

# PROBLEMS AND SPECIAL ASPECTS OF PRIVATE SECURITY SERVICE ACTIVITIES CONSOLIDATION FOR THE BUSINESS ENTITIES OF UKRAINE

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**Abstract:** The article provides the analysis of the current legislation in the sphere of entrepreneurial activity protection, which is the basis for determination of special aspects of private security service consolidation for a business entity to provide the proper conditions of its development. It reveals the problems of regulatory environment of the security of entrepreneurial activity in the aspect of creation of one's own instruments and facilities of business security provision. The analysis provides that current problems of regulatory environment do not deprive business entities of the right to employ instruments of the business protection. It has been substantiated that using the rules of a number of legislative measures and subordinate legislation, which regulate different aspects of entrepreneurial activities, the owners of business entities still have the possibility to create their own security services to provide a wide range of security functions. Demonstrative examples help to establish the amount of rights and responsibilities of a private security service in the view of real or potential risks for the business.

**Key words:** security service, functions, tasks, regulatory environment, business security, business owner, rights, duties, protection, opportunity.

## Introduction

In the current conditions of business the important issue is creation and establishment of security of the business entity. This is due to the fact that entrepreneurial activity is often accompanied with a number of real and potential risks for the business owner. Therefore, the latter faces the need to protect the interests of the company, providing early detection, prevention and neutralization of any risks for the business.

If it is necessary to save only tangible assets, businesses often use the services of security companies, without creating their own security unit. However, in terms of extended business activity it is necessary to conduct comprehensive measures to safeguard the company's activities, which stipulates the feasibility of establishing their own security service.

However, on the stage of such security service establishment, an business owner often encounters a number of challenges for creating effective system of security in the company that would have broad powers and, at the same time, act within current legislation without violating the rights of other legal entities.

So the goal of the present research is the analysis of the current legislation on the protection of business and determination of the features of a private security company which would ensure appropriate conditions of its development. The issue of building security systems to create safe business environment at all times of business development was and remains important. The effectiveness of these measures depends on many factors that need continuous learning and improvement. An important task in this regard is a businessman's clear understanding of legal rights of business and opportunities of protection of one's own interests as well as correct definition of these measures.

## Analysis of Research and Publications

Such issues have been researched by a number of lawyers and scientists and laid out in various scientific papers. However, as a rule, their works cover general aspects of the designated research topic. Also, considering the issues of security services operation for the company, researchers have concentrated on highlighting the features of the current legislation of Ukraine in this sphere. These publications include scientific works of Yu. I. Krehula, R.O. Bank, M. I. Kamlyk as well as the collective paper "Economic security of enterprises, organizations and institutions".

The works of M. I. Zubko attract attention, where the author suggests quite interesting features of business security, including the establishment of security for the company. However, the researcher does not aim to elaborate on the features of the mentioned issues relating to the legislation of Ukraine, so the material is presented in the form of charts, tables and graphs.

The paper «Safety of business: organizational and legal framework, scientific and practical guide», by Yu. V. Bondarchuk and A.I. Maruschak, seems to be quite thorough from the point of view of considering the construction and operation of security services for the company and analysis of legal acts. In this work the authors describe the legal basis for regulating business activity in Ukraine, the basis for building security of business in Ukraine, the shortcomings of regulatory environment of security and detection. However, the terms of limitation of this work publication and some amendments to the legislative acts of the researched areas trigger a new and more detailed analysis of such areas.

### Primary Statement

Every entrepreneur, defining instruments of protection of one's business, is focused on real and potential risks to its activity. Therefore, in order to create effective private security company in the first phase it is advisable to categorize the risks of business activities into certain groups according to their scope and causes of occurrence, such as:

- 1) economic risks in the form of corruption, fraud, abuse of position, using imperfect technologies and unfair competition;
- 2) physical risks – theft, burglary, damage to equipment;
- 3) intellectual ones – disclosure and misuse of commercial information and intangible property, social conflicts, psychological and ideological sabotage.

The reason of these risks is above all the presence of shadow capital in financial relations, total insolvency of business entities, existence of competition in economic markets, inadequate legal regulation of business, inefficient staff policy, poor work discipline and responsibility of employees, etc..

All the facts mentioned above, may lead to the conclusion that the objects of threat to business activity are personnel, finance, material resources and information.

