

G.N. Mukhamadieva* , **Y.T. Alimkulov** , **A.A. Aryn** 

Al-Farabi Kazakh National University, Kazakhstan, Almaty

*e-mail: mukhamadiyevagn@gmail.com

PRIVATE DETECTIVE WORK AS A GUARANTEE OF THE REALIZATION OF INDIVIDUAL RIGHTS AND FREEDOMS IN CRIMINAL PROCEEDINGS

The article is devoted to the characterization of private detective activity as an element of the mechanism for the realization of individual rights and freedoms in criminal proceedings. The article deals with the issues of balancing the interests of the individual and the state, which are most clearly manifested in the criminal process, on the example of the implementation of the rights and freedoms of the individual, the issues of the implementation of private detective activities in the Republic of Kazakhstan and foreign countries. In this regard, the authors update the essence, importance and role of private detective work, which serves as a guarantee of the realization of individual rights and freedoms in criminal proceedings. For this purpose, the paper examines the theoretical and historical and legal foundations of private detective work as an activity related to the protection of the legal rights and interests of the individual of the Republic of Kazakhstan; the norms of the legislation of the Republic of Kazakhstan, the range of homogeneous public relations regulated by them on the implementation of the rights and freedoms of the individual in criminal proceedings; the practice of applying the above-mentioned legislation, based on the study of which proposals for improving the legislation are developed, as well as studies of the practice of law enforcement on the issues under consideration in the Republic of Kazakhstan.

The study of the questions raised uses a logical, formal – legal, analytical, and functional method that identifies the qualitative characteristics of the subject of the study, which allows us to determine the essence of the institution under study, the possibility of a regulatory impact of constitutional and sectoral legislation on the state of law and order in the Republic of Kazakhstan. In the scientific analysis undertaken by the authors, the principles of complexity and consistency are consistently implemented and productively combined, which made it possible to more fully, scientifically update the issues of improving criminal procedural opportunities for the realization of individual rights and freedoms.

As a result of the study, it was determined that the participation of a private detective in a preliminary investigation will serve as a guarantee of respect for and protection of the rights and legitimate interests of the individual, increase the objectivity of the preliminary investigation, allow a more comprehensive assessment of the alleged episodes, and sometimes generally come to a conclusion about the innocence of the suspect. Thus, the legal status of a person must be guaranteed by the current legislation, which provides a strong mechanism for protecting his rights, freedoms and legitimate interests.

Key words: human rights, criminal procedure, detective work, detective.

Г.Н. Мухамадиева*, Е.Т. Алимкулов, А.А. Арын

Әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

*e-mail: mukhamadiyevagn@gmail.com

Жеке детективтік қызмет қылмыстық процесте жеке адамның құқықтары мен бостандықтарын іске асырудың кепілі ретінде

Мақала қылмыстық процесте жеке адамның құқықтары мен бостандықтарын жүзеге асыру тетігінің элементі ретінде жеке детективтік қызметті сипаттауға арналған. Мақалада қылмыстық процесте жеке адамның құқықтары мен бостандықтарын іске асыру мысалында айқын көрінетін жеке тұлға мен мемлекет мүдделерінің тепе-теңдігі мәселелері, Қазақстан Республикасында және шетелдерде жеке детективтік қызметті жүзеге асыру мәселелері қарастырылады. Осыған байланысты автор қылмыстық процесте жеке адамның құқықтары мен бостандықтарын жүзеге асырудың кепілі саналатын жеке детективтік қызметтің мәнін, маңыздылығы мен рөлін нақтылайды. Бұл үшін жұмыста Қазақстан Республикасы жеке тұлғасының заңды құқықтары мен мүдделерін қорғауға байланысты қызмет ретінде жеке детективтік қызметтің теориялық және тарихи-құқықтық негіздері; Қазақстан Республикасы заңнамасының нормалары, қылмыстық процесте жеке адамның құқықтары мен бостандықтарын жүзеге асыру мәселелері бойынша олар реттейтін біртекті қоғамдық қатынастардың шеңбері зерттеледі; аталған заңнаманы қолдану практикасы, оны зерделеу негізінде заңнаманы жетілдіру жөнінде ұсыныстар әзірленеді, сондай-

ақ Қазақстан Республикасында қаралатын мәселелер бойынша құқық қолдану практикасын зерттеуге көңіл бөлінеді.

