

# Experiences of reliability tests in Hungarian healthcare system

## Abstract

Reliability tests or integrity tests involving doctors play an important role in the healthcare sector in order to ensure patient safety and maintain professional standards. This paper provides an overview of the importance and process of physician trustworthiness testing and the impact of testing results on health services and patient trust. The study analyzes the aims, methods and results of the studies, highlighting the positive and negative experiences. The research also points out that the regularity and comprehensiveness of reliability tests is vital in monitoring the performance of doctors and maintaining professional standards. Finally, the study makes recommendations for the further development and efficiency of the tests in order to improve the health care system.

**Keywords:** medical malpractice, medical liability, health care system, reliability tests

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## Introduction

Finding viable implies of activity against corruption could be an issue in nearly each nation. The toolbox of conceivable measures is continually growing, increasingly arrangements are being made that center more on anticipation. It is exceptionally troublesome to precisely distinguish the components that imperil the integrity. One of the devices for usually to conduct corruption examinations and reliability tests. The reason of reliability test is to set up whether the individual concerned fulfills his official duties. In arrange to set up this, the body conducting the test misleadingly makes life circumstances that will or may happen in reality amid the execution of the work. In pith, this simulated life situation implies setting a trap on the portion of the specialists, the specialist may be a scientific trap.

In Act C. of 2020 the Hungarian Government expressed its appreciation for the doctors who graduated during the coronavirus epidemic dedicated to his work. The law amendment that entered into force on January 1, 2021 implemented a significant wage increase for doctors and also classified the giving and acceptance of gratuities as a crime. This is a significant step towards a transparent and well-functioning healthcare system. My study seeks answers to the most important questions related to reliability tests.

Based on the main points of the law, the Criminal Code was also amended, classifying the giving or acceptance of a gratuity, as well as the invitation (even incitement), as a crime. Violation of the rules is punishable by up to three years in prison for healthcare workers, and up to one year in special cases, and up to one year in the case of patients or their relatives. The acceptance of gratuities should be prohibited for all health professionals, regardless of whether they are in the private sector or covered by social security. The only exception to this are the so-called low-value gifts, i.e. gifts reaching 5% of the monthly minimum wage. Gifts of such a small amount can be given and received from patients or relatives once every two months in case of longer treatment. In order to examine the administrative competence of medical professionals, the National Defense Authority can conduct reliability tests. In case of suspicion of a crime, the investigative authorities can also conduct investigations. It is possible to initiate a reliability investigation against health workers employed by the state. The investigations are usually directed against the employees of the health services, but an investigation can also be ordered against the employees of the budgetary bodies. Entrepreneurs, workers in the

private sector, and employees of foundations and churches cannot be investigated in this way. This means that health workers' phones cannot be tapped, and the content of their e-mails cannot be checked. Employees of the National Defense Service can confidentially record conversations, but if no irregularities are found during the authenticity checks, the recordings must be deleted. Only employees of the national defense service and the subject of the investigation may make recordings. In case of a negative result, the person concerned and his employer will be notified. If a crime is suspected, National Defense Service the will file a criminal complaint. If a reward is offered or requested, the healthcare professional or patient can contact the National Protection Authority.

## About the national defense service

Following the 2010 amendments to the Police Act, the National Protection Service / National Defense Service (NPS), the police's internal crime prevention and crime prevention unit, was given extensive powers to secretly monitor the work of public administration officials.

## What is reliability testing and who performs it?

The purpose of the test is to find out whether the person under investigation fulfills his legal and professional obligations. Credibility tests are regulated by the Police Act 7-7/D. § 10-13 of Decree 293/2010 (22.12.2010). are regulated by § Integrity is examined in artificially created (organized) living conditions. In other words, the investigator conducting the integrity test simulates real-life situations that the person under investigation has to face unknowingly. Credibility checks are carried out by the National Defense Service, the police's "internal crime prevention and detection service" (i.e. internal prevention).

In the beginning, the credibility investigations were aimed in principle at the detection of corruption. The involvement of health professionals was aimed at uncovering the receipt of gratuities. The investigations carried out for this purpose are similar to the tax authority's mock inspections. During the investigation, he makes a clear offer that he is willing to pay bribe money if the person under investigation fulfills a request that would otherwise violate his official and professional duties. Undercover investigators attempt to bribe the target of the investigation and use hidden devices to record their actions. If, for example, a police officer successfully pays a bribe

or a doctor accepts a gratuity, criminal proceedings will be initiated against them. However, the law allows investigators not only to detect corruption, but also to carry out broader covert surveillance.