Effective tackling these and other risks of entrepreneurship requires special skills of the personnel or professionals involved. At the same time, clear legal regulation of the relevant activities to protect the interests of the company is urgently necessary.

Analysis of the current legal framework gives the reason to believe that the establishment of safeguarding activity in Ukraine is in some way legally due. However, the procedure of private security undertakings and their rights and responsibilities is not defined at all.

Currently there is only a draft law «On security services of economic entities» registered in the Verkhovna Rada of Ukraine as early as on 30.03.2006, No. 9264. It contains the definition of legal, organizational and managerial foundations of the security services functioning and their rights, responsibilities and manner of interaction with other entities, engaged in activities of safeguarding security, including law enforcement bodies.

According to Article 5 of the said draft law, the key tasks of security services should be:

- management of own structural departments, interaction between them and security departments of other entities in order to ensure functioning and sustainable development of the business facility;
- monitoring of risks and hazards, revealing of the sources of hazard, preventive actions to avoid their escalation;
- development of mechanism of risks and hazards management;
- implementation of measures to ensure the safety of the facility: information analysis, regulatory, logistical, psychological, ideological, organizational and other support;
- facilitation of civil control of the security services of other entities;
- specific instruments of reaction to threats and risks of the facility;
- participation in formation of educational system in the sphere of security provision;
- informational and analytical supervision of the court sessions, which concern the interests of the facility;
- informing the competent state organs and civil society about violation of the rights of the facility;
- exercising elements of safeguarding and detective activity to provide the security of the facility in correspondence with the current legislation;
- providing assistance in the personnel recruitment;
- researching about business reliability and financial sustainability of the partners of the facility;
- facilitation of independent expertise of the quality of provided goods, products and services;
- formation of public opinion in the media, organization of exhibitions, promotional and other campaigns, stipulated by law;

- maintaining the register of reliable partners;
- management of educational, practical and consultative activity for the personnel in the sphere of security;
- protection of lawful rights and interests, including material ones, of the personnel of the facility;
- collection, analysis, assessment and forecasting of the data, which provide the internal and external characteristics of the secured facility;
- timely revelation of potential threat for the facility from the side of external sources of risk;
- preventing penetration to the facility of the structures of industrial espionage, organized crime and individuals with illegal intentions;
- resistance to technical penetration to the facility of unauthorized subjects;
- detection, prevention and suppression of possible negative or other illegal activity of the employees of the facility to detriment its security;
- protection of the facility employees from violence and property assault;
- preservation of assets and information that constitute a trade secret of the facility;
- obtaining the necessary information for making strategic and tactical decisions related to the management of the facility;
- physical and technical protection of buildings, territory and vehicles owned by the facility;
- taking active anti-competitive measures;
- enforcement of observation of trade secrets of the facility, taking measures in accordance with applicable law, following the facts of disclosure or attempt to disclosure of trade secrets;
- search of the lost property of the facility;
- investigation of the misuse of the company trademarks;
- search for missing employees of the company;
- collecting information for business negotiations;
- protection of life and health of personnel from illegal encroachments;
- providing security at the sites of representative, confidential and other events, held by the facility;
- monitoring the effectiveness of the security system;
- interaction with law enforcement and regulatory authorities, creation of favorable conditions for the performance of their legal obligations.

Based on the security challenges for the company Articles 8 and 9 of the draft law provide detailed enumeration of their rights and obligations, and Article 11 defines the instruments, involved by the security service to ensure the safety in accordance with the statutory rules and laws of Ukraine. These instruments include: personnel, experts, weapons, and special vehicles, communications and other logistical facilities. Also, the company manager would be allowed to engage forces and instruments of other security and law enforcement agencies either on contractual or free of charge basis for the company security purposes. In case of involvement they would report to the general manager of the facility.

Analysis of the aforesaid draft law regarding current legislation of Ukraine makes it possible to say that most of these tasks can be assigned the security unit by the head of the company in the absence of special legislation as well. This right is provided by Art. 55 of the Constitution of Ukraine which states: "Everyone has the right by any means, not prohibited by law, to protect their rights and freedoms from violations and illegal encroachments".

A number of other legal acts regulate various aspects of entrepreneurship. For example, the Civil and the Commercial Codes of Ukraine govern the rights of private property and the rights of individuals and business entities. In particular, they determine not only the reason and means of acquiring these rights but the order of their protection as well.

