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**PROBLEMS IN DETERMINATION OF THE ESSENCE AND THE
COMPONENTS OF ADMINISTRATIVE AND LEGAL STATUS OF THE
SUBJECTS OF PRIVATE DETECTIVE ACTIVITY**

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The subject of this article is to determine the essence of administrative and legal status of the subjects of private detective activity. The purpose of this article is to determine the essence and the components of administrative and legal status of the subjects of private detective activity. The specified purpose necessitated performance of the following tasks: to define the concepts and the features of legal status of the subject of private detective (investigative) activity; to determine the guarantees of legality for the said activity implementation. The author uses a comparative law method and a simulation method that enabled formulating the concepts and the features of the administrative and legal status of the subjects of private detective activity, as well as determination of the guarantees for its implementation. The results of the study shall be used in law making when discussing and approving the Law of Ukraine “On Private Detective Activity”.

Key words: administrative and legal status, administrative and legal relations, private detective, private detective activity, rights, duties, guarantees.

Target setting. Private detective activity in Ukraine has been practiced outside the legal environment for several decades. Individuals and legal entities that provide detective (investigation) services cannot

perform it so legally. The consequences of such a situation are tax evasion, provision of detective services in the form of information services, as well as other violations of the rules of business. However, the problems related to lack of a basic legal act in this area are mainly connected not with business relations but with administrative and legal relations. The major problem lies in lack of agreed positions with respect to administrative and legal status of the subjects of private detective activity. The stated above determines the relevance and the importance of the selected topic of the article related to determination of the essence and the components of administrative and legal status of the subjects of private detective activity.

Actual scientific researches and issues analysis. Some aspects of private detective (investigative) activity and peculiarities for implementation of legality guarantees legality explored in their works K.L. Buhaichuk, A.M. Volynska, I.B. Honcharenko, V.L. Hrokholskyi, M.V. Dzhyha, M.V. Zavalnyi, T.M. Kravtsova, R.S. Melnyk, P.P. Mykhailenko, N.M. Onyshchenko, O.P. Riabchenko, P.V. Synytskyi, O.P. Snigeriov, V. O. Cherkov, I. M. Shopina, M. V. Shutyi and other scholars. At the same time, the issues of administrative and legal status of private detective activity remain insufficiently researched in the area of administrative law.

Purpose and objective statement. The purpose of this article is to determine the essence and the components of administrative and legal status of private detective activity. The said purpose necessitated performance of the following tasks: to define the concepts and the features of the legal status of the subject of private detective (investigative) activity; to determine the guarantees of legality for this activity implementation

The statement of basic materials. The administrative and legal status of the subjects of private detective (investigative) activity stemming from the system of social relations fixed in the legal norms. However, it should be stated that it has the certain differences which presence is

caused by its dual nature. The legal status of the subjects of private detective (investigative) activity as compared to the legal statuses of other representatives of the professions in the area of law enforcement activity has its features that are connected with existence of inconsistencies between real public relations formed in the area of private detective investigative activity and their legal confirmation [1, p.87].

It should be said that the legal status of a private detective differs by the following features: lack of legal regulation at the level of law with simultaneous consolidation at the level of by-laws; latent nature of detective activity that either causes it to be carried out under the guise of providing information services or completely outside the requirements of legality such as in the course of covert surveillance using special technical means to obtain information, including that one with restricted access; holding of rights, duties and responsibilities by private detectives stipulated by the law on business activities provided that they do not contain restrictions and prohibitions that are specific for law enforcement professions: the requirements of law which is applied to private detectives as to information protection and responsibility for its violation [1, p.88]. Based on the analysis of the features above the legal status of the subjects of private detective (investigative) activity can be defined as a set of their rights, duties, guarantees and legal responsibility a body of those enables their professional activity performance.