Қойылған мәселелерді зерттеу кезінде зерттеу нысанасының сапалық сипаттамаларын анықтайтын, зерттелетін институттың мәнін айқындауға мүмкіндік беретін логикалық, формальды – құқықтық, талдамалық, сондай-ақ функционалдық әдіс қолданылады, Қазақстан Республикасындағы заңдылық пен құқық тәртібінің жай-күйіне конституциялық және салалық заңнаманың реттеушілік әсер ету мүмкіндігі пайдаланылады. Автор қабылдаған ғылыми талдауда күрделілік пен жүйелілік принциптері дәйекті түрде жүзеге асырылады және нәтижелі біріктіріледі, бұл жеке адамның құқықтары мен бостандықтарын іске асыру үшін қылмыстық іс жүргізу мүмкіндіктерін жетілдіру мәселелерін неғұрлым толық, ғылыми тұрғыдан жандандыруға мүмкіндік берді.

Зерттеу нәтижесінде жеке детективтің алдын-ала тергеуге қатысуы адамның құқықтары мен заңды мүдделерін сақтау мен қорғаудың кепілі болады, алдын-ала тергеудің объективтілігін арттырады, кінәлі эпизодтарды жан-жақты бағалауға, кейде күдіктінің кінәсіздігі туралы қорытындыға келуге мүмкіндік береді деп анықталған. Сонымен адамның құқықтық мәртебесіне оның құқықтарын, бостандықтарын мен заңды мүдделерін қорғаудың берік тетігін қамтамасыз ететін қолданыстағы заңнама кепілдік беруі керек.

Түйін сөздер: адам құқығы, қылмыстық процесс, детективтік қызмет, детектив.

Г.Н. Мухамадиева*, Е.Т. Алимкулов, А.А. Арын

Казахский национальный университет им. аль-Фараби, Казахстан, г. Алматы

*e-mail: mukhamadiyevagn@gmail.com

Частная детективная деятельность как гарантия реализации прав и свобод личности в уголовном процессе

Статья посвящена характеристике частной детективной деятельности как элемента механизма реализации прав и свобод личности в уголовном процессе. В статье рассматриваются вопросы сбалансированности интересов личности и государства, наиболее ярко проявляющиеся в уголовном процессе, на примере реализации прав и свобод личности, вопросы осуществления частной детективной деятельности в Республике Казахстан и зарубежных странах. В данной связи авторы актуализируют суть, важность и роль частной детективной деятельности, выступающей гарантией реализации прав и свобод личности в уголовном процессе. Для этого в работе исследуются теоретико- и историко-правовые основы частной детективной деятельности как деятельности, связанной с защитой законных прав и интересов личности Республики Казахстан; нормы законодательства Республики Казахстан, регулируемый ими круг однородных общественных отношений по вопросам реализации прав и свобод личности в уголовном процессе; практика применения названного законодательства, на основе изучения которой разрабатываются предложения по совершенствованию законодательства, также исследования практики правоприменения по рассматриваемым вопросам в Республике Казахстан.

При исследовании поставленных вопросов используются логический, формально-правовой, аналитический, а также функциональный методы, выявляющие качественные характеристики предмета исследования, позволяющие определить суть исследуемого института, возможность регулятивного воздействия конституционного и отраслевого законодательства на состояние законности и правопорядка в Республике Казахстан. В предпринятом авторами научном анализе последовательно осуществляется, и продуктивно сочетаются принципы комплексности, и системности, что позволило более полно, научно актуализировать вопросы совершенствования уголовно-процессуальных возможностей для реализации прав и свобод личности.

В результате исследования определено, что участие частного детектива в предварительном расследовании послужит гарантией соблюдения и охраны прав и законных интересов личности, повысит объективность предварительного расследования, позволит более всесторонне оценить вменяемые в вину эпизоды, а иногда и в целом прийти к выводу о невиновности подозреваемого. Так, правовой статус лица должен быть гарантирован действующим законодательством, обеспечивающим прочный механизм защиты его прав, свобод и законных интересов.

Ключевые слова: права человека, уголовный процесс, детективная деятельность, детектив.

Introduction

From the analysis of the norms, views, and principles of law of the Republic of Kazakhstan, it is clear that they constitute the space necessary for the

formation of civil society, ensuring the rights and freedoms of man and citizen, strengthening the rule of law, exercising political and legal responsibility of citizens, state bodies, and officials, and harmonious activity of all branches of state power.

