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## Polygraph examinations in Poland<sup>2</sup>

It is a curious and interesting detail that one of the discoverers of galvanic skin response, the Russian physiologist Tarchanoff, spent his last years as an emigrant in Poland. Also noteworthy is that his Polish student, collaborator and friend, Napoleon Cybulski, known for his work on catecholamines, was a professor and rector of the Jagiellonian University in Cracow (1).

Before the Second World War, the Institute of Mental Hygiene in Warsaw had a polygraph in its possession (2). It was employed for psychological experiments and research, but not for criminal investigation – at least no mention of such an application has survived.

Nevertheless, as early as in the pre-war period the notion of polygraph examinations and its utility for investigations was already known in Poland. In a study published in 1939, W. K. Zielińska presented the polygraph examination research and described the experiments carried out by Benussi and Larson (3). She also quoted

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an eminent European criminologist, Ernst Seelig, who claimed in his commentary to Larson's work that it would be a mistake to neglect the opportunity to use the polygraph for criminal investigation purposes.

In the early 1950s, the communist Ministry of Public Security bought an American polygraph, but without information on its use.

In the early postwar period, the subject of polygraph examination received only passing mention in works on psychology of the time (4). In criminology literature, the comments were mostly critical and revealed the authors' limited knowledge of the subject (5).

The first application of polygraph in a criminal case in Poland took place in 1963 in the course of a murder inquiry (Voivodship Court in Olsztyn, No. IV, 94/63). The examination was carried out by Professor Paweł Horoszowski, at that time Head of the Department of Criminalistics at the Warsaw University, using a Stoeltzing polygraph he had purchased in the United States. Professor Horoszowski coined the term *wariograf*, which has since been used in Polish literature as synonymous with *poligraf*. The examination results were submitted as part of the evidence in the Voivodship Court in Olsztyn. In the court of second instance, the Supreme Court did not rule against the acceptability of the method. The court neither forbade the use of polygraph examinations in criminal proceedings, nor did it preclude treating examination results as evidence (Supreme Court decision of 11 November 1964, No. III, K 177/64).

Since that time, polygraph examination has been used occasionally in criminal investigation. In the meantime, a wide-reaching debate arose in legal and criminology journals on the method's admissibility in criminal proceedings. In the 1960s, most opinions were critical. The method's detractors doubted its effectiveness and compliance with Polish law, as well as questioned it on moral grounds. The debate made it clear that the participants living behind the Iron Curtain were virtually ignorant of the accomplishments of polygraph research (especially in the United States) and had no access to literature on the subject (6).

It was only at that time that the first more or less reliable studies were published in which the authors described polygraph examination and its application in the United States and other countries (7). It is likely that in the late 1960s the first polygraphs were purchased by the intelligence services, both civilian controlled by the Ministry of Internal Affairs, and the military services. The purchase and the purposes the polygraphs served were kept confidential to the highest degree. It is known today that the polygraphs were used to train intelligence agents who were to operate in the United States and Western Europe; they were probably also used to test the loyalty of the services' own agents, and for counterintelligence purposes. It

can be said with certainty that the Communist political police (Security Service, or *Śłużba Bezpieczeństwa* [SB]) never used polygraph examinations to persecute the anti-Communist opposition in Poland.

The Polish army employed polygraphs in intelligence and counterintelligence activities in an analogous manner to the civilian intelligence services. They were also used by the Military Police, which formed part of the Military Internal Service, or *Wojskowa Służba Wewnętrzna* [WSW]. The latter institution used polygraphs in investigations into crimes committed by soldiers serving military service (most frequently and with best results in cases where weapons had been lost or stolen). The Military Police experts occasionally provided assistance in criminal investigations, mainly in homicide cases. The same experts participated in conferences organised by universities or scientific societies and published articles about polygraph examinations in the generally available scientific or professional journals.

In the late 1970s and 1980s experimental scientific research was carried out alongside tests in the course of investigations (usually in murder cases) at universities, mainly the Jagiellonian University in Cracow and later at the University of Silesia in Katowice. During this period, many scientific publications on polygraph examinations were published. Their character ranged from experimental to case studies and analysis of field research (8).

At the end of the 1970s, polygraph examinations were carried out in criminal cases at the Department of Criminalistics of the University of Silesia and the courts admitted their results as evidence. During this period, at the University of Silesia about 100 individuals were examined each year at the request of prosecutors, the police or courts. It was also at that time that a polygraph was used to eliminate suspects in a manhunt for a serial killer of women. In the course of these proceedings alone over 500 persons underwent polygraph examinations.

