

SCTMG 2020**International Scientific Conference «Social and Cultural Transformations in the Context of Modern Globalism»****PRIVATE INVESTIGATION SERVICES' DEVELOPMENT TO ENSURE THE WORLD ATTRACTIVENESS OF RUSSIAN JURISDICTION**

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Abstract

Law enforcement officials lack initiative in identification, disclosure, and investigation of crimes related to relationships between private agents due to the absence of a normative motivation system and the desire to save departmental resources. At the same time, these officials provide security services to the agents on a covert, illegal, commercial basis. The described circumstances have led to a monopoly established in the security service market by law enforcement officials. To increase the attractiveness of Russian jurisdiction in the context of globalization, it is necessary to reinforce such civil society institutions as a bar association, arbitral tribunals, and self-regulatory bodies that control and resolve conflicts in many spheres of professional activities. It is also necessary to further develop adversarial criminal procedures. This requires the promotion of private detective agencies (private investigation), which will provide alternative security services to private agents. This should be done at the level of government policies which involves lifting the ban on the use of special equipment for getting private information, decriminalizing some types of private life violation allowing for collecting evidences in civil and criminal matters by non-state private investigation agencies, giving private detectives a special legal status to ensure their independence and safety, aligning court practices and modern technical capabilities for evidence collection, popularizing, both culturally and informationally, the activities of private detective agencies as an effective means to provide security to private agents.

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1. Introduction

Over the past decades in Russia, we have been witnessing the formation of a competitive model for organizing both public and private services aimed at ensuring real guarantees of stability, safety, fair and timely resolution of arguments and fair competition to attract economic agents in our jurisdiction in the context of globalization.

Nowadays, there is a profanation of such important civil society institutes as individual nationally (not foreign and internationally) oriented domestic media, local authorities, the bar association, arbitral courts, private expert and professional communities, public councils for controlling the government authorities. This doesn't allow creating an effective system of checks and balances between the state and the civil society which makes Russian jurisdiction unattractive for economic agents because of such traits as an accusatorial bias and the opportunism of domestic justice, the state monopoly on security services, the lack of fair competition in the market of public contracts that is one of the national economy drivers, etc. That's why such national security risks as the preservation of a major share of shadow economy and opportunities for corruption and criminalization of commercial activities are still pertinent to Russian society. This becomes obvious if one looks at the modern timeline of criminal events.

2. Problem Statement

Over the last years big sums of illegally acquired money, comparable to the annual budget of a small town, were seized from corrupt law enforcement authorities. Such scale of illicit enrichment (a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income – UNCAC, article 20) indicates the need for security and work stability services provided by law enforcement officials to private agents.

In these circumstances, there is no claim for limited resources of private security and detective agencies that provide safety and justice. Also, Russian jurisdiction becomes unattractive for business and investments while corruption and moral decay in the government becomes even worse.

3. Research Questions

The research aims to find out why law enforcement officials lack initiative in identification, disclosure, and investigation of crimes related to relationships between private agents and how they provide security services to these agents on a covert, illegal, commercial basis. The study will also describe why these illegal services are in high demand by private agents, creating threats to the national security of Russia in the form of corruption and criminalization of commercial relations as well as big share of the shadow economy, low competitiveness of national economy because of unattractiveness of Russian jurisdiction in the context of globalization.

4. Purpose of the Study

To increase the attractiveness of Russian jurisdiction, develop competition in the market of security services, prevent corruption and criminalization of commercial relations, and form a complete

model of adversary criminal process, it is necessary to introduce legislative and organizational measures against illicit enrichment and provision of illegal security services by law enforcement agencies.

