

SELECTING AND TRAINING POLICE AGENTS

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Abstract: *Preparing a candidate for a police career begins in high school, like the "Vasile Lascar" Police Agents School, Campina or the "Septimius Muresan" Police Agents School in Cluj-Napoca, and continues with training in a specialized public institution of higher education: the "Alexandru Ioan Cuza" Police Academy. From the student years, legislation and specific training provide a different status for students at the Police Academy, given that the curricula are different and specific. In their work, officers are different from civil servants and magistrates, have their own law organization which gives them a unique legal status, because police agencies ensure the functioning of a public service.*

Key words: *Police Academy, police agents, training period, civil servants.*

1. Introduction

According to art. 9 para. (1) in the Police Staff Regulations", *"police agents usually come from among graduates of educational institutions of the Ministry of Internal Affairs"*.

Education institutions referred to in the text of the above mentioned law are the "Alexandru Ioan Cuza" Police Academy from Bucharest, the "Vasile Lascar" Police Agents School from Campina and the "Septimius Muresan" Police Agents School in Cluj-Napoca.

2. "Alexandru Ioan Cuza" Police Academy from Bucharest

Regarding the "Alexandru Ioan Cuza" Police Academy, it is an institution of higher education in the field of defense, public order and national security, with

university autonomy, a component of the national higher education system.

The "Alexandru Ioan Cuza" Police Academy is subordinated to the Ministry of Internal Affairs and is involved in organizing and teaching activities for the training staff of the Ministry of Internal Affairs, through the three faculties: Faculty of Law, Department of Firefighter College and Archives College.

The organization and functioning of the higher education institutions is regulated by Government Decision no. 294/2007.

Thus, in the content of this bill, it is stated that "the Academy trains officers and archivists for staffing needs of the Ministry of Defense, which is the principal beneficiary in charge of the formative process conducted by the higher

education institution - article 3 paragraph (1), and paragraph (2) states that "the organization within the Academy of university studies in the fields and

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specializations proposed by The Ministry of Defence and approved according to the law ensures the identity of professions of police agent, border police, court policeman, fireman and archivist, including in terms of the training necessary to the personnel."

The General Inspectorate of Romanian Police, through the Human Resources Management evaluates staffing needs within the territorial units, this data being submitted annually to the Ministry of Internal Affairs to determine the number of vacancies that should be opened at the Police Academy.

3. The competition for admission at the "Alexandru Ioan Cuza" Police Academy from Bucharest

To participate in the competition for admission at the "Alexandru Ioan Cuza" Police Academy, the candidates must meet the following legal requirements:

- a) to have Romanian citizenship and residence in Romania;
- b) to know written and spoken Romanian;
- c) to have full legal capacity;
- d) to be declared "fit" from the physical and psychological points of view (evaluations are conducted by the structures of the Ministry of Internal Affairs);
- e) to be aged minimum 18 years or to turn this age during the year in which the competition is held;
- f) to be high school graduates with a baccalaureate degree;
- g) to have a proper behaviour, in conformity with the rules of conduct admitted and put into practice in society;
- h) not to have a criminal record or to be under criminal investigation or trial for offenses unless rehabilitation occurred;
- i) not to have been dismissed from a public position in the past seven years;

j) not to have carried out political police activities, as defined by law;

k) they are aware of the provisions of art. 10 para. 3 of Law 360/2003 on the Police Regulations, subsequently modified and amended;

l) meet *specific criteria in order to occupy a public position with a special status following a contest as hereunder:*

- to be up to 27 years old in the year of the competition for admission to the initial training as police or military officer;
- to have obtained during high school the overall average mark of at least 8;
- not to have been expelled for misconduct from an educational institution;
- have a minimum height of 1.70 m men and 1.65 m women.

Police Regulations provide that *"the candidates who have passed the entrance examination in the educational institutions of the Ministry of Internal Affairs, as well as people to be employed directly in the police force should not be members of any political party or political organization."*

Candidates to be declared admitted after passing the entrance exam will have a special status for the students preparing for professions that do not enjoy special status.

The students of the Police Academy are compelled to follow a strict regime of training.

This is required, in addition to proper academic preparation and specialized training aiming to prepare the student to exercise the job of police officer (shooting with different types of weapons, military tactics, sports training, etc).

Students from the Police Academy benefit from free accommodation, food, equipment and settlement of travel expenses on holidays during their studies.

