

Security and Law Enforcement Activities: Correlation of Terms and Spheres of Criminal and Legal Protection



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Abstract. On the basis of modern researches the definition of concepts of security and law-enforcement activity, their features and subjects is given. The author expresses his opinion on the necessity of the appearance of non-state law enforcement activities in Ukraine. It is emphasized on the need for comprehensive criminal law protection of both state and non-state security activities in our country. It is proposed to introduce appropriate amendments to the legislation that regulates the activity of the subjects of protective activity.

Keywords: security activity; law enforcement activities; law enforcement function of the state; security guards; private security activities; criminal law protection.

Problem statement

In the scientific environment there is a rather lively discussion about the definition and correlation of the concepts of security and law enforcement activities. There is an urgent need for comprehensive criminal law protection of both state and non-state security activities in our country, which requires the introduction of appropriate changes to the legislation that regulates the activities of these entities.

Analysis of recent research and publications.

This problem is considered by specialists in the field of civil, administrative, labor, criminal law and criminology, criminal procedural law. It is investigated in the works of V. Hryshchuka, M. Khavroniuka, Yu. Kravchenka, V. Kovalskoho, M. Mazepy, M. Melnyka, M. Rudenka, O. Tykhomyrova, Yu. Vedernykova, S. Yurka and others. But there is no unity in the views. The author in this article expresses his own opinion on this complex issue.

The purpose of the article is to determine the grounds for delimiting these two types of activities and to determine the limits of their criminal law protection.

Presentation of the main research material. In our view, security activity is a type of economic

or one of the areas of law enforcement in the system of legal, organizational, economic, technological, physical and other measures that are carried out by actors with specific rights and responsibilities for the protection of life and the health of individuals and their property, property of legal entities or the state from unlawful encroachment, which are determined by laws, by-laws and civil law agreements.

Consider the concepts and features of law enforcement activities that are interpreted differently in science. Its subjects are also determined differently. At the legislative level, there is no concept of law enforcement.

In a broad sense, law enforcement (human rights) activities are understood as any activity aimed at ensuring human rights and freedoms

in the amount defined and enshrined in international legal instruments [1, p. 79].

In the narrow sense, law enforcement is understood as the activity of the state as a whole or as the activities of its special bodies for the protection and protection of those specific rights and freedoms of citizens (subjects of law), which are reflected and enshrined in the current national legislation [2, p. 42].

An analysis of the definitions of law-enforcement activity allows us to conclude that there are two main directions of interpretation of the latter. Representatives of the first of them define law enforcement as a type of police “force” activity aimed at countering offenses and other offenses. Therefore, these authors are included in the list of law enforcement bodies, mainly law enforcement agencies that counteract crime and administrative offenses, using police powers: arrest, delinquency, verification of documents, execution and removal of things that are prohibited or restricted, use of force and weapons, etc.

Representatives of the second – interpret it as a collective concept, which includes several relatively independent, but related activities: justice, prosecutorial supervision, pre-trial investigation, protection in criminal cases and cases of administrative offenses, provision of legal assistance, organizational support the activity of courts, the commission of notarial acts, etc. The main purpose of law enforcement activities in this approach is to protect human rights.

According to M. Melnyk and M. Havroniuk, only specially created state bodies deal with this activity. Law enforcement activities in the field of combating crime, in their view, include the use of coercive measures envisaged by law for those who commit socially dangerous acts, and measures to restore the rights and legitimate interests of legal entities and individuals that have been violated as a result of their commission [3, p. 26–27]. Need to agree with O. Tykhomyrov and Yu. Vedernikov, despite the diversity of scientists’ views about the nature and place of law-enforcement activity, they are the only ones in recognition of her as a state-power activity, which is carried out in legal form and is directly related to the prevention and prevention of offenses [4, p. 168].