5. Research Methods

The authors carried out the study of the security services market based on the dialectical methodology. This methodology allows studying any phenomenon or process in dynamics. The research discovered interrelationships and controversies of studied processes and phenomena which allowed offering suggestions on the further development of government policy in the sphere of private security agencies in Russia. The dialectical method gave an opportunity to find important substantive elements of controversies in the sphere of security services. It also revealed factors that influence the effectiveness of these services and showed interrelationships between agents providing law enforcement services and the level of national safety. The article also extensively uses the game theory that helps to consider the behavior of the participants in the sphere of security taking into account economic feasibility.

6. Findings

The broad commercialization of public law enforcement became possible in the circumstances of controversial state policy. On the one hand, the government attempts to solve all internal challenges from the perspectives of economic viability. On the other hand, it encourages such negative (according to the economic knowledge paradigm) trends as simplification and state (corporate) monopolization of all spheres of society. Such a policy has resulted in savings on the well-being of people for increasing the budget, placing the means to ensure state activities higher than the goal of the existence of the state. This trend is evident not only in particular decisions (annual reduction of health services and social support for the population, raising the age of retirement higher than the average period of life) but in the formation of scientific (Melikhov et al., 2019) and ordinary attitudes (Melikhov, 2016). Such attitudinal shifts result in the fact that in recent years the sacramental function of policing and ensuring public safety and state security is perceived by society as a vulgar provision of services to the population, and this attitude was started by the government.

Such a liberal approach towards law enforcement doesn't belong to continental traditions and national mentality. However, even this approach is one of the ways to create favorable conditions for people's lives and business, but several conditions must be met. They include:

- the minimization of the state intrusion in the activities of private agents;
- the existence of a free and available market of private and state services in the sphere of security and accessible effective justice for collective economic agents;
- the opportunity for the consumers of law enforcement services, provided by government organizations, to influence their quality if they don't match their security requirements.

The first part of this conception is partially implemented. After reducing the number of police officers, the real range of its activities narrowed to the elimination of apparent and urgent threats to public safety and identification, disclosure, and investigation of typical, not evidentiary difficult crimes common

in the everyday life of a big city and committed, as a rule, under the influence of alcohol. The police have returned to its initial purpose, typical for tsarist Russia, i.e. the fight with crimes, committed by citizens with low income against the citizens of the same category.

As for the sphere of complex intellectual and economic crime, law enforcement officials enter this area only to protect state interests, i.e. to combat corruption and theft connected to government contracts and budget money. Before the reforms, the structure of police included separate units to combat economic crimes. Nowadays, even the name of the unit, e.g. economic security and anti-corruption office, implies that economic crimes are associated with corruption, which explains the specificity of their work.

The law enforcement officials lack initiative in identification, disclosure, and investigation of crimes related to relationships between private agents as:

- they don't specifically affect the interests of the state as the employer of law enforcement authorities;
- there are no direct departmental indicators of quality and effectiveness of combat against crimes in this sphere;
- such conflicts rarely become the threat to public security (unlike, for example, a brawl at one of the cemeteries in Moscow that was started by migrants working in competing funeral companies).

Massive reductions in the number of police officers and a heavy workload within obligatory lines of work have led to the situation when conflicts between private economic agents, which took the form of a crime, are resolved by a leftover principle in the form of refusal to institute criminal proceedings. In the same manner, preventive measures with respect to these crimes are taken in the same manner, while methodology and practice for investigating these crimes don't develop.

As a rule, state law enforcement officials provide the real security services to private economic agents on a concealed, illegal, commercial basis. Moreover, agents have to buy both illegal (criminal proceedings against competitors) and legal services from corrupt officials, e.g. criminal procedures against an embezzler.

If big corporations can afford their own security services that can effectively prevent commercial risks (recruiting conscientious staff, installation of surveillance and signalization equipment, elaboration of legal liability measures for workers and partners) without using state mechanisms for identification, disclosure, and investigation of crimes as well as resolution of conflicts, small and middle businesses, which constitute the basis of stable, nationally oriented economy of a liberal state, have to rely on state law enforcement agencies without an alternative.

