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THE ANTI-CORRUPTION BULLETIN



BULLETIN OF THE CENTRAL ANTI-CORRUPTION BUREAU



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Integrity Testing

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The Central Anti-Corruption Bureau has the pleasure of presenting a new edition of the Anti-Corruption Bulletin devoted to the subject of integrity testing. The content of the magazine is the result of international cooperation between services and institutions. The Bulletin contains the original versions of the articles.

TABLE OF CONTENTS

Foreword	5
1 BULGARIA	7
2 CZECH REPUBLIC	14
3 HUNGARY	16
4 MOLDOVA	23
5 ROMANIA	25
6 SERBIA	35
7 THE USA	48
8 POLAND	50

Foreword

Dear Readers,

I am pleased to provide you with the next issue of the popular science magazine of the Central Anti-Corruption Bureau entitled the Anti-Corruption Review. This time it is devoted to the issue of integrity tests, presented both in the perspective of solutions functioning under foreign legal systems and the conclusions resulting from the concept of introducing them into national legislation.

Although this tool does not currently exist in the Polish legal system, since it is of crucial importance, this topic was addressed in the latest issue of the magazine in order to familiarise a wider circle of recipients with the subject matter. Representatives of other foreign services who shared their experience in the field of the subject were invited to cooperate in the preparation of this publication.

The solution of integrity testing has been implemented in various countries of the world, including our foreign partners. Integrity tests are carried out to detect cases of unlawful conduct of officers while performing their official duties. There are two types of such tests – non-classified, examining the integrity of an employee before his or her employment (these are psychological tests) and classified, conducted to check the level of integrity of the officer in the conditions of an artificially created situation. Classified tests include both – tests oriented on verifying information about a committed crime and random tests.

As a result of the cooperation with our partners, the publication contains information about integrity tests used in Bulgaria, the Czech Republic, Moldova, Serbia, Romania, the USA, and Hungary. Our partners described conditions accompanying the introduction of integrity tests and the methods of conducting them. They also presented legal provisions on this issue and provided the effects of using this tool.

The Review also includes articles dealing with integrity tests at the level of Polish experience – showing the possibilities and perspectives of implementing this tool. The author of one of the articles – representative of the Internal Affairs Bureau of the Polish National Police, junior inspector Jerzy Świątek – presents, among others, theoretical issues and examines the legal basis for introducing this type of solution in Poland. The author of the next study – the former Deputy Head of the CBA, assistant professor of the Cardinal Stefan Wyszyński University in Warsaw, Grzegorz Ociecek, PhD – presents and analyses the results of research conducted on integrity tests among officers of the Central Anti-Corruption Bureau and law students of the University of Cardinal Stefan Wyszyński.

I hope that the latest issue of the Anti-Corruption Review allows its readers to deepen their knowledge in the field of integrity tests and also initiates a discussion on introducing this type of solution into the Polish legal system.

Andrzej Stróżny
Head of the Central Anti-Corruption Bureau

BULGARIA

Internal Security Directorate at the Ministry of the Interior

The Internal Security Directorate at the Ministry of the Interior of the Republic of Bulgaria has been applying its integrity tests for a relatively short period of time by acquiring information from its longtime partners from the United Kingdom as they have extensive experience in this field.

Corruption in the state apparatus is the most serious form of corruption, as it is often related to the concealment of a crime or an offense. This affects not only the rights of the individual, but also the interests of the whole society. Corruption is a collective concept that involves multiple phenomena of objective reality and can be interpreted more widely than they way in which we are all accustomed to understanding it. This makes the term inappropriate for use in criminal law, and instead the legislator uses the term “bribe”. An entire section of the Criminal Code of the Republic of Bulgaria is devoted to the bribe: VIII, Chapter IV “Bribery”, Art. from 301 to 307a.

The Internal Security Directorate is a Ministry of the Interior structure for operational-search, information-analytical and organizational activities on the prevention, interception and disclosure of transfers carried out by ministry officials. As a part of the executive, the Ministry through its specialized Internal Security Directorate makes efforts to develop a strategy of anti-corruption measures that, while imposing a comprehensive, more general approach, focuses on those key measures that may be more effective, a decisive anti-corruption effect, various practical programs and

measures, most of which are borrowed from foreign experience, and are being assimilated, with an attempt to introduce them at the regional and national levels with a thorough, in-depth analysis.

The analysis of the activities of the security environment and the state of the Ministry of Interior shows that there are deficiencies in the integrity, loyalty and ownership of the policies, principles, goals, values and performance of the employees of these institutions. Former countermeasures, investigating cases of corruption and conducting alerts, are not proactive acts when they are post factum. Actually, when we start these actions, a criminal act or violation has already been committed, which in tum has an impact on both the public and the other employees in the system.

The mechanism for counteracting corruption in the Ministry of Interior started to be constructed by the Ministry of Interior in December 1996 when, with an order of the Minister of Interior, this activity is regulated for the first time. An organization for the prevention and detection of corruption in the Ministry of the Interior was established in 1998 and 1999. However, practice has shown that the order established by these normative documents does not allow effective interaction between the different national and territorial services in the processing of the signs received. The reason for this is that at this moment in the Ministry of Interior there is no unit that in fact coordinates the activity of the structures of the Ministry of Interior in the area of corruption and

performs methodological control assistance in the work on investigating the signs of corrupt behavior on the part of employees. This omission was corrected in 2001, when an entirely new organization was set up to detect and prevent corruption in the system of the ministry. Part of this mechanism is the internal coordination council, established for fighting corruption in the Ministry of the Interior, which defines the policy followed by the ministry in this regard and the department “Anti-Corruption in the Ministry of the Interior”. This not only centralized the work on counteracting internal corruption, but also optimized the activity of the MoI for registering the signals, processing them, assessing, analyzing and documenting the acts of corruption committed by employees of the internal administration. Continuous control is provided by the Anti-Corruption Department at the Ministry of Interior at the Inspectorate Directorate, on the activity of elucidating the reported corruption signals and by improving the operational interaction between the employees of the National Organized Crime Service, the Border Police and the Police.

At the beginning of 2003, these changes were also reflected in the law on the Ministry of Interior – Art. 125a is supplemented by a new point 4, according to which “... the Inspectorate Directorate controls and provides methodological assistance in the work of the national and territorial services for prevention of corruption in the system of the Ministry of Interior”.

Since July 2003, with the signing of a bilateral twinning agreement between the Bulgarian and UK Ministries of Interior, in partnership with the London Police Department, the Ministry of Interior started to implement a project with an investment component, the PHARE Program – “Implementation of the National Anti-Corruption Strategy: Development of the Unified Anti Corruption System in the Ministry of Interior.” As part of the project, it has been working in several areas related to the legal-institutional framework and public awareness, prevention, training, information systems and operational

practices. All activities implemented are aimed at achieving the main objective of the contract – increasing the effectiveness of the work in countering internal corruption in line with the positive experience of the European Union. During the implementation of the project at the Ministry of Interior, a large number of activities were carried out in order to improve the work and to increase the efficiency of the fight against internal corruption. A National Conference was held at the beginning of June 2004, during which the state of work on internal corruption issues for the period 2001–2004 was discussed and measures for improvement of the existing mechanism were proposed. As a result of the conference in October 2004, a ministerial order was issued, which established and introduced into the Ministry of Interior a specific model representing a Unified Anti-Corruption System at the Ministry of the Interior. This act fully encompasses the process of receiving, checking and realizing information on corruption behavior of MoI officials. An active approach to acquiring alerts has been introduced, which is clarified by the specialized units and the designated officials in the national and territorial services of the Ministry working only in this area (at this time, 126 employees). In view of their greater autonomy in their direct work and less subordinate position, the methodological control and assistance in their activity were carried out by the inspectors in the Anti-Corruption Department at the Ministry of Interior at the Inspectorate Directorate. The new normative act formulates the concept of “corrupt behavior of an employee of the Ministry of Interior”, which is subject to anti-corruption activity. It has also endorsed various ways of obtaining tips about corrupt behavior, and has created an opportunity to control all executive and management levels in the ministry, including employees working on this line of business. By signing and implementing this order, the main objective of the jointly implemented contract between the Ministries of Interior of Bulgaria and Great Britain to improve the model and to increase the effectiveness of the work on countering internal corruption in line with

the positive experience of the European Union is realized and practiced.

The actual launching of the unified Anti-Corruption System at the Ministry of the Interior took place in early March 2005, when a working meeting was held with the employees assigned to work only in this area, aiming at forming the necessary attitude and motivating them to carry out their future activities, which is one of the ministry's main priorities.

One result of the PHARE Partnership Agreement with the United Kingdom has been the establishment of a comprehensive organization for comprehensive reporting of signs of corruption, namely:

- two anonymous telephone lines (internal for employees and outside for citizens) have been opened and started to function in the “Inspectorate” Directorate for receiving signals of corruption acts of MoI officials,
- it is also possible to submit such tips to the Ministry's website.

In connection with the contract, a communication strategy has been developed to inform the public about the measures taken to counter corruption in the Ministry of Interior. Accordingly:

- a video clip and a radio spot with anticorruption content and an appeal to civil society for the unacceptability of the corruption of ministry officials have been produced and broadcast on TV and radio channels.

In 2004, using the good experience of the UK, the Ministry of the Interior carried out, for the first time, employee loyalty tests aimed at establishing the lawful performance of their duties. In view of the anti-corruption impact on MoI staff working directly with the public, loyalty tests were conducted and in early May 2005; in order to increase the preventive effect, the results of the inspection were appropriately reflected in the media.

In addition to the 2003 Code of Ethics for Interior Ministry Employees with Police Powers for Higher Standards of Conduct among MoI Employees, in May 2005, 10 basic principles for the prevention of corruption were introduced and popularized

with a view toward the formation of sustainability in the value system of ministry employees in accordance with moral and ethical forms in society, and are provided personally to each of them against signature. Issues concerning counteracting internal corruption are included in the curricula and thematic plans of the Academy of the Ministry of the Interior and the other training centers of the Ministry, and managers and experts have been trained on this topic.

In 2005, at the end of the two-year PHARE Partnership Agreement, which is in partnership with the London Police Counterfeiting Unit, the British partners strongly recommended applying the Integrity Test (TI) method. This approach is used by Britain's anti-corruption command, where it is legislated. The British partners argue for their proposal with the fact that the presence of an Integrity Test Unit already has a preventive effect, as it leads to an increase in the level of responsibility of regular police officers who believe that such tests are conducted on a daily basis and in many places.

The first integrity tests were conducted among employees in two district offices in Sofia. Their purpose was to establish the integrity of the employees in the institution, the lawful performance of their duties, and to create a new way of thinking. The inspections revealed violations of official duties, and the disciplinary punishment of “Dismissal” was imposed on eight employees. Once these events were appropriately reflected in the media, they were found to have had a positive anti-corruption effect on employees and citizens in society.

In 2005, these were conducted for the performance of the official duties of uniformed police officers carrying out road control on the territory of several districts in the country. The actions of the review teams were in line with Article 125j of the then-existing MoI Act. For this purpose, cars were hired using the twinning project BG02 I 1B/JH-02 and a PHARE convergence agreement was concluded, with a Plan (scenario) being prepared in advance. The rented vehicles had to create natural preconditions so

that the Traffic Police patrols would stop them for inspection, namely exceeding the maximum permitted speed of 12–15 km/h in the area where the traffic police are located, simulating a conversation with GSM devices, removing safety belts while approaching patrol cars without creating a road traffic accident. According to the plan, after the check-in, the review team played a scenario according to a specific setting. The main purpose was to check the performance of official duties by road-traffic controllers. The event was aimed at exploring the possibilities of applying the English experience in Bulgaria's anti-corruption practice and, last but not least, achieving the necessary prevention and impact on employees and on society, by suggesting that this line would be continually in operation. The scenario Plan also lists the punishments provided for the offenses. All planned actions are targeted as such outside the scope of Article 307 of the Penal Code, excluding the subjective element. The goal was for the employee to decide on his actions himself without being challenged or provoked to do so.

As a natural result of the implementation of the internal anti-corruption policy in the Ministry of Interior and in connection with the implementation of the two-year Cohesion Policy PHARE agreement BG 02 I IB/JH-02 "Implementation of the National Anti-Corruption Strategy: anti corruption system in the Ministry of the Interior", in 2006 actions were taken to conduct a new loyalty test (performance of official duties) of the police officers carrying out road control on the territory of several territorial areas in the country. Such measures are also planned in the program of the Council of Ministers for the implementation of the Strategy for Transparent Management and Prevention and Counteraction of Corruption for 2006, which directly engages the Mol. An established line of behavior of the inspection teams and a tactical approach to trigger the interest of the policing of police exercises have been developed. In the pre-prepared scenario plan, the routes to be scrutinized by the inspection teams were indicated. The main purpose of the tests was to check

the performance of the roadworthiness of road traffic controllers by making them assess how to react to the situation without provoking negative decisions. Following the model of the tests carried out in 2005, disciplinary sanctions were again provided for employees who had not fulfilled their duties and incentives for those who had done so. Next, the application of a loyalty test aimed at achieving the necessary prevention and impact on the employees and the society, suggesting that Traffic Police monitoring is being conducted in such a way that such tests are continuously carried out. In order to avoid the subjective element in the provisions of Article 307 of the Criminal Code, the pre-prepared scenario plan for the conduct of the loyalty tests was agreed and confirmed by a prosecutor. The aim of this conciliation was to mark the activities so as to go beyond the executive act of "provocation to bribery", which in its legal nature is expressed in the accusation, persuasion and motivation of an official, in this case a police officer to take a decision to obtain a gift that is not granted to him in order to expose the person who gave or accepts the bribe (Sentence 123 "A4/10.03.1970 on NN 88/1979). Decree No 8 of 30.11.1981 on the NN 10/1981, Supreme Court Plenum (AC) In item 17 of the Decree, the Council of Ministers accepts that the commission of the offense under Article 307 requires deliberate persuasion, persuasion and motivation of the provoked person to accept or give a gift in order to be subsequently exposed to a crime, but provocation of a bribe is not the case when the person receiving a bribe asked for it in advance, and the one who gave it to him was trying to get some benefit against him.

When summarizing the results of the integrity tests carried out in 2005, a report was prepared in which the findings are described in detail and the cases are divided into four categories:

- cases where uniformed roadside control officers did not perform their duties and accepted cash and other benefits in case of violations of the Road Traffic Law and implementing its regulations,

- cases in which police officers performed their official duties (acts are compiled acts under the LTA.),
- cases in which police officers failed to perform their duties in the case of obvious violations of the APA and its Implementing Rules carried out during the test by the inspection teams,
- cases in which police officers detected the violations committed by the test team but did not sanction them (“forgave” the violation).

Together with the established disciplinary offenses, verifiers who have applied loyalty tests in practice have identified the existence of problems that have a negative impact on both the fight against corruption and on traffic safety:

- lack of sufficient inspectorates in the “Traffic Control and Preventive Traffic Management Organization” group,
- inability to ensure a permanent inspection presence during the night shift with the available inspectorate staff – shift managers, which negatively affects the fight against corruption and acts to encourage unscrupulous employees,
- further involvement of the auto-control team in the day-to-day road control activities (Road Traffic Police – Traffic Police teams are often diverted from the service routes to regulate traffic in connection with ongoing rehabilitation activities on the road network).

After summarizing the results of the loyalty tests (performance of official duties) and drawing up a detailed report, the data concerning each of the directorates under review were systematized and sent out in order to take appropriate disciplinary measures against the accused police officers.

As an additional measure against the employees who committed a breach of their obligations and according to Art. 191, para. 1, item 3 of the Ministry of Interior Act provided for the appointment of a post outside the road control. For this purpose, a Methodology should be followed for the evaluation of the performance of the position of the civil servants in the Ministry of the Interior.

Undoubtedly, the preventive significance of the tests carried out regarded all MoI officials. This fact is confirmed by the follow-up inspection carried out with the permission of the Minister of Interior. The purpose was to establish the implementation of the actions already undertaken to remedy the deficiencies, weaknesses and admitted violations, according to the recommendations from the performed test and activity of the employees in the exercise of the obligations related to the road control in violations of the Law on Civil Aviation and the Law for the Protection of Nature. By preventing and impacting employees and society by suggesting to the Traffic Police the fact that such tests will be conducted continuously along these lines. As a result of the control, several general conclusions are drawn that explain the high corruption risk and behavior of the MoI staff:

- first of all, such a risk is the direct contact between the police officers carrying out the check and the offenders;
- threats of a self-inflicted offense by offenders, which demotivates employees;
- ineffectiveness of the mechanism for service of the punitive decrees issued;
- poor activity by Traffic Police officers in respect to violations committed by the inspection teams.

Another positive moment as a consequence of the events was the organization of a daily inspection of police officers for alcohol use. The number of non-verification checks has increased considerably.

As a whole, the first measures to establish the performance of official duties by MoI staff were not dressed in legal form. Their legality was expressed in the preparation of a proposal containing a preliminary plan for their conduct, which was agreed with the Chief Secretary of the Ministry of Interior and with a prosecutor from the competent prosecutor’s office, in order to avoid the subjective moment in the provisions of Art. 307 of the Criminal Code. The tests are based on basic principles of legality, such as respect for fundamental human rights and freedoms, respect for the human and professional dignity of civil servants,

impartiality and objectivity. The testing proposals made in 2006 were consistent with the implementation of the internal anti-corruption policy of the MoI and in connection with the implementation of the two-year Cohesion Policy PHARE agreements under PHARE BG 02 I IB/JH-02 “Implementation of National Anti-Corruption Strategy: Developing a Unified Anti-Corruption System at the MoI”. After the conversions in 2005 and 2006, legal conclusions were drawn that in order to apply the “Integrity Test” method in Bulgaria, it was necessary to make a change in the country’s legislation. In this regard, proposals have been made by the Ministry of Interior to the Council of Ministers to amend the provisions of Art. 307 of the Criminal Code. Until now, such actions have not been implemented, although there is an active discussion about the fight against corruption not only in the Ministry of Interior but also in the country as a whole. The lack of secondary legislation can also be considered as a significant negative factor.

The new circumstance to date is the new Law on Counteracting Corruption and Removal of Illegally Acquired Property that has been introduced. It is the first attempt to define the notion of corruption. According to Art. 3, corruption occurs when, as a result of a senior public office, the person abuses power, violates or does not fulfill official duties for the purpose of directly or indirectly obtaining material or immaterial benefit for himself or for others. The law covers, in addition to senior public officials, all civil servants in the law enforcement authorities of the Republic of Bulgaria.

Next, with an amendment in 2016, the Law on the Ministry of Interior was amended, where for the first time the integrity tests were dressed in a legal form. The law provides for the tests to be carried out under the terms and conditions specified in an instruction. In the system of the Ministry of Interior, such an instruction has already been in effect since the beginning of 2017 and it regulates the conditions and the order in which the tests for the establishment of the performance of the official duties of state

officials of the Ministry of Interior will be carried out. A special unit was set up to the Internal Security Directorate – the Ministry of Interior to implement the measure in the framework of administrative control.

Instructions have been introduced to conduct non-standard checks to support integrity testing. It is characterized by the fact that when inspectors fail to fulfill their official duties, the examiners may terminate the observation and take action to remove them and give instructions to the team.

At the invitation of the Internal Security Directorate – Ministry of Interior, in 2018 a one-week training was conducted on the territory of the Republic of Bulgaria with a lecturer from the National Crime Agency (NCA) of Great Britain. Employees are familiar with good practice and have received many case-specific examples when applying integrity tests in the UK. In the beginning of 2019, officers of the Directorate were sent to a working visit to the National Crime Agency (NCA) of Great Britain. Their stay there is related to enhancing the capacity and qualifications of integrity tests and is a continuation of the joint initiative related to the introduction and implementation of the integrity tests by the Ministry of Interior. During the visit, employees are aware of the vast international network for counteraction and prevention of corruption.

Identifying potential risk indicators for employees is one of the most important measures in preventing corrupt practices. In our opinion, an important part is the intensified internal monitoring, both for the people who will be in the structure and for the employees in it, that is, prevention has a leading role in the measures to prevent corruption. The term “law enforcement integrity” means that law enforcement officers know and respect the values of the organization, recognize them as their own, and act in their behavior actively to realize organizational goals that are in harmony with their personal and professional goals; on the basis of the results achieved, they have the trust of society. Employee integrity testing is done on the basis of clear rules and mechanisms that are compliant with the law.

Integrity tests are a specific form of administrative control. These include inspections of all MoI staff.

In February 2019, the Internal Security Directorate – the Ministry of Interior organized and conducted its first stand-alone integrity tests among the Ministry of Interior staff. For this purpose and in compliance with the normative basis, a proposal was prepared in advance to the Minister of the Interior, and after a positive resolution he made a plan and a scenario for conducting the event itself. The team directly involved in the implementation of the activities prepared a route movement and way of performing the test. During its application over two days, no violations or non-fulfillment of official duties of civil servants in the MoI system were established.

