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Polygraph Examination in Criminal Cases. Current Polish Practice. A Critical Study

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In total, according to data reported for our research by Police, Military Police, Border Guard and General Public Prosecutor Office in 2005–2012 they performed 570 examinations in criminal cases (the fewest in 2005 – 8, and the most in 2011 – 158).

In the same period approximately one million criminal cases were initiated in Poland each year (with the most in 2005 – 1,235,239, and the fewest in 2010 – 964,616).

This shows that the polygraph is hardly ever employed in criminal cases. In 2011, when examinations were conducted in altogether 158 instances, 981,460 cases were initiated.

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The scarce use of such examinations in criminal cases in Poland proves both the low efficiency of the examinations conducted, which seems to attest to the low competencies of polygraphers, and also the fact that the investigating authorities are not capable of making appropriate use of polygraph examinations in their cases.

In Poland, polygraph examinations are conducted primarily to examine candidates for the police and special forces, and also for screening tests in such forces. The legal grounds for such examinations are clear regulations in the acts of law concerning such services. On the contrary, subjecting other civil servants or officers of local, regional, and central governments to polygraph examinations – when such a procedure is not clearly admitted by an act of law – is assumed impermissible.

Similar examinations are also performed in private business, especially on candidates for work in private security companies protecting people and goods (i.e. in “private police forces”), and also on people already working in such firms. There is a lack of clear regulations regulating the admissibility of polygraph examination in the private sector.

It is generally assumed that such examinations are allowed if certain conditions are met. It is obvious that an examination may be performed only with the consent of the examinee, and test questions may concern only such information on the employee to which the employee is otherwise entitled. Sometimes another condition is also raised, namely, that the option to conduct such examinations should be included in the job contract (Widacki, Cempura 2012). The result of the examination itself justifies neither making an employee redundant nor starting a disciplinary procedure against one. In other words, the result of the examination does not entitle the employer to such actions against an employee to which the employer would not have been entitled without such an examination. In most cases, procedures of this type for the use of private business are performed by private companies providing the relevant services. In Poland, unfortunately, unlike in many other countries, no licence is required to perform polygraph examinations.

Polygraph examinations in Poland are also performed for the needs of criminal investigations and, more generally, criminal trials. Performance of such examinations is permitted verbatim by the Code of Criminal Procedure since its amendment in 2003 (see: Art. 192a, and Art. 199a of the Code).

Unlike in the United Kingdom, no polygraph examinations are performed on people convicted of sexual crimes in order to focus the therapy properly and later to control the effects (Wilcox 2009).

Yet even earlier, the Code of Criminal Procedure explicitly allowed polygraph examinations in trials. Such examinations were conducted both for preliminary elimination of suspects and in taking evidence. The first use of polygraph examinations as evidence in a Polish criminal trial took place in the 1960s (Widacki 2007).

From that time, until 1990, polygraph examinations were very occasionally conducted, most often in homicide cases.

At this time, polygraph examination in Poland have been performed either by academics from university departments of criminalistics, who also conducted experimental research in the area, or by military experts.

Neither the police, nor the Institute of Forensic Research (IFR) of the Ministry of Justice had a polygraph machine or their own experts in the field.

Now, for over a decade, polygraph examinations in criminal cases have been performed in five police centres (regional headquarters in Białystok, Bydgoszcz, Katowice, Łódź, and at the Central Forensic Sciences Laboratory of the Police in Warsaw), as well as in the centres of the Military Police and Border Guard.

Although performed very rarely, such examinations are among services offered by the Polish Forensic Association (Polskie Towarzystwo Kryminalistyczne), performing expertise for the needs of the Polish judiciary in various fields, and also by private experts. The last group are in most cases academics dealing with the scientific aspects of the question, and also other people, including retired officers who had a longer or shorter involvement with polygraph examinations during the service.

As far as the ascertainment of the number of examinations performed in criminal cases by polygraphers employed in governmental and academic institutions is possible and relatively easy, there is an absolute shortage of data on the number of examinations performed by private experts. However, it can be estimated that they conduct no more than anything from 5% to 10% of all the examinations performed in criminal cases.

Despite the legal admissibility of polygraph examinations in criminal cases, such procedures are hardly ever employed. In Poland in recent years, the

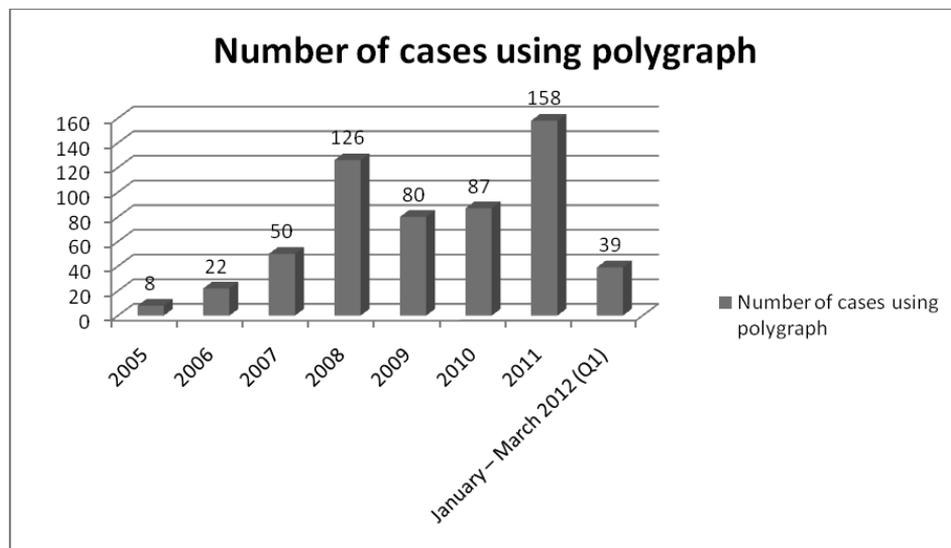
Police, the Military Police, the Border Guard, and academic institutions have performed polygraph examinations in a few hundred criminal cases altogether. Majority of them it was homicide cases. Only Military Police recently conducted polygraph examination in cases of theft (even in small thefts) committed in military barracks or camps.