The first polygraph screeners in Poland were self-trained practitioners. A clear example was undoubtedly the aforementioned Professor Horoszowski, who in the early 1960s at his own expense acquired in the United States a Stoelting polygraph in addition to from some professional and scientific literature. It is possible that Professor Horoszowski trained the first examiners in the intelligence services of Communist Poland. Still, it cannot be ruled out that they were also self-trained, although this cannot be established with any certainty (Professor Horoszowski left Poland in 1968 and died abroad probably in the 1970s). It is nevertheless certain that these first (possibly self-trained) practitioners trained their followers, among whom were the experts of the Military Police. As a rule, they used the CQT (*Control Question Test*) method; POT (*Peak of Tension*) tests were also applied. The book *Truth and Deception* by J. Reid and F. Inbau was undoubtedly well-known and was regarded by examiners not as a mere textbook, but almost as a bible.

Similarly, researchers at universities working with the polygraph acquired knowledge on polygraph techniques on their own, using available literature (mostly American), or exploiting their contacts with scientists from the United States, Japan, and Czechoslovakia. This resulted in some joint publications were published (9).

It was also possible for university researchers and Military Police experts to exchange information and experience concerning the application of polygraphs in criminal cases. No contacts, however, existed between the university researchers and the intelligence and counterintelligence agents, who remained anonymous to scientists since their work was absolutely confidential.

To this day, no specialist training exists in Poland for examiners and experts on polygraphs and “forensic psychophysiology”. No schools, formal training programmes, or formal examinations for candidates seeking the status of certified polygraph examiner exist. Prospective examiners practise individually under the supervision of their more experienced colleagues.

According to my knowledge, in Poland there are no more than 25–30 examiners that conduct polygraph examinations. Among this number are university researchers, officers of intelligence services, police officers, and examiners employed in various private security and detective agencies. Three examiners are women, two of whom have degrees in psychology. All of the examiners have a university degree, some of them have experience working in law enforcement. The examiners’ level of professional competence is varied. Unfortunately, it is usually low, especially in criminal cases. This is a consequence of the absence of formal training and licensing procedures, a lack of mutual control among professionals, and non-existent competition.

In the mid-1990s the Polish Polygraph Association was founded. The members include the majority of the people that practise polygraph examinations, conduct experimental research in the field, or are interested in the issue from a legal perspective. Its total membership is about 40.

At the time of its foundation, the Association was intended as an integrating force for the professional community, a forum for sharing experience, a propagator and supporter of experimental research in the field of forensic psychophysiology, as well as an organisation that would establish standards for research and training and administer control. The Association also planned to issue a journal.

To date, very little of the foregoing laudable and necessary plans has been realised. The sole accomplishment has been the adoption of *The Standards for Polygraph Examination in Criminal Cases* (a set of methodological rules for conducting an examination). So far, the Association has been unsuccessful in adopting *The Standard for Pre-Employment and Screening Examinations* and passing a code of ethics for examiners.

As I have demonstrated, the Association has had very limited success in implementing the plans that accompanied its foundation.

Polygraph examinations are used in criminal investigations, pre-employment investigations and control checks (screening). The latter two procedures are also applied in government institutions (intelligence services and law enforcement organs) as well as by private businesses.

No institution in Poland keeps statistics on polygraph examinations and complete data is unavailable. We can go as far as to estimate that less than 100 examinations are conducted annually in criminal cases. Considering the fact that almost 1,000 killings are investigated every year and with the total number of investigations reaching the hundreds of thousands, it becomes clear that polygraph examinations are very rarely used. Their number is outpaced many times over by examinations carried out in other fields, such as pre-employment and screening. In government agencies (Agency of Internal Security or *Agencja Bezpieczeństwa Wewnętrznego* [ABW], the Military Intelligence Service and the Military Counterintelligence Service (*Służba Wywiadu Wojskowego, Służba Kontrwywiadu Wojskowego*), the Police [*Policja*], Border Guard [*Straż Graniczna*], Central Anti-corruption Bureau [*Centralne Biuro Antykorupcyjne*]), several hundred examinations are probably conducted every year. No precise data are published.

Private agencies perform examinations ordered mostly by banks and large companies. Some large detective agencies and firms providing business information check their own employees on a polygraph. A portion of the examinations carried out by private agencies and commissioned by private businesses are not pre-employment or screening checks; sometimes they are “internal investigations” undertaken in connection with some minor offence committed within a company, probably by an employee. Similarly, polygraph screenings are used to determine how confidential information has leaked out of the company. Such screenings are in no way different from those carried out in criminal investigations.