Considering, for example, the question of ownership of trade secrets we can state that Articles 420 of the Civil Code and 155 of the Commercial Code provide that trade secret is the subject of intellectual property, and Art. 506 of the Civil Code of Ukraine enables business entities to allocate a range of intellectual property rights in trade secret, which include: the right to use trade secrets; exclusive right to authorize the use of trade secrets; the exclusive right to prevent unauthorized disclosure, collection or use of trade secrets; other intellectual property rights established by law. According to Article 162 of the Commercial Code of Ukraine the entity that is the owner of technical, organizational or other commercial information is entitled to protection from the illicit use of this information by third parties, provided that the information has commercial value due to the fact that it is unknown to third parties and it does not have free access to other persons lawfully and the holder

of information shall take appropriate measures to protect its confidentiality. The term of the legal protection of trade secrets is time limited in time.

It should be noted that according to Part 3, Art.36 of the Civil Code of Ukraine, Art. 17 of the Law «On protection from unfair competition», disclosure of trade secrets means familiarization of another person with the information that under the current legislation of Ukraine represents trade secrets, without the authorized person's consent, by the person to whom such information was entrusted in the established order or become known in connection with official duties if it caused or could cause damage to the commercial entity. Such action leads to criminal, Art. 232 of the Criminal Code of Ukraine, and administrative responsibility, Part 3, Art. 164-3 of the Code of Ukraine on Administrative Offences.

One of the methods of protecting trade secrets may be the development of legal documents concerning the registration of the employees obligation not to disclose trade secrets of the company. Such protection can be applied on the basis of current Labor Code of Ukraine (Part 3, Art. 21 «Employment Contract» and Art. 142 «Rules of Internal Labor Regulations. Statutes and regulations on discipline») and the Civil Code of Ukraine (Part 3, Art. 3 «General Principles of Civil Legislation» (freedom of contract)).

Such documents may envisage the following: introduction of the proper conditions to the contract, internal labor regulations; get the employee's written undertaking to keep a secret the company's information of limited access; written warning that failure to keep a secret trade secrets may have legal consequences; obtaining of the employee's commitment to preserve the secrecy of information of the company, after one's dismissal.

On the basis of the aforesaid, it can be concluded that the composition and volume of information constituting commercial secret and the order of its protection are determined independently by the company owner in compliance with the current legislation.

Not infrequently, those, who attack the security of business, are representatives of regulatory bodies that use official position, resorting to unauthorized verifications for commercial purposes. An example of the possibility of protecting the rights of business entities from such illegal and destabilizing actions may be to use the provisions of the Decree of the President of Ukraine of 23.07.1998 No. 817/98 and the State Committee of Ukraine for Entrepreneurship Development of 10.08.1998 No. 18, which prescribe the specific order to avoid allowing members of supervisory bodies to audit or implement security measures as to the access of verifying officers to certain types of information.

Besides, such regulations as the Law of Ukraine «On Protection of Economic Competition» as of 11.01.2001, No. 2210-III and the Law of Ukraine «On unfair competition» as of 07.06.1996, No. 236/96-VR are aimed at establishing, developing and providing trade and other fair traditions in competition when performing the market economic activity and define the legal basis for protection of economic competition.

So, the commercial entities may be «free to do as they like unless expressly prohibited by law». The problem is in free interpretation of the functions of the security service, which would satisfy the needs of the company and not undermine rights and freedoms of other subjects of legal relations.

As a result, with no violation of the current legislation, the corporate entities may confer the following responsibilities for their security services:

1) organization and provision of access and internal procedures within the premises of the company; service procedures; monitoring of compliance by the staff and partners of the company (visitors) with the requirements of Internal Regulations;

2) participation in the development of basic documents (internal regulations, contracts, etc.) for basic security requirements and protection of trade secrets and confidential information to be displayed in them;

3) organization of legal and engineering protection of trade secrets of the company that would prevent the unauthorized receipt of such information;

4) detection and localization of possible leakage of trade secrets and confidential information in the normal course of business and in emergency situations; accounting and analysis of violations of the security mode by the employees, customers and competitors of the company;

5) safeguarding premises, equipment, offices, production and technical facilities, required for industrial or other activities;

6) management of personal safety of top managers and specialists of the company, as well as safeguarding meetings, negotiations, consultations;

7) management and conducting of official investigations of the disclosure or loss of documents and other security breaches of the company;

8) management and regular training of the company staff and security personnel in all areas of the enterprise protection;

9) assessment of marketing situations and unlawful acts of competitors and abusers;

10) formation of the database of competitive environment of the company;

11) support of contacts with law enforcement bodies and security services of vicinal(branch) companies (entities) for the sake of research of crime rate in the area (sphere of business), etc.

