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## CONSIDERATIONS ON POLICE OFFICERS' RIGHT TO TEACH WITHIN THE ADULT PROFESSIONAL TRAINING SYSTEM

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**Abstract:** *THE POLICE OFFICER, A PUBLIC AUTHORITY WITH SPECIAL STATUS, MAY DIVERGE FROM THE GENERAL REGULATION AND ESTABLISH SPECIFIC INCOMPATIBILITIES. WE ANALYZE THE NATURE OF THE ACTIVITIES THAT ARE COMPATIBLE WITH THE STATUS OF POLICE FORCE, PARTICULARLY THOSE IN THE FIELD OF TEACHING. THE ANALYSIS OF THE CASES REVEALS DIFFICULTIES IN MANAGING THE ACTIVITIES PERMITTED FOR INTERNAL AFFAIRS MINISTRY PERSONNEL, INCLUDING THE POLICE OFFICERS. WE DISCUSS IF AND IN WHAT CONDITIONS THIS CATEGORY MAY INCLUDE ACTIVITIES AND OCCUPATIONS, NAMELY TEACHING POSITIONS, IN THE ADULT VOCATIONAL TRAINING SYSTEM.*

**Keywords:** POLICEMEN. INCOMPATIBILITIES. EDUCATIONAL INSTITUTIONS. TRAINING ACTIVITIES.

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### INTRODUCTION

In order to analyse the factors associated to police officer legal duties and allowed additional activities, it is important to first underline the need of setting "regulatory limits of the special status, in relation to the one which, through its regulatory object, represents the general status" of the civil servant (Vedinaș, V., 2007, p.143). Moreover, these limits are established by law. Special statutes can regulate specific rights, duties and incompatibilities, specific public functions. This clarification is necessary in the economy of this argumentation. Therefore, regarding incompatibilities, the provisions of the special statute may derogate from those of the general statute under the conditions and limits established by it.

## **INCOMPATIBILITIES, RESTRICTIONS, AND PERMITTED ACTIVITIES FOR POLICE OFFICERS**

The obligation to comply with these provisions is expressly stipulated in article 460 of Administrative Code (Emergency Ordinance No. 57/2019 of July 3, 2019): "civil servants are subject to the regime of incompatibilities in the exercise of their functions established by the special legislation regarding some measures to ensure transparency in the exercise of public dignities and public functions". Article 429 of Administrative Code also stipulates that civil officials may engage in remunerated activities in both the public and private sectors, in compliance with the legal provisions regarding incompatibilities and conflict of interests. "Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption" establishes situations of incompatibility and conflict of interests for civil servants as well. Regarding the right of civil servant about holding other positions and carrying out other activities, Law 161/2003, article 94, provides: "the status of civil servant is incompatible with any other public position than the one in which he was appointed, as well as with public dignity positions".

Given that the police officer is a civil servant with a special status, this status can also establish specific incompatibilities. According to Law 360/2002 on the Status of the Police, article 45 paragraph 1 letter i), "the officer is not permitted to breach the legal regime of conflict of interests and incompatibilities established by Law No. 161/2003 concerning some measures to ensure transparency in the exercise of public dignities, public functions, and the business environment, as well as the prevention and sanctioning of corruption, with subsequent amendments and additions". This article was modified by the Emergency Ordinance No. 53/2018 for modification and completion of Law 360/2002 on the Statute of Policemen; before the adoption of this act, the article had the following content: the police officer is prohibited from holding any other public or private position for which he is remunerated, with the exception of teaching positions within educational institutions, scientific research and literary-artistic creation activities. They are also prohibited to carry out, directly or through intermediaries, commercial activities or to participate in administration and management of some commercial companies, except being shareholder.

So, in order to discuss the permitted activities for police officers, we have to look at article 96 of Law 161/2003, which states that civil servants, parliamentary civil servants, and civil servants with special status (which are also police officers) may perform functions or activities in the fields of teaching, scientific research, literary-artistic creation; they may also conduct responsibilities in other fields of private sector that are not directly or indirectly related to their job description requirements.

