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Legal Status of the Initiator and the Person Granting Permission to Conduct a Polygraph Test

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Abstract

The relevance of the study is conditioned by the need to regulate the legal status of participants in a polygraph examination as subjects of relevant legal relations. The purpose of the study is to improve the theoretical justification and applied component of the legal regulation of a polygraph examination in the security and defence sector of Ukraine, in particular the legal status of its participants. The methodological basis of the study consists of general and special methods of scientific knowledge, namely: hermeneutics, logical, system-structural, dogmatic, Aristotelian, generalisation, etc. It was proved that the peculiarity of a polygraph examination in the activities of the security and defence sector is that it is conducted to solve the problems of primary legal relations. Accordingly, the status of subjects in a polygraph examination is directly related to their legal status as participants in primary legal relations. It was determined that in the area of personnel support, during the examination of candidates for service (work) a polygraph test is appointed by the relevant subject represented by its head based on a regulation that establishes the procedure for checking candidates. It was noted that in the area of psychological support of counterintelligence and intelligence-gathering activities, the decision on the appointment of a polygraph test should be made by an official who has the right to approve the decision on the establishment of the relevant case; as for the initiator of the examination, it can be both the intelligence officer in charge of the case or the head of the operational unit or body. It was established that the appointment of a psychophysiological examination using a polygraph in criminal proceedings can be initiated by: the parties to criminal proceedings (in relation to themselves and other persons, the applicant, a witness (only in relation to themselves and their representatives and legal representatives (in relation to persons whose interests they represent. Persons who have the right to appoint a psychophysiological examination using a polygraph are the investigator and the investigating judge.

Keywords:

polygraph; official; legal relationship; purpose; subject

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Introduction

Today, a polygraph examination is applied in the activities of subjects of the security and defence sector of Ukraine, which, according to paragraph 16 of Article 1 of the Law of Ukraine "On National Security"¹ also includes the Armed Forces of Ukraine, other military formations developed in accordance with the laws of Ukraine, law enforcement and intelligence agencies, state special purpose bodies with law enforcement functions. These subjects belong to state authorities, and therefore, in accordance with Part 2 of Article 19 of the Constitution of Ukraine, "they are obliged to act only on the basis, within the limits of their powers, and in the manner provided for by the Constitution and laws of Ukraine"². a polygraph examination as a form of relations, one of the participants of which is the subjects of the security and defence sector of Ukraine, should be regulated by law, that is, have legal status. In turn, one of the components of legal regulation of legal relations is the regulation of the legal status of its subjects. The legal status of the subject of legal relations is the subject of studies on the theory of law, constitutional and administrative law.

The initiator and the person who grants permission to conduct a polygraph test are mandatory participants in the relevant legal relations. As D. Kutsenko correctly noted, "any social relations have a primary source – the person who initiates them. The procedure for conducting a polygraph test, which is always initiated by a person when making a decision on the need to conduct this examination, is no exception" [1].

Issues related to the use of a polygraph were covered by many Ukrainian and foreign researchers. Thus, Yu. Dmytrenko also considered the legal aspects of the use of polygraphs in the security and defence sector at the dissertation level [2]. T. Morozova covered the issue of introducing a polygraph to law enforcement agencies and special services of Ukraine, including certain aspects of the legal status of a polygraph examiner [3]. O. Motljakh in his dissertation research examined certain aspects of the legal status of participants in criminal proceedings in terms of assigning a polygraph examination and attaching the results of such examinations to the materials of criminal proceedings [4]. The famous polygraph examiner J. Widacki devoted his studies to the legal issues of using the polygraph in Poland [5]. Separate issues of legal regulation of the use of the polygraph and judicial practice were covered by the South African researcher M.R. Charles [6]. The publications of D. Krapohl [7] and T. Amsel [8] are devoted to the development of polygraphology. The publication by O. Motljakh is devoted to the analysis of the special knowledge of a polygraph examiner that is the basis of their professional activity [9]. Some issues regarding the legal status of participants in a polygraph examination were investigated by I. Okhrimenko [10], O. Zhyvolzhna [11]. However,

only D. Kutsenko separately covered the issue of the legal status of the initiator of a polygraph examination. In particular, he provided a single definition of "initiator of psychophysiological research using a polygraph" as "a person who, if there are appropriate grounds, exercised their rights (powers) by setting a task to conduct an examination using a polygraph" [3, p. 58].