We believe that law enforcement should be seen as a kind of “force” of police activity. Law-enforcement activity stems from the law-enforcement function of the state. The main legal forms of the exercise of state functions include: law-making, law enforcement, law enforcement, constituent, controlling and supervisory. “The law-enforcement function is the direction of the state’s activity, which expresses its essence at this historical stage, aimed at solving the main tasks of ensuring the protection of the constitutional system, the rights and freedoms of citizens, the rule of law and law and order, all regulated by the right of social relations, and is carried out in appropriate forms and special methods” [5, p. 68]. The law enforcement function of the state and law-enforcement activity should be distinguished. The function of the state is the main direction of its activity, which determines the activity of all state bodies, and law enforcement activities are only one, albeit main, form of the implementation of the law-enforcement function of the state.

The signs of law enforcement activities include: the focus on the protection of the rights and freedoms of citizens, the rule of law and the rule of law of all regulated by the law of social relations; is realized on the basis and in accordance with the law and, preferably, in the appropriate procedural form; when it is implemented, as a rule, legal means are used; carried out by specially authorized actors on a professional basis. The purpose of law enforcement activity is to: protect human and civil rights and freedoms; provision of public order and public safety; maintenance of law and order; realization of the rule of law principle. This goal is specified in the tasks. These should include: preventing violations of the requirements of the law, preventing an unlawful encroachment on human security; Detection and termination of offenses and abuses by law; in cases of committing crimes and other offenses – their prompt disclosure, establishment of guilty parties and bringing the latter to legal liability; preventing unwarranted allegations of innocence; overseeing the enforcement process; impartial enforcement of decisions envisaged by law; legal assistance to citizens.

Given this, the law-enforcement system in the state must perform certain functions. They

are divided into main and secondary ones. The first ones are: preventive; protective; guarded; execution of sentences, decisions, decisions and decisions of courts, orders of bodies of pre-trial investigation and prosecutors. As minor, the following are indicated: control (supervisory); permissive; right explanatory; analytical and / or methodical; informational; norm-setting; coordination

Scientists who are investigating the problems of law enforcement have introduced the concept of “model of law enforcement”. It should be understood as a system of norms and principles that underlie the legal regulation of law enforcement activities, the subject structure and directions of this activity, the objects on which it is directed, the forms and methods of its implementation.

In the 90 years of the twentieth century in our country there is a scientific opinion about the need for the emergence of subjects of non-state law enforcement activities. First of all, the author’s team criticized the axiom that was established at the time: enforced enforcement of the law and law enforcement functions are carried out solely by the state in the person of the authorities authorized by it. The authors noted that the limitation of modern state forms and control over them is the reason that often the rights, freedoms and legitimate interests of citizens, their collective formations remain without proper protection and protection. Global democratic sociopolitical practice has developed a variety of non-state law enforcement activities. To such forms they were enlisted by non-state security and investigative agencies. In order to develop new law enforcement structures, the authors proposed to accept some suggestions, such as the possibility of arrest and immediate delivery to the militia of criminals and the rights to use weapons by security and intelligence agencies, even with current standards of development of legislation and legal science, are relevant enough [6, p. 24].

Subsequently, the theme of non-state law enforcement activities was supported by Y. Iliushin and L. Sobolevskiy, who expressed their concern about legislative unregulated activities of non-state law enforcement structures, lack of effective state control over their activities,

which creates real threats of merging these structures with the criminal world. These authors distinguished between the two main organizational forms of non-state law enforcement activities: non-state specialized corporations, firms and bureaus that provide services to all interested public and private institutions, organizations and individuals (detective activity, personal protection, etc.); internal “security services”, the so-called private police created by industrial companies, firms and organizations (protection of commercial and official secrets, studying the activities of competitors, security functions, etc.) [7, p. 48].

S. Krasnokutskiy investigated non-state law enforcement activities in the context of legal activity. The scientist understands law enforcement activities as being carried out with the aim of protecting the rights of specially authorized bodies through the application of legal measures of influence in strict accordance and for the strict observance of the order established by him. The author considers the main essence of non-state law enforcement activity in securing the security and protection of business rights, while the limits of the competence of non-state law enforcement activity are limited to the counteraction to manifestations that violate or restrict the rights of entrepreneurs. Among non-state law enforcement subjects the scientist includes: private law offices; arbitration courts; private security enterprises; individual detective enterprises and their associations; Unions and Associations of Investigation and Protection; Separate units of legal entities created for conducting security and investigative activities in the interests of the safety of the founder (security services); non-state educational institutions for the training of private detectives and guards [8, p. 61, 76].

