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Edited by
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IN THE MODERN INFORMATION SPACE

Collective monograph

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The collective monograph of the author's group of the Faculty of Law of the National Aviation University is dedicated to the relevant problems of jurisprudence in the modern information space. The main globalization tendencies of the development of the law, in particular the fundamental values of the law, their interpretation and interaction of legal systems, the role of fundamental principles of law, state sovereignty and human rights, modern tendencies in ensuring legal security and economic freedoms in the light of the interaction of national legal systems are considered.

The collective monograph consists of 22 chapters, which are both the general theoretical and practical block of monographic work, and the scientists conducted a comprehensive analysis of the issues of the legal system of the social state, isolates and analyzes the essential characteristics of such a legal system and identifies the ways of developing the legal system in the context of globalization changes in the world. Also, the monograph reflects the results of scientific research of political and legal tendencies of interaction of national and international principles of statehood development, which later became the basis for considering the peculiarities of reforming state-legal institutions as a necessary condition for the development of a social and legal state in Ukraine.

Scientific publication contains articles covering issues from different branches of law.

The publication is intended for lecturers of law faculties of higher educational institutions and persons who are interested in development of legal science in Ukraine.

Contents of scientific papers do not always coincide with the views of the editorial board.

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Chapter 18

Constitutional and legislative restrictions imposed upon the private detective activity subjects while exercising their duties

The concept of a private detective activity has long been used as an effective means of human rights protection, citizens and legal persons legitimate interests protection in the civilized, democratic, developed society, where the compliance with the constitutional norms and human rights is deemed to be the fundamental value. The concept of a private detective activity is embodied in practically all EU countries and democratically developed countries of the world. The functioning of this concept allows eradicating the factual monopoly of the state law enforcement system.

The monopoly of the state law enforcement system generates the destructive negativism and the deformation of public morality in real life. Nowadays, it seems to be obvious that the formation of a private detective activity, its lawful legalization and functioning in Ukraine are reckoned to be an irreversible process.

The main duty of a state is considered to be the creation, development and provision of an operative and effective mechanism to the fundamental rights and freedoms of man and the citizen (Art.3 of the Constitution of Ukraine) [1p. 3].

Today realities require introducing the current social and legal institutions of the structures and elements providing the national law enforcement development and formation, aimed at promoting further implementation of constitutional norms and principles into the state legal practice, and also the Constitution of Ukraine establishment, building the mutual trust and responsibility between man and the state. The worldwide recognized private detective activity institutes as the time-tested institutions and as one of the most effective ways of human rights protection, the rule of law consolidation and the democracy development, have to facilitate the above-mentioned points.

This issue has become currently topical after the adoption of the new Criminal Procedural Code of Ukraine and regarding the pivotal pre-trial investigations reforming. A new criminal process ideology requires the cooperation between the law enforcement agencies and private persons. The law enforcement agencies shall refuse from a certain part of the monopolies, impeding their work tremendously and shall not characterize them functionally, in favor of the private process participants. Moreover, by involving the private participants to the criminal process, one can significantly enhance the international image of Ukraine

as the country capable of creating all the necessary conditions for the real protection of citizens' rights, freedoms and legitimate interests [3, p. 5].

Although, the sufficient quantity of the draft legislation, elaborated and submitted to the Parliament existing, the business entities detective activity conduct and the detective services provision haven't been legislatively supported in Ukraine, but instead they started being studied and researched by the law enforcement activity scientists and experts.

Such national and foreign scholars as V. M. Zemlianov, A. Ie. Ivahin, Iu.A.Karmazin, V. I. Kurylo, I. V. Leonenko, P. Ia. Pryhunov, O.V. Punda, A.I.Frantsuz, etc. have been dealing with the organizational and private detective activity conduct issues. At the same time, the results of their research make it possible to get a clearer vision of the legal regulation peculiarities of certain private detective activity aspects and contribute to the gradual formation of the appropriate institute regarding the national legislation.

The majority of legal studies concerning the private detective activity aren't of a complex character; they are only limited to the general spectrum of the private detective activity and the existing draft legislation analysis regarding the aforementioned.

Therefore, currently there is no legal regulation of the private detective activity concept in Ukraine, and hence, there is no major prerequisite to organize and implement the latter.