The results of the activity in the Internal Security Directorate – Ministry of Interior in counteracting corruption among the employees as well as in view of the established processes of sanctioned and established cases of corrupt actions, lead to the following more important conclusions, summaries and recommendations:

1. In MoI structures, training of personnel from different categories, structures and units for the implementation of anti-corruption measures and promotion of sustainable behavior toward the initiatives provoked by the citizens for the realization of corruption practice should be conducted in the structures of the Ministry of Interior.
2. On the basis of established characteristics of the “typical employee inclined to

corrupt behavior” in each structure, monitoring should be carried out on the employees in this type – with seven years of experience in the Ministry of the Interior, aged 35–45 years; over 45, often with a tendency to highlight their power, a weak tendency for self-improvement.

3. Infringements of administrative rules or offenses do not necessarily entail the imposition of a disciplinary and administrative measure on the civil servant being tested, but the chief of the profession shall prescribe measures in accordance with his legal judgment.

The outlined trends and recurring features in proven cases of corrupt practices allow these types of issues to be included in the integrity tests, tests and initial selection procedures of the MoI staff.

The application of anti-corruption measures leads to increased confidence in society and citizens in the Ministry of Interior and its employees. Applying integrity tests would be a successful tool for preventing and counteracting corruption. Their use in different sectors is advisable at the established high risk of corruption. Prevention, which is a natural conduit to countering corruption in the Ministry of Interior, is of paramount importance for the future work of the Internal Security Directorate. All that has been said so far can be summed up with the main conclusion that the conduct of integrity tests in Bulgaria is a mandatory tool for prevention and counteraction against government officials exposed to corruption risk and vulnerability.



CZECH REPUBLIC

General Inspection of the Security Forces

General Inspection of the Security Forces of the Czech Republic (GIBS) is a national-level law enforcement agency. Its mission is to investigate when Czech police officers, customs officers, prison officers as well as civil employees of law enforcement are suspected of committing a criminal offence in the line of their duty.

Integrity tests are a very important tool both in the prevention of corruption, actual fight against it and in investigation of criminal activities in the areas of GIBS' jurisdiction. Over the past few years, integrity testing has become of one of its key areas of focus.

Integrity tests in the Czech Republic's law enforcement community

An old proverb says that integrity is choosing your thoughts and actions based on your values rather than personal gain. In the area of the security forces, this truth is obviously limited not only to one's personal values, but first and foremost to the ability to strictly adhere to legal boundaries. Therefore, since 2008 and in order to verify that the service members of the various security forces of the Czech Republic "practice what they preach" as well as follow both legal regulations and the highest ethical standards when conducting their daily duties, the country's legislators have instituted the instrument of integrity tests and embedded it into the overall legal system of the Czech Republic.

Since the beginning of 2012, the duty of planning and execution of integrity tests of the servicemen and women of the Police, Prison Service and the Customs Administration has been, along with other key tasks, entrusted into the responsibility of the then newly-formed General Inspection of the Security Forces of the Czech Republic (GIBS).

While it was built on the tradition and principles of functioning of its informal predecessors – the individual inspections of the Police, Prison Service and the Customs Administration, all three of which had ceased to exist by the end of 2011 – GIBS was formed as a "green-field" organization. From its foundation it was empowered with appropriate rights and adequate resources enabling it to conduct effective complex investigations into the crimes committed by both officers and civilian employees of all three of the above-mentioned security forces as well as of those from within its own organization. Naturally, just like with any civilian police investigations and fully in line with the Czech legislation, any cases which GIBS investigates are always supervised by the public prosecutor. GIBS, which unlike its informal predecessors is not part of any specific ministry, and with its Director reporting solely to the Prime Minister of the Czech Republic, had therefore become a supreme independent investigative authority over the Czech Police, Prison Service and the Customs Administration.

Given its exclusive position within the hierarchy of the Czech law enforcement system, at the time of its formation GIBS was also assigned with several other key tasks such as educational, monitoring and prevention activities within the organizations in its jurisdiction along with the creation of appropriate methodological recommendations for the Czech law enforcement community. Nevertheless, together with the day-to-day identification and investigation of crimes, the area of conducting integrity tests had become one of the GIBS' flagship activities.

The way in which GIBS can execute integrity tests is strictly governed by the appropriate legislation that clearly mandates how the exercise can and cannot be carried out. The actual testing is conducted by simulating an artificial situation, yet similar to those in the tested person's daily work routine and verifying whether they carry out their duties properly and in accordance with the applicable legal regulations and code of conduct. Under no circumstances can the officers executing the integrity test act against the law or force the tested person to commit an offense or a crime nor can they create any life-threatening or other conditions generally prohibited by law. Last but not least and most importantly, the integrity test and the way it is carried out cannot impose a provocation. Being an instrument for objective verification of the tested person's resistance to corruption, illegal or unethical behavior,

execution of each integrity test must be documented using video and audio recordings.

One practical example of such testing is an integrity verification of members of the Czech traffic police. During the exercise, GIBS officers commit an intentional violation of the traffic regulations and subsequently passively monitor the traffic police officers' reactions and behavior. As mentioned previously, a concealed video and audio recordings are used during the whole interaction with the tested personnel and the GIBS officers can by no means interfere or provoke any unlawful actions during the entire incident. The way the situation is handled, and its ultimate outcome are therefore fully in the hands of the traffic patrol and its service members. Obviously, there are much more complex testing scenarios as well and on average it takes two to seven GIBS officers to prepare, execute and evaluate each test. In 2018 alone, GIBS received 56 requests to conduct various types of integrity tests, of which 40 were carried out.

In line with the philosophy of "hope for the best, but plan for the worst", over the past several years the integrity tests of the Czech Police, Prison Service and the Customs Administration have become a key element in ensuring that their service members behave in a way that is expected both by the law and by the ordinary citizens. Should they not, GIBS remains on 24/7 watch to make sure that the appropriate legal actions are taken as well as to help to protect the trustworthiness of the overall Czech law enforcement system in the eyes of the public as such.



HUNGARY

National Protective Service

The National Protective Service of Hungary (hereinafter referred as to NPS) is a Budapest-based organisation with nationwide competence performing internal crime prevention and detection duties, which has carried out its protective work by the provisions of the Act 34 of 1994 on the Police since 1 January 2011. Further enforcement rules on the scope of the mandate is stipulated by Government Decree 293/2010 (12.22) on designation of the police organ for internal crime prevention and crime detection, on the discharge of its duties, and on detailed regulation for lifestyle monitoring and integrity testing.

NPS – alongside the agency for general police activities and the agency for counterterrorism – is an independent part of the Hungarian Police, which is controlled by the Government via the minister in charge of law enforcement (Minister of the Interior).

The aim of the NPS is to generate and support a morally pure, professionally prepared public service with a European mentality, and to protect the public service from the influence of corruption and thereby strengthen the trust in the public sector.

The main tasks of the NPS:

- Crime prevention,
- Crime detection,
- Lifestyle monitoring,
- Integrity testing,
- Protection,
- Corruption prevention.

Organizational integrity

Ideally, an organization works transparently, managers and subordinates carry out their work responsibly and accountably; and the aim of the organization is to enforce the public interest defined in laws. If they do, then the organization is integrated. Another fundamental pillar of organizational integrity is individual integrity, which assumes that the individual acts in every situation in accordance with his/her moral values. Corruption is one of the most serious forms of damage to integrity.

New method for the repression of corruption¹

The integrity test as a new legal instrument was introduced in accordance with the establishment of the National Protective Service in 2011.

The intention of the legislator was to establish such an organisation which is able to work more efficiently on the field of internal crime prevention and crime detection covering all Hungarian law enforcement agencies and significant part of the public administration in order to meet the national and international expectations of a more effective fight against corruption. The trust in state organisations and public life is essential in modern democracies. To guarantee this, the internal crime prevention and crime detection agency was established with a new organisational structure, and a broader scope of authority than its predecessor had.

From the very beginning, an essential requirement was determined that after the comprehensive preparation process, an appropriate person should be selected as the subject of integrity testing, and as many contacts as possible should be realized on the basis of the life-like situations created. The effectiveness of the integrity testing is based upon the risk analysis performed during the preparation process and the assessment of a criminal situation.²

The legal background of integrity testing³

Section 7/A. (1) The purpose of integrity testing is to establish whether the person concerned complies with the statutory requirements of his/her job, and the obligation of laws, the scope of activities laid down by collective agreement, work agreement and labour contract. In order to establish this, the agency carrying out the integrity testing shall create artificial situations that may happen or can be assumed to happen in real life in the course of doing a given job. Infringement of the law detected in the course of integrity testing cannot be used as basis for starting disciplinary or misdemeanour procedures.

(2) Integrity testing shall be ordered by the head of the agency carrying out internal crime prevention and detection in a Decision, including the reasons for the need for such testing. The test could be initiated against the member, or the unit employing the member of protected staff who carries out their tasks at a specific unit and belongs to a specific staff branch but cannot be named at the time of the initiation of the test. The prosecutor must immediately be informed of the order and completion of integrity testing, including sending the relevant Decision, and in case of the order, a detailed plan as well. Based on the Order and on the detailed plan on the implementation of the test, the Prosecutor shall approve or deny the approval of ordering the integrity testing within two working days.

(2a) Within eight working days of the receipt of the Decision on the completion of integri-

ty testing the Prosecutor shall examine the legality of the Decision and return it to the ordering authority. If a violation of law is established by the prosecutor s/he shall order the authority performing the integrity test to make a new Decision. If the integrity testing was carried differently out from the detailed plan the prosecutor s/he may initiate impeachment.

(3) The member of the protected personnel affected by the integrity testing shall not be informed of the start of the testing – including the decision to terminate in accordance with paragraph 5 – but shall be informed of its completion within 15 working days.

(4) Integrity testing – with the exception of paragraph (5) – can be ordered for a member or members of the protected personnel a maximum of three times a calendar year.

(5) In the event creation of the test situation cannot be started due to objective circumstances, the decision on the termination of the test shall be made by the agency for internal crime prevention and crime detection, and in this case paragraph 4 is disregarded for the annual restriction of implementation of integrity testing.

(6) The duration of integrity testing may not exceed 15 days, which may be extended once by 15 days by the head of the agency carrying out internal crime prevention and detection. The activities undertaken during integrity testing must be documented.

Section 7/B. (1) In the course of integrity testing, secret information collection may be done as stipulated under Chapter VII.⁴ The tool for secret information collection must be given in the Ordering Decision and in the detailed plan as well.

(2) Integrity testing may be done by a staff member of the agency carrying out internal crime prevention and detection in compliance with the following:

a) s/he may commit misdemeanours related to: the use of explosives and pyrotechnical products for civilian use, reporting untrue information, customs, assisting the perpetrator

of a customs misdemeanour, receiving stolen goods, violation of fire protection rules, an offense related to policing foreigners, violations of public traffic signs, driving without valid vehicle liability insurance, violation of traffic management rules, minor violation of traffic rules and violating traffic rules that are liable to public administration fine,

b) s/he may not commit criminal acts,
 ba) criminal acts listed in Act IV of 1978 on the Criminal Code Chapters X⁵, XI⁶, XII⁷ – except trespassing private homes [Section 176] – XIV⁸, XV⁹ – except malfeasance [Section 225], perjury [Section 233], misleading of authority [Section 237] and the provisions under Title VII¹⁰ – XVI¹¹ – except the provisions under Title III¹² – XVII¹³ – except the provisions under Title III¹⁴ – XVIII¹⁵ – except the infringement of rights related to copyright [Section 329/A] XIX¹⁶ and XX,¹⁷
 bb) criminal acts listed in Criminal Code misuse of personal data [Section 219], illegal entry into private property [Section 221], criminal offenses with classified information [Section 265], false accusation [Section 268], misleading of authority [Section 271], abuse of authority [Section 305], information system fraud [Section 375], infringement of copyright and certain rights related to copyright [Section 385], counterfeiting of cash-substitute payment instruments [Section 392], cash-substitute payment instrument fraud [Section 393], aiding in counterfeiting cash-substitute payment instruments [Section 394], imitation of competitors [Section 419], and except the crimes in Chapters XXVII¹⁸, XXXIII¹⁹ and XXXIX,²⁰

c) s/he may infringe or breach of the obligation of the Excise Duty Act,

d) s/he may infringe product charge obligations, breach rules in accordance with the metal merchant's trading activities; selling, transportation, warehousing, storage and utilization of other materials subject to license by different person; breach rules regarding reporting obligations related to electronic road

traffic control system or financial or other subvention, tax reporting, declarations, payment obligations, and accounting obligations.

(3)*²¹

(4)*

(5) Data which is irrelevant to the purpose of the integrity testing and data of the person who is untouched upon testing shall be deleted within three days after recording.

Section 7/C. (1)*

(2) In the event of the authority carrying out internal crime prevention and detection tasks does not initiate criminal proceedings as a result of the integrity testing, the data generated in connection with the integrity testing – including those recorded by technical means pursuant to Section 66 (2)²² – with the exception of the document of completion and termination, shall be destroyed within 30 days of the completion of testing.

(3) The Decision made on the completion of integrity testing shall be destroyed two years after it was made. The Decision on the completion of the integrity testing shall include all the significant data of the testing, in particular important data concerning the Prosecutor's supervision of legality and the protection of interests under investigation.

(4) The prosecutor shall exercise supervision over the entire process of integrity testing as provided by the applicable rules and regulations.

(5) The procedural rules of integrity testing shall be regulated in detail by the Government in a Decree.

Section 7/D. § The member of the authority carrying out the internal crime prevention and detection performs as per Section 7/B.

(2) is not punishable:

a) in the event an offense against the law – crime, infringement or misdemeanour which may result administrative fine – is committed as defined in the detailed plan of integrity test if the offense serves crime prevention and crime detection purposes,

b) in the event an offense against the law committed – crime, infringement or misde-

meanour which may result administrative fine – for the purpose of securing and preventing unveiling if this interest is more important than the interest of prosecution, or in the event an offense against the law committed – crime, infringement or

c) misdemeanour which may result administrative fine – for the purpose of prevention or interruption of offense is more important than the interest in prosecution.

Enforcement rules of the integrity test defined by the Government Decree 293/2010. (12.22)

Section 10. The decision ordering the integrity test (hereinafter: test) includes:

a) the protected staff's:

aa) concrete member's personal identification data and place of service, or

ab) the specific name of the unit employing the member of protected staff who carries out their tasks at a specific unit and belongs to a specific staff branch but cannot be named at the time of the initiation of the test,

b) the start and termination date of the test with the indication of year, month and day, furthermore,

c) the date and duration of a previous test in the same year in cases of:

ca) tests falling under aa) of a)

cb) tests falling under ab) when it includes a member of staff against whom test cannot be carried out in the year of initiation pursuant to S. 7/A. paragraph (4) of Act on the Police.

d) the description of the tool planned for use during secret information collection.

Section 11. (1) The detailed plan of test includes:

a) the protected staff's:

aa) concrete member's name, title of unit, post and scope of activities, or

ab) the specific name of the unit employing the member of protected staff who carries out his/her tasks in a specific unit and belongs to a specific staff branch but cannot be named at the time of the initiation of the test,

b) the justification of the test,

c) detailed description of method to be used during in secret information collection,

d) description of situation to be created with the detailed presentation of the facts and scene,

e) the planned place – road, route section, district, city, town, village, patrol routes, county, official premises, vehicle – and planned time,

f) names and ranks of persons delivering the test,

g) detailed tasks of the persons delivering the test,

h) the means of documentation of delivery,

i) for the sake of information after the termination of the test, the names and posts of employers of the persons concerned with the test.

(2) If the method of the test is committing a crime or another breach of regulations sanctioned with administrative fee, the plan shall also include:

a) the description of the crime or another breach of regulations sanctioned with administrative fee,

b) the justification for the use this method, and

c) the detailed description of the perpetration.

(3) If – in line with the relevant laws – technical recording is planned to take place during the test, the detailed plan shall also include reference to the recording, the description, specification or precise indication of place or vehicle.

(4) It shall be endeavoured that unconcerned data or data of unconcerned persons not be recorded.

(5) The accompanying list of recorded data shall include the file number, aim of the test, the name of the person concerned with the test or the specific name of the unit employing the member of protected staff who carries out their tasks at a specific unit and belongs to a specific staff branch but cannot be named at the time of the initiation of the test, place and time.

Section 12. (1) The situation created for the test shall entail an official measure or proce-

dure of the person concerned with the test. The situation shall not limit the freedom of deliberation of the person concerned with the test in terms of choosing the method of measure or the order of procedure.

(2) The place and method of test shall not hamper the fulfilment of the tasks and obligations of the person concerned with the test.

(3) The method of the test shall not be intimidating and shall not violate the honour and reputation of the person concerned with the test; furthermore it shall not endanger the life or physical integrity of any person.

(4) The test shall not endanger the procedure of any other authority.

Section 12/A. (1) In the event the creation of the test situation cannot be started due to objective circumstances, the decision on the termination of the test shall include:

a) the protected staff's:

aa) concrete member(s)'s name, title of unit, post and scope of activities;

ab) the specific name of the unit employing the member of protected staff who carries out their tasks in a specific unit and belongs to a specific staff branch but cannot be named at the time of the initiation of the test;

b) start and termination date of the test with the indication of year, month and day furthermore;

c) the reason for termination.

(2) The member of staff concerned with the test shall be notified about the termination or completion of the test. The notification shall include the fact of the termination, the exact time (year, month, and day) of start and termination.

(3) In the event the test is initiated against a member of staff who carries out their tasks in a specific unit and belongs to a specific staff branch but cannot be named at the time of the initiation of the test, the decision on the termination of the test shall only include the exact name of the unit and the time of the start and the termination of the test.

(4) The commanding officer shall be notified about the termination of the test set out in

paragraph (3) with the content set out in paragraph (2).

The concerned members of staff shall be notified by their commanding officer.

(5) The decision to terminate the test shall be sent to the prosecutor authorising its launch at the same time with the notification set out in paragraph (2) or (3).

Section 12/B. (1) The officer delivering the test set out in Section 10. ab) of a) shall examine prior to the creation of the artificial situation whether or not there is a member of staff at the time and place approved by the prosecutor against whom test can be delivered in the actual year pursuant to Section 7/A. (4) of the Act on the Police. If the officer delivering the test satisfies that the test may affect a member of staff against whom the test cannot be delivered in the actual year pursuant to Section 7/A. (4) of the Act on the Police, the test shall not be started.

(2) In the event set out in (1) regulations of Section 12/A. shall be applied accordingly.

Section 12/C. In the event the deadline of the test is extended, the extending decision shall include justification of the extension and the extended deadline of the test.

Section 13. If the employment of the member of the protected staff is terminated for any reason during the test, the test shall be terminated by Decision.

Additional regulations concerning to integrity testing

The Act C of 2012 on the Criminal Code Chapter XXVIII – Abuse of Authority – Section 307. shall be applied for unauthorized secret information collection or employment of covert methods and Section 308. for unlawful integrity testing as follows.

Unauthorized Secret Information Collection or Employment of Covert Methods

Section 307. (1) Any public official who:

a) secretly collects information or employs covert methods without authorization for which the authorization of a judge or the

minister in charge of the judicial system is required or by exceeding the scope of the authorization,

b) orders or authorizes such secret information collection or employment of covert methods unlawfully for which the authorization of a judge or the minister in charge of the judicial system is required; is guilty of a felony punishable by imprisonment not exceeding three years.

(2) Any public official who supplies information that is false or untrue to person empowered to order or authorize the collection of information or employing covert methods for which the authorization of a judge or the minister in charge of the judicial system is required, shall be punishable in accordance with Subsection (1).

(3) The penalty shall be imprisonment between one to five years if the criminal offense defined in Subsections (1)-(2) causes a substantial injury of interest.

Unlawful Integrity Testing

Section 308. (1) Any public official who:

a) conducts an integrity test without the prior approval of the public prosecutor, or by exceeding the scope of the approval;

b) approves an integrity test unlawfully; is guilty of a felony punishable by imprisonment not exceeding three years.

(2) Any public official who supplies information that is false or untrue in the resolution ordering an integrity test, and the person empowered to do so approves the order for the integrity test relying on such information, shall be punishable in accordance with Subsection (1).

(3) The penalty shall be imprisonment between one to five years if the criminal offense defined in Subsections (1)-(2) causes a substantial injury of interest.

Functions of integrity testing:

Risk Analysis: By analysing the data obtained during execution, it is possible to identify those circumstances which make it possible to commit corruption. On the basis of the findings, suggestions may be made to agen-

cies protected to alter their working processes or improve their internal control mechanisms.

