

Promo-LEX Opinion on the draft Law No 511 of 10 December 2020 which provides for the return to military ranks within the Ministry of Internal Affairs

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Sent by e-mail

To Mr Serghei SIRBU

Chairman of the Committee for National Security, Defense and
Public Order

To the members of the Committee for National Security, Defense
and Public Order

Draft law authors: Mr Lebedinschi Adrian and Mr Gagauz Fiodor

Copy: To Mrs Maia SANDU,

President of the Republic of Moldova

To Mr Pavel VOICU, Minister of Internal Affairs

To Mr Sergiu PAIU, Head of the General Police Inspectorate

Dear Sirs/Madams,

Promo-LEX Association, on the grounds of Law No 239-XVI of 13 November 2008 on Transparency of Decision-Making Process and

the Regulation of the Parliament approved by Law No 7979-XIII of 2 April 1996, would like to participate in the public consultations of the draft Law amending and supplementing the Law No 288/2016 on Civil Servant with Special Status within the Ministry of Internal Affairs (registration number in the Parliament: 511 of 10 December 2020[1])

Respectively, Promo-LEX Association, as a stakeholder, requires the Parliament Standing Committee for National Security, Defence and Public Order to review the findings, conclusions and recommendations of the Association regarding the draft Law No 511 of 10 December 2020 under this Opinion.

FINDINGS AND RECOMMENDATIONS:

Following the draft analysis, **Promo-LEX Association presents the following findings and recommendations:**

General background to the proposed amendments

By Law No 288 of 16 December 2016 on Civil Servant with Special Status within the Ministry of Internal Affairs (MIA)[2] new titles for special ranks were introduced[3]. This draft Law was drawn up by MIA and, according to the Information Note, represented a new stage in the process of modernization of the management of Human Resources within the Ministry, as well as a new step towards the actual demilitarisation.

In April 2020, MIA published on the platform www.particip.gov.md the draft Government Decision on the approval of the draft Law amending the Law No 288/2016 on Civil Servant with Special Status within the Ministry of Internal Affairs (unique number 262/MIA/2020), which however did not pass and was not approved in the Government meeting.

This draft is identical to the draft registered on **10 December**

2020 in the Parliament and submitted by the MPs Lebedinschi Adrian and Gagauz Fiodor. The submitted draft law aims to bring back the old titles for special ranks that would correspond to military ranks. According to the authors, this draft law is needed due to the following reasons:

- the current titles of special ranks create confusions and uncertainties among civil society representatives that interact with civil servants with special status;
- it is necessary to establish links with similar special ranks from other national public institutions that operate with special ranks as Lieutenant, First Lieutenant, Captain, etc. (SPPS, NAC, SIS, Customs Service), especially when transferring from an institution to another.
- there are duplications and confusions regarding the Law No 270/2018 on the Salary System in the Budgetary Sector that operates with titles of positions similar to special ranks within MIA (inspector, senior inspector).

At the same time, according to the Information Note to the draft law, the return to previous titles of special ranks does not represent the militarisation of civil servants with a special status within MIA, or the 'rule of law' prevails on the 'rule of rank' that is typical for military structures.

Content of the proposed amendments

The draft Law No 511 of 10 December 2020 was passed in first reading on 13 March 2021. You will find below the main findings and proposals of the Promo-LEX Association.

- **The draft Law passed in the first reading does not ensure an effective correlation of special ranks for the sub-officers corps with the military ranks**

Though, one of the purposes stated in the draft Law is removing confusions and uncertainties regarding special ranks, as well as the need to correlate them with other special ranks

from other public institutions, ***we believe that this amendment will actually lead to more confusions and uncertainties, especially with regards to special ranks of the sub-officers.***

Law No 1245 of 18 July 2002 on the Preparation of Citizens for the Defence of the Motherland, provides the military ranks established in the Armed Forces, particularly for the number of soldiers, sergeants, low and high rank officers, and officers with senior ranks. We point out that the Law No 232 of 8 November 2018^[4] excluded the military ranks for sub-officers^[5]. At that time, the military ranks of the sub-officers (adjutant warrant officer (Ro: "plutonier adjutant"), major warrant officer- (Ro: "plutonier major"), warrant officer (Ro: "plutonier") were equated with the military ranks of the sergeants staff (respectively, Sergeant First Class, Sergeant Second Class, Sergeant Third Class), which led to a degradation of the staff class (though the previous rights were preserved).