The term “polygraph” (in Polish *poligraf*) or “polygraph examination” (in Polish *badanie poligraficzne*) is explicitly used only in one legal act: in article 50 (1) (4)

of the Central Anti-corruption Bureau (of 6 June 2006, Journal of Laws 2006, No. 104, Item 708).

The Code of Penal Procedures (CPP) defines a polygraph examination as “an application of technical means aimed at controlling the unconscious reactions of the body” (CPP, article 171 (5) (2); CPP, article 192a; CPP, article 199).

The Act on the Duties of Officers of the Internal Security Agency and Intelligence Agency (of 9 June 2006, Journal of Laws 2006, No. 104, Item 710) in article 5 (2) and the Internal Security Agency and Intelligence Agency Act (of 24 May 2002, Journal of Laws 2002, No. 74, Item 676) in article 46 (2) define the polygraph examination as a *psychophysiological* examination.

Polygraph examinations are allowed in investigation as a method of finding evidence and eliminating suspects. Article 192a of the Code of Penal Procedures states that “in order to reduce the number of suspects or to determine the evidence value of leads” and with the consent of the person to be examined, an expert witness is allowed to “apply technical means aimed at controlling the unconscious reactions of the body”. Article 199a of the Code of Penal Procedures restates that “the application of technical means aimed at controlling the unconscious reactions of the body is possible only with the affected party’s consent”.

The Supreme Court and the Courts of Appeal admit the results of polygraph examinations as evidence, provided several general conditions are met. First, the examination must be carried out with the person’s consent (CPP, article 192a; CPP, article 199a). Second, the examination must be performed by an expert in the course of expert opinion, the result of which must take the form of a report complying with the provisions of article 200 of the CPP; the examination must not be part of other proceedings, e.g. interrogation (CPP, article 171 (5) (2)). Naturally, in the opinion of the court the expert must possess the necessary professional and moral qualifications (or the prosecutor at the investigation stage; CPP, article 193; CPP, article 195; CPP, article 196) (10).

The provisions regulating the activities of intelligence services in the aforementioned acts state that “in the case of a candidate applying for service in the Internal Security Agency or Intelligence Agency in a position requiring special skills or pre-dispositions, the qualification proceedings may be extended to include procedures aimed at checking the candidate’s suitability for the position, including a psychophysiological examination” (The Internal Security Agency and Intelligence Agency Act, article 46 (2)). The same regulation appears in article 5 (2) of the Act on the Duties of Officers of the Military Counterintelligence and Military Intelligence Service.

No legal act regulates (or prohibits) the use of polygraph examination by private organisations (for pre-employment or screening examinations).

The general public accepts polygraph examinations, especially in criminal cases. The fear of crime is strong in Poland and public opinion is ready to accept all crime-fighting methods presented as effective. To date, no opposition has arisen to employing the polygraph by private organisations in employee-related cases.

The opponents of using polygraph examination in investigation, let alone accepting the results as evidence by courts, can be found in some legal circles, especially among scholars specialising in penal procedure. Their reservations concern the procedural and moral aspects (polygraph examination as an invasion of privacy, the tested person as assisting in finding evidence against themselves, etc.).

The 2003 amendment to the Code of Penal Procedures, which involved added article 192a (2) and article 199a, decidedly tipped the scales in favour of the acceptability of polygraph examination in investigation and put an end to the debate that had been raging in the absence of an explicit legal basis for polygraph examination.

The polygraph examiners techniques include Control Question Test (CQT – according to the procedures devised by Reid or Backster) and the Guilty Knowledge Test (GKT). The latter technique (GKT) is preferred recently by examiners in the Police. But this fact is not the result of their experience, but rather the influence of some American authors.

Unfortunately, during the last two decades not a single work based on experimental research has been published in Poland.

In the 1970s and 1980s, such publications were numerous. They focused on diagnostic value (11), analysis of field research (12), or discovering latent information (13).

After this long interval, the Department of Criminalistics of the Frycz Modrzewski Cracow College has begun an extensive research project on polygraph examinations. The aims of the project include an analysis of the practice of polygraph examination in the years 1989–2006, devising methods of distinguishing between persons “possessing knowledge” of the event(s) and “active participants”, determining the diagnostic value of polygraph screening in cases of personality disorders (especially schizoid and antisocial personalities) and in co-operation with specialists in neuropsychology and neurophysiology, a study into patterns of deception.

The number of polygraphs used in Poland is about 15, all of which were produced in the United States by Stoelting and La Fayette. While some of the devices have been in use since the 1970s, others are new and a few have a computer.