Russian author L. Kvasha combined private detective and security activities with the term “private police” [9, p. 74]. This approach is found in the literature, but it is questionable. Private police in the United States and some European countries are generally only referred to as security agencies that provide public order and security services on the basis of treaties with state authorities and local self-government. Such companies can actually use the word “police” in their official name.

S. Yurko proposes to determine the non-state law enforcement as a specialized activity of civil society to search for persons fleeing from justice, disclosure violations, protection of natural and legal persons, their property and public order by unlawful acts by coercive measures in accordance with statutory procedures [10, p. 199].

Non-state law enforcement activities may have commercial (security agencies) and non-profit nature (public law enforcement formations); carried out on a professional (private detective) or non-professional basis (a member of the public formation of public order protection). Non-state law enforcement activities can also be public (the activities of municipal law enforcement agencies) and private (the activities of security services enterprises).

State and non-state law enforcement activities have common and distinctive features. The defining features of law-enforcement activity in general are specialization, the possibility of applying coercive measures and proceduralism. Special features of non-state law enforcement activities are that it is carried out by non-state actors on behalf of the client or community and is more narrow than the state protection object. Optional features of non-state law enforcement activities are of mainly, contractual nature, the focus on protecting private-law interests and the limited use of measures of legal liability.

The subjects of non-state law enforcement activity should include: private security enterprises; security services of enterprises; private detective associations, or detectives who carry out their activities individually; public law enforcement formations; public law enforcement assistants and other individual legal forms of assistance.

It should be noted that non-state law enforcement activities have not received proper legal regulation. In our opinion, it is a promising direction for improving the law enforcement activities of the relevant actors. We agree with S. Postolnyk, who notes that non-state law enforcement activities have historically been an alternative to the state because of objective and subjective reasons. However, currently in Ukraine, it is only at the stage of formation [11, p. 123].

Already, such ways of interaction of non-state security enterprises with law enforcement agencies have been developed: participation of employees of private security enterprises and security services in preventive measures together with law enforcement officers; use of forces and means of private security enterprises and security services to enhance the protection of vital objects; joint participation in the conduct of measures for the disclosure and investigation of crimes, the protection of public order during mass events; the interaction of private guards with district police inspectors for the elaboration of the housing sector in the conduct of operations and raids for the identification of persons inclined to offenses living without registration, as well as compliance with the owners of the conditions for the storage of firearms; training of private guards in the specialized institutions of the Ministry of Internal Affairs of Ukraine (and in the future and detectives); assistance in emergency situations.

It should be noted that, as a rule, law enforcement agencies are attracted to those security structures on the basis of which public organizations are created for the protection of public order and the state border. But this issue is not properly regulated in the current legislation. There is a good deal of opinion from practitioners that the legislation that regulates these issues needs to be amended accordingly. Yes, it is proposed to supplement art. 18 of the Law of Ukraine "On Protection Activities", a clause which would stipulate that during the taking of measures to prevent the offense it is allowed to involve authorized security guards to the implementation of information exchange and establishment of business contacts within the established limits with law enforcement officers for the purpose of coordination of law enforcement activities on the prevention and suppression of offenses. The Law of Ukraine "On National Police" should be amended – a separate section "Relations between law enforcement agencies and security guards". The author of this work fully supports this position.

Summing up, it should be noted that the protective activity of state entities is simultaneously a type of economic activity and one of the areas of law enforcement activity. The latter is a broader concept than security

activity. Within the framework of realization of criminal law protection of law-enforcement activity, such protection of its separate direction is carried out as state security

activity. The implementation of criminal law protection of non-state security activities is ensured by the application of certain norms of criminal liability law.

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