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A CONTRIBUTION TO DEFINING OF INTEGRITY TESTING IN POLICE : CRIME-INVESTIGATING ASPECTS

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Abstract: The shortcomings of reactive approach to suppression of corruption in police, as well as in other spheres of so-called consensual and “victimless crime” required introduction of proactive investigations and relying on covert methods of work. New crime-investigating strategy relies largely on building of professional integrity, as well as its testing, including integrity testing. This is a specific mode of simulated investigating methods which should show if the police officers in certain simulated situations are corrupt or prone to commission of other crimes, misusing their position and status. Although hypothetically any member of the police can be tested, the tendency is to do targeted testing, in other words to test those who are suspected of being criminalized. Considering that integrity testing is essentially simulated deal/activity, in which the subject is put into a simulated environment in order to see if he will commit an indictable act, it is important in its implementation to take care of encouraging, or acting in the role of agent provocateur.

Keywords: corruption, police, integrity testing, simulated investigating activities, targeted testing, random integrity test, provocation to commit crime.

INTRODUCTION PROBLEMS OF INVESTIGATING POLICE CORRUPTION

The scope of corruption displayed within police force, as well as frequent and fast recidivism despite successfully completed and processed investigations in the last 20 years, brought into the spotlight the request for reform of approach to its prevention and repression. In that context a considerable progress has been made when it comes to the selection and recruitment of future police officers, their training, investigations of complaints about their work and external control of policing. In addition to this, theory and practice have taken a

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stand that the strategy of suppression of corruption and other misuses in police must include spatial context of crime activities in criminal investigation (Милић, 2019) and specific, covert investigating techniques so that in addition to reactive approach, the unwanted consequences will also be met, as well as foreseen and prevented.

Traditionally, the majority of their human and material resources intended for internal control police dedicate to investigating citizen's complaints. The complaints filed against potentially responsible officers can be a significant indicator of irregularities or unlawful work, and this is why they should always be thoroughly investigated. In other words, it is necessary for every complaint, including the anonymous ones, to be documented and its grounds assessed in order to define the corresponding action taken starting from it – frequent and reliable procedure of complaint investigation is in the function of establishing essential trust between a state agency, on the one hand and citizens or the community, on the other hand. *However, what is the situation in reality?*

The majority of such reactive investigations during their realization inherently get the features of fierce conflict of the opposing sides – the complainants and the suspect, often including also real or imaginary witnesses to support their claims. The aggravating circumstances are that those who investigate the admissibility of complaint and the existence of guilt can hardly get any reliable material evidence which would support or refute the claims of either of the parties. Some authors point out that less than 20% of such reported cases are sustainable in initiated disciplinary or criminal proceedings (Rothlein, 2010). Such an

outcome is largely the result of unsuccessful proving, despite comprehensive investigations which sometimes may be compared with murder investigations or investigations of other serious crimes, which ultimately wears out both material and human investigating resources.

The data on corruption and other unethical conducts in police can be obtained from various sources – internal sources (police), informants, the public (citizens), other government services and agencies, auditing and supervision and similar. Relying only on intelligence data from internal department for supervision of legal conduct cannot give a complete picture. As in other investigations, here too we can come across suspects based on incorrect information, but also those coming under the *radar of control and supervision*. In addition to this, the witnesses to corruptive behaviour are often the citizens who are offenders themselves, or, from time to time, the co-workers of corrupt officers whose cooperation in investigations may be missing – in the first case due to the belief that (their) *word*, a word of an offender, against a police officer's would not be taken *seriously*, or in the second case due to feeling of collegiality and solidarity (IAB's integrity testing program, 2000). This is why it is believed that direct measuring of police corruption is not possible, as of any other latent criminal forms. However, the estimates are that between 0.5 and 1% of police personnel (potentially, not necessarily – authors' remark) are corrupt, and that unlawful activities most often include (Newburn, 2015):

– Disclosure (leaking) of information from the police organization, as a dominant form of unlawful conduct;



- Abuse of position and powers in order to get money and other material gain or sexual favours from citizens (for instance, prostitutes);
- Association with offenders in committing crimes;
- Stealing and malversations in course of raids, crime scene investigations, inquests and similar, and
- Using position within police organization in order to *undermine* the ongoing investigations.

In addition to the above said, unlawful conduct of police officers includes also selling, buying and using of illegal drugs, frauds, thefts, domestic violence, false reports on illnesses in order to get sick leaves, etc.

