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Recruitment for Intelligence and Security Services – Maintaining Democratic Values, Integrity and Professionalism

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By Francisco Cardona



CENTRE FOR INTEGRITY
IN THE DEFENCE SECTOR

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IN THE DEFENCE SECTOR

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The views expressed in this report are those of the author and do not necessarily represent the views of, and should not be attributed to, the Norwegian MOD.

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FOREWORD

CIDS is proud to publish CIDS Report no. 1/2022: "Recruitment for Intelligence and Security Services – Maintaining Democratic Values, Integrity and Professionalism".

As part of a project funded by the Norwegian Ministry of Foreign Affairs in the Western Balkans, CIDS has assisted Ministries in drafting an HRM Strategies for MoDs and Mols and defence and security forces. As such, a couple of contentious issues have arisen:

1. Whether it would make sense to legally exempt the Security-Intelligence Directorate of MoD's from the obligation to follow merit-based open competition rules in staff recruitment,
2. to what extent the lack of transparency of the security vetting procedure should be mended by reducing its opaqueness.

Personnel recruitment to security-intelligence directorates in some countries is exempted from competitive procedures. One of the alleged grounds for such legal exemption is that it is a common practice in intelligence services of other NATO countries. This paper shows that opaque, non-merit-based recruitment is, in fact, not the norm for Allies, as demonstrated in the three European countries (France, Norway and Spain), that have been studied in comparison.

CIDS would be happy to receive feedback on the report.

Oslo, 24. March 2022



Per A. Christensen
Director

1. Background

As part of a project funded by the Norwegian Ministry of Foreign Affairs in the Western Balkans, CIDS has assisted Ministries of Defence in drafting a HRM Strategy for the MoD and the Armed Forces. As such, a couple of contentious issues have arisen: 1) whether it would make sense to legally exempt the Security-Intelligence Directorate of MoD's from the obligation to follow merit-based open competition rules in staff recruitment and 2) to what extent the lack of transparency of the security vetting procedure should be mended by reducing its opacity.

Personnel recruitment to MoD Security-Intelligence Directorates in some countries is exempted from competitive procedures. One of the alleged grounds for such legal exemption is that it is a common practice in MoD Intelligence Services of other NATO countries. This paper shows that opaque, non-merit-based recruitment is, in fact, not the norm in European consolidated democracies.

The Security and Intelligence Directorate conducts security vetting of all candidates and personnel in the MoD and the Armed Forces in some of the CIDS partner countries.

Those undergoing this security clearance procedure, do not have the right to be heard. The vetting procedure is carried out for recruitment, promotion to a higher position and termination of employment. Unsuccessful candidates do not have the right to know the reasons for a negative security clearance. The only exception is sometimes the termination of employment, where an employee can challenge a security vetting decision in the administrative procedure and before a court (in a judicial review/ administrative dispute). The security vetting procedure is governed by the non-publicly available MoD Rulebook on Security Vetting, the provisions of which are classified.

These arrangements make the risk real of patronage and 'tribal' practice in intelligence services' personnel management to the detriment of professionalism. On the other hand, the opacity of the vetting procedures is contemptuous for individual rights and risky for the democratic and civilian control of the armed forces.

2. Conceptualising and framing the Issue: Professionalism in Defence Establishments and NATO Member Nations

Personnel in the military, security, intelligence services are public servants. They are part of national administrations in a larger sense, which need genuine professionals. This is especially worth considering in the context of NATO enlargement.¹

NATO's value basis was substantially reaffirmed after the collapse of the Eastern Bloc when key proponents of NATO enlargement argued that eastward enlargement of the Alliance would help consolidate democratic regimes in the post-communist states.² NATO documents established a direct link between the inclusion of new countries in the Alliance's community of shared values and the achievement of freedom and security: the promotion of democracy, rule of law and human rights is not only regarded as a moral obligation, it is also seen as an instrument of security policy that helps to promote peace and stability.³

Without a professional public service managed in accordance with the merit principle, it is difficult to conceive that NATO's core values can be realised. There is a well-recognised correlation between, on the one hand, arrangements for an impartial and professionally independent public service and, on the other, the development and consolidation of a democracy based on the rule of law. More specifically, robust systems for professionalism in defence establishments promote resilience by ensuring appropriate democratic and civilian control of the armed forces. This safeguards the Ministry against undue political interference or military control.