Crime Prevention: There is a powerful preventive effect within the personnel protected, since integrity tests are performed in unknown places and times.

Crime Detection: If large number of integrity tests are performed focusing on a certain type of work, they will result relevant data and information about the extent of corruption risk which may be the base of additional detection.

Performance of integrity testing

For the performance of integrity testing, those members of the National Protective Service are selected who are suitable for this task and are able to identify themselves with the role they have to perform in the life-like situation.

The National Protective Service may collect secret information during integrity testing if the method planned to be applied is not subject to Court Permit. The member of NPS may commit infringement or crime as stipulated by law.

A certain percentage of the tests are failed because there are no contacts between the member of the National Protective Service and the person tested. The main reasons are as follows: the person tested does not show much interest in taking measures; the change of shift work or other changes occur. Generally, in the above-mentioned cases the test will be repeated.

When there is contact between the member of National Protective Service and the person tested, there is the opportunity to measure the integrity of the person. This is what we define as a successful test. Only the circumstances are influenced by the NPS in creating the simulated life-like situation, but it is not allowed to exercise influence on the free decision making of the person tested. The decision of the person tested may be professional and correct administration or corruption.

Experiences gained

The general experience is that integrity testing, as a new legal instrument, has achieved its aim. The legal instrument has undergone important changes since 2011. There was no significant change in the process itself, but the rules became more detailed. For the implementation, new methods and tools were introduced, the number of personnel

protected increased and the stimulated life-like situations made more varied than they were at the beginning.

The more detailed rules and the prosecutor's control strengthen the tight system of guarantee.²³

Simply the legal possibility of conducting of integrity test itself generates corruption prevention and retaining force.



¹ Balázs Dékány – *The history of the integrity testing – a new legal instrument* – Published in *Belügyi Szemle*, 2016/2, p. 67–68.

² Márta Kőszegi – *Integrity testing – Dissertation*, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Budapest, 2018, p. 33.

³ Act XXXIV of 1994 on the Police – Chapter II – The Carrying out Internal Crime Prevention and Detection Agency and The Carrying out Counter Terrorism Agency of the Police and Cooperation – The internal crime prevention and detection agency.

⁴ Chapter VII – Secret Information Gathering.

⁵ Chapter X – Crimes against the State.

⁶ Chapter XI – Crimes against Humanity.

⁷ Chapter XII – Crimes against the Person.

⁸ Chapter XIV – Crimes against Marriage, Family, Youth and Sexual Morals.

⁹ Chapter XV – Crimes against the Purity of State Administration, the Administration of Justice and Public Life.

¹⁰ Title VII – Crimes against the Purity of Public Life.

¹¹ Chapter XVI – Crimes against Law and Order.

¹² Title III – Crime against Public Confidence.

¹³ Chapter XVII – Economic Crimes.

¹⁴ Title III – Financial Crimes.

¹⁵ Chapter XXVIII – Crimes against Property.

¹⁶ Chapter XIX – Crimes against Military Defence Obligation.

¹⁷ Chapter XX – Military Crimes.

¹⁸ Chapter XXVII – Crimes of Corruption.

¹⁹ Chapter XXXIII – Criminal Offenses against Public Confidence.

²⁰ Chapter XXXIX – Criminal Offenses against Public Finances.

²¹ * – Deleted.

²² (2) The authority performing internal crime prevention and crime detection tasks may secretly observe and record the activity of the person tested during the performance of an integrity test by technical means in the office or vehicle of the protected agency or on the site of testing in the created situation. Technical means may be installed in the above-mentioned locations.

²³ Márta Kőszegi – *Integrity testing – Dissertation*, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Budapest, 2018, p. 65.

MOLDOVA

National Anti-corruption Centre

In recent years, the National Anti-corruption Centre (NAC) had some difficulties in applying the professional integrity test. Initially, the professional integrity test was applied as an independent instrument and its introduction was approved by the testing activity coordinator, and at the present moment it is at the stage of the institutional integrity assessment process and is subject to judicial control.

The Mechanism of Professional Integrity Testing is a novelty for the Republic of Moldova, having been introduced by Law no. 325 of the 23rd of December 2013, and implementation of the provisions of this law was carried out six months later.

Professional integrity testing involves the application of certain virtual, simulated situations, similar to those in the work activity, materialized through dissimulated operations, conditioned on the activity and behavior of the tested public agent, in order to passively monitor and establish the reaction and conduct of the public agent being tested, hence determining the level of damage to the institutional integrity environment and the corruption risks of the public entity within the institutional integrity assessment.

The subjects of professional integrity testing are public agents in all public entities. NAC is the national authority empowered to test the integrity of public agents in these entities through the Integrity Testing Subdivision, and the Intelligence and Security Service applies the integrity testing to NAC employees.

The sanction for failure to pass integrity testing may be of only a disciplinary character, up to dismissal from office. Another consequence for public agents who fail the test is the prohibition on holding public office for a five-year period.

The detailed implementation of Law no. 325/2013 was described in the Report on the implementation of Law no. 325/2013 to 14.02.2015. The English version of the report can be found on the official website of the National Anti-corruption Centre (<https://www.cna.md/pageview.php?l=en&idc=75&t=/Evaluation-of-institutional-integrity/Useful-information/Documents/>).

On April 16, 2015, upon a referral submitted by a group of deputies, the Constitutional Court issued a judgment declaring that some provisions of Law no. 325/2013 were unconstitutional. Thus, the mechanism of professional integrity testing was blocked, followed by a period of stagnation in the implementation of this instrument.

After a long process of amending the regulatory framework regarding the adjustment to the recommendations of the Venice Commission and the Constitutional Court, in May 2018 NAC re-launched professional integrity testing, based on a new concept that establishes this instrument as one stage in the framework of institutional integrity assessment and is carried out in parallel with it.

According to the new concept, professional integrity testing measures are subject

to judicial control from initiation to confirmation of the results.

At this stage, we are already benefiting from the effectiveness and impact of this instrument, which is applied to public entities, and the results will be subsequently published, to comply with the confidential regime of these measures and not to jeopardize their proper conduct.

At the same time, we report that on June 26, 2019, a workshop for the profession-

al integrity testing mechanism was held in Chisinau, where the representatives of the anti-corruption authorities from several countries presented their own model for the implementation of this mechanism. The results of this workshop will contribute to the formulation of a comprehensive vision over the mechanism of integrity testing both in the Republic of Moldova and in other countries.



ROMANIA

Experience of the Anti-Corruption General Directorate in the area of integrity testing

Anti-Corruption General Directorate

Police Chief Commissioner
Manuela Elena POPESCU

Evolution of the legal framework which regulates professional integrity testing in Romania

The integrity test was designed as an instrument to fight corruption and has a strong preventive character. It was also initiated as a consequence of the need to eliminate the risks and vulnerabilities which may generate corruption within the Ministry of Internal Affairs (MoIA).

In Romania, professional integrity testing has been conducted by the Anti-corruption General Directorate¹ (DGA) since 2009, based on the MoIA Ministerial Order no. S 177/2004 for the approval of the methodology for the organization and conduct of fidelity and professional integrity tests within the MoIA, with modifications and completions brought by the MoIA Ministerial Order no. S 1142/2006 (both are classified).

The classified character of the legal basis which regulated integrity testing was criticized, due to the fact that the allegedly tested personnel had limited or no access to the provisions in force at that time.

At present, the legal basis regulating integrity testing is the Governmental Emergency Ordinance (GEO) no. 30/2007 on the organization and functioning of the MoIA and for the reorganization of certain MoIA structures, modified by GEO no. 20/2009², a legal document which institutes integrity testing as mandatory within the MoIA. All proceedings afferent to integrity testing are

regulated by the MoIA Ministerial Order no. 256/16.11.2011 on the procedure for integrity testing of MoIA personnel.

Thus, article 17¹ paragraph 1 of GEO no. 30/2007 provides that joining the Ministry of Internal Affairs implies that all MoIA personnel agree to be subject to professional integrity testing, while paragraph 2 of the same article provides that professional integrity testing is conducted by the DGA.

In line with these provisions, the DGA is the only institution empowered to organize and perform integrity testing, through its specialized units, respectively the Operational Unit (at the central level) and Operational Centers in Iași, Timișoara and Cluj-Napoca (at the territorial level).

The same article from GEO 30/2007 defines the integrity test as a method to identify, evaluate and remove the vulnerabilities and risks which may induce MoIA personnel to commit acts of corruption and it consists in creating virtual situations, similar to the real professional ones. The integrity test is conducted through covert activities, adapted to the circumstances familiar to the tested person and according to his/her behavior, in order to establish his/her reaction and professional attitude.

With the purpose of creating virtual situations, DGA officers conduct covert activities, showing appropriate behavior for one of the citizens who directly interact with MoIA employees. The testing officers adapt

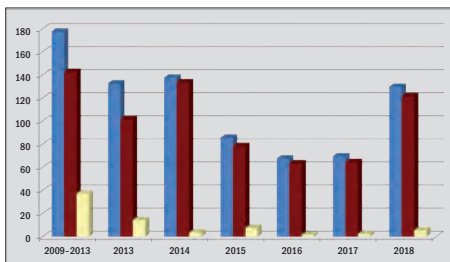
their attitude and actions to the specific activity of the tested personnel.

Essentially, integrity testing is very dynamic, as the testing officer (DGA operative officer) has to establish the reaction and the behavior of the tested subject, in the sense of his/her tendency to commit acts of corruption.

Paragraph 3 from article 17¹ of GEO no. 30/2007 underlines that if, while conducting integrity testing, the commission of criminal offences is ascertained, the DGA shall notify the relevant prosecutorial body, according to law.

The integrity tests conducted by the DGA to the present, during specific activities, have shown that most MoIA employees are honest and perform their professional duties correctly, the result of the test being positive.

The graphic below emphasizes the dynamic of the overall number of integrity tests, both positive and negative, conducted by the DGA between 2012–2018.



Still, there are situations when MoIA employees (approx. 10% of the overall number of integrity tests) ask for certain amounts of money in order to fulfil, not fulfil, speed or delay their professional duties or commit other criminal offences while performing them; in that case, the result of the test is negative.

In this case, DGA officers take notice ex officio, concluding a written document in this regard, according to the provisions of the Criminal Procedure Code, which comprises the main aspects ascertained while conducting the professional integrity test.

We must mention that the integrity test does not stand in Court as evidence, but the aspects revealed by the test with regard to the tendency of a person to commit acts of

corruption constitutes the notification document, to be presented to the prosecutorial body, at the same time offering the grounds for the prosecutor to issue a warrant for the introduction of undercover officers or other special surveillance and investigation methods³, in order to obtain evidence and take legal measures against the offender.

Professional integrity testing, regulated and conducted by the DGA as described above, meets the exigencies of the European Court of Human Rights (ECHR), having in view the ECHR Decision no. 27797/10 from 15.04.2010 given in the case Rotaru against Romania, which clearly states that the negative result of the integrity test constitutes a document which notifies the Prosecutor's Office and also offers the legal basis for determining criminal activity by the use of undercover investigators.⁴

According to GEO no. 30/2007 modified by GEO no. 20/2009 and approved by Law no. 38/2011, the procedure for professional integrity testing is established by the Order of the MoIA Minister.

Thus, in 2011 the MoIA Minister's Order no. 256/16.11.2011 was issued, which regulates professional integrity testing within the MoIA.

We must mention that the organization and conduct of integrity testing is one of the DGA's core duties, according to the Regulation for the organization and functioning of the Anti-corruption General Directorate no. 158 din 19.12.2017 (this is the main internal legal regulation).

The procedure for the organization and conduct of integrity testing according to MoIA Ministerial Order no. 256/16.11.2011

This legal document provides all aspects related to this area of activity, one of the relevant provisions being the fact that any MoIA employee may be subject to integrity testing.

The objective of professional integrity testing is to prevent acts of corruption in which MoIA personnel might be involved.

Integrity testing is conducted under strict observation of fundamental human rights and freedoms, of human and professional dignity and mention must be made on the fact that while conducting the test it is strictly forbidden to provoke the subject of the test to commit any penal or disciplinary offence.

The selection of the personnel who will be tested is made according to the areas and places that are most prone to corruption risks and vulnerabilities. These areas are established following previous activities developed by other structures and based on institutional vulnerabilities specific to the MoIA's archetype.

We should underline that professional integrity tests are applied to certain personnel categories, not on MoIA employees specifically identified. If there are concrete data and information regarding a particular MoIA employee involved in acts of corruption, it is compulsory to notify the relevant Prosecutor's Office.

All aspects related to the organization and performance of integrity testing are comprised in a document entitled "Plan for professional integrity testing", which is approved by the DGA leadership and which provides the following: the personnel category to be tested, the participants, versions and backups of the activities, technical and other such details.

The officers who take part in integrity testing are DGA specialists and conduct all actions in a covert manner.

The MoIA Ministerial Order no. 256/16.11.2011 also provides that in the process of integrity testing, a special technique is used for audio-video recording, transport and communication, as well as backstopping documents, according to the legislation in force.

Once the relevant Prosecutor's office has been notified regarding the fact that the tested person received money or other goods used in the testing process and, if the prosecutorial body decides that the deed does not constitute a criminal offence, the DGA informs the hierarchical manager of the institution where the tested person works, who will order measures in line with the normative documents in force.

If, following an integrity test, certain aspects occur regarding the breach of duties and attributions other than those in relation to specific testing activities, the manager of the structure/institution will order measures in line with the normative documents in force.

The DGA communicates the result and the findings of the integrity testing to the manager of the structure/institution if the tested person proved honest and the manager has the duty to present the findings and debate them with his/her subordinates.

With the aspects presented above in mind and also the fact that, based on integrity testing activities, several criminal files were constituted with corruption deeds committed by MoIA employees as their object, considering the utility of this preventive tool which led to MoIA employees to denounce corrupt practices, we conclude that professional integrity testing has a significant role both in preventing and countering corruption.



¹ Access www.mai-dga.ro.

² GEO no. 20/2009 was approved by Law no. 38/8.03.2011 published in Romania's Official Journal no. 215/29.03. 2011.

³ See article 138 from the Romanian Criminal Procedure Code, Law no. 255/2013, published in the official Journal no. 515/14.08.2013.

⁴ See ECHR jurisprudence: <http://hudoc.echr.coe.int>.

Ministry of Internal Affairs

Anti-Corruption General Directorate

Professional Integrity Testing in Romania

Legal framework

Professional integrity testing is performed in accordance with the provisions of the following legal documents:

- **Art. 17¹ of the Law 38/2011 on modifying Emergency Government Ordinance No. 30/2007 on the organization and functioning of the MoIA** – it provides that the status of employee of the Ministry of Internal Affairs implies the acceptance of professional integrity testing (before this article, these provisions were contained only in Law 360/2002 (Art.23 alin.6) regarding the statute on police officers). Furthermore, the objectives of integrity testing are defined, as well as the methodology for conducting integrity tests.

Until the approval of Law 38/2011, the activity of integrity testing was regulated by a classified Order of the Minister of Interior, which stipulated the methodology of conducting the integrity testing. This situation was criticised for the limited access to its provisions.

The foreign experts who worked on MoIA projects made the following recommendations: the methodology for conducting the professional integrity test should be public and not classified (this can be vulnerable to any complaint). All personnel who can be subject to a test should be able to have free access to this methodology.

The test is a method to identify, evaluate and warn about the risks and vulnerabilities

that lead the MoIA personnel to commit acts of corruption.

- **MoIA Order No. 256/2011 on the procedure for testing the professional integrity of MoIA staff** – gives a formal and practical orientation on how to proceed with integrity testing.

This order determines the rules, dues and obligations which must be considered in planning and performing, conducting and managing the consequences of the tests.

A test can be initiated by the Anti-Corruption General Directorate (DGA) and any MoIA employee can be subject to testing, where the selection of persons is dependent of the areas and places with corruption risks and vulnerabilities.

An officer of the DGA competent structure will directly lead the measure. The test is to be carried out observing the fundamental human rights and freedoms, as well as the human and professional dignity of the subjects to testing.

During the testing activity it is forbidden to incite or/and instigate the person to perpetrate crimes and/or discipline infringements.

During the test, audio-video recording, MoIA means of transport and communications are used, as well as cover documents in the conditions provided by the normative acts in force.

- **MoIA Order No. 119/25.07.2014, regarding the Regulation for organizing and functioning of DGA, published in the Official Bulletin no. 580/04.08.2014.**

Definition

The test means:

- A prevention method/administrative tool – it does not require the prosecutor's approval
- Creating virtual situations, similar to those MoIA personnel meet when performing their daily duties,
- A covert operation, focused on the person's conduct, in order to ascertain their reaction = The actions within the test are circumstantial and dissimulated, trying to establish whether the conduct of the employee is proper, according to his/her professional capacity and duties.

Objectives

The objectives of integrity testing are:

- to determine whether or not a public civil servant engages in corrupt practices and/or activities,
- to increase the actual and perceived risk for corrupt officials that they will be discovered, thereby deterring corrupt behaviour.

The final objectives of the test are prevention and identification of corrupt practices which might involve MoIA personnel.

There is an extraordinary impact of prevention by publishing the fact that integrity tests are done, because any official has to take into account the possibility to be subject to this preventative instrument at any time.

First of all, it has to be noted that the integrity testing is not focused on certain persons, to whom there are already indications or any suspicion of committing or having committed a crime or disciplinary misconduct.

In such cases:

- the prosecutor's office would start specific investigations or
- the administrative authorities would initiate appropriate internal disciplinary proceedings.

Subjects

All MoIA staff can be subject to a testing operation. We mention that, the above-mentioned ministry is the largest body of the Romanian Government, with over 140,000 employees and is constituted

by the most relevant law enforcement agencies, such as the Romanian Police, the Border Police, the Gendarmerie, Civil Emergencies, and so on.

The selection of the personnel to be tested is made based on:

- the areas and places identified as having high risks and vulnerabilities to acts of corruption,
- the information provided by the management of a particular unit that not all official acts done in their area of competence are conducted according to the law,
- citizens report incidents they have experienced, through filling complaints, calling the Tilverde line, giving rise to suspicions of corruption in a particular area.

It is assumed that each employee of the public administration must know the legislation. This is based on the fact that there is a special reference to Art. 17 of the Law 38/2011 as part of regular training and education of new employees.

Principles

Professional integrity testing is carried out taking into account the fundamental citizens rights and liberties, human and professional dignity of the tested subjects.

Instigation of the tested person to commit crimes and/or disciplinary infringements is forbidden.

PRINCIPLE OF PROPORTIONALITY

The DGA has a special unit that conducts professional integrity tests, responsible for planning and carrying out integrity tests. This unit must check in every single case, if a professional integrity testing is absolutely necessary for the intended purpose, combatting corruption and safeguarding the integrity of the MoIA staff.

The responsible unit in particular has to check, if there are milder measures to reach the same target, e.g. implementing random shifts or circulation of the staff.

The Order on the Procedure for Professional Integrity Testing of the MoIA staff no 256/16.11.2011 lists the main provisions concerning the obligations of the testing officers while conducting the test.

The officials of the DGA have the obligation to observe fundamental human rights and freedoms, as well as the human and professional dignity of the subjects to testing.

The testing officials have the obligation to respect the pride and the image of the tested person as well as the legal interests related to his position, Art. 5 (2) of the Order.

COMMITTING CRIMES – Professional integrity testing is not a part of the Criminal Procedure Code but an independent administrative procedure; a testing officer performing a professional integrity testing cannot be authorised to commit crimes according to the generally accepted guidelines.

AGENT PROVOCATEUR – The problem of the “agent provocateur” is explicitly solved for the professional integrity testing procedure, because any activity which could be defined as a provocation by inciting or instigating the tested person to perpetrate crimes or discipline infringements is strictly forbidden.

Professional integrity testing plan

- Approved by the Head of Anti-corruption General Directorate;
- Includes the subjects to testing, participants and the ways of action;
- The participants are DGA employees directly involved in the activity of testing and who, as a general rule, perform their specific tasks in a covert manner.

For documentation purposes of the testing process and the behaviour of the test subject, undercover audio and video recordings may be used in accordance with the applicable laws. In addition, the tester has to prepare a detailed report on the testing process itself and on the results.

Testing plan

If the appropriate conditions for the implementation of integrity tests exist, the required preparatory and planning work starts after it has been approved by the AGD leadership.

The plan includes the proposed transactions:

- the way of action
 - the location and content of the field of activity has to be identified, in which the (corrupt) misconduct of employees probably occurred,

- simulated situations or circumstances will be created with the scope of gaining the attention of the test subjects by specially trained AGD investigators,

- the contraventions that are to be committed during the testing operation have to be clearly and precisely defined,
- it is usually necessary to feign apparent misconduct or actually to commit such to induce the corrupt activity of the official.

