

PRIVATE SECURITY ACTIVITY: INTERNATIONAL EXPERIENCE AND LEGAL REGULATION IN UKRAINE

Liudmyla Ostapchuk, Academy of the State Penitentiary Service

Vyktor Chalavan, National Institute for Strategic Studies

Nataliia Kolomiets, Chernihiv National University of Technology

Maryna Kyselova, Academy of the State Penitentiary Service

Nadiia Senchenko, Chernihiv National University of Technology

ABSTRACT

The article is devoted to the study of the characteristics of private security activity, taking into account international experience and legal regulation in accordance with the current Ukrainian legislation. A particular attention was paid to the experience of the characteristics of the production of private security activities in the United States, Britain, Germany, the Netherlands, Mexico, and South Africa. A specific legislation in the field of non-state security activities in Ukraine, represented by a set of both legislative and sub-legal regulatory acts was determined. The legislative definition of the concept of security activity and the subject of security activity was given. An attention was drawn to the mandatory requirement of the Ukrainian legislation on the licensing of security services by non-state security agencies. The issues of control over the activities of private security organizations by the state, as well as the establishment of special qualification requirements for security personnel, including non-state security structures, were studied. The distinction between legally defined features of the legal status of a police officer and a private security structure was established. The attention was focused on the legislative regulation of issues concerning interaction between non-state and state security agencies. Based on the analysis of the norms of the current Ukrainian legislation on the regulation of relations in the sphere of non-state security activity, its characteristic features were determined.

Keywords: Security Activity, Security Activity Subject, Non-State Security Activity.

INTRODUCTION

One of the problems of the formation and functioning of a legal state is reliable protection of the rights and legitimate interests of citizens and legal entities. And since the activities of state law enforcement agencies are accompanied by certain shortcomings, including the implementation of pre-trial investigation, the lack of established cooperation with other law enforcement agencies, including foreign countries (Olga et al., 2019), this leads to the emergence of a significant number of various security structures (enterprises, organizations) which activities are aimed at providing actual services for the protection of individuals, legal entities, objects of property rights against possible unlawful encroachments. The world practice shows that the emergence of new demands from society related to the rule of law has an important influence on

the organization of law enforcement in a particular country. An effective counteraction against unlawful threats is possible by denationalizing law enforcement and creating new institutions of civil society. That is why, in many foreign countries, society is focused on seeking protection not only from state law enforcement agencies, but also on the extensive use of private security services, which together form the basis of a non-state security system.

One of the main threats to national and international security remains a high level of crime. That is why ensuring the security of individuals and legal entities (their personal security, security of property rights) in countering illegal encroachment is a priority for both state law enforcement agencies and non-state security agencies. Modern Ukrainian society is not an exception, in which the role of non-state security actors has significant growth. The emergence of such actors requires an appropriate regulatory framework aimed at regulating the activities of subjects of private law in the provision of security services. Given this, it is important to study foreign experience in the production of non-state security activities, as well as the legislative regulation of this issue at the present stage in Ukraine.

LITERATURE REVIEW

In the United States, provisions for security services began to form in the second half of the twentieth century. In accordance with US law, private security guards, detectives, and investigators are not entitled to use such procedural measures as house searches, personal searches, or arrest. At the same time, they have no right to detain persons suspected of committing a crime or preparing for committing a crime, with the aim of further handover such persons to the police. It is common practice for private security services to hire former employees of the FBI and the CIA, police officers, retired military personnel (McCrie, 2017).

As for the UK, there are no legislative instruments or government regulations concerning the mandatory registration of private detective organizations. Detective agencies perform certain specific tasks that are prohibited for law enforcement. In particular, this concerns the development of security measures in accordance with contracts concluded with government agencies; performing tasks from customers to shadow close relatives; revealing the facts of adultery, etc. (Singh & Light, 2017).

The legal status of a private detective bureau in Germany requires compulsory registration as an institution engaged in business, as it has the purpose of maintaining remuneration for its activities, and is also obliged to adhere to all laws and regulations that regulate such activities. A bureau establishment requires a minimum capital of 50,000 euros. In this case, the presence of special education and relevant work experience for the founder is not required (Baljak, 2015).

In the Netherlands, private security organizations do not have a legally defined investigation authority (Drobyazko et al., 2019). This circumstance means that private investigators are limited in their investigations, since they are not allowed, for example, to enter or search the premises without the consent of the owner. This type of far-reaching investigative powers is assigned to law enforcement agencies and is protected by the rules of the Dutch Criminal Code (1881). Due to the wide variety of subjects with different work experience in this field, including former police officers, lawyers, court accountants, there is a wide variety of skills and experience that goes beyond police investigations (Meerts, 2016).

In Latin America, in particular in Mexico, today, there are almost 50 percent more private security guards than police officers in the field of security. Private security companies are constantly at a disadvantage in front of the police due to their inherent security strength in terms of their authority to support the law and impose order. Personnel of former police officers are often involved in private security organizations. In 2013, the Declaración de Belén de las Flores “*México en Paz*.” was signed between the federal government and the main representatives of the private security field, calling for the strengthening of the private security industry as an auxiliary and additional public security function. However, despite these state efforts to promote cooperation, the relationship between Mexican private and public security providers is usually far away (Puck, 2017).

In South Africa, the main regulatory body in state regulation of private security activity is the private security industry regulatory authority (PSIRA), a body that is controlled by the Ministry of Police, but funded by the industry itself, which operates in accordance with the Private Industrial Security Regulatory Act (PSIRA). Government regulation of the security industry provides that all employees in the industry must be registered with PSIRA. PSIRA contains an article on consumer liability that is legally obliged to ensure that the companies they use are registered and operating in accordance with the law (Diphorn, 2016).

METHODOLOGY

The methodological basis for the study of the characteristics of private security activity was a set of comparative legal, formal legal and structural and functional methods. Using the comparative legal method, the study of foreign experience of state regulation of the characteristics of the implementation of private security activity was carried out. The formal legal method allowed to find out the content of the relevant norms of the current Ukrainian legislation governing the implementation of non-state security activities, including the defining basis of state control over such activities. The method of structural and functional analysis was used to determine the peculiarities of non-state security activities, as well as to outline the differences between the legislatively fixed features of the legal status of a police officer and a private security structure.

FINDINGS AND DISCUSSION

In Ukraine, special legislation in the field of non-state security activity is represented by a combination of both legislative and sub-legal regulatory instruments. The main legislative acts in respect of which the regulation of the provision of private security services is carried out should be attributed to the Laws of Ukraine “*On Security Activities*” dated March 22, 2012 and “*On Licensing of Certain Types of Economic Activities*”. Among the bylaws in the regulation of relations for the implementation of private security activities the most important are: (1) Resolution of the Cabinet of Ministers of Ukraine “*On approval of the licensing conditions for the implementation of security activities*” dated November 18, 2015; (2) Resolution of the Cabinet of Ministers of Ukraine “*On approval of the list of special means, the acquisition, storage and use of which is carried out by the subjects of security activity*” dated February 11, 2013.

The special law in the sphere of regulation of non-state security activities, which defines the organizational and legal principles for carrying out business activities in the provision of property and citizen protection services, is the Law of Ukraine “*On Security Activities*” dated March 22, 2012. The definition of the concept of non-state (private) security activity the Law does not contain. But in art. 1 of the Law, a definition of security activity is given, by which the legislator means the provision of services for property and citizens protection. At the same time, the concept of a subject of security activity, which is a business entity of any form of ownership, incorporated and registered on the territory of Ukraine, which carries out security activities on the basis of a license obtained in the established manner, is also defined (Law of Ukraine, 2012).

It should be noted that the implementation of non-state security activities requires mandatory licensing of security services based on the analysis of the norms of the Law of Ukraine “*On Security Activities*”. The specifics of such licensing are determined by the Law of Ukraine “*On Licensing of Certain Types of Economic Activities*” and the Licensing Conditions for the Implementation of Security Activities, approved by the Resolution of the Cabinet of Ministers of November 18, 2015. In order to obtain a license, the applicant, personally or through an authority or a person authorized by the applicant, submits to the licensing authority an application for obtaining such a license. If there are no grounds for leaving the application for obtaining a license without consideration, the period for making a decision by the licensing authority on issuing a license is ten working days from the day the license authority received the application for obtaining a license (Law of Ukraine, 2015; Law of Ministries Ukraine, 2015).

The control over the activities of private security organizations is carried out by the Ministry of Internal Affairs of Ukraine. On October 10, 2018, the Resolution of the Cabinet of Ministers of Ukraine approved new Criteria, which assess the degree of risk from economic activities in the field of security activities subject to licensing, and determine the frequency of planned state supervision (control) measures by the Ministry of Internal Affairs. The control takes place through scheduled and unscheduled inspections in accordance with the requirements of the Law of Ukraine “*On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity*” dated April 5, 2007, taking into account the features defined by the Law of Ukraine “*On Licensing of Certain Types of Economic Activities*” (Law of Ukraine, 2015).

Security personnel are employees who directly perform the functions of protecting property or individuals in accordance with their qualification level. Such employees study, undergo training, retraining, and advanced training in educational institutions of various forms of ownership (Law of Ukraine, 2012). So, the legislator establishes certain requirements for personnel of non-state security structures, due to the need for the professional provision of security services.

According to Art. 16 of the Law of Ukraine “*On Security Activities*”, in the implementation of security activities security personnel have the right to apply physical measures and special means to persons encroaching on the object of protection (Law of Ukraine, 2012). On February 11, 2013, the Resolution of the Cabinet of Ministers approved the list of special means, the acquisition, storage and use of which is carried out by the subjects of security activity. These special means include: body armors; protective helmets; pepper guns with aerosols of tear and irritant action; gas pistols and revolvers and cartridges to them of caliber 6, 8 and 9 millimeters, charged with tear and irritant substances; rubber truncheons; plastic (textile) disposable handcuffs; electroshock devices; domestic-made devices for shooting ammunition

filled with rubber or non-lethal projectiles with specified ammunition (Postanova Kabinetu Ministriv Ukrainy Pro zatverdzhennia Pereliku spetsialnykh zasobiv, prydbannia, zberihannia ta vykorystannia yakykh zdiisnuietsia subiektamy okhoronnoi diialnosti, 2013). In turn, police enforcement measures are defined in Art. 42 of the Law of Ukraine "On the National Police" dated July 2, 2015, which, in particular, include: (1) physical impact (force); (2) use of special means; (3) use of firearms (Law of Ukraine, 2015). An analysis of the provisions of the Resolution of the Cabinet of Ministers of Ukraine "On approval of the list of special means, the acquisition, storage and use of which is carried out by the subjects of security activity" and the Law of Ukraine "On the National Police" provides an opportunity to distinguish between the legal characteristics of the legal status of a police officer and a private security structure. In this case, it consists in the absence of the latter's right to use firearms.

In the study of the characteristics of private security structures, it is important to pay attention to the legislative regulation of the issues of their interaction with government bodies. The Art. 18 of the Law of Ukraine "On Security Activities" provides for the possibility of joint organization of interaction between subjects of security activities and law enforcement agencies, as well as mutual assistance in activities aimed at preventing, suppressing and solving criminal offenses and ensuring the protection of public order. The Art. 19 of the Law clarifies the forms of interaction of non-state security structures with law enforcement agencies, which as follows: (1) holding joint meetings, consultations; (2) exchange of information on the prevention and punishment of offenses; (3) other measures not prohibited by law (Law of Ukraine, 2012). However, it should be noted that the legal regulation of the specifics of the interaction procedure between non-state and state actors of security activities is absent. This, in turn, leads to a number of procedural problems regarding the actual use of forms of interaction defined by the legislator.

RECOMMENDATIONS

An important aspect of the characteristic changes in the development of the market of security services in the sphere of non-state security activity is the existence of state control in this sphere. In order to perform such a function, the necessary tasks are the development and implementation of appropriate effective mechanisms for monitoring the activities of non-state security structures, standards for the provision and evaluation of the effectiveness of security services, and the like. Special attention should also be given to addressing the peculiarities of the interaction procedure between non-state and state actors of security activities. Settlement of such issues is possible at the level of adoption of a by-law regulatory act in which it is advisable to consolidate procedural issues of interaction between private security organizations and state law enforcement agencies related to the prevention, solving and stop of criminal offenses and the protection of individuals, property of citizens and legal entities.

CONCLUSION

Today, the organizational and legal regulation of security activities in Ukraine plays an important role, due to the degree of effectiveness of the activities of entities on the provision of security services. Legislative regulation of security activities is ensured by the presence of a established regulatory framework, in accordance with which non-state protection is carried out. The analysis of the norms of the current Ukrainian legislation in the field of regulation of non-

state security activity makes it possible to identify the following characteristic features: (1) provision of security services on a contractual basis (conclusion of a civil contract); (2) mandatory licensing of such activities; (3) state control-Ministry of Internal Affairs of Ukraine; (4) possibility of using physical measures and special means only in special cases; (5) professional provision of security services, etc.

REFERENCES

- Baljak, M. (2015). The role of private security agency in the 21st century. *Defendologija*, 2(36), 22–30.
- Diphooorn, T. (2016). Surveillance of the surveillers: Regulation of the private security industry in South Africa and Kenya. *African Studies Review*, 2(59), 161–182.
- Drobyazko, S., Hryhoruk, I., Pavlova, H., Volchanska, L., & Sergiychuk, S. (2019). Entrepreneurship innovation model for telecommunications enterprises. *Journal of Entrepreneurship Education*, 22(2), 1-6.
- Dutch Criminal Code. (1881). Retrieved from http://legaldb.freemedia.at/my_keywords/dutch-criminal-code/
- Law of Ministries Ukraine. (2013). Resolution of the cabinet of ministers of Ukraine on approval of the list of special means, the acquisition, storage and use of which is carried out by security guards.
- Law of Ministries Ukraine. (2015). *Resolution of the cabinet of ministers of Ukraine on approval of licensing conditions for the conduct of security activities*.
- Law of Ukraine. (2012). *On protective activities: As amended up to Act of November 04, 2018*. Retrieved from <https://zakon.rada.gov.ua/laws/show/4616-17>
- Law of Ukraine. (2015). *On licensing of types of economic activities: As amended up to Act of January 01, 2019*. Retrieved from <https://zakon.rada.gov.ua/laws/show/222-19>
- McCrie, R. (2017). Private security services regulations in the United States today. *International Journal of Comparative and Applied Criminal Justice*, 4(41), 287-304.
- Meerts, C. (2016). A world apart? Private investigations in the corporate sector. *Erasmus Law Review*, 9(4), 162-176.
- Olga, O.V., Nadiia, S.A., Oleg, M.R., Vyacheslav, V.V., Kateryna, D.Y. (2019). International aspect of a legal regulation in the field of financial crime counteraction by the example of special services of Ukraine and the CIS countries. *Journal of Legal, Ethical and Regulatory Issues*, 22(1), 1–8.
- Puck, L. (2017). Uneasy partners against crime: The ambivalent relationship between the police and the private security industry in Mexico. *Latin American Politics and Society*, 1(59), 74–95.
- Singh, A.M., & Light, M. (2017). Constraints on the growth of private policing: A comparative international analysis. *Theoretical Criminology*, 10(1), 1–20.

This article was originally published in a Special Issue 2, entitled: "**Business Laws and Legal Rights: Research and Practice**", Edited by **Dr. Svetlana Drobyazko**