Article 3 of the Constitution of Ukraine declares that an individual, his life and health, honor and dignity, inviolability and security shall be recognized in Ukraine as the highest social value. Human rights and freedoms and guarantees thereof shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State [1].

Consequently, it appears to be extremely undemocratic and inhumane to deprive the citizens of the right to appeal to private detective structures to investigate or solve versatile personal issues non-prohibited by law (by means of civil, administrative, commercial or criminal proceedings). Otherwise, the individual has no choice and sees only one possible way out – to appeal to the law enforcement agency – the police, the security agency, the prosecutor's office and others.

In this regard, the adoption of the regulatory legal act, regulating the private detective activity and conduct in Ukraine are deemed to of paramount importance. On the other hand, when the private detective activity subjects carry out their responsibilities, temporary restrictions of the constitutional rights and freedoms of man and a citizen might become possible.

Thus, for example, Clause 8, Part 1, Art. 13 of the draft legislation states that private detectives, private detective companies (agencies) have the right to take

photos, to make film shots, to videotape, to make audio records while conducting the private detective (search, investigative) activity, and also, to use other technical means, not causing damage to life and health of citizens, the environment. They shall have the right to search offices and other premises, having the written consent of these premises' owners. Besides, Clause 8 of the same Article sets forth that the subjects of the private detective activity are allowed to conduct the external surveillance outdoors, in public places and in transport [2].

The afore mentioned private detective actions as well as the majority of other actions carried out by the private detective activity subjects are covert (confidential). Confidentiality in this case means non-obviousness, concealment of private investigative actions, the need to conceal the private investigative actions carried out, from persons not taking part in them, but first and foremost, from the detective activity objects [3, p. 554].

Article 32 of the Constitution of Ukraine asserts that no one shall be subjected to interference in his private life and family matters, except when such interference is stipulated by the Constitution of Ukraine. The collection, storage, use, and dissemination of confidential information about a person without his consent shall not be permitted, except for the cases determined by law and only in the interests of national security, economic welfare, and human rights [1].

Thus, taking covert photos, making covert film shots and audio records, videotaping the persons checked (Clause 8, Part 2, Art. 13 of the draft legislation) by employing special technical means and collecting information using other covert methods of work aimed at obtaining information, interesting to the client, the private detective is, one way or another, forced to infringe the citizens constitutional rights and freedoms within the framework of his/her professional activity.

Considering the great number of private detectives and private detective companies (agencies), that will definitely appear after the adoption of the legislative act concerning the private detective activity in Ukraine, it would be quite challenging to exercise the due supervision and control over the national legislation observance by the private detectives and detective agencies in order to deter the violation's of citizens rights to privacy.

Today, the private detective activity is viewed as one the most powerful branches in all the civilized countries of the world, creating, therefore, a serious competition to the state law enforcement agencies. Moreover, such countries as France and the USA, where the private detective activity emerged in the middle of the XIX century, gradually created their own *private search schools* with their specific rules and methods of the investigative work. In this regard, it seems reasonable to study the experience of private detective institutions creation and functioning, in particular, in France, the USA and Great Britain.

In authors' opinion, the use of British experience might be of huge practical importance in this area of study. As at the beginning of the XXI century there were several large and a lot of small detective agencies in the country. The total number amounted to about 2000 detectives, working at numerous private detective agencies of the country. Eventually, the market of the private detective services appeared to be unregulated, and the number of citizens becoming the fraudsters' victims rose increasingly.

Today there are a lot of private investigative agencies in Great Britain. At the same time, nearly 10 000 private detectives work without license in the UK, despite the serious control. Individuals, having no necessary skills, government-recognized qualification and field-specific education often mislead customers, discrediting the private detective activity. Taking into account the above-mentioned facts and circumstances, all private detective bureaus of the UK were joined together to form a strictly regulated and diversified system named *The Association of British Investigators* in 2013.

In 2013 Theresa May announced that: "*It is vital we have proper regulation of private investigators to ensure rigorous standards in this sector and the respect of individuals' rights to privacy*". This statement by Theresa May on July 31, 2013 became crucial for the further development of the private detectives' institute in Great Britain [4].

In France, about 300 private investigative bureaus were registered officially, but besides them, there are more than one hundred 'unofficial' detective offices, called the *Surveillance Service*, the *Surveillance Bureau*, etc. Canada provides the 'whole army' of the private detectives working solely, and more than 200 private firms, engaged in investigative business [10, p. 15].