The professionalism and capacity of NATO member states' security institutions to deliver what is expected of them,

are important for the Alliance's ability to realise its collective goals and values.

NATO is made up of 30 member states. They have all agreed to contribute to collective defence should a member be threatened. As such it is of the essence that the Alliance can rely on the capacity of all member states to deliver. Reliability and trust can only be ensured by professionalism and respect for NATO's shared values. As debates in, for example, Germany have shown, dysfunctional domestic institutions may in fact lead to a situation in which it might be difficult for all Allies to agree on assisting a member country if it has failed to meet fundamental NATO requirements.⁴

In summary, the notion of a common security based on credible collective defence is not simply a product of formal commitments and military operability. Trust based on common values and political reliability is also important. A well-functioning public service is an intrinsic part of political reliability. Professionalism and integrity in the public service should, therefore, be seen as important both for national and international security. In short, good governance may also be considered a security concern. Lack of integrity increases the vulnerability of a country to be a victim of hybrid threats. Professionalism and integrity in the armed forces, ministries of defence and other security institutions have implications that go far beyond efficient and effective human resource management systems.

1 See CIDS (2015). *Professionalism and Integrity in the Public Service*, in *Guides to Good Governance* no. 1. At <https://cids.no/cids-publications/>

2 Reiter, Dan. 2001. "Why NATO Enlargement Does Not Spread Democracy", *International Security* 25 (4): 41-67.

3 NATO. "The Study on NATO Enlargement". "By integrating more countries into the existing community of values and institutions, consistent with the objectives of the Washington Treaty and the London Declaration, NATO enlargement will safeguard the freedom and security of all its members in accordance with the principles of the UN Charter." The study is available at http://www.nato.int/cps/en/natolive/official_texts_24733.htm

4 See for example "Freies Land?" *Frankfurter Allgemeine Zeitung*, 28 April 2014.

3. Essentials of the Merit System

In the public service, personnel management operations are governed by the merit principle in most developed states. The merit principle is usually understood as recruiting, selecting, and the advancement of employees based on their relative ability, knowledge and skills or competencies, as well as non-discrimination (equal treatment) regardless of personal characteristics such as gender, race, religion, sexual inclination, age, political persuasion, or non-invalidating disabilities. Personnel management processes and procedures, including recruitment and promotion, shall respect the privacy and constitutional rights of the candidates as citizens.

With national variations and modalities, the main characteristics of public service systems in advanced democracies, be they career-based or position-based, can be summarised as follows⁵:

- Public servants are recruited and promoted by means of competitive examinations, which have replaced previous selection modalities based on patronage and venality;
- restrictions to arbitrary transfer, demotion or dismissal of public servants are well established;
- the political neutrality and impartiality of public servants constitute stringent obligations imposed upon them; public service positions are established centrally and classified by grades or/and steps;
- salaries are determined in legislation and are paid according to grade and seniority rather than according to the quality and quantity of the work actually performed (although this feature is currently under revision in some countries – so far with uneven and unclear outcomes – so as to introduce a more performance-related salary treatments);
- in certain countries restrictions apply to lateral entry into the public service, particularly in those countries where career systems are prevalent (the majority of senior

positions are filled through internal promotions, and the majority of public servants enter the service at the lower levels of the hierarchy).

The system is monitored by means of strong control mechanisms and institutions, including independent public service commissions (mainly in the British Commonwealth countries) or independent judicial review of the management of the civil service (mainly in administrative law countries).

