

DETECTIVE ACTIVITY IN SERBIA

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Abstract: *The criminal and civil procedure as well as and other procedures fail to recognize the activity of private investigators / detectives for the purposes of conducting court and other proceedings, nor do they provide any rules concerning private collection and processing of personal data without the consent of the person. Activities of private investigators / detectives as one of the most vulnerable segments of the private security sector from the aspect of human rights protection, requires a different approach and the creation of appropriate normative-legal framework for their activities in the Republic of Serbia.*

Keywords: *Private security sector, detective activity, investigators / detectives*

1. INTRODUCTION

He who governs information governs any situation, too. Collection and processing of personal data, companies or events for the purposes of personal information and keeping certain legal and administrative procedures is traditionally located within the competent state authorities and is a formally controlled action of collecting evidence.

The key issue is whether operations of private investigators / detectives represents de facto power without control exercised by the courts, parliaments and executive bodies, the Ombudsman, etc.

Operations in the private security sector, traditionally reserved for state structures that use force (army and police) thus holding the monopoly of force, opens up great controversy in the professional and general public about various aspects of operations of private investigators / detectives, especially considering the proclaimed constitutional principles of human rights and freedom, on the one hand, and the need for security - as the subject of professional and commercial service provision, on the other hand.

The private security sector includes more traditional activities such as: private military companies; private companies for business security; individuals who, as a registered business, provide certain services...; detective agencies; security consulting, marketing and engineering...

Despite the constantly increasing interest in the forms of action which fall under the rights to privacy and collected personal data without consent, and in the private security sector in Serbia, there is still a small number of specialized texts in this field.

In an attempt to clarify the functions of private investigators / detectives, who are usually divided between the interests of clients they protect and represent and the interests of society when it comes to the ethical aspects of this issue, it is interesting to compare them with the legal profession in which there is a similar dilemma, whether (non) compliance with laws should protect the interests of clients or general interests of society.

The concept of a detective is commonly used for: (1) Police officers in civilian clothes who collect evidence and information about offenders and investigate; (2) Private detectives - investigators who work on behalf of clients for an agreed fee.

It is characteristic of private investigators / detectives that they essentially perform collection of data and evidence to order, for a fee. In line with the above, another issue is the problem of collecting and processing personal data without consent (data collections formation!), i.e. interference with the right to privacy of every citizen without clearly defined legal requirements formally provided mechanisms and methods of control over the work of private investigators / detectives.

Private investigation / detective activity abroad means not only to gather information, but also to collect certain evidence, which is essential for customers who are contracting work, because in this way we can ensure the protection of the legitimate interests and rights of these persons before the authorities [1]. Having said that, foreign literature notes that private investigators / detectives should not engage in any activity governed by the law enforcement - police.

In 2013 [2] in the Republic of Serbia the Law on Detective Activity was adopted which closely specifies the work of legal entities, entrepreneurs and individuals who perform tasks in the areas of provision of detective services, conditions for their licensing, manner of performing tasks and exercising control over their work.

2. HISTORY OF PRIVATE INVESTIGATORS / DETECTIVES

History of private investigators started at the British Islands, where in the late seventeenth century there were recorded first forms of such activities. With the entry into force of the Highwaymen Act in 1692, there is a possibility of offering cash prizes for catching criminals and this is when head hunters for prize money first appeared. Apart from the UK, this practice had been present in the US where criminals and fugitives from the law were caught for a cash prize.

In addition to head hunters, the literature emphasizes the importance of companies for private prosecution present in the UK during the eighteenth and nineteenth centuries, whose aim was to provide assistance in finding suspects; this was done by using rewards for information leading to arrest of criminals in the territory in which the company operated.

Since the mid-nineteenth century, it would be impossible to follow the concept of private investigation / detective activity without reference to the situation in the United States, where such activities are focused primarily on assisting in the maintenance of discipline at work. In addition, the role of Alan Pinkerton is also important, founder of the 'North-western detective agency', known as 'the Pinkerton National Detective Agency'. Members of this agency were able to stop a series of train robberies gaining thus immense reputation

among the Americans. During the Civil War, Pinkerton agency prevented the alleged conspiracy and the attempted assassination of Abraham Lincoln, and gave special contribution to prevention of infiltration of enemy into the organizational structure of the unionists. In addition, during the civil war in the United States, this agency was engaged in collecting military information within the territory of the Confederation. Pinkerton is especially known for introducing several research techniques in operational work which are still used today in the work of criminal police, among which the best known are: - monitoring or surveillance of the suspect; undercover work or work with concealed identity.

3. THE CONCEPT OF PRIVATE INVESTIGATOR / DETECTIVE ACTIVITY

In the literature [3] this term is usually related to someone who searches for something missing, or something that happened or something that is or has been known, but remains hidden. The term detectives for perpetrators of such detective operations became commonly accepted as it was often used by the means of mass media and culture.

