

# LEGAL ASPECTS OF AUTHORITY, CONTROL AND MONITORING OF PRIVATE SECURITY OFFICERS IN SERBIA

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**Abstract:** *In parallel with the process of transition, which is accompanied by new investments in order Notwithstanding legitimate, and capital from the black market, private security in Serbia has developed as a result of the inability of the state to fully optimize each subject provide some level of security. The Republic of Serbia is among the last countries of South-East Europe legislated private security sector and thus the private security as one of its components, adoption of the Law on Private Security in late 2013, with full implementation was postponed to January 01, 2017. The aim of the rule is regulative solving current problems and dilemmas and introduce legality, inter alia, in the management, authorization, control and supervision of private security operators, and thus employed in private security. Legal regulation of private security is of special interest for general security and the development of society as a whole, given that water logging-contracting private security services are a result of the fact that public bodies cannot be the sole provider of security services, claimed by citizens and business organizations. The subject of this paper is to analyze the legal powers of private security, as well as the control of the same, with the aim of giving overriding answer whether private security entities have responsibilities, authority to provide the necessary level of safety of service users, particularly in a situation where private security operators take part assignments who had previously belonged solely to government services.*

**Keywords:** *private security, private security, power, control, security guard.*

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## INTRODUCTION

The modern state, in seeing the need to delegate to its almost sacrosanct right to use force and coercion to other factors within the national security, allows free and economically justified choice of individuals or companies that enjoy a higher degree of security than the state provides all citizens.<sup>1</sup> It is evident that the contemporary social conditions, the needs

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1           Andjelkovic, S. "The issue of regulation of the private security sector in Serbia" - Journal of security, 04/09, 2009. p.21.

of the public and private sectors for private security services are constantly growing and have the character of a long-term trend, which can be derived statement today that private security as one of the components of private security, is a set of rule-based, interconnected and professionally organized business, activities and subjects of private security measures intended to protect certain public and private property primarily on commercially-contractual basis. In such a situation predicted character powers and control of private security officers have their own special place in the regulation of private security and especially in relation to human rights violations, as well as threatening phenomena that today bears new forms after some degree of risk to some extent overcome the dangers that have so far been known.<sup>2</sup> Formal Law on Private Security<sup>3</sup> represents the normative system and materially - legal basis for performing the duties of private security in Serbia, it is decorated like to legal entities, entrepreneurs and individuals who perform tasks in the field of private security, be sure to secured facilities, private security jobs, licenses for performing the duties of private security, the conditions for their licensing, the manner of work, authority of security officers, labeling and presentation, the protection of the personal data, records and exercising control over their work. The assumption is that the law should provide all necessary conditions for the full and effective cooperation between the public and the private security sector, which in society is a prerequisite for the highest possible level of security of society as a whole. The highest level of security of society is achieved when the power and jurisdiction, both private and public sector security balanced with the full coordination and cooperation. Finally, the law provides a regulatory framework for the professionalization, standardization and certification of a wide range of security services of private security undertakings, where the framework of democratic civilian control of public and private subjects of security, control and monitoring function performed statutory bodies and accredited organizations.

## 1. PRIVATE SECURITY CONCEPT AND BASIC FEATURES

In the literature and available scientific research on private security, there is no unified position in defining and determining the content of the same idea. Different approaches in the conceptual definition of private security is mostly explained by the existence of differences in the understanding of the structure and components which are part of the activities of private security. Some authors under the private security includes “all kinds of activities of private organizations and individuals that provide various types of services related to security, investigations, guard services, patrols, alarm services, fraud and armored transport of goods.”<sup>4</sup> According to other authors, private security is an “act of providing protection against crime and other threats, such as accidents, errors, and other unethical practices.”<sup>5</sup>

2 By: William C. Cunningham, John J. Strauss, Clifford Van Meter, & Hallcrest Systems, Inc .. Private security trends 1970-2000: The report Hallcrest II, Butterworth-Heinemann, Boston MA 1990, rr. 116-128.

3 “Fig. Gazette of RS “, no. 104/2013.