The professionalism and political neutrality of the public service postulate its autonomy from politics and its autonomy as a state institution. This institution is formed of heterogeneous professions and trades but has the capacity to build common practices and rules of behaviour, as well as its own set of values and group culture (*esprit de corps*), which in turn contribute to legitimising its existence and its actions. The professionalization of the public service in democracies can only be achieved by means of the merit system. This system is at the foundation of modern bureaucracies.⁶

Criticism of the merit-based public service derives perhaps either from a lack of understanding of the real nature of the problems that the merit system is meant to solve or from a broader ideological attempt to undermine the State and its institutions. The constant disparaging of the public service from different social quarters led the OECD (2000) to claim that for public organisations to become attractive workplaces, the first measure and “the most important challenge” is “a comprehensive investment in building a positive and credible image of the public sector work and working conditions”.⁷

5 Cardona, F. (2004): “Civil Service, Democracy and Economic Development” in *Viešoji Politika ir Administravimas*, 2004. Nr. 7, pages 16-22. <https://repository.mruni.eu/handle/007/13762?show=full>

6 Dreyfus, F. (2000) : *L'invention de la bureaucratie: Servir l'État en France, en Grande-Bretagne et aux États-Unis (XVIII-XX siècles)*. Paris: Editions La Découverte.

7 OECD (2000): “*Public Service as an Employer of Choice*” Policy Brief, June 2000.

4. Operationalising the Merit System in Recruitment

The merit principle is operationalised in recruitment through several mechanisms: public announcement of vacancies, which should describe the job contents and the main components of the recruitment process, including examination or tests, the areas to be tested, the percentage assigned to each component, any entrance requirements (e.g., level of education or training and experience requirements), and any threshold points which will be used in the examination. Such openness forces specificity in assessment methods at the beginning of the testing process. Vague statements on the terms and conditions on which the recruitment will take place, are unacceptable and are liable to be annulled by higher administrative or judicial review bodies.

Another operational mechanism of the merit principle in hiring for the civil service, is the requirement that all applicants are allowed to fairly compete for job openings by following a pre-established and fair procedure in transparent manners.

Merit selection is a cornerstone of all public service systems in advanced, democratic states. In position-based systems, the civil service legislation requires that persons who are appointed have proven themselves to be capable of performing the primary and dominant duties of the position. Their assessment is to be restricted to those areas which can be reliably and fairly measured and that have a direct correlation with the contents of the position to be occupied by the candidate. Otherwise, serious candidates may abstain from participating, and the recruitment scheme may become the object of public derision and disparagement.

Recruiting authorities shall focus on content-valid personnel selection tests, which measure the capability of a person to perform the job. Tests are usually cognitive, i.e., designed to measure the knowledge, skills and abilities required to perform the job. Alternatively, the tests are designed to include samples of job duties themselves (i.e., simulations of real-life job situations). Omitted from the testing process are those areas which cannot be reliably and fairly tested, including various personality variables such as honesty, willingness to take risk, affectivity, and willingness to assume authority, leadership capability, etc. This leads to a very

practical and basic orientation in the choice of areas to be tested.

In the public service, areas not tested usually include personality factors, personal characteristics, attitudes and preferences, motivation and the knowledge, skills, and abilities not amenable to testing through examination. Personality factors are typically not considered amenable to reliable and valid testing or to have demonstrable relationships with future job performance. However, this kind of testing may be very useful for recruiting to certain positions related to security and intelligence, jobs deemed exceptions to the general rules.

Generally speaking, personal attitudes, preferences and motivation are typically and similarly omitted for two reasons. First, measures of these areas are so open to false and subjective evaluation that they are not considered amenable to fair and reliable measurement. Second, these areas may not fit under the legal mandate required to perform the job. The knowledge, skills, and abilities not amenable to measurement might include honesty, creativity, courage, and some aspects of the practical application of the knowledge and skills which are measured. Non-measurable testing can be conducive to a recruitment procedure which is against the merit principle by introducing elements of excessive discretion, even arbitrariness in personnel selection. These are the reasons why intelligence and security-related jobs tend to have specific rules guaranteeing the merit principle while simultaneously measuring personal attitudes of candidates.