The guarantees hold a special place within the structure of administrative and legal status. The guarantees for the activity of the subjects of private detective (investigative) activity can be divided into three groups: a) guarantees of legality of private detective (investigative) activity; b) guarantees of security of private detective (investigative) activity; c) guarantees of combination of private and public interests in the course of private detective (investigative) activity performance. Within the activities of

private detectives the guarantees of legality can be presented as a set of institutional, political and legal conditions under which the requirements of the laws and by-laws regulating private detective (investigative) activity are ensured. Institutional conditions include the system of state fixed in the Constitution of Ukraine.

Among the institutional guarantees of private detective (investigative) activity performance we should mention the Verkhovna Rada of Ukraine (the Parliament of Ukraine) which has a legislative function, the law enforcement agencies to combat crime and offences, the judicial system, and a number of controlling authorities. The political guarantees of private detective (investigative) activity are functioning of the system of democracy, the citizens' right to participate in the management of public affairs, freedom of speech, media behavior, etc.

The legal guarantees for legality of the subjects of private detective (investigative) activity include: 1) material guarantees that include the principles of the rule of law, lawfulness, discretion, objectivity and impartiality, respect for the rights, freedoms and legitimate interests of the individuals and legal entities, respect for human dignity, integrity, independence of the subjects of private detective (investigative) activity, confidentiality and protection of professional secrecy, interaction with law enforcement authorities, public authorities and local self-government authorities, businesses, institutions, organizations and citizens; b) the prohibitions according to which a private detective cannot be an officer or an official of public authorities, local self-government authorities, law enforcement or judicial authorities, the person cannot be a private detective who: has an outstanding conviction or non-expunged conviction in accordance with the procedure established by law; recognized by the court as an incapacitated person or whose civil capacity is limited; registered with health care institutions in connection with mental disease, alcohol or drug

addiction; discharged from the office as a judge, prosecutor, public notary, from law enforcement service, from public service or service in local self-government authorities for violation of oath, committing a corruption offense; deprived of the right to perform private detective (investigative) activity - within three years from the date of entry into force of the decision to annul the certificate of the right to be engaged in private detective (investigative) activity; c) keeping a Unified Register of the Subjects of Private Detective (Investigative) Activity for the purpose of collecting, storing, accounting and provision of reliable information on the number and their staffing level who in accordance with this Law have acquired the right to be engaged in private detective (investigative) activity in Ukraine, about the organizational forms of activity selected by the subjects of private detective (investigation) activity.

The procedural guarantees for legality of the operation of the subjects of private detective (investigative) activity include: the procedure for issuing and revocation of the certificate for the right to perform private detective (investigative) activity; the appeal procedure against the decisions on refusal to issue a certificate on the right to engage in private detective (search) activity and on the revocation of a certificate for the right to perform private detective (investigative) activity; the right of subjects of private detective (investigative) activity to protect their violated rights in judicial and extrajudicial order (including through self-defense), which is realized on the basis of the Code of Administrative Procedure of Ukraine, Code of Commercial Procedure of Ukraine, Civil Procedure Code of Ukraine, Code of Criminal Procedure Ukraine and other legal acts.

Unfortunately, the main legal guarantee for legality of private detective (investigative) activity is currently absent, Law of Ukraine "On Private Detective (Investigative) Activity" has not been adopted yet. This causes an

insufficient level of compliance with the legality guarantees of the type of the activity which being explored.

The security guarantees for private detective (investigative) activity performance are the system determined by the legislation of Ukraine and sustainable law enforcement practices of techniques and methods that can reduce the risk of harm to the lives, health, financial and other protected rights of private detectives and their associations, as well as individual and legal entities using their services. Security guarantees include: protection of information, including the information in telecommunication networks; system of personnel selection and training; control over the activities of private detectives and their associations, both internal and external.

The guarantees for combination of private and public interests in the course of private detective (investigative) activity are the system of legal tools and means by which simultaneous compliance, on the one hand, with the requirements of information legislation in the aspect of personal data and professional secrecy protection in the specified activity, and on the other hand, the high level of cooperation is ensured with the law enforcement authorities in the area of combating crimes and offences.