4 By: James S. Kakalika, Wildhorn Sorel, Current regulation of private police: Regulatory agency experience and view - Study R-871-DOJ, Vol. 1, Rand Corporation, Santa Monica CA 1971, rr. Third

5 By: Kevin Storm, Marcus Berezovsky, Shook-With Bonnie, Barrick Kel, Crystal Daye, Nicole Horstmann, Susan Kinsey, The Private Security Industry: A Review of the Definitions, Available Data Sources, and Paths Moving Forward “, RTI International, Research triangle Park NC, 2010, rp. 6th

However, in theory the most common definition of private security exists, which is closest to the joint, "Private Security is part of the private security industry, which provides services through the market, which is funded by fees charged to the chambers through contractual relations and whose employees generally do not have special powers".<sup>6</sup>

In practice, private security is most often related to the kind of security services of the private security sector are ordered and paid for by individuals, companies, business organizations and public institutions for the improvement of their own level of security and protection of certain (key) values. In doing so, these security services are not under the jurisdiction and scope public of the national security system and are located outside the base level of security that is guaranteed to all natural and legal persons.

## 2. THE POWERS OF PRIVATE SECURITY OFFICERS-NORMATIVE ASPECTS

The performance of private security guards, security officers<sup>7</sup> have certain powers<sup>8</sup> that can be used only under the conditions and in the manner prescribed by law and other normative act,<sup>9</sup> and only during the performance of their duties, in which those powers must be applied gradually and proportionately, according to the particular circumstances. The purpose of such behavior of security officers to neutralize the security-threatening occurrence with minimal adverse effects.

By its nature, the activity Legal Officer private security is achieved by preventive actions (detection, elimination, deterrence and prevention of various forms and carriers compromising)<sup>10</sup> and repressive action (strictly take certain legal measures foreseen).<sup>11</sup> In this regard, Chapter VI of the Law on Private Security regulates the general framework of the jurisdiction and powers of security officers, private security officers who do not have official status, although they have a large number of powers that are similar to the powers of the police, and that can:

1. verify the identity of persons entering or leaving a building or space that provides in the protected area;<sup>12</sup>
2. inspect persons or vehicles at the entrance and exits of buildings or premises, and in the protected area;<sup>13</sup>

6 Button M., *Private Policing*, Willan Publishing, Milton UK, 2003, pp. 19th

7 Article 3 of the Law on Private Security predicts that "the security officer physical entity, of both sexes, which performs the tasks of private security."

8 Authorization is the right and duty of the authorized person to take a series of measures, actions, and to use appropriate anti-holders compromising security, but only in cases prescribed by law and in the manner prescribed by laws or by-laws. By: O. Stevanovic, *Leadership in the police*, Police Academy, Belgrade 2003, p. 133.

9 Rules on the use of force in performing private security, "Sl. Gazette of RS "no. 30/2015.

10 Prevention is the basic form of operation and the services of physical and technical protection in the private security sector. It is planned activity intended exercise of protective functions of buildings, property and persons in the company or other legal entity. By: G. Matic, *Basic physical and technical security*, Chamber of Commerce of Serbia, Belgrade 2006, p. 114th

11 Repression is a form of response services of physical and technical protection of the occurrence of crime and other deviant phenomena in a protected facility. *Ibid*, p. 115.

12 Checking the identity of the person made using ID cards or other identification cards.

13 Overview of persons and vehicles is done visually, a guaranteed he same fullness views, except

3. prohibiting unauthorized persons enter or exit the building or space that is provided;
4. order the person to be removed from the building or space that is provided, if the person is here without authorization;
5. alert the person whose behavior or omission of required actions can endanger their safety, the safety of others or cause damage and destruction of property;<sup>14</sup>
6. temporarily retain the person who found room in the house or in the exercise of criminal acts and serious violations of public order and peace, until the arrival of the police;<sup>15</sup>
7. Use the following coercive measures:<sup>16</sup> binding agents,<sup>17</sup> physical strength,<sup>18</sup> especially trained dogs<sup>19</sup> and firearms (under conditions established by the law <sup>20</sup>and the law governing the use of weapons by authorized police officers<sup>21</sup>).