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known under the informal title as *the European Convention on Human Rights* (hereinafter referred to as the *Convention*), is considered to be one of the main documents of the Council of Europe. This international treaty was signed on November 4, 1950 and entered into force on September 3, 1953.

Ukraine ratified the European Convention on Human Rights only on July 17, 1997, and the document entered into force on September 11, 1997.

On the one hand, the Convention secures to everyone within its jurisdiction the rights and freedoms defined in Section I of this Convention (the right to life, the right to liberty and security of person, the right to a fair trial, the right to freedom of thoughts, conscience and religion, the right to respect for the private and family life, etc.), and on the other hand, the Convention lays upon the High Contracting Parties the responsibility to secure to everyone the rights and freedoms, mentioned above, within their jurisdictions. Each and every resident of any European Union country may appeal to the European Court of Human Rights

(hereinafter referred to as the ECtHR) if he considers his/her rights and freedoms, defined by any of the Convention articles, were violated.

Pursuant to Part 1, Art. 8 of the Convention everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Part 2, Art.8 of the Convention).

Art. 7 of the Charter of Fundamental Rights of the European Union, 2000, declares that *everyone has the right to respect for his or her private and family life, home and communications*, the wording is practically the same as that of Part 1, Art. 8 of the Convention. At the same time, the provisions of Art. 8 of the Charter, in comparison to the Convention, are considered to be progressively new, regarding the protection of personal data. Also, this article defines the basis of the right to privacy involving the issues of obtaining and disseminating the information about the person, his/her personal data.

To understand the meaning of this or that term, one has to use the ECtHR judicial practice. The ECtHR has broadly interpreted the provisions of Art. 8 of the Convention, and therefore, the new social relations fall under its protection from time to time. Further, the national judges of the EU member states and of the countries applying for the EU membership settle the cases referring to the appropriate ECtHR interpretations.

Before defining the notion of privacy, one should consider its essence (nature). It is assumed that there is such a sphere of individual's life, where he/she has the right to stay alone and to be left alone, and no one shall interfere into it without the individual's permission. Thus, the ECtHR judge (B. Zupanchych) explained the approximate nature of this right by stating that: "Sovereign Incognito is the Privilege of Robinson". These incognito boundaries are determined by means of the following criteria:

1. *The discretion of the persons themselves* – an individual has this exclusive right to decide what personal space (the distance that separates him/her from another people) is comfortable for him/her. Such person's discretion is based on the principle "there is no violation if anything is done with the victim's consent". The private life of an individual becomes public when the individual discloses the personal information freely and overtly. Thus, for example, when a person tells a story of her life on television, it becomes available practically to everyone, but the dissemination of such information via the social networks (Facebook, Twitter, etc.) among the friends will mean that the information is accessible only to them.

2. *The probability of staying alone.* The legal basis for the protection of privacy upholds the idea that a person can reasonably expect from the society to get an opportunity to be left alone. However, no one can rationally rely on being left alone, if he unlawfully harms another person or society and this should be considered as a certain limit, crossing which the privacy may be restricted. The constitution of each law-governed state sets forth the norms prohibiting the use of power to restrict the rights and freedoms of other people. That's why the offender is assumed to waive his right to inviolability of his/her private life to the extent it determines the severity of the crime, committed by him/her.

3. *The existence of a well-supported public interest.* The private life of a person sometimes gets certain public interest, and that's why the information about him/her may not only be collected but even published. Such cases may be related either to the event itself (for instance, the relatives' statement about the person's disappearance) or to the social status of a person, due to which certain circumstances of this person private life (for example, the compromising contacts of the politician) become known to the public, as this person has great influence on the public life. In the theory of law the individuals able of attracting public attention are called *public persons* and there are two types of them:

1. Public persons in the broad sense are those persons who hold an appropriate post: politicians, public officers, as well as famous athletes, TV presenters, prominent entrepreneurs.