With existing evidence of misbehaviour in a particular area, professional integrity testing on the same person as the object of a test scenario may not exceed three times. If the subject’s behaviour in these three cases is in accordance with the law, his integrity is evident and he may not be examined in conjunction with this test again.

There are three different possible scenarios for carrying out the test:

- The preferable option is that the test subject behaves in accordance with the law and performs his/her duties. In this case, the integrity of the employee is verified, and the testing officer stops the test.
- The test is also finished if the tested person would act with understanding for the invoked reasons mentioned by the testing officer and will only warn him without imposing any fine.
- The third alternative is when the tested officer does not apply legal provisions and shows availability to be rewarded. In this case the testing official will allow the test subject to communicate the nature and the amount of the desired reward and he will hand over the requested amount of money or goods.

In the case when the result of the test is **POSITIVE** (the tested employee proves integrity):

- The DGA will inform the head of the structure or institution about the results and the findings of the testing activity. For transparency purposes, prevention of misbehaviour/misconduct and improvement of the justified tasks fulfilment, the heads of the structures/institutions have the obligation to discuss with their sub-

ordinate staff the most important aspects highlighted in the results of the tests that have been carried out.

- As regards the tested person, the provisions of the Order do not explicitly stipulate that the tested person has to be informed about the result of the test.

In the case when the result of the test is NEGATIVE (the tested employee received money or undue goods in exchange of not accomplishing their service duties), there are three possible outcomes of the test imaginable:

The behaviour of the tested person that had been recorded in this respect cannot be used as evidence in a trial, but as a starting point for further criminal investigations.

a. If the prosecutor's office comes to the conclusion that the misconduct of the tested person is not a criminal offence, the DGA will inform the head of the institution in which the tested person works. The complete file

related to the integrity testing is submitted to the head of the institution. Disciplinary and/or administrative measures, according to the legal provisions will be carried out.

b. In the case when other infringements of professional tasks and duties are discovered in the process of testing professional integrity, tasks and duties which are not connected to the specific testing activity, the head of the structure/ institution should order measures according to the normative acts in place.

2. If the prosecutor considers that the result of the test is a criminal offence, he will authorise the use of UCI which will lead to an operation to catch the person in the act.

During 2014, 137 professional integrity tests were performed, out of which 133 were **positive**, meaning that the tested MoIA employees proved integrity and 4 were negative, meaning that the tested MoIA employees received money or undue goods in exchange for not fulfilling their service duties.



Ministry of Administration and Interior

5

Article 171 from Law 38/2011 on the approval of Government Emergency Ordinance No. 20/2009, for modifying Art. 13 paragraphs (2) and (3) from Government Emergency Ordinance No. 30/2007, regarding the organization and functioning of the Ministry of Administration and Interior and for reorganizing some structures subordinated to the Ministry of Administration and Interior

“Art. 171 – (1) Attainment of the capacity of personnel of the Ministry of Administration and Interior implies agreement to have one’s professional integrity tested.

(2) The testing of professional integrity is conducted by the Anti-corruption General Directorate and represents a method to identify, assess and eliminate the vulnerabilities and risks which lead the personnel of the Ministry of Administration and Interior to commit acts of corruption. Integrity testing consists of creating a possible situation,

similar to the one encountered by personnel when exercising their professional duties, turned into practice in the form of dissimulated operations, in accordance with the tested personnel’s behaviour, in order to establish their reaction and conduct.

(3) If, while conducting an integrity test, it is ascertained that criminal acts have been committed, the Anti-corruption General Directorate notifies the relevant prosecuting body, according to law.

(4) If, while conducting an integrity test, it is ascertained that the tested personnel violated the legal provisions in force, other than those under paragraph (3), administrative and/or disciplinary measures will be ordered, according to the legal provisions which regulate the activity of the personnel of the Ministry of Administration and Interior.

(5) The procedure for the conduct of an integrity test is established through the order of the Minister of Administration and Interior.”



ORDER No. 256/16.11.2011 ON THE PROCEDURE FOR PROFESSIONAL INTEGRITY TESTING OF MoAI STAFF, Published in Official Journal no. 836/25.11.2011, 1st Part

Having in view the provisions of Art. 17¹ from *Government Emergency Ordinance no. 30/2007 on the organizing and functioning of the Ministry of Administration and Interior, approved with modifications through Law no. 15/2008*, with subsequent modifications and completions, of the Law no. 360/2002 on Police Staff status, with subsequent modifications and completions, of the Law no. 80/1995 on the Military Staff status, with subsequent modifications and completions, of the Law no. 188/1999 on civil servants status, republished, with subsequent modifications and completions, as well as of the Law no. 53/2003 on the Work Code, with subsequent modifications and completions,

Taking into account Government Emergency Ordinance no. 120/2005 on rendering operational the Anticorruption General Directorate within the MoAI, approved with modifications through Law no. 383/2005,

Based on Art. 7 item (4) of the Government Emergency Ordinance no. 30/2007 approved with modifications through Law no. 15/2008, with subsequent modifications and completions,

The Minister of Administration and Interior issues the present Order.

Art. 1. The present Order establishes the procedure for testing the professional integrity of the staff of the Ministry of Administration and Interior, called hereinafter MoAI.

Art. 2. Testing may be performed on the initiative of the Anticorruption General Directorate, hereinafter called the AGD, or by request of the MoAI structures.

Art. 3. Any MoAI employee can be subject to testing.

Art. 4. The test has as its objective the prevention of acts of corruption which could involve MoAI staff.

Art. 5. (1) The test is to be carried out observing the fundamental human rights and freedoms, as well as the human and professional dignity of those subjected to testing.

(2) Using the testing activity for the purpose of negatively affecting the authority, pride, image of the tested persons or of the legal interests circumscribed to their position is forbidden.

(3) During the testing activity it is forbidden to incite/instigate the person subject to testing to perpetrate crimes and/or to infringements of discipline.

(4) *Provocation* means the action of the AGD police officer to incite/instigate the perpetration of crimes and/or infringements of discipline.

Art. 6. The selection of the persons to be tested is made depending on the areas

and places with corruption risks and vulnerabilities.

Art. 7. (1) The persons taking part in the performance of the test are part of the AGD and, usually, carry out the specific activities in a coordinated way.

(2) Testing is conducted only with the approval of the AGD leadership.

Art. 8. (1) While carrying out the testing, audio-video recording, means of transport and communications from MoAI assets are used, as well as cover documents, under the conditions provided by the normative acts in force.

(2) If the situation requires, means from other sources may also be used, only with the previous consent of the owner or person who uses them, avoiding exposure or other negative consequences.

Art. 9. The carrying out of the testing will be directly led by an officer of the AGD competent structure, appointed by the leadership of the AGD, who will notify in a report the results following the test.

Art. 10. If through the opportunity of testing professional integrity, the perpetration of criminal deeds by MoAI staff is discovered, AGD policemen report *ex officio*, drawing up an agreed minute for this purpose, according to the provisions of the Criminal Law procedure Code.

Art. 11. (1) If the tested person requested or received money or advantages used in the testing activity, and, following notification, the competent bodies discover that the act is not a crime, the AGD shall inform the head

of structure/institution the person submitted to testing is a part of, and he or she shall order the disciplinary and/or administrative measures, according to the legal provisions, notified to the AGD.

(2) AGD makes available to the head of structure/ institution, upon his request, copies of the materials achieved during the testing.

(3) If through the opportunity of testing professional integrity, other infringements of the professional tasks and duties are discovered, not connected to the specific testing activity, the head of the structure/ institution shall order measures in accordance with the normative acts in force.

Art. 12. AGD will inform the head of the structure/institution about the result and the findings of the testing activity if the integrity of the staff submitted to testing is proved.

Art. 13. The heads of the structures/institutions have the obligation to discuss with subordinate staff the most important aspects highlighted as a follow-up to the carrying out of the tests.

Art. 14. In order to perform the testing, the AGD uses financial resources from the MoAI budget intended for this activity.

Art. 15. The present Order will be published in the Romanian Official Journal, Part I.



The Minister of Administration and Interior,
Constantin Traian Igaș
 Bucharest, 16th of November 2011
 No. 256

SERBIA

Ministry of the Interior

Rulebook on the method
of the conduct of integrity testing

Pursuant to Article 230a, paragraph 12 of the Police Law (“Official Gazette of the Republic of Serbia”, No. 6/16 and 24/18), Minister of the Interior of the Republic of Serbia adopts:

RULEBOOK ON THE METHOD OF THE CONDUCT OF INTEGRITY TESTING

“Official Gazette of the Republic of Serbia”, No. 39 of 25 May 2018

Article 1

This Rulebook establishes the method of the conduct of integrity testing of police officers and other employees in the Ministry of Interior (hereinafter: the Ministry), implemented by Internal Affairs Sector police officers (hereinafter: internal affairs police officers).

Article 2

Integrity testing is conducted by the internal affairs police officers during which the regular performance of duties and tasks in the competence of a tested employee is not endangered, in confidentiality and on the basis of previously prepared and approved plan.

Article 3

All data collected during the conduct of integrity testing are marked by level of confidentiality “CONFIDENTIAL.”

Internal affairs police officers that conduct integrity testing and other persons to whom

data referred to in paragraph 1 of this Article are available, act in accordance with regulations that govern confidentiality of data.

Article 4

The procedure for conducting integrity testing of police officers and other employees in the Ministry is initiated on the written and reasoned initiative of persons authorized by the law, after which the Head of the Internal Affairs Sector brings a Decision on fulfillment of conditions for the conduct of integrity testing (hereinafter: Decision) in accordance with the law.

The Decision is brought on the basis of data and facts mentioned in the explanation of the initiative that indicate the necessity of the application of an integrity test.

The Decision consists of data about the submitter of the initiative for application of an integrity test, the phenomenon that is subject of integrity testing, indicators based on which initiative was brought and the reasons for its acceptance or non-acceptance.

Article 5

The plan for conducting an integrity test (hereinafter: Plan) is made on the basis of the Decision to accept the initiative, and is approved by the Assistant Minister – Head of the Internal Affairs Sector.

Integrity testing may continue for up to twelve months from the day of approval of the Plan.

Article 6

The Plan contains:

- 1) a decision by which the initiative is accepted;
- 2) analysis of data collected that refer to the observed phenomenon;
- 3) detailed data on the location, time and duration of integrity testing;
- 4) foreseen covert activities of the internal affairs police officers who directly conduct integrity testing with security assessment of the implementation of integrity testing;
- 5) list of material-technical and financial resources used during the conduct of integrity testing and necessary covert resources and documents in order to successfully implement the integrity test;
- 6) other information relevant to the successful conduct of integrity testing.

Article 7

When conducting an integrity test, in a case when a tested employee requests certain goods, services, privileges, benefits or objects, internal affairs police officers who conduct the integrity test can give requested goods to the tested employee, they can accept services, provide privileges, provide benefits or hand over requested items to the tested employee that will be specified as an option in the Plan for conducting the integrity test and subsequently described in detail in the report on the integrity test conducted.

Actions by Internal Affairs Sector police officers in the conduct of integrity testing that contain unlawful elements or a violation of official duty, shall not be considered as such if undertaking these is necessary to achieve the purpose of the conduct of integrity testing and shall be foreseen in the Plan as such.

Article 8

Internal affairs police officers, who directly conduct integrity testing, can use funds foreseen for special operational purposes, pursuant to Article 246 of the Police Law.

Internal affairs police officers, during the conduct of integrity testing, use material-technical resources foreseen for conduct of the Plan and, in case there is a need, use material-technical resources of other organizational units of the Ministry.

Article 9

Internal affairs police officers prepare a report on integrity testing conducted that contains:

- 1) Description of activities undertaken during the conduct of integrity testing performed in accordance with the Plan, referred to in Article 6 of this Rulebook, and other facts relevant for the conduct of integrity testing;
- 2) Description of the reactions and activities of the tested employee;
- 3) Result of the integrity test conducted.

Video and audio recordings made while conducting an integrity test are attached to the report on the conduct of integrity testing and are integral part of the report.

The Manager of the Internal Affairs Sector organizational unit in charge of the conduct of integrity testing submits the report on integrity test conducting to the Assistant Minister – Head of the Internal Affairs Sector.

The report shall be made no later than 15 days after integrity testing was conducted and completed.

Article 10

It shall be considered that conducted integrity testing of police officers and other Ministry employees has a positive result when the tested employee has proved his/her professional integrity so that in the conduct of activities that are in the scope of his/her work he/she has not manifested unlawful behavior or an inclination to corruption.

In case of a positive result of an integrity test, when testing has shown that the tested employee has no inclination to unlawful conduct or corrupt behavior, the Internal Affairs Sector shall in written inform the



submitter of the initiative and the authorized supervisor of the Ministry's organizational unit where the tested employee is employed, no later than 30 days after the integrity test has been conducted and completed.

Article 11

In case of a negative result of an integrity test, the Internal Affairs Sector shall, no later than 30 days after the integrity test has been conducted and completed, submit a report on the integrity test conducted, containing the evidence gathered, to the submitter of the initiative and the authorized supervisor of the Ministry's organizational unit where the tested employee is employed, in order to initiate and conduct disciplinary proceedings against the tested employee.

In case of a negative result of an integrity test, submission of the report can be delayed when the Internal Affairs Sector continues to conduct testing upon the order of

the competent public prosecutor pursuant to provisions of the law that regulates criminal proceedings.

Video and audio materials are attached to the report on the conducted integrity testing in such a way that faces, voices, registration plates and other facts that do not relate to the tested employee are made unrecognizable in order to protect confidentiality of internal affairs police officers that conduct the testing as well as other persons.

Article 12

This Rulebook shall enter into force on the eighth day after its publication in the "Official Gazette" of the Republic of Serbia.



01 No: 3962/18-3
In Belgrade, 18 May 2018
Minister,
dr Nebojsa Stefanovic

Internal control of the work of the police officers and other employees of the Ministry is performed by the Internal Affairs Sector (IAS), according to the Police Law (Amendments of the Police Law were adopted in April 2018 and the Police Law was adopted in 2016). The competences of the IAS are regulated by the Police Law (Article 219–233).

Integrity testing is regulated by the Police Law. It was first prescribed by adoption of the new Police Law in 2016, but in 2018 amendments to the Police Law were adopted and integrity testing was prescribed in greater detail in the law.

In Article 230 of the Police Law (Preventive measures) it is prescribed: “To prevent corruption, the IAS shall implement integrity testing, conduct corruption risk analysis, keep records and control declarations of assets and changes in ownership status”.

In Article 230a, integrity tests are prescribed in more detail:

“Integrity testing means the control of the reaction and actions of an employee in a simulated situation, which is identical to his/her work activities, without the obligation to previously notify the organizational unit where the tested person is employed.

Integrity testing shall be conducted for the purpose of strengthening the professional integrity of employees and preventive action. It serves as an indicator for the initiation of pre-investigative proceedings, assessment and analysis of corruption risk, detection of violations of official duty, change in the methodology of work and procedures during the direct actions of employees, and

determining of the type of and need for employee training.

The procedure of integrity testing shall include the initiative for the initiation, decision and plan for the implementation of integrity testing.

The procedure of integrity testing of employees of the Ministry shall be initiated on the written and reasoned initiative of the Minister, Police Director or head of the Sector.

The decision on the fulfilment of conditions for the implementation of integrity testing shall be adopted by the head of the Sector of Internal Control, who shall approve the plan of the implementation of integrity testing.

During the implementation of integrity testing, the principles of legality, basic human rights and freedoms, professional integrity and dignity of the tested person shall be respected.

The incitement of the tested persons to commit a criminal offence or violate their official duty shall be forbidden.

Activities taken during the implementation of integrity testing shall not belong to special evidence collecting actions prescribed by the Criminal Procedure Code.

The implementation of integrity testing may be documented in video and audio form, and during its implementation, means and documents with legends may be used.

The result of integrity testing may be positive or negative. Integrity testing shall have a negative result if the tested person did not prove his professional integrity, in which case the collected material shall be used to initiate and conduct disciplinary proceedings.

The manner of implementing integrity testing shall be prescribed by the Minister”.

After Adoption of the Amendments of the Police Law, sub-law that prescribed the method of conducting integrity testing was adopted in May 2018 by the minister of interior called Rulebook on the method of the conduct of integrity testing.

New Rulebook on Systematization of Job Position in MoI was adopted in June 2019, so after creating clear legal frame for integrity tests, IAS created new organizational structure which included Division for the Conduct of Integrity Testing. In January 2019, positions within the Division were

filled and IAs started to officially implement integrity testing.

Within the IPA 2015 EU funded project, IAS supplied equipment for audio and video surveillance at the beginning of 2019, and in March 2019 twining project started implementation with twining partners from the Republic of Lithuania and Romania that will provide specialized training for conducting integrity tests and creating operational procedures.

Since IAS only just started to implement integrity testing this year, we do not have as much experience (good practice or challenges) as other similar internal affairs/anti-corruption units.

□

XI. OVERSIGHT OF WORK

Article 219

The work of the Ministry shall be under democratic oversight.

Types of control

Article 220

The work of the Ministry shall be overseen through external control and internal control.

External oversight

Article 221

External oversight shall be performed by:

- 1) the National Assembly of the Republic of Serbia;
- 2) assemblies of the provincial autonomy units or local self-government units, including town municipalities;
- 3) judicial authorities;
- 4) independent state authorities in charge of oversight and other authorized state authorities and bodies;
- 5) citizens and the public

Parliamentary oversight

Article 222

The National Assembly shall oversee the work of the Ministry directly and through the competent internal affairs committee (hereinafter: the Committee).

The Committee shall in particular:

- 1) examine the semi-annual and extraordinary reports on the security situation in the Republic of Serbia;

- 2) examine the semi-annual and extraordinary reports on the work of the Ministry;
- 3) examine the annual reports on the work of the Sector of Internal Control;
- 4) oversee the legality of spending budgetary and other resources;
- 5) oversee the legality of implementing special evidentiary actions defined by the code regulating criminal procedure, targeted search measures and integrity testing;
- 6) oversee the upholding of political, ideological and interest neutrality in the work of the Police;
- 7) establish the facts on detected illegalities or irregularities in the work of the Ministry and issue conclusions thereon;
- 8) report its conclusions and proposals to the National Assembly

The Minister or the person authorized by the Minister shall submit to the Committee a semi-annual report on the security situation in the Republic of Serbia, as well as the regular report on the work of the Ministry.

The Ministry shall, as needed or at the request of the Committee, also submit extraordinary reports to the Committee.

Oversight role of the assemblies of provincial autonomy or local self-government units, including town municipalities

Article 223

The assemblies and executive authorities of the provincial autonomy or local self-government units, including town municipalities, shall:

- 1) examine the report on the security situation in their territories;
- 2) assume positions on priorities for the safety of people and property, and submit proposals to the manager of the competent organizational unit of the Ministry.

In order to act as referred to in paragraph 1, point 2) of this Article, the assembly and/or the executive authority of the provincial autonomy or local self-government units, including town municipalities, may establish advisory bodies.

Oversight of work of the police officers and employees of the Ministry

Sector of Internal Control

Article 224

Internal control of the work of the Police and other employees of the Ministry shall be performed by the Sector of Internal Control.

The Sector of Internal Control shall be led by the Head of the Sector of Internal Control.

The Head of Sector of Internal Control shall regularly and periodically submit reports on the work of the Sector of Internal Control to the Minister, and on actions taken to detect criminal offenses to the competent public prosecutor.

At the request of the Government and the working body of the National Assembly in charge of internal affairs, the Minister shall submit a report on the work of the Sector of Internal Control.

The Sector of Internal Control shall, within three months of the end of the calendar year, publish the work report for the previous year, including the basic statistics on the activities undertaken and the results achieved.

Forms and manner of performing internal control

Article 225

The Sector of Internal Control shall oversee the legality of work of police officers, as well as other employees of the Ministry, especially in terms of their respect for and protection of human and minority rights and freedoms while performing official tasks and exercising police powers, namely while performing activities within their purview.

The Sector of Internal Control shall take measures and actions in accordance with the law regulating criminal procedure to detect and prevent criminal offenses of corruption and other forms of corruptive behaviour, as well as other criminal offenses of police officers and other employees of the Ministry, committed at work or in relation to work.

The method of performing internal control shall be prescribed by the Minister.

Employees of the Sector of Internal Control

Article 226

Police officers authorized to perform internal control (hereinafter: internal control police officer) in the Sector of Internal Control shall have full police powers in conducting internal control, and shall, in terms of their rights and duties, be equal to other police officers in the status of authorized officers.