Human rights and freedoms have been affected by all of humanity for centuries, and, in our opinion, this is still an exciting problem, since a person lives in a society. Nevertheless, the effective solution of these issues, that is, the prevention of infringement of human rights and freedoms, indicates the prospects for the further development of a truly democratic, rule of law state. The compliance of the legal system of the Republic of Kazakhstan with international norms and standards in the field of human rights also depends on this. This is stated in part 3 of Article 4 of the Constitution of the Republic of Kazakhstan: “International treaties ratified by the Republic have priority over its laws and are applied directly, except in cases where it follows from an international treaty that its application requires the publication of a law” (the Constitution, <https://prg.kz>); In paragraph 3 of Article 2 of the Criminal Procedure Code of the Republic of Kazakhstan: “International treaties ratified by the Republic of Kazakhstan have priority over this Code and are applied directly, except in cases where it follows from an international treaty that its application requires the publication of a law” (the Criminal Procedure Code of the Republic of Kazakhstan, <https://prg.kz>).

Materials and methods

In this regard, we can mention the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, which contributed to the conclusion of many international treaties in the field of human rights (the Universal Declaration of Human Rights, <https://prg.kz>). Despite the fact that the Declaration has no contractual force, its principles and norms are generally recognized and are taken as the basis of the constitutions of many States. The rights and freedoms specified in Part 2, “Man and citizen” of the Constitution of the Republic of Kazakhstan are also based on the rights that make up the group of personal rights and freedoms in the first articles of the Declaration: respect for the honor and dignity of the individual, the right to life, the right to freedom, the inviolability of the individual, the protection of the private life of the individual, etc. The right to choose one’s place of residence, freedom of conscience, freedom of opinion, the right to vote and be elected to State bodies of power, and civil and political rights are provided for in articles 1-21 of the Declaration. Socio-economic rights: the right to work, education, recreation and its organization, to an adequate standard of living, protection from unemployment, fair wages, social security,

participation in the cultural life of society, the norms set out in articles 22-28 of the Declaration are taken.

Thus, in December 2018, the Ministry of Foreign Affairs hosted a round table of the Commission on Human Rights under the President of the Republic of Kazakhstan, dedicated to the 70th anniversary of the adoption by the UN General Assembly of the Universal Declaration of Human Rights and International Human Rights Day, where a wide range of issues related to the implementation of human rights and freedoms, improvement of national mechanisms for the protection of human rights in accordance with international standards were discussed. (<https://www.gov.kz>).

It can be said that the norms of this Declaration have defined the path of documents covering different areas of human rights. Among them: The International Covenants on Civil and Political Rights, as well as on Economic, Social and Cultural Rights, adopted in 1966 by the United Nations as legally binding instruments (the Covenants, <https://prg.kz>). Legally binding means that the parties to these Covenants undertake to comply with all the rules of these Covenants in the territory of their States.

Discussion and results

In Kazakhstan, the process of establishing the status of a person has passed through bright evolutionary stages. Today, we speak about the status of the individual from the position of respect for its democratic rights and freedoms, legitimate interests.

The status of an individual is determined through the totality of his legal rights, freedoms and obligations in the state, which relate to his interests in security, social security, cultural, political, economic self-expression, etc. Part of the rights of the individual belongs to it from birth, they are inalienable, absolute and inviolable for any encroachments on the part of the state, its organs and other individuals, its collective entities. Inviolability, thus, is identified with such concepts as “it is impossible to encroach”, “it is impossible to violate”. Literally, inviolability means: “you can not touch”, but to touch in the sense that as a result of such a touch in any way infringe on the scope of rights and freedoms that are outlined by law.

The content of personal inviolability as a right is revealed through a system of constitutional norms that establish: the right to personal freedom (Article 16); the right to life (Article 15); the right to privacy, personal and family secrets, protection

of one's honor and dignity (Article 18); equality before the law and the court (Part 1 of Article 14); prohibition of discrimination based on origin, social, official and property status, gender, race, nationality, language, attitude to religion, belief, place of residence or any other circumstances (Part 2 of Article 14);. inviolability of dignity (part 1 of Article 17); prohibition of torture, violence, other cruel or degrading treatment or punishment (part 2 of Article 17), etc.

The definition of the inviolability of the individual is complicated by the quality of the status of the individual in society, the guarantees, means of protection and protection that a particular state has given it.

The problem in this case, in our opinion, is seen in a completely different way.

First, the mechanism of restriction of rights and freedoms regulated by the norms of law must be applicable (i.e., the norms of law must correspond to the social, political, cultural and other conditions of life of the society in which it is located at the moment). This is the legislator's problem.