In 2021, however, the range of persons under covert investigation was extended to include the following: Almost the entire executive branch: persons who are employees of government or budget agencies under the direction and control of a department or agency.

These include: Police officers, ministerial employees, employees of the General Directorate of Social and Child Protection (DGSSC) and all child protection and disability institutions, the Directorate of Education (OH), the National Public Health Center, the National Public Service University, medical staff, except students, church health employees of institutions and employees of the Parliamentary Guard.

With regard to doctors, the most typical are the acceptance of classic gratuities. In relation to healthcare, two cases related to corruption from recent years can be highlighted: A chief psychiatrist hired police officers to be on the patient list for a large amount of money. On the other hand, a complaint was filed in a case involving a doctor who embezzled drugs to treat the new coronavirus infection from the hospital where he worked and transferred them in exchange for money.

### Carrying out reliability tests

The persons on whom reliability tests can be carried out are collectively called protected persons.

#### The main rules are

The tests are always carried out on a specific person (i.e. not in general, but on each person individually), for a maximum of 15 days. This period can be extended by another 15 days. Three examinations may be conducted for one person within one calendar year, and the completion of the examinations must be notified (within 15 days of completion).

Secret intelligence gathering (ie, intelligence tools and methods) may be used during the investigation. However, it is important to note that only methods that are less intrusive and do not require judicial approval are permitted.

#### All reliability testing should be preceded by a plan that specifies the following:

- I. Who will be investigated?
- II. Why the investigation is justified?
- III. What tools or methods will be used?
- IV. What artificial or staged living conditions are planned (a detailed description is required)?
- V. When and where the inspection will take place (roads, road sections, districts, towns, villages, towns, villages, patrol routes, settlements, public institutions, vehicles)?
- VI. Who will conduct the survey and what responsibilities they will have; and
- VII. How the examination will be documented?
- VIII. Who will exercise the employer's authority over the subject of the investigation (this is necessary in order to receive information after the end of the investigation)?

This plan must be approved by the prosecutor, and the investigation can only begin after it is completed. At the end of the investigation, the prosecutor confirms that the investigation was conducted in accordance with the law. Data recorded during the collection of information on persons not related to the investigation (e.g. colleagues of the person subject to the investigation, or in some cases other persons staying in public buildings) must be deleted within three days.

#### What does it mean that an „information tool” can be used in an investigation?

This is a general term and refers to what the Police Act refers to as a „confidential information gathering device”. There are basically two types: those that are theoretically less intrusive and therefore do not require judicial authorization, and those that are more intrusive into the privacy of the person concerned and therefore require judicial authorization. Only devices that do not require judicial permission can be used in the framework of the reliability test.

#### In the case of intelligence gathering, the following tools can be used

„Police officers using false identities, embedded police officers or other persons working undercover with the police.

Communication metadata (presence or absence of communication, communication tools, communication partners, place of communication);

Surveillance of apartments, other buildings, fenced buildings, public areas, public places, and vehicles. Secret surveillance can also take place in public places or on publicly accessible vehicles. Events in these places can also be recorded and the necessary surveillance equipment can be installed (in the case of doctors, this could in principle also cover surgeries and operating rooms, but this is disproportionate and illegal, as explained below).

#### Such secret intelligence tools cannot be used

- I. Secret searches of private residences or private vehicles;
- II. Surveillance devices in private residences or private vehicles for covert surveillance; and
- III. Eavesdropping or eavesdropping on communications (phone calls, chats, emails);
- IV. Opening sealed letters
- V. Monitoring computer activity using installed software.

It is forbidden to eavesdrop on the phone conversations of the person under investigation, observe them in their home or vehicle, or obtain direct information about the content of their online or offline communications. In addition, a detailed preliminary plan for the credibility investigation must be prepared, and the prosecutor's office will examine whether the plan is proportionate to the goals to be achieved. The prosecutor's office also checks afterwards whether the investigation is legal. However, as explained in the next section, not all of these provide important safeguards against comprehensive surveillance.