As a solution which should considerably increase the efficiency of repression of corruption and other unlawful behaviours in the police, there is application of *proactive investigations*, which is based on informants, the methods of covert supervision and monitoring of communications, secret agents or covert investigators, simulated actions, so called *anti-corruptive patrols* (discreet patrolling and presence of control officers in the areas known for gambling, prostitution, drug dealing, and similar, in order to spot corruptive activities) and *integrity testing* (Newburn, 2015). Specially trained and capable personnel as well as the most up-to-date technical equipment are of key significance for their successful realization.

It should bear in mind that in this case it is not a simple task to convert police officers, who previously implemented reactive approach for either long or short period of time. On the one hand, they

must get acquainted in detail with legal and by-legal regulations which deal with these problems, with special accent on avoiding supervision methods, primarily communications, against the standards of protection of the right to privacy, and acting in the capacity of *agent provocateur*, i.e. encouraging to unlawful behavior. On the other hand, when we talk about investigations of corruption in their own environment, it should bear in mind that the investigators face the professional police officers, who are well acquainted with methods of control and supervision they may be exposed to and who often have used and use them themselves. Their skill in such a balance of power enables them to protect themselves in situations when they are the most vulnerable and in such a way avoid being identified and their guilt proven.²

If the act of corruption is not detected, its perpetrator will continue with unlawful activities. The real danger is that through career promotion system such a person may be appointed to a senior position in the service they belong to, from where they can do much more damage. On the other hand, when a widely-spread network of corruption is revealed, there are measures to be conducted for its irradiation, which mostly consist of criminal prosecution of perpetrators and their dismissal from service. However, almost as a rule, after some time there come new cases of corruption – the belief that removing the *bad apples* (as the American literature prefers to call them) can solve the problem of police corruption proved incorrect. This is why the strategy of its repression must be constantly implemented through synergy of preventive,

² One of the key challenges in corruption investigations, which were noticed by the internal control personnel in England and Wales, were difficulties in using standard investigating techniques against corrupt police officers, which as a rule were well acquainted with crime-investigating methods and were in a good position to avoid being discovered.



proactive and repressive measures, so that the government bodies would not become *complacent* by the results they achieved.

The accent is therefore on the application of measures of *internal/external control and integrity testing*. The latter occur as especially useful in *cleaning* public services from corrupt, and maintenance of *cleanliness* once it is achieved.

VARIOUS COMPREHENSIONS OF THE NOTION OF INTEGRITY TESTING

Conduct of individual(s) in certain situations is often defined by laws, customary or moral norms and standards, wherefrom the obligation comes, or expectation, that such rules and standards are respected and enforced. If this will really happen depends largely on the integrity of that individual's personality, in other words on his readiness and willingness to *resist challenges and temptations* which they come across in their work, and which mostly are connected with personal interests being put in the spotlight instead of wider general interest. To have *integrity* means to adopt unconditional and unwavering obligation towards established and agreed legal, moral, religious, cultural and other values and duties – integrity, on the one hand, includes honesty and respect of something which has previously been accepted and agreed, while on the other, it excludes corruptiveness and satisfaction of personal needs at the expense of defined rules and values.

Professional integrity may be defined as a feature and capability of a person to perform their professional duties and obligations honestly and spotlessly in accordance with law, exhibiting at that

high moral standard, correctness, impartiality and independence, respecting public interest and excluding any form of abuse of powers. From the aspect of work of civil servants who perform public duties, the integrity has a special relation to corruption – the more integrity means less corruption and vice versa, wherefrom it results that by defining professional integrity provides for its indirect measuring and testing in public authority bodies. The latter is especially important if we take into account that corruption as a phenomenon is very latent and difficult to measure.

Integrity testing as a method of getting knowledge/investigating method can be comprehended in its wider or narrower sense, in other words it can have wider or narrower scope of application. In a wider context, *integrity testing* is a term which includes a series of designed activities which are undertaken in order to check legality of action of public authorities in performing public jobs.³ It implies putting these persons into simulated and monitored situations which require undertaking official actions or authorizations beyond their line of work, with the aim that those who do them, or according

³ To that effect even the *UN Office on Drugs and Crime (UNODC)* defines integrity test as an anti-corruption measure consisting of engagement of undercover investigators/agents, who provide opportunity for civil servants to commit a corruptive act in a way that the evidence of their reaction can easily and credibly collected and presented, and that as a rule the evidence can be provided even in those cases when other measures and activities do not yield results.



to whose order the testing is done, get directly convinced if the tested persons behave in accordance with the law or not. All those performing public authorities, executive, legislative and judicial, can be subjected to integrity testing in the wider sense, although it is applied as a rule to the persons in the executive power or public administration, and therefore it should not be applied in the sphere of legislative and particularly judicial power.⁴

However, integrity testing as an investigative method in the majority of cases refers to police officers as those performing public authority. According to this, narrow understanding, *integrity testing in police is an investigative technique which consists of devising and creating simulated situations analogue to the real ones, which requires actions of police officers in order to check if their response is in accordance with legal regulations.* Testing is used to determine if police officers are involved in corruptive and other illicit activities, but it also increases the general perception of risk that the employees can be caught doing a corruptive action, if they opt for it. In addition to check the legality of action, in other words possible determination of penal liability, it can also check the quality of application of police powers.