Secondly, the practice of law enforcement must meet the requirements of legality and be accompanied by such requirements for the subjects of law enforcement as morality, professionalism, etc. Here, an important factor is the individual characteristics of these subjects, such as: decency, sense of duty, education, patriotism, high self- and legal awareness, etc. Violations of rights and freedoms, in particular, and the inviolability of the individual, in part, we observe due to the ignorance of law enforcement officers, their low professional training, etc.

It is often these individuals who violate the norms of the law that establish the inviolability of the individual in criminal proceedings.

Consequently, we speak about the inviolability of the individual in the application of measures of criminal procedural coercion, focusing on the preservation of a certain block of rights and freedoms for the individual, which cannot be restricted or violated by either the State or other law enforcement entities. We can firmly assert that it is a step-by-step legal reform that can achieve the desired indicators, since the legislator uses in his arsenal not only the rules of legislative technique, but also the domestic experience of law enforcement practice.

The inviolability of the person, being, first of all, a constitutional human right, is put by the legislator at the forefront of the criminal process. And this is due to the increased attention of the state to the individual, despite the fact that it is involved in the

sphere of criminal proceedings, where they fall for committing (or suspected of committing) the most dangerous offenses for society. Here, the main (constitutional) postulate is the promotion of the individual in priority positions in relation to all other state institutions, including the institutions of power (in particular, the penal system).

As far as the inviolability of the individual as a legal category, acting in the form of the right of the individual, is complex from the point of view of constitutional and legal science, so much, and, perhaps, even more, taking into account the industry specifics, it is complex in the criminal process. If in the Constitution the right to inviolability of the person is collected from several norms: the right to life, dignity, security, freedom, etc., then in criminal proceedings this whole complex also "breaks down" into stages specific to the process, multiple procedural and investigative actions, procedural measures, etc.

Modern trends in the criminal procedure legislation of the Republic of Kazakhstan are aimed at ensuring the rights and freedoms of citizens, as well as the implementation of the constitutional principles of justice and criminal procedure, increasingly rely on the direction of protecting the rights of persons involved in the orbit of the process at the pre-trial stage. The highest possible degree of protection of the rights and legitimate interests of the individual, especially the individual involved in the orbit of criminal proceedings, is a distinctive feature of a democratic and legal state.

The function of the State is mainly to protect the freedom of the individual from encroachments, as well as to establish certain restrictions and frameworks that regulate the exercise of rights. The boundaries beyond which an individual becomes "accessible" or "weak" for a State using a system of coercive measures should be clearly defined in the law. In case of violation of these borders, legal liability measures are applied.

When studying the inviolability of the individual, it is important to remember that the abuse of physical and psychological forms of violence against the individual in the exercise of powers by the bodies of inquiry and preliminary investigation leads to an aggravation of the confrontation between the authorities and citizens, in critical situations-to open opposition.

The problem under consideration is further aggravated by the fact that in law enforcement activities at the stage of preliminary investigation, there is a high latent level of the use of force against suspects and accused persons, often accompanied

by psychological and physical abuse. Violence, as a rule, is applied to a socially disadvantaged and legally unprotected group of citizens involved in criminal procedural relations. At the same time, violence is justified by the goals established by law – the rapid and complete disclosure of the crime, the exposure of the perpetrators, and the protection of the rights and legitimate interests of the victims.

Statistical data indicate that violations of the law occurred during the application of measures of criminal procedural coercion, many citizens were illegally detained and placed in places of detention, violent actions and mental violence were used by the bodies conducting preliminary investigations. Thus, the NGO Coalition of Kazakhstan against Torture registered cruel, inhuman, degrading treatment and facts of torture (Report of the NGO Coalition of Kazakhstan against Torture 2017-2019, <https://www.notorture.kz>).

According to the data of the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan, 86 criminal offenses were registered in the ERDR in 2019 under Article 146 of the Criminal Code of the Republic of Kazakhstan for crimes of torture. For 5 months of 2020, 131 criminal offenses were registered in Kazakhstan under this article. In 3 months of 2020, 16 persons were convicted of torture. For 3 months of 2020, 1 police officer was convicted of torture, 10 employees of the CUIS, and 5 previously convicted persons (the Committee on Legal Statistics and Special Records of the Prosecutor General's Office, <https://www.gov.kz>).

Perhaps we should agree with the position of those legislators who create an additional lever for the balance of these conflicting interests, which creates special guarantees to avoid violence in criminal proceedings. For example, in the Code of Conduct for Law Enforcement Officials of 17 December 1979, article 3 defines the principle of the use of force: "Law enforcement officials may use force only when absolutely necessary and to the extent necessary for the performance of their duties". The conditions for the use of force under this article are:

- 1) exclusivity;
- 2) powers of the official;
- 3) reasonable necessity;
- 4) the use of force not exceeding the limits necessary for these purposes;
- 5) legitimate purpose (International protection of human rights and freedoms. Collection of documents, 1990: 321).