In the context of credibility checks, civil servants are examined to see if they have fulfilled their “legal obligations or their obligations under the law, collective agreement, collective bargaining or employment contract”, and in some cases information is collected as part of an undercover investigation. The police can therefore use a wide range of information tools, but such privacy restrictions must be proportionate to law enforcement objectives. In other words,

the legislator “intends to extend the use of the tools of the law enforcement system to areas not related to law enforcement with the help of reliability tests and tools for this purpose.”

The only “result” of the investigation is the initiation of criminal proceedings, and disciplinary investigations and prosecutions based on reliability tests are expressly prohibited by law. In this case, however, it is not clear why the regulation, the violation or disregard of which, according to the text of the law, does not entail criminal liability (but disciplinary liability or other labor law or employment consequences) can be the subject of an investigation. If the goal is to uncover crimes, the investigations must be directed exclusively to this goal.

Inspectors working at crime prevention services are not eligible, as are psychologists, social workers, special educators, etc. working in child protection or social care. to check his “tasks”. If the legitimate purpose of the investigation is to fight corruption, then it is justified to allow surveillance in this context, but it would be a violation of fundamental rights to allow much broader surveillance of citizens working in the public administration.

The Minister of the Interior can order the inspection of the identity documents of the protected officials with a specific instruction. The Minister of the Interior can give individual instructions to the internal police organization responsible for the prevention and detection of crimes, which in turn can direct the conduct of the criminal investigation. In other words, it is up to the Home Secretary’s individual discretion not to abuse this form of surveillance.

There are no legal safeguards against such investigations. Procedural guarantees are contained in a regulation that the government can amend at any time to reduce the level of protection. The prosecutor’s inspection can therefore be terminated at any time.

The Police Act allows surveillance of public buildings and offices without a judicial warrant, including wiretapping, in the context of secret intelligence. However, these are also largely private areas, since this is where we spend most of our lives. In the workplace, for example, there is no sharp distinction between private and public life. Continuous, covert monitoring and eavesdropping in an office space is hardly considered a violation of rights compared to monitoring a private home. In addition, in some cases the legal definition is not entirely clear.

The collection of communications traffic data (metadata) is also not subject to judicial authorization, but such data can often be used to draw conclusions about the data subject that are as accurate as those derived from direct observation of the data subject’s communications. Therefore, even without the fear of eavesdropping, the available tools are no less invasive.

The reliability tests are then reported to the relevant parties. If a breach is found, a complaint can be made to the NCA or the Fundamental Rights Commissioner. Based on the procedure of the Commissioner of Fundamental Rights, they can also file a complaint with NSZH.

In this context, in our opinion, the complaint is not an effective remedy. The reason for this is that the parties are not informed of the details of the investigation, which can prevent the substantive formulation of the complaint and make this legal remedy unnecessary.

## Which laws govern credit checks?

The main rules for credit checks are contained in the Police Act of 1994 (Rtv.).<sup>1</sup>

### The most important rules are:

65/A. § (1) Prohibition of means of collecting confidential information subject to court permission.

§ 66 (1) The applicable secret information collection tools.

66/A. § 66. § (2) The NPS “can secretly observe and use technical means to record the activities and expressions of persons subject to identity verification, in office premises, in the vehicles of organizations employing protected persons and in the places of identity verification, as well as those staying in artificial living conditions activities and manifestations of persons” and is entitled “to place the necessary technical devices in the mentioned places”.

293/2010 on the operation of national security authorities. s. decree.

Some ID laws require covered individuals to submit to a background check as a condition of employment. This is because reliability checks are required by law and are not left to the discretion of the person concerned. Reliability checks are required by law and are not left to the discretion of those involved.

### Constitutional complaints in connection with reliability investigations

The Constitutional Court rejected the complaint of a doctor who claimed that the new provisions on health services violated his fundamental rights.

In his complaint, the doctor wrote that with the introduction of the new health service in 2021, he will have to live in fear that his private life could be invaded at any time by collecting confidential information that he would only find out about months later. A permanent restriction of fundamental rights results in a restriction of the exercise of the right to private and family life, even if no illegal act has been committed. According to him, this law violates the Constitution.

Prime Minister of the Constitutional Court’s advisory committee, chaired by President Tamas Sulyok, disagrees. He recognized the legislative purpose of the restrictions, which is to make the operation of the health care system transparent and to ensure people’s right to health and equal access to health care. The Constitutional Court recognized the act of restricting the “distributing-paying” practice as a constitutional value and found that this is the legitimate aim of restricting fundamental rights. Since both the giver of the tip and the recipient of the tip wanted to keep the tip a secret, it was only possible to reveal and prove the fact by creating artificial living conditions and using different means of secret surveillance - which is the essence of the reliability test.

