

Kositsin I. A.

LEGAL REGULATION OF THE APPLICATION OF PHYSICAL FORCE BY PRIVATE SECURITY GUARDS

*Kositsin Igor'
Alekseevich,
(PhD of jurisprudence), As-
sociate professor, Associate
professor of the Chair of con-
stitutional and administra-
tive law at Omsk Law Acad-
emy, Omsk,
Ikosicin@yandex.ru*

Here are denoted the problems associ-
ated with the use of physical force by private
security guards in situations not related to the
protection of objects of protection. It is argued
that the most problematic situations occur
when an offender commits a crime against a
protected object, but does not make resistance
to the guard, since they “fall out of the legal
framework of the Law of the Russian Federa-
tion “On Private Detective and Security Guard
Activity in the Russian Federation”.

The author notes the lack of normative
regulation of the issue of application by private
security guard of physical force to prevent an
administrative offense against a protected object.

Keywords: private security guards, pri-
vate security activity, application (use) of force
by private security guards.

July 3, 2013 the State Duma of the Russian Federation adopted in first reading the draft law “On Amendments to the Law of the Russian Federation “On Private Detective and Protection Activity in the Russian Federation” [4]. What problems are planned to be removed with adoption of this act?

This draft, in accordance with its annotation, is intended to solve the issues of attracting private security organizations in providing anti-terrorist protection of objects and to specify the list of objects, which should not be covered by the activity of private security organizations.

In addition, this draft intends to introduce to the Law of the Russian Federation “On Private Detective and Protection Activity in the Russian Federation” a new article “16.1 Application of Physical Force”. We could be happy for a huge

army of private security guards receiving legal support in the form of direct providing by the law of the right to apply physical force. However, implementation of the proposed amendments does not solve existing problems related to the lack in the Law of the Russian Federation "On Private Detective and Protection Activity in the Russian Federation" the norm that establishes legal grounds for the use of physical force.

Analyzing the Russian legislation on the private security activity, A. Z. Kolyasinskii said that often "guards are governed by general legislation and act as ordinary citizens – at their own risk. In some situations, though quite rare in practice, their actions may be subject to legal action – exactly because of the lack of direct regulation of the needed norms in special legislation" [5, 19].

An even greater problem is the use of physical force by private security guards in situations not involving the protection of objects of protection. "The law does not provide private security guards permission to use special means, physical force and firearms for the protection of public order, i.e., for the exercising of public-law powers" [7, 54].

Other researchers have also repeatedly written about the problems related to the lack of legal regulation of the application of physical force by private security guards [6; 2; 3].

The newly proposed norm prescribes: "Private security guard has the right to apply physical force in all cases when this Law allows the use of special means or firearms". All these cases are associated with active actions of an offender against a security guard: so, in accordance with part 2 article 17 of the aforementioned Law, private security guards have the right to use special means in the following cases:

- 1) to repel the attack directly threatening their life and health, and to repel the attack directly threatening the lives and health of protected persons;
- 2) to prevent crimes against protected by them property when a perpetrator makes physical resistance.

In accordance with part 1 article 18, security guards have the right to use firearms in the following cases:

- 1) to repel the attack directly threatening their life;
- 2) to repel collective or armed attacks on protected property.

Thus, a legal gap is only partially eliminated, the most problematic situations where an offender commits a crime against the object of protection, but makes no resistance to the security guard, fall out of the legal framework of the considered law. The issue application of physical force by a private security guard to prevent administrative offence against the protected object is still unresolved.

We offer that article 16.1 “Application of Physical Force” of the draft shall be read as follows:

“Private security guards have the right to apply physical force to protect the objects of protection against unlawful encroachments, apprehend at the crime scene for transferring persons who have committed offence to the police, overcome resistance to legal demands of private security guards, if other methods do not provide the performance of their duties.

Private security guard also has the right to apply physical force in all cases where this Law permits the use of special means or firearms”.

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