At the same time, it is very important that both restrictions and responsibility as a response measure for violations are established from the position of equality. This criterion defines the essence of the rule of law, in which the law is a common and equal "measure" for the life of society. An example is the norm of the Constitution, which establishes: "All are equal before the law and the court" (part 1 of Article 14). If the individual has a constitutional right to inviolability, the State is obliged to guarantee the exercise of it in relation to each individual. This provision is especially relevant in conditions when a person falls into the sphere of criminal law influence.

Thus, the presence of a criminal charge in the criminal process requires the opposition of the defense. The fundamental approach to ensuring the right to protection follows from the norm of Part 2 of Article 13 of the Constitution of the Republic of Kazakhstan, according to which "Everyone has the right to receive qualified legal assistance...". The right to protection is enshrined in Articles 12, 15, 26 and 27 of the Code of Criminal Procedure of the Republic of Kazakhstan (the Constitution, <https://prg.kz>).

In our opinion, in the use of the opportunities provided by the law to defend himself, and with the help of a private detective (detective), the individual in the criminal process has a guarantee of compliance and protection of his rights and legitimate interests.

According to Article 1 of the Draft Law of the Republic of Kazakhstan "On Private detective activity", private detective activity is a licensed type of activity for providing detective services on a paid contractual basis related to the protection of the legal rights and interests of the customer (Resolution of the Government of the Republic of Kazakhstan "On the Draft Law of the Republic of Kazakhstan "On Private Detective Activity", <http://adilet.zan.kz>). The main purpose of private detective work is to provide legal assistance in the interests of protecting the rights of the individual and ensuring the security of property and property of citizens and legal entities, including assistance to law enforcement agencies in the fight against criminal offenses and their prevention. The main task of private detective work is to protect the rights and legitimate interests of the individual.

Detective (English detective, from Lat. *detectio* "disclosure"), a detective-specialist in the investigation of criminal offenses; an agent of the detective police. His duties include collecting evidence and providing it to the judicial authorities.

Private detective — a person who carries out detective (detective) activities and provides

detective services in a private (individual) way. Famous private detectives:

- Jorge Colomar — a private detective from Barcelona, whom the press calls “the Spanish Sherlock Holmes”.

- Clyde Wilson-North American private detective, known for his ability to solve complex cases, was considered “the most public private detective in Houston.”

- Kroll is an American detective company specializing in business intelligence, cybersecurity, and risk management for corporations and individuals. Investigated the case of the “gold of the party” on the order of the Russian government in 1992 (Material from Wikipedia-free encyclopedia, <https://ru.wikipedia.org>).

Despite the fact that detective work is not new in the world, the activities of private detectives in Kazakhstan are still not regulated. The first draft law was developed 15 years ago, but it was never adopted. As we can see, only the draft of May 30, 2013 No. 548 was developed, although in 2010 the Decree “On measures to improve the efficiency of law enforcement and the judicial system in the Republic of Kazakhstan”: “... together with the interested state bodies to make proposals on the introduction of the institute of private detective activity in the Republic of Kazakhstan” (paragraph 5, subparagraph 10) (Decree of the President of the Republic of Kazakhstan, <http://adilet.zan.kz>) and 2012 in the annual Address to the people of Kazakhstan “Socio-economic modernization – the main vector of development of Kazakhstan” the first President of the Republic of Kazakhstan N. A. Nazarbayev pointed to “... the need to introduce the institute of private detective activity in the Republic of Kazakhstan” (Address of the President of the Republic of Kazakhstan-Leader of the Nation N. A. Nazarbayev to the people of Kazakhstan, <http://adilet.zan.kz>).