The provisions of the Law on private security dictate that all those powers of private security are clearly stated in the contract of security<sup>22</sup> which is concluded with the customer.

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when it is necessary to confiscation of weapons. When viewing physically not being searched, but only carried outward examination of persons, baggage and opening of certain parts of the vehicle, but without the right to rummage items and their individual sightseeing. Namely, in such a situation, if there are grounds for suspicion that the person with him, in the vehicle or luggage he carries with him, has items that may serve as evidence in the misdemeanor or criminal proceedings, security guard summoned person to own the content featured clothing, items or group. Thus, if the grounds for suspicion or confirmation of a person referred to deduct, there is a need for the exercise of a search operation by the security officer cannot be applied against a person who is not employed in the protected object, but only if such a person may be temporarily withheld until the arrival of the police, and vice versa if you are happy about an employee in the protected object, then the security officer is entitled to take action and shaking.

14 Warnings are issued and voice in writing and must be understood.

15 It is obvious that the Law on Private Security does not provide for the use of electric stun guns, as well as significantly more human resources in relation to firearms. After the use of force, security guard first aid, inform the competent police department, and prepares a report to his superior, who, within 48 hours prepare a report to the police administration.

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17 The provisions of the Law on Private Security in connection with the use of coercive measures, require that the binding agents are used to prevent resistance, self-harm, and e escape.

18 Under physical strength means using special martial arts - surgery, strokes and a combination of surgery and kicks to the extent that the person comply with orders or stop the attack or providing resistance. Physical strength is used to prevent an attack or damage to property.

19 The use of specially trained dogs permitted only in the case where the use of firearms, and only in compliance with the conditions cases "self-defense" and "extreme necessity" and in a way that does not disturb the citizens by a trained security officers with additional training.ape.

20 The members 55 and 56 of the Law on Private Security Act prescribes the legal requirements and procedures for the use of firearms by private security officers, which, among other things, includes the identification and clear warning, as well as obligations upon the use of force, including the submission of reports the use of firearms and other means of coercion responsible person in the legal entity, which then submits the report with its opinion to the relevant police administration.

21 In accordance with the provisions of Article 124, 125 and 126 of the Police Act Republic Serbia, Official Gazette no. 6 of 28.01.2016., And exclusively in terms of "self-defense" and "extreme necessity".

22 According to Article 20 of the Law on private security, private security jobs in Serbia can be

It also stipulates that when applying the measures no one shall be subjected to torture, inhuman or degrading treatment.

The Act provides for the limitation of these powers, so that the security officer may act only in the manner prescribed by the Law on private security and other regulations, so that the execution of the tasks accomplished with the least harmful consequences. If it is in relation to the circumstances allowed to apply several measures, shall apply the first one that you'll at least be considered, and the application of measures must cease as soon as the reasons for which they were applied, or when it determines that the task in this way will not be able to perform.

Overall, the authority of security officers have similar powers of police officers, but the main difference consists in the fact that security officers can use their powers only in the zone of the protected object. However, exceptionally, during transport or transmission security money and other valuable shipments and Conducting personal security, authorization may be applied outside the premise, but also in public places, and on the basis of prior consent of MIA.

As police officers, private security officers perform authentication checking the ID card or other document with a photograph, except in private security in cases of refusal of identification, the only sequence, prevent the entry into the protected object.

Overview of persons, objects and means of transportation is also regulated similarly as in the conduct of police officers. However, unlike the police, security officers can switch only visually or using technical means, or cannot make the review of touching. It is anticipated that the review should be performed by a person of the same sex, which means that at the entrance to the protected object be required to be present for at least two security officers - male and female. The provision which stipulates that the security guard calling feature to automatically show the contents of clothing items that carries or vehicles entering or exiting the protected object, raises the question of what happens when a person refuses to call security - whether he will be like the refusal to identify prohibit entry into the protected facility or if you still leave the facility if the person previously identified. It is certain that the security officer cannot force anyone to display the contents of your clothes, objects or vehicles.