The limitation of the right to work, which, according to art. 41 paragraph 1 of the Romanian Constitution, "cannot be limited," can only be carried out within the limits of the Constitution's provisions, which state in art. 53 paragraph 1 that "the exercise of certain rights or freedoms can be restricted only by law and only if it is required, as the case may be, for: the defence of national security, order, public health or morals, the rights and freedoms of others, the rights and freedoms of others". As a result, the limitation of this right is based on these considerations, also in the case of police officers, in order to guarantee the independence of the civil servant with a particular status. Furthermore, Law 360/2002 on the Police Officer's Statute restricts a police officer from having, directly or through intermediaries, interests likely to endanger his impartiality and independence in a unit subject to the jurisdiction of the police unit of which he is a member.

## **DICUSSIONS ON TEACHING ACTIVITIES PERMITTED FOR POLICE OFFICERS**

We will further examine the nature of these activities compatible with the status of a police officer, particularly those grouped under the phrase "functions or activities in the field of teaching" in

light of the evolution of the concept and the Romanian education system, an evolution to which the system does not explicitly adapt legislation from fields other than education.

The provisions of Administrative Code (article 462) stipulate which are the meanings of the activities in the didactic field that civil servants can carry out: teaching positions in state educational institutions or private authorized/accredited under the law, trainer, mentor or resource person positions within the professional training programs for adults organized in the conditions of the normative acts in the field of professional training, or specialist in the examination commissions or evaluator in the evaluation/monitoring commissions within the professional training programs for adults, organized under the conditions of the acts norms in the field of professional training of adults.

The law of national education, Law no.1/2011, regulates also lifelong education which encompasses all of the learning activities that each individual engages in throughout their lives, whether formal and informal, with the purpose of training or developing abilities from a variety of perspectives: personal, civic, societal, or occupational. Lifelong learning encompasses early childhood education, pre-university education, higher education, continuing professional education, and adult education. Institutions or organizations which organize learning in formal contexts are: units and institutions of pre-university and higher education, centres of education and professional training subordinated to ministries or authorities local public, public and private providers of education and professional training authorized/accredited under the law, non-governmental organizations or government that offer programs authorized under the law, employers that offers professional training programs to its own employees, training institutions continues non-university from the Ministry of National Defence, Ministry of Affairs Interior, the Ministry of Justice, the Romanian Intelligence Service or other institutions with attributions in the field of defence, information, public order and security (article 331, Law no.1/2011).

We can state that the police officer can also conduct educational functions within these legal entities. Furthermore, the law clearly specifies the process of authorization of these legal bodies, as well as the name of the activity that includes the delivery of teaching activities in the context of adult education (Government Ordinance no. 129/2000). Thus, art. 9 of Government Ordinance no. 129/2000 on the professional training of adults provides that this activity can be carried out, as the case may be, by individuals or legal entities called professional training providers, under public or private law, regardless of their legal form of organization. Adults are professionally trained through training programs that comprise all theoretical and/or practical training activities in order to fulfil the goals of training skills for a certain field.

According to article 14 of Government Ordinance no. 129/2000, professional training programs are organized by professional training providers for occupations, trades, specialties and professions, called occupations, described in the Classification of Occupations from Romania - C.O.R., as well as for professional skills common to several occupations.

It should be noted that, in order to be authorized, “training providers must demonstrate that they carry out professional training programs with trainers who have profiles or specialties related to the training program, and that they have specific training for adult education in accordance with occupational requirements” (article 28 paragraph 2, Government Ordinance no. 129/2000). Training providers professional must prove that they carry out the training programs professional with trainers who have the appropriate profiles or specialty training program and specialist training for adult education in accordance with occupational requirements.

When we compare the descriptions of the occupations of teacher and trainer as they appear in the Romanian Classification of Occupations, we can see that the main difference is not the type of activity performed (which, in both cases, focuses on theoretical and practical training, meaning educational activity), but the target group.