Nevertheless, the characteristics of the public service generate special constraints on the feasibility of various types of tests and the use of those tests. Public administration shall function under a merit system, in which applicants have many legal rights. They are usually able to question or appeal the testing process, and employers must be able to explain why a particular type of test was used and how it was scored. In addition, applicants legitimately expect that their rights to privacy will be respected. Notwithstanding, tests used by public sector employers must meet the same stringent technical and legal requirements as tests for any other employers, including psychological tests.

5. Discretion in Appointment should be limited while Transparency should be maximal

Often, if the appointing authority chooses someone other than the top person on the list of scores, a legitimate justification must be offered. There is often a legal requirement related to the administrative acts to be grounded on factual and legal bases. Giving reasons for administrative decisions is a strong requirement in, for example, a Law on Administrative Procedures. It also forms part of the European good administration principles (article 41 of the European Charter of Fundamental Rights). These reasons and justifications may be a matter of public record, open to inspection by any person and particularly by the persons not appointed. Appeal rights and mechanisms for lodging an appeal in court are given to rejected candidates. Courts and reviewing instances may review all documents, tests and examinations which grounded the recruitment decision in every aspect and its totality. The applicants may have the right to appeal individual test items in addition to whole test components.

The propriety of the final appointment decision may also be appealed. An applicant high on the list may feel that the appointing authority gave an untrue reason or a pretext for choosing a lower placed applicant. Before going to the administrative court, the facts behind such decisions may

be examined in detail before an independent administrative body. Often there is an independent administrative body (e.g., an appeal commission) set up to hear such appeals and empowered to establish direct remedies, including the firing of an applicant hired in violation of the merit principle. Often, not only applicants are monitoring the hiring process, but also the media because recruitment in the public sector is politically sensitive and attracts media and NGO attention.

In the public sector, personnel selection often is in the focus of a strain between political pressure, leaning to patronage and clientelism on the one hand, and legal mandates imposing fairness and merit selection on the other. Too often, politicians consider that the most important characteristics of key subordinates are loyalty and commitment to political agendas rather than managerial skills and expert knowledge. This obviously conflicts with the merit principle of choosing the best person for the job based on knowledge, abilities, and skills, which is required by law. In the private sector, merit-based recruitment is not a legal mandate.

6. Do Defence and Security Sectors necessitate special Recruitment Roles? If so, how special should these be?

Typical challenges in the operation of intelligence services in a democracy stem from the following:⁸

- *Secrecy*: management, control and oversight of a large governmental bureaucracy is more complex when there is a need for secrecy. Independent, but complementary oversight institutions with clear mandates for access to information can help overcome this problem.
- *Discretion*: intelligence professionals commonly have discretionary authority to make independent decisions during their work. Effective oversight is time-consuming and difficult.
- *Political will*: due to the level of secrecy in intelligence services, many aspects related to intelligence oversight cannot be publicly discussed, and are therefore not necessarily useful for winning citizens attention and votes. Thus, elected representative may lack incentives to invest their time in intelligence oversight.
- *Exaggerated threat perceptions*: perceived threats to national security can be used to justify actions that may be disproportionate to the threat and harmful to the principles of democratic governance, human rights, and the rule of law. A high level of professionalism, autonomy from politics, and effective oversight are necessary to ensure that intelligence services are at the service of the democratic society.
- *International scope*: international intelligence cooperation extends the powers and activities of national intelligence services beyond the reach of national systems of control and oversight. Oversight powers do not reach beyond national jurisdiction, but defining the scope and nature of international cooperation can prevent abuses and bolster the credibility of national intelligence services,

as we have discussed above in the context of NATO integration.

- *Technology*: technologies used in intelligence work advance faster than the mandates and powers for their oversight and control, leading to gaps in accountability. Technical experts can provide oversight authorities with key information, while legislatures need to ensure that legal frameworks keep abreast of such changes.