Nowadays, the burden of security costs is shifting to private institutions. However, this process has been successfully accomplished only in the part of private economic agents, the security of which is provided by private security agencies. This reform helped to lessen the burden on police units that provide public safety. However, the demand for security services from the side of the business is still present. In the 90s, entrepreneurs used the assistance of criminal kingpins who offered a wide range of illegal security and conflict resolution services in a voluntold manner (Volkov, 2012). In 2001 the system of Russian Ministry of the Interior lost its extraordinary law enforcement bodies i.e. departments for

combating organized crime, as criminal groups, which posed a threat to national security, were either destroyed or politically and economically legalized. The vacant place in the market of security services for private economic agents should have been replaced by private security and detective agencies. However, this didn't happen due to the lack of state support and general underdevelopment of the civil society system, which make the preservation of complex mechanisms for rights protection beneficial. The struggle for rights involved both forcible and material means as previously. In the circumstances of low wages and lack of material support, current and former law enforcement officials started to provide security services in the spare time. Unlike military men, these officials became demanded security workers due to the combination of professional qualities and law knowledge as well as better suitability for doing business. The government ended this trend by reducing the number of police officers more than twice over the last 10 years. However, the time showed that this reduction made for the purpose of economic viability becomes effective only if the burden of security expenditures shifts to private institutions. Otherwise, even with increased service loads and lack of material support, law enforcement officials will find time to provide illegal security services or artificially build demand on their services by making pressure on the business.

Moreover, law enforcement agencies became a threat to private economic agents themselves. Abusing their monopoly for evidence collection, unscrupulous law enforcement officials frame questionable and even entirely false accusations and evidence against the owners of economic agents. The constant threat of potential criminal prosecution of business has become so widespread that the Russian President has to constantly draw the attention of the public and authorities to the problem. He notes that 45 % of criminal cases brought into action against entrepreneurs are dismissed without going to court. This might indicate that these cases were brought into action to put pressure on private economic agents.

The current policy of economic viability is not consistent as the government is still prudently cautious about breaching its monopoly on providing security services. This holds back the implementation of two other conditions aimed to provide favorable jurisdiction for business i.e. the presence of free and available market of private and public services in the sphere of security, the accessible and effective justice for collective economic agents, and the opportunity for consumers of security services to influence their quality.

In the newest history of Russia the state monopoly on justice aimed at increasing the attractiveness of national jurisdiction should have been limited by the revival of adversary proceedings, the reinforcement of the bar association, the introduction of arbitral courts and self-regulatory organizations that control and resolve conflicts in many spheres of professional activities as well as the cultivation of private detective and security services.

The real competitiveness of criminal and civil processes ensures the collection of full evidence and conflicts within the country are resolved fairly, which reduces the risks of investors, increases the financial depth and improves the investment climate.

The domestic system of criminal procedure has stayed the same, more or less, from Soviet times. In this system, an investigator, who is the main, highly educated and law-aware person, organizes investigation to find objective truth, combining the roles of an investigator and a judge. However, this system was effective only within the socialist paradigm of civil life. A western liberal type of criminal

procedure is characterized by the adversary nature which was formally declared in the new Code of Criminal Procedure of the Russian Federation adopted in 2001. However, it wasn't implemented institutionally.

In the liberal paradigm, an investigator, being a worker of a state judicial system, doesn't have an interest in finding an objective truth as such goal-setting may not give results (the termination of prosecution). Tactically, the investigator is interested in achieving concrete deliverables, while strategically supporting a state function of providing justice in the form of timely and lawful resolution of conflicts within assigned powers, limited time, and finite capabilities to find the objective truth.

This pattern is validated by scientific researches. In 1999, the economists Dewatripont and Tirole published the article called "Advocates" that became classics. They compared a process where for and against evidence was collected by an impartial person with a process where the prosecution and defence were searching for opposing evidence. It turned out that the model where obtaining evidence requires efforts and they couldn't be faked, one can't build a system of stimuli to make an impartial person find objective truth. You can find the full set of for and against evidence only in the process with two conflicting parties (Dewatripont & Tirole, 1999; Skugarevskiy 2014).