2. Persons who have temporarily obtained the status of public persons are those persons who have attracted public attention for a short period of time, being forgotten by the society later on (for example, the victims of the road accidents). Actually, anyone can record the information intended to satisfy the reasonable public interest. Thus, it is necessary to refer to the source providing the appropriate information. For instance, under the Law on Media of the Republic of Latvia, the person's consent to a committed offence is not needed, if this offence was witnessed, and the recorded photos, videos or sounds can be provided, even if they were made in the persons dwelling or private ownership. In this case, preventing and detecting the offences present the great public interest, and therefore the collection of some information regarding the offender is justified. However, the private detective should realize that he/she has the right to trace the information only if he/she has acted as a journalist or, at least, as the private person, accidentally finding himself at the scene, otherwise, his /her actions being carried out exclusively to the benefit of the client will be regulated by a special law.

Consequently, the right to personal life is, above, all, the right to have informal conversations with other people. Individuals themselves choose their friends or just acquaintances; choose what to talk to their relatives, acquaintances or friends about. And at the same time, the individuals have to sure that their personal information will not revealed to the public authorities. Privacy itself coves the

whole spectrum of family life, friendship and relationships with relatives, the home-style of everyday life, intimacy and other personal relationships, preferences, sympathies and antipathies.

The right to privacy means the possibility to control the personal information, to deter the disclosure of the intimate information, the possibility granted to a person and guaranteed by a state. The right to privacy involves the inadmissibility of surveying the person, listening and recording the personal conversations at home or in public places, including telephone conversations, except for the cases set by the law.

The right to privacy also means the inviolability of the dwelling. After all, the person has the right to solitude in her own dwelling or in a rented one, the right to a free choice of residence and to free movement, the right to freedom of literary, artistic, scientific and technical creativity. Personal papers, drawings, etc. are also considered to be inviolable.

The right of a person to private life also means the right to have confidential communication with other people, in particular, the right to the privacy of correspondence, telephone conversations, telegraphic and other correspondence, and the state shall guarantee the confidentiality and inviolability of the postal correspondence and telegraph messages.

The private life also includes the marriage, childbirth, adoption, divorce, division of property, family budget, disposal of property and cash deposits.

The private life also comprises certain personal and family confidential information, reported to medical workers, lawyers, priests, law enforcement officers, notary workers, etc. That is to say, that all the types of the privileged information (medical, lawyer, correspondence, adoption, etc.) are regarded to be the right of the citizen to privacy [5, pp. 101 - 105].

The notion of *family life* should be interpreted as a kind of private (personal) life. The European Court of Human Rights interpreting the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the notion of *family life* doesn't confine the latter only to relations between people based on marriage, but may encompass other family relationships.

Above all, the provisions of the Convention protect the interests of the biological family, made in accordance with the national peculiarities. The term *family life* may include the relations between the brides on condition they have lasted for a long period of time. The relationships among relatives may also be nominated as *family life*. First of all, it concerns the relations between parents and children (legitimate or illegitimate). Even if the children do not live with their parents, they still are in relations being defined as *family life*. Also, this notion covers the relations between family members, i.e. brothers and sisters, grandparents and grandchildren, great-grandparents and great-grandchildren,

nephews and uncles, etc. So, the provisions of Art.8 of the Convention on family life are applicable of:

1. Family having legal status, as well as other family ties;
2. The rights of the spouse;
3. The right to communicate with relatives;
4. Paternity examination;
5. Deprivation of paternal rights;
6. Taking children from their parents without deprivation of paternal rights;
7. Custody and guard [6].

The principal of proportionality as the main criterion to define the protected democratic values of a private detective (investigative) activity.

The Proportionality principle assesses the protected values and defines which of them overwhelms in a particular situation.

The application of the proportionality principle covers three criteria, and one has to prove the compliance with them, applying this principle:

1. The choice of the tool. One has to answer positively to the question concerning the ability of the appropriate tool to help in reaching the desirable legitimate goal and to consider the benefits of the actions done. If an act, violating the private life cannot help in reaching the desirable legitimate goal in principle, than such a tool shall be considered the one violating the proportionality principle.

2. The necessity of the tool. At this stage one has to decide whether it's regarded possible to reach the desirable legitimate goal using another tools, allocating the same amount of resources and minimizing the interference into the person's private life at the same time.

3. Balance. At this stage one has to decide whether the person's rights are violated much more than necessary to reach the desirable legitimate goal. The more the predicted harm is, the more important the target should be. The Decision of the Constitutional Court of the Republic of Latvia of September 19, 2002 may be symbolically considered as the endpoint of such a balance. This decision asserts that the very nature and essence of the rights and freedoms cannot be denied by the restrictions. For instance, the installment of the eavesdropping device by a private detective in the bedroom is likely to be treated as above the endpoint, not meeting the balance requirements.