For this, according to art. 17 para. (1) GD. 294/2007 "At the beginning of undergraduate studies, students of the Academy, except those from the Department of Archives, enter into an agreement with the Ministry of Defense, according to the normative documents in force, through which they undertake, after graduating from the Academy, to carry on working for 10 years in the Ministry of Defence and, as appropriate, in other similar structures, depending on the needs of the ministry. "

Further on, para. (2) provides that "*police officers may come from among graduate police officers, with a diploma or degree, from higher education institutions of the Ministry of Internal Affairs providing full time or part time courses, or from other higher education institutions with a profile corresponding the specialties necessary to the police, established by the Minister of Internal Affairs.* "

Another modality of embracing the police profession is provided in paragraph (3) which states that "*for certain positions specialists with appropriate education, meeting the job requirements and the legal conditions may be assigned.*"

When adopting this provision the legislature, just like in the other European countries, tried to cover the situation where schools that are part of the Internal Affairs Ministry cannot prepare certain categories of specialists and for the proper course of specific activities carried out by these individuals, specialized training is required.

It is the case of IT specialists, chemists (within the laboratories for the analysis of narcotic substances, of the engineers in the Forensic Institute), authorized translators (from the specific services that give effect to interception authorizations), etc.

This provision, however, only contains general terms "*(...) that meet the legal requirements,*" which allowed the hiring of

certain "specialists" more or less trained in the position they were employed for.

Basically, this article of the Regulations has allowed employment in the police structures of very many people who have sought only to be employed in this structure so that later, after obtaining the necessary ranks or achieve a certain period of placement, to be employed in positions that they actually sought to occupy (generally non-operational functions or functions within certain services for which certain additional material benefits are provided), these functions being subsequently occupied by officers trained in educational institutions of the Ministry of Internal Affairs.

For these reasons I consider that *de lege ferenda*, the provisions included in this article must be fulfilled, in the sense of establishing the exact requirements that the future applicant must meet, as well as filling these positions for at least a certain period of time.

The incumbency of keeping the position occupied for a longer period of time will deter those who are considering occupying certain positions.

From the above it can be seen that in order to acquire the position of police agent, special training is required, imposed by the specificity of this profession.

Thus, within the educational institutions belonging to the Ministry of Internal Affairs, in addition to the legal training of future police officers, special emphasis is placed on specialized training.

This requires familiarization of the future police agents with the specificity of this activity, this being accomplished through a series of specific disciplines (eg. Police tactics and theory; The fundamentals of informational activity, shooting sessions with different types of weapons, the development of scenarios of armed conflict, etc).

Particular attention shall be paid to the physical training of future police officers, in the process, in addition to developing physical qualities, the training in terms of fighting techniques aimed at removing any threat to the physical integrity being also taken into account.

Unlike the police, in case of public positions for which the legislature has not deemed necessary to adopt special status, they can be filled by any Roman citizen who satisfies the conditions laid down by law.

Thus, art. 54 of Law no. 188/1999 establishes that "the person who meets the following conditions can occupy a public position:

- a) has Romanian citizenship and residence in Romania;
- b) knows written and spoken Romanian;
- c) is aged no less than 18 years;
- d) has full legal capacity;
- e) has an appropriate health condition for a public office, certified by a medical examination;
- f) meets the statutory education for the public position;
- g) meets specific conditions for occupying a public office;
- h) has not been convicted of a crime against humanity, against the State or against authority, his/her job or in connection with the job, which prevents the administration of justice, false or of corruption or of intentional offenses which would make him/her incompatible with the public office, except the situation in which she / he was rehabilitated;
- i) was not dismissed from a public office or his/her employment contract has not been terminated for disciplinary reasons in the past seven years;
- j) she/he did not conduct any political activity as defined by law. "

As it may be noticed, in the civil servants' case for whom no special status is provided, their recruitment is done on the basis of general criteria, applicable to all officers, without any provisions regarding completion of several special training stages.

Additional provisions regarding the recruitment of future police officers are contained in art. 10 para. (1) of Law no. 360/2002, which stipulates that "to admission examinations in the educational institutions of the Ministry of Internal Affairs and to direct employment of specialists, any person

has access, regardless of race, nationality, sex, religion, wealth or social origin, who meets besides legal general requirements for civil servants, the following special conditions:

- a) to be capable both physically and mentally;
- b) not to have a criminal record or not to be under criminal investigation or trial for offenses;
- c) to behave according to the requirements of conduct accepted and practiced in society. "

Another additional provision with respect to officers is set out in art. 10 paragraph (3) of the Statute which provides that "the candidates who have passed the entrance examination in the educational institutions of the Ministry of Internal Affairs, as well as the people to be employed directly in the police should not be members of any political party or any political organizations.