In 2011 there appeared the Inquisitor Judge's trilemma (Nakao & Tsumagari, 2012). The Inquisitor Judge's Trilemma). It stated that every judge facing the task to find an objective truth resembles a chess player playing with himself or herself and then decides on the winner. He or she has to invest efforts to find evidence of guilt and innocence and then play the role of the referee (Nakao & Tsumagari, 2012; Skugarevskiy, 2014).

Thus, material and financial costs for establishing justice within the modern liberal criminal process should be assigned to both prosecution and defense sides. Otherwise, a criminal process acquires an accusatory character despite the formal presence of the adversary nature of institutions.

The trend of the domestic legal system to ignore scientific progress and the monopoly on collecting evidence are noted by many specialists in the criminal process sphere (Pavlichenko & Tambovtsev, 2019; Tsvetkov, 2015; Vlasova, 2018). Vlasova (2018) notes that a criminal case is an external expression of an investigator's supremacy in the trial. It is a "crime story told by an investigator". It is necessary to withdraw the monopoly on forming the crime story from the storyteller by reducing the criminal case to just one of the alternative versions (Vlasova, 2018).

Unfortunately, the commercialization of public consciousness and public authorities, as well as controversial and unfinished model of criminal process organization have led to profanation and vulgarization of the bar association, which was an effective alternative institution for collecting evidence. Nowadays, the main goal of a lawyer is to find a compromise between the interests of a defendant, investigators, the court, and the public prosecution office. In such circumstances, the effectiveness of lawyer's activities aimed at ensuring a fair verdict is close to zero as the number of acquittals in the Russian Federation is equal to 0.3 %. (Medvedeva et al., 2018; Paneyakh et al., 2010; Varaksin, 2019).

It is necessary to note that the indicated trend is also common in the Western liberal world where the function of representing the interests in the court and organizing the collection of the evidence are performed by a lawyer, while the collection itself is carried out by a private investigator. However, in our country, the institute of private investigation is not developed, and the liberal model of justice has not

been finalized yet. This civil society institute, providing alternative law enforcement services in the form of private investigation activities, is very important for the internal national security system. The development of this institute is undermined by several factors (Shumilov, 2013):

- the lack of the necessary cultural and information background of private detective agencies. In the Western world, various media actively support the image of an independent, honest, highly qualified, and experienced lawyer, journalist, private detective as the last means to establish justice. These institutes allowed returning, at least on the mental level, the trust in the liberal state justice system and the existing system of fighting for justice after the Great Depression in the US;
- the criminal ban on using special technical means to obtain private information. In fact, the use of recording equipment to obtain private information is one of the main working methods of a private investigator;
- treating any attempt to collect evidence in civil and criminal cases by private investigation agencies as the violation of private life, the privacy of correspondence, telephone talks, post, telegraph, and other messages with the following criminal or administrative prosecution;
- the rejection of proofs, presented by private agencies as obtained illegally or not having a value as supporting reasons (e.g. GPS data, audio and video data obtained as a result of covert surveillance, etc.). According to Vlasova (2018), any technical information media with digitized data must be recognized as alternative evidence to ensure the adversary nature of the judicial process.

7. Conclusion

To increase the attractiveness of Russian jurisdiction and form the complete model of the adversary judicial process, it is necessary to create conditions for the development of private investigation industry as an alternative provider of justice and security services for private economic agents by lifting the ban on the use of special equipment for getting private information, decriminalizing some types of private life violation allowing for collecting evidences in civil and criminal matters by non-state private investigation agencies, giving private detectives a special legal status to ensure their independence and safety, aligning court practices and modern technical capabilities for evidence collection, popularizing, both culturally and informationally, the activities of private detective agencies as an effective means to provide security to private agents.

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