Given these challenges, how special should the rules be? Wherein lies the difference between justified legal speciality and unjustified privilege?

The legal philosopher Gustav Radbruch warned of the consequences of a system where one rule appears to apply to a selected few and another to everyone else. Given his service as German Minister of Justice during the Weimar Republic and later, as a respected legal academic, we would do well to draw from his views on how the law is made and upheld. Radbruch suggested that a rule that does not treat equal cases alike could be so unjust that it undermines the stability of the entire legal system. If the wider population thinks that a person is exempted from a rule for no good reason, everyone else would, rightfully, question the point of the rule. They may ask why they should follow it – if enough people do this, the reason for having the rule in the first place disappears completely. If that happens in a society, such a society will become ungovernable, the rule of law fades away and the rule by the powerful few prevails.

⁸ See DCAF: https://www.dcaf.ch/sites/default/files/publications/documents/EN-GUIDELINES_FOR_INTELLIGENCE_OVERSIGHT.pdf

7. Benchmarking some Intelligence Services amongst NATO Members

The criteria for choosing France, Norway and Spain as benchmark countries is that they present different traditions in promoting merit-based recruitment to their defence intelligence services and different attitudes towards the principle of transparency in public administration. France and Spain evolved from absolutism towards democracy over a quite long period of time. The legacy of their respective history still lingers in certain aspects of their contemporary governance mindset such as a tendency to opaqueness, secrecy, and confidentiality, which they have tried to mitigate in several ways, as their societies have become more demanding and more aware of their right to know how the institutions of the state are working. In parallel, their partnership in international organisations have pushed them towards further professionalising their state apparatuses, including intelligence services.

Norway comes from quite a different tradition. It is a country where societal trust in public institutions remains strong, merit-based values are at the core of the individual rights of citizens, and transparency has traditionally been an undisputed national conviction which the society tends to take for granted.

These differences among the three countries are reflected in their respective approaches to the management of such sensitive institutions as their defence intelligence services. Obviously, the internal tensions in their systems could manifest themselves through deeper scrutiny and research. For our current purpose a succinct tour of horizon will, however, suffice.

Nevertheless, we may extract some commonalities with respect to the topics we are interested in. In the three countries, recruitment on merit is the main mechanism for staffing the defence intelligence services. Security clearance is a common practice which is carried out in relatively transparent ways, as the decisions on clearance are open to independent scrutiny and challengeable before independent courts.

FRANCE: DIRECTION DU RENSEIGNEMENT ET DE LA SECURITE DE LA DEFENSE (DRSD)

In France, there are several services working in the various fields of intelligence gathering. The DRSD (*Direction du Renseignement et de la Sécurité de la Défense*) is one of the six services belonging to the 'first' circle of the intelligence community. It is made up of the DGSE (Directorate-General for External Security), the DGSI (Directorate-General for Internal Security), the DRM (Military Intelligence Directorate), the DNRED (National Directorate for Intelligence and Customs Investigations) and TRACFIN (Intelligence processing and action against underground financial circuits). The DRSD is allowed to utilise all the intelligence techniques regulated by the Law on Intelligence dated July 2015.

In the area of defence, the Directorate of the Intelligence and Security of the Defence (DRSD), which is part of the MoD, is the main operator.⁹ The DRSD is 1500-strong, including military (70%) and civilian (30 %) personnel. The DRSD is "the service placed at the disposal of the Minister of Armed Forces to exercise his/her responsibilities for the security of personnel, information, equipment and sensitive sites", as stated in Article D3126 of the Defence Code. In other words, the hard-core of the DRSD's mission is counterintelligence in the defence sphere.

Recruitment is mostly considered a modality of mobility through transfers based on merit principles (knowledge, skills, capabilities, competencies, and reliability-security clearance). Recruitment-transfer is open to any member of the armed forces and any of the civil services (state, territorial, health care, municipalities, parliamentary, judges, prosecutors, etc).

