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WHAT SUITABILITY OF PRIVATE GUARDS IS PERIODICALLY CHECKED?

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The article analyzes the divergence of orders and letters of the Russian Interior Ministry, establishing procedures for periodic checks of private security guards in respect to suitability to act in conditions involving the use of firearms and special equipment, from legislation on private security activity.

Keywords: private security activity, periodic checks, use of weapons.

Private security activity is related with the possible restriction of the constitutional rights of citizens and use of high risk items (weapons and special means). For the purpose of increasing the quality of provision security services to the population and economic units without negative consequences in this sphere of activity the existing Russian legislation provides for the passage by employees of private security organizations of periodical checks for suitability to act in situations involving the use of firearms and special means.

The obligation is laid upon private security guards, article 16 of the law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective and Security Activities in the Russian Federation" [1]. The content of periodic inspections, procedures and time-frames are defined by the Ministry of Internal Affairs of the Russian Federation in accordance with the prescription of law.

First, let's determine the subject of check. In accordance with the law employees of private security organizations pass periodical checks for suitability to act in situations involving the use of firearms and special means. Therefore, the theoretical part of examination allows finding out the knowledge of an employee of a private security organization:

- about the prescribed by law cases of use of firearms,
- about the prohibitions on the use of firearms,
- about the instructions of the applying of firearms.

However, the reference rule of the article provides that “the content, procedures and time-frames of periodic inspections are defined by a federal executive authority, the competence of which includes internal affairs issues”, which means that the questions for the check of knowledge of a private security organization’s employee, contained in subordinate law, must not go beyond the requirements stipulated by law.

Second, let’s define what is meant under applying by a private security guard firearm and special means. For example, the authors of the commentary to the Law “On the Police”, who took direct participation in drafting laws on the militia and on the police, define the use of firearms by police officers, as follows: “this is firing for the purposes stipulated by article 23 of the Law “On the Police”. Another legislatively permitted handling of firearms – extracting from its holster, preparation to combat readiness, threats of weapon (verbal or by demonstration, but without firing), beating by weapon, shooting at a shooting range, as well as firing in situations where there is no reasons stipulated by the Law “On the Police”, but a police officer is in a position of self-defense, absolute necessity, during detention a criminal, and so on, are not the use of firearms within the meaning of articles 23 and 24 of the Law “On the Police” [2].

Necessary to note the position of the Plenum of the Supreme Court of the Russian Federation: “In classification of person’s actions under clause “b” part 3 article 286 of the Criminal Code of the RF, under the use of a weapon or special means the courts should understand deliberate actions of a person related to the use of killability of the mentioned objects, or the use them by purpose” [3].

Consequently, actions in situations involving the use of firearms and special means include:

- 1) actions immediately preceding the use of weapons and special means, including determination of the legality of the upcoming use of firearms and (or) special means;
- 2) adherence to the rules of the use of weapons and special means;
- 3) actions taken immediately after the use of weapons and special means.

In accordance with the prescription of the Law, the Russian Ministry of Internal Affairs issued the order No. 647 dated June 29, 2012 “On approval the Provision on conducting by the internal affairs agencies of the Russian Federation of periodic inspections of private security guards and employees of legal entities engaged in

special assignments on suitability to act in situations involving the use of firearms and special means” [4]. The named order in clause 21 of Annex No. 1 requires during polling employees to determine their knowledge of provisions of:

- articles 1-6, 9, 12, 13, 21, 22, 24-27 of the Federal Law No. 150 from December 13, 1996 “On Weapons”,
- articles 37-39, 203, 222, 224 and 225 of the Criminal Code of the Russian Federation,
- articles 14.2, 17.12, 19.1, 19.4 (part 1), 19.5 (part 1), 19.20, 19.23, 20.08 (parts 1 and 2), 20.9, 20.12, 20.13, 20.16, 20.17, 20.19 and 20.24 of the Code On Administrative Offences of the Russian federation,
- articles 16-18 of the law of the Russian Federation No. 2487-1 from March 11, 1992 “On Private Detective and Security Activities in the Russian Federation”,
- as well as the Instructions for the use of special means by private security guards approved by the Decree of the Government of the Russian Federation No. 587 from August 14, 1992.

