

KONCEPTUALNE MOMENTY ORGANIZACJI PRYWATNEJ DZIAŁALNOŚCI DETEKTYWISTYCZNEJ (ŚLEDCZEJ) NA UKRAINIE

Maryna Kulyk

*doktor nauk prawnych, docent Katedry dochodzeń przedprocesowych,
Narodowa Akademia Spraw Wewnętrznych, (Kijów, Ukraina)
e-mail: Coolss777@ukr.net
ORCID ID: 0000-0003-1373-6749*

Anna Stepanova

*doktor nauk prawnych, docent Katedry dochodzeń przedprocesowych,
Narodowa Akademia Spraw Wewnętrznych, (Kijów, Ukraina)
e-mail: annast7675@ukr.net
ORCID ID: 0000-0003-1280-0163*

Streszczenie. Artykuł poświęcony jest odrębnemu zagadnieniu badania problemów i perspektyw funkcjonowania prywatnych detektywów na Ukrainie. Przeanalizowano osobliwości projektu Ustawy Ukrainy "O prywatnym detektywie (śledztwie)", przedstawiono ich sprzeczności i propozycje harmonizacji.

Słowa kluczowe: prywatna działalność detektywistyczna, detektyw, usługi detektywistyczne, doświadczenie międzynarodowe, regulacje prawne dotyczące prywatnej działalności detektywistycznej.

CONCEPTUAL MOMENTS OF THE PRIVATE INVESTIGATION DETECTIVE (ROSSUK) IN UKRAINE

Marina Kulik

*Candidate of Law, associate professor of the Pre-trial Investigation Department of the
National Academy of Internal Affairs, (Kyiv, Ukraine)*

Anna Stepanova

*Candidate of Law, associate Professor of the Pre-trial Investigation Department of the
National Academy of Internal Affairs, (Kyiv, Ukraine)*

Abstract. The article is devoted to individual issues of the study of the problems and prospects of private detectives in Ukraine. The features of the draft Law of Ukraine "On Private Detective (Investigation) Activities" are analyzed, their contradictions are identified and proposals for their coordination are provided.

Keywords: private detective work, detective, detective services, international experience, legislative regulation of the implementation of private detective work.

КОНЦЕПТУАЛЬНІ МОМЕНТИ ОРГАНІЗАЦІЇ ПРИВАТНОЇ ДЕТЕКТИВНОЇ (РОЗШУКОВОЇ) ДІЯЛЬНОСТІ В УКРАЇНІ

Марина Кулик

*кандидат юридичних наук, доцент кафедри досудового розслідування
Національної академії внутрішніх справ, (Київ, Україна)*

Ганна Степанова

*кандидат юридичних наук, доцент кафедри досудового розслідування
Національної академії внутрішніх справ, (Київ, Україна)*

Анотація. Стаття призначена окремим питанням дослідження проблем та перспектив функціонування приватних детективів в Україні. Проаналізовано особливості проектів Закону України «Про приватну детективну (розшукову) діяльність», визначено їх суперечності та надані пропозиції щодо їх узгодження.

Ключові слова: приватна детективна діяльність, детектив, детективні послуги, міжнародний досвід, законодавче регламентування здійснення приватної детективної діяльності.

Formulation of the problem. The steady increase in the demand for security and detective services raises the need for the development of domestic private security and detective activities. And if the domestic private security activity has been developing for a long time and successfully, the development of private detective activity in Ukraine is just beginning. In such conditions, the need to introduce foreign experience, with its unconditional adaptation to Ukrainian legal, economic, social realities and taking into account the prospects for further development of this industry, becomes of particular importance.

Analysis of recent research and publications. The following scientists and practices in the field of security and law were devoted to the organization and legal support of private detective activity in Ukraine: V. Krutov, O. Frantsuz, V. Litvinenko, V. Cherkov, Y. Karmazin, O. Bandurka, V. Onopenko, V. Moysik, V. Shvets, V. Malyshev, M. Palamarchuk, A. Kozhemyakin, O. Prodan and others.

The purpose of the article is to study the problems and prospects of legalizing private detective activity in Ukraine on the basis of the draft Law of Ukraine "On Private Detective (Investigative) Activity".

Presenting main material. After the dignity revolution in Ukraine, an active process of constructing a modern democratic state has begun. Transformation of the post-totalitarian state is an essential element of another, even more complex and very important for our country's future process related to European integration.

Successful integration into European structures is impossible without bringing to European standards all aspects of life and activity of our state and society. This applies to politics, economics, legislation, the law enforcement system, the relationship between government and business, government and civil society, freedom of speech and democracy.

Particular attention should be paid to the modernization of the non-state security system in the transformation of society and the state towards the transition to European values and standards. An important component, which is a private detective activity.