This obligation that falls upon future police agents is valid from the moment of officially acquiring that status.

Regarding the limitation to exercise this right, Law. 188/1999 accepts it only in case of leading positions in leading structures or bodies, elected or appointed, of political parties, defined according to their status, of the organizations to which

the same legal status is applicable as to the political parties or foundations or associations which are attached to political parties (art. 44 paragraph (1)).

Exercising the right to be part of a political party is prohibited to high public officials.

Thus, in art. 44 paragraph (2) it is stated that "public officials are not allowed to join political parties, organizations to which the same legal status as political parties is applicable, foundations or associations which are attached to political parties."

According to art. 21 of the Police Regulations "the graduates of specialized institutions of the Ministry of Internal Affairs shall be granted professional degrees and are employed in police structures with training periods" - paragraph (1).

These training periods are of 6 months for police agents and of 1 year for police officers. Similar regulations are also provided within Law no. 188/1999, in which, at art. 60 paragraph(1), it is provided that "the purpose of the training period is to verify the professional skills in carrying out attributions and responsibilities of a public position, the practical training of junior civil servants and their knowledge of the specificity of public administration as well as its requirements", in paragraph (2) showing that the "probation period is of 12 months for rank I executive civil servants, of 8 months for rank II and of 6 months for those of rank III".

4. Legal special status of the police officers

In terms of the moment when the future police agents take the oath, it occurs when the first professional degree is awarded (art. 23 par.1), unlike the provisions included in art. 62 paragraph (6) of the

Statute of civil servants, which states that "*when joining the civil service, the civil servant takes an oath of allegiance within 3 days of the issuing of the final appointment in the public office.*"

Regarding these provisions, we appreciate that by setting the exact time for taking the oath by the future police agents, various contingencies that might arise within the 3 days provided in the Police Regulations are avoided.

Thus, in the legal reference books, the issue of the legal consequences that the failure to take the oath required by the law produces was brought forward by the civil servant upon whose responsibility this falls.

The practice has made a distinction between the situation of failure to take an oath by the civil servant as a result of culpable conduct of the public authority or institution which is responsible for the organization of the ceremony, on the one hand, and the situation in which the oath is not taken because the public servant refuses to honour this obligation, on the other hand.

Since the interwar period, the jurisprudence [2] in our country established that in case the civil servant has not taken the oath when taking-over the position, she /he will not lose the previously acquired professional quality if the public authority does not prove that they summoned the person in question to take the oath and she / he refused to comply with this invitation.

According to art. 62 paragraph (7) the third sentence of the Statute of civil servants posits that "the obligation to organize the taking of the oath belongs to the person who has the legal power of appointment".

So, if the public authority in whose structure the civil servant in question was appointed fails to organize the attestation, s/he will not be able to issue the legitimate

act of dismissal of the above named, even if the civil servant concerned has not warned the respective public authority where she / he carries out his/her activity.

Concerning the moment of attestation, the law provides another distinction between the police agent as civil servant with a special status, on the one hand and the public official subjected to the common law, on the other hand.

Thus, in the latter professional category, the obligation to take the oath is incumbent only upon the definitive civil servant and not upon the beginner.

According to art. 62 paragraph (6) of the Statute of civil servants, the oath shall be taken "within three days from the issuing of the final appointment to the public office."

This situation may be objectionable, especially as the law makes no distinction between the junior civil servant and the permanent public servant and the junior civil servant is appointed unilaterally through an administrative act, thus being given a mandate, under which the invested is called upon to perform a set of tasks, making use of the assigned public power and its associated attributes.

With respect to police agents, this situation is avoided, according to the text of art. 23 para. (1) of the Police-workers Regulations "in granting the first professional degree, the graduate or the police agent employed directly takes the oath before the head of the educational institution or the chief of Police and in the presence of two police agents."

A similar situation is also provisioned for judges. Thus, according to art. 34 of Law no. 304/2004 on the statute of judges and prosecutors, "before starting to profess, judges and prosecutors take the following oath: *"I swear to respect the Constitution and the laws of the country, to defend the rights and freedoms of the individual, to*

fulfill my duties with honour, conscience and without bias. So help me God".

