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LEGAL REGULATION OF PROTECTION OF OBJECTS OF PARTICULAR IMPORTANCE

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Such problems in the legal regulation of protection of objects of particular importance, as the lack of a legal regulation of issues associated with the categorization of objects and uncertainty of control procedures over protected objects of certain categories, are noted in the article.

Given that particularly important objects are the subject of intense interest by criminal groups that are usually specially prepared, the main objectives of protection are an exception of penetration on an object and into vital centers of the object, full restriction of access by unauthorized persons and personnel in the special "zones" of the object, detecting leaks of hazardous substances (e.g. domestic gas), which can lead to technological accidents.

Keywords: objects of particular importance, protection of objects of particular importance, Federal Guard Service, principle of objects' protection, extradepartmental security service.

The main potential to improve the protection of objects of particular importance lies in the sphere of organization of closer interaction of administration of objects' security services with state law enforcement agencies and special services.

Being objectively interested in cooperation with law enforcement agencies for quality conducting of prevention activities, detection the attempts of crimes and ensuring of prompt, timely arrival of units of the Federal Security Service, the Ministry of Internal Affairs and the Emercom of Russia at the scene of accident, the heads of objects of particular importance, and the heads of security structures should take an appropriate initiative, regardless of the level of understanding among the local representatives of law enforcement agencies [10, 205].

Article one of the Federal Law No. 57-FL from May 27, 1996 "On State Guard" provides that state guard is a function of Federal authorities for the protection of objects of the state guard, which is carried out based on a totality of legal, institutional, protective, modal, investigative, technical and other measures" [3].

Objects of the State Guard are: the President of the Russian Federation, holders of public office of the Russian Federation, federal public servants, heads of foreign states and governments and other persons of foreign states during staying in the territory of the Russian Federation. Protected objects are buildings in which the federal bodies of state power are located, the surrounding territory and water area.

Federal Guard Service of the Russian Federation carries out protection of the Prime Minister of the Russian Federation, Chairman of the Federation Council, Chairman of the State Duma, Chairman of the Supreme Court of the Russian Federation, Chairman of the Higher Arbitration Court of the Russian Federation, President of the Constitutional Court of the Russian Federation, Procurator General of the Russian Federation during their term of office. If necessary, by decision of the President of the Russian Federation, the state guard may be provided to other persons – deputies, public servants. In accordance with the international treaties, heads of foreign states and governments, members of their families during their stay on the territory of the Russian Federation are provided protection. By the order of the President of the RF the Federal Guard Service protects foreign political and public figures during their stay on the territory of the RF. That is, this information allows us to describe the State's Departmental Guard as a totality of created by the federal executive authorities management bodies, forces and resources for the protection of protected objects against unlawful encroachments.

At that, you must determine what body of state power is given the functions of ensuring security of objects of the state guard, that this state body is the Federal Guard Service (FSO – in Russian).

Meanwhile, police units of extradepartmental security service, in accordance with the Order of the Russian Ministry of Internal Affairs No. 609 from August 4, 2006 “Organization Issues of Activity of the Military Police Units of Extradepartmental Security Service of the Internal Affairs Bodies of the Russian Federation”, bear responsibility to ensure the protection of objects subject to mandatory protection, protection of property of individuals and legal entities on a contractual basis, to implement tasks on participation in ensuring the protection of public order and fight against offenses in areas of their posts and patrol routes.

It should be noted that currently the optimization of the list of objects subject to mandatory police protection of the previously existing RF Government Order No. 1629-r from November 2, 2009 [7] has been completed; the list of these objects is approved by the RF Government Decree No. 2324-r from December 10, 2013 [9], from the previous list were excluded such items as:

- buildings, storages of state museums, libraries, archives, reserve museums of regional significance;
 - administrative buildings of the Accounting Chamber of the RF;
 - administrative buildings, occupied by other prosecutors in the constituent entities of the RF, the investigative bodies Investigative Committee of the RF;
 - storages of narcotic drugs and psychotropic substances;
 - buildings of state television and radio companies, their radio-television transmitting and technical centers;
 - administrative buildings of the Federal Drug Control Service (FDCS), the Federal Bailiff Service (FBS) of Russia and their territorial bodies;
- and the following items were included:
- administrative buildings of the central office, territorial institutions of OJSC “Bank VTB”;
 - objects of fuel and energy complex;
 - weapon storage rooms of departmental guard units of the federal executive authorities and their organizations;
 - administrative buildings occupied by city, district courts in the constituent entities of the Russian Federation.