Recruitment from among the military personnel: The DRSD recruits hundreds of personnel every year from among senior non-commissioned officers (*militaires du rang*), sub officials (NCO, i.e., non-commissioned officers) of the armed forces (navy, air force and army) and other officers through a selection procedure which is based

⁹ <https://www.drds.defense.gouv.fr/recrutement>

on an examination or on the personal experience in the armed forces. Successfully selected candidates become Inspectors of the Defence Security. Candidates must meet the established legal requirements and especially the education credentials required. Professional profiles vary from cyber security, rare languages, data mining, as well as support positions such as HR, law, finances, logistics, etc.). Regarding recruiting from military personnel, the procedure consists of lodging an electronic application to a vacancy which matches the professional profile of the applicant, along with the personal dossier of the applicant, with the DRSD. It is followed by a scrutiny of the dossier by the Human Resource Directorate of the army. Candidates meeting the requirements of experience and education credentials are called for an interview at the central directorate of the DRSD. Finally, successful candidates undergo a security clearance (*agrément de sécurité*).

Recruitment from among civilian personnel: The procedure is similar to that of military personnel, but it includes an interview with a psychologist and a “*procedure d’habilitation*” (administrative inquiry carried out by the DRSD on the reliability from the perspective of the security of physical individuals or moral persons).¹⁰

The rejection of a candidate due to denial of security clearance can be appealed in front of an administrative judge. The latter shall request the declassification of the parts of the concerned information about the candidate from the Consultative Commission for the Secret of the National Defence (CCSDN). An independent administrative authority is entitled to access classified information. This body has no authority to order the declassification of any document, but only to advise the Minister of Defence on the matter.¹¹

NORWAY: NATIONAL SECURITY AUTHORITY (NSM)

The Norwegian National Security Authority (NSM) is a cross-sectoral professional and supervisory authority of the protective security services in Norway. The purpose of protective security is to counter threats to the independence and security of the Kingdom and other vital

national security interests, primarily espionage, sabotage or acts of terrorism. Protective security measures shall not be more intrusive than strictly necessary and shall serve to promote a robust and safe society. The directorate was established on 1 January 2003 and reports to the Ministry of Justice and Public Security (civil sector) and the Ministry of Defence (military sector). The 2018 National Security Act (in force as of 1 January 2019) regulates the NSM.

Recruitment is generally made from among the ranks of the army and the police and increasingly from the general civil service through merit-based, competitive procedures. Section 8 of the Law regulates the security clearance for those who need access to information classified “confidential” and above. A decision requiring access clearance that affects an independent natural or legal person may be appealed. A person may be cleared if there are no reasonable grounds for doubting the person’s suitability related to security. Clearance decisions are made by the clearance authority.

Section 8-5 establishes the vetting procedure for awarding security clearance. According to Section 8-13, any person who has been assessed for clearance is entitled to know the outcome of the assessment. If it is decided that the person should not be granted the desired clearance, the clearance authority shall on its own initiative notify the person of the outcome and the reasons for it. The clearance authority shall also give notice of the right to appeal the decision. The clearance authority shall prepare an internal statement of reasons which specifies all relevant circumstances.

Pursuant Section 8-14, once a clearance decision has been made, the person who has been assessed for clearance is entitled to examine the case documents. The person is not entitled to all or parts of documents which contain confidential information. Nor is the person entitled to disclosure of documents prepared as part of the internal case preparations of the clearance authority or the body of appeal. The exception does not apply to information or summaries or other processed forms of information.

The National Security Authority is the body of appeal with respect to any clearance authority. The Ministry is the body of appeal with respect of clearance decisions made by the National Security Authority at first instance. A denial of security clearance can also be brought before

¹⁰ For critical details on the procedure, see <http://www.senat.fr/rap/r19-506/r19-50616.html> ; see also <https://www.intelligenceonline.com/tags/drdsd>

¹¹ See CIDS (2016): Guides to Good Governance No. 4: *Access to information and limits to public transparency*, page 12. At: <https://cids.no/wp-content/uploads/pdf/7933-DSS-Access-to-information-GGG-4-skjern.pdf>

the Norwegian Parliamentary Oversight Committee on Intelligence and Security Services. Administrative decisions on security clearance may be appealed before the general courts.