Analysis of the content of the mentioned order questions the increase in quality of providing security services to the population and economic units from conducting of implemented on the basis of this normative act periodic inspections of private guards for suitability to act in situations involving the use of firearms and special means. Not every of its articles, the knowledge of which has to be determined, contains provisions governing action in situations associated with the use of firearms and special means. Most of these articles regulate actions in the situations relating to the acquisition, possession, storage, sale of weapons and special means. Some norms do not relate to weapons and special means, for example, articles of the Code on Administrative Offences of the Russian Federation: 19.1. Arbitrariness; 19.4. Failure to Follow the Lawful Order of an Official of a Body Exercising State Supervision (Control); 19.5. Failure to Follow in Due Time a Lawful Direction (Order, Proposal, Decision) of a Body (Official), Exercising State Supervision (Control); 19.20. Conducting Activities, Which Are Not Connected with Deriving Profits, Without a Special Permit (License); 19.23. Making Forged Documents, Stamps, Seals or Forms, and their Use, Transfer or Sale.

Even more doubts are raised by the letter of the Head Department to Ensure the Protection of Public Order of the Russian Ministry of Internal Affairs (GUOOOP MVD in Russian) No. 12/8977 dated December 27, 2011, by which to the centers of licensing and permitting work of Internal Affairs Bodies of constituent entities of the Russian Federation were sent model questions for periodic inspection. These questions are posted on the websites of many Internal Affairs

Bodies and organizations, such as the sites of the Center of licensing and permitting work of the Head Department of the Ministry of Internal Affairs for the city of Saint-Petersburg and the Leningrad region [5] and the Coordinating Council of the Head Department of the Ministry of Internal Affairs for Novosibirsk region for interaction with security and detective structures [6]. These questions are used to conduct periodic checks of employees of private security organizations in subdivisions of licensing and permitting work all over the country.

A close reading of a letter from the GUOOOP MVD No. 12/8977 dated December 27, 2011 allows us to draw a conclusion that the letter contradicts not only to the order of the Ministry of Internal Affairs of Russia No. 647 from June 29, 2012, but also the Law of the Russian Federation No. 2487-1 from March 11, 1992 “On Private Detective and Security Activities in the Russian Federation”. On the one hand, it does not contain questions on the knowledge of the CAO RF articles specified in the order, but on the other hand, sets out the issues on topics not related to situations related to the use of firearms and special means, thus goes beyond of the framework defined by law.

In the list of questions stipulated by the letter only 27 out of 120 questions on legal training are consistent with the objective of periodic inspection. The remaining questions are designed to determine the knowledge of a private security guard in the area of labor and civil legislation, as well as the organizational aspects of qualification examination, for example, question No. 102 determines the private security guard’s knowledge of the list of persons signing the examination sheet, which contains the results of qualifying examination.

It seems to us that the order is required to be adjusted in part of defining the list of provisions of laws, knowledge of which should be determined in the course of periodic inspections.

References:

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3. Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19 from October 16, 2009 “On judicial practice in cases of abuse of power and abuse of office” [Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 16 oktyabrya 2009 g. № 19 «O sudebnoi praktike po delam o zloupotreblenii dolzhnostnymi polnomochiyami i o prevyshenii dolzhnostnykh polnomochii»]. *Byulleten' Verkhovnogo Suda RF – Bulletin of the Supreme Court of the RF*, 2009, no. 12.

4. Order of the Russian Interior Ministry No. 647 from June 29, 2012 “On approval the provision on carrying out by internal affairs bodies periodic checks of private security guards and legal entities with special statutory tasks regarding suitability to act in conditions involving the use of firearms and special equipment” [Prikaz MVD Rossii ot 29 iyunya 2012 g № 647 «Ob utverzhdenii Polozheniya o provedenii organami vnutrennikh del Rossiiskoi Federatsii periodicheskikh proverok chastnykh okhrannikov i rabotnikov yuridicheskikh lits s osobymi ustavnymi zadachami na prigodnost' k deistviyam v usloviyakh, svyazannykh s primeneniem ognestrel'nogo oruzhiya i spetsial'nykh sredstv»]. *Rossiiskaya gazeta – Russian Gazette* from August 15, 2012.

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