However, not all provisions of the list are indisputable.

Namely, according to the particular arbitration case No. A45-11313/2013, considered in the Federal Arbitration Court of the West Siberian district, April 8, 2014, it can be concluded that exclusion from the list of objects of protection the storage depots of narcotic drugs is inappropriate in terms of public security.

So, the State Budgetary Health Institution of Novosibirsk region “Advisory-diagnostic polyclinic No. 2” appealed to the Arbitration Court of Novosibirsk region with a statement to invalidate the decision of the Department of the Federal Drug Control Service of Russia in Novosibirsk region No. 3/417 from 14.03.2013 “On refusal to issue a conclusion on the conformity of objects and premises related to activities associated to turnover of narcotic drugs and psychotropic substances included in List I of priced catalogue, and (or) the cultivation of narcotic plants, to the established requirements for equipping these facilities and premises with engineering technical means”.

The stated demand was met by the decision of the Arbitration Court of Novosibirsk region from September 16, 2013, which had been left without changes by the decision of the seventh Arbitration Court of Appeals from 25.11.2013.

In the cassation appeal the Department, referring to the incorrect application of material and procedural norms of law, not matching of the findings of courts with the detected circumstances of the case, asks to cancel the decisions and to take a new legal act on refusal to meet the stated demands. According to the applicant of the cassation appeal, in accordance with the current legislation, the controversial object is subject to state guard, i.e. by the police.

Materials of the case found that on the basis of application from the institution № 3/490 from 19.02.2013 the Department made an examination of premise of the third category for storage of narcotic drugs and psychotropic substances No. 33, located in a clinic at the address Novosibirsk, Morskoy Avenue 25.

Based on the results of the examination the Department compiled act No. 3/29/54 from 12.03.2013 and took decision No. 3/417 from 14.03.2013, by which the institution was denied the conclusion on the conformity of the premise to the established requirements due to the fact that it was not protected by the police.

Believing that the Department’s denial to issue the conclusion is not based on norms of the current legislation, the institution appealed to arbitration court with the present application.

When meeting the demands stated, arbitration courts had come to the conclusion that the premises for the storage of narcotic drugs, psychotropic substances and their precursors, that constitute a part of health institutions, including state ones, related to the premises of the third category, might be protected by non-governmental organizations having the license for realization of non-state (private) security activity.

Federal service department points to the contradiction of the current legislation norms.

The courts investigated these issues and were based on the following.

On the basis of paragraph 1 article 8 of the Law on narcotic drugs, trafficking in narcotic drugs, psychotropic substances and precursors included in List I on the territory of the Russian Federation is carried out only for the purposes and under the procedure prescribed by this Federal Law and adopted in accordance with its normative legal acts of the Russian Federation.

By virtue of paragraph 10 of the Rules of storage narcotic drugs, protection of premises belonging to the third and fourth categories is carried out through involving (in addition to the units of extradepartmental guard of internal affairs bodies) of legal entities licensed to conduct non-state (private) security activity.

However, subparagraph 25 paragraph 1 article 12 of the Federal Law No. 3-FL from February 7, 2011 "On the Police" [4], the police is responsible for protection on a contractual basis of property of citizens and organizations, as well as objects subject to mandatory protection of police, in accordance with the list approved by the Government of the Russian Federation.

According to paragraph 8 of the List of objects subject to mandatory police protection, approved by order of the Government of the Russian Federation No. 1629-r, in the version valid at the time of the inspection by the Department, warehouses (storage rooms) for narcotic drugs and psychotropic substances, highly potent, poisonous, toxic substances and chemical drugs composed of highly potent, poisonous and toxic substances, of state bodies and organizations are subject to mandatory police protection.

It was found out, that paragraph 8 of the List is in conflict with paragraph 10 of the Rules of storage narcotic drugs.