Despite the lack of legislation regulating the activities of detectives, almost two thousand people are engaged in private investigation in Kazakhstan. The director of the “Center for Lie Detection “Pravdalab” Andrey Kriknin confirms the legitimacy of this activity as follows: “There is Article 20 of the Constitution of the Republic of Kazakhstan, paragraph 2, which states that everyone has the right to freely receive and disseminate information in any way not prohibited by law. In addition, according to the national classification of occupations, section 54-19 “Employees of services that protect citizens and property” provides for the profession of “private detectives”. That is, we

exist” (Italics, 2018 <https://kursiv.kz>). Also, the Chairman of the NGO “Association of Professionals of Corporate Security and Detective Work “Kalkan” Rustam Mirzabayev believes that the actions of detective agencies in Kazakhstan are legal, if they do not use prohibited equipment and illegal methods of collecting information. According to Mirzabayev, in Kazakhstan, detectives are mainly engaged in checking contractors, personnel, helping in the search for lost property and searching for missing persons. “Detectives work within the framework of general laws, observing the norms of the Criminal Code, the Constitution, the Tax Code, following the Law “On Personal Data and their Protection”, – said the specialist. According to the expert, the adoption of the law in relation to detectives will clarify the rights and obligations of representatives of private investigation (Platonova A., 2018 <https://ru.sputnik.kz>).

As you know, private detective work did not originate in the United States, but in France. Its founder should be considered Jean Francois Vidocq, the iconic French detective, the founder of the modern criminal investigation, who after retiring established the first detective agency in 1834: “Bureau of Investigation for the Benefit of Commerce.” The success of detective work in Europe resulted in its spread in the New World. At the same time, in the United States, the activities of detectives developed more actively than in the Old World. This was because European countries had already by the nineteenth century a relatively developed system of law enforcement agencies, and the activities of private detectives came into some contradictions with it. The first detective agency in the United States was established in Chicago in 1850 (Features of private detective work in the United States, 19.11.2019 // <https://www.nsb-rf.ru> In 1850, Allan Pinkerton founded the Pinkerton National Detective Agency, which became one of the most famous detective agencies in the United States. The term “private investigator” is derived from the original Pinkerton logo. (Tracy V. Wilson, <https://money.howstuffworks.com>).

In the United States, the rights and opportunities of a private investigator are related to their class. Private detectives are assigned classes A or C (class B is assigned to security guards). Class A holders can only collect information. Class C allows you to carry weapons, conduct investigations, and provide security services. Detectives of both classes are allowed to detain persons suspected of committing a crime and transfer them to the police. But it is forbidden to conduct searches and arrests (Private detective in the United States // <https://detektive.ru>).

Working as a private investigator often requires the following skills:

- Carry out surveillance
- Prepare reports
- Perform a background check
- Interviews with people
- Collect intelligence
- Provide security services
- Help in finding missing persons
- Give evidence in court.

Although they are not government agents, the information that private detectives collect can later be used for criminal investigations. For this reason, it is important that private investigators, like police detectives, adhere to the established rules of evidence (Timothy Roufa, 2019 <https://www.thebalancecareers.com>).

In Australia, private detectives provide government agencies, businesses and the public with investigative and legal support services in areas such as fraud prevention, detection, assessment and resolution; corporate fraud and risk management services; insurance fraud and claims investigation, monitoring and evaluation; aviation accident and loss investigations; maritime loss investigations; health and safety incident investigations; witness location and search; criminal investigations (Code of Practice for Private Detectives in Australia, <https://www.alrc.gov.au>).

In the Russian Federation, private detective activity is regulated by the Law of the Russian Federation "On Private Detective and Security Activities in the Russian Federation" of March 11, 1992 (The Law of the Russian Federation "On Private Detective and Security Activities in the Russian Federation", <http://www.consultant.ru>).

According to the current legislation of Russia, a private detective provides the following types of services:

- collection of information on civil cases on a contractual basis with the participants in the process;
- market research, gathering information for business negotiations, identifying non-creditworthy or unreliable business partners;
- establishing the circumstances of the illegal use of trade marks and names in business activities, unfair competition, as well as the disclosure of information that constitutes a trade secret;
- clarification of biographical and other personal data about individual citizens (with their written consent) when they conclude employment and other contracts;
- search for missing citizens;

- search for property lost by citizens or enterprises, institutions, organizations;
- collection of information on criminal cases on a contractual basis with the participants in the process. Within a day from the moment of signing a contract with the client to collect such information, a private detective must notify the person conducting the inquiry, the investigator or the court in whose proceedings the criminal case is located.

The definition of this type of activity was given by Kolchemanov M.V., according to which private detective activity is the provision of services on a paid contractual basis to individuals and legal entities that have a special permit (license) of the internal affairs bodies by organizations and individual entrepreneurs in order to protect the legitimate rights and interests of their clients (Kolchemanov, M.V., 2007: 102). Describing the essence of private detective work in the Russian Federation, V.V. Horovenko clarifies: "Private detective work — this is a law enforcement, independent, risky activity aimed at making a profit from meeting the needs of individuals and legal entities to ensure the implementation and protection of property and non-property rights and legitimate interests, carried out by providing a special set of detective and security services using specific methods and means, by commercial organizations that have received a special license, whose employees must have Russian citizenship" (Baluev E.N., 2011 <https://cyberleninka.ru>).