Legitimacy warranty in using the information and results of the private detective activity

The legal literature interprets the **legitimacy** as the legal regime of social relations, ensuring the strict and firm compliance with the law and regulatory acts. Such legitimate legal regime allows creating the effective means of control over

the strict and firm implementation of legal requirements, further functioning in the society. And those guilty of committing offences are sued.

The legitimacy warranties in their broadest sense are explicated as the system of generally social and specially social (legal) conditions, means and methods enshrined in the current legislation and aimed at ensuring the rule of law (legitimacy regime).

The legitimacy warranties in a more narrow sense are explicated as the objective and subjective terms and means, aimed at ensuring the most favorable conditions to implement the legal requirements and control their implementation, detecting the offenders and hold them liable.

Therefore, on the one hand, the legitimacy may be regarded as the principle of the state activity, forcing public authorities, other natural or legal persons to act in compliance with the law, and on the other hand, it may be regarded as the system regime of relations between citizens, public and other non-governmental entities, local governance and the bodies representing various branches of public authority.

Considering the private detective activity (hereinafter referred to as PDA), the legitimacy warranties are a system of conditions and means ensuring the strict and firm implementation and compliance with the law by the PDA subjects.

The main provisions of the PDA legitimacy warranties are set out in the Constitution of Ukraine (Articles. 29, 30, 31, 32, and 36), the Convention on Human Rights (Art. 8) and in the Law of Ukraine *On Private Detective (Investigation) Activity* (Draft law of Ukraine dated December 28, 2018 under consideration).

Pursuant to Art. 19 of the draft law on *Warranties of the Private Detectives Carrying out the Private Detective (Investigative) Activity*, the professional rights, honor and dignity of citizens, carrying out the private detective (investigative) activity are protected by law. It is prohibited to interfere with the activities of private detectives, to demand the private detectives professional privileged information.

Thus, the following components of the legitimacy warranty carrying out the PDA are singled out:

- 1) professional rights, honor and dignity of citizens, carrying out the private detective (investigative) activity;
- 2) private detective activity as type of entrepreneurial activity;
- 3) private detectives professional privileged information.

According to Art. 19 of the draft law *the professional rights, honor and dignity of citizens, carrying out the private detective (investigative) activity are protected by law. It is prohibited to interfere with the activities of private detectives, to demand the private detectives professional privileged information.* However, herein one doesn't touch upon the private detectives safety issues, or the personal protection of their relatives (family members) and trustees (confidants). Personal safety shall

be deemed as ensuring life and health safety, protection of PDA subjects' property, members of their families and trustees.

In this case, there is a significant gap in the draft law on private detective (investigative) activity. At the same time, the personal safety warranties of the law enforcement employees and the human rights bodies, members of their families are enshrined in the relevant legislative acts.

Thus, for example, Art. 28 of the Law of Ukraine *On the Security Service of Ukraine* stipulates that the Security Service of Ukraine officers are the representatives of the authority, act on behalf of the state and under its protection, performing their duties. Their personal inviolability, honor and dignity are protected by the legislation.

Close relatives of the Security Service of Ukraine officers are also under protection of the state. Offences committed against the close relatives of the Security Service of Ukraine officers, performing their functions, shall entail liability, established by law.

Persons assisting and advancing the Security Service of Ukraine as well as the pensioners of the Security Service of Ukraine are also under protection of the state.

The confidentiality of relations is guaranteed to persons assisting and advancing the Security Service of Ukraine. The disclosure of information concerning such relations as well as other offences committed against these citizens and members of their families, performing their functions of state security, shall entail liability, established by law [7].

Clause 6, Art. 23 of the Law of Ukraine *On the Bar and Practice of Law* states that "life, health, honor and dignity of an attorney and of his/her family members and their property are under protection of the state, and any encroachments thereupon shall entail liability established by law" [8].

Chapter XV of the Criminal Code of Ukraine *Crimes Against The Authority of Governmnet, Local Government or Associations of Citizens* includes the whole range of regulatory acts providing for criminal liability for threads of murder or violence made in respect of a law enforcement officer, or his close relatives (Art. 345), willful destruction or impairment of the property owned by a law enforcement officer or his/her close relatives (Art. 347), trespass against life of a law enforcement officer or his/her close relatives (Art. 348).