In the 1990s, a psychological stress evaluator was purchased for the Police. So far, the device has never been put to use in criminal investigation (14), nor have any results of experimental research been published.

There are two closely related and basic problems concerning polygraph examinations. The first problem is the decline of scientific experimental research as well as field research and analysis of field practice. The few recently published works on polygraph screening are either legal and focus on the legal aspects of polygraph use (15), or they are popularised scientific article for lawyers and law enforcement officers (16) or chapters in handbooks on criminalistics (17). Second, to date no uniform system has been prepared or implemented of training polygraph examiners or granting licences and no clear requirements for obtaining the licence have been formulated.

As a result of the foregoing problems, the professional community exercises no control over the level of the examiners' work, which in the long-run inevitably leads to the deterioration of standards.

## Notes

- (1) See: J. Widacki (1988), *Stulecie krakowskich detektywów*, Warszawa, 114.
- (2) P. V. Trovillo (1938/1939), *A History of Lie-detection*, *The Journal of Criminal Law and Criminology*, 29, 6, 880.
- (3) W. K. Zielińska (1939), *Znaczenie psychologicznej diagnostyki dla celów śledczych*, Bydgoszcz.
- (4) For example: M. Kreuz (1949), *Podstawy psychologii*, Warszawa, 62.



- (5) For example: J. Sehn (1951), *Obecny stan kryminalistyki w Polsce*, in: *Stan kryminalistyki i medycyny sądowej*, Warszawa, 14.
- (6) See: J. Widacki (1981), *Wprowadzenie do problematyki badań poligraficznych*, Warszawa, 182–194.
- (7) See: P. Horoszowski (1965), *Eksperymentalno-testowa metoda wariograficzna w śledczej i sądowej ekspertyzie psychologicznej*, *Przegląd Psychologiczny*, 9, 55–75.
- (8) For example: J. Widacki (1982), *Analiza przestanek diagnozowania w badaniach poligraficznych*, Katowice.
- (9) See: J. Widacki, F. Horvath (1978), *An Experimental Investigation of the Relative Validity and Utility of the Polygraph Technique and Three other Common Methods of Criminal Investigation*, *Journal of Forensic Sciences*, 23, 3; M. Dufek, V. Valkova, J. Widacki (1975), *K nekterym otazkam problematiki poligrackeho vystrovani*, *Ceskoslovenska Kriminalistika*, 8, 4, 284–286.
- (10) Decisions of the Supreme Court: II KR 171/76 (25.09.1976); I KR 136/77 (15.12.1977); III KR 211/80 (8.12.1980); IV KO 101/98 (21.12.1998); Court of Appeals in Cracow II Aka 147/99 (19.08.1999).
- (11) See: J. Widacki (1977), *Wartość diagnostyczna badania poligraficznego i jej znaczenie kryminalistyczne*, Kraków; J. Widacki (1979), *Badania poligraficzne osób z organicznymi uszkodzeniami centralnego układu nerwowego*, *AMSiK*, 29, 2.
- (12) J. Widacki (1980), *Badania poligraficzne w sprawach o zabójstwa w praktyce Zakładu Kryminalistyki Uniwersytetu Śląskiego*, *Sł. MO*, 6; J. Widacki, A. Feluś (1981), *Sprawcy zabójstw badani w Zakładzie Kryminalistyki UŚ*, *AMSiK*, 31, 1; J. Widacki (1982), *Analiza przestanek diagnozowania w badaniach poligraficznych*, Katowice.
- (13) J. Konieczny, M. Fraś, J. Widacki (1984), *The Specificity of So-called Emotional Traces and Certain Features of Personality in Polygraph Examination*, *AMSiK*, 34, 1, 25–30.
- (14) J. Pietruszka (2006), *O przydatności poligrafu głosowego. Wstępne wyniki badań*, *Problemy Kryminalistyki*, 251.
- (15) For example: R. Jaworski (1999), *Opinia z ekspertyzy poligraficznej jako dowód odciążający*, Wrocław; J. Widacki (2004), *Sytuacja prawna badań poligra-*

*ficznych po ostatniej nowelizacji kodeksu postępowania karnego*, Problemy Kryminalistyki, 243, 24.

(16) A. Krzyścin (1996), *Zarys metodyki psychofizjologicznego badania poligraficznego*, Problemy Kryminalistyki, 212.

(17) For example: *Kryminalistyka*, ed. 2002, ed. J. Widacki, Warszawa, chapter XXIX, 407–421; J. Kasprzak, B. Młodziejowski, W. Brzęk, J. Moszczyński (2006), *Kryminalistyka*, Warszawa, chapter XXIV, 275–280.