Although the integrity testing primarily refers to police officers who use po-

lice powers in order to repress crime, maintain public peace and order, control traffic safety and similar, other people working in the police can also succumb to it, such as officers working on issuing personal and travelling documents, people in charge of official records, as well as other people doing logistics tasks – legal, information, material-financial, accounting and administrative. It is important that they are in a position within their workplace or related to their job to get involved in corruptive or other illegal activities.

Essentially, integrity testing is a modality of simulated activities as crime-investigating method which are applied by government bodies based on law in order to prevent and repress crime, wherefrom the conclusion comes that simulation, as legally prescribed investigating method, is conducted in two formally shaped models – the first one is *integrity testing*, while in the other case we are talking about *proving action of simulated deals/activities* (making and/or offering simulated deals and services, simulated accepting and/or giving bribe, simulated purchase/selling of a subject of crime). Both investigative techniques are based on creation of a controlled environment with a goal to check the readiness of a certain individual to undertake unlawful action. However, the *ratio* of devising and prescribing integrity testing is

⁴ Moldova *Law on Professional Integrity Testing* (No. 325 of December 23, 2013) provides for rather a wide circle of institutions whose employees can be subjected to integrity testing: Parliament Secretariat, the Administration of the President of the Republic of Moldova, State Office, including its territorial offices, bodies of central specialized public administration (ministries, other central administrative bodies subordinate to the Government and organizational structures within their jurisdiction), the Supreme Court, the Constitutional Court, the courts at all levels, the Prosecutor's office at all levels, the service for information and security, the State service for protection and security, the Centre for Human Rights, etc. In connection with this, it is particularly problematic that even judges are subject to testing, which violates the independence of judiciary and the principle of division of power, and also represents a considerable risk considering that the government can use testing as a way of punishing judges whose opinion does not suit them. This is why the laws which provide for application of testing on judges are at the very least controversial, considering that they represent an opportunity for abuse by executive or legislative power in relation to judiciary. This is the direction where even the conclusion of the Venice commission points to, which determined that 2014 Moldova Law on Professional Integrity Testing has potentially negative influence on judicial power. .



special, in other words *exceptional* in relation to simulated activities as a proving action. This specialty reflects in the particularity of a subject of investigation and the environment where they are tested – as a rule it is a *police officer who acts in that capacity in a certain situation*. In that context it can be concluded that integrity testing is actually a special form of simulated deals.

Formally legal relation of integrity testing and simulated deals/activities is defined by the legislator, or the law, whereas it should bear in mind the fact that in comparative law the simulated deals/activities are uniformly considered as a proving activity, which cannot be said for integrity testing.

In literature it is possible to find an understanding that integrity testing in police refers also to certain specific checking modalities, which are not classified as integrity testing in the true sense of

the word. Thus, for instance, members of special police forces can be tested, such as operatives in charge of drug enforcement or covert investigations, in the form of either regular and/or random medical controls of blood or urine for *presence of narcotics and other illegal substances* (Klockars *et al.*, 2007). Such tests should show if the officers who are considered risky, considering their frequent contact with psychoactive substances and/or extreme stress related to the work they do, take psychoactive substances or not, in other words if they have remained vice-free and reliable. Integrity testing can be performed using *lie detectors* in order to see if their integrity resisted the temptations which make an integral part of the work they do. Similar can be done during the selection of candidates who are to be admitted in certain police units – pre-employment testing, which makes an integral part of the procedure to fulfill criteria for admission to service.