Chapter XVIII of the Criminal Code of Ukraine *Criminal Offences Against Justice*, provides for criminal liability for threats of murder, violence made in respect of a defense attorney or legal agent, and also their close relatives (Art. 398), willful destruction or impairment of property owned by a defense attorney or legal agent or their close relatives (Art. 399), trespass against life of a defense attorney or legal agent in connection with their activity related to the administration of justice (Art. 400).

On May 14, 2015, the current Criminal Code of Ukraine was supplemented by Article 348-1 *Trespass Against Life of a Journalist*, providing for criminal liability for murder or attempted murder of a journalist life or his/her close relatives life in connection with his/her official duties, and these crimes shall be punishable by imprisonment for a term of nine to fifteen years [9].

The private detective undergoes quite serious risks when performing his functions, sometimes even more serious than a journalist or a lawyer, as they are public figures, as a rule, compared to the private detective, mainly obtaining information using the confidential methods of work. The activity of a private detective in many respects is similar to the activity of law enforcement workers, although much more limited in power. Consequently, in case of disclosure by a person being checked (the object), the private detective risks not only to lose his reputation, but even his/her life and health, as the behavior and further actions of the object can't be foreseen at the moment of disclosure. In the vast majority of such situations the conflict is inevitable, and the negative consequences, experienced by a private detective (from abusive language to physical violence and even the use of weapon) are versatile.

Taking into account the above stated facts, it would have been reasonable to amend the Criminal Code of Ukraine by appropriate regulatory acts providing for criminal liability for trespass against life, health and property of the private detective activity subjects and their close relatives after the adoption of the Law of Ukraine 'On Private Detective (Investigative) Activity'.

It has already been noted that the vast majority of actions carried out by the private detective activity subjects are of confidential character. Confidentiality in this case means non-obviousness, the need to conceal the private investigative actions carried out, from persons not taking part in them, but first and foremost, from the detective activity subjects [3, p. 554].

The principle of covertness (conspiracy) appears to be one of the core principles of the investigation. And investigation is indisputably an integral part of a private detective activity. The private detective conducts all the investigative actions covertly, thus, ensuring the conspiracy. It's necessary to ensure the client's security, as well as the private detective's security. Also, it's important to conceal the flow of information or its change. The process of obtaining information from semi-legal (particularly illegal) sources should definitely be confidential as the legislation prohibits collecting information about natural persons [10, p. 160].

So, Part 2, Art. 11 of the Law of Ukraine *On Information* declares that it is prohibited to collect, store, use and disseminate confidential information about a person without his/her consent, except for the cases determined by law, and only in the interests of national security, economic welfare and human rights protection. Confidential information about a natural person includes, inter alia, the

information about his/her nationality, education, marital status, religion affiliation, health, as well as address, date and place of birth [11].

Anyway, the individual's consent to collect certain personal information is obligatory. Of course, when the client asks the private detective to find some information about the competitor, the private detective will definitely fail fulfilling such a task, on condition he doesn't receive the background papers. That's why the aforementioned Article of the Law of Ukraine *On Information* in current situation is predetermined to being violated by the private detective activity subject. Conspiracy means that the competitor shouldn't be aware of being the subject of collecting information by someone, under no circumstances. The confidentiality is achieved by using legends and covert measures, passive technical means of masking, camouflaging special technical means [10, p. 161].

Thus wise, we have attempted to show that it is completely impossible to conduct investigative activity, aimed at obtaining personal information, without using some special technical means by a private detective. Accordingly, it seems impossible to avoid violating the law regarding each and every particular case.

Art. 32 of the Constitution of Ukraine asserts that no one shall be subjected to interference in his private life and family matters, except when such interference is stipulated by the Constitution of Ukraine. The collection, storage, use, and dissemination of confidential information about a person without his consent shall not be permitted, except for the cases determined by law and only in the interests of national security, economic welfare, and human rights [1].