In addition to the above, the term investigator / detective is used for officers who reveal crimes and their perpetrators, while the term private investigator / detective is a person who by order and for the award secretly keeps an eye on certain people or gathers evidence in court proceedings (usually in divorce proceedings or criminal proceedings at the request of the defense).

In the literature, there are three groups of definitions of private detective activity:

(A) through the normative frame - when the special laws govern private investigation / detective activity as a contractual relationship between customers who order services and providers of services, while in the second case, through the public authority, the state transfers some of its responsibilities to the private sector, in this case investigators / selective, where the type and scope of work are essentially determined by the state itself which usually appears as a contracting authority of the transaction;

(B) through functional design - by precisely defining the the concept by listing tasks that fall under the jurisdiction of private investigators / detectives, and whose content is essentially determined by normative solutions, which vary from state to state;

(C) through definition of professionals - when investigators differ from private entrepreneurs and independent individuals who perform activities based on the contract with the client, investigator / detective who is employed under a specific private institutions or enterprises (law firms, banks, insurance company, etc).

Ranking of private investigative / detective agencies may be carried out according to the operating rules, i.e, those that perform their work completely legally (searches of business books, reports, finding missing persons and objects) to the agencies involved in the pre-election and election political campaigns, 'collection of debts', industrial espionage, theft, bribery and corruption.

The analysis of comparative legal solutions lists the following tasks that can be performed by private investigators / detectives:

- 1) Research of the past of future spouses or employees in enterprises;
- 2) investigation of cases of missing persons (only in case of lack of police resources or if it is suspected that the disappearance is not related to the criminal offense);
- 3) checking the behavior of lovers or spouses;

- 4) insurance fraud investigation;
- 5) reconstruction of traffic and other accidents;
- 6) secret work for private companies to detect criminal activity, drug use, or violation of labor rights by employees (ie. Internal investigation); and
- 7) delivery of subpoenas.

4. THE ACTIVITY OF PRIVATE INVESTIGATORS / DETECTIVES IN SERBIA

The analysis of ads and other public media in Serbia over the past 10 years has determined what private investigators / detectives actually do, before and after enactment of the law in 2013, and these services are summarized as follows:

- Search for missing persons and objects;
- Resolving criminal cases;
- Information gathering;
- Surveillance, monitoring and control;
- Detect listening devices and covert monitoring;
- Detection of drug addicts, members of religious sects;
- Polygraph testing;
- Jobs regarding security of persons and property;
- Alarm and video surveillance;
- Examining the solvency of business partners;
- Tracking;
- Consulting in the field of security;
- Monitoring the mobile phone and SMS messages;
- Checking fidelity of spouses;
- Checking reliability of employees;
- Preparation of participants in court proceedings to give evidence;
- Juvenile delinquency;
- Business intelligence operations;
- Checks in connection with the consumption of drugs and work with aficionados and their families;
- counter-diversion;
- Assistance in connection with the problems arising in the Ministry of Interior;
- Protection of persons working abroad;
- Determination of the mitigating and aggravating circumstances in criminal proceedings;
- Collection of information and information relating to personal and private information, economic information and economic and security issues; and
- Training of future private investigator / detective.

When it comes to the field of normative regulation of private investigators / detectives in Serbia, it is important to note that legal entities and entrepreneurs registered for carrying out detective activities, i.e. natural persons who are employed to perform detective activities cannot perform the duties that are the exclusive responsibility of the state bodies and implement the operational methods and means, i.e. operational-technical means and methods that the authorities carry out, or apply on the basis of special regulations.

In the previous period, the Law on classification of activities and register of classified units [4] of 1996 envisaged the activity of searching for lost persons and protection (Section

J, activities related to real estate, renting and business activities; branch of 746), such as : the search for lost persons; the activities of private investigators; surveillance activities and other protective actions; transport of valuables; physical protection; street patrols, guarding and monitoring of residential buildings, offices, factories, construction sites, hotels, theaters, discos, etc.; detective activity in retail shops; monitoring using mechanical and electronic protective devices, etc.; providing advice on the protection and security in the industry, households and public safety. This activity is not included: setting alarms and research relating to insurance, which are classified into specific sub-classification. However, the Act on the Classification of activities [5] in 2009 made all the above ineffective.

The Law on Chambers of Commerce [6] stipulates that the Chamber of Commerce are interest, independent and business-professional organizations of enterprises, entrepreneurs and other forms of organizations that conduct business activities that are bound by common business interest in a particular area or territory in the Republic of Serbia, which, as a part of a unique connection of business entities participating in the exercise and ensuring common interests are important for the economy of the Republic.