The scientific originality of the study lies in the fact that the legal status of the initiator of a polygraph examination and the person who grants permission to conduct a polygraph examination in connection to the legal relations that determine the purpose and conduct of such examination (primary legal relations) is considered. In addition, the powers of the initiator and the person granting permission to conduct a polygraph examination were investigated, depending on their legal status in the primary legal relations.

Thus, the relevance of the study on the legal status of the initiator and the person granting permission to conduct a polygraph examination is conditioned by the growth of cases of polygraph use by subjects of the security and defence sector, and fragmentary coverage in the scientific theory of the legal status of these participants in legal relations.

Therewith, the investigation of scientific literature on this issue showed that the problems and features of the legal status of these participants in a polygraph examination are not given due attention.

Therefore, the tasks of the paper are:

- to differentiate the legal status of the initiator and the person who has the right to prescribe a polygraph test;
- to determine the specific features of the legal status of the initiator and the person who has the right to appoint a polygraph test, depending on the area of its conduct.

Therefore, the *purpose of the study* is to justify that the legal status of the initiator and the person who has the right to appoint a polygraph test depends on the type of legal status acquired by entering into legal relations within which these examinations are appointed.

Materials and Methods

The methodology of the study is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, and subject of the study. The method of hermeneutics was used to examine the texts of regulations and scientific materials of Ukrainian and foreign researchers who investigated the use of a polygraph. The logical method showed the direct relationship of the legal status of participants in a polygraph examination with the legal status of participants in the legal relationship within which these examinations are conducted. The dogmatic method helped to formulate the definition of "legal status" and

¹Law of Ukraine No. 2469-VIII "On National Security of Ukraine". (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

²Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text>.

“person granting permission to conduct a polygraph test”. The system-structural method identified the features of the legal status of the initiator of a polygraph examination and the person who grants permission to conduct it and determined the scope of application of the polygraph. The use of the formal-logical method allowed analysing the norms of current legislation and the practice of its application during a polygraph examination. Using the generalisation method, relevant conclusions were developed, in particular, that the legal status of participants in a polygraph examination is directly related to their legal status as participants in legal relations within which these examinations are conducted.

The study is based on the papers of such researchers as J. Widacki [5], Yu. Dmytrenko [2], O. Zhyvolzhna [11], D. Kutsenko [3], O. Motljakh [4], I. Okhrimenko [10], etc. The study used regulations governing the conduct of polygraph tests, in particular: the Constitution of Ukraine¹, The Criminal Procedure Code of Ukraine², the Law of Ukraine “On National Security of Ukraine”³, etc.

Results and Discussion

In the theory of law, legal status is a set of subjective rights, legal obligations, and legitimate interests of legal entities [12, p. 237]. There is a distinction between general, special, and individual legal status. Considering the subject and purpose of this study, it is necessary to focus in more detail on the definition of special legal status.

Special (collective) is a legal status that is granted to certain groups of individuals and citizens. It covers special, peculiar (additional) rights and obligations of a certain group of subjects [13, p. 149].

The special legal status of an official is conditioned upon the specific features of professional activity. Special status characterises a representative of a particular social group who is endowed, according to laws and other regulations, with special, additional rights, obligations, restrictions, and responsibilities [14, p. 129]. This legal status is reflected in regulations as a system of rights, obligations, and legal responsibility of a certain category of persons performing the tasks assigned to them [14, p. 132].

Notably, in the activities of subjects of the security and defence sector, a polygraph examination takes place only within the framework of certain legal relations (the process of recruitment, internal investigation, implementation of counterintelligence or intelligence-gathering activities or criminal proceedings) and to solve the problems of these primary legal relations, legal relations arise that consist in conducting a polygraph examination. A polygraph test by the decision of the subject of power cannot be conducted “by itself”, even at the request and initiative of the person in respect of whom it should be conducted.

Accordingly, the legal status of participants in a polygraph examination consists in its direct connection with their legal status as participants in the legal relations within which these examinations are conducted (primary legal relations). Therefore, the legal status of the same participant in a polygraph examination differs depending on the type of primary legal relationship.

As for the legal status of the initiator and the person who grants permission to conduct a polygraph examination, it is possible to consider these categories of participants in legal relations together, since they are related to each other, sometimes this is the same job. In addition, in this context, it is necessary to pay attention to the erroneous identification of these participants in legal relations.

Thus, it is better to consider the specific features of the legal status of the initiator of a polygraph examination and the person authorised to appoint it based on the legal relations within which these examinations are conducted.

