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THE PRIVATE POLICE

Symmary. The article is devoted to the nature and legal status of non-state law enforcement institutions. Legal development of security activity in some countries led to the formation of a unique legal institution of private police. Author is considering the question in three aspects: legal, philosophical and historical.

Key words: law enforcement, private police, security, anarchy-capitalism, law enforcement function.

The formulation of the problem. The legal nature of policing is changing. In the modern world there is a clear trend to transfer some law enforcement functions to non-governmental institutions. This phenomenon occurs even in criminal proceedings. First of all we are going to consider question of private prisons and private police. The private security industry already employs significantly more guards, patrol personnel, and detectives than federal, state and local governments combined, and the disparity is growing. Some scholars argue that non-state law enforcement institutions are a legal anomaly, others see this trend in the development of civil society. Police privatization, in this view, is a part of a broader shift of resources and responsibilities from government towards the private sector.

Questions about the nature and the legal basis of the non-state law enforcement institutions are insufficiently disclosed in contemporary literature and require further research.

Objectives. Explore the nature and legal grounds of private police activity in modern circumstances.

Basic material. Problematic of the theme should be viewed in three interrelated sections: philosophical, historical and, of course, legal.

Privatization of law enforcement agencies is closely connected with the politico-philosophical doctrine of anarchy-capitalism (market anarchism, libertarianism). This relationship can be traced on a theoretical level. Murray Rothbard, who was the founder and leading theoretician of anarchy-capitalism, asserted that all services provided by «monopoly system of the corporate state» could be provided by the private sector more efficiently. Does not consider that the State is a coercive criminal organization that subsists by a regularized large-scale system of taxation-theft, and which gets away with it by engineering the support of the majority through securing an alliance with a group of opinion-molding intellectuals whom it rewards with a share in its power and pelf. The State has arrogated to itself a compulsory monopoly over police and military services, the provision of law, judicial decision-making, the mint and the power to create money unused land («the public domain»), streets and highways, rivers and coastal waters, and the means of delivering mail. But, above all, the crucial monopoly is the State's control of the use of violence: of the police and armed services, and of the courts – the locus of ultimate decision-making power in disputes over crimes and contracts. Control of the police and the army is particularly important in enforcing and assuring all of the State's other powers, including the all-important power to extract its revenue by coercion [1, p. 161].

According to the views of adherents of anarchy-capitalism, mankind must come to a stateless society in which courts, police,

law enforcement functions in general, as well as health, education, etc. will be concentrated in the hands of private organizations. Anarchy-capitalism would mean the end of the state monopoly on force. Important role in this transformation belongs to transnational corporations. But the mechanism of this transition is not completely clear. So anarchy-capitalism has been often criticized for its provisions utopianism.

Another widely circulated explanation for the recent growth of private police was first offered by Canadian criminologists Clifford Shearing and Philip Stenning. They attributed that growth to significant increase in the amount of «public» activity taking place on what they called «mass private property»: large, privately owned facilities such as shopping malls, office buildings, housing complexes, manufacturing plants, recreational facilities, and university campuses. The modern development of mass private property, has meant that more and more public life now takes place concerning property which is privately owned. This in turn, they contended, has led to a steadily increasing role of private security in the provision of public order, because the public police whose patrol responsibilities traditionally have been limited to public property generally have lacked both resources and the desire to maintain order on private property, and because private owners, in any event, have preferred to keep control over the policing of their property [2, p. 1165].

