



September 2020 Edition 7



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PRIVATE SECURITY, COVID19 AND NEW RISKS.

by Florian Horn

I recently read a British study by “Perpetuity Research and Consultancy International” on corona death rates from private security services. With 47.5 deaths in 100,000 people and one of the highest death rates, the numbers were terrifying to me. However, it motivated me to get closer to the numbers, data and facts. Although I could not find any clear statistics for Germany, the published figures in Germany mainly mention medical professions as a risk group.

However, this is understandable, if one takes a closer look into the fact that the lockdown measures in the Federal Republic were relatively extensive and were implemented quickly: the retail (with the exception of supermarkets), event facilities, kindergartens and schools were quickly closed, entering public places was only permitted with good reason and distances of at least 1.5 m had to be observed.

Despite the strict requirements, there haven't been hardly any sanction options so far, and the implementation of penalties has been the subject of heated debate. Private security services in particular were repeatedly in legal grey areas and faced with considerable pitfalls. To understand this, you have to take a brief digression into German law:

In the classic sense, a corona regulation represents an administrative regulation. Administrative law in Germany can only be directed at an authority (e.g. the police) or a person directly affected (e.g. supermarket operator). However, a legal regulation does not have a right of access to a third party via a previously named person or institution. This is comparable to traffic law; the state makes demands on the individual and cannot empower the individual driver to enforce it against other road users.

This considerably complicates the enforcement, even during the corona crisis, as the explanatory example shows: The Corona Regulation, for example, obliges the supermarket operator to introduce a mask requirement for its customers. In order to oblige its customers to carry and to refuse access if refused, the obligation must be integrated into the house rules. He cannot rely on the regulation itself, since it is aimed exclusively at himself.

Legal risks

This problem also led to extensive discussions in the security industry. It must be additionally explained that there is no central authority in Germany like the SIA in the UK. The responsibility for the legal interpretation is broken down to the municipal level due to the federal system. This can lead to a different interpretation of trade law in Bavaria (I already reported on this in the last article) than in Berlin. The discussions within the branch were held regarding the qualifications: The enforcement of the house right and the guarding of foreign property is an activity according to § 34a GewO and requires a guard law qualification. On the part of the employers' association (BDSW), a leaked internal assessment to its members became known, which undermined this legal assