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**ZASADY KONCEPTUALNE UMOCNIENIA NORMATYWNO-
PRAWNEGO ŻĄDAŃ TECHNICZNYCH DO PRZEPROWADZENIA
BADAŃ NIELEGALNEGO KOPIOWANIA W SEKTORZE
BEZPIECZEŃSTWA I OBRONY**

Streszczenie: W tym artykule uzasadnia się niezbędność badania normatywno-prawnego, dotyczącego żądań technicznych dla przeprowadzenia badań poligraficznych w sektorze bezpieczeństwa i obrony. Wyodrębniają się grupy żądań technicznych do poligrafii, warunków przeprowadzenia oraz ustalenia procesu przeprowadzenia badania psychofizjologicznego oraz ich wyniki.

Słowa kluczowe: poligraf, badania nielegalnego kopiowania, uregulowanie normatywno-prawne, żądania techniczne

**CONCEPTUAL PRINCIPLES OF STATUTORY-LEGAL
REGULATION OF TECHNICAL REQUIREMENTS FOR
CONDUCTING POLYGRAPHIC DETECTIONS IN THE SECURITY
AND DEFENSE SECTOR**

Abstract: The necessity of statutory-legal regulation of technical requirements for conducting polygraph detections by the entities of the security and defense sector has been grounded. Groups of technical requirements to the polygraph, conditions of conducting and fixing the process of carrying out psychophysiological researches and their results are allocated.

Keywords: polygraph, polygraph research, legal regulation, technical requirements

1. Introduction

Entities in the security and defense sector use a polygraph in their activity. Analysis of the practice and experience of polygraph researches allows identifying areas of their conduct, which may vary depending on the relevant legal practice of a particular country:

- state service recruitment;
- intermittent inspections of staff;

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- inspections to gain the access to the information constituting a state secret or official information;
- conducting internal investigations;
- in criminal proceedings.

It should be noted that nowadays there are both supporters and opponents of the polygraph detections. Moreover, the practice of carrying them out in different countries is also different. Therefore, the starting point is as follows: if the country has developed the practice of conducting polygraph detections in the activities of the security and defense sector, it must be regulated by the current legislation.

2. Substantiation of statutory-legal regulation of technical requirements for polygraph detection

The need for law approximation of the above mentioned public relations is to the fact that, in its essence, the conduct of polygraph detections is interference in the private life of the person.

Protection of the right to privacy from interference by public authorities, as well as cases when such a right may be limited is enshrined in international regulations, and subsequently is implemented in the national legislation of democratic countries.

In particular, according to article 12, part 2 of the article 29 Universal Declaration of Human Rights no one shall be subjected to arbitrary interference with his privacy, family, home. Everyone has the right to the protection of the law against such interference or attacks.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society [1].

These above mentioned provisions are reflected and concretized in article 12 of European Convention on Human Rights: "Everyone has the right to respect for his private and family life.

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

Also, conducting polygraph detections in connection with the investigation of crimes is related to the human right for protection and a fair trial. This right is enshrined in article 6 of European Convention on Human Rights: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the rights: to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance [2].

Moreover, polygraph detections done by the security and defense sector in terms of labor and related labor laws, or in criminal proceedings against a person, is carried out with the respect of the person's right to protection, freedom from self-disclosure, not to testify against oneself and close relatives. Therefore, taking into account the potential ability of the person to protect his rights in court, the requirements for it, including technical ones, are regulated by law.

As V. Honcharenko notes: “The use of scientific and technical means can be effective and generally allowed under the condition of meeting three essential conditions: 1) compliance with moral and ethical principles of modern society – they must be safe for life and health of the participants in the proceedings, not to degrade anyone, conducting experiments and manipulations should not be considered immoral by the participants, especially those who are being tested; 2) scientific means - they must have a scientifically sound possibility and practical effectiveness of their technical design and application, the predicted ability to obtain objective, reliable and multiplicative results; 3) legality of means – there should be clear legislative regulation of the order of their application, regulation of the received results, conditions and procedures of their compulsory application, definition of an exclusive circle of persons who have the right to use them” [3].

Compliance with the technical requirements for polygraph detections allows ensuring the identical conditions, which is a guarantee of objectivity and impartiality, the ability to multiply the results, as well as the mechanism to prevent distortion of the detection results. For example, as T. Morozova states, according to the decision of the Supreme Court of Japan in 1968, one of the requirements for recognizing the results of the polygraph detections as the evidence is the use of a standard device [4].

Based on this, it is considered appropriate to distinguish technical components of polygraph detection, which should be defined in the law, as well as the method of their standardization. It should be noted that the main purpose of the implementation of technical regulations in the legal form, i.e. their reflection in legislation, is to make them compulsory.

3. Key aspects of regulatory and legal consolidation of technical requirements for polygraph detection

Based on the specifics of polygraph detections, the first group of technical requirements that to be standardized is the requirements for the device itself - a polygraph, namely:

- the minimum requirements for the number of channels for fixing physiological reactions;
- technical characteristics of sensors for registration of physiological reactions;
- technical characteristics of the transducer unit for reading sensors signals (hardware) and its software;
- technical characteristics of computer equipment and software used to interpret the results of the study.

Another important component is the technical requirements for the premises where the polygraph detections is carried out particularly its area, lighting, sound insulation, color design, etc.

Next group is the technical requirements for recording polygraph detection and storing their results, namely:

- ways to record the procedure for polygraph detections;
- technical requirements for the fixing device;
- material media where the relevant information and requirements for their storage are accumulated.

It is obvious that it is necessary to take into account both general technical requirements as an example for electric devices (safety requirements, materials which the devices are made of, power parameters, etc.)

4. Methods of normative and legal consolidation of technical requirements for polygraph detection.

Despite the fact that the legal regulation of polygraph detection in general can be carried out under the relevant legal act (for example: Lithuania, Moldova), or reflected in the appropriate laws regulating public relations it is considered expedient to reflect only blanket norms, which refer to by-laws (standards, methods of forensic examinations, etc.) in such normative-legal acts.

This is primarily due to the fact that the law is a more stable category that regulates the most important social relations, has a complex and time-consuming procedure for adoption and amendment. Instead, modern rapid development of technology and its improvement, accordingly, affects the change of its technical characteristics. Therefore, the standardization of technical requirements for polygraph detections in bylaws will allow you to more quickly respond to certain changes and take them into account, which will ensure the maintenance of relevant standards and methods under the current conditions. In this case, the development and approval of such standards and methods should be carried out by the authorized institution.

5. Summary

In the view of the stated above, the technical requirements for conducting polygraph detections by the entities of the security and defense sector should be enshrined in regulations in order to make them mandatory and to ensure the objectivity of such examinations.

The technical requirements for the polygraph itself, the equipment of the premises where the research is conducted, and fixation of conducting and interpretation results of the detections are the subject to standardization.

Regulatory and legal consolidation of technical standards for polygraph detections should be carried out by the means of developing and adopting appropriate standards (methods) by authorized state institutions. In this case, the relevant laws regulating the use of the polygraph should contain blanket norms that refer to these standards.

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