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The occupation of "trainer" (code 242401) is part of the basic group 2424 - personnel specialists who "plan, develop, implement, and evaluate training and development programs, to ensure that both the management team and the staff acquire the skills and develop the competencies required by the organization to achieve the organizational objectives," according to the Romanian Classification of Occupations. The occupation of "teacher" (at different levels) is part of the same major group 2 - Specialists with intellectual and scientific occupations, as described by the Classification of Occupations in Romania, teach, at different levels, "the theory and practice of one or more disciplines studies the concepts, theories and methods within their own discipline, which they improve or complete; they prepare their lectures or specialized papers; coordinate individual study, meditate students, prepare and educate people with disabilities; elaborates and modifies study programs; verifies and approves pedagogical methods and means; participates in making decisions regarding the organization of education and school and university activities" (Romanian Classification of Occupations). Both jobs, teacher and trainer, can be categorized as "teaching jobs" because they involve teaching, training, staff or student training activities.

We can conclude, based on the provisions of the administrative code and those of Law 161/2003, that police officers can hold teaching positions in public or private educational institutions authorized/accredited under the terms of the law, as well as the capacity of trainer, mentor, person-resource, or evaluator within professional training programs for adults organized under the conditions of the normative acts in the field of professional training. These activities are not limited by any other condition. Furthermore, as civil servants with special status, police officers can perform activities in the private sector that are not directly or indirectly related to the duties performed as civil officials, according to the job description. We can conclude that police officers can carry out training activities under an authorized training company from the private sector, even if those activities are related to the duties exercised according to the job description. The limitation of performing other activities - of not being related to the attributions in the job description - in the exercise of some functions in the private field refers to the situation in which they are performed in other fields than teaching, scientific research, and literary-artistic creation. Furthermore, all activities must take into account the other prohibitions in the police officer's special statute: "to carry out, directly or through intermediaries, commercial activities or participate in the administration or management of commercial companies, except as a shareholder; to carry out profit-making activities likely to harm the honour and dignity of the police officer or the institution to which he belongs" ( article 45, paragraph 1, letter g, h, Law 360/2002 on the Statute of Policemen).

Since the performance of these activities by the police does not endanger "the defence of national security, order, health, or public morals, the rights and freedoms of citizens", it does not violate the conditions set out in art. 53 paragraph 1 of the Romanian Constitution, which might justify restricting the exercise of certain rights or freedoms, in the case of the right to work.

Paradoxically, even if, as we demonstrated above, there are many allowed activities for police officers, including those within professional training programs for adults organized under the conditions of the normative acts in the field of professional training, the judicial investigating structures identified offences related to this field committed by Internal Affairs Ministry personnel. This offences are described in the Diagnosis of Corruption Facts Involving Employees of The Ministry of Internal Affairs in 2020.

In one of the cases investigated by Anticorruption National Directorate, Internal Affairs Ministry personnel utilised their professional experience based on his work on public office to undertake out duties within the controlled commercial company. The prosecutors affirmed that they performed different tasks, among them being that of professional training courses. We have to emphasize that if this courses would have been performed by a police officer within the legal



framework described above, this activity would have been permitted by law. In another case the suspects used the personal data belonging to some retired colleagues from the Ministry of Interior, to get into partnership agreements in order to legitimize the fact that the company has specialized personnel (trainers in the specific field), but none of them actually practiced or were remunerated. Again, another case in which the offences were committed in relation with the type of activity we discussed above: the ministry employee took advantage of his professional relationship with the police officers who served on the examination and attestation commissions for graduates of the security personnel qualification and professional training courses to persuade them to sign documents that falsely attested to the completion of the examination on a different date than the one on which the examination was actually carried out, without the approval of the Commission for the Authorization of Providers of Vocational Training for Adults.

### CONCLUSION

Although the teaching activity seems to be a part of the wrongdoings investigated within the cases described above, the elements which prosecutors had investigated as offence are based on the fact that the suspects conducted duties in other fields of private sector that are directly or indirectly related to their job description requirements. Moreover, regarding that that duties, they performed both the role of administrators of commercial companies owned by interneers, as well as the role of executors of the activities registered as the object of activity of those companies. In all these situations, they used the position they held and/or the expertise resulting from the exercise of their duties, to facilitate the illegal provision of goods transportation, tourist, and professional training services.

The analysis of the described cases reveals difficulties in managing the activities permitted for Internal Affairs Ministry personnel, including the police officers. Because of the different regulations with provisions in this area (Administrative Code, Law 161/2003, Law 360/2002) there might be a need for some methodology guidance norms, in order to ensure the necessary clarification.



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