A detailed list of the cases in which the polygraph was used is presented in Table 1.

Table 1.

Year	Number of cases using polygraph
2005	8
2006	22
2007	50
2008	126
2009	80
2010	87
2011	158
January – March 2012 (Q1)	39

Table 1 (Source: own research)



In this time, approximately one million criminal cases per annum were conducted in Poland (ranging from 1,235,239 in 2005 to 964,616 in 2010). This means that polygraph examinations were commissioned in an infinitesimal number of cases.

Table 2 presents the number of criminal cases initiated in individual years, and the percentage of cases in which polygraph examinations were performed.

Table 2.

Year	Number of initiated criminal cases	Promilles of cases in which polygrapher examinations were commissioned
2005	1,235,239	0.006
2006	1,156,031	0.02
2007	1,014,695	0.05
2008	968,620	0.1
2009	994,959	0.08
2010	964,616	0.09
2011	981,460	0.8
2012	No data	

Table 2 (Source: General Headquarters of Police and own data)

Obviously, not every criminal case requires polygraph use, and in some it makes no sense. One such case is when the suspect confesses, which is corroborated further by other evidence raising no doubt. As a rule, such a procedure is not applied in minor criminal cases either. If one were to consider only the gravest criminal cases, the percentage making use of the examination would probably be somewhat higher, yet still very low. To compare, it is worth noting that in 2011, the year when relatively the largest number of polygraph examinations were conducted, one such examination was on average performed in every 6705 criminal cases!

We do not have data, even estimations, concerning the percentage of criminal cases in which a polygraph examination is justified. Yet using elementary experience, it can be said that such a proportion is definitely many times higher than the current fraction of a percent.

It is therefore justifiable to conclude that polygraph examinations in Polish criminal cases are an absolute exception.

The lack of popularity of the polygraph may generally result from two fundamental reasons appearing independently or jointly:

- 1) low efficiency of the examinations conducted
- 2) lack of trust for the method.

In turn, the low efficiency of examinations may result either from the poor preparation of experts performing the studies or from commissioning such examinations too late, while it is general knowledge that polygraph examination is most efficient in the earliest possible phase of the procedure, immediately after the first contact with the suspect (e.g. upon arrest) (Widacki 2008).

Theoretically, the low efficiency of the examinations may also result from poor collaboration of the prosecution and expert polygrapher in charge of the examinations. In brief: the prosecution officers may not be ready to use polygraph examinations.

Preliminary research (M. Widacki, 2013) seems to corroborate these presumptions. Polygraph tests are very often commissioned by prosecutors or officers at advanced stages of the investigation, when the subject has already been remanded in custody for weeks if not months, and has previously been interrogated, possibly repeatedly, and participated in numerous investigative procedures (recognitions, confrontations).

Frequently, antiquated (e.g. Reid) and rather ineffective (e.g. GKT, CIT) techniques are used for conducting tests, often with unjustified deviations from the principles approved for the given technique and with the assessment of the results being performed almost exclusively with quality-based methods, control questions being incorrectly selected, and pre-test interviews lasting no more than several minutes.

Reports from the tests are often written in an enigmatic manner (e.g. “the subject of the examination reveals an emotional link ... yet ...” etc.) and tell the officer in charge of the investigation hardly anything, thus being of little use for the investigation.

Lack of trust of examinations acting as a deterrent from commissioning them, despite legal and organisational capacity, may also have a certain link to the traditional reluctance of European lawyers to the polygraph. In Poland, before the Code of Criminal Procedure approved legal admissibility of polygraph examinations in criminal cases and recognised the results of the examination as evidence, most legal scholars, experts in criminal procedure, strongly opposed

such examinations, and the sentences of the Supreme Court were not unanimous in the matter.

The diagnostic value of such examinations raised doubts. Although it is a paradox, the diagnostic value of a polygraph examination has been investigated far more precisely than that of many other methods of identification offered by forensic sciences (Widacki, Horvath 1978, Committee Report 2011), such as tool marks, contact traces, or even handwriting analysis.

The lawyers found it a problem to qualify the results of polygraph examinations. Are they circumstantial evidence – much like the ones provided by various forensic sciences, or direct evidence – like the admission of the suspect during an interrogation (see: Inman, Rudin 2001). The closer the diagnostic value of a polygraph examination to 100%, the more such evidence resembles direct evidence.

The latest research and analysis prove that the validity of the polygraph lies more or less in the range of 83% to 95% of correct indications, with the level of non-conclusive examinations at the level of 13% (see for example : Committee Report 2011).

Thus, in every case, the opinion of an expert drawn up after each polygraph examination must be judged by the court that performs this evaluation in the context of other evidence (by the way, of similar diagnostic value) that the court has gathered and assessed. In this scope, the result of polygraph examinations must be treated just like any other circumstantial evidence provided by forensic sciences.

Thus a polygraph examination may be of great use for the investigation, and as such should be resorted to far more often than is the case nowadays. This, however, requires better professional training of people conducting the investigations and improvement of the level of the examination itself.

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