This is evidenced by the fact that since 2000, Ukraine has developed 6 draft laws regulating this type of professional security activities ((*Pro pryvatnu detektyvnu*

diyalynist': Zakonoproekt vid 01.07.2004, Pro pryvatnu detektyvnu diyalynist': Zakonoproekt vid 05.04.2000 №5237, Proekt Zakonu Ukrayiny «Pro pryvatnu detektyvnu (rozshukovu) diyalynist'» vid 13. 12. 2012 r.).

The last of them is the Law of Ukraine "On Private Detective (Investigation) Activity" (No. 3726), sponsored by the People's Deputies M. Palamarchuk, A. Kozhemyakin, O. Prodan, A. Teteruk was adopted by the Verkhovna Rada of Ukraine on April 13, 2017 year (*Pro pryvatnu detektyvnu (rozshukovu) diyalynist': Proekt Zakonu № 3726 vid 14.02.2017 r.*), but, unfortunately, he was honored by the President of Ukraine. On the one hand, it speaks of the importance of private detective activity, but on the other hand, it shows that in this complex form of professional activity the interests of the state, society, citizens and business are seriously overlapping.

Private detective activity is the new direction in Ukraine in providing security and protection services, legal rights and interests of individuals and legal entities in our country. It is carried out for the purpose of searching, collecting and fixing information, searching for objects, property, people and animals, establishing facts and clarifying different circumstances on the order of the customer and in accordance with the contract on the provision of private detective (search) services.

The main areas of private detective activity are:

- 1) ensuring constitutional rights, freedoms and security of citizens of Ukraine;
- 2) ensuring the safety of business activities and economic security of economic entities;
- 3) assistance to state authorities and law enforcement agencies in combating crime and ensuring national security.

The subjects of private detective activity can be solved the following tasks:

- 1) search for missing people;
- 2) search for lost property of individuals and legal entities;
- 3) information provision of participants in the trial;
- 4) determination of the location of people;
- 5) information support for the preparation and conduct of business negotiations;
- 6) subjects of economic activity;
- 7) obtaining objective information about the business partner in order to determine the degree of its reliability;
- 8) security in the recruitment of new employees of economic entities and state institutions;
- 9) participation in measures to protect commercial secrets of a business entity and others (*Samoilenko A.A., 2013, p.87*).

Private detective activity is a very complex and responsible kind of professional security activity.

Like every new one, the field of professional security activities private detective activity faces problems. One of them, the successful decision of which is crucially the civilized development of private detective activity in our country, is the training of highly skilled personnel for detective activity. This problem consists of two interconnected and mutually popup parts. The first of these is due to the lack of experience in training such specialists. At present, there is no model for a specialist in this profile; his competence is incomprehensible and, as a result, it is not clear what training plans should be, the disciplines being studied and their content. And the second part of the problem is connected with the teaching staff who should prepare private detectives.

The situation with the implementation of private detective activity is also greatly complicated by the history, traditions and mentality in the field of law enforcement, which we got from the former USSR and unfortunately, still in varying degrees, and at present. The peculiarity of private detective activity is that it is carried out in the general system of functioning of law enforcement bodies of the state. The main task of this system is to ensure the security of the state and society, and that it is very important - the constitutional rights and freedoms of Ukrainian citizens. In order for the subjects of private detective activity to carry out their activities effectively and in the legal field, it is necessary to organize their interaction with the subjects of the law-enforcement system of the state, including with the units of the Ministry of Internal Affairs, the SBU, as well as with the prosecutor's offices. To do this, it is necessary to create the appropriate mechanisms of interaction (*Krutov V.V., 2009, p. 408*).

The construction of an effective mechanism of interaction is beneficial both for subjects of private detective activity and law enforcement agencies. Therefore, the main feature of such a mechanism of interaction is that it should function exclusively in the legal field.

This is dictated primarily by the fact that law enforcement bodies operate exclusively in the legal field. Their functioning is regulated not only by the Constitution of Ukraine and the general legislation of the state. Adopted as special laws that directly regulate their activities. For example, the legal regulation of the activities of the National Police is regulated by the Law of Ukraine "On National Police" and other legislative acts.

Particular attention when organizing and managing private detective activities should be paid to consumers of this service. Relations with clients of a detective agency should be extremely delicate. The basis must be the mutual trust and confidence of customers in the unconditional preservation of confidential information that they report to a private detective. It is so important for clients that it is expedient to develop a code of honor for a private detective. The trust of clients and their confidence in the high professionalism of private detectives is what can be the basis for the stable work and development of the subject of private detective activity. Therefore, the principle of confidentiality should become one of the main activities of private detectives. In view of this, private detectives should pay constant attention to issues related to the protection of information regarding their professional activities and the interests of their clients. Information protection should be comprehensive and include organizational, legal and engineering-technical measures. Particular attention should be paid to ensuring the reliability of personnel involved in the organization and conduct of private detective activities. This requires careful selection of candidates for work in a company that specializes in providing private detective services.