Private organizations have a long tradition of filling perceived gaps in the policing services provided by government. Policing as a concept has been remarkably malleable, and no part of the job has ever been monopolized by government. Before the Norman Conquest, Saxon society maintained order through a well-understood principle of social obligation, or collective security. The system may have originated in voluntary associations for mutual protection against theft, but by the tenth century it had evolved into a hierarchical system of mandatory community service. Every adult male was enrolled in a group of about ten families called a «tything», headed by a tything man, and tythings were in turn organized into groups called «hundreds», headed by a hundred man or royal reeve. Among the responsibilities of the hundred man was holding trials. The Normans also introduced the position of constable, originally a royal military office. In 1285, the Statute of Winchester refining the collective responsibility of communities for law enforcement, the statute imposed liability on the hundreds for any robberies committed within them unless the offenders were caught, provided for appointment on a rotating basis of specified numbers of night watchmen for every city and borough, and called for arrest of strangers the watchmen encountered. For these purposes, the statute required every man the ages between fifteen and sixty to maintain specified weaponry which varied according to his wealth. Thus law enforcement under the Statute of Winchester remained «a community affair». Constables and watchmen were not paid for their service, and police duties were the duties of every man [3].

Early American law enforcement for the most part resembled English law enforcement. Colonial towns, like their English counterparts, relied on the medieval institutions of the constable, the night watch. Also as in England, serving as a constable or watchman was generally, in theory, an unpaid civic obligation [2, p. 1205].

Professional police was created quite late. Situation changed only in 1829, when Home Secretary Robert Peel maneuvered the Metropolitan Police Act through Parliament. The act called for the creation of a tax-supported police force for the London metropolitan area, under the centralized control. The creation of professional, quasi-military police in USA was modeled according the London model. New York established such a force in 1845, and other cities soon followed.

As we know, broad participation of civic institutions in law enforcement activity also has been provided by the «Russkaia Pravda» – the secular law code of Kievan Rus. So, private policing is only a continuation of longstanding historical practice.

In modern world private police is circulated in the USA, Canada, the South Africa and the United Kingdom. Non-government law enforcement agencies could have different forms such as the specialized railroad police, mall security or community police service of universities. Private police in essence is a result of the development of security firms to which the government contracts out police work. Local governments contract with private firms for a wide array of traditional police functions, particularly in the area of police support services. It helps local governments to cut spending on the public police force. County residents are paying for this as for conventional utilities. Private police development became especially noticeable after the terrorist attacks in the United States and Great Britain. The growth in private policing reflects growing demand for security and private agents.

For example, the Canadian National Police Service is a private police force protecting the property, personnel, and rail infrastructure of Canadian National Railway in Canada and the United States [4]. The National Police Air Service (NPAS) is a non-government police aviation service that provides centralised air support to the territorial police forces in England and Wales [5]. The Colorado Mounted Rangers is a statutorily-authorized, statewide law enforcement auxiliary that assists law enforcement and other first responder agencies across Colorado. Rangers annually provide up to 50 000 or more hours of service to the State of Colorado supporting local police and sheriffs departments. Rangers are unpaid and the Auxiliary is not funded by tax dollars. The Rangers are the oldest statewide law enforcement agency in Colorado, originally organized in 1861 [6].

According to the «Company Police Act» NGGS 74E of North Carolina, an individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer. Applicants for commission as a company police officer and a commissioned company police officer must meet and maintain the same minimum reemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission, and must meet and maintain any other reemployment and in-service requirements set by the Attorney General.

The following three distinct classifications of company police officers were established according to the Chapter 74E: «Company Police Act» of North Carolina:

1. Campus Police Officers – Only those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure.

2. Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers.

3. Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

All company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests both felonies and misdemeanors and to charge for infractions on any of the following:

1. Real property owned by or in the possession and control of their employer.

2. Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

3. Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Campus police officers also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department.

Railroad police officers also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons [7].

So, as we see, the legal status and authorities of private police corresponds with the legal status of state police. Company police officers can have the same powers as municipal and county police officers to prevent crimes, make arrests for both felonies and misdemeanors and to charge for infractions. But the jurisdiction of company police is sometimes limited to the property which they have been hired to protect. Problems in the sector of private policing relate with the ability of criminals to organize their own security force abuses in the use of surveillance, widespread dissemination of weapons, as well as rising tensions between public and private police forces.

Despite of this, we should consider the possibility of extending the powers of private security firms in the field of public order and crime prevention, considering the conditions of economic and social crisis, the corruption in law enforcement, crime growth in Ukraine. According to the article 18 of the Law Of Ukraine «On The Security Activity», Subjects of security activities and law enforcement agencies can jointly organize interaction and provide mutual assistance in activities aimed at preventing, combating and disclosure of criminal offenses and to ensure public order [8]. But the specific procedural forms of such interaction were not provided by our legislation, as a consequence, we do not use completely the all potential security agencies in crime prevention.

Private security is more robust in the sense that it brings order with lower costs. In turn, the public police will begin to work more effectively in those areas of law enforcement activity where state structures are really needed. Global progress of security services is moving towards transferring functions of law enforcement, where state presence is not required, to commercial firms. This trend is dominated in the U.S. and most European countries. But these steps should be accompanied with increased requirements for security firms and their employees as well as the creation of legal barriers that made impossible the penetration of criminals in security activity. It is important for private policing powers to be clearly defined and restricted.

Conclusion. Nowadays, the concept of private police sends new challenges to the common definition and function of policing. Throughout English and American history the distinction between public and private policing has been blurred. The emergence of state-controlled law enforcement, particularly in England, grew out of private organizations that were established to maintain public order. Non-government police could have different forms in modern world such the specialized railroad police, mall security or community police service of universities. Company police officers may be granted powers of citation, investigation, arrest or detention authority in the United States if they have attended the basic law enforcement officers training academy in the state in which they work. Company Police patrol and enforce the law and provide the same services within territorial jurisdiction as municipal law enforcement officers do. Police in the U.S. can be compared with public health system: the state provides a minimum, and if you need higher quality services you should refer to a private firm.

Literature:

1. Murray N. Rothbard *The Ethics of Liberty* / Rothbard Murray – 2nd edition with an introduction by Hans-Hermann Hoppe – New York : University Press, 1998. – p. 295.
2. Sklansky David A. *The Private Police* / David Alan Sklansky // *UCLA L. Rev.* Vol. 46. – 1999. – p. 1165.
3. Винчестерский статут 1285 года [Internet Resource]. – Access Mode : <http://www.hrono.ru/dokum/1200dok/1285ed1.php>.
4. The Canadian National Police Service [Internet Resource]. – Access Mode : <https://www.cn.ca/en/delivering-responsibly/safety/cn-police-service>.
5. National Police Air Service (NPAS) / West Yorkshire Police [Internet Resource]. – Access Mode : <http://www.westyorkshire.police.uk/npas>.
6. Colorado Mounted Rangers [Internet Resource]. – Access Mode : <http://www.coloradoranger.org>.
7. Company Police Act [Internet Resource]. – Access Mode : <http://www.ncleg.net/gascripts/statutes/StatutesTOC.pl?Chapter=0074E>.
8. Про охоронну діяльність : Закон України від 22.03.2012 // Відомості Верховної Ради України. – 2013. – № 2. – Ст. 40.

Юрко С. С. Приватна поліція

Анотація. Статтю присвячено питанням сутності і правового статусу приватної поліції. Правовий розвиток охоронної діяльності в деяких країнах сучасного світу призвів до формування унікального правового інституту приватної поліції. Автор розглядає питання у трьох аспектах: правовому, політико-філософському та історичному.

Ключові слова: правоохоронна діяльність, приватна поліція, охорона, анархо-капіталізм, правоохоронні функції.

Юрко С. С. Частная полиция

Аннотация. Статья посвящена вопросам сущности и правового статуса институтов негосударственной правоохраны. Правовое развитие охранной деятельности в некоторых странах мира привело к формированию уникального правового института частной полиции. Автор рассматривает вопрос в трех аспектах: правовом, философском и историческом.

Ключевые слова: правоохранительная деятельность, частная полиция, охрана, анархо-капитализм, правоохранительные функции.