The reference to divinity in the oath formula changes according to the religious belief of judges and prosecutors and is optional."

Another difference between the police agents and other categories of civil servants without having special statute is provided for in art. 23.

In this regard, the text of paragraph (4) states "the oath of allegiance is signed by the graduate or the police agent employed directly and, where appropriate, by the head of the educational institution or the Head of Police and the police assistants", while paragraph 5 shows that the "oath of allegiance is countersigned by the Minister of Internal Affairs (...)".

Regarding this point, Law no. 188/1999 Art. 62 paragraph (7) states that "the taking of the oath provided in paragraph (6) shall be documented. Refusal to take the oath shall be reduced to writing and shall entail the cancellation of the administrative act of appointment in the public office. The obligation to organize the oath belongs to the person with legal competence to appoint."

Regarding the issue of taking the oath by the future civil servants, in the case of police agents, an additional provision is inserted.

Thus, art. 23 para. (6) of the Police-workers Regulations provides that "signing the oath of allegiance entails the implicit consent of the police agent to have his/her loyalty and professional integrity tested by conducting special verifications in compliance with the law."

This activity is regulated by Order no. 256/2011 on the procedure for testing the integrity of the staff of the Ministry of Administration and Interior [3].

The competent structure in carrying out these tests is the National Anticorruption

Directorate of the Ministry of Internal Affairs.

According to art. 5, 'the test will be conducted in observance of human rights and fundamental freedoms, human and professional dignity of the subjects undergoing testing' - paragraph (1).

Further, it provides that "in the testing activity, it is prohibited to instigate the person tested to commit offenses with a criminal and/or disciplinary character" - para. (3).

The issue of professional integrity testing is regulated in the contents of Emergency Ordinance no.30 of 25 April 2007 on the organization and functioning of the Ministry of Internal Affairs, where, in art.17¹ paragraph. (2) it is stated that "testing the professional integrity is performed by the National Anticorruption Directorate and is a method of identification, assessment and elimination of vulnerabilities and risks that determine the personnel of the Ministry of Administration and Interior to commit acts of corruption, involving the creation of virtual situations similar to those faced by staff in the line of duty, evidenced by covert operations, influenced by their behavior in order to establish the reaction and the behaviour adopted" [1].

Considering the provisions of the legal text above, we consider that, given the virtual nature in which the tests simulated by National Anticorruption Directorate are conducted, their results cannot have consequences that could damage in any way the social values protected by criminalizing corruption offenses.

Therefore, even in the hypothetical situation where the person tested would request or receive money from the National Anticorruption Directorate testator, his / her act cannot meet the elements of a corruption offense.

Given the increased difficulty in identifying and proving corruption of Romanian Police officials, particularly with regard to the other categories in the Ministry of Internal Affairs in general, as well as the ambiguous legislation, I consider that by including the infringement of the obligation regarding the fidelity and integrity of the Ministry of Internal Affairs' employees (revealed by means of the integrity tests conducted by the National Anticorruption Directorate in compliance with a rigorous test procedure, designed to provide guarantees against all forms of arbitrariness) among the causes that trigger the unilateral termination of labour relations with the organization, the purpose for which this document was adopted could be achieved.

The Ministry of Internal Affairs could also include, as a distinct criterion for acquiring the status of employee, the one regarding the lack of any history concerning lack of integrity or fidelity manifested in performing one's duties in activities within the public institutions or authorities.

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5. *** *Legea nr. 62/2011 privind dialogul social (Law no. 62/2011 on social dialogue)* published in Monitorul Oficial nr. 322 of 10 May 2011.

6. *** *Decision no. 126 of 19 March 1931* of the Third Section of Bucharest Court of Appeal.
7. *** *Order no. 256/2011 on the procedure for testing the integrity of staff of the Ministry of Administration and Interior* was published in the Official Gazette, Part I no. 836 of November 25, 2011.
8. *** *Law no. 38 of 28 March 2011*, published in Official Gazette no. 215 of 29 March 2011, *which complements art. 1 from Emergency Ordinance no. 20 of 11 March 2009*, published in Official Gazette no. 156 of 12 March 2009 *introduced. art 17' by point 2 of section 2 of art.I of Law no. 38 of 28 March 2011.*