

ASSESSMENTS ON THE DUTIES OF THE CONTEMPORARY POLICEMAN FROM THE PERSPECTIVE OF PREVENTING AND COMBATING THE CRIMINAL PHENOMENON

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ABSTRACT: *The paper aims to make an x-ray of the duties of policemen seen as guarantors of law enforcement by exercising the prerogatives of public power in order to ensure the protection of the principle of legality and safety of the social environment by protecting public order. The scientific research activity will use the method of in-depth and comparative research of the current stage of domestic knowledge in the field.*

This approach will determine a logic and systematic interpretation, respectively a synthesis of the information obtained on this occasion, being a great occasion to come up with pertinent proposals for further legislation. The topic is as current as possible, given the role of the police officer in contemporary society, as well as the current concerns for ensuring a solid legal framework for the exercise of the duties that form the content of the service relationships of police officers.

KEYWORDS: *legal; police; service relationships; framework; order; security.*

JEL Code: *K31*

1. GENERAL PRESENTATION

In today's Romania, the normative framework applicable to police officers and the organization in which they operate is mainly represented by Law no 218/2002 on the organization and functioning of the Romanian Police and Law no 360/2002 on the status of the police officer, to which is added a whole series of related normative acts. From a historical-teleological point of view, the year 2002 marked the foundation of the modern construction of the Romanian Police, the moment when the policeman replaced the military uniform, becoming a civilian civil servant with a special status¹. By definition, the core of the activity of the Romanian Police consists in the defense of the fundamental rights and freedoms of the person, of private and public property, the prevention and discovery of crimes, the observance of public order and tranquility, under the conditions of the law². The police officers are the vectors for the fulfillment of the purpose of the Romanian

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¹ Law no 360/2002 on the status of the policeman, art. 1 para. 1, Official Gazette of Romania no 140/2002, with subsequent modifications and completions.

² Law no 218/2002 on the organization and functioning of the Romanian Police, art. 1, Official Gazette of Romania, 170/2020, with subsequent modifications and completions.

Police, seen as a public service specialized in the defense of general and private interests, both, their activity being governed by the following principles: legality, impartiality, non-discrimination, proportionality and gradualness.

2. SOME ASSESSMENTS REGARDING THE SERVICE REPORTS OF THE POLICEMEN

The service relations of police officers represent the relations established under the law between the police officer and his employer (organizational structure within the Romanian Police), under which the former performs work for and under the authority of the latter in exchange for a remuneration called salary. Thus, service relationships have a bilateral character and are based on the agreement of will of the involved parties, agreement obtained as a result of manifestations of will externalized through specific and separate legal means, giving birth to a contract viewed as a legal operation - source of rights and obligations, and not as *instrumentum negotium*. In other words, it is not about a single document verifying the agreement, but about separate legal acts and facts from which each of the two manifestations of will can be derived, as follows: the will of the employer results from the administrative act of granting the professional degree and appointment to the public office, and the will of the employee results from a set of actions, among which we mention the registration, participation and promotion of the public office competition or the graduation of the studies organized by the educational institutions of the Ministry of Internal Affairs, as the case may be, all culminating in the taking of the oath of faith towards Romania. As it is claimed in the specialized literature, the legal basis of service relationships is represented by an individual and unnamed administrative contract, the oath representing the terminus of the "stepwise" manifestation of the policeman's consent (Ștefănescu, 2017, p.277)³.

Another character of the service relations is represented by the police officer's subordination to the employer, which has a legal side as well as an economic side. From a legal point of view, by virtue of this subordination relationship, the employer has the right to establish the appropriate attributions, to issue binding orders for the police officer subject to their legality, to exercise control over the way of performing the duties, to ascertain and sanction any deviations. Correlatively, the policeman has the obligation to fulfill the orders and legal provisions of the hierarchical superiors regarding his professional activity⁴, their violation, with guilt, engaging its disciplinary, material, civil or criminal liability, as the case may be⁵. *Per a contrario*, disobeying a lawful order engages the legal responsibility of the policeman, the execution of an order of the superior that proves to be illegal is a cause of exoneration for the policeman but will generate the accountability of the issuer, and the execution of an obviously illegal order will engage both the liability of the issuer, as well as of the policeman who executed it. In a previous research I noted the fact that, neither in common law nor in the regulations applicable to the police, there are no references to the way in which the employee should act when he

³ See Ștefănescu, I.T. (2017), *Theoretical and practical labor law treatise, 4th edition, revised and added*, Juridical Universe Publishing House, Bucharest, p.277.

⁴ See art. 4 para. 1 Law no 360/2002.