Thus, we found that although within the Armed Forces the military ranks were changed, the special ranks within other institutions (SPPS, NAC, SIS) were not adjusted appropriately. Respectively, the ranks of warrant officer (Ro:"plutonier"), major warrant officer (Ro: "plutonier major"), adjutant warrant officer (Ro: "plutonier adjutant") do not correspond to the military ranks existing within the national system (Annex 1). Moreover, it is difficult to understand why the authors of the draft law want to establish the respective ranks within MIA.

A greater uncertainty may be created when approving the draft law on the special ranks of Junior Sergeant, Sergeant and Sergeant Major. These special ranks are to be assigned to the sub-officer corps within MIA, but to the Sergeant corps within Armed Forces. Moreover, after approving the Law No 232 of 8 November 2018, the system of military ranks removed the ranks of Junior Sergeant and Sergeant. In the system are established ranks of Corporal (Ro: "caporal)", Sergeant Third Class,

Sergeant Second Class, Sergeant First Class, Sergeant Major and Senior Sergeant (Ro: "sergent principal") (Annex 1). Therefore, if the proposed amendments are approved, a situation similar to the degradation of the staff class in the military system could be created in respect of civil servants with special status within MIA (from the sub-officers corps).

Considering the above mentioned, we find that there is no link between the special ranks that are to be established for the sub-officers and the military ranks existing in the Armed Forces system. The approval of this draft law will further create more uncertainties for the sub-officers corps.

- **Returning to military ranks in the Police activity jeopardises the efforts meant to reform and transform the Police into a civil institution that serves the community**

The 'demilitarisation' of the Police and the delimitation of the policeman status from other categories of servants that ensure the activity of the Police was one of the goals set up in the **Concept of Reform of the Ministry of Internal Affairs** and its subordinated and decentralised structures[\[6\]](#). According to this, ensuring a transparent, accessible and responsible police service all over the country is possible by removing the stereotype of a militarised and repressive institution. At the time of adopting the respective concept, the demilitarisation process was already being implemented (The Military Reform Concept[\[7\]](#), Law No 345 of 25 July 2003 on National Defence[\[8\]](#)) with further measures to be taken for boosting and speeding it up.

The issue of police 'demilitarisation' was also described in the **Information Note of the draft Law No 264 of 13 June 2016** on Civil Servant with Special Status within MIA. According to that document, the statute of personnel (military) is often

confused with the model of action used for carrying out their duties/missions. Thus, the civilian police model implies understanding and assuming that the order and security represent a public service for the community. To this end, it is worth mentioning that:

- civil servants with special status develop partnerships with the members of the society;
- the attitude in respect to the population, the system of designing and carrying out missions, the way of giving and executing orders changes;
- hierarchical relations are 'humanised';
- the general legislation on civil service and general labour legislation becomes applicable;
- judicial requests are submitted to civilian, not to military courts;
- the career system changes;
- **the ranks are not any more military, but professional, and have different titles, etc.**

In addition, according to the Information Note to the above mentioned draft law, the issue of 'demilitarisation' was solved at least officially by assigning the staff of MIA with status of civil servants with special status. Therefore, there should be no concerns about the risk of returning to the previous situation. Nonetheless, requests meant to ensure the efficient transformation of the police activity in terms of the above mentioned aspects (development of partnerships between civil servants with a special status and the society members; change of the attitude towards the population, the system of designing and carrying out missions, the way of giving and executing orders; 'humanisation' of hierarchical relations, etc.) were to be made, which is a long-lasting process.

The issue of demilitarisation was addressed in a series of strategic documents, including in the National Strategy on Public Order and Security for 2017-2020 [\[9\]](#) that found

persisting military practices and behaviours, despite the establishment of special status for MIA employees.

At the same time, according to the **Strategy on Reforming the Carabineer Troops for 2017-2020**[\[10\]](#), the development of public order and security system had to be performed by maintaining and strengthening the dual system for ensuring the public order and security, **where additional civil police (Police) and military structures (Carabineers) work**. Restoring the public order should be the main mission of Carabineers, and maintaining the public order – the main mission of Police. ***Thus, granting military ranks to the police renders meaningless the dual police system set up both by strategies and by law.***

At the same time, the **2016-2020 Police Development Strategy**[\[11\]](#), mentions that by dropping out the military system in terms of organisation form and management, prerequisites for the decentralisation and for an increased initiative in cooperating with public administration authorities and local community were created.

