

Gustova L. V.

USE OF POLYGRAPH AT ENTERING TO THE POLICE SERVICE

*Gustova Lidiya
Vyacheslavovna,
post-graduate student of the De-
partment of customs, adminis-
trative and financial law, Sara-
tov State University named after
N. G. Chernyshevsky.*

The author considers the organ-
izationally-technical and legal prob-
lems of the use of polygraph in psy-
chophysiological testing of candidates
to the service in internal affairs bodies,
including in comparison with foreign
experience through the example of the
United States.

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One of the peculiarities of enlistment to the police is a mandatory passage of special psycho-physiological research (surveys) and testing. Such research (surveys) and testing are aimed at revealing candidate's consumption of narcotic drugs or psychotropic substances without a doctor's prescription and abuse of alcohol or toxic substances (part 6 article 17 of the Federal Law "On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation").

The emergence in the draft law "On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation" of this norm has been accompanied by many comments in the media about the introducing for recruitment to the police of verification procedures on a polygraph (lie detector) [4].

The emergence in the draft law "On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation" of this norm has been accompanied by many comments in the media about the introducing of a verification procedure on a polygraph (lie detector) at entering to the police service [4]. This is not entirely true: part 6 article 17 of the Federal Law "On Service in Internal Affairs Bodies" does not provide for the obligation of conducting lie detector research. Although it also refers to the psycho-physiological research, there are

also other kinds of research. Today the check of future police officers by polygraph examination is performed selectively [1].

Meanwhile, in many foreign countries, including, in the United Kingdom and the United States, conducting of a special psychophysiological test of the candidates for the police service through polygraph is a common procedure. Refusal to pass polygraph test results in an unambiguous denial of employment [3].

Selective use of polygraph in the Russian Federation is due to organizational reasons: lack both the equipment and specialists able to work on it. As a result, in some cases, even referred to a polygraph examination candidates (including current or retesting police officers) have to wait for their turn weeks and months.

It must be said that the Interior Ministry is planning to address this issue. To do this there is being conducted a bulk purchase of polygraphs and training (re-training) of specialists. This assumes that each candidate for the police service will be subjected to polygraph test [2].

With all the positive assessment of this move, it seems to us that legislative justification for the use of polygraphic research needs a certain improvement. As has been noted above, both the current legislation on the service in the interior bodies and subordinate acts in this area do not provide for obligatoriness of conducting surveys exactly through a polygraph. As a result, even with the necessary technical base we cannot exclude the situation where officials responsible for complying with the procedures of recruitment to the police service on the base of any personal interests (for example, to ensure the recruitment of a relative) will not carry out such a survey.

In addition, we find not quite true the very wording of part 5 article 17 and part 4 article 19 of the Federal Law "On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation", according to which psycho-physiological research (survey) is conducted solely for the purpose of revealing the consumption of narcotic drugs or psychotropic substances without a doctor's prescription and abuse of alcohol or toxic substances. It is quite obvious that the polygraph test can be used to reveal other facts that make entering of a person to the police service unwanted (or impossible). In fact, in practice when polygraph is used the questions aimed at their clarification are usually asked (such as about existence of criminal past, sources of income, grounds for entering to the police service, etc.).

However, since the current domestic legislation provides for the use of polygraphs only to identify consumption of narcotic drugs or psychotropic substances without a doctor's prescription and abuse of alcohol or toxic substances, a candidate

can theoretically refuse to answer questions not related to the establishment of these circumstances. Of course, in this case, in practice, it likely will not be hired to the police, but it will be able to appeal against the refusal in the court.

In addition, lack of proper regulation of polygraph application procedures when admission to the police profession may also lead to the violation of the rights of examined persons. The experts carrying out this type of check argue that the rights of examined persons are not violated because:

- 1) the need for testing at recruitment to the service is established by law;
- 2) all examined persons sign a written consent to verification;
- 3) when testing the questions regarding ethnicity, religious beliefs, sexual life, etc. are not asked [1].

All this, of course, is true. However, it should be understood that consent to a polygraph test at the entry to the police service is not entirely voluntary and, even, of quasi-mandatory nature, because a candidate understands that rejection of test deprives it of any possibility of employment. At that, no one can guarantee that, in the absence of a normative document regulating the procedure of verification, a checked person will not be asked questions about its personal life, which are not related to future service, and it will be forced to either answer them, or, in fact, abandon admission to the police.

All this requires, in our view, the development and adoption of a normative act regulating the grounds and procedures for polygraph tests at entering to the police service; the rights and obligations of a checked person; demands to the person conducting test; an indicative list of questions to be clarified during verification; an indicative list of those themes that are forbidden to ask, etc.

If we turn to foreign experience, the United States can serve as an example, in which there is a comprehensive legislation concerning the use of polygraphs. There, in 1988, came into force "The Employee Polygraph Protection Act" - EPPA, which established the main directions of application of this method and introduced restrictions on its use in the field of private entrepreneurship, in hiring in state institutions, as well as in respect of working personnel. However, the Act does not apply to:

- members of the Federal Government, administration of the States and local self-government bodies or any of their units;
- permanent or contract staff, experts and consultants of the Ministries of Defense and Nuclear Energy;
- all persons working at the NSA, FBI, and CIA or gain access to their classified information.

In this connection, in order to establish unified nationwide demands in this area in 1991 the U.S.A. State Department approved departmental instructions: “The policy regarding polygraph tests”, which stated that “testing is regulated by the Constitution and the United States Code, legislative act about service in the State Department” and the law on protection of employees from polygraph. The instructions also established that “in accordance with the adopted in the State Department policy of conducting polygraph tests, any candidate for the job in this department under certain circumstances may be offered to pass this verification on a voluntary basis, and due to the sanction of authorized officers” [5].

United States legislation also establishes that in conducting a polygraph examination the following topics should not be touched upon:

- religious beliefs, affiliation to religious organizations;
- beliefs and views on public issues;
- information about the views and practices in sexual sphere.

It appears that this experience can be used in the Russian Federation.

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