Action by the Sector of Internal Control

Article 227

The Sector of Internal Control shall act on its own initiative, at the request of the competent public prosecutor, based on collected intelligence and other knowledge, requests of employees of the Ministry, citizens and legal persons in cases not envisaged by provisions regulating the complaint and abbreviated procedure or provisions of other laws. In case when through the work of the Sector for Internal Control it is determined that during the action of a police officer police powers were overstepped, which resulted in the violation of rights protected by the Ombudsman, information thereof shall be sent not only to the Minister but also to the public prosecutor and the Ombudsman.

If in the course of their work they acquire knowledge and information that an employee of the Ministry has committed a criminal offense during work or related to it, all organizational units of the Ministry shall without delay inform the competent public prosecutor and the Sector of Internal Control thereof, not later than within 24 hours upon learning about it.

Police officers or other employees of the Ministry may not be held to account for addressing the Sector of Internal Control, except in cases of false allegations.

Duties and powers in performing internal control

Article 228

Police officers and other employees of the Ministry shall allow internal control police officers to conduct control and shall provide them with the necessary professional and technical support required by the Sector of Internal Control.

In conducting control, internal control police officers shall have the right and duty to:

- 1) inspect the data on a case, the case file, official documents relating to the case, and records kept by the Police or another organizational unit of the Ministry;
- 2) take statements from police officers and other employees of the Ministry, victims and witnesses;
- 3) request from police officers and other employees of the Ministry to supply other data and information within their purview, which are required for the purposes of conducting internal control;
- 4) inspect employees of the Ministry, official means and premises;
- 5) request inspection certification documents and technical and other data on technical means used in work, and request evidence on the capacity of police officers and other employees of the Ministry to use technical and other means which they apply in their work;
- 6) order that urgent and necessary measures and actions be taken, if their delay would be conducive to violation of human rights and freedoms while exercising police powers or performing other police tasks.

The documents related to the exercise of the powers referred to in paragraph 2 of this Article and which carry a certain level of secrecy may be inspected by internal control police officers in the presence of a competent person who has established the level of secrecy of the document.

Article 229

In conducting control, internal control police officers may not influence the work of the Police or otherwise hinder the work or imperil the confidentiality of a police action.

The justifiability of putting at risk the confidentiality of a police action shall be explained to the competent public prosecutor who shall make the final decision.

If there is a reasonable danger that the conduct of internal control of work the police officers and other employees of the exercise of police and other established under this Law or other regulations, would block or obstruct the use of police powers or endanger the lives and health of persons using them, a police officer and other employees may, pending the decision of the competent public prosecutor, temporarily refuse to allow inspection of documents and premises and to make available specific data and information to the internal control police officer.

In case of refusal of the order of the Sector of Internal Control for the reasons specified in paragraph 3 of this Article, the police officer shall without delay prepare a report and submit it to the Minister and the competent public prosecutor.

Preventive activities

Article 230

To prevent corruption, the Sector of Internal Control shall apply integrity testing, conduct corruption risk analysis, keep records and control the assets declaration and changes in the ownership status.

The collected data and records for the implementation of activities referred to in paragraph 1 of this Article shall be kept in accordance with the regulation on records and processing of data in the field of internal affairs.

Integrity testing

Article 230a

Integrity testing means the control of the reaction and actions of the employee in a simulated situation, which is identical to his or her work activities, without the obligation to previously notify the organizational unit where the tested person is employed.

Integrity testing shall be conducted for the purpose of strengthening professional integrity of employees and preventive action. It serves as an indicator for initiation of pre-investigative proceedings, assessment and analysis of corruption risk, detection of violations of official duty, change in the methodology of work and procedures during direct acting of employees, and determining of the type of and need for employee training.

The procedure of integrity testing shall include the initiative for the initiation, decision and plan for the implementation of integrity testing.

The procedure of integrity testing of employees of the Ministry shall be initiated on the written and reasoned initiative of the Minister, Police Director or head of the Sector.

The decision on the fulfilment of conditions for the implementation of integrity testing shall be adopted by the head of the Sector of Internal Control, who shall approve the plan of implementation of integrity testing.

During the implementation of integrity testing, the principles of legality, basic human rights and freedoms, professional integrity and dignity of the tested person shall be respected.

The incitement of the tested persons to commit a criminal offence or violate official duty shall be forbidden.

Activities taken during the implementation of integrity testing shall not belong to special evidence collecting actions prescribed by the Criminal Procedure Code.

The implementation of integrity testing may be documented in video and audio form, and during its implementation, means and documents with legends may be used.

The result of integrity testing may be positive or negative. Integrity testing shall have a negative result if the tested person did not prove his professional integrity, in which case the collected material shall be used to initiate and conduct disciplinary proceedings.

The manner of implementing integrity testing shall be prescribed by the Minister.

Implementation of the corruption risk analysis

Article 230b

The corruption risk analysis at the Ministry means the creation of a single methodology for the detection, identification and assessment of corruption risks, and for determination of institutional and individual factors which enable corruption, as recognized by the risk register.

The corruption risk analysis shall also include the preparation of recommendations and measures needed for the prevention, mitigation and elimination of the probability of occurrence of corruption or consequences of corruption, and the control of implementation of measures and revision of risks, and repeated assessment of corruption risks if the need arises.

In cooperation with the Anti-Corruption Agency, the Sector of Internal Control shall analyse the corruption risk in all organizational units of the Ministry and for each job position at the Ministry.

Organisational units of the Ministry shall provide the Sector of Internal Control with expert and technical assistance with the aim of ensuring the best possible overview of the current situation and risk assessment for the job position and the organizational unit of the Ministry which are exposed to the corruption risk.

The method of conducting the corruption risk analysis shall be prescribed by the Minister.

Verification of assets of declaration and changes in the ownership status of an employee

Article 230c

The Sector of Internal Control shall keep records of the ownership status of managers and employees at high-risk job positions in the Ministry, established by the corruption risk analysis, verify the accuracy of data reported in the assets declaration and verify changes in the ownership status.

Managers and employees at high-risk job positions shall report assets and changes in their ownership status, which shall be recorded in the personal assets declaration deposited with the Sector of Internal Control.

If the ownership status has changed, the persons referred to in paragraph 2 of this Article shall report changes to the Sector of Internal Control by no later than 31 January of the current year, for the previous year.

The assets declaration shall contain personal data and data on the property and income of the employee in the Ministry and persons with whom he lives in the joint family household.

The manner of verifying the declaration and changes in the ownership status and the form of the assets declaration shall be prescribed by the Minister.

Article 231

In conducting internal control, internal control police officers shall take the necessary measures and actions, collect evidence and establish the facts, and take other measures in accordance with the law.

The Head of Sector of Internal Control shall submit the findings of the internal control and ordered measures to the Minister and the Police Director, head of the sector as well as to the manager of the inspected organizational unit of the Ministry who shall be ordered to remove the identified illegalities and to implement the accountability measures in accordance with the law and other regulations adopted on the basis of the law.

The manager referred to in paragraph 2 of this Article shall submit to the Minister ordered measures with advisory measures and examples of good practice, an annual Report on the Internal Control Findings with advisory recommendations.

The manager of the controlled organizational unit of the Ministry shall be responsible for the implementation of ordered and proposed measures and for feedback informing of the head of the Sector of Internal Control.

Oversight of work of the Sector of Internal Control

Article 232

The Sector of Internal Control shall be subject to external control, conducted by the bodies referred to in Article 221, paragraph 1, points 1), 3), 4), and 5) of this Law.

The Head of Sector of Internal Control shall report to the Minister for his own work

and for the work of the Sector of Internal Control.

The work of the Head and employees of the Sector of Internal Control shall be under the Minister's control.

Article 233

The Minister shall issue guidelines and binding work instructions to the Sector of Internal Control, except for actions taken in preliminary and investigation proceedings at the request of the competent public prosecutor.

Oversight by handling complaints

Right to file a complaint

Article 234

A complaint may be submitted by any person (hereinafter: a complainant) who believes that his or her human and minority rights and freedoms were violated by an act or failure to act by an employee (hereinafter: respondent) during the performance of official tasks, within 30 days after the day when the act subject to complaint occurred.

A complaint may also be submitted against the work of the Ministry.

The complainant shall be allowed to participate in the complaints procedure.

Based on the submitted complaint, the complaints procedure or the summary procedure shall be conducted.

The submitted complaints shall be forwarded to the competent organizational unit of the Ministry for further handling.

The complaint which is not submitted within the period referred to in paragraph 1 of this Article shall be resolved in the summary procedure.

If the complaint contains elements of a criminal offense, it shall without delay be brought to the attention of the competent public prosecutor, the Sector of Internal Control, as well as the manager of the organizational unit where the respondent works, who shall inform the complainant thereof.

If the complaint contains elements of violation of official duty, the manager of the organizational unit where the respondent works shall without delay initiate the disciplinary procedure against the respondent and inform the complainant thereof.

Complaints procedure

Article 235

The complaints procedure shall be conducted by the manager of the organizational unit where the respondent works, or a person authorized by him or the Complaints Committee (hereinafter: the Committee).

Upon receiving a complaint, the manager of the organizational unit shall inform the complainant about the initiation of the complaints procedure and call him for an interview within 15 days after receiving the complaint.

The manager shall settle the complaint through the reconciliation of positions with the complainant.

If the positions on the presence of a threat or breach of human and minority rights and freedoms are not reconciled, the complaint shall be transferred to the Committee.

The complaint shall be transferred to the Committee also when the duly called complainant fails to appear for an interview and informs the manager that the Committee shall handle the complaint.

If the complainant fails to respond to the call of the manager referred to in paragraph 1 of this Article and does not request that the Committee handles the complaint, the complaint shall be considered withdrawn by the complainant.

The complaints procedure before the manager of the organizational unit shall be concluded within 30 days after receiving the complaint.

The procedure before the Committee shall be concluded with the delivery of a written response to the complainant within 30 days after the complaint is transferred for resolution.

Administrative and technical tasks in the complaints procedure shall be performed by the complaints units.

A complaints unit shall be the organizational unit in charge of complaints at the headquarters of the Ministry and in police departments, or the organizational unit designated for that by the manager.

The complaints procedure shall, on the basis of subsidiarity, be subjected to the law regulating general administrative procedure.

The manner of handling complaints during the complaints procedure shall be prescribed by the Minister.

Article 236

If the complaints procedure establishes that the respondent's actions breached or threatened human and minority rights and freedoms of the complainant, the managers of organizational units of the Ministry shall take appropriate measures against the respondents.

The managers referred to in paragraph 1 of this Article shall submit the report on measures taken to the competent complaints unit and shall inform the complainant of the measures taken.

Complaints committee

Article 237

The complaints committee shall consist of three members: the chairperson of the committee, one member from the Ministry and one representative of the general public.

The Minister shall appoint and dismiss members of the Committee by a decision.

The Chairperson of the Committee shall be a police officer proposed by the Police Directorate or another competent organizational unit of the Ministry

The Committee members shall be employees of the Ministry, proposed by the Police Directorate or the organizational unit of the Ministry where the employee – respondent works.

Representatives of the public in the Committee at the headquarters of the Ministry shall be appointed by the Minister at the proposal of organizations of professional public and non-governmental organizations.

Representatives of the public in committees at the headquarters of police departments shall be appointed by the Minister at the proposal of the local self-government authorities from the territory of respective Police Departments.

The Committee members shall be appointed for a period of four years.

The Committee shall sit in the required number of panels at the headquarters of the Ministry and at the headquarters of police departments.

Article 238

Representatives of the general public who participate in the work of the Committee shall be entitled to compensation for work at the Committee sessions, amounting to a per diem for official travel that applies to employees of state authorities.

Supervision of settling of complaints in complaint procedure

Article 239

The conduct of the complaints procedure by the manager of the organizational unit shall be supervised by the competent complaints unit and the Police Directorate.

The conduct of the complaints procedure by the Committee shall be supervised by an expert authorized by the Minister for that purpose.

The *modus operandi* during the supervision of the complaint handling procedure shall be regulated by the act referred to in Article 235, paragraph 12 of this Law.

Registration and reporting

Article 240

Registration of complaints and reporting on settling complaints shall be performed by competent complaints units in accordance with the regulation governing registration and data processing in the field of internal affairs.

The annual report on settling complaints at the Ministry shall be made publicly available at the official website of the Ministry.

Handling complaints in summary procedure

Article 241

In the summary procedure, complaints shall be handled by the manager of the organizational unit where the respondent works, or to which the complaint refers (hereinafter: the manager).

The manager shall check the allegations made in the complaint, and shall inform the complainant about the outcome within 60 days after receiving the complaint.

The manager will not act upon the complaint in the following cases:

1) when the complaint is repeated and no new evidence is submitted;

2) when there is an obvious abuse of the right to submit a complaint.

The manager shall respond to the complainant about the outcome of the summary procedure referred to in paragraph 3 of this Article upon the complainant's first address.

Article 242

The manager or the Chairperson of the Committee referred to in Article 235, paragraph 1 of this Law shall inform the Police Directorate or other competent organizational unit of the Ministry about the outcome of the conducted complaints procedure.

Article 243

Submitting a false complaint shall be considered equal to filing false charges in terms of criminal law.

Security vetting and identification of the presence of security impediments

Article 140

The assessment of the existence or non-existence of a security threat, with an explanation, shall be given by the manager of the organisational unit which conducted the security vetting. The assessment with an explanation shall be submitted to the submitter of the request for carrying out security vetting, while it shall be given for insight to the person to which it relates only at the explicit request.

The assessment of the existence or non-existence of a security threat, with an explanation, in the event of conducting security vetting for police officers of the Service for Data Security and Protection, shall be given by the special commission referred to in Article 141, paragraph 11 of this Law.

The data collected may not be used for any other purposes.

Levels of security vetting

Article 141

Security vetting shall be conducted at three different levels.

The first-level security vetting shall be carried out for persons referred to in Article 102 of this Law.

The first-level security vetting shall involve processing of data from the official records of the Ministry and collecting data by direct operational-field work.

The second-level security vetting shall be carried out for mid-level managers for the period of five years.

The second-level security vetting shall involve processing of data referred to in paragraph 3 of this Article, as well as complete vetting of data from the records of other state authorities, public administration bodies, provincial autonomy bodies, local self-government units, and holders of public powers.

The third-level security vetting shall be carried out for state officials, appointed persons, or high- or strategic-level managers of the Ministry, for the period of four years.

The third-level vetting shall involve processing of data referred to in paragraphs 3 and 5 of this Article, as well as data from the records of other security services.

Security vetting may also be carried out for shorter periods if necessary, as well as in other cases prescribed by law.

The second and third levels of security vetting shall be carried out by the Sector of Internal Control.

Security vetting of police officers of the Sector for Internal Control shall be carried out by

the Service for Data Security and Protection.

Security vetting for police officers of the Service for Data Security and Protection shall be carried out by a special commission set up by the act of the Minister.

Funds for special operational needs

Article 246

For payment of expenses and awards to persons for acting and participating in the implementation of measures permitted under this Law and the law regulating criminal procedure and for paying for useful information relating to criminal offenses and their perpetrators and for the costs of implementation of the programme of protection of participants in criminal proceedings, funds for special operational needs of the Police Directorate and the Sector of Internal Control shall be allocated within the budget in accordance with the financial plan of the Ministry.

Records on such payments shall be kept separately, in accordance with regulations governing specific fields.

The management of funds for special operational needs shall be regulated by secondary legislation.

□

THE USA

NYPD Internal Affairs Bureau

Integrity Tests: Random and Targeted

The NYPD is comprised of 55,628 employees (36,421 uniformed and 19,207 civilian).¹ The NYPD Internal Affairs Bureau has an Integrity Testing unit of approximately forty (40) undercover officers that is dedicated to conducting Integrity Tests on members of the service. These tests can be either random or targeted.

Random tests involve creating a scenario in which any officer who engages will be the subject. The current strategy for determining where Random Integrity Tests will be conducted is based upon monthly statistical trends compiled by IAB's Assessment and Analysis Unit that receive the most corruption/misconduct complaints (by ratio per staffing). Patrol Precincts, Housing Public Service Areas (PSA), and Transit Districts (TD) are prioritized for Random Integrity Tests.² Statistical trends regarding the kinds of Corruption or Misconduct allegations prevalent in the particular Precinct/PSA/TD will help determine the type of Integrity Test conducted (e.g., if a precinct shows an uptick in Force complaints, the Integrity Test scenario will involve force). Regardless of the statistics, the Internal Affairs Bureau aims to conduct at least one Random Integrity Test per year in every Patrol Precinct, PSA, and TD. While Random Integrity Tests may involve officers of any rank, the majority are Police Officers and Sergeants. This is due to the fact that they are likely the first officers on scene.

Targeted Integrity Tests are conducted upon request by an IAB Group investigating allegations against a specific member of the service. These test scenarios are tailored to the specific member of the service and the allegation(s). These tests are much more elaborate than Random Integrity Tests and can include elaborate set-ups, surveillance, and site surveys.

In determining whether an officer passes or fails an Integrity Test, IAB makes a distinction between "criminal" and "procedural" failures. The disciplinary consequences for an Integrity Test failure vary depending on the type of failure. A criminal failure means that the officer's response to the test involved corruption or serious misconduct (e.g. the officer takes money from an arrestee's pocket and keeps it rather than invoicing it). A procedural failure means that the officer merely failed to follow a Department procedure in his response to the test (e.g., an officer allows the arrestee's friend to take possession of money rather than voucher it).

Integrity Tests: Frequency

Year	Random	Targeted	Total
2014	268	177	445
2015	285	170	455
2016	578	246	824
2017	563	221	784
2018	702	167	869

Integrity Tests: Examples

- An undercover officer in possession of money, valuable property, and/or contraband commits an arrestable offense. Passage or failure is determined based upon both whether the officer handled the arrest properly (both procedurally and with respect towards the arrestee) and whether the property is accounted for and handled as per procedure.
- An undercover officer is posing as a citizen who is in the vicinity of or accused of an offense but there is no probable cause to arrest or issue a summons. Passage or failure is determined by whether the officer unjustly effects the arrest or issues the summons.
- An undercover officer poses as a concerned member of the public and directs the officer's attention to a person needing assistance, acting suspiciously, or otherwise requiring police attention. Passage or failure is determined based upon

whether the officer responds and, if they do, how they address the condition.

- An undercover officer poses as a member of the public and delivers "found" money, property, or contraband to an officer. Passage or failure is based upon whether the officer properly invoices the property.
- An undercover officer offers an officer money or another thing of value to deviate from their official duties (i.e., not make an arrest, change a report, etc.). Passage or failure is based upon not only whether the officer accepts or declines the offer but also whether they properly report the attempted bribe.



¹ Personnel totals provided by NYPD Personnel Bureau and are current as of January 2, 2019.

² The NYPD is comprised of nineteen (19) Bureaus, however the majority of uniformed officers are assigned to one of three: Patrol Services Bureau (covering precincts), Housing Bureau (covering Housing Authority property), or Transit Bureau (covering our train and bus stations). In all they account for 60.94% of uniformed manpower.

POLAND

Junior Inspector Jerzy Świątek
Counselor of the Analysis and Supervision
Department of the Internal Affairs Bureau of
the Police

Integrity testing as a tool to verify the attitude of officers and civil servants

I would like to begin by saying that the introduction of this measure as an offensive legal solution to the range of tools used by Polish entities involved in preventing and combating corruption may constitute a further step in building an effective national anti-corruption system, including by increasing the level of effectiveness of the detection process and by strengthening the preventive measures.

UN Convention against Corruption and integrity testing

On 31 October 2003, the UN General Assembly adopted the United Nations Convention against Corruption.¹ The institution whose aim is to combat corruption-related threats on behalf of the UN is the United Nations Office on Drugs and Crime (UNDOC).² In the performance of the related tasks, two publications were published in 2004, which were the result of the Convention: "Practical anti-corruption measures for prosecutors and investigators" and "The global programme against corruption. UN anti-corruption toolkit"³, which promote a wide range of diverse tools intended to prevent and combat corruption, including integrity testing.⁴

Prevention of and fight against crime, including corruption, and integrity testing

Crimes, including corruption, can be detected through proactive and reactive measures. Proactive activities take place when a law enforcement agency initiates activ-

ities on the basis of its own information. Gathering of evidence takes place through the implementation of operational and exploratory activities. The best example of a proactive tool for verification of the attitude of an officer or an official is an integrity test. An integrity test is an instrument that strengthens both the prevention of and the fight against crime. It consists in arranging places or situations where an official or a police officer should behave in accordance with the law. In a given scenario, the freedom to make decisions by such a person cannot be restricted. The chosen scenery or the created situation cannot prevent this person from fulfilling his or her duties or obligations. The aim of integrity tests is primarily to determine whether an official or a police officer engages in criminal activities and to increase the real and perceived risk of imminent disclosure of the fact that a crime has been committed, thereby discouraging reprehensible behavior. Integrity testing an effective tool used in some countries to "test" whether government officials are able to behave legally, e.g. to resist bribery and refrain from accepting a corrupt proposal of an applicant who wants to settle a matter in an office. Integrity tests have also proven to be a very effective and efficient deterrent in practice.