MODALITIES OF INTEGRITY TESTING IN POLICE – TARGETED AND RANDOM TESTING

Integrity testing in police is mainly conducted on a specific person for whom the information exists that as a part of their official engagement they violate legal norms which define and regulate it. It is testing undertaken based on *operative/intelligence information* and/or *reports of citizens*, and it is usually called *targeted*

testing.⁵ The benefits of its application can be twofold – on the one hand, the suspect who avoids processing due to the lack of evidence will be identified in this way, punished and removed from police organization, which would again, on the other hand, have strong warning/intimidating, or preventive effect on other of-

⁵ Thus, for instance, if for officer XY there are three anonymous and one signed report in a few months that he takes money from street sellers of concert tickets (so called '*ticket touts*') in return for non-reporting, in other words enables them to work, he should and might be a candidate for targeted testing. Also, the informant can also point to the corrupt officer XY, who has found out that XY is corroborating with certain stolen goods dealers, as a middleman between them and street sellers in a *flee market*. The typical reactive investigation would lead to XY negating the reports, justifying himself that the reports are actually the reponse of offenders to his incorruptiveness, so that they would tarnish his reputation and he be removed from the field. Such a defense might have sense, but also it should bear in mind that a large number of police officers do not have a single similar report during their entire careers, and this is why it can be concluded that ZY is a *good candidate* for a targeted integrity test.



ficers, sending them clear message that the same will happen to them if they opt for unlawful activities.

Opposite to the targeted testing, testing can also be carried out on previously undefined persons, or police officers for whom there is no knowledge that they are involved in illegal activities – this is so called *random integrity testing*. It should bear in mind at that that the selection of persons who are tested in such situations can be partially or completely arbitrary, in other words *random*. In the first case the members of police units are tested who within their lines of duty are exposed to high risk of corruption and other unlawful activities, because of which, regardless of the lack of suspicion of criminal behavior of concrete individuals in their ranks, should be checked from time to time. The same applies for those employed in the services who based on statistical analyses and risk assessment are identified as highly risky in terms of corruption, in order to reduce the risk of corruption.

On the other hand, completely random integrity tests are carried out with random sample/selection method and can

be used on anyone in any department/unit without some special selection criterion. Basically, the goal of their application is *twofold*. The first is to scan corruption problem at various levels of police organization – random tests are mainly conducted in combination with other factors in order to spot and approximately determine or refute or confirm statistically observed trends of corruption within certain structures in the police – they are compatible and mutually complementing with other identification methods and measuring of corruption in it. The other goal is essentially related to the phenomenon of *general prevention* – the existence and application of totally random integrity tests shape an opinion and awareness of police officers that they can always be checked/tested, which is deterring, or preventing, when it comes to opportunities to commit an unlawful activity.⁶

Some police services in the world, primarily in the USA, such as Los Angeles, New York and New Orleans police forces, routinely conduct random integrity testing of their officers (Rothlein, 2010). However, the analysis of its application

⁶ In 2001 the journalists and editorial board of the ABC News TV network in the USA conducted a kind of experiment in order to test integrity of police officers. For that purpose they prepared 40 wallets with a certain amount of money in them, as well as identification details of their owners, which they delivered to police officers working in foot or car patrols as anonymous citizens, reporting that they found them in the street. The police officers had a choice – 1) to call the owner and inform him that his property has been found and to return the wallet with all its contents; 2) to take some money from the wallet or use a payment card in the wallet a few times before returning the wallet to the owner; 3) take the wallet with all its contents. At the same time, in both cities a certain number of citizens were questioned related to their opinion on how police officers in such or similar situations might respond. The citizens were quite sceptical. In LA the majority said that only about 50% officers would return a lost wallet, while in New York citizens were even more suspicious – they stated that even 19 of 20 police officers would spend a part or all of the money in the wallet and that they would not return them to their owners. However, the test results were a surprise to many people! All 40 tested police officers in both cities returned the wallets to their owners with all their respective contents. Thirty years earlier the same television conducted a similar test in Miami – *allegedly* found wallets were given to 31 police officers in the street. At that time nine kept the money which was in the wallet, after which they were fired from the service and/or criminally prosecuted. Quoted according to Rothlein (2010). Officers pass test on basic integrity, *The Observer*, Published May 19/ Updated February 13, 2016: “A million dollar question” – *Were the officers in 1970s more corruptible that thirty years later or the success of the second test was largely determined by their awareness that they might be subject to integrity testing and the fear of being monitored, which was not the case earlier (in the meantime a lot has been said and debated about integrity test, a lot of them got acquainted with this investigating technique, especially in police agencies)?*



showed that although (potentially) it can be useful, it still does not justify its existence, and that targeted testing has far more higher rate of successfulness (Prenzler & Ronken, 2001). On the other hand, *Transparency International* considers that random integrity testing in the fight against corruption has a significant deterring effect – it has been noticed that after it has been introduced there was a significant rise in reporting officers who were offered bribe or bribed officers, and that even a small portion of this rise can be attributed to the fact that police officers have at least become concerned in terms that they can be subject to checking and testing (Transparency International, 2000). Prenzler and Ronken conclude that frequent exposure of police to the possibilities of corruption and other illegal activities require undertaking several preventive strategies and that although the arguments for (further) application of random tests are currently rather weak, at least it should continue with experimenting in this field so that the ethical standards and respect of law in the police are maximized (Prenzler & Ronken, 2001).