Notably, the specific features of the legal status of the initiator of a polygraph test and the person who grants permission to conduct it are conditioned by the following:

a) firstly, the purpose of a polygraph test is a complex legal fact that consists of a set of actions;

b) secondly, the initiators and persons who grant permission to conduct the examination are simultaneously participants in the primary legal relationship, respectively, their legal status differs depending on the type of legal relationship in which these examinations are assigned;

c) thirdly, the initiation and conduct of polygraph tests (again, depending on the type of legal relationship in which they are conducted) can be either mandatory for a certain category (if there is a direct consolidation in the relevant provision of the law) or selective. Then, the basis for its implementation in the first case should be a legal norm and in the second – ad hoc regulation.

The specificity of polygraph examinations as legal relations is that the legal status of each of the participants is governed both by the norms of public relations within which polygraph examination is conducted and by the norms of legislation concerning the specific features of conducting these examinations.

In accordance with the established practice of conducting a polygraph examination in the security and defence sector, the following main areas of application of the polygraph are distinguished:

- personnel work (so-called screening studies, polygraph examinations within internal investigations);
- counterintelligence and intelligence-gathering activities (as a measure to ensure these types of activities);
- criminal process (conducting psychophysiological examinations using a polygraph).

Therefore, it is advisable to consider the specific features of the legal status of the initiator of a polygraph

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text>.

²Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <http://zakon0.rada.gov.ua/laws/show/4651-17>.

³Law of Ukraine No. 2469-VIII “On National Security of Ukraine”. (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

test and the person authorised to appoint it in accordance with certain areas of application of the polygraph.

Personnel work. Today, passing a polygraph test when applying for service in many subjects of the security and defence sector of Ukraine is a mandatory condition. Since the very procedure of conducting a polygraph examination affects the right of a person to private life, based on the provisions of Article 32 of the Constitution¹, the corresponding restriction of such a right by the state can take place only if such cases are determined by the law and only in the interests of national security, economic well-being, and human rights.

This provision does not cancel the requirement for a person's voluntary consent to undergo legal examination, since the very specificity of its conduct implies not just consent, but the assistance for the examined person to do so. However, if one refuses to pass, it also affects the primary legal relationship (for example, the termination of the examination of a person as a candidate for service).

Therefore, the appointment and conduct of polygraph tests as a measure of personnel selection of subjects of the security and defence sector of Ukraine should be based on the requirements of the legislation and detailed in the relevant bylaws issued by the subject of the security and defence sector. Based on this, since such a procedure should be standard for all persons of a certain category (for example, candidates for service), the initiator of such an examination is a particular employee (division represented by its head) who organises the examination of the candidate (as a rule, this is a personnel division). Therewith, the initiation of such an examination takes place if there are two conditions: the person's voluntary consent to undergo a polygraph test, and the conduct of other verification measures in relation to this person that precede the examination.

In this case, the basis for the polygraph examination is the relevant rule of law and bylaws of the subject of the security and defence sector, which determines, among other things, the order of appointment and conduct, a list of standard (typical) questions.

Nevertheless, if it is necessary to resolve additional questions from the examined person or conduct a second examination, the initiator of the examination should be one of the employees involved in the examination of the candidate, and the person who gives permission to conduct the examination should be the body, the head of the subdivision that made the decision to test the candidate. The basis for assigning an examination should be ad hoc regulation. Therewith, the subject of making a decision on the appointment of an examination, in this case, is the compliance of the actual circumstances that determine the need for repeated or additional examination with the grounds stipulated in the bylaw regulating the

procedure for conducting a polygraph examination; the list of issues with the tasks that are supposed to be solved during such an examination.

Internal investigations. A separate area of conducting polygraph examinations as a component of personnel support for the activities of subjects of the security and defence sector is their conduct within the framework of internal investigations. Given the differences from screening studies, the legal status of the initiator and the person authorised to order polygraph examinations as part of internal investigations are investigated separately.

Notably, the concept of "internal investigation" is absent in the current legislation regulating the activities of subjects of the security and defence sector of Ukraine. It is used simultaneously in the legislation and law enforcement practice of many countries. It should be understood as a type of investigation conducted in accordance with certain procedures, based on the decision of an authorised official of the security service of Ukraine, issued in the form of ad hoc regulation against employees. The person who appoints such an investigation, those who conduct it, and the person(s) in respect of whom it is conducted are employees of the same subject of the security and defence sector.

The analysis of the current state of legal regulation allows identifying several categories of internal investigations that can be conducted against employees of the security and defence sector: official investigations and inspections; official investigations to determine the causes of damage to the state, its size and perpetrators; investigations into violations of legislation in the field of state secret protection; investigations into the loss of documents or disclosure of information containing official information. Each of these categories of investigations is governed by separate regulations.

In accordance with the requirements of regulations on the conduct of various types of internal investigations, they are conducted either individually by a certain person or by a commission. The person authorised to appoint an internal investigation determines the personal composition of the internal investigation commission and the chairman of the commission.

Notably, the bylaws of certain subjects of the security and defence sector, which regulate, primarily, the conduct of official investigations, have norms that establish the possibility of conducting a polygraph examination within the framework of these investigations. For example, the relevant provisions are contained in: paragraph 10 of the procedure for conducting official investigations in the Armed Forces of Ukraine²; instructions on the procedure for conducting official investigations and official inspections in relation to military personnel of the Security Service of Ukraine³.

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text>.

²Order of the Ministry of Defense of Ukraine No. 608 "On Approval of the Procedure for Conducting an Official Investigation in the Armed Forces of Ukraine". (2017, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1503-17#Text>.

³Order of the Security Service of Ukraine No. 45 "Instruction on the Procedure for Conducting Official Investigations and Official Inspections Regarding Servicemen of the Security Service of Ukraine". (2016, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1503-17#Text>.

In this case, the person granting permission to conduct a polygraph examination in a particular internal investigation is the person who appointed this investigation, and the initiator of the examination is either one of the members of the internal investigation commission or the person against whom such an investigation is being conducted.

Therewith, the grounds for making a decision on the appointment of a polygraph test within the framework of a specific internal investigation should be the correspondence of the test questions to the subject of the internal investigation, the presence in the materials of the internal investigation of factual data indicating that the person in respect of whom the examination is planned is trying to hide information about the circumstances or reports false information, or the inability to confirm or refute the information that became the basis for conducting an internal investigation in another way. In the case of initiation of a polygraph examination by a person against whom an internal investigation is being conducted, the subject of making an appropriate decision is also the establishment of the actual voluntariness of such a decision.

Notably, the right to appoint polygraph tests within the framework of internal investigations should be fixed in the legislation regulating the activities of a particular subject of the security and defence sector, and the procedure for assigning such an examination in this area should be regulated in a bylaw that governs the conduct of an internal investigation or polygraph tests.

Counterintelligence and intelligence-gathering activities. The initiator of a polygraph examination, as a measure of psychological support for counterintelligence and intelligence-gathering activities (hereinafter referred to as intelligence activities), and the person who grants permission for its conduct, are the subjects of counterintelligence and intelligence-gathering activities.

Since it is quite logical that in this area a polygraph examination is one of the measures of intelligence activity, and the organisational form of this activity is the relevant case, the decision on the appointment of a polygraph examination should be made by an official who has the right to approve the decision on the establishment of the relevant case. As for the initiator of the examination, it can be either an intelligence officer in charge of the case or the head of an operational division or body. If a polygraph test is initiated by an official who has the right to approve a decision on initiating a case, such official is both the initiator of the polygraph test and the person granting permission to conduct it.

It should be clarified that polygraph tests as a measure of psychological support for intelligence activities can be conducted only with the voluntary consent of the person, in addition, they are exclusively indicative for the intelligence officer and their result does not affect the legal status of the examined person. In addition, one of the key points of organising and conducting these examinations is the issue of privacy and secrecy.

Considering the above, it is more correct to discuss the authority of a person to grant not permission to conduct an examination but to agree on the feasibility of conducting it, if the voluntary consent of the examined person to do so is present. This provision is also based on the fact that obtaining a person's voluntary consent to conduct a polygraph examination can take place both in advance and immediately before conducting the examination based on tactical considerations, the voluntary consent is the basis for conducting the examination, and any decision of an authorised person without voluntary consent does not have any legal consequences.

Regarding the legal status of the initiator of a polygraph examination as a measure of psychological support for intelligence activities, it is worth paying attention to their obligation to provide conditions for such examination that would meet certain requirements for their conduct and the requirements necessary for conspiracy.

In addition, for high-quality preparation for the examination, the polygraph examiner should get acquainted with the materials about the examined person, first of all with the operational information accumulated on the case, which has access restrictions. Therefore, the initiator of the examination is obliged to provide the polygraph examiner with the necessary information to prepare for the examination at the request. Otherwise, its lack is one of the grounds for refusing to conduct such an examination.