This Strategy was implemented thanks to the generous support provided by the development partners of the Republic of Moldova, particularly due to the budget support for the Police Reform granted by the European Union in the amount of about EUR 51 million. Provided that the Moldovan authorities are not consistent with the measures promoted in this field, and given that the practical utility the of the draft law voted in first reading is doubtful, ***we think it is relevant to draw the attention of the Parliament of the Republic of Moldova, of the Ministry of Internal Affairs and Presidency on the risk to lose the development partners' confidence and the financial support granted for the implementation of real reforms in this area.***

Given the above mentioned, we point out that a genuine demilitarisation process can be performed only if the

*conditions assumed through strategic documents are cumulatively met. **The failure to meet at least one condition, in this case – returning to military ranks, results into to the failure to meet the commitments and plans that were made.** In addition, considering that the ‘special rank represents the social acknowledgement of the position of civil servant with special status within MIA’ [\[12\]](#), **returning to military ranks could reverse the police reform.***

*We remind that the MIA and Police reform was launched in 2010 and so far, the beneficiary institutions enjoyed the support of more development partners. **To this end, we recommend the authors to withdraw the draft law.***

- **Draft Law No 511 of 10 December 2020 was passed in the first reading without any well-founded arguments for the implementation of the proposed amendments**

When analysing the Information Note to the draft law, it is not possible to identify the goal and/or the well-founded reasons for implementing the proposed amendments, or the respective draft law shall not solve any question of law or of fact. Thus, the National Anticorruption Centre, in its anti-corruption expert review report to the developed draft law, as well as the General Legal Division of the Parliament in its opinion, found that the Information Note did not provide sufficient reasons and a well defined goal for this amendment. At the same time, NAC mentioned the absence of a sufficient broad analysis based on concrete data, studies and their real impact, which proves that characteristics of the public officer with a special status within MIA were prejudiced as a result of the reform in the wording proposed in the Law No 288/2016.

At the same time, Promo-LEX Association believes that:

- the confusions regarding the current title of special ranks and uncertainties invoked in the context of

relations with the civil society representatives are a natural result of any reform or reorganisation process; respectively, through promotion of the new special ranks titles applied within MIA and the active communication with the citizens about the reform itself and about its benefits could solve the problem identified by the draft law authors.

- as about the correlation of special ranks with those from other public institutions (SPPS, NAC, SIS, Customs Service), the laws of those institutions contain express rules regarding the equivalence of special ranks with military ones. At the same time, given that the staff turnover has been a problem for MIA system for many years, it is not clear the necessity to facilitate the transfer from an institution to another by correlating similar special ranks.
- the rationale of the draft law authors concerning the duplications and confusions in the Law No 270/2018 on Salary System in the Budget Sector that operates with titles of positions similar to special ranks within MIA (inspector, senior inspector) is meaningless. Or, the qualified staff that operates with the Law on Salary is enabled to appropriately analyse, interpret and apply the respective legal rules. Moreover, in case of certain legal inconsistencies, these shall be settled by amending the Law on Salary in the Budget Sector, section public order and security.

In addition to the above mentioned reasons, the Promo-LEX Association points out that it is not logical and useful to grant military ranks to a civil police structure. According to the **European Code of Police Ethics** and the explanatory memorandum^[13], the police, when performing police duties in civil society, **shall be under the responsibility of civilian authorities**. The legal side of the police work – i.e. the police as a component of the criminal justice system – and the public order side, as well as the public service dimension of

the police work and the integration of the police into civil society – all these elements are at odds with the military duties and objectives (Annex 2) [\[14\]](#). Moreover, the legal basis and police powers in a society based on the rule of law, where the focus is on respecting the civil and political rights of individuals, are also different from those of the army. A police organisation under civilian responsibility is likely to best cultivate police professionalism suitable for civil society.

In conclusion, we believe that in the absence of well-founded arguments in favour of the need to approve this draft law, it should be withdrawn from the Parliament. Furthermore, following the analysis of policy documents and the related legal framework, we find that the approval of such a draft law is going to be detrimental to the system of the Ministry of Internal Affairs.

▪ Unjustified expenses for changing the titles of special ranks

Although in the economic and financial substantiation section, the author of the draft stated that the implementation of the said draft does not require the allocation of additional financial resources from the state budget, it should be noted that as a result of the change in the military rank titles, the service cards of all civil servants with special status within the MAI would be changed, including their insignia and service uniforms could be changed.

We note that the adoption of the Law No 288 of 16 December 2016 was followed by the draft Government Decision on approving the uniform, insignia and rules of equipping civil servants with special status within MIA [\[15\]](#). However, the draft Government Decision was not promoted and, correspondingly, not approved in a Government meeting, remaining into force the provisions of the Government Decision No 284 of 24 April 2013 [\[16\]](#), including those referring to the

insignia of the officers and sub-officers corresponding to the respective military ranks.