The opinions of the majority of theorists are that the application of random integrity tests in the police should be avoided because of protection of freedom and rights of the testees, considering that in this way without a real ground they are exposed to application of specially sensitive, intrusive investigating activities, on the one hand, as well as to preserve the atmosphere of collegiality and mutual trust within the police organization, which is often necessary in conducting official tasks, on the other hand. It

should bear in mind that uncritical application of testing, especially random, together with the measures of secret control and supervision of communication of the employees, can lead to creation of *climate of paranoia* within the organization. In such an environment police officers would be under constant pressure and fear that they can always be controlled and checked in every place, and then start to suspect anyone and everything – from their coworkers to citizens they interact with, and they do not feel secure, comfortable and focused during solving the concrete problems, often bearing high risk to life and body.⁷

The existence of two integrity testing modalities, random and targeted, underlines much more than it is usual for other operative and proving measures and activities, the two goals of its application – *repressive and preventive*. Repressive primarily refers to targeted testing, while preventive is dominant, or is at the very least on the same level with repressive in random testing. Although simulated activities, and thus integrity testing, are basically undertaken in order to identify (potential) offenders and provide knowledge/evidence of their culpability in criminalistically ideal *in flagranti delicto* situations, they cannot be taken away their strong preventive, deterring role.

Integrity tests are aimed at preventing corruptive activities through creation of sense of ever-presence – subjective perception of potential offender in the police ranks that every opportunity for illegal action actually presents a possible test, in other words a trap. The essence is that

⁷ *Hypothetically* – Two patrol officers come across robbers fleeing the store with weapons in their hands. Knowing that always and in any place they can be tested, they both can wonder if it was a real action or if his colleague is involved in a potential test scenario. Maybe they test me to see how I would act, if and in which way I would use firearms? While dilemma is going on, which will delay an adequate response the robbers may wound or kill a passer-by or officers.



the probability of doing an unlawful act is certainly reduced if a person who wants and plans to do it knows that a seemingly good opportunity for these needs can actually be simulated by the police.

SCENARIOS OF INTEGRITY TESTING IN THE POLICE

Generally, integrity testing can be used to determine any violation of official duty of a police member, such as unlawful application of powers, abuse of official position, dealing with work incompatible with police duty, prevention or misleading of criminal or other procedure before competent court, failing to report criminal offence or violation, unprofessional relationship to citizens, acting contrary to order or instructions for work performance, and similar. However, testing can be particularly successful in the following cases:

- 1) *various vorns of extortions from offenders* – for instance money or drugs from dealers, money or sexual favours from prostitutes, money or goods from street salesmen, trafficking in foreign currency, and similar;
- 2) *taking bribe in use of police powers and activities*, particularly in traffic control and issuing travelling and other documents;
- 3) *misappropriating found, delivered, seized or confiscated substances, objects or money*, most often during police raids or after them;
- 4) *unauthorized access to systems, data and information which hold the status of official secret*, other operative data and information, their revealing and submitting to people outside the police, especially offenders, which are related to criminal investigations of illegal activities.

Usually, in the beginning, the testing plan is made based on available information and documentation which initiate the check, or testing. The starting

point in its making and working out includes the suspect and his workplace, in other words the environment where he performs his official duties and for which suspicion of illegal acting is related – they are the *constant* which the investigating team and testing scenario realization must be adapted to. In case it is determined that it is impossible to conduct test according to the existing state-of-affairs, it is necessary to consider alternative solutions, which might include deploying the suspect into another service vehicle, another work shift, another location, and similar, taking account not to make him suspicious or to expose the application of the very measure.

The next step in working out of the plan of integrity testing, after the analysis of the suspect and the environment where there is illegal conduct, includes the selection of officers who will take active part in its realization and/or provide things which will be used during testing – money, *forged documents* to support the simulated scenario, for instance identity cards or driving licenses, then the appropriate uniforms, cars, sometimes even the subject of a crime, such as narcotics or substances similar to them, as well as other material and technical means (technical means for electronic surveillance and audio/video surveillance). The possibility is to be considered especially to hire a support team, while in order for objective assessment and evaluation of the results of professional integrity testing, it is necessary to record the course of its realization or



the behaviour of the testee in it by audio/video equipment.