Having set during the consideration of the present case, the collision of provisions of the mentioned legal acts, arbitration courts of both instances, in accordance with part 2 article 13 of the Arbitration Procedural Code of the Russian Federation [1], article 23 of the Federal Constitutional Law No. 2-FCL from December 17, 1997 "On the Government of the Russian Federation" [2], rightly pointed out that in the present case priority should be given to the Order of the Government No. 1148, since this normative legal act has greater legal force and the later date of adoption.

In such circumstances, courts have come to a reasonable conclusion that the provision of services to protect the disputed premises may not only be on the basis of a contract with the police, but also with the specialized organizations licensed to non-state (private) security activity.

Arguments of the Department on non-use by courts the provisions of the Law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective

and Security Activities in the Russian Federation” [5] and the RF Government Order No. 587 from 14.02.1992 “Issues of Private Detective (investigative) and Private Security Activity” [6] were rejected by the court of cassation.

The reorganization of the Ministry of Internal Affairs of Russia shows that extradepartmental security service has not stopped in its development, and it has been given new functions, new approaches of service activity have been elaborated and fundamentally new tasks have been set.

So, the Federal Law “On the Police” provides extradepartmental security service such functions like the inspection of guard units of legal entities engaged in special assignments and units of departmental guard (paragraph 25 article 12), the issuance of instructions on elimination of detected violations in their security activity, in the area of arms trafficking and ensuring the safety of State and municipal property (article 26 article 13). Appropriate regulatory framework is already created and since 2012 the service has begun to implement these functions.

The cardinal change in the structure of the service and its legal status has become the signed on December 30, 2011 RF Government Decree No. 2437-r [8] on the establishment of federal state-owned institutions on the basis of Internal Protection Directorate (Department of Extradepartmental Security Service) with the accession to them as branches the units of extradepartmental security service of local internal affairs bodies at the district level.

Since the units of extradepartmental security service are entrusted with a number of specific tasks that are the distinctive feature from the other services of internal affairs bodies, the creation of a Federal State-owned Institution was necessary to save them the status of a legal entity with preserving accounts in the Federal Treasury bodies, the contractual framework of activities of these units for the protection of property of citizens and organizations, the powers to conduct the work with claims and suits, the performance of functions of revenue administrators and performing of prognostic indicators for the transfer of funds to the Federal Budget, as well as the formation of tariffs for services.

In this regard, in 2014, it is proposed to conduct significant organizational-legal and practical arrangements for the amending of normative-legal acts of Internal Protection Directorate (Department of Extradepartmental Security Service), preparation of provisions on the branches of Federal State-owned Institution, powers of attorney for the heads of branches defining their powers, staff schedules of branches and other documents, as well as arrangements for the renewal of contracts (additional agreements) with counterparties, reregistering of

the property of the units of extradepartmental security service of the subjects, paying special attention to the preservation of the volume of security services, prevention of negative factors in connection with the reorganization.

Over the past 10 years, the Ministry of Internal Affairs of Russia, Department of State Protection of Property, Center for Operational Management of Extradepartmental Security Service and Main Directorate of Extradepartmental Security Service of the RF MIA had prepared for units of extradepartmental security service more than 230 directives aimed at improving the protection of objects of particular importance, including the requirements for activity on carrying out examination of their technical strengthening and elimination of revealed deficiencies.

This shows not only the emphasis that is laid by the Ministry of Internal Affairs of Russia on the strengthening security of such objects, but also the presence of various problems.

Such problems include the following:

- there is no legislative regimentation of issues associated with the categorization of objects;
- uncertainty in control procedures for certain categories of protected objects;

Since these issues relate to the definition of the status and the state guard of objects of particular importance, there is no doubt that their resolving should be enforced at the federal level.

In addition, it should be noted that optimization of administrative apparatus of extradepartmental security service, first of all, should focus on strengthening the units of organizational and analytical work while ensuring qualitative selection and training of staff for management activities, including the training of staff in the staff offices of internal affairs bodies.

Particularly important objects are the subject of intense interest by criminal groups that are usually specially prepared. Their methods include not only the direct implementation of a sabotage, but also compulsion to prepare them by means of threats or bribery of site personnel. For this reason, the main objectives of protection are an exception of penetration on an object and into vital centers of the object, full restriction of access by unauthorized persons and personnel in the special "zones" of the object, detecting leaks of hazardous substances (e.g. domestic gas), which can lead to technological accidents. In addition, with the introduction in the market of security services of private structures, own security services of objects, expanding their spheres of activity, there is an urgent issue of the need for strengthening state regulation in the field of property protection.