SPAIN: NATIONAL INTELLIGENCE CENTRE (CNI)

Traditionally, the Spanish intelligence services have had a strong military character, in terms of its structure, its assignments and its staff. The CNI (*Centro Nacional de Inteligencia*) inherited from its predecessor, the CESID (*Centro Superior de Información de la Defensa*), a workforce comprised mainly of military personnel and members of the Police and Civil Guard. Nepotism and the priority given to the hiring of military and police personnel already within the system, both characteristics of the recruitment of the previous intelligence service, were explained under the pretext of the organisation's need to protect itself from infiltration by other foreign intelligence services. Consequently, the recruitment of civilian staff in the CESID was minimal, and limited to administrative positions, translators, and drivers. It was not until the eighties that major changes were made in personnel policy, including a move to recruit civilians, especially women. The subsequent enactment of the CESID Staff Regulations (1995) was an important milestone in the history of the Spanish intelligence services in general, as well as personnel policy, since it enabled the streamlining of the admission, training, and professionalization of its members. It also facilitated the establishment of a more defined and appropriate selection policy based on a principle of merit.

The current CNI was created in 2002. Article 5 of the Law governing the CNI (Law 11/2002 of 6 May) establishes the classified nature of all aspects regarding personnel and the information or data that may lead to their disclosure. However, article 6 of the Statute of Personnel of the CNI, approved by Royal Decree 240/2013, of 5 April, details the specifics of the recruitment requirements and procedures. Accordingly, recruitment and selection are to be carried out through one of the modalities established in the general law on civil service: *concurso-oposición*. In

Spain, one can become a civil servant or public employee through the classical examination of the career system (called *oposición*), or through a mere screening of the CV followed by an interview with an ad hoc commission (called *concurso*), although this procedure is considered by the law to be exceptional and only for very restricted use. Finally, a combination of both (called *concurso-oposición*) exists, in which the goal is to assess the knowledge, skills and the experience of candidates in a combined way.

The general rule is a publicly announced competition, but it is also possible to invite individuals (usually from the military or from the police or civil guard) recommended by members of the CNI, a practise that has been criticised because it may perpetuate nepotistic practices (patronage, clientelism, etc.) in the intelligence service, even if the education credentials are a fundamental requirement. It is also necessary to have a security clearance (*informe favorable de seguridad*). Article 11 provides details on the security clearance, which includes several tests: personality, assessment of personal liaisons and economic situation and other vulnerabilities of the candidate, capacity to write reports in an orderly and concisely manner, as well as proficiency in foreign languages, among other aspects and skills. The recruitment is thus merit/competency-based. Specific training courses may form part of the selection process. Candidates are selected on probation (*prácticas*) and there is a commitment to remain at the CNI for a minimum period of four years. Otherwise, one must compensate the CNI for the expenditure carried out in training and preparation for the full-fledged performance of the relevant job. A permanent post is offered only after the fifth year of service.

Candidates rejected because they fail to obtain a security clearance, can appeal through the administrative remedies established in the law on Administrative Procedures and to the administrative court. In fact, any decision on personnel issues can be appealed through the internal administrative procedures first and then via an administrative court system (article 110).

8. Conclusions

The three examined country cases show that there is a merit-based recruitment procedure for intelligence services, which primarily, but not exclusively, operates as an internal transfer mechanism of personnel already having the status of military, security, or civil servants.

- The need for security clearance is practised by all countries examined. While preserving confidential information contained in the clearance procedure file,

the rejection of the clearance shall be based on legal and factual reasons, and the relevant decision on clearance can be appealed through administrative and judicial appeal procedures.

- Other NATO countries rely, with variations, on similar procedures. Therefore, we may safely conclude that merit-based recruitment and transparency is the rule in recruitment for military intelligence services.

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