Integrity testing means designing a scenario according to which a simulated situation will be realized, whereas it should bear in mind that the success of the entire operation depends on the degree of its reality. Accordingly, the test which is conducted according to not a well devised scenario and which is not lifelike/realistic is doomed to failure in advance – the suspect will easily see through it and realize that he is the subject of investigation which is why he will become more cautious or give up illegal activities for a short or long period of time.

Typical *scenarios* of police officer's integrity testing include:

- criminal investigator in the role of a citizen who hands over to a police officer the wallet found with certain amount of money, which he supposedly found, or takes it to a police station, monitoring its *destiny* – if finding of a wallet is entered into the official records and if, in case it is, there is a certain amount of money missing in it;
- leaving valuable object or money in the room or facility where a simulated crime was committed, for instance in a burgled house or a stolen vehicle, so that it could be determined if a police officer securing a crime scene or the members of a CSI team would file these valuables in accordance with the regulations or take them and hide them, in other words misappropriate them;
- criminal investigator in the role of a citizen committing a violation, for instance, violating public order and peace or endangering traffic safety, offering a bribe to a police officer in order to be let off unpunished;

- simulation of drug seizure or other valuable items of a crime, monitoring if they were filed by a police officer handling them, as well as if a certain amount of seized substances, money or other valuables is missing;
- simulated catching in the act of the offender or deviant persons and monitoring if the suspected officer extorts money from them, sexual favours, and similar in exchange for not reporting a crime;
- posing as an interested citizen, a criminal investigator offers bribe to a police officer in order to have certain document issued or some other request met circumventing the legal procedure;
- placing an untrue information carrying a sign 'classified' to a police officer who is suspected of illegally revealing them or placing such an information into a database and monitoring if it will be relayed to third persons by that officer.

The scenario according to which integrity test is to be carried out can be more or less complex, which depends on every specific situation. Thus, for instance, in case of suspicion that a traffic officer for whom there is an information to take bribe from drivers who were speeding or committed some other traffic violation, the scenario can be rather simple – it is sufficient for an authorized person to impersonate a citizen who commits violation with his vehicle in the part of the road controlled by the suspect. On the other hand, the suspicion that a police officer *sells information* to persons in the criminal world requires a complex scenario, which includes more people, use of surveillance, involvement of informants, and similar.



THE ISSUE OF ENCOURAGING IN INTEGRITY TESTING

Integrity testing is one of modalities of simulation as criminal investigation method, and thus can be characterized also as a *covert operation with elements of simulation which are kind of misleading for a suspect*. In the countries with Anglo-Saxon legal system, as a general term for various forms of encouraging to a criminal act in simulated, controlled environment, in order to detect offender and prove his guilt, the term *sting operations* is used (Nash, 1992). The main problem in carrying out such an investigation from the aspect of protection of freedom and rights of citizens is the existence or inexistence of encouragement in the criminal-law sense. In other words, the question of *encouragement* is central and the most sensitive question in simulation as an investigation method, whether it is about integrity testing or a special evidencing action of simulated deals and services. Related to this, simulated investigating activities, including integrity testing, must be devised and realized in such a way that the persons who are tested are provided with equal chances to commit or not to commit a punishable act – their outcome must exclusively be the question of free will, i.e. free choice of the testee, he must not be *encouraged* to commit a crime. The environment where simulated activity is carried out and the manner in which this is done are such as to define a place and time of manifesting the offence (illegal, illicit behaviour), and not the decision on its commitment. In order to avoid the possibility to contest validity of the acquired evidence, as well as for them to gain additional strength, in practice the realization of simulated activities as a rule is documented by audio/video

equipment, which is often the obligation according to the law as well.

As other simulated activities, integrity testing can be realized in either the active or passive form of influence on the testee (a suspect), in other words *active and passive trial* (checking). Active influence implies *physical participation* of a subject who carries out the testing in a simulated activity and his *verbal contact* with the testee, which consists of giving proposals, considering possibilities and negotiating the details of commitment of an illicit activity, in other words a crime. As a rule, we are talking about investigations of illegal activities for whose manifestation it is necessary that two actors exist, who actively participate in them on their consensual will. Thus, for instance, investigating subject participating in the integrity test takes a role of a foreign citizen who seeks a working permit beyond the legal procedure, attempting to uncover corrupt police officers ready to provide such a permit; or a participant in traffic who commits violation in order to be spotted by a traffic officer, whom he will offer bribe in return for non punishment. It is exactly due to the fact that the person conducting the test in these cases is an active participant in simulating the environment within which an illegal act will take place and through which the readiness of a tested person to commit it will be shown, this kind of test contains an increased degree of danger of *encouragement*, in other words acting in the capacity of *agent provocateur*. In other words, active participation can include convincing, persuasion or even blackmailing as illicit acts, in order for the tested person to consent to an unlawful act and then be processed.