Article 46, paragraph 1, item 6 of the Law on Private Security stipulates that "the security officer is authorized to temporarily detain a person who is found in the house or room in offenses and serious offenses, disturbing the peace, until the arrival of the police." in this connection, it is unjustified and wrong to expect from security officers to qualify what kind of disturbance of public peace and order occurred, so that depending on its assessments in the decision whether or not to detain the person until the police arrive.

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made only on the basis and within the framework of the contract concluded in writing between the legal entity or entrepreneur to work private security and service users. The said contract, among other things, must include: clearly defined subject of the contract; method of carrying out contractual activities with the contracting authority of security officers, number and place of work; the type and quantity of weapons and engaged resources, during contractual services and the manner, type and degree of secrecy, the period of storage and use, as well as data protection measures resulting from the contracts.

### 3. SUPERVISION AND CONTROL, THE CONCEPT AND BASIC FEATURES

In theory and praxis concept of control and supervision of the term is often equated. However, the control and supervision have common elements, which consist in the influence of the body that supervises, or controls at one over which control ie. checks carried out. So, if the criteria should be continuity in supervision, then the control can be characterized as single or multiple process under control. This control can be marked as an integral part of the control, where control is out of control is possible and achievable, but not efficient.<sup>23</sup>

However, the term "control" is defined as a comparison of the actual activities of state bodies and agencies, as well as the results of these activities with the activities and results to be expected on the basis of predetermined criteria. In this regard, the control comprises three relatively distinct phases. In the first comparing planned and achieved; after that, followed by phase price, or statements on the basis of execution of probation. The third stage consists in an appropriate intervention, which is not required if the assessment was positive, but it is necessary when you need to remove the identified deviation from the preset criteria.<sup>24</sup>

The main objective of the control of the security sector, restricting the abuse of power security subjects. In this connection, control must be in the spirit of the rule of law, with the sanctioning of any deviations from the legal procedures and tasks, with the discretionary assessment must be used in the spirit of the law and in accordance with the public interest, to the achievement of public interest were within the set legal frameworks and guidance to the operation of security subjects according to the needs of society rather than individuals.<sup>25</sup> The main objective of the control of the security sector is to discover the weaknesses of protection and taking appropriate actions in order to eliminate them.<sup>26</sup> After completion of the checks always prepares the report or study of executed checks in the full scope.<sup>27</sup>

Control of the private security can be: outward or external, carried out by the competent national authorities on the basis of their legal powers and certain organizations and individuals on the basis of constitutionally guaranteed rights (including control over the legality of acts and legality of the work of private security operators) and the internal or internal, and implemented directly operators of private security (checking whether all the activities of a transaction made on time, correctly and in accordance with the approved plan, the given guidelines, orders and established principles).

Control of the private security can be external and internal. External control of the

23 Tomic Z., Administrative law - system, Official Gazette of Serbia and Montenegro, Belgrade 2002, p. 72 thereof.

24 Ibid, op. cit. p. 73-74.

25 For details, see: Milosavljevic, Bogoljub, Police Science, Police Academy, Belgrade 1997, p. 308-309.

26 By: Tamburic I. "Control as a management function," Military job, Vol. 57, no. 1, the Ministry of Defense of Serbia and Montenegro, Belgrade 2005, p. 113th

27 Report on the completed control contains time basis and to exercise control; name of the authority that made the control, its composition and the name of the supervisor; organizational unit or activity that is controlled; target and control tasks; types and forms of exercising control; established (factual) state (the result of controls); the conclusions of the audit, undertaken emergency measures (orders, decisions, etc.); a proposal for measures to eliminate it-identified deficiencies; proposal of measures against the perpetrators controlled (recognition, sanctions) and Annex (notes, statements, schedules, documents and other).

private security inspection covers (which must have a control and supervisory powers, without the possibility of independent arbitration in cases of violation of legality, because the performance of control activities of the police)<sup>28</sup> and administrative controls (including the procedure for issuing licenses under certain conditions and in accordance with administrative procedures), the legality of acts, supervision over the legality of work and the same is done through:

- direct insight into the implementation of the prescribed measures in the area of the Law on Fire

Protection, Law on Arms and Ammunition Act, production and trade of dangerous substances and others Law;

- direct insight into the implementation of the provisions of the Law on private security;
- the method of administering the prescribed consent or approval, which is reflected in the control exercised by the Ministry of Internal Affairs and labor inspection;
- the procedure for determining fulfillment of conditions for the work, such as controlling the fulfillment of conditions of storage of weapons and ammunition.

Inspection supervision in the area of private security is necessary for legal (lawful business security and prevent possible abuses of private security operators) and practical reasons (preventing unfair competition and business in so-called. "Gray zone"). The supervisory function in this area involves the use of the concept of control, where the state sets the rules and standards, or the relevant state authority supervise their implementation, while professional associations of private security professional standards of care, in order to create conditions for self-regulation and autonomy of the market (issuance of licenses under certain conditions and in accordance with administrative procedures).

Inspection supervision of the legality of subjects of private security ensures that these tasks are carried out within the area of responsibility and the role of the private security sector, given that the state law entrusts the public service to the private security sector.

Internal control in private security is achieved by professional associations at the level of the private security sector and applies to business entities segment private security (eng. When it is determined that the offer price services below the guaranteed minimum criteria for the creation of these prices, etc.);

#### **4. MONITORING AND CONTROL OF PRIVATE SECURITY OFFICERS-NORMATIVE ASPECTS**

In Serbia, a key control and control of private security actors are: the National Assembly Committee for Defense and Internal Affairs (perform indirect external supervision of the private security sector, by legally supervises the work of the MUP), the Committee on Finance, State Budget and Control of Public Spending, how in the field of control of state institutions spend their funds, and whether they are private security services procured legally and practical. In addition to these bodies, the Republican members have the right to ask parliamentary questions (related to the work of certain institutions, or about a specific topic related to the functioning of private security), and the Assembly can establish a temporary

<sup>28</sup> The experience of developed countries shows that after reaching the required level of professionalization of the security services, supervisory function take professional associations of private security and the state determines the required control framework

working bodies, such as boards of inquiry and inquiry commissions, and deeply consider a topic or problem, thus, the assembly and its committees have a legal basis for external control of the private security sector.

However, such direct and indirect control and control of private security actors in Serbia, there are other competent authorities, organizations and individuals, including: Ministry of Interior (direct function has an external inspection and administrative supervision) the competent inspection authorities (legally exercised influence the operators of private security), insurance companies (with their policies do not stimulate the provision of good services, as it does not affect the quality of the services of private security entities, as perceived only if the client has a built-in technical means, without considering its quality), clients (subject to commercial - contracting based banks and various organizations and individuals, their requirements for security services, affect the type and quality of service) and the trade unions of employees (whose importance in Serbia is still not recognized, but it certainly can not be underestimated). Overall, the current Serbian publicly available comprehensive information on the current the actual effects control and supervision of private security.

Supervision and control of private security officer in detail regulated by the Law on Private Security, which a number of provisions establishes ways and types of performing scheduled monitoring and control. The provisions of the tenth head of the Law on Private Security, overseeing the implementation of the Law on private security was entrusted to the Ministry

Interior.<sup>29</sup>The same provisions of the law does not provide for a separate organizational unit within the Ministry of Interior, and the question of efficiency of performing inspection by the Ministry, since the inspection in this area is not effective if the police officers to the already existing jobs added to some other duty. This solution will result in that the monitoring carried out by police officers Ministry of Interior as delegated tasks, while the priority to deal with other police operations, with or no control, or she will not be fully effective.