Therewith, it is necessary to pay attention to the fact that conducting a polygraph examination in this area involves the risks of familiarising the examined person with the information that the subjects of counterintelligence and intelligence-gathering activities have, based on the content of the developed tests. The legal status of the initiator of the examination should include the right to get acquainted with the prepared tests and the obligation not to allow the possibility of communicating information to the examined person, which may negatively affect further work on the case.

In addition, in other areas of the polygraph examination, video and audio recordings of the examination should be mandatory to assess its quality. However, when taking measures of psychological support for counterintelligence and intelligence-gathering activities, the corresponding decision should be made in each individual case by the person granting permission to conduct such examination at the suggestion of the initiator. In particular, such fixation may provide for measures that would allow identifying the person (image retouching, etc.) in relation to whom a polygraph examination is being conducted.

Criminal proceedings. The use of a polygraph in criminal proceedings, and especially the use of a polygraph examination results as evidence, is still a controversial subject among both Ukrainian and foreign researchers and legal practitioners. As for the Ukrainian legislation, certain changes in the recognition of polygraph tests as a type of expert study occurred in 2015, polygraph tests were included in the list of forensic examinations by

adding the relevant norms (paragraph 6.8) of Section VI of the Order of the Ministry of Justice of Ukraine No. 53/5 of 10/08/1998 (hereinafter referred to as methodological recommendations)¹.

However, these provisions are not consistent with the requirements of Part 2 of Article 84 of the Criminal Procedure Code of Ukraine², according to the above-mentioned provisions of the methodological recommendations (which are a bylaw) limited the use of the results of polygraph tests only to obtaining orientation information, forming a hierarchical (subordinate) conflict.

This has affected the heterogeneity of judicial practice in similar circumstances, which is quite logical and expected. Moreover, it can be noted that the initiator and the person who appoints the polygraph examination are participants in criminal proceedings, the list of which is defined by paragraph 25 of Article 3 of the Criminal Procedure Code of Ukraine³. In particular, the initiators of a polygraph test should include the parties to criminal proceedings, the applicant, the witness, their representatives and legal representatives. Considering the provisions of Paragraph 19 of the same norm⁴, the initiators of polygraph tests on the part of the prosecution can include the investigator, the victim, on the part of the defence – the suspect, the accused, their defenders and legal representatives.

Therewith, if such an expert examination is initiated by the person in respect of whom it is supposed to be conducted, the relevant application must contain the voluntary consent of this person to conduct a psychophysiological examination. If such an examination is initiated by one participant in the process in relation to another, its consideration can take place only with the voluntary consent of the person in respect of whom the polygraph examination is supposed to be conducted.

In accordance with the provisions of Article 242 of the Criminal Procedure Code⁵, an expert institution, expert or experts are involved by the parties to criminal proceedings or an investigating judge at the request of the defence party. Considering the provisions of this norm, it should be noted that persons who have the right to appoint a psychophysiological examination using a polygraph can only be ones authorised to perform state functions, as a rule, this is an investigator, an investigating judge. Other participants in the process can either apply to the investigator and the investigating judge with a corresponding request, or if this refers to a party to the criminal process (victim, suspect, accused), involve an expert on a contractual basis.

In addition, concerning the powers of persons who have the right to appoint polygraph tests, when making

an appropriate decision, their competence should include determining:

- if a person who is planned to be involved as an expert in conducting a polygraph test has the necessary qualifications and the right to conduct forensic examinations;
- if the purpose of the questions submitted for the expert's decision is to clarify the circumstances relevant to the criminal proceedings;
- if there a voluntary consent of the examined person to conduct a psychophysiological examination both documented and in fact;
- if the examined person is aware of the right to freedom from self-disclosure and the right not to testify in relation to themselves, family members, or close relatives, the circle of which is determined by law.

The study shows for the first time the direct relationship between the legal status of participants in a polygraph examination with the legal status of participants in the legal relationship within which these examinations are conducted. For the first time, the “person who grants permission to conduct a polygraph examination” is considered a mandatory participant in a polygraph examination. The features of the legal status of the initiator and the person granting permission to conduct a polygraph examination, depending on the legal relations within which these examinations are conducted, were covered.

Conclusions

In the activities of subjects of the security and defence sector, polygraph tests are conducted only within the framework of certain legal relations (the process of recruitment, internal investigation, counterintelligence or intelligence-gathering activities, or criminal proceedings).