⁵ See art. 55 Law no 360/2002.

receives an obviously illegal order from his superiors (Dumitrache, 2011, p.69)⁶, on which occasion I supported the opinion expressed in the doctrine in the sense of the corresponding norms applicable to civil servants as a result of resorting to the method of interpretation by analogy (Beligrădeanu & Ștefănescu, 2009, p.92)⁷. Consequently, according to art. 437 para. 3 Administrative Code⁸, the civil servant, therefore implicitly also the policeman, has the right to refuse, in writing and with reasons, the fulfillment of the instructions received from the hierarchical superior, if he considers them illegal, even having the duty to bring them to the knowledge of the hierarchical superior of the person who issued the provision). In this context, the duty of the hierarchical heads of the structures of the Romanian Police to be responsible for the legality of the provisions given to their subordinates acquires essence⁹.

The service reports of the police officers are *intuitu personae* reports, because they are born in consideration of the qualities pursued by each party in the person of the other, their exercise is not possible through representation, the police profession being an eminently vocational profession.

The specificity of service reports derives from the following certain data: 1. the police officer has prerogatives of public power, being invested with the exercise of public authority by occupying a public position, but not absolutely, but within the limits of the competences established by law¹⁰; 2. The policeman is a civil servant with a special status conferred by the special duties and risks to which he is exposed in the exercise of his duties, by the carrying of a weapon and by the professional status established by organic law; 3. The principle of negotiation is limited to a few aspects related to social dialogue and collective labor law, namely the establishment and use of funds intended to improve working conditions, health and safety at work, the daily work schedule, professional training, respectively procedural measures for those elected to the management bodies of trade union organizations¹¹.

3. THE MAIN DUTIES OF THE ROMANIAN POLICE

These can be grouped into four categories, as follows: attributions related to protecting, ensuring and restoring, if necessary, fundamental human rights and freedoms (life, health, bodily integrity and freedom of individuals, property rights); attributions aimed at maintaining public order and safety, with its preventive and punitive components, acting as a guarantor of the principle of legality under all aspects of civic life and the dangers that

⁶ See Dumitrache, Ș (2011), *Disciplinary liability in internal and comparative labor law*, Sitech Publishing House, Craiova, p.69.

⁷ See Beligrădeanu, Ș & Ștefănescu, I.T. (2009), *Reciprocal civil liability between the parties to the contractual service relationship of the civil servant*, Journal Dreptul no. 4, p.92.

⁸ G.E.O. no 57/2019 regarding the Administrative Code, Official Gazette of Romania no 555/2019, with subsequent modifications and completions.

⁹ See art.5 sentence 1 Law no 360/2002.

¹⁰ See art. 2 Law no 360/2002.

¹¹ Collective Agreement regarding the service reports of civil servants with special status - policemen from the Ministry of Internal Affairs, downloaded July 19, 2022, <https://www.snppc.ro/uploads/fisiere/articole/ACORD-COLECTIV-PRIVIND-RAPORTURILE-DE-SERVICIU-ALE-POLITISTILOR,-FSNPPC---MAI,-din-05-mai-2022.pdf>; available at <https://www.snppc.ro/11-05-2022-noul-acord-colectiv-privind-raporturile-de-serviciu-ale-poli-i-tilor-a-intrat-n-vigoare-bd10926> (accessed: October 13, 2022).

threaten them (preventing and combating the criminal phenomenon and terrorism, countering actions that represent a danger to the legitimate values and interests of individuals and the community, the neutralization of aggressive actions, the ascertainment and investigation of the facts that meet the constitutive elements of some crimes and/or misdemeanors as a result of reaching some values protected by the laws in force); attributions of a scientific nature aimed at the development of knowledge, respectively the implementation of good practices in areas such as the analysis of information and the evaluation of criminal behavior or criminal personality, the dynamics of criminality; attributions regarding intra- and inter-institutional relations both internally and internationally, which highlights the support of the gendarmerie with information to ensure or restore public order and peace on the occasion of rallies and demonstrations of any kind, supporting the public administration authorities in order to carry out activity, participating in mixed teams in rescue actions and evacuating people, when the operational situation requires it, collaboration with educational institutions and non-governmental organizations for the anti-criminal training of the population, carrying out specific activities of cooperation and international police assistance and cooperation international judicial in criminal matters, participation in international training or humanitarian missions, respectively police assistance and cooperation¹².

In order to carry out these duties, policemen who have the capacity of investigation bodies of the judicial police will be appointed, by administrative act, it being necessary to obtain the opinion in this sense from the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice¹³, the latter being the moment from which specific criminal investigation activities can be carried out as a legal mechanism for sanctioning criminality, with the aim of restoring public order¹⁴. From the point of view of labor relations, in order to be part of this professional category, the policeman must occupy a position with specific duties of the criminal investigation bodies of the judicial police, highlighted in the job description¹⁵.