In addition to the general powers in the field of inspection, the authorized police officers Ministry of Interior have the right and duty to verify the way of keeping and carrying of firearms, psychophysical ability<sup>30</sup> and educational qualifications of security officers,<sup>31</sup> and that, if necessary, by other means achieve immediate and unannounced access to the performance of tasks private security. Police officers of the Ministry also have the right and duty of the legal entity or entrepreneur for performing private security, the decision to temporarily stop performing private security, if the activity or activities performed or carried without a license or without a signed contract, without the necessary staff and technical conditions, the unskilled and unprofessional manner that may cause harm or danger to the user, security officers or a third party, and contrary to the order of execution of transactions or performing the duties of compliance with the Law.<sup>32</sup>

Also, the competent police authority at the request of the responsible person in a company or entrepreneur, checks whether the conditions for the conduct of the responsible person in a company or entrepreneur, where as a result of subsequent checks, a decision revoke the license for performing activities of private security if it is determined that the data on which the license was issued false and if in persons changed some of the conditions under

29 Article 70 of the Law on Private Security.

30 Article 71 of the Law on Private Security.

31 Article 12 of the Law on Private Security.

32 Article 72 of the Law on Private Security.

which the license was issued.

Especially important is the subsequent control application authorization, as the responsible person in a business organization and entrepreneur shall at the latest within 48 hours of delivery The reports written to the competent authority on the exercise of power. In this case, the competent authority shall supervise the legality of applying the powers and notify the responsible person in the company. In the event that the coercive measures used in a lawful manner, absent the intervention phase of the review process, and establishing responsibility of the person who used the means of coercion. Significant control powers of the police authority expressed in the domain of the legal entity or entrepreneur, or security officer prohibit the performance of activities of private security, if the activity is performed without license or authorization, without a signed contract, without the necessary human and technical conditions, of unskilled and unprofessional a way that can cause harm to service users, security officers or a third party, and if it performs activities contrary to the order. A special form of control of private security entity, achieved control of the government, which according to the Law on Private Security, the Minister of Interior decision to establish the Expert Council for the promotion of private security.<sup>33</sup>

An authorized official of the Ministry of Interior, which in the exercise of supervision irregularities implement measures prescribed by the regulations on the inspection. During inspection authorized police officers shall specify the period for the elimination of irregularities in operations which may not be longer than 60 days, unless within that period irregularities are not eliminated, the authorized officer shall issue a decision prohibiting the work, or performing activities of security officers and detective activities that within three days to the Ministry.

## CONCLUSION

Private security as a part or component of the private security industry has its own special place and importance in society, where the individual security standpoint it is an important segment of the overall security of each state and the operating factor of national security, while from an economic standpoint, it is also a significant economic activity (exercise great profit, employs a large number of people and an average responsible for 80% of the assets of today's security state).<sup>34</sup>

Time, predicted powers of private security provide appropriate conditions for preventive and repressively same operation on different carriers compromising, whose concrete implementation must be in accordance with the envisaged laws and regulations. On the other hand, the supervision and control of private security operators can detect weaknesses of protection and taking appropriate actions in order to eliminate them, which is the main objective of supervision and control to restrict the abuse of power leading factor of private security, in order to perform these tasks within the area of responsibility and their role in the system security. Given that in certain situations the state law entrusts the performance of certain public duties and private security entities. The government at the same time through the control of the legality of subjects of private security and control of observance of legal

33 Article 75 of the Law on Private Security.

34 Above about: Hakala, J; Why regulate manned private security ?, Confederation of European Security Services (CoESS), Wemmel BL 2008 rr. 32nd

standards in this area, indirect appears as the guarantor of the private sphere of security. In this sense, it can be said that private security represents a particular supplement security guaranteed by the state and also affects public safety, tending to equalize the differences between the interests of the individual (protection of persons and property on a commercial basis) and the public interest community. In essence, it is a formal, external, legal, regular, extraordinary and vertical control and supervision of private security operators.

The prevailing conclusion that provided the authority and supervision of private security officers in Serbia are vital function of the functioning and organization of private security undertakings, where their clear legal framework, makes it an institutional basis for the lawful conduct of all holders of the private security, while today their full knowledge of actual effects in practice, can be identified only after the full implementation of standards envisaged by the current Law on private security, during a certain lapse of time in 2017.

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