According to the decision of the Constitutional Court of Ukraine. №2-rp / 2012, dated January 20, 2012, information regarding private and family life of an individual shall be any information and/or data concerning relations of non-property and property character, circumstances, events, relations etc. related to an individual and members of his or her family except for information envisaged by law which concerns person holding an office related to performance of authorities of state and local self-government, administrative functions. Such information regarding an individual is confidential. The same decision of the Constitutional Court points out that "it is impossible to define absolutely all types of behavior of an individual in the sphere of private and family life since private and family rights are a part of natural human rights which are inexhaustible and are implemented in various and dynamic relations of property and non-property character, relationships, developments, events etc. The right to private and family life is a fundamental value necessary for full prosperity of an individual in a democratic society and is considered as a right of an individual to autonomous life independent from the state, bodies of local self-government, legal and natural persons" [12].

Similar restrictions on the prohibition of interference with the private life of individuals are defined by other legislative acts of Ukraine.

For instance, the Civil Code of Ukraine (hereinafter referred to as the Code) explicates the essence of the right to inviolability of personal and family life as one of the types of personal non-property rights by stating that a natural person, on its own, shall determine his/her personal privacy and the possibility to familiarize other persons with it. Also, a natural person shall be entitled to keep secret the circumstances of his/her personal privacy (Articles 270, 271, 301 of the Code). A natural person cannot abandon personal non-property rights, and cannot be deprived of them (Part 3, Art. 269 of the Code) [13].

The personal life of a natural person is deemed to be his/her behavior in the sphere of personal, family, domestic, intimate, social, professional, business and other relationships outside the scopes of social activity, which is carried out, in particular, when the person performs functions of the state or local self-government bodies.

Family life governs personal property and non-property relationship between spouses and other family members, which is carried out using the principles defined in the Family Code of Ukraine (hereinafter referred to as the FC of Ukraine) [14].

Pursuant to Part 4, Art. 4 of the FC of Ukraine everyone has the right to respect for his/her family life. There shall be no interference in one's own family life except as prescribed by the Constitution of Ukraine (Part 5, Art. 5 of the FC of Ukraine). Family relations are regulated concerning the right of privacy inherent in their parties, their right to personal liberty and arbitrary non-interference in their family life (Part 4, Art. 7 of the FC of Ukraine) [14].

At the same time, the criminal procedural legislation of Ukraine provides for the possibility of limiting the relevant constitutional and legislative provisions in the following cases: 1) when it is necessary for the interests of national security, economic welfare, human rights, as well as for the prevention of disturbances or crimes; 2) these cases shall be envisaged by the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine), that is the codified procedure for limiting the right to inviolability of private dwelling [15, p. 69]. In other words, the possibility to employ the appropriate covert investigative (search) actions with the mandatory permission of the investigative judge to conduct them by the pre-trial investigation bodies is discussed.

According to Part 4, Art. 258 of the CPC of Ukraine, interference in private communication implies an access to the contents of communication providing that the communicants can reasonably expect their communication to be private. The following shall be the types of interference in private communication: 1) audio, video monitoring of an individual; 2) arrest, examination and seizure of correspondence; 3) collecting information from telecommunication networks; 4) collecting information from electronic information systems.

M. Ie. Shumylo reasonably points out that communication is deemed to be private if the information is transmitted and stored under such physical and legal conditions, which guarantee the protection of information to the communicants from being interfered by other persons. The physical conditions capable of securing protection from interference into communication are considered to be its place and time, chosen by persons, the form of communication (verbal, tacit, written, graphic), the form of information exchange (direct or indirect – letters, wrappers, parcels, postal containers, telegrams, material media to transfer information among individuals), technical means of wire and wireless communication, means of writing, creation of graphic images, data encryption and storage, etc. [3, p. 572].

The legislator has also established the rules guaranteeing unauthorized disclosure of the received information in the field of criminal proceedings. It shall not be used beyond the scope of criminal proceedings. Everyone who has become aware of such information is obliged to prevent its disclosure [15, p. 69]. The criminal proceedings actors (witness, injured, civil plaintiff, civil defendant, counsel, attesting witness, judge, investigator, prosecutor, operational search department worker, etc.) are hold liable for violating the above mentioned rules due to Art. 387 of the Criminal Code of Ukraine.

To conclude, it should be stated once again that the corresponding restrictions of the constitutional rights shall be allowed only due to the following reasons: 1) the emergence of a threat to the interests of national security, economic welfare, human rights; 2) prevention of disturbances or crimes; 3) mandatory regulatory acts set by criminal procedural legislation of Ukraine; 4) mandatory leave of court. Moreover, only the state executive power bodies, provided for by the law, may be the subjects to restrictions of the constitutional rights, specified above, but not the subjects of private detective activity.