M. Milovanova believes that in Russia, private detectives actually have no place in the field of criminal justice, except for the possibility of collecting information on criminal cases. Moreover, by securing the rights, the legislator restricted private detectives in their freedom of choice and methods of activity, and also did not provide for how the information obtained and the evidence collected should be evaluated and formalized. (Milovanova M., 2017 <https://cyberleninka.ru>).

One of the reasons for the illegal actions of employees of private detective and security structures Ishmaeva T.P. and Tkachenko A.V. call weak control of their activities. In this regard, in order to improve the work of the internal affairs bodies and the effectiveness of control in large cities with a large number of objects of the permit system, it is proposed to create operational units in the divisions of the license and permit system of the Department of Internal Affairs of the district, the city to identify violations and solve crimes in this field of activity, as well as to identify unlicensed security and detective enterprises, security services that illegally perform

security and detective functions (Ishmaeva T.P., Tkachenko A.V., 2017 <https://cyberleninka.ru/>).

Similarly, in Canada, the purpose of covert surveillance is to observe people, places, or things without detection, as well as to observe an object in its natural and true state. Usually, surveillance leads to documenting the actions of the subject, recording them on video or photos, which are considered illustrative evidence. However, a private investigator should not attempt to access restricted information, such as bank records, tax information, or credit information, without a signed authorization and without legal authority. Generally speaking, private investigators must comply with all federal, provincial, and municipal laws when conducting surveillance (Private Security & Investigative Services, <https://www.mcscs.jus.gov.on.ca>).

As mentioned above, the participation of a private investigator in the preliminary investigation would serve as a guarantee of respect for and protection of the rights and legitimate interests of the individual. Just as the extension of the adversarial principle that exists in criminal proceedings to the pre-trial investigation stage makes the entire criminal process more effective, ensuring the protection of the rights of its participants at its early stages, so the participation of a private investigator in a preliminary investigation would increase its objectivity, allow for a more comprehensive assessment of the imputed episodes, and sometimes generally come to a conclusion about the innocence of the suspect. However, despite the fact that the Kazakh legal system establishes the principle of adversarial proceedings in criminal proceedings through the criminal procedure legislation, the principle of adversarial proceedings does not apply to pre-trial proceedings of criminal proceedings. Thus, at the stage of preliminary investigation, criminal cases are investigated and terminated at the initiative of the prosecutor's office and the investigation. Thus, some of the functions of the court are concentrated in the hands of the prosecutor's office, the bodies of preliminary investigation and inquiry. That is, the rights and freedoms of citizens can be restricted without the knowledge of the judiciary, this is enshrined in part 2 of Article 16 of the Constitution of the Republic of Kazakhstan: "Arrest and detention is allowed only in cases provided for by law and only with the approval of the court, with the right of judicial appeal to the arrested person...". This rule directly points to the investigative and investigative (inquisitorial) principle of the criminal process at the stage of pre-trial proceedings, since the bodies of inquiry, preliminary investigation and prosecutor's

office are not limited in their actions and form one whole in the system of criminal prosecution and prosecution. At this stage of the criminal process, there may be costs.

If you conduct your own analysis, it is clear that a number of norms of the Criminal Procedure Code of the Republic of Kazakhstan contradict the provisions of Article 23. Thus, the provisions of Article 23 of the Criminal Procedure Code of the Republic of Kazakhstan are in contradiction with Article 24 and Part 1 of Article 34 of the Criminal Procedure Code of the Republic of Kazakhstan, which establish that criminal prosecution bodies (prosecutor, investigator, body of inquiry, inquirer) are obliged to identify circumstances that not only incriminate, but also justify the suspect, not only aggravating, but also mitigating his responsibility and punishment. Thus, the criminal prosecution is not separated from the defense, and the investigative body performs the two functions of defense and prosecution. And if there are grounds provided for in Articles 35, 36 of the Code of Criminal Procedure – and the resolution of the case. Consequently, the officials and bodies conducting the preliminary investigation exercise all three functions, which is fundamentally contrary to the principle of competition.

Conclusion

Further, there can be no question of equality of the parties at the stage of preliminary investigation. For example, even a cursory analysis of the rights of the victim and the suspect does not allow us to conclude that they are equal. Moreover, paragraph 45 of Article 7 of the Code of Criminal Procedure, in contrast to part 1 of Article 23 of the Code of Criminal Procedure, refers to the principle of adversarial proceedings.