The list of specific tasks and powers of the security service of the company, depending on the specifics of its operations may be different, but it must be always sufficient to prevent negative impact of risks and justified in terms of economic feasibility.

In the process of organizing security service of the company, one should also remember that some methods of dealing with unlawful actions of relationships, including business, under the laws of Ukraine, may be committed only by certain authorized state bodies.

Thus, the investigative activities under Article 5 of the Law of Ukraine «On Investigative Activity» as of 18.02.1992 No. 2135-XII shall be carried out by the operational units of:

- the National Police – by criminal and special police units;
- the State Bureau of Investigation – internal security, personal security provision;
- the Security Service of Ukraine – by counterintelligence, counter reconnaissance, national security provision units, special anticorruption and anti-organized criminality units, operating-technical, internal security, operative documentation, antiterrorist units and units of protection of participants of criminal court sessions and personnel of the law enforcement bodies;
- the Services of External Intelligence of Ukraine – by clandestine intelligence, operating-technical, inherent security;
- the State Border Guard Service of Ukraine – by the organ of intelligence of the authorized central body of executive power in the sphere of the state border safeguarding (clandestine intelligence, operating-technical, inherent security), investigative units of the authorized central body of executive power in the sphere of the state border and its territorial organs safeguarding, units of the state border guarding of the bodies of the state border guarding and the Maritime Guard, internal security provision, inherent security provision, operative documentation and operating-technical;
- the State Safeguarding Agency – by the unit of operative provision of security, including the purpose of security provision for the persons and objects of the state safeguarding;
- organs of income and charges - tax police operational units and anti-smuggling units;
- enforcement and penal institutions and detention centers of the State Penitentiary Service of Ukraine;
- the intelligence bodies of the Ministry of Defense of Ukraine – operative, operating-technical, inherent security;
- the National Anticorruption Bureau of Ukraine – by detectives, operating-technical units, units of internal control.

It is prohibited to conduct operational activities by other departments, divisions of other ministries, departments, civil, private organizations and individuals.

There are certain restrictions for commercial entities for the use of certain instruments in the implementation of security measures. In particular, the Law of Ukraine «On the National Police» as of 02.07.2015, No.580-VIII involves the use of such special means of protection and security as firearms, only by the law enforcement bodies officials. However, it is prohibited to use a number of other special means of security, such as helmets, body armor, armored and shock shields, stun devices, cartridges and other special instruments of lachrymatory and irritant action and others. Only the legislation body may regulate their use (Decree of the Cabinet of Ministers of Ukraine «On the order of sale, purchase, registration, recording and use of special means of self-defense, charged with lachrymatory and irritant substances» of 07.09.1993 No. 706 and the Decree of the USSR Council of Ministers «On approval of the Rules of application of special instruments for the public order provision» of 27.02.1991 No. 49).

### Conclusions

On the basis of the aforesaid, one can make the following conclusions. The key factor of the proper development of entrepreneurial activity is provision of secure conditions for its development. However, entrepreneurs, developing security strategy of their own business come across a number of problems concerning the legal basis and determination of their actions. Thus, the main problem of legal regulation of business security is the discrepancy of existing legal framework with the requirements of business security. This is reflected in the absence of specific legislation on regulation of business security activities. There is some heterogeneity of legal rules as to different regulations of

a number of organs and institutions, which can be used by an entrepreneur to create one's own security forces and instruments of business security.

This problem causes non-correspondence of conditions for the functioning of the security forces with their business objectives and goals. This is manifested in the absence or imperfection of legal documents for business entities on the issues of their safety. It also leads to uncertainty of the legal status of private security forces and clear understanding of the purpose and activities of the organization.

However, existing problems do not deprive commercial entities of the right to protect their own business. Using the rules of many laws and regulations, governing various aspects of entrepreneurship, business owners still have the ability to create a private security service, which will provide a wide range of security functions. However, every entrepreneur within the current legislation, has to determine the order and features of private security services, its structure and functionality at one's own discretion, including real or potential risks to the business.

Thus, in order to improve the business development opportunities there is a need of constant research of this problem and improvement of the legal framework.

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