

The First Step to Put into Operation a Federal Law on Polygraph Testing in Russia¹

Elena Volchinskaya² and Yury Kholodny³

Polygraph testing or, in Russian terminology, interrogation using a polygraph⁴ is a complex psychological and psycho-physiological method of evaluating the reliability of information stated by an adult. A polygraph examination is non-traumatic and harmless to humans. The procedure involves only the voluntary monitoring of respiration, electrodermal responses (EDRs), cardiovascular activity and the motor activity of a person. Many years ago science demonstrated that when a person is asked a question about a significant event (for him/her) while physiological responses of the person are monitored, the result of such monitoring makes it possible to establish if that person was a party or witness to the event even if there is an attempt to hide involvement.

In practice polygraph examinations are used to detect information concealed by persons in many types of investigations and in the selection of applicants for employment and/or the verification of existing staff (employees). At the present time, polygraph examinations are actively used in Russia by public authorities, especially law enforcement agencies, and by business owners to protect their commercial interests.

According to the American Polygraph Association, the accuracy of the results of a

properly conducted polygraph examination is about 90 percent. This estimate of the accuracy of polygraph examinations is quite high, particularly when considered in light of many other psychological assessments. The effectiveness of a polygraph examination explains why today at least a hundred different countries use this method in practice.

Polygraph examinations overcame the claim of being pseudo-scientific that was made in the USSR in the years between 1930 and 1991. Shortly after that time, in the spring of 1993, the legal application of polygraph examinations in domestic law enforcement practices began. The Ministry of Justice of the Russian Federation, in accordance with the law “On operative crime detection activities in the Russian Federation” (hereinafter – the Law OCDA), approved the first legal act for regulation of polygraph examination.

At present polygraph examinations are used in Russia by the Ministry of Internal Affairs (hereinafter – MIA), the Federal Security Service (hereinafter – FSS), the Federal Customs Service (hereinafter – FCS), the Ministry of Defense (hereinafter – MD) and several other federal agencies. And the process of introducing polygraph testing in the

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² Dr. Volchinskaya holds a doctorate in Economics and is the Leading Counselor for the State Duma Committee on Security.

³ Dr. Kholodny holds doctorates both in Law and in Psychology, and is a professor at the Moscow State Technical University n.a. Bauman.

⁴ Although the expression – “interrogation using a polygraph” – is widespread in Russia and was used in the Russian version of this article, but for better understanding hereinafter we will use the generally accepted – “polygraph testing” or “polygraph examination.”

activities of public authorities continues to be very intensive. Suffice it to note that during the years from 2002 to 2007 in subdivisions of the MIA the number of polygraph examinations increased by 14 times, and the number reached almost 22,000 examinations per year. Although federal agencies don't announce annual statistics, one could estimate that in 2008 in the federal sector of Russia there were no fewer than 35,000 – 40,000 examinations carried out for various applications.

Domestic business began to use polygraph examinations for pre-employment selection and/or for audits of working personnel, as well as for internal official investigations, in 1994. Now the commercial application of polygraph testing is seen in dozens of cities in Russia, and the number of examinations per year is close to 100,000. These data allow us to state that in both the federal and private sectors of Russia there are many thousands of examinations given every year, and the use of polygraph testing is steadily growing.

Scientific achievements in the last decade have created conditions for the application of polygraph examinations in the procedures of the courts. Psychophysiological expertise with a polygraph has already been recognized in a number of cases, already in the hundreds.

According to some experts there is now "a polygraph boom" in Russia. Suffice it to say that since September of 2008 different departments in the MIA have conducted five "polygraph" conferences in Moscow, Kazan and Krasnodar. There is a real basis to say that beginning in 1993 many things have been done in the development of polygraph examinations in Russia, and the most important achievement is that polygraph examinations firmly came into the practices of the federal authorities and the business community.

However, in spite of the obvious achievement in the use of polygraph examinations in law enforcement practices, the pride of Russian specialists, it's necessary to acknowledge that during that growth period a number of shortcomings and deficiencies have been observed and these require urgent

elimination. In particular, it is known that numbers of unskilled polygraph examiners have been seen. They have affected the conclusion of some investigations and trials. The low qualification of these polygraph examiners is a real problem. In addition, there are also cases when some examiners have violated the civil rights of examinees during polygraph examinations. These examinations were a part of non-federal employment relationships. The reason for this situation is the absence of any regulation.

Since 1993, the year when active implementation of polygraph examinations in various areas of public practices in Russia began, it was seen that the lack of good legal regulation of polygraph testing attracted the attention of legislators. As a result the State Duma of the Federal Assembly of the Russian Federation (hereinafter – the State Duma) created in 1999 a special working group (hereafter – "Working Group") to develop a draft of a law "On amendments and additions to the law on state secrets" (hereinafter – a draft AASS). The purpose of this draft was to regulate the use of polygraph testing related to state secrets.

In December 2001 the State Duma held parliamentary hearings on the "Current state and ways to improve the legislation of the Russian Federation in the fight against corruption" and attracted attention to include polygraph examinations in the system of anti-corruption measures. As a result of the hearings, in 2002 the State Duma Commission on anti-corruption efforts decided to abandon the draft AASS, because this bill solved only one of the special tasks related to polygraph testing – in accordance with the Federal Law "On state secrets" (hereinafter – the Law SS). In other words, it was recognized as necessary to begin a new draft on the use of polygraph testing in the Russian Federation (hereafter – the Bill on UPRF), so that all aspects of polygraph testing in both federal and private sectors of the country would be included.

The appearance of the idea for the new legislation on the UPRF was not accidental. By 2002, it was clear that due to the achievements of Russian scientists and specialists the capabilities of polygraph testing became more widespread than was

anticipated in the existing “legal framework” as covered by the Law OCDA and Law SS. In particular, specialists pointed out that “the narrow orientation of these laws did not provide an adequate a legal basis for the use of polygraph testing outside of operative crime detection activities (hereinafter – OCDA). For example, personnel selection in the Ministry of Defense and the investigation practices of the prosecution authorities were not covered.

The situation with the application of polygraph testing was exacerbated by the lack of “strict qualification standards” for examiners. In Russia especially with respect to non-federal examiners, polygraph examinations are carried out by “specialists” whose knowledge is very weak, and this has negative consequences for all of the persons who are examined by these “specialists” (Podshibiakin & Kholodny, 2004).

A decision of the State Duma in the spring of 2004 led to a “Working Group” dealing with the Bill on UPRF. It was headed by Deputy V.V. Dyatlenko, the Vice-Chairman of the State Duma Committee on Security. The Bill on UPRF was subjected to substantial revision, and by the summer of 2005 a new version of the bill was prepared. In the autumn of 2005, under the leadership of Deputy V.V. Dyatlenko, a meeting of scientists and specialists was conducted; these were persons who were professionals in polygraph testing.

The meeting was attended by authorized representatives of the MAI, FSS, FCS, MD, Ministry of Justice, the Prosecutor General's Office, the Chief Military Prosecutor Office, Federal Service Execution of Punishment and other federal services. Representatives from two Moscow universities were also in attendance. All of the representatives received the Bill on UPRF and the pamphlet that accompanied it. The pamphlet to the Bill on UPRF, in particular, noted that “in general, taking into account the real needs of the practice in using this method, the development of polygraph examinations in federal authorities in Russia was usually haphazard. Of particular concern is the use of the polygraph in domestic private enterprise. At present, there is a total lack of any legal rules governing the use of polygraph

in this area, as well as training of specialists and supervision of their activities.”

Experience in the United States has shown that a deficiency in legal regulation of polygraph testing for business purposes may lead to a low professional level of polygraph examiners, especially in the commercial sector, and that this in turn may lead to violations of the “technological” requirements of polygraph examinations. All of this inevitably leads to abuses of the method, reduces the quality of examinations and may produce erroneous results with all of the ensuing consequences.

Therefore, to bring order to the application of polygraph examinations in Russia and to protect citizens working in the private sector from incompetent use of polygraph testing, the U.S. Congress in 1988 passed a special federal law, the Employee Polygraph Protection Act (EPPA).

Taking into account this foreign experience and the desire to promote the active implementation of polygraph examinations in the activity of various organizations and institutions in Russia, the pamphlet on the Bill on UPRF stated that legal regulation of polygraph testing needed a special federal law.

At the turn of 2005, Deputy V.V. Dyatlenko carried out a second meeting of the scientists and specialists to discuss the Bill on UPRF. And although there were a lot of critical notes to this document, the conception of the Bill on UPRF was approved and all participants supported the necessity to adopt a law which put in order the use of polygraph examination by federal authorities as well as non-governmental organizations. It was particularly written so as to defend Russian citizens from incompetent use of polygraph testing.

Concerning the Bill on UPRF, the Security Council of the Russian Federation expressly stated that “the bill is supported conceptually, but requires significant improvement.” The “Working Group” analyzed and summarized comments on the Bill on UPRF. Each comment was examined individually, and was either accommodated in the text of the bill or rejected. And the Bill on UPRF was given a new name – “On the

application of the polygraph” (hereafter – the Bill on AP). Thus, the Bill on AP was the result of the intellectual work of scientists and specialists. It reflected the opinions of more than a dozen federal agencies in Russia on different aspects of polygraph testing in the country. In the summer of 2007, the “Working Group” completed work on the Bill on AP. That group then referred it to the State Duma Committee on Security. For a number of technical reasons, the bill has not yet been submitted officially to the RF State Duma.

After its publication in a journal and its appearance on the Internet, the Bill on AP has aroused great interest. It has been shown to have many active supporters and a good number of ardent opponents. Supporters of the Bill clearly believe that “regulation of the application of the polygraph and use of its results in our country requires legislative regulation... That is why it’s necessary to minimize the arguments about the reasonable use of the polygraph in practice and to quickly introduce effective levers of control of its scope. It’s necessary to protect society from the ‘polygraph lawlessness’ that has been seen. Obstacles to doing this, in our view, should become a law on the use of polygraph” (Pershin, 2008).

Some Moscow scientists and specialists in the MIA supported the introduction of a law on the use of polygraph much more decidedly. According to their opinion, “for an active use of the polygraph in the life of Russian society an imperious will and resoluteness of the first persons of the State” are important. They believe that “adoption of the federal law ‘On the polygraph in Russia’ is needed.” And they believe that this law will help “to state the control of effective use of polygraph according to criminal, civil, administrative and other standards. Also there must be the consistent use of all means, especially the media, to promote the importance and necessity of applications of the polygraph” in the country. (Bezyazichny, Dubiagin, & Bordilovsky, 2008).

But there are other points of view on the Bill on AP. Some polygraph examiners of federal agencies (Fedorenko & Fedorenko, 2006; Ivanov, 2005) believe that “the recent proposals on the necessity of the law ‘On application of a polygraph’, to determine the

order of the use of a polygraph in different areas of society, are non-topical, ... because the basic legal rules ARE already registered in the legislative and institutional acts” (Skripnikova, 2008).

Indeed, the federal agencies really have more or less effective legal regulation of polygraph testing. In the country there are also some laws (the Law OCDA, the Law SS, the Labor Code of RF and so on), which potentially allow the use of polygraph testing in certain spheres of social practice. But none of them establishes an application of polygraph examinations, the order of training of polygraph examiners, the control of polygraph examiner activities and, moreover, some don’t even mention the polygraph. That is why, when polygraph examiners or other specialists mention that the basic legal standards already prescribed in legislative and institutional acts are satisfactory, this claim is either in ignorance of reality, or is an intentional distortion of the real state of affairs.

There is a profound concern that application of polygraph testing outside of the public sector is not limited by any legal standard. This situation inevitably is accompanied by abuses and violations of human rights. It’s known that in a lot of cases, when non-federal employers request employees to go through polygraph testing and, where there was a waiver, they immediately dismissed the employees without any explanation, violating labor laws. The Russian mass media long ago determined that for polygraph examinations “a commercial sphere is a huge field for abuse” (Arguments and Facts, 2007).

Federal and progressive non-federal users of polygraph testing understand the need for strict legal regulation of the field. They are outraged by the people who are simply doing business but who don’t possess sufficient knowledge to decide the employment fate of people. In recent years a lot of “courses” or “schools” have been opened in different cities of Russia to teach polygraph testing. They produce graduates whose training is at an extremely low level. These graduates are not even “specialists” (“Neva Times”, 2009). Unfortunately, this is a reality.

For example, in Russia anyone can easily find Internet-based training courses by distance learning; these are openly slapdash. For example (<http://www.antey-group.ru/distant.html>):

- “1. A student registers himself on the site “Antey”, gets all required instructions, pays the cost of courses (59 000 rubles or, approximately, \$1950) and begins learning directly. Duration of this training is 3 weeks.
2. After the theoretical training and tests, the student within 5 days consolidates his theoretical knowledge during practice at the Antey Training Center.”

It is clear that polygraph examiners and other specialists who transformed polygraph testing and who have a profitable business are already accustomed to working without any control. The Bill on AP is not necessary for them.

What will the Federal Law “On the application of the polygraph” bring to the country in the event of its adoption? This act is intended to implement a provision stating that the society is obliged to comply strictly with the idea of parity between human rights and democratic liberties and the right of the society to protect its interests and to be secure from crime and illegal encroachments.

The application of polygraph testing in Russia is expected to recognize the rights and freedoms of all citizens, as established by the Constitution of the Russian Federation, in accordance with the principles of legality, humanism, scientific content and confidentiality, with a combination of the voluntary participation of citizens in polygraph examinations and mandatory polygraph examinations in the cases provided by this law.

The law is intended to introduce into society - in both federal and non-federal areas

- the institute of mandatory and voluntary polygraph examinations, to establish the conditions of their implementation and to regulate the consequences of waiving polygraph examinations. The law also defines the list of persons eligible to participate in polygraph testing and grants them appropriate rights and responsibilities and establishes accountability.

At the legislative level, it should be the purpose of the legislation to have executive authorities implement the application of polygraph testing in operative crime detection activities, as well as in the selection and placement of employees. At the same time in personnel practices the implementation of mandatory polygraph testing must be appropriately provided and clearly regulated.

We must recognize as reasonable and legitimate the desire of domestic businessmen to use polygraph testing, while ensuring their own safety and the protection of their commercial and other secrets. Businessmen should have the right to use polygraph testing to protect their interests from abuse by criminals, competitors and non-loyal personnel, including, when necessary, official investigations.

The Bill on AP clearly defines areas of obligatory and voluntary polygraph testing in the private sector. The use of polygraph is in strict accordance with the norms of labor legislation and should ensure mutual protection of the rights and interests of those who are employed and those of the employer.

The Federal Law “On the application of the polygraph” is obliged to ensure confidentiality of information obtained during and as a result of testing. It also prohibits testing for purposes not provided by the law. The Bill on AP is necessary and its adoption is important. The absence of such legislation creates conditions for the abuse of polygraph testing in both the public and private sectors.

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