Therefore, the Constitutional Court considers that the disputed restrictions are necessary and proportionate in relation to the importance of their purpose and the weight of the fundamental rights violation they cause. The Constitutional Court further noted that the agreements were not binding and health professionals were free to decide whether to sign them or not. Based on all of this, the doctors’ complaint was rejected by the Constitutional Court.<sup>2-6</sup>

### Reliability test statistics

Last year, the Ministry of Defense reported 225 cases. For the past several years, the NPS has protected and “screened” employees of the Public Health Service, as well as employees of law enforcement and administrative units. Last year, NPS initiated slightly more investigations than the previous year, but only 4 percent of them

related to payroll. In the vast majority of cases, bribery is discovered during background checks, but background checks have their own rules.

The National Defense Service was in the headlines last year primarily because of bribery; From March 2021, one of its tasks will be to expose health professionals who accept or expect bribes in exchange for treatment. The payment of a bribe, which for decades was considered a well-deserved benefit, is now clearly classified as a bribe. More specifically, it is not money, but a post-treatment gift that can be given to the healthcare professional with impunity. However, the amount of the gift may not exceed 5% of the current minimum wage (around 8-13 thousand forints in recent years).

The takeover of healthcare by non-governmental organizations drew the media's attention not only to the bribery procedures used in the doctor-patient relationship, but also to the organization, which for a long time operated especially secretly, as a kind of domestic intelligence organization. Previously, only protected employees of law enforcement and public administration units knew about the existence of the NGO, but in January of this year, the organization launched a television advertising campaign to discourage the use of bribes.

NGOs are police, not intelligence agencies, but closer to intelligence agencies. The reason for this is that although the NSI does not have the same investigative powers as the Secret Service, it can, like the Secret Service, use covert means to gather information to investigate a case. Once they have gathered the necessary information that can be used as evidence in a criminal case, an investigation is launched together with the police and the prosecutor's office. In other words, the case is handed over to the agency that conducts the investigation and prosecutes the case.

It is not unprecedented that national statistical institutes, which have been operating under the radar for a long time, are now operating as "fronts". Foreign intelligence agencies often conduct awareness campaigns, and the activities of Russian spies in northern Europe, including the Baltic states, are closely monitored by counterintelligence. It is true that such campaigns are not alien to NGOs. Last November, for example, a video was released showing a 37-year-old ex-highway policeman jailed for corruption shedding tears while sending messages to his colleagues. The short video is part of NTA's training package of educational films, biographies, presentations and interview booklets.

"Last year, our colleagues working in the public health sector held more than 60 crime prevention lectures in front of more than 6,000 doctors, nurses and students," Judit Pap, spokesperson of the NPS, told hvg.hu. According to spokesperson Papp, the goal of the lectures is to reach as many participants as possible get to know the corruption situations that occur in doctor-patient relationships and, in the words of the spokesperson, "learn what to do to avoid and prevent them".

However, in the information campaign launched in January, civil organizations no longer target only health professionals, but also other citizens. "We want people to know that there are ways to say thank you other than making a big fuss and giving and receiving envelopes. We would like awareness to change in this area," explains Pap.

The NGO received a total of 225 complaints last year, the organization said in its response to the questions. The fact that so many cases have been reported means that, in practice, many suspected crimes have been identified in the defense sector, of which health and hygiene is only one part. For example, the NPS covers all employees of the Home Affairs, Civil Defence, Police, Prisons and Immigration

Offices, as well as some budgetary agencies under the control and supervision of members of the government. In addition, there is a special department within the NPC that is responsible for investigating organized crime cases committed by protected personnel of various departments, as well as cases that require the joint cooperation of one or more partner agencies.

Judit Pap has not yet disclosed figures on how many protected departments were affected out of last year's 225 tips, but she said that the number of tips made by NVSZ is proportional to the number of personnel of the organizations concerned. In other words, there are more cases in organizations with tens of thousands of employees.

However, as of March 2021, the NPS is understood to have initiated a total of 105 proceedings against some 250 health workers for allegedly accepting or giving bribes. Last year, the giving or accepting of bribes was reported in 10 cases. "In these cases, the doctors or health workers did not commit any violations, but received cash payments after the treatment. This means that the health workers concerned accepted the money offered by the patient after the treatment, but did not make it a condition of the treatment.

