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SEPARATE DISADVANTAGES OF PRIVATE DETECTIVE ACTIVITY LEGISLATION

A systematic study of the provisions of the draft law on private detective (search) activity No. 1228 dated 02.09.2019 [1] revealed a number of inaccuracies. In Part 1 of Art. 3 of draft Law No. 1228, the principle of interaction with law enforcement bodies, state authorities and local governments, enterprises, institutions, organizations and citizens is enshrined. At the same time, current legislation, like legal doctrine, defines the list of law enforcement agencies in different ways. Given that the clear meaning of the principle directly affects the quality of its implementation, it is advisable in a separate article or part of it to specifically determine with which law enforcement agencies such interaction will take place. In addition, the presented edition lacks judicial bodies, which are often separated from law enforcement, but all of them are covered by the category of government bodies.

In h. 3 Article. 4 of draft Law No. 1228 indicates that the subjects of private detective (search) activities are not subject to the laws governing the legal status of law enforcement officials. In our opinion, such a norm cannot be considered correct, since law enforcement officials, in addition to specialized laws, are also subject to the norms of the Ukrainian Code of Labor Laws, which private detectives will be guided in their work in the future.

The content of Part 5. Art. 4 of draft Law No. 1228 relates to private detective (search) activities and exceptional activities that are performed by the relevant entities. Based on this wording, it is not clear what an exceptional type of activity is, because if it is carried out by business entities, and private detectives just

have such an organizational and legal form, then this is an economic activity that can be profitable or unprofitable. In turn, on exclusive activities in the current legislation does not contain any provisions. Moreover, it is not clear why private detective (detective) activity is exclusive to private detectives.

In h. 1 Article 5 of draft Law No. 1228 establishes requirements for persons who may be private detectives, in particular the requirement for higher education. At the same time, such a person will systematically need to work with a large number of regulatory legal acts, analyze their provisions, including with a view to observing human rights and freedoms in the course of detective (search) activities. For its part, a person who does not have a higher legal education will not be able to fulfill his professional duties at a high level, since he does not have the necessary knowledge, skills, and taking special courses does not guarantee their acquisition.

The draft law No. 1228 stipulates that the Ministry of Internal Affairs of Ukraine issues a license to a private detective (Article 8), and the corresponding register of such persons is maintained by the Ministry of Justice of Ukraine (Article 7), and the mechanism for their interaction between the two ministries is – regarding the transfer of information for entering the registry is not regulated, which complicates the work of both departments.

According to paragraph. 7 h. 1 Article 10 of draft Law No. 1228, the basis for canceling a certificate of the right to engage in private detective (search) activity is a gross violation by a private detective of the requirements of the current legislation, which today does not operate with the concept of “gross violation”, except for specific articles of the Criminal Code of Ukraine, where the vast majority the concept of “malicious”. Therefore, it is not clear what exactly is meant by a “gross violation” and how it differs from a non-gross violation.

In paragraph 8, part 1 of article 13 of draft Law No. 1228 states: subjects of private detective (search) activity, when carrying out such activity, have the right to perform any actions not prohibited by law that are necessary for the proper execution of the contract for the provision of private detective (detective) services, in particular, to seek out, receive and accumulate the necessary information by all means not prohibited by law, including film and photography, video and audio recording, as well as the use of other technical means that are not harmful

to life and health persons in premises with the written consent of the persons in respect of which the film and photography, video and audio recording, as well as with the owners of legitimate messages or users of these facilities [1]. It should be noted that obtaining oral or written consent of persons to conduct film and photo shooting, video and audio recordings on them makes it impossible to obtain the necessary information, because a person, knowing that he is being watched, will not feel free, and will be able to intentionally hide the necessary information.

Thus, the very fact of adoption of such a law is certainly a positive thing, but its meaning and content of certain provisions require improvement.

References

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ПОПЕРЕДЖЕННЯ ЗЛОЧИНІВ У СФЕРІ ТОРГІВЛІ ЛЮДЬМИ

Торгівля людьми – одна з найбільш актуальних проблем сучасності. Жертвами сучасних форм рабства в усьому світі щорічно стають мільйони людей.

Поширенню зазначеного явища сприяють також такі чинники, як підвищення мобільності населення, трудова міграція,