Types of integrity tests

There are two types of integrity tests: tests aimed at verifying information about a crime, including corruption (targeted test), and random tests. Integrity tests can be used

to verify the integrity or dishonesty of an employee in a specific, predictable situation. The scenario created for a test, which targeted at, for example, a specific official or officer, is based on typical, everyday circumstances, where such a person has the freedom to make decisions, i.e. will either act legally or engage in criminal behavior or other inappropriate conduct. For example, an official or an officer may be offered a bribe by a police officer who may use documents that make it impossible to identify the police officer's identity (*agent provocateur*), or a situation may be created that gives a potential opportunity to commit a crime, e.g. to obtain a bribe. Integrity tests can also be used as tests aimed at verifying the authenticity of an allegation or suspicion of criminal behavior, including corruption. Members of the public, criminals, or other officials may communicate information to law enforcement agencies that certain individuals or even entire organizational units are involved in a variety of crimes or are simply corrupt. Quite often, complainants claim that a corrupt official wants a bribe from them for dealing with a particular matter. Moreover, when law enforcement agencies identify a group of police officers or officials who are particularly susceptible to crime, including corruption, or their activities may indicate that they have committed crimes, e.g. have accepted bribes, it is advisable to apply a random test to determine the scale of the criminal activity or the level of corruption at the time of its implementation.

In addition to typical corruption cases, testing can include arranged situations involving the theft or misappropriation of property, such as handing over lost luggage or a wallet with money at a police station, leaving valuable items on the scene of a traffic incident or a burglary, ordering intervention against a person under the influence of alcohol or drugs, and recording the behavior of the police officers who have taken care of the case.

Effects of application of integrity tests

It should be acknowledged that if tests are conducted in secret, the data collected

is reliable and helps to accurately assess the extent of criminal practices within the selected group. Once an integrity test is completed and a criminal activity is stopped, official information about these facts may serve as an effective deterrent against criminal behavior, including corruption, by other officers or officials. Moreover, public notification that such tests will continue to be conducted on a random basis significantly reduces crime among officials and officers. It should be emphasized that in a democratic society, government bodies cannot carry out activities that encourage people to commit crimes. However, one should accept activities consisting in observation of whether someone commits a crime in ordinary, everyday circumstances. Therefore, integrity tests must be carried out under strictly defined conditions. In particular, the course of the test must be recorded using an audio and video device that records the actual event, to show that the actions of the accused person were purely voluntary. The recording also helps ensure that the law enforcement agency collects sufficient evidence for an effective prosecution.

Both random and targeted integrity tests must be carried out as realistically as possible so as not to expose an officer or official to greater temptations than they are usually exposed to. In order to ensure the reliability of the test, and in particular to make sure that it is accepted by both those subject to it and the general public, the methods and scenarios should be assessed and approved by the competent authorities. The test should be carefully prepared and, in particular, adequate measures should be planned in relation to the information about the offense, e.g. about the types, the situations, the forms, and the amounts of bribes to which the subject may be exposed. It should be added that while integrity tests can be very effective as an investigative tool and an excellent deterrent, courts do not always accept this method of gathering of evidence. Nevertheless, it should be concluded that there are good reasons to conduct integrity tests. The key reason is that their use is one of the most effective tools for elimination in a very short peri-

od of time of criminal phenomena, including corruption among officers and officials. In particular, with high levels of corruption and low levels of public confidence, this is one of the few tools that can deliver immediate results and help restore confidence in public administration. Legal systems that provide for the use of an “agent” in an arranged scenario should include provisions aimed to ensure that the scenario does not include the possibility of incitement to commit a criminal offense. It is therefore important that the degree of temptation is not extreme or unreasonable.

Application of integrity tests in the world

Integrity tests are used by the police units in many countries, including, since 1970, the New York Police Department (NYPD) in the United States.⁵ The NYPD uses both random and targeted integrity tests. Another country where integrity tests have been in place since 1990 is Australia,⁶ where the experience of the New York police has been used and most of the tests are targeted. In Europe, one of the countries where the integrity tests are conducted is the United Kingdom, where integrity testing was introduced to the London Metropolitan Police in 1998.⁷ Another European country where integrity tests have been conducted place since 2007 is Romania.⁸ In 2011, the National Protective Service (NPS) was established in Hungary; it is responsible, among other things, for preventing and combating crime among officers and public administration officials. The NPS uses integrity testing as a new protective tool to check the legality, the performance of tasks, and the fulfillment of duties. The purpose of the tests is to radically reduce corruption and abuse of power.⁹

The Internal Affairs Bureau of the National Police Headquarters and integrity tests

In the years 2006–2014, the officers of the Internal Affairs Bureau (IAB) of the National Police Headquarters (NPH) participated in many training courses and meetings, including international meetings devoted to the subject matter in question. In our view, integrity testing is a very good means of ver-

ification of the attitude of an officer or official when there is a high probability that he or she will commit crimes, including corruption, and there are no other ways to establish this fact. Moreover, the preventive aspect of this method, as well as the effectiveness and speed of the effects obtained, is undisputed. It should be added that the long-standing practice of the officers of the IAB of the NPH performing activities pursuant to Article 19a of the Police Act, commonly referred to as controlled acceptance or giving of a bribe, guarantees professional performance of such a method by police officers of the IAB of the NPH if it is adopted in the Polish law.

In 2006–2007, in view of the concern for raising ethical and moral standards and professionalism of the police service provided to the State and its citizens, officers of the IAB of the NPH proposed an appropriate amendment to the Act of 6 April 1990 on the Police.¹⁰ This change consisted in equipping the central police authority with a new, essentially offensive legal solution, regulated by Article 19c of the Police Act, which was to enable more effective prevention and detection of crimes and other negative phenomena among police officers.

The Police is an extremely important element in the structure of state bodies that carry out tasks in the field of protection of security of people and maintenance of public order and safety; therefore, due to its special public mission, its officers should meet high ethical and moral standards. The Police, as an institution, takes appropriate actions to maintain these high standards and has a strong interest in independently disclosing and eliminating from their ranks those police officers who, contrary to the oath they have made, have violated the principles of professional integrity and strict observance of the law. The phenomenon of crime in the Police, as in any social group, is a fact and, although it has a marginal character, the integrity of Police personnel, understood as honest fulfillment of the mission of this professional group, is a fundamental issue and enters the sphere of wider professional responsibility. Criminal activity of a police officer or employee violates the integrity of the institution

and constitutes a significant obstacle to the fulfillment of the statutory tasks of the Police. It causes a number of negative consequences for the institution, on both a micro and a macro scale, starting from betrayal of values important to the profession and of honest professional relations and ending with financial losses incurred by the Police budget and the state budget due to crime, as well as a negative impact of this crime on the perception of the Police by the public. However, this is an area where one should expect a large number (so-called dark number) of crimes that are not disclosed to the public, also due to the fact that these crimes are committed by persons who, by definition, are perfectly familiar with the crime detection methods and tactics. It should be emphasized that the social harmfulness of law infringements by police officers, who are appointed, among other things, to prosecute crimes and their perpetrators, is exceptionally high and qualitatively completely different from even similar infringements committed by other persons.

The need to introduce integrity testing into the Police Act was and is dictated by the need to increase the effectiveness of methods that both prevent and suppress crime in the police, since the current legal solutions are often insufficient in practice. One such insufficient solution is provided for in Article 19a of the Police Act, which indicates that classified activities within the framework of the so-called operational control may be undertaken only when information has been obtained on the crimes specified in Article 19 of the Police Act. The closed list of offenses defined there is too limited, as it does not take into account offenses closely related to the unique characteristics of service in the Police, which in many cases makes the operational control a useless tool. It is only limited to an extension of the list of offenses under Article 19, which will not meet the assumed objectives within the scope of prosecution of all offenses committed in or in connection with the service; therefore, a legal instrument must be introduced which will allow for the creation of various situ-

ations requiring the officer subject to it to act in a professional manner in compliance with the law and the principles of ethics and professional discipline, as well as for their ongoing monitoring.

The suggested wording of Article 19c was developed by a group of officers from the National Police Headquarters and the Police Academy in Szczytno, designated by the Decision no. 643 of the Police Commander-in-Chief of 15 November 2006 appointing a team to develop draft legal solutions enabling the application of a proactive method of verification of integrity of personnel of the Police. As a result of the team's work, a new, much-needed, and effective method of operational work was developed, which is partly modeled after American solutions that proved to be very effective in practice, which was referred to, for the purposes of the project, as verification of a police officer's professional attitude. Although this method may be seen as a provocation, it cannot be regarded as such, not least because the arranged situation in no way can compel the person exposed to it to commit a crime or otherwise violate the law. At most, it falls within the category of active facilitation of the commitment of a crime or other violation of law by a police officer undergoing the verification, but each time it is the police officer who decides on his or her reaction to the situation created and who bears the burden of responsibility for any unlawful acts or omissions resulting from his or her conduct during or in connection with his or her official activities. The proposed paragraph 4 of Article 19c contained specific guarantees in this respect, prohibiting the use of violence or unlawful threats against the verified persons. The idea which is to always guide the application of the new method is to check the honesty of an officer in the performance of his or her official duties, and not to induce him or her to commit a crime or otherwise violate the law.

The essence of the new solution was, therefore, to create the possibility for a participatory verification of the professional attitude of police officers in arranged situations, which are similar to situations in which, according to reliable information,

they commit intentional crimes prosecuted by public indictment.

The plan was to conduct verification of an officer of the Police with the use of the new legal instrument only if there was a justified suspicion that he or she has committed an intentional crime prosecuted by public indictment in connection with the performance of official duties. Such suspicion must be justified and, therefore, supported (documented) by data that make the commitment of this crime likely – to the extent that it does not allow for abstaining from further verification and, at the same time, does not give grounds for an investigation.

The statutory requirement to have a factual basis for taking actions pursuant to Article 19c indicated that the verification could not be performed on police officers for whom there is no sufficient data justifying the assumption that they have committed an intentional crime prosecuted by public prosecution in connection with the performance of their official duties – which is intended to prevent cases of their unjustified arbitrary application, e.g. for ad hoc staffing or disciplinary purposes. As a rule, the mere fact of opening an investigation on the basis of information justifying the suspicion that such an offense has been committed by a police officer should not automatically determine the verification of his or her attitude. Verification in the course and for the purposes of a specific investigation will not be acceptable as, by its very nature, it cannot be a useful instrument for establishing the facts giving rise to such an investigation and making it possible to decide on the subject matter of a criminal trial. The plan was that nothing would prevent the verification of the attitude of a police officer from being carried out after the investigation against him or her was discontinued, based on the assumption that the factual basis for the verification is broader than the basis for initiating preparatory proceedings, which is in line with the principle expressed in the planned Article 19c (3), which provides that verification shall be carried out when other measures prove ineffective. Despite the fact that the factual basis for verification is separate and independent,

it cannot be assumed *a priori* that operational, exploratory, and procedural activities within the framework of an investigation initiated on the basis of the same information will be ineffective or useless. It should be emphasized, however, that the same data that constitutes the basis for the initiation of a pre-trial investigation cannot be used as the basis for verification after discontinuance of the investigation due to the fact that it has been found that a particular police officer did not commit a crime. The situation is different in the case of discontinuance of proceedings due to lack of sufficient evidence that would not allow for, on the one hand, the exclusion of the perpetration of a crime and, on the other hand, the filing of an accusation; only then will there be grounds for concluding that other methods have proven ineffective. The *a priori* assumption that other methods are not useful can only concern the need to check such data that does not yet give rise to an investigation.

The amendments provide that during the verification process the use of violence or unlawful threat will be unacceptable, both against the officer subjected to the tests and against other persons, and also it will be prohibited to simulate acts, the commission of which may directly expose the verified persons or third parties to loss of life or health – with the exception of the persons conducting the verification.

The legitimacy of the performance of the verification was to be subject to judicial review. According to Article 19c (6), verification could only be ordered by a circuit court upon a written request of the Police Commander-in-Chief, after obtaining a prior written consent of the Prosecutor General. Such a solution creates a kind of guarantee for the police officer concerned by the request. The essence of the guarantee is the transfer of the final decision-making authority concerning the performance of the verification to an independent judicial authority, which ensures the independence of its decision from the body of the executive branch of the government, i.e. from both the applicant and the consenting entity referred to in the provision. Such a location of the

decision-making entity is directly related to the subsidiarity of verification as a method in relation to other legally permissible detection activities, which is guaranteed in the law. Therefore, it should be reasonable to expect that each application for performance of the verification will be subject to a thorough analysis by the judge of the circuit court, in terms of both formal requirements and material prerequisites for the admissibility of this method. The legitimacy and legality of the performance of the verification have been standardized to take account of the exceptional nature of this method and to guarantee the legality of the related procedure.

An important legal norm protecting the persons who are subject to the verification against an excessively offensive and repeated activities of the services carrying out the verification is Article 19c (9). This provision provides for the possibility to carry out only one verification of the information giving rise to the verification. It is not difficult to see that should such a provision be lacking, the verifying authority could ask for the relevant consent on multiple occasions.

The obligation to inform the person who has been verified about the positive result of the verification, provided for in Article 19c (11), is an expression of the desire to increase the standard of transparency in presentation of the activities of the Internal Affairs Bureau of the National Police Headquarters. An important impulse both for the person who was verified and for the officers working with him or her is the awareness that such actions are taken at all. In practice, for the verified person it is a signal confirming his or her fair and proper performance of official tasks, and at the same time it will clear him or her of any, often false, assumptions made about him or her. In relation to officers working with the verified person, one cannot fail to notice an additional preventive impact of such a solution – which is in fact hinders undesirable attitudes, as well as stimulates an increase in professionalism in the performance of official activities.

The course of verification was to be obligatorily documented in a covert way by means of video and sound recording devices.

The behavior of the verified officer and the decisions taken by him or her were also to be verified on an ongoing basis by the officers of the Internal Affairs Bureau of the National Police Headquarters in the course of direct contacts with the officer.

The commitment of an offense by the person during the verification was to result in criminal proceedings being brought against him or her. The plan was that the operational material collected in this way, which documented the verification process and the evidence of the crime, would be handed over to the circuit prosecutor.

Activities of the IAB of the NPH¹¹ concerning integrity testing within the framework of the Government Programme for Counteracting Corruption for the years 2014–2019¹²

Resolution no. 37 of the Council of Ministers of 1 April 2014 on the Government Programme for Counteracting Corruption for the years 2014–2019 established the “Programme” in which objectives and targeted actions were set for all entities charged with counteracting and combating corruption in the country. The document was a continuation of the state’s activities in the field of prevention and suppression of corruption. This third such large systemic activity was preceded by the government document entitled “Programme for Fight Against Corruption – Anti-Corruption Strategy for the years 2002–2004,” which was a set of targeted decisions and actions to be taken by the government administration in the fight against corruption, and by the document entitled “Programme for Fight Against Corruption – Anti-Corruption Strategy – 2nd stage of implementation in the years 2005–2009,” which provided for the implementation of another package of legislative, organizational, educational, and informational projects, supplemented by new areas of corruption hazard and tasks related to monitoring of the effectiveness of the measures that are being undertaken.

The above mentioned “Programme” assumes that the main objective is to reduce corruption in the country, with two specific

goals: to strengthen preventive and educational measures and to strengthen the fight against corruption. It was assumed that the goals and objectives would be achieved, among others, by further strengthening of the existing legal solutions in this area and by improving the cooperation and coordination of activities of law enforcement agencies, also on the international level. In the case of the Police, due to the dichotomy with respect to corruption, the Commander-in-Chief of the Police appointed the IAB of the NPH to carry out the activities within the Police. Therefore, it was assumed that one of the priority tasks would be to continue work on strengthening the legal solutions present in Poland, with a proactive tool for verification of the attitude of officers and officials, namely the integrity test, which strengthens both crime prevention and fight against crime.

Therefore, within the implementation of task no. 19 of this “Programme,” titled “Strengthening international cooperation in combating of corruption,” in particular during the implementation of measure no. 19.3 titled “Exchange of experiences and good practices with other countries in the area of combating of corruption,” international contacts were intensified in order to acquire theoretical and practical knowledge concerning the functioning of *integrity testing*, in particular among the countries of the European Union.

One of the most important meetings was a working meeting of representatives of internal affairs services of the Czech Republic, Slovakia, Hungary, and Poland, organized by the Czech party in late May and early June 2016, within the framework of regional cooperation within the V4 Visegrad Group. The meeting was attended by representatives of the General Inspection of Security Units (GISB – Generální Inspekce Bezpečnostních Sborů) from the Czech Republic, the Inspection and Control Service of the Ministry of Interior (Sekcia kontroly a inšpekčnej služby Ministerstva vnútra) from Slovakia, the National Security Service (NSO – Nemzeti Védelmi Szolgálat) from Hungary, and the Polish Bureau. During the meeting, the hosts presented

the scope of operation of the General Inspection. This service was established in 2012. It is an independent service, the director of which reports directly to the Prime Minister of the Czech Government. Previously, it operated within the Ministry of the Interior. It consists of 300 people (250 officers and 50 civil employees). It supervises the work of 65,800 police, prison, and customs officers. The number of persons employed in this service constitutes about 0.5% of the persons under its supervision. It has been conducting integrity tests since 2009. It is an administrative tool, where in the case of e.g. acceptance of an arranged bribe, information about this is passed on to the official superior of a given officer and constitutes the basis for his or her expulsion from service. In exceptional cases, the materials from the activities may be used as evidence in criminal proceedings.

The integrity test in the Czech Republic is governed by Article 41 of the Act no. 341/2011¹³:

(1) A GISB officer, in order to prevent, avoid, and expose illegal conduct, has the consent to perform an integrity test against an officer or employee (hereinafter referred to as “person being tested”).

(2) The integrity test consists in arranging a situation that has to be handled by the person being tested.

(3) Conduct of an integrity test shall not pose a threat to or endanger the life or health of the person being tested or his or her property, or restrict his or her personal liberty. Also, his or her human dignity/honor must be preserved.

(4) At the request of a GISB officer, an integrity test may be carried out by another person with his or her consent. In this case, the person is obliged to follow the instructions of the officer; the officer is responsible for the person’s actions.

(5) A GISB officer or other person performing an integrity test may provide false information during the test.

(6) The course of the integrity test shall be audio-visually documented and the recording of the integrity test shall be retained.

(7) If the person being tested commits a breach of law during the integrity test,

the person being tested shall be immediately and clearly informed of the integrity test by a GISB officer and a copy of the record referred to in paragraph (6) shall be handed over to the appropriate security unit, which shall keep the record in the personal file of the person being tested. The person being tested shall not be informed and the record shall not be handed over if this could pose a threat to the implementation of a specific prosecution (criminal proceedings) or to the performance of own control activities. In this case, the person being tested shall be informed and the record shall be transmitted to the security unit as soon as the risk has expired. A person being tested who has breached the law during an integrity test shall be entitled to review the documentation produced pursuant to paragraph (6).

(8) An activity of a GISB officer or other person performing an integrity test identified as a misdemeanor or another other administrative offense shall not constitute a misdemeanor or other administrative offense if it is necessary for the attainment of the objectives of the test and does not jeopardize or harm the interests listed in paragraph (3).

(9) Every six months, the GISB shall submit a summary report to the appropriate security unit, including the names of the officers and employees being tested who have passed the examination.

The authorization mechanism is the following:

1. An integrity test shall be carried out on the basis of an approved request from a GISB officer (applicant).

2. The request shall be approved by the Deputy Director for Special Services and the Deputy Director for Prosecution on the recommendation of the head of the applicant's Department. An exception is possible only for the reasons set out in Articles 4 and 5.

3. If the request is initiated by another subject (e.g. the security unit, the public, the media, etc.), the initiative shall be forwarded to the GISB Department for review and legitimacy assessment according to the local and material jurisdiction. Then the procedure shall be conducted in accordance with Articles 1 and 2.

4. If a member of Department 31 of the GISB (special department) finds reasons to perform an integrity test without prior request and approval, the test may be performed with the consent of the Head of the Department or his or her Deputy.

5. If a GISB member cannot receive an approval in advance, the test can be performed, but the Head of the Special Department or his or her Deputy must be informed immediately about the test as they are responsible for informing the Deputy Director for the Secret Service about the test. Next, the Head of Department 31 must submit a request within 48 hours to the Deputy Director for the Secret Service to receive an additional approval, in order to carry out the test. If the request is not approved by the Deputy Director for Secret Service, the files will be retained and the video material will be destroyed.

6. The Special Department is allowed to conduct a test on its own initiative. This must be approved by the Executive Department, which approves the intention to conduct the test in the specified environment.