Thus, taking covert photos, making covert film shots and audio records, videotaping the persons checked (Clause 8, Part 2, Art. 13 of the draft legislation) by employing special technical means and collecting information using other covert methods of work aimed at obtaining information, interesting to the client, the private detective is, one way or another, forced to infringe the whole range of the regulatory legal acts of the national legislation.

Currently, the acquisition or use of special means to obtain information poses serious problems and causes a lot of complaints.

Being mentioned above, the investigative actions, committed by a private detective are mainly confidential (secret, covert) and, thus, special technology being used by him in the course of his/her professional activity shall have certain characteristics (be of small size, be camouflaged to look like different household appliances, etc.). The criminal law science defines such means as special

technology for secret obtaining of information (Art. 359 of the Criminal Code of Ukraine).

Special technology for secret obtaining of information are technical means, equipment, facilities, devices, appliances, samples and other species intentionally designed, elaborated, developed, upgraded, programmed and adapted to fulfill the task of secret obtaining of information. For instance, such means include, in particular, special means for the secret: 1) reception and registration of audio information (directed microphone, radio locking device, etc.); 2) visual surveillance and documenting (small camera, miniature telescope, night-vision device, capable of image registration, etc.); 3) examination of objects and documents (portable X-ray device, universal unlocking tools, etc.); 4) penetration into the premises, vehicles, other objects and their inspection (radio set to be worn covertly, nonlinear locators and radars, universal unlocking tools, etc.); 5) control over the movement of vehicles and other objects (radio direction-finder, equipment for silent recordings and chemicals reproducing the traffic route of the vehicles under control, miniature sensors, etc.). Special technology may be camouflaged to resemble the household appliances or non-camouflaged [16, p. 1029].

Many of the above listed special technical means are used by the private detective activity subjects while performing their professional duties. Thus, it turns out that the private detective activity subjects seriously violate the current criminal law of Ukraine.

Therefore, nowadays, there is a rather controversial and dangerous situation for the private detective activity subjects. Considering the aforementioned provisions, private detectives are deemed to be quite dangerous offenders and the persons checked – their victims, are in no way protected from unauthorized interference in private communication. Of course, such a statement is an absurd, and therefore, this situation requires an immediate legislative settlement.

Summarizing the above mentioned, it seems reasonable to underscore great significance of the issues considered. Taking into account the latest amendments and supplements proposed by the Verkhovna Rada Committee on the legislative support of the law enforcement activity, it may be stated that the legislators haven't paid thorough attention to the issues of proper control and supervision of the lawfulness of the special technical means use and covert methods of work by the private detective activity subjects. This may lead to numerous violations of the constitutional rights and freedoms of the citizens (the checked persons) while conducting the private investigative operations. The future of the private detective activity looks quite obscure, complicated, controversial and even dangerous unless the stated problems are solved. To avoid such misunderstandings in the nearest future, one has to solve all the controversial issues of the private detective activity sector assiduously, thoroughly and rigorously while the regulatory process is still in action.

The main precondition for the proper private detective activity is, first and foremost, the legislation, defining the arrangement and conduct of the private detective activity. Unfortunately, the detective activity and the provision of the detective services by business entities haven't received the proper legislative support till this moment in Ukraine. But it has already drawn the precise attention of the acknowledged law enforcement services scholars and professionals to this challenging issue. Although, the level of the scientific research regarding the legal regulation of the detective and law enforcement services still remains quite insufficient and not properly studied.

The formation of a private detective activity in Ukraine is an irreversible process. This is to be certified by the development and submission of several bills on detective activity to the parliament of Ukraine. These bills identify the main grounds to perform the detective activity, a list of services to be provided by the subjects of this activity, control and responsibility for performing it. Artificial and continuous deterrence in legalizing the detective activity causes irrecoverable harm not only to the private detective subjects, already existing at the Ukrainian market and those wishing to engage in such kind of business, but to the interests of the citizens who need such services as well as state interests and image of Ukraine on the international arena. Therefore, the need to adopt the Law On Private Detective (Investigative) Activity in Ukraine is of vital importance.

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