Activities of the Chamber are: - providing and organizing technical assistance to its members to enhance and improve their operations; - The study of issues related to the industries represented in the chamber, monitoring the phenomenon of economic life and evaluation of their effects on the economy of the Republic of Serbia, or its territories or areas; - The promotion and establishment of economic cooperation with foreign countries, organizing economic and tourist-information propaganda, fairs, commercial exhibitions and other promotional activities for its members; - Presentation of the domestic economy in the country and abroad, and the inclusion of the same in the international exchange of goods and services in a way that will facilitate their members access to the world market; - Providing timely and quality information to its members aimed at finding potential partners and their interconnection; - Development of an information system in the chamber; - Encouraging research in the field of scientific and technological development; - Improvement of entrepreneurship and management and monitoring of the transfer of international experience in these fields, especially in the field of management of quality systems; - Business networking and informing of the Association members; - Making proposals to the relevant state authorities for the development and introduction of various instruments in the domestic economy; - Initiation of anti-dumping concerning improper behavior of foreign producers on the domestic market; - Providing assistance to its members in connection with the financing and crediting of production in cooperation with commercial banks; - Fostering good business practices and business ethics; - Organizing lectures, seminars and specialized courses for training and training of personnel in the economy, and issuing corresponding certificates chamber; - Harmonization of interests of the Association members; - Assisting in the establishment of new enterprises and the restructuring of existing ones; - The preparation and promotion of standard contracts between enterprises; - Carrying out other activities of interest for members of the chamber.

Code of Business Ethics [7] defines the principles and rules of business ethics that are binding for economic operators, members of chambers of commerce, employees, members of organs and persons engaged under a contractual basis in the undertaking.

Respect for the principles and rules of business ethics includes, but is not limited to, the following principles: 1. professional conduct of business activity; 2. conscientious and complete assumption and execution of the obligations and responsibilities; 3. conducting economic activity in a way that does not jeopardize the professional reputation; 4. use of the

available funding to achieve business objectives; 5. compliance of incompatible activities; 6. professional secrecy; 7. avoid conflicts of interest between personal and business entities; 8. conducting business activities in a manner that is not harmful to existing shareholders, members or partners; 9. conducting business activities that increase the capital value of the company; 10. Refraining from the use of political influence or pressure to achieve business objectives; 11. Business cooperation with other companies bona fide; 12. Resolve disputes with business partners through negotiation or mediation, and efforts to continue business relations; 13. Respect for intellectual property rights; 14. Conducting business activities in accordance with the regulations on the protection and improvement of the environment; 15. Respecting standards of business ethics and contribution to the further promotion of morality in business relationships.

5. PROCESSING OF PERSONAL DATA AND ACTIVITIES OF PRIVATE INVESTIGATOR / DETECTIVES

According to the provisions of Article 10 of the Law on Detective Activity entity for detective activity and entrepreneur for detective activity, a detective may process data on:

- 1) Missing persons or persons who are hiding to avoid prosecution;
- 2) persons who have caused damage to the client, if the statutory conditions of liability for damages are met;
- 3) persons who anonymously and unlawfully affect the user, with the threat of harmful consequences;
- 4) items that are lost or stolen;
- 5) performance of legal entities and entrepreneurs;
- 6) protection of intellectual and industrial property.

During processing, the detective is forbidden to interfere with the performance of activities that are the responsibility of state authorities.

It should be noted that the processing of personal data without consent under the legislation of the Republic of Serbia does not foresee at all any activity of private detectives / investigators in this field.

Constitutional concept - the right to privacy, in a general way includes the right to respect for the private and family life, home and correspondence, as well as honor and reputation. Elements of this law experienced the development and refinement, through the formulation of concrete rights and inclusion of new content. Private life includes a series of narrower rights, such as the right to protection of personal data, the right to a name and reputation, the right to moral and physical integrity, the right to respect for all forms of secrecy of correspondence (letters, telegrams, electronic media, etc.) . The right to privacy encompasses more rights, but only one of them is the protection of personal data. Any restriction of human (civil or political) rights must be provided for by law (legality). Deviation from the standards of human rights must be lawful. This variance can significantly undermine these rights. For this reason, there are principles that must be met in order to be lawful derogation. It is these principles (which are currently only indicative): excellence; the public; proportionality, consistency, non-discrimination and notification. The limitation must be explained to some of the recognized objectives (allocated), which include the protection of

the rights and freedoms of others; state and public security; public health or morals; the prevention of disorder and crime. It must be shown that the restriction “necessary in a democratic society” (necessity and proportionality), and must meet the necessary social need, has a very good reason; be proportionate.

Proportionality should minimize the threat for limitations of rights, should be carefully designed to meet the desired objectives and must not be arbitrary, unfair or based on irrational attitudes. Any qualification of rights with respect to the limitations of human rights should not be used in a discriminatory manner (non-discrimination). The difference will be considered discriminatory if it has no objective and reasonable justification, as such, does not have enough good reasons when disproportionate.