Unlike active, *passive simulation* includes creation of *objective opportunities and circumstances* suitable for commission of a punishable act, excluding *verbal or concludent contact* of the participating actors in terms of proposing and considering possibility for its commission. This can have two forms.

The first one implies putting certain objects and/or things into a certain place, or space, so that they represent attractive loot for potential offenders there in terms of their unlawful appropriation by stealing or hiding them. For instance, money or valuable jewelry are placed in a crime scene or in the street so that it seems lost or tossed – it will further be monitored if a police officer, after spotting them, will report and file them, or hand them over to a competent investigating authority or keep it for themselves. The second modality of passive simulation implies that *a police officer posing as a citizen – an attractive victim* is placed into a monitored environment, the place of crime commission, in order for the potential offender to be led to commit a crime against him, most often an act of violence, such as rape, although this can also be a property-related crime, for instance robbery, in a wider context even pickpocketing. This form of passive testing, or checking, considering its nature, is not possible for integrity testing, to which by definition police officers are subject when performing their duties.

Our opinion is that passive forms of provocation, due to their nature, exclude the possibility of encouragement to criminal act or other forms of behaviour which might make them unlawful, or illicit, although in practice of the prosecution or court and as such they are often treated as illicit.⁸

In the analysis of problems of encouragement in simulated activities the questions of *initiation of an unlawful act* and *unrealistically good offer* (“*indecent proposal*”) are of special significance, which are in direct connection with prohibition of influence on the autonomous will of a testee, in other words the decision to commit an illicit act. To that effect, theoretical thinking and court practice are mainly at the standpoint that (initial) proposal to commit a crime in a simulated environment should come from a potential offender and not the investigating subject. Thus his influence on the *idea been born* of incriminated act is avoided, which *might not even occur to the offender* if it was not suggested to him – the decision on unlawful behavior of a potential offender must exist independently from the proposal of the other side, which is most clearly established if he was to express it first.⁹ What is previously stated is valid for simulated deals and the engagement of a covert investigator, or secret agent, as special evidencing activities.

8 In Serbia the prosecutor in motor vehicle thefts often considers as unlawful the evidence which police collected by catching the offender in the act in cases when a certain vehicle is placed as attractive loot to thieves by parking in a place suitable for stealing, such as a dark and isolated parking lot without system of protection. Such actions in the Anglo-Saxon and crime-investigation practice are called *honeypot operations* or *honeypot traps* and are allowed as a rule.

9 Thus, for instance, in repressing prostitution and detecting the users of sexual services in the US the police officers put their female officers in the streets who pose as prostitutes. For the investigation to be valid, *false prostitutes* must not approach the potential customers first and offer them services, but they must passively wait for them to contact them first, start conversation and agree to go to the place where they would have sexual intercourse, where they would actually be arrested. Naturally, as for the majority things in life, here also there may be exceptions which are best described by the practice of the USA courts related to decisions on the existence of *entrapment*.



However, the question is if the same applies for integrity testing as an investigating method, in other words if a tested police officer can and may be *offered bribe* or proposed to commit an illicit act, or perhaps wait for him to propose/suggest something like that on his own? According to our opinion, in this case the request to initiate an illicit act should not be taken into consideration when deciding if there is a provocation or not. Such an attitude results from the fact that here we do not have an ordinary citizen tested, but a police officer – his professional and personal integrity have to be so strong that not any proposal, not even persuasion, must lead him to illicit behavior in performing official duties. Accordingly, the scenario of *defense* of a testee according to which, from the aspect of guilt, as mitigating or even excluding circumstances the fact is taken that the illicit act was proposed to him, which resulted in his idea on its commitment being born, should not have any significance.