7. Before the test is conducted, a plan must be prepared and then approved by the Head of the Special Department.

According to recent case law, it is possible to use the integrity test for criminal prosecution under certain conditions (the conditions are listed in sec. 89 (2) of the Czech Code of Criminal Procedure¹⁴ – the evidence can be anything that would contribute to the clarification of the case – the evidence must be obtained in accordance with the law).

Moreover, materials from the conduct of an integrity test may be transferred to the Police, the customs service, and the prison service, whose authorities may punish any person subjected to the test who is employed there and who, while applying the test, has violated the law, in accordance with the procedure in force in the respective institution.

Next, the representatives of the Inspection and Control Service of the Ministry of the Interior from Slovakia briefly spoke about their service. The director of the Service reports directly to the Minister of Interior, just as the Commander-in-Chief of the Police does. The service employs about

200 persons (1% of the supervised persons) and covers 20,000 employees and officers of the Police. In addition to its criminal capabilities, it also has inspection powers. Slovaks also conduct integrity tests, which are an administrative tool, and as is the case in the Czech Republic, failure to pass the tests gives the competent superior the opportunity to expel such a person from the ranks of the Police. As in the Czech Republic, Slovaks have their own operational techniques unit for this and other operational projects.

Another internal service, the Hungarian National Security Service, was established in 2011. As in Slovakia, it operates within the Ministry of Interior. The director of the Service reports directly to the Minister of Interior, just as the Commander-in-Chief of the Police does. The organization employs about 550 people and its operations cover over 120,000 people from virtually all agencies, including the Police. This represents about 0.5% of all supervised persons. In Hungary, as in other of the aforementioned countries, integrity tests are conducted; they are prepared and implemented by the NSO's own operational techniques units. The above-mentioned method was legally introduced in 2011, but it took 1 year to prepare for its practical implementation. Unlike in the Czech Republic and Slovakia, in Hungary the results of integrity tests are evidence in criminal proceedings and the tests are carried out with the knowledge and approval of the prosecutor. It should be noted that in 2018, an article by Mr. Grzegorz Ociecek – the Deputy Head of the Central Anti-Corruption Bureau – titled “Integrity test. Selected legal solutions” was published in the “Prokuratura i Prawo” journal (no. 1); the article presented the functioning of this instrument closer in Hungary; therefore, I will not discuss the procedure in more detail here.¹⁵

It should be emphasized that the representatives of all three countries stated that integrity tests are an excellent tool, both preventive and exploratory. It is used when information is received that a person may have committed a crime, especially an act of corruption. The professional way of its ex-

ecution guarantees that it does not have the character of a provocation. The public has watched the use of this method very closely, especially at the beginning of its application, but the materials obtained through its use (obligation to record the test each time) has fully convinced the public of the legitimacy of use of the integrity test as one of the operational and exploratory activities. It should be added that officers from the above-mentioned countries emphasized mostly the preventive value of this method.

Another important meeting on this topic took place during the visit of the representatives of the IAB of the NPH in Romania in October 2016. During the visit, we met with officers of the General Anti-Corruption Directorate (DGA – *Directia Generala Anticoruptie*). During the meeting, the hosts presented the scope of functioning of the General Anti-Corruption Directorate, which was established on the recommendation of the European Commission, was created with the help of agencies from Great Britain and Spain in 2005, and is managed by the Director General, who is in charge of the Directorate and reports directly to the Minister of Interior and Administration. The agency has about 600 officers and is concerned with prevention and combating of corruption within the Ministry of Interior and Administration. Each of the employees and officers of an entity that is subordinate to or a part of the Ministry of Interior and Administration may be subject to, among other things, an integrity test. The above-mentioned Ministry is the largest unit of the Romanian government, with more than 140,000 employees and officers. It consists of the most important law enforcement agencies, such as the Romanian Police, the Border Guard, the Gendarmerie, and the Civil Defense.

According to the DGA, integrity testing is primarily a preventive tool, which is why it is conducted in the form of the so-called *random tests*. Such tests are conducted randomly in hazard areas and not in relation to specific persons. Where specific information is available, integrity tests are not performed, unlike in other countries where, in addition to the so-called random tests, targeted tests

are conducted, which are targeted at specific persons where information about acts allegedly committed by such persons is available. In Romania, where specific information on corruption is available, police officers act within the framework of a prosecutor's investigation. In the case of negative behavior of a given person during an integrity test, the materials obtained during the test may be the basis for implementation of actions similar to those applied in Poland – pursuant to Article 19a of the Police Act – i.e. controlled acceptance or offering of a financial benefit. As a side note, it should be mentioned that in Romania, the integrity test is an administrative tool and its implementation is decided by the head of the DGA.

The procedure for performance of the test is the following:

Article 17¹ of the Law 38/2011 approved by Order no. 20/2009, in order to amend Article 13 (2 and 3) of Order no. 30/2007, on the organization and functioning of the Ministry of Interior and Administration and to reorganize certain structures subordinate to the Ministry of Interior and Administration.¹⁶

Art. 17¹ (1) The fact of being an employee of the Ministry of Administration and Interior presupposes consent to an integrity test.

(2) The professional integrity test is carried out by the DGA and is a method to identify, assess, and address the gaps and threats that induce the staff of the Ministry of Administration and Interior to commit acts of corruption. The integrity test involves arrangement of possible situations, similar to those encountered by employees in the course of their professional activities, carried out in practice in the form of simulated operations, in accordance with the behavior of the tested personnel, in order to determine their reactions and behaviors.

(3) If, during an integrity test, it is established that criminal acts have been committed, the General Anti-Corruption Directorate shall notify the relevant law enforcement authority in accordance with the law.

(4) If, in the course of an integrity test, it is found that the staff concerned have breached applicable laws other than those referred to in (3), administrative and/or dis-

ciplinary measures shall be taken, in accordance with the laws that govern the activities of the staff of the Ministry of Administration and Interior.

(5) The procedure for carrying out the integrity test is laid down by order of the Minister of Administration and Interior.

Pursuant to Article 7 (4) of Regulation no. 30/2007 approved by amendment of Act no. 15/2008, as amended and supplemented, the Minister of Administration and Interior has ordered the following¹⁷:

Art. 1 The Order establishes a procedure for testing the professional integrity of the staff of the Ministry of Administration and Interior, hereinafter referred to as the MAI.

Art. 2 The test may be carried out on the initiative of the General Anti-Corruption Directorate, hereinafter referred to as the DGA, or at the request of the structures of the MAI.

Art. 3 Every employee of the MAI may be subjected to the test.

Art. 4 The test is designed to prevent corrupt practices that may affect the staff of the MAI.

Art. 5 (1) The test shall be carried out in compliance with the fundamental rights and freedoms people and the human and professional dignity of the persons tested.

(2) The use of the tests for purposes that adversely affect the authority, dignity, image, or legal interest of the persons tested, or limiting their legal position, shall be prohibited.

(3) It is forbidden to incite/provoke the person being tested to commit a crime and/or to violate discipline during the test.

(4) Provocation shall mean an action of a DGA police officer intended to incite/provoke the commitment of criminal offenses and/or violations of discipline.

Art. 6 The selection of persons to be tested is made depending on the areas and places threatened by the risk of and vulnerability to corruption.

Art. 7 (1) Participants in the test are members of the DGA and usually conduct the test in a covert manner.

(2) Testing is only carried out with the consent of the DGA leadership.

Art. 8 (1) During the tests, audio and video recordings, transport, and communi-

cations shall be performed using equipment of the MAI, as well as authentication documents, in accordance with the conditions laid down in the normative acts in force.

(2) Where appropriate, means from other sources may also be used, only with the prior consent of the owner or the person using them, so as to avoid disclosure or other negative consequences.

Art. 9 Conduct of a test shall be directly led by a DGA officer of the relevant structure, designated by the DGA leadership, who shall provide information on the results of the test in a report.

Art. 10 If, in connection with the performance of an integrity test, information is obtained about the commitment of criminal acts by employees of the MAI, the DGA police officers shall report this fact *ex officio*, in a relevant report drawn up in accordance with the provisions of the Code of Criminal Procedure.

Art. 11 (1) If the tested person asks for or receives the money or benefits used in the test and, following the notification, the competent authorities believe that the act is not a criminal offense, the DGA shall inform the head of the structure/institution of the tested person who is an employee of the structure/institution and he or she orders disciplinary and/or administrative measures in accordance with the law, the DGA shall be notified thereof.

(2) The DGA shall make available to the head of the structure/institution, upon request, copies of the materials obtained during the tests.

(3) Should other violations of the tasks and responsibilities not related to a specific test occur during the test, the head of the structure/institution shall order the application of measures in accordance with the normative acts in force.

Art. 12 The DGA shall inform the head of the structure/institution about the results of the test if the tested personnel proves his or her integrity.

Art. 13 The heads of structures/institutions are required to discuss with the tested personnel the most important aspects resulting from the tests.

Art. 14 In order to carry out the test, the DGA shall use funds from the MIA's budget allocated to these activities.

Then, in 2017, taking advantage of the international activities, among others, during the conference held within the framework of the project titled "Cooperation between the institutions of the Republic of Lithuania and the Kingdom of Norway aimed at transferring knowledge and best practices in the field of improvement of administrative and financial management, as well as prevention of financial crimes (including corruption) in Lithuania, within the institutions of the central government and the local government," as well as meetings concerning the issues of combating and prevention of corruption, within CEPOL – the European Union Agency for Law Enforcement Training, the subject of integrity test was discussed and studied in order to use the information that has been obtained, the observations, and the conclusions in the course of further work of the IAB of the NPH. Of note is the fact that a representative of Transparency International, who listened to the presentation titled "Introduction of good practices in preventing corruption as one of the key action of the Internal Affairs Bureau of the National Police Headquarters resulting from the analyzes of the state of threat of crime in the police environment," at the end of which the initiative planned by the IAB of the NPH was presented, in particular the proposal to amend the Police Act by implementing an integrity test as an administrative tool to verify the correctness of police officers' behavior, including their professionalism and compliance with the rules of ethics, said that such a test is a great proactive tool for counteracting corruption and was recommended by TI and the UN. During his lecture, the representative of TI also said that apart from prosecuting the perpetrators of acts of corruption, it is important to remember to securing the fruits of the crime and to ensure good cooperation with the media, because it is they who mainly shape the attitudes of the public towards the problem of corruption and, consequently, help to lower its level, thus gaining, among others, the opportunity

to improve the country's Transparency International rating.

Another fact worth noting is that in 2018, as part of the activities of the European Partners against Corruption (EPAC)/European contact-point network against corruption (EACN), research was carried out on the functioning of the integrity test, thus drawing attention among the members of this organization to this tool, which may be an effective solution for preventing and combating corruption.

Simultaneously, as part of the Government Programme for Counteracting Corruption for the years 2014–2019, in the years 2016–2018, in Poland, including during the 1st Anti-Corruption Conference organized by the Anti-Corruption Department of the Criminal Office of the National Police Headquarters, entitled “Fighting corruption in Poland, prevention or repression,” the 2nd Anti-Corruption Conference titled “Systemic mechanisms of combating corruption in the public space,” as well as the 3rd Anti-Corruption Conference entitled “Preventive and educational activities as a mechanism for countering corruption in Poland,” the activities of the IAB of the NPH included promotion of the concept of an integrity test with the goal of developing mechanisms for preventing corruption in Poland, in the context of tasks that were to be implemented within the framework of the “Programme.” Of note is the fact that during the discussion, representatives of the anti-corruption department of the Polish Police noticed potential opportunities to use this method – during their activities – against individuals and entities that are of interest to them.

To conclude this part, I would like to mention that during the works carried out at the IAB of the NPH/IABP, as a part of the activities within the above-mentioned “Programme,” a number of draft versions of laws related to the test in question were developed. One of them assumed that the test would be of an administrative nature, within the framework of the Police Act, and could take the following form:

Art. 25. 1. Service in the Police may be performed by a Polish citizen of good repu-

tation who has not been convicted by a final court sentence for a crime or fiscal offense, who enjoys full public rights, has at least secondary education and is physically and mentally fit to serve in armed formations, subject to a particular official discipline, to which he is prepared to conform, including a *verification test*, and who gives a guarantee of secrecy in accordance with the requirements set out in the regulations on the protection of classified information.

Article 35a. 1. A police officer may be subjected to a procedure aimed to determine his or her predispositions for service in specific positions or in specific organizational units, taking the form of a physical fitness test, a *verification test*, a psychological examination, or a psychophysiological examination.

2a. The verification test shall be ordered by the Commander-in-Chief of the Police for all police officers and shall be carried out by police officers of the internal affairs units.

In conclusion, I would like to emphasize that the IABP is still interested in implementing a similar legal solution, because the possibility of using such an institution to prevent corruption would certainly guarantee both the preventive and the practical aspects, given the possibility of quick, simple and effective verification of initial signals and information on persons and areas at risk of corruption. It should be added that the *integrity test*, as an effective tool used to prevent and combat crime, including corruption, among public officials and officers, including police officers and civilian employees of the Police, is gradually incorporated into the legal systems of more and more democratic countries in Europe and the rest of the world, and is still used by countries with a well-established tradition of democratic rule of law, such as the United States of America¹⁸ and the United Kingdom.¹⁹

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Summary:

Integrity test as a tool for verifying the attitude of the officer and the official.

Integrity test is a tool in which officers and officials are involved in situations or conditions, without their knowledge, during which they are potentially exposed to corruption or other negative behavior and their actions are analyzed and evaluated by the relevant authorities. There are two types of integrity checks – random tests, which apply to every officer and official in any public institution and the target tests, which refer only to officers and officials suspected of committing corruption or other crime.

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⁹ <http://nvsz.hu/en/introduction>.

¹⁰ Information on the work of the Team established by the Decision no. 643 of the Police Commander-in-Chief of 15 November 2006 on appointing a team to develop draft legal solutions enabling the use of a proactive method of verification of integrity of personnel of the Police. <http://www.inszpzpwlk.p.pl/print.php?grupa=s-trona&id=274>.

¹¹ As of 27 January 2018, pursuant to the provisions of the Act of 9 November 2017 amending the Act on certain rights of employees of the office providing services to the minister in charge of internal affairs and officers and employees of offices supervised by the minister in charge of internal affairs and certain other acts (Journal of Laws of 2018, item 106), a new type of service was established in the Police: the internal affairs service and its unit – the Internal Affairs Bureau of the Police (IABP), which performs tasks throughout the country within the scope specified in Article 5b of the Police Act (Journal of Laws of 2019, items 161, 125, and 1091).

¹² On 6 January 2018, pursuant to Resolution no. 207 of the Council of Ministers of 19 December 2017, (Monitor Polski of 2018, item 12) the Government Programme for Counteracting Corruption for the years 2018–2020 was established; with its entry into force, Resolution no. 37 of the Council of Ministers of 1 April 2014 on the Government Anti-Corruption Programme for the years 2014–2019 (Monitor Polski of 2014, item 299) expired.

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POLAND

Central Anti-Corruption Bureau

Grzegorz Ocieczek
Integrity testing.
Empirical-comparative studies

Abstract

This publication is aimed at presenting the results of empirical research conducted among randomly selected officers of the Central Anti-Corruption Bureau and students of the 4th year of law at the Cardinal Stefan Wyszyński University in Warsaw, concerning knowledge of integrity testing, an offensive operational work tool (also called attitude testing and honesty testing). Another aim of this paper is to answer the question of whether representatives of law enforcement agencies, i.e. the Central Anti-Corruption Bureau, are supporters or opponents of this operational work tool and what arguments were used by supporters and opponents of the introduction of attitude testing. At the end, the author also mentioned the issues connected with the suggestion to establish the so-called International Anti-Corruption Court. This institution was the subject of a panel discussion organized by the World Bank and held at the International Conference in Copenhagen on 25–26 October 2018.

In January 2018, the “Prokuratura i Prawo” monthly published an article on integrity testing, also known as the honesty testing and attitude testing. In particular, it presented selected legal solutions applied in some countries where the so-called “attitude test” is carried out, including Hungary, Moldova, and Australia.¹ The next edition presenting similar legal solutions, among others in the Republic of Serbia and the Czech Republic, will be published by the HZN publishing house.²

The consequence of the publication of this article (as the author assumed in advance) was criticism from some legal communities

and some representatives of law enforcement agencies, including, among others, the Police Trade Unions. The arguments of the opponents of integrity tests focused, among others, on the fact that such tests could be used to eliminate inconvenient officers and that they are, as a representative of the Police Trade Union noted, “a method of conducting operational work used by the communist secret police (sic!).” Additionally, attorney A. Pietryka, who, according to a newspaper, specializes in protection of human rights, noted that “(...) the services always strive to increase their powers. They do not care whether their actions are proportionate or whether additional powers and tools translate into results (...).” In addition, it is not known which service would be in charge of carrying out such tests and who would control the controller.³

In order to remind and familiarize the reader with this operational tool used by some services in democratic countries⁴ that are charged with fight against and prevention of crime, it is worth noting that an integrity test is an operational police method consisting in secret collection of information, carried out in order to prevent and detect corruption in such agencies as the Police. This information, depending on its outcome and the legislative solutions, is then forwarded to the appropriate prosecutor’s office or to an appropriate disciplinary body.

Integrity tests are usually conducted not only to identify police officers susceptible to corruption, to gather evidence in support of criminal charges or to initiate disciplinary proceedings, but also to identify those

who are trustworthy and not susceptible to corrupt practices and who deserve promotion. The testing leads the Police to believe that the risk of detecting corruption is higher and that Police officers are discouraged from accepting bribes and engaging in similar corrupt activities. Because, as determined on the basis of the research that has been conducted, Police officers strongly oppose reporting cases of corruption perpetrated by their colleagues, the testing serves as an incentive to change this practice.⁵

The first integrity test was introduced in the 1970s to combat corruption in the New York police department. Nevertheless, it is difficult to argue constructively with some opponents who criticize the legal basis for introducing the test, especially when one of the arguments is that such tests contradict the principle of a democratic state, especially because such organizations as Transparency International, OECD, etc. are not opposed to such tests and, moreover, accept them.

As has been indicated in previous publications, “the main objective of the application of integrity tests is to eliminate from public life unscrupulous officials, in particular law enforcement officers, who commit criminal activities, mainly corruption, in the course of their service, related to the acceptance of material benefit in connection with their public functions.”⁶

There are two main types of integrity tests:

1. Targeted tests – where the body carrying out the sting operation has information concerning possible dishonesty of an official who may be susceptible to corruption.
2. Random tests – carried out on a randomly selected official when the testing body does not have any information that could indicate his or her susceptibility to corruption.

With exceptional appreciation of only constructive criticism, an attempt has been made to determine, in the part of the professional group dealing with prosecution of corruption-related crimes and the most serious economic sector crimes, the degree of awareness of the integrity test tool.

Research problem

The main research problem was an attempt to determine the level of knowledge

about the operational work tool, i.e. the integrity test, as well as an attempt to answer the question of whether CBA officers oppose or support introduction of integrity testing covering broadly defined representatives of law enforcement agencies.

A partial research problem was to determine which arguments were used by the supporters and by the opponents of integrity tests. In addition, an attempt was made to answer a question related to the consequences of a failure to “pass” the test. At the same time, the author tried to determine which of the law enforcement agencies, in the opinion of the respondents, would have the greatest competence to conduct such tests.

Sample selection

The study was divided into several stages. It covered a part of the randomly selected CBA Regional Offices (the study was conducted at 8 out of 11 CBA Regional Offices) and at the CBA Headquarters in Warsaw.

The surveys were carried out at the following regional offices:

1. Regional Office of the CBA in Warsaw;
2. Regional Office of the CBA in Kraków;
3. Regional Office of the CBA in Katowice;
4. Regional Office of the CBA in Rzeszów;
5. Regional Office of the CBA in Gdańsk;
6. Regional Office of the CBA in Białystok;
7. Regional Office of the CBA in Szczecin; and
8. Regional Office of the CBA in Lublin.

At the Headquarters of the CBA, the surveys were conducted in the following organizational units:

1. The CBA Operations and Investigation Department;
2. The CBA Operational Techniques Bureau;
3. The Cabinet of the Head of the CBA.

Additionally, surveys were conducted among some 4th year students of the Faculty of Law at the Cardinal Stefan Wyszyński University in Warsaw.

The study covered a total of 323 persons, of which 24 were students of the training group and 299 were officers of the CBA. The study sample covered about 35% of the total number of officers. This number can be considered as significant and the replies to the questions asked – as representative.

Due to the nature of the study, pilot studies were not carried out.