In view of the threat of wrongful acts at these objects, territorial internal affairs bodies and extradepartmental security service, in cooperation with the heads of executive authorities, carried out a set of organizational, practical, precautionary and preventive measures.

However, security of objects of particular importance is a condition when the negative effects of potential dangers from threats of man-made, natural nature and criminal encroachments of terrorist nature are overcome or extremely reduced.

The principle of security of objects of particular importance includes the following main elements:

- coordination and collaboration of the subjects of protection;
- assessment of the security of objects of particular importance;
- assessment of the reliability of technical means of protection.

References:

1. Arbitration Procedural Code of the Russian Federation from July 24, 2002, No. 95-FL [Arbitrazhnyi protsessual'nyi kodeks Rossiiskoi Federatsii ot 24 iyulya 2002 g. № 95-FZ]. *System GARANT* [Electronic resource], Moscow: 2014.

2. Federal Constitutional Law No. 2-FCL from December 17, 1997 "On the Government of the Russian Federation" [Federal'nyi konstitutsionnyi zakon ot 17 dekabrya 1997 g. №2-FKZ «O Pravitel'stve Rossiiskoi Federatsii». *System GARANT* [Electronic resource], Moscow: 2014.

3. Federal Law No. 57-FL from May 27, 1996 "On State Guard" [Federal'nyj zakon ot 27 maja 1996 goda № 57-FZ «O gosudarstvennoj ohrane»]. *System GARANT* [Electronic resource], Moscow: 2014.

4. Federal Law No. 3-FL from February 07, 2011 "On the Police" [Federal'nyi zakon ot 7 fevralya 2011 № 3-FZ «O politsii»]. *SZ RF – Collection of Laws of the RF*, 2011, no. 7, article 900.

5. The Law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective and Security Activities in the Russian Federation" [Zakon Rossiiskoi Federatsii ot 11.03.1992 № 2487-1 «O chastnoi detektivnoi i okhranno-i deyatelnosti v Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2014.

6. RF Government Order No. 587 from 14.02.1992 "Issues of Private Detective (investigative) and Private Security Activity" [Postanovlenie Pravitel'stva

Rossiiskoi Federatsii ot 14.02.1992 № 587 «Voprosy chastnoi detektivnoi (systemnoi) i chastnoi okhrannoi deyatel'nosti». *System GARANT* [Electronic resource], Moscow: 2014.

7. RF Government Order No. 1629-r from November 2, 2009 "On Approval of the List of Objects Subject to Mandatory Protection by Police Units of Extradepartmental Security Service of the Internal Affairs Bodies of the Russian Federation" [Rasporyazhenie Pravitel'stva RF ot 2 noyabrya 2009 g. № 1629-r "Ob utverzhdenii Perechnya ob"ektov, podlezhashchikh obyazatel'noi okhrane podrazdeleniyami militsii vnevedomstvennoi okhrany pri organakh vnutrennikh del RF"]. *System GARANT* [Electronic resource], Moscow: 2014.

8. RF Government Decree No. 2437-r from 30 December, 2011 [Rasporyazhenie Pravitel'stva RF ot 30 dekabrya 2011 g. N 2437-r]. *System GARANT* [Electronic resource], Moscow: 2014.

9. RF Government Decree No. 2324-r from December 10, 2013 [Rasporyazhenie Pravitel'stva RF ot 10.12.2013g. № 2324-r]. *Rossiiskaya gazeta – Russian Newspaper*, from December 12, 2013.

10. Yudin G. G. Towards the Issue of Improving the Normative Legal Ensuring of Protection of High Risk Objects in the Russian Federation [K voprosu sovershenstvovaniya normativnogo pravovogo obespecheniya okhrany ob"ektov povyshennoi opasnosti v Rossiiskoi Federatsii]. «*Chernye dyry*» v *Rossiiskom zakonodatel'stve – "Black Holes" in the Russian Legislation*, 2009, no. 1.