The second important question related to a simulated situation occurs in cases when the testee is provided with an *unrealistically good opportunity* to commit an illicit act. *Unrealistically good opportunity* could be defined as a situation in which the chances to commit a criminal offence, which as a rule leads to property gain, are such that on the one hand the offender almost certainly would not be discovered, while on the other hand, there is *unusually large material gain* for such an offence, due to which from the aspect of a potential offender it is simply *worth a risk*. In any case, such a situation in real life either does not occur or occurs rather

rarely, this is why the conduct of a testee in such a situation can hardly be taken as a paradigm of his real criminal will. For instance, the suspect in a simulated environment has been given an opportunity to take or seize a considerably large quantity of money with very low risk of disclosure and possible punishment. Such a chance with easy loot can be used by someone who can be characterized as an *honest person* who would (never) commit a criminal offence if it were not for such an *ideal opportunity*.¹⁰

In other words, *simulating an event with unrealistically good offer* sends a weak signal at best that the testee who has succumbed to temptation is a *real offender*. If we take into account earlier mentioned statement that simulated investigating activities make sense only in cases when they prove the guilt of those individuals who would commit the same or similar illicit act in a similar real situation, then simulated situations which in any segment considerably differ from life opportunities and circumstances, especially in terms of a tempting and unusually good opportunity to profit, even unlawful one, should be excluded.

However, we think that in this case also the difference should be made between simulated deals, as special investigating activities, and integrity testing of police officers. What was said about the significance of initiating an unlawful act in evaluation of responsibility of the testee applies in this case as well – *unrealistically good offer* in a simulated situation can and should be of significance as a special evidencing act whose integral part it makes, for determining if there exists

10 An undercover investigator offered to a target of investigation to buy 20 kg of cocaine with huge discount, explaining that as an employee of an air company he found the drugs in some solitary luggage. The target has never been involved in drug trafficking, but was persuaded to it by the tale of the huge profit he will make. The court made the decision that the victim was unlawfully led to commit crime (*entrapped*) – the case before American court *State v. Anders* (1992).



criminal liability, or instigation to crime, but it should not be taken into account when we talk about an investigating act in integrity testing. We underline once again that professional and personal integrity of a tested police officer has to be so strong that not even an unrealistically good opportunity must lead him to un-

lawful conduct in performing an official duty.

Conclusion: Simulated investigating activities, including integrity testing, make sense only in cases when they prove the guilt of those individuals who would commit the same or similar illicit act in a real situation!!!

CONCLUSION

The analyses of police organizations worldwide confirm the attitude that they are full of possibilities to commit unlawful, corrupt behaviours – the powers which are exercised by their members are characterized by a wide range of discretions, they are pervaded with the possibility to apply coercion, they are often conducted in private spaces, out of sight of supervisors and in the presence of witnesses who are often considered unreliable. Traditional, repressive approach to crime suppression within the ranks of those who should guarantee respect of law has partly proven as inadequate for the problem. As in other spheres of *consensual crime* and so called *victimless crimes*, in case of repression of corruption in the police in the last twenty years the emphasis has been on application of proactive investigations, whereas a special accent is on the use of *integrity testing*.

Integrity can be tested for various purposes and in a wide range, from checking loyalty of an employee to the owner or director of the company where he works, to determining if a person performing a public office or has certain authorizations uses them in accordance with legal regulations. As an investigating method, today it is generally linked to the police and determining legality of conduct of their officers – testing is used

to determine their involvement in corruptive and other unlawful activities, but it also increases the general perception of risk that the employees can be caught in corruptive activity if they opt for it. In that regard, testing is most often conducted in those parts of the police which are in contact with citizens on a daily basis, such as traffic police, or in the sectors for which there is knowledge that they are particularly sensitive to corruption.

Integrity tests are one of modalities of simulated/pseudo deals, and thus secret operations with elements of simulation, and this is why in their realization it must take special care to avoid *encouragement*, in other words acting in the capacity of *agent provocateur*. It is conducted, almost as a rule, on a concrete person for whom there is information that in the course of their official engagement they violate legal norms which define and regulate them. Contrary to such targeted testing, integrity testing can be done randomly, on previously undetermined persons for whom there is not knowledge that they do illicit acts. However, the attitude of the majority of theorists and legislators is that the application of random integrity testing in the police should be avoided because of protection of freedoms and rights of the testees, and preservation of atmosphere



of collegiality and mutual trust within a police organization.

In the implementation of integrity testing special significance should be given to the questions of *initiation of illicit act* and *unrealistically good offer*, which are directly related to encouragement or prohibition of influence on the autonomous will of the testee in the process of making a decision if to commit an illicit act or not. According to our opinion, they are irrelevant when it comes to test-

ing of a police officer, which cannot be said also for simulated deals as a special proving activity. Such an attitude results from the fact that in integrity testing it is not an ordinary citizen who is tested, but a police officer, whose professional and personal integrity have to be so strong that not a proposal, not even persuasion or an extremely favourable opportunity to commit an illicit act must lead him to criminal behavior in performing an official duty.

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