Thus, we found that at least in the case of civil servants within MIA who were employed in the period of 2017-2020 and who were awarded special ranks pursuant to the Law 288/2016, their service cards would have to be changed, which would require additional expenses.

Conclusions and Recommendations

In conclusion,

Promo-LEX Association finds inappropriate and unjustified for the Ministry of Internal Affairs to draft and promote such a law (MIA being its original author), its approval by the Parliament in the first reading being an irresponsible act that can affect strategically the processes of demilitarisation and transformation of police work, initiated ten years ago.

The adoption in the final reading of this draft law could be a deviation from the police reform path, for which considerable financial and human resources were allocated.

Thus, we reiterate that the return to the special rank titles corresponding to the military ones, according to Promo-LEX, is unfounded and unjustified for the following reasons:

- It contradicts the concept of Police demilitarisation, the policy documents for the reform of the MIA and of the Police, implemented during 2010-2020, as well as the commitments assumed by the authorities of the Republic of Moldova through the agreements concluded with development partners.
- The proposed draft law lacks well-founded arguments;
- The draft Law No 511 of 10 December 2020 does not ensure an effective correlation of the special ranks of sub-officers with the military ranks or the special ranks

assigned in other institutions. On the contrary, a military ranking system within Police will cause more uncertainties and risks.

- Passing such a draft law would require allocating financial resources, at least, for covering the costs for renewing the service cards.

Based on the considerations stated above, Promo-LEX Association **recommends the authors to withdraw the draft law from further examination, or, as the case may be, recommends the Parliament of the Republic of Moldova to reject the draft Law No 511 of 10 December 2020 in the second reading.**

In case the draft law is passed in the second reading, **we recommend the President of the Republic of Moldova, pursuant to the Article 93(2) of the Constitution of the Republic of Moldova, not to promulgate this law** and send it for review to the Parliament.

Annex 1: Correlation of special ranks with military ranks



Annex 2:



[\[1\] The draft Law](#) No 511 of 10 December 2020 supplementing and

amending the Law No 288/2016 on Civil Servant with Special Status within the Ministry of Internal Affairs

[2] [Law](#) No 288 of 16 December 2016 on Civil Servant with Special Status within the Ministry of Internal Affairs

[3] [The draft Law](#) No 264 of 13 June 2016 on Civil Servant with Special Status within the Ministry of Internal Affairs

[4] [Law](#) No 232 of 08 November 2018 on the Amendment of Certain Legislative Acts

[5] The *Law No 1244 /2002* on the Reserve of the Armed Forces, the *Law No 1245/2002* on the Preparation of Citizens for the Defence of the Motherland, *Law No 162/2005* on the Status of the Military Personnel, *Law No 147/2017* on the Regime of Conventional Arms and Munitions, of Special Means and Military Devices Owned by the National Army and Foreign Military Forces on the Territory of the Republic of Moldova were appropriately adjusted.

[6] [The Concept](#) of the Reform of Ministry of Internal Affairs and its subordinated and decentralised structures approved by the Government Decision No 1109 of 6 December 2010

[7] The Military Reform Concept, approved by the Parliament's Decision No 1315-XV of 26 July 2002, according to which Armed Forces consist of the National Army, Border Guard Troops and Carabineer Troops.

[8] *Law No 345* of 25 July 2003 on National Defence- according to Article 9, the National Defence Forces are represented by the Armed Forces consisting of the National Army and General Carabineer Inspectorate.

[9] [National Strategy](#) on Public Order and Security for 2017-2020, approved by Government Decision No 354 of 31 May 2017

[10] [Strategy](#) on Reforming the Carabineer Troops for

2017-2020, approved by Government Decision No 357 of 31 May 2017

[11] [Strategy](#) Police Development for 2016-2020, approved by Government Decision No 587 of 12 May 2016

[12] Information Note to the draft Law No 511 of 10 December 2020

[13] The [European Code of Police Ethics](#) Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum

[14] The difference between the special status of the police and the military status within the national system is represented in Annex 2

[15] [Draft](#) Government Decision on the approval of the uniform, insignia and rules of equipping with uniform civil servants with special status within the Ministry of Internal Affairs

[16] [Government Decision](#) No 284 of 24 April 2013 (Annex 2), regarding the approval of the uniform, insignia and rules of equipping police officers with uniform.