Therefore, private detective work would serve as one of the guarantees of the realization of the rights and freedoms of the individual in the criminal process. Identifying witnesses, checking the background of suspects, searching for assets to determine the viability of a trial – all these actions of a private investigator would help achieve the goal of the criminal process.

We find that the provision of such services, the lack of legislative regulation of this serious, necessary activity and the reference to the law that does not currently exist, can lead to a violation of the rights and freedoms of the individual in general, in particular in criminal proceedings. This "omission" of the legislative regulation contradicts Part 1 of Article 39 of the Constitution of the Republic of

Kazakhstan, which implies that all restrictions on the rights of persons in the course of criminal proceedings must be provided for by laws.

So, summing up, we can say that in the Republic there is a need for the legalization and legal regulation of private detective (detective) activities. Since the truly democratic essence of the inviolability of the individual requires constant scientific, practical and dialectical development,

taking into account the ever-developing social relations, increasing the role and importance of the status of the individual.

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References

- Address of the President of the Republic of Kazakhstan-Leader of the Nation N. A. Nazarbayev to the people of Kazakhstan, Astana, January 27, 2012 // <http://adilet.zan.kz>
- Australian Institute of Private Detectives, Code of Rules for Private Detectives in Australia (2005) // <https://www.alrc.gov.au>
- Baluev E. N. Private detective activity as a structural and functional element of the mechanism for implementing the law enforcement function of the modern state (comparative legal aspect). Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia, 2011 // <https://cyberleninka.ru>
- Decree of the President of the Republic of Kazakhstan dated August 17, 2010 No. 1039 "On measures to improve the effectiveness of law enforcement and the judicial system in the Republic of Kazakhstan" // <http://adilet.zan.kz/>
- Committee on Legal Statistics and Special Accounts of the Prosecutor General's Office // <https://www.gov.kz/>
- Ishmaeva T.P., Tkachenko A.V. Some problems of control of private detective and security activities of the internal Affairs bodies of the rule of Law: history, theory, practice. 2017 // <https://cyberleninka.ru>
- International protection of human rights and freedoms. Collection of UN documents. – Moscow: Legal Lit., 1990 – 672 p.
- Kolchemanov, M.V. Interaction of police bodies with non-state (private) security and detective structures: on the example of the USA // Law and right. – 2007. – No. 10. – P 102-107.
- Law of the Republic of Kazakhstan № 91 of November 28, 2005 "On Ratification of the International Covenant on Civil and Political Rights" // <http://adilet.zan.kz>
- Material from Wikipedia-free encyclopedia // <https://ru.wikipedia.org>
- Milovanova M. Some problems of collection of evidence by a person engaged in private detective work O.E. Kutafina University Vestnik, 2017 // <https://cyberleninka.ru>
- Private detective work in the United States, 19.11.2019 // <https://www.nsb-rf.ru>
- Private Security & Investigative Services, <https://www.mcscs.jus.gov.on.ca>
- Private detective in the USA // <https://detektive.ru>
- Platonov A. What being a private detective in Kazakhstan. Sputnik Kazakhstan, 12.10.2018 // <https://ru.sputnik.kz>
- Resolution of the Government of the Republic of Kazakhstan dated May 30, 2013 No. 548 on the draft Law of the Republic of Kazakhstan "On private detective activity" // <http://adilet.zan.kz>
- The Law of the Russian Federation "On private detective and security activities in the Russian Federation" of 11.03.1992 N 2487-1 // <http://www.consultant.ru>
- The Constitution of the Republic of Kazakhstan. The Constitution was adopted at the republican referendum on August 30, 1995 // <https://prg.kz>
- The International Day of Human Rights was celebrated in the Ministry of Foreign Affairs of Kazakhstan. <https://www.gov.kz>
- The report by a coalition of NGOs of Kazakhstan against torture 2017-2019 <https://www.notorture.kz>
- Timothy Roufa What Does a Private Investigator Do? July 16, 2019 // <https://www.thebalancecareers.com>
- Tracy V. Wilson How Private Investigators Work // <https://money.howstuffworks.com>
- Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014 No. 231-V ZRK // <https://prg.kz>
- The Universal Declaration of Human Rights of 10 December 1948 // <https://prg.kz>
- Why can't detective work be regulated in Kazakhstan for 15 years? //Italics, 23.05.2018 // <https://kursiv.kz>