The process of complete transformation and reloading of the entire political system, launched in 2014, significantly influenced the law enforcement agencies of Ukraine. This process is by far the most significant, cardinal and requires a certain amount of time to complete it. Under these conditions, when the level of public confidence in the law enforcement agencies has decreased significantly, while the National Police of Ukraine is only a difficult stage of formation and adaptation, a number of powers, rights and duties that relied on law enforcement bodies were temporarily left without proper control.

In this regard, those who needed help were forced to turn to private detective structures. However, the question is the question of the possibility of obtaining qualitative, legally regulated detective services. Indeed, in Ukraine, private detective activity has not yet been regulated by law, as opposed to most countries of the world, where such activity is recognized at the state level and is a phenomenon common, established and sufficiently regulated by national legislation.

In order to track the process of emergence of interest and the need for the establishment of a private detective (search) institution, it is worth referring to existing bills. So far, a number of bills have been developed, the purpose of which is to regulate private detective (search) activities as a set of non-state measures aimed at improving the mechanism of ensuring constitutional rights and freedoms, protecting the legal rights and interests of legal entities.

In particular, the draft Law of Ukraine "On Private Detective Activity" (author - People's Deputy Y. Karmazin) dated April 5, 2000 No. 5237, draft Law of Ukraine "On Private Detective Activity" (authors - People's Deputies V. Kafarsky, O. Bandurka and V. Moysik) dated April 7, 2004 No. 5380, the draft Law of Ukraine "On Private Detective Activity" (authors - People's Deputies Y. Karmazin, V. Onopenko and M. Onischuk) dated July 1, 2004 No. 5380-1, the draft Law of Ukraine "On Privately Detective (Investigative) Activity" (author - deputy V. Moysyk) dated 12.04.2010 No. 6288, project C On the private detective (search) activity "(authors - people's deputies V. Shvets, V. Malyshev) from 13.12.2012 № 1093, the draft Law of Ukraine" On private detective (wanted) activity "(authors - people's deputies) M. Palamarchuk, A. Kozhemyakin, A. Prodan, A. Teteruk) from 28.12.2015 № 3726 (*Pro pryvatnu detektyvnu diyal'nist': Zakonoproekt vid 01.07.2004, Pro pryvatnu detektyvnu diyal'nist': Zakonoproekt vid 05.04.2000 №5237, Proekt Zakonu Ukrayiny «Pro pryvatnu detektyvnu (rozshukovu) diyal'nist'» vid 13. 12. 2012 r.*).

When investigating the problematic issues of legislative proposals concerning the legalization of private detective activity, it is necessary first of all to assess the concept of such activity and to determine the requirements to the subjects of such activity, taking into account the ambiguity of fixing these definitions in the aforementioned bills.

Thus, in the draft Law of Ukraine "On Private Detective (Investigation) Activity" dated December 13, 2012, No. 1093, private detective activity is defined as follows: "Private detective (wanted) activity - the activity of private detectives or private detective agencies allowed by internal affairs bodies, their associations and branches, to provide customers (individuals and legal entities) on paid contract basis detective services in order to protect their legitimate rights and interests. Private detective (search) activity is by its very nature entrepreneurial activity "(*Proekt Zakonu Ukrayiny «Pro pryvatnu detektyvnu (rozshukovu) diyal'nist'» vid 13. 12. 2012 r.*).

In the draft Law of Ukraine "On Private Detective (Investigative) Activity" dated 28.12.2015, No. 3726, it was stated that "private detective (wanted) activity - allowed by the authorities of the National Police of Ukraine independent professional activity of private detectives or private detective enterprises (agencies) in relation to providing to clients on a paid contract basis detective services in order to protect their legitimate rights and interests on the grounds and in the manner prescribed by this Law "(15). But at the same time, Article 5 of this draft stipulates that a private detective may engage in private detective (search) activity as a self-employed person (ie, to pursue independent professional activity) or as an individual entrepreneur.

Consequently, it can be concluded that the essence of private detective activity is not clearly defined in this project, since on the one hand it is considered to be the activity of self-employed persons, and on the other - entrepreneurial.

In our opinion, it would be advisable to give the following definition of private detective (search) activity: private detective (wanted) activity - provided by this law and permitted by the bodies of the National Police of Ukraine business activity of private detectives or private detective enterprises (agencies) for providing customers with paid contract based on detective services to protect their legitimate rights and interests.