The legal responsibility of the subjects of private detective (investigative) activity is a set of restrictive or coercive measures applied to a private detective if he has violated the legal mandate. A private detective may bear criminal, administrative, civil and financial responsibility in accordance with the general requirements of the legislation of Ukraine governing labor relations, the procedure for providing services to business entities, protection of information, etc. Given that the activity of private detectives is connected with many risks, it would be reasonable to insert Draft Law of Ukraine "On Private Detective (Investigative) Activity" with a separate article that would fix the special grounds for bringing private detectives to responsibility.

Based on the analysis of foreign experience with respect to legal regulation of private detective (investigation) activity we can draw the following conclusions:

a) given the importance of this type of activity, its abundance and existence of numerous risks of violations of human and citizen rights, legal entities and the state as a whole in the course of its implementation, in most of the states we reviewed, the activity of private detectives is legalized at the level of law; b) the specific place holds in the laws regulating the activity of private detectives in the states of the Anglo-Saxon a detailed presentation of the peculiarities for interaction with the law enforcement authorities that could be useful for Ukrainian practice.

The particular danger constitute establishment of the conditions that lie outside legal field of the activities of private detectives and their associations, enabling commitment of crimes. The problems connected with creation of the conditions for commitment of crimes that violate the right of citizens for secrecy of correspondence, telephone conversations, telegraph or other correspondence transmitted by means of communication, including telecommunication lie in impossibility to ensure control in the area of personal data protection and taking of the corresponding measures under the results of such control, including bringing to responsibility in the course of detective services provision in the so-called "gray". Thus, this harm is caused:

a) the interests of the state connected with ensuring the rights and freedoms of individuals and legal entities determined by the Constitution and the laws of Ukraine; regular ensuring taxes and duties to the National Budget of Ukraine and local budgets, ensuring unimpeded and effective activity of the law enforcement authorities; b) the interests of civil society, since existence of uncontrolled businesses and individuals creates a danger for ensuring the right of citizens to manage public affairs; c) the

interests of businesses, institutions and organizations that are the law-abiding taxpayers that comply with the requirements of the laws of Ukraine in the course of the legal services provision but existence of the subjects that do not comply with the requirements of tax and other branches of Ukrainian legislation near them, is a violation of completion conditions in relation to them; d) the interests of the law enforcement and intelligence agencies which is particularly dangerous today, when the Joint Forces Operation is being conducted and it creates threat to occurrence of dangerous consequences that can be used in armed aggression against Ukraine; e) the interests of the citizens, as the risks of violation of the rights guaranteed by the Constitution of Ukraine for protection of housing, secrecy of correspondence, telephone conversations, telegraph and other correspondence are increased; non-interference with personal and family life, except in the cases provided for by the Constitution of Ukraine and other constitutional rights, freedoms and guarantees; f) the interests of the subjects of private detective (investigative) activity, the absence of legislative guarantees in the work of which increases the risk of danger to their life, health, business reputation, honor, dignity and other interests protected by law. In our opinion, those directions should make it possible to work with the appropriate addressees with a view to ensure that they are informed about the creation of danger area, violation of their rights, freedoms and legitimate interests.

As many years of practice of providing private detective services in Ukraine, as well as foreign experience, the activity of private detectives has a great potential for solving the problems of counteracting crime and offences. Based on the research findings, today resolution of the problems of increasing the level of law and order in society requires active participation of all subjects of social control as governmental from the integrative combination within the system of social control of all objective

and subjective factors [2, p.447; 3, p. 849; 4;5] . It should be that cooperation between the law enforcement authorities and private detectives (their associations) must be considered as one of these factors, during which the tasks of protecting human rights and the citizen and combating crime must be jointly addressed.

Conclusions. Based on the stated above, we can make sure that it is necessary to adopt Law of Ukraine “On Private Detective (Investigative) Activity” as soon as possible where it would be expedient to specify the rights and duties of private detectives, to define guarantees of their activity and to fix the peculiarities of legal responsibility for violation of legal orders . This would prevent the shadowing of detective services provision and it would enhance legitimacy of non-state law enforcement activity, as well as create a reliable guarantees system for private detective (investigative) activity.

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