The provisions of Article 42 of the Constitution of the Republic of Serbia [8] guarantee the protection of personal data. In addition, it is envisaged that the collection, holding, processing and use of personal data are regulated by law. Prohibited and punishable use personal data for purposes other than those for which they were collected, in accordance with the law, except for the purpose of conducting criminal proceedings or protect the safety of Serbia in the manner provided by law. In addition, the right to privacy is constitutionally protected and guaranteed through the guarantee of human dignity, the inviolability of the physical and psychological integrity, apartments, confidentiality of letters and other means of communication (communication), and the rights to the name. Any natural person, except if the data are processed in accordance with Article 13 of the Law on the Protection of Personal Data (processing of data by government authorities without the consent of the person!), has the right to be informed of the data collected about his person, in accordance with the law and the right to judicial protection of their abuse.

Convention on Protection of Individuals with regard to Automatic machinery processing personal data [9] and the Additional Protocol to the Convention on the Protection of Individuals with regard to Automatic Processing of data, regarding supervisory authorities and transborder data flows [10] - provides for exceptions and limitations on the application of Article 5. (data quality); Article 6 (Special categories of data) and 8 (additional measures for the protection of the data subject) of the Convention, unless a derogation is provided to the national law of the State Parties to the Convention (or the Parties), and constitutes a necessary measure in a democratic society for: (a) protect the safety of a country, the public safety, the monetary interests or for the suppression of criminal offenses; (B) for the protection of the data subject and the rights and freedoms of others.

The law on the protection of personal data [11] - Personal data is any information relating to a natural person, regardless of the form in which it is expressed and the information (paper, tape, film, electronic media, etc.), after which order, in whose name and for whose account the information is stored, the date of the information storage site information, the manner of obtaining information (directly, by listening, watching and the like, or indirectly, through the access to a document containing the information, and the like) or regardless of other characteristics of information or data.

Data processing is any action related to data such as collection, recording, copying, duplication, copy, transfer, search, sorting, storing, sepa, intersection, integration, upodobljavanje, transmission, provision, use, placing on the insight, discovery, publication, dissemination, recording, organization, storage, adaptation, disclosure by transmission or otherwise making available, camouflage, displacement and otherwise making unavailable, as well as implementation of other actions related to the above data, regardless of whether it is done automatic, semi-automatic, or otherwise.

The data collection is a collection of data that are managed either in automated or non-automated way, and are available according to personal, subject or other basis, irrespective of the manner in which they are stored and where data are stored. The operator is a natural or legal person or authority processing the data. User of data is a natural or legal person or authority, who by law or by consent of the person is authorized to use the data. Processor is a natural or legal person or authority to whom the operator on the basis of law or contract entrusts certain tasks related to the processing of personal data.

Authority processes data without consent of the person if the processing is necessary for carrying out tasks within their competence determined by law or other regulations in order to achieve the interests of national security or public safety; national defense; prevention, detection, investigation and prosecution of criminal offenses; economic or financial interests of the state; the protection of health or morals; protection of rights and freedoms and other public interests, and in other cases on the basis of a written consent of the person.

6. CONCLUSION

The Republic of Serbia, regardless of the adopted regulations has not yet appropriately, in accordance with the legal standards of the European Union, fully regulated activity in the private security sector.

Codes of Criminal and Civil Procedure fail to recognize the activities of private investigators / detectives for the purposes of conducting court and other proceedings, nor do they provide any rules concerning private collection and processing of personal data without the consent of the person.

Analyzing the activities of private investigators / detectives in the Republic of Serbia, having in mind the Latin proverb that 'kindness brings friends and truth bring enemies' we can not avoid the conclusion that this industry is still partly outside the scope of the legislation, organization-wise still based on the sole legal text and general provisions on the performance of economic activity, and content-wise it is based on the contractual relationship between the private investigator / detective (as service provider) on one side and the client (user services) on the other side, which can be considered as powers of control. The very activity of private investigators / detectives is left to the market needs.

The provisions of Article 20 of the Constitution of the Republic of Serbia prescribe the conditions under which it is possible by the competent authorities to carry out the limitations of human and minority rights, and only if these restrictions permitted by the Constitution, the purposes for which the Constitution allows, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the guaranteed right. With deviation from human and minority rights, all state bodies, particularly the courts, are obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and whether there is a way for the purpose of the restriction to be implemented with less restrictive means.

Is it right for activities of private investigators / detectives that step into the concept of constitutionally guaranteed authority to be treated as state authority activity?

Activities of private investigators / detectives, as one of the most vulnerable segments of the private security sector from the aspect of human rights protection, require different approach and the creation of appropriate normative-legal framework for their activities in the Republic of Serbia, which implies amendment to all the procedural and other laws, all in

addition to passing of the special Act 2013 which further regulated the activities of private investigators detectives.

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