The legal status of participants in a polygraph examination is directly related to the legal status of participants in the legal relations within which these examinations are conducted.

According to the general rule, during the examination of candidates for service (work), a polygraph test is appointed by the relevant entity in the person of its head based on a regulation that determines the procedure for checking candidates. Nevertheless, if it is necessary to resolve additional questions from the examined person or conduct a second examination, the initiator of the examination should be one of the employees involved in the examination of the candidate, and the person who gives permission to conduct the examination should be the body, the head of the subdivision that made the decision to test the candidate. The

¹Order of the Ministry of Justice of Ukraine No. 53/5 “Instruction on the Appointment and Conduct of Forensic Examinations and Expert Research and Scientific and Methodological Recommendations for the Preparation and Appointment of Forensic Examinations and Expert Research”. (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0705-98#Text>.

²Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <http://zakon0.rada.gov.ua/laws/show/4651-17>.

³*Ibidem*, 2012.

⁴*Ibidem*, 2012.

⁵*Ibidem*, 2012.

basis for assigning an examination should be ad hoc regulation.

The person granting permission to conduct a polygraph examination in a particular internal investigation is the person who appointed this investigation, and the initiator of the examination is either one of the members of the internal investigation commission or the person against whom such an investigation is being conducted.

Based on the fact that the organisational form of counterintelligence or intelligence-gathering activity is a case, the decision on the appointment of a polygraph test should be made by an official who has the right to approve the decision on the establishment of the relevant case. As for the initiator of the examination, it can be either an intelligence officer in charge of the case or the head of an operational division or body. If a polygraph test is initiated by an official who has the right to

approve a decision on the initiation of a case, such an official is both the initiator of the polygraph test and the person granting permission to conduct it.

In criminal proceedings, polygraph tests are conducted in the form of a psychophysiological examination using a polygraph. According to the requirements for the appointment of an expert examination, the initiators of polygraph examination must include the parties to criminal proceedings (the prosecution can include the investigator, the victim, the defence – the suspect, the accused, their defenders and legal representatives), the applicant, the witness, their representatives and legal representatives. Persons authorised to perform the functions of the state, as a rule, an investigator and an investigating judge can be attributed to the ones who have the right to appoint a psychophysiological examination using a polygraph.

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Правовий статус ініціатора та особи, яка надає дозвіл на проведення поліграфного дослідження

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Анотація

Актуальність теми дослідження зумовлена необхідністю унормування правового статусу учасників поліграфних досліджень як суб'єктів відповідних правовідносин. Метою дослідження є теоретичне обґрунтування та визначення прикладної складової правового регулювання поліграфних досліджень у секторі безпеки й оборони України, зокрема правового статусу їхніх учасників. Основу методології наукового дослідження становлять загальні та спеціальні методи наукового пізнання, зокрема герменевтичний, логічний, системно-структурний, догматичний, формально-логічний методи, а також методузагальнення. Доведено, що особливістю проведення поліграфних досліджень у діяльності суб'єктів сектору безпеки й оборони є те, що вони передбачають виконання завдань первинних правовідносин. Відповідно, статус учасників поліграфних досліджень безпосередньо пов'язаний з їхнім правовим статусом як учасників первинних правовідносин. Визначено, що в межах кадрового забезпечення в процесі вивчення кандидатів на службу (роботу) поліграфне дослідження призначає відповідний суб'єкт в особі його керівника на підставі нормативно-правового акта, який встановлює порядок перевірки кандидатів. Зауважено, що в межах психологічного забезпечення контррозвідувальної та оперативно-розшукової діяльності рішення про призначення поліграфного дослідження повинна приймати службова особа, яка має право затверджувати постанови про заведення відповідної справи. Встановлено, що ініціатором дослідження може бути як оперативний співробітник, у провадженні якого перебуває справа, так і керівник оперативного підрозділу або органу. Призначення психофізіологічної експертизи із застосуванням поліграфа в кримінальних провадженнях можуть ініціювати сторони кримінального провадження (стосовно себе та інших осіб), заявник, свідок (лише стосовно себе), їхні представники (стосовно осіб, інтереси яких вони представляють). Зауважено, що психофізіологічну експертизу із застосуванням поліграфа мають право призначати слідчий і слідчий суддя

Ключові слова:

поліграф; посадова особа; правовідносини; призначення; суб'єкт