However, this is not the only case where bribes are involved. Last year, the NCA uncovered 19 cases of bribery. These included, for example, doctors fraudulently writing prescriptions, offering VIP treatment in exchange for money, or issuing false medical certificates or fitness certificates in exchange for money.

The most egregious such case was that a sports doctor issued such certificates 454 times and reported 454 cases of bribery to the NPS. Also last year, a cardiologist was accused of bribery 67 times, while an oncologist and his assistant demanded money from cancer patients more than 80 times to start state-funded chemotherapy.

Non-governmental organizations active in the healthcare sector do not only report cases of bribery. Last year, for example, a number of investigations were launched into pharmaceutical counterfeiting, drug trafficking, abuse of performance-enhancing drugs, money laundering, fraud, embezzlement and perjury.

In the majority of cases, the NCA tries to expose the culprits with so-called "credibility investigations". Not only public health workers are investigated in the same way, but also workers in other sectors they protect, such as the police.

Tests of credibility are a type of on-the-spot test in which NCA officers, known as negotiators, test subjects without revealing their identity. For example, health workers are being investigated for issuing medical certificates without a medical examination or accepting cash from patients in exchange for money. Pap Judit emphasized that such reliability tests are strictly supervised by the prosecutor's office, and the negotiating officer can only "recommend" the subject once. If they refuse, they cannot plead or offer a higher amount.

During the reliability tests, the ÁNTSZ can only use tools approved by the prosecutor's office. Devices subject to court authorization (e.g. wiretapping) cannot be used during such investigations, but events can be secretly observed and recorded in the building, vehicle or place where the credibility investigation takes place.

If it is not a warrantless investigation, national officials can of course use any means of secrecy subject to judicial authorization, such as wiretapping, texting or secret searches, but they must always seek judicial authorization. It follows from the principles formulated by the Court that the reliability tests, carried out by authorities in the interest of detecting corruption, based on well-founded information

and with sufficient procedural guarantees regulated by legislation, do not conflict with fair procedure into the basic principle of real law.<sup>7-9</sup>

## Conclusions and recommendations

The psychology of bribery in healthcare is completely different than in any other life situation. In this case, the transfer of the benefit is motivated by the fact that the citizen is helping himself or a relative. Patients should therefore be aware that any gratuity that gets them into trouble is a crime, but even more so the healthcare worker to whom it is handed or forced into their pocket, even if in good faith.

The reliability test is actually an integrity test, where integrity refers to the inviolability, integrity, and incorruptibility of the person under investigation. During the test - on the basis of well-founded reasons and with prior permission from the prosecutor's office - the specially trained employees of the service create an artificial but real-life situation in which they play the role of the patient (or the patient's relative) trying to bribe the examined person, following the example of the healthcare sector. The purpose of the test is to determine whether the healthcare worker accepts the bribe or abuses his or her official position.

A test can be requested against an individual doctor three times a year. An interesting, point by point arrange is drawn up for each examination, which is affirmed by the prosecutor, and as it were at that point can the execution start. The assignment and supervision of the prosecutor does not conclusion here: a report is continuously composed approximately the examination, on the premise of which the prosecutor who already authorized it moreover checks the lawfulness of the execution.

### Recommendations:

- I. Healthcare providers in Hungary should prioritize the implementation of reliability tests to assess and improve the quality of healthcare services.
- II. Continuous monitoring and evaluation of reliability tests should be carried out to identify and address any gaps or deficiencies in the system and take corrective actions to improve patient outcomes and the overall quality of healthcare services.
- III. Reliability tests must be completely objective

IV. The authorities should only create the possibility of committing the crime, not encourage it

V. It is important to establish and record the willingness of the person affected by the test to break the rules

VI. The authorisation, execution and supervision of procedural actions should be clear and transparent

Crime prevention is clearly the main task. In all protected areas - in law enforcement, in public administration, as well as in health care - it is fundamental that the vast majority of those working there perform their work in compliance with legal and ethical standards, free from any illegal influence - in other words: with honor. The main point of carrying out reliability tests is to filter out the minority who do not meet these conditions, to reduce their proportion as much as possible.

## Acknowledgments

None.

## Conflicts of interest

The author declares there is no conflict of interest.

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