With regard to the requirements for individuals who intend to engage in private detective (search) activities, in our opinion, none of the bills, does not reflect them sufficiently full. We believe that the list of such requirements needs to be clarified and supplemented, as:

- Firstly, in most bills there is no age requirement for individuals who want to engage in private detective (search) activity. We believe that it must be at least 22 years old;

- secondly, the availability of draft clauses in alternative conditions: "he has undergone special training for the purpose of carrying out a private detective (search) activity or has experience in operational units or pre-trial investigation bodies of at least three years," leads us to the fact that the length of service in the relevant divisions frees a person from special training.

In our opinion, special training should be for all individuals who intend to engage in private detective (search) activities, only in different programs, depending on their work experience.

Particular attention, from our point of view, requires the provisions of bills on the order of training, retraining and professional development of persons engaged in private detective (search) activities. Thus, in most bills it is proposed to carry out training, retraining and advanced training of persons engaged in detective activity by non-state educational institutions, since such institutions are not in a position to provide educational services in their entirety in the field of detective activity, due to the fact that they do not have the appropriate technical equipment (special equipment) and pedagogical support (instructors in tactics, fire training, special physical training, etc.). Therefore, it is appropriate to identify higher education institutions with specific learning conditions that are part of its management areas that will be responsible for this area of work.

The provisions of the bills that stipulate the rights and obligations of the subjects of private detective (search) activity are also debatable, as some of the rights enshrined in the bills of the subjects of such activities according to the current legislation coincide with the functions of law enforcement agencies, which raises the question of the legality of such actions by the subjects of private detective (search) activity, because, in accordance with the current legislation, the possibility of obtaining information protected by law on an individual without his consent, including her personal and family life, only law enforcement agencies are entitled.

In turn, it will be appropriate to analyze the list of restrictions and prohibitions that contain the considered bills.

Thus, private detectives during the conduct of private detective (search) activities are prohibited:

1) to hide from law enforcement agencies the facts of the committed crimes (criminal offenses) or crimes that are being prepared, which became known in the process of carrying out a private detective (search) activity;

2) to impersonate the subjects of operative and investigative activity, law enforcement officials, representatives of other state bodies;

3) collect information related to personal life, with political and religious beliefs of individuals (without the written consent of such person);

4) transmit your certificate or certificate for use by others (*Pro pryvatnu detektyvnu (rozshukovu) diyalnist Proekt Zakonu № 3726 vid 14.02.2017 r.*).

It should be noted that there are other disadvantages of the bills under consideration (for example, some provisions of the bills are duplicate, need to be substantially revised or not consistent with other legislative acts). Thus, it can be argued that the bills proposed to date need to be substantially refined, as incompletely and unclearly regulate the issues of private detective (search) activity.

Conclusions.

Private detective (search) activity in most countries of the world is recognized at the state level, regulated by laws and optimally used to increase the ability of citizens and legal entities to protect their legitimate rights and interests (Bezug I. electronic resource)

Under private detective activities are understood as independent professional activities, which is a system of search activities carried out by private detectives on a contractual basis for the provision of detective services and the use of technical means.

The content of private detective activities, as a rule, includes services for collecting information on criminal proceedings on a contractual basis with process participants, the search for persons fleeing from legal proceedings, as well as the search for stolen property of the client. At the same time, private detective activity has a more diverse character.

Therefore, at the present stage, private detective activity plays a significant role in ensuring the security and protection of the rights of economic entities.

In Ukraine, a number of bills have been developed to date, the purpose of which is to regulate private detective (search) activities as a set of non-state measures aimed at improving the mechanism of ensuring constitutional rights and freedoms, protecting the legal rights and interests of legal entities.

Analysis of the data of the bills indicates that there are problematic issues regarding the legalization of private detective activity. This applies, in particular, to the definition of the concept of such activities and requirements to the subjects of such activities, the procedure for training, retraining and retraining of persons engaged in private detective (search) activities, as well as the scope of rights and obligations of subjects of private detective (wanted) activity.

Of course, Ukrainian legislation is at the stage of development of this type of activity, but already has a certain basis for preventing crime through detective activity. Accordingly, after the adoption of the Law of Ukraine "On Private (Investigative) Activity", private detective activity will achieve greater efficiency and independence.

So, taking into account all the factors, it is necessary:

1) clearly identify the place of detectives and detective agencies, their participation in the fight against crime;

2) identify and consolidate the legal status of information that can be extracted and used by private detectives or their associations;

3) to develop curricula, which could be trained by future private detectives, to organize training of the latter;

- 4) Specify the permitted actions that will fall within the competence of private detectives;
- 5) Ensure access to databases and information technologies so that detectives begin to provide real services;
- 6) determine the order and system of interaction between private detective agencies or private detectives and state law enforcement agencies.

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