At the European level, in consideration of the essential role that the police have in the justice system, as well as the desire to create a solid legal framework for the exercise of the powers of the police, the Council of Europe adopted Recommendation (2001)10 on the European Code of police ethics, on the occasion of which the Police main objectives were stated, namely: maintaining peace, legality and order in society, protecting and respecting fundamental human rights and freedoms, preventing, combating and punishing crime, as well as offering a public service to the community in general¹⁶.

¹² See art. 26 Law no 218/2002.

¹³ See art. 27 para. 1 Law no 218/2002.

¹⁴ Law regarding the organization and functioning of the judicial police no 364/2004, art. 2 para. 7, Official Gazette of Romania no 305/2004, with subsequent modifications and completions.

¹⁵ See art.4 para 1 Ibidem.

¹⁶ CE Recommendation (2001)10, downloaded July 20, 2022, <https://rm.coe.int/16805e297e> (Accessed: October 13, 2022)

4. DUTIES OF THE POLICE OFFICER AND RESTRICTION OF THE EXERCISE OF CERTAIN RIGHTS AND FREEDOMS

In continuation of what has been shown, I remind you that the exercise of the police profession involves, by its very nature, special duties and risks, which is why it is absolutely necessary to outline a certain socio-professional profile, including from the aspect of the passive side of the content of service relationships, viewed as a set of duties to which the policeman is bound.

The policeman must have a series of personal and professional skills that have been translated into duties, such as: loyalty to the institution which he is a part of, respect for the principles of the rule of law and the defense of democratic values, solicitude and respect for any person, the fulfillment of the duties of service with integrity, competence, fairness and conscientiousness, continuous improvement, moral and professional probity, social interactions governed by respect and fairness, supporting colleagues in fulfilling their duties. All this comes to explain and ensure the general perception of the police and the policeman as being worthy of the due trust and consideration and so necessary to carry out the duties enshrined by the normative acts in force¹⁷.

In addition, the police officer is obliged to a series of actions, as follows: to preserve professional secrecy, as well as the confidentiality of data acquired during the performance of the activity, under the law, except in cases where the performance of duties, the needs of justice or the law require their disclosure (as regards the obligation of confidentiality, it operates, as I have shown, both during the development of the service relationship and for 5 years from the date of their termination, unless the law provides otherwise¹⁸ (in this matter, derogations are possible only with the fulfillment of the following generic requirements: compliance with the principle of the presumption of innocence, respectively the right to one's own image, dignity, intimate, family or private life of the person and not prejudicial to the completion of the criminal investigation in a case under investigation or trial); to show fairness in solving personal problems, in such a way that he does not benefit from or give the impression that he benefits from confidential data obtained in his official capacity; to ensure the correct information of citizens on public affairs and on issues of their personal interest, according to the legally established competences; to have a correct conduct, not to abuse the official capacity and not to compromise, through his public or private activity, the prestige of the position or the institution he belongs to; to immediately inform the human resources structure of the unit which he is a part of about the acquisition of the procedural quality of accused or defendant, as well as about the criminal procedural measures ordered or the criminal judgments pronounced against him¹⁹.

Also, the policeman is obliged to report to the established work schedule, like any other employee, but the difference is given by the fact that the additional work is carried out whenever the operational situation requires it, without the policeman's consent being necessary (I consider here, calamities or large-scale disturbances of public order and tranquility, the establishment of a state of emergency, siege, mobilization and the declaration of a state of war and other similar situations that require the presence of the

¹⁷ See art. 41 Law no 360/2002.

¹⁸ See art. 45 para. 3 Law no 360/2002.

¹⁹ See art. 42 Law no 360/2002.

policeman at the workplace for the performance of duties, with compensation for working time carried out beyond its normal duration)²⁰.

The following are part of the category of negative obligations for police officers: the obligation not to receive, request, accept, directly or indirectly, or to have them promised, gifts or other advantages, for themselves or for others, in consideration of their official capacity ; not to solve requests that are not within his competence or that were not assigned to him by the hierarchical heads or to intervene for the solution of such requests; not to use force, other than in accordance with the law; not to cause physical or mental suffering to any person with the aim of obtaining information or confessions from this person or a third person, to punish them for an act that this person or a third person has committed or is suspected of having committed , to intimidate her or to put pressure on her or on a third person; not to collect sums of money from natural or legal persons; not to write, print or distribute materials or publications of a political, immoral or inciting indiscipline character; not to have, directly or through intermediaries, in a unit subject to the control of the police unit of which it is a part, interests likely to compromise its impartiality and independence²¹. To these is added the prohibition to be part of political parties, formations or organizations or to carry out propaganda in their favor, to express opinions or political preferences at the workplace or in public, to run for local public administration authorities, the Parliament of Romania and for the position of President of Romania, to publicly express opinions contrary to the interests of Romania, to declare or participate in strikes, as well as in rallies, demonstrations, processions or any other gatherings of a political nature, to join sects, religious organizations or to other organizations prohibited by law²².