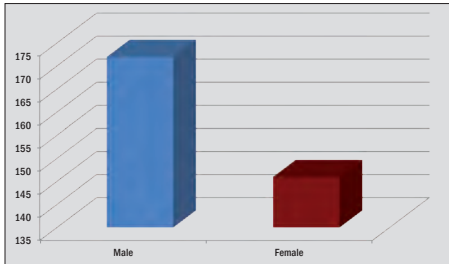
Some persons did not complete the questionnaires in a comprehensive manner and, therefore, some of the presented data are incomplete.

The charts below show the data of the study groups related to gender, age group, and number of years of service.

A majority of the respondents, which is reflected in real data, were men. The study involved 173 men and the remaining respondents were women (Chart 1).

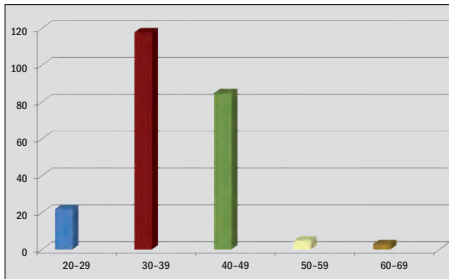
The most numerous study group was people aged 30–49 (Chart 2), with between 10 and 14 years of service (119 respondents). The second largest group was 50 respondents with work experience of up to 4 years, while the next place was taken by 36 respondents with work experience of 5 to 9 years (Chart 3).

Chart 1. Gender of the respondents.



Source: own data.

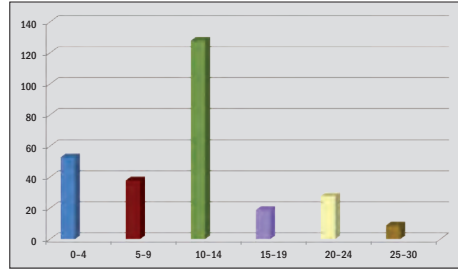
Chart 2. Respondents' age groups.



Source: own data.

As far as the education of the study group is concerned, the vast majority, i.e. 267, were people with higher education (Table 1). The second largest group was people with secondary education.

Chart 3. Number of years of service.



Source: own data.

Table 1. Education of the respondents.

education	secondary	higher	technical	bachelor
number	30	267	1	1

Source: own data.

Research tool

The research was carried out by means of original surveys, which included questions concerning both the knowledge about the integrity test tool and the proposed legal solutions related to the attitude test. At the same time, the survey was intended to obtain answers related to the negative as well as positive consequences of introduction of an attitude test into the current legal system. Some of the questions were open-ended and others were closed-ended. The survey was voluntary, unpaid, and anonymous. In addition, it should be noted that this was a one-off survey. So far, as it has been determined, such surveys have not been conducted, either among CBA officers or among other representatives of law enforcement agencies.

Research hypotheses

Hypothesis 0 – CBA officers are opposed to the introduction of an offensive operational work tool, i.e. the integrity test, into the Polish legal system.

Hypothesis 1 (alternative) – Officers of the CBA are in favor of introducing the integrity test into the Polish legal system.

Partial hypotheses

Failure to “pass” an integrity test should result in criminal charges.

Failure to “pass” an integrity test should result only in initiation of disciplinary

proceedings which may result in expulsion from service.

The body authorized to carry out integrity tests should be the competent body of a given service (the Internal Affairs Bureau of a given service).

The body entitled to carry out integrity tests should be an independently appointed service.

Course of the study

Officers of the CBA filled in a survey of the “paper-pencil” type, which was delivered through the heads of their organizational units. Persons completing the survey were not given any time frame for their completion. The average time taken to fill out the surveys was 7 days. Before starting to fill in the surveys, the officers were informed that the surveys were completely anonymous and unpaid. At the same time, the respondents were asked to answer open-ended questions in a precise manner. All data were analyzed after aggregation into individual study groups, i.e. CBA Regional Offices, the CBA Headquarters, and the students’ control group. Data on education, age, and years of service of individual officers were aggregated into appropriate collective compartments. The students were asked to fill in the surveys after classes.

Discussion of the survey results

As a result of the survey, it was found that a vast majority of the respondents (221) know what the integrity test is about. Only 78 people had never heard of such a research tool. In the group of students (24 persons), only 1 person did not know what the integrity test consisted in. As for the question of whether CBA officers are supporters or opponents of the introduction of the integrity test, on the basis of the collective results, it was determined that 119 persons were in favor of introduction of the integrity test and 29 were against it. As many as 124 people had no opinion on this matter.

The answers to the above question given by the individual CBA units that participated in the study are presented in Table 2 and the following tables.

Table 2. Number of supporters and opponents of the integrity test at the CBA Headquarters.

Yes	50
No	11
I don't have an opinion.	61

Source: own data.

In the following CBA Regional Offices, the following numbers of persons expressed their support for introduction of the integrity test:

1. Regional Office of the CBA in Warsaw – 15 persons;
2. Regional Office of the CBA in Kraków – 6 persons;
3. Regional Office of the CBA in Katowice – 7 persons;
4. Regional Office of the CBA in Rzeszów – 13 persons;
5. Regional Office of the CBA in Gdańsk – 8 persons;
6. Regional Office of the CBA in Białystok – 6 persons;
7. Regional Office of the CBA in Szczecin – 8 persons; and
8. Regional Office of the CBA in Lublin – 6 persons.

On the other hand, the number of opponents of the integrity test was as follows:

1. Regional Office of the CBA in Warsaw – 5 persons;
2. Regional Office of the CBA in Kraków – 0 persons;
3. Regional Office of the CBA in Katowice – 2 persons;
4. Regional Office of the CBA in Rzeszów – 3 persons;
5. Regional Office of the CBA in Gdańsk – 1 person;
6. Regional Office of the CBA in Białystok – 1 person;
7. Regional Office of the CBA in Szczecin – 2 persons; and
8. Regional Office of the CBA in Lublin – 4 persons.

A significant number of respondents were not sure whether or not to introduce the attitude test. The results were as follows:

1. Regional Office of the CBA in Warsaw – 7 persons;
2. Regional Office of the CBA in Kraków – 3 persons;
3. Regional Office of the CBA in Katowice – 11 persons;
4. Regional Office of the CBA in Rzeszów – 9 persons;
5. Regional Office of the CBA in Gdańsk – 9 persons;
6. Regional Office of the CBA in Białystok – 11 persons;
7. Regional Office of the CBA in Szczecin – 7 persons; and
8. Regional Office of the CBA in Lublin – 4 persons.

On the other hand, the research group consisting of students of the Faculty of Law was largely in favor of the introduction of the integrity test – 19 persons; 1 person did not have an opinion on this topic. None of the students were against the introduction of the test.

The presented arguments of both opponents and supporters of the introduction of the attitude test should be considered interesting.

Thus, according to the aggregated data, the opponents of the introduction of the attitude test put forward the following arguments:

1. The test is unjustified and unreliable – 16 respondents;
2. It is a tool that can be used for personal intrigues – 10 respondents;
3. It is a sting operation tool – 7 respondents;
4. It is a tool that violates privacy – 6 respondents;
5. There is no proper control over the conduct of the tests (the persons conducting them) – 5 respondents.

Additionally, some officers employed at the Headquarters of the CBA expressed their opinions about integrity tests in the following manner: “It should be borne in mind that declarations of assets currently constitute a much broader compendium of knowledge than the standard integrity tests and that duplication of the same questions in the integrity tests would therefore not be the best solution.”

Those in favor of introducing an integrity test, on the other hand, used the following argumentation:

1. Elimination of pathologies, corruption, and crime – 107 respondents;
2. A check of honesty – 40 respondents;
3. Improvement of the image of law enforcement agencies – 32 respondents;
4. Preventive action – 27 respondents;
5. Verification of persons and attitudes – 26 respondents;
6. Transparency – 14 respondents;
7. Loyalty to the service and the state – 4 respondents.

As regards the legal consequences of a failure to pass the integrity test, the largest number of respondents indicated that a person should be subject to criminal proceedings. Second place was taken by expulsion from the service. The following summary Table 3 presents the answers to this question.

Table 3. Legal consequences of failing an integrity test. Collective results.

Criminal proceedings	99
Expulsion	76
Disciplinary proceedings	14
Clarification proceedings	10
Prohibition to perform functions	5
It is hard to say	9
Other	12

Source: own data.

For a better illustration of the above issue, the table below presents the results of the studies carried out in some CBA Regional Offices.

Table 4. Legal consequences of failing an integrity test. Results at the different Regional Offices and the Headquarters of the CBA.

Regional Office of the CBA in Szczecin

Criminal proceedings	7
Expulsion	5
Disciplinary proceedings	1
Clarification proceedings	0
Prohibition to perform functions	0
It is hard to say	0
Other	0

Regional Office of the CBA in Katowice

Criminal proceedings	4
Expulsion	7
Disciplinary proceedings	0
Clarification proceedings	2
Prohibition to perform functions	0
It is hard to say	1
Other	1

Regional Office of the CBA in Rzeszów

Criminal proceedings	12
Expulsion	7
Disciplinary proceedings	1
Clarification proceedings	1
Prohibition to perform functions	0
It is hard to say	0
Other	1

Regional Office of the CBA in Kraków

Criminal proceedings	4
Expulsion	1
Disciplinary proceedings	0
Clarification proceedings	1
Prohibition to perform functions	0
It is hard to say	1
Other	0

Regional Office of the CBA in Warsaw

Criminal proceedings	10
Expulsion	4
Disciplinary proceedings	5
Clarification proceedings	0
Prohibition to perform functions	2
It is hard to say	1
Other	0

Regional Office of the CBA in Lublin

Criminal proceedings	7
Expulsion	3
Disciplinary proceedings	0
Clarification proceedings	0
Prohibition to perform functions	0
It is hard to say	0
Other	4

Regional Office of the CBA in Gdańsk

Criminal proceedings	4
Expulsion	5
Disciplinary proceedings	0
Clarification proceedings	0
Prohibition to perform functions	0
It is hard to say	3
Other	0

Regional Office of the CBA in Białystok

Criminal proceedings	3
Expulsion	1
Disciplinary proceedings	5
Clarification proceedings	0
Prohibition to perform functions	0
It is hard to say	3
Other	0

Headquarters of the CBA

Criminal proceedings	43
Expulsion	39
Disciplinary proceedings	7
Clarification proceedings	6
Prohibition to perform functions	4
It is hard to say	1
Other	6

Students

Criminal proceedings	15
Expulsion	8
Disciplinary proceedings	0
Clarification proceedings	0
Prohibition to perform functions	1
It is hard to say	0
Other	0

Source: own data.

Among the surveyed students, 15 persons were in favor of instituting criminal proceedings, 8 were in favor of expulsion from the service, while 1 person opted for a prohibition on performing functions.

The next question was related to who should be involved in testing the honesty of

law enforcement officers. The surveys contained three possible answers, namely:

1. The Internal Affairs Office of the law enforcement agency concerned;
2. A body established for this purpose;
3. The Central Anti-Corruption Bureau.

The largest number of respondents – as many as 103 persons – stated that the integrity test should be conducted by the Internal Affairs Office of the law enforcement agency whose officer is subject to the integrity test, the second most common answer was a body established for this purpose – 86 respondents, while the next most common answer was the CBA – 56 persons. Only students answered that integrity testing should be carried out by CBA officers (Table 5).

Table 5. Students' answers to the question of who should conduct integrity tests.

IAO	2
Special body	7
CBA officers	11

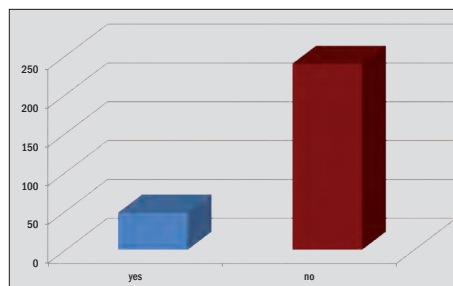
Source: own data.

Another issue worth pointing out is the question concerning the experience of attempts to hand material benefits to CBA officers in connection with their service.

When asked “Have you personally witnessed the giving or receiving of a material benefit?” 12 officers gave a positive answer and 231 a negative answer. In as many as 9 cases an attempt was made to give material benefits to CBA officers employed at the Headquarters. On the other hand, in Regional Offices in such cities as Białystok, Rzeszów, Katowice, Lublin, and Szczecin, the respondents replied that there had never been a situation where someone tried to give them a material benefit.

The next question was whether officers had ever witnessed the giving of material benefits (Chart 4).

Chart 4. Has an officer personally witnessed the giving or receiving of a material benefit?



Source: own data.

As can be seen from the chart above, 36 officers had personally witnessed the giving of material benefits, while 207 persons gave a negative answer. As in the previous question, the largest number of officers witnessing the giving of material benefits is employed at the CBA Headquarters – 21 persons. The Regional Office with the second largest number of such officers was the Regional Office in Gdansk – 7 people, followed by the Regional Office in Szczecin – 3 people and the Regional Office in Katowice – 2 people.⁷

Summary and conclusions

As a result of an anonymous survey conducted among officers of the body dealing with combating and counteracting corruption in our country, it was found that most of them were strongly in favor of the possibility of introducing an integrity test (119 – for; 29 – against).

CBA officers are of the opinion that introduction of an integrity test could certainly contribute to elimination of such a serious phenomenon as corruption in our country, especially as according to the latest data contained in the report of Transparency International Poland, Poland is ranked 36th among 180 countries⁸ (Table 6).

Also noteworthy is the significant number of undecided persons who do not know whether introduction of an attitude test will be a good or a bad legal solution (124 people).

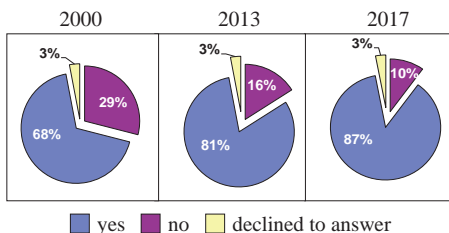
Table 6. Corruption perception index.

Year of the study	Number of countries covered by the study	Index	Rank of Poland
2009	180	5.0	49
2010	180	5.3	41
2011	176	5.5	41
2012	179	58 points	41
2013	177	60 points	38
2014	175	61 points	35
2015	168	62 points	30
2016	176	62 points	29
2017	180	60 points	36

Source: Transparency International.

Also noteworthy are the data provided by the Center for Social Opinion Research (CBOS) concerning the giving of financial gains (Chart 5).⁹

Chart 5. Knowledge of persons giving material benefits.



Source: CBOS.

Certainly, the possible introduction of an integrity test should be regulated in detail by law. According to the European Convention for the Protection of Human Rights and Freedoms, anything that may endanger human rights must be subject to the law and not to internal regulations or other regulations with smaller legal force. The law must clearly define safeguard mechanisms that will ensure that the tests are not used in practice for personal, political, or other interests.¹⁰

These theses were confirmed by the respondents who, among the factors considered the most dangerous when using the attitude test, stated that it can be used for personal and political intrigues, as well as the fact that this tool is a typical sting operation.

If any country chooses to apply the integrity test, it must also take appropriate statutory measures to ensure that judicial institutions or other independent bodies maintain control over its implementation, by issuing approvals for those measures, by carrying out checks during its implementation, or by carrying out checks ex-post.¹¹

On the other hand, the body or body that may be established or designated to carry out the integrity test will have to meet the following criteria:

- be specialized;
- be independent and insensitive to pressures;
- have sufficient financial resources to act;
- have specialized staff with adequate training in the fight against corruption; and
- be able to exercise extreme caution and so-called “common sense” when testing officers.

Furthermore, appropriate provisions should be adopted in relation to the collection, storage, use, and processing of personal data of the tested persons.

In conclusion, the positive aspects of introduction of the integrity test include the fact that:

- it would make it possible to verify the way in which public officials and, in particular, representatives of law enforcement agencies act in order to respect the duties and tasks associated with their work;
- it would make it possible to assess and identify vulnerabilities and threats that cause or encourage corruption in a given sector;
- it would allow for rejection of inappropriate influence in the performance of official duties, whereby inappropriate influence may include illegal attempts, pressure, threats, or interference by third parties to obtain favorable outcomes.

Finally, it should be stated that integrity tests have produced many positive results in

terms of reducing corruption in many democratic countries, such as the USA, the UK, Hungary, Australia, Georgia, and others. In addition, these tests have been identified as an effective tool in the fight against corruption by the World Bank, Transparency International, and organizations such as the OECD, the OSCE, and the UNODC.

It should also be mentioned that at the last World Bank conference held on 25–26 October 2018 in Copenhagen¹², one of the panels devoted to the fight against corruption was attended by: Judge M. Wolf, former Head of the District of Massachusetts, J. Smith – Head of the Department for Exclusions and Suspensions of the World Bank, G. Irring – PhD of the University of New York, the Deputy Head of the CBA, and others. The panel discussed the issue of the introduction of the International Anti-Corruption Court, all the more so because nowadays in many countries this type of judiciary exists.¹³ Examples of countries where anti-corruption courts have been introduced are: Bangladesh, Kenya, Cameroon, Croatia, Pakistan, Senegal, Slovakia, Philippines, Afghanistan, and Bulgaria. Recently, in June this year, the Parliament of Ukraine also voted in favor of the introduction of this type of judiciary.¹⁴

Despite the turbulent discussion, during which substantive arguments were presented, some participants of the panel were skeptical about the introduction of international anti-corruption judiciary, although the supporters of its introduction tried to convince others about its positive aspects. Perhaps, this is the right time to start a substantive, factual, and emotionless discussion on this subject.



¹ G. Ociecek, Test integralności. Wybrane rozwiązania prawne [Integrity testing. Selected legal solutions], *Prokuratura i Prawo* 2018, no. 1, pp. 56–81.

² G. Ociecek, Test integralności. Kolejne wybrane rozwiązania prawne [Integrity testing. Further selected legal solutions], HZN. – in print.

³ “Test uczciwości”, czyli wiceszef CBA myśli o prowokacji [“Honesty test” or Deputy Head of the CBA thinks about sting operations], *Gazeta Wyborcza*, 28 February 2018; “Testy uczciwości” wiceszefa CBA [“Honesty

tests” of the Deputy Head of the CBA], *Gazeta Wyborcza*, 10 March 2018; Onet, Wiceszef CBA chciałby wprowadzenia testu uczciwości [Deputy Head of the CBA would like to introduce a honesty test], published on 28 February 2018; WP, “Test uczciwości”. Wiceszef CBA chce usankcjonować prowokację [“Honesty test”. Deputy Head of the CBA wants to sanction sting operations], published on 28 February 2018.

⁴ At present, integrity tests in their various forms are carried out in the United States, Australia, the United Kingdom, the Czech Republic, Hungary, Romania, and other countries.

⁵ Tilman Hoppe. 2014. *Integrity Testing: Aspects of Implementation*. Strasbourg: Council of Europe.

⁶ G. Ociecek, Test integralności [Integrity testing], op. cit., p. 56.

⁷ The officers’ response related to the giving of material benefits and the question whether they witnessed this practice is probably related to the participation of officers in special operations related to Art. 19 of the Act on the CBA. Art. 19 of the Act on the CBA:

par. 1. In cases concerning the offenses referred to in Article 17(1), operational and exploratory activities aimed at verifying previously obtained reliable information on an offense and detecting the perpetrators and obtaining evidence may consist in secretly acquiring or taking over objects originating from the offense which are subject to forfeiture or whose manufacture, possession, transport, or trade is prohibited, as well as accepting or giving a financial advantage.

par. 2. The Head of the CBA may order, for a definite period of time, the activities referred to in section 1, after obtaining a written consent of the Prosecutor General, whom he shall keep informed about the course of these activities and their outcome.

par. 3. The activities referred to in par. 1 may consist in making a proposal to purchase, sell, or accept objects derived from crime, which are subject to forfeiture, or whose manufacture, possession, transport, or trade is prohibited, as well as in making a proposal to accept or hand over a financial gain.

⁸ www.transparency.org (accessed on 28 October 2018).

⁹ The study was conducted by CBOS on 5–14 May 2017 on a group of 1034 respondents.

¹⁰ Ross Homel. 1997. *Integrity Testing to Prevent Police Misconduct: Reflections on Deterrence and other Key Issues*. Discussion Paper. Brisbane: Criminal Justice Commission.

¹¹ Council of Europe. 2005. Recommendation Rec (2005)10 of the Committee of Ministers to member states on “special investigation techniques” in relation to serious crimes including acts of terrorism. Adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies.

¹² Copenhagen, 25–26 October 2018, International Corruption Hunters Alliance. Coalitions Against Corruption; www.cba.gov.pl, conference of the International Corruption Hunters Alliance.

¹³ M. Stephenson, S. Shutte, Specialized anti-corruption courts. A comparative mapping, *Anti Corruption Resource Center*, December 2016, No 7; www.u4.no (accessed on 27 October 2018).

¹⁴ The Ukrainian High Anti-Corruption Court has started its activity on 5 September 2019 (editor’s note).