In addition, the police officer is forbidden to carry out directly or through persons interposed, commercial activities or to participate in the administration or management of commercial companies, except as a shareholder, to carry out profit-making activities likely to harm the honor and dignity of the police officer or of the institution of which he is a part, as well as to violate the legal regime of conflict of interests and incompatibilities, regulated by law²³, these being situations of incompatibility for cumulating of the function of police officer with other functions or qualities (Vlad & Vasile & Dumitrache & Vlad, 2008, p.145)²⁴. First of all, it is observed the impossibility of the police officer to have the capacity of majority shareholder or sole shareholder within a company, in these situations his participation in the administration or management of the legal entity is obvious. However, I cannot fail to note the fact that a shareholder participates in the management or administration of the company of which he is a part even if he is a minority, the difference being that his manifestation of will would not be sufficient for making a decision.

A second incompatibility refers to the impossibility of cumulating the quality of being a policeman with the performance of an activity with a profit-making purpose of a nature to harm the honor and dignity of the policeman or the institution of which he is a member. It should be emphasized that the legislator does not make any additional reference

²⁰ See art. 44 Law no 360/2002.

²¹ See art. 43 Law no 360/2002.

²² See art. 45 Law no 360/2002.

²³ *Ibidem*.

²⁴ Vlad, B & Vasile, C & Dumitrache, Ş & Vlad, M (2008), *Labor law*, Cermaprint Publishing House Bucharest, p.145.

regarding the meaning of the phrase "activity (...) of a nature to harm honor and dignity", so the assessment is left to the discretion of the person called to pronounce on the existence or emergence of such situations. Given the subjective nature of such an assessment, we consider it necessary to justify any decision regarding the resolution of a situation like the one described.

Last but not least, the policeman has the task of appropriating and respecting the legal regime of conflict of interests and incompatibilities as established by Law no 161/2002 on some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption²⁵. As far as the policeman is concerned, the conflict of interests is defined as that situation in which he aims to satisfy a patrimonial interest, which would be likely to influence the objective fulfillment of his duties contrary to the normative acts in force²⁶. However, civil servants with special status - police officers can exercise functions or activities in the field of teaching, scientific research, literary-artistic creation, as well as functions in other fields of activity in the private sector that are not directly or indirectly related to his duties according to the job description²⁷. From the systematic interpretation of the legal provisions enunciated above, it follows that the only activities that can be combined with the police function are those in the didactic field, scientific research, literary-artistic creation and those in fields that do not intersect under any circumstances with duties related to the public office. The legislator wanted to prevent the situation in which the interests of the position would contravene private interests, when the person involved would be faced with the fact of choosing how to act, any decision of his being called into question from the point of view of correctness and soundness, which cannot be admitted when it is a function that involves the exercise of public power prerogatives for the protection of essential values of humanity and society. The list of permitted activities is much narrower in the case of police officers who have the capacity of criminal investigation bodies of the judicial police, they being prohibited from holding other public or private positions, with the exception of teaching positions in higher education²⁸. The justification on which such a restrictive provision is based is that of the much more obvious connection of this professional category with the social environment, public or private, hence the exponentially greater risk of being in a conflict of interests generated by the conduct of certain other activities. However, the exclusion of scientific research activities, literary and artistic ones, as well as those in pre-university education seems to be exaggerated and disproportionate. What is the perceived danger in the case of these activities, but especially how is it possible to carry out didactic activities in higher education without scientific research activity? In the context in which a didactic career forms a common body with the activity of scientific research, their dissociation is not adapted to the legislation in the field of national education, which is why, by *law ferenda*, the intervention of the legislator is necessary in terms of completing the list of activities that can be cumulated with the position of judicial police officer with those activities that do not pose any danger to the

²⁵ Published in Official Gazette of Romania no. 279/2003.

²⁶ See art. 70 Law no 161/2002.

²⁷ See art. 96 para. 1 Law no 161/2002.

²⁸ See art. 2 para. 4 Law no. 364/2004.

dignity and integrity of the profession: scientific research, literary-artistic creation, education in general, without limitation to higher education.

5. CONCLUSIONS

Through all of this, the aim is to ensure an unbroken reputation, a special moral authority, probity and fairness in the person of any police officer so that he has all the prerequisites for carrying out his duties, without fear of taking action or engaging legal means made available by the legislator for the purpose of protecting the legitimate values of man and society, as well as preventing and combating the criminal phenomenon. The pillars of the construction of a policeman's career cannot be other than impartiality, integrity, decision-making transparency and the supremacy of the public interest, a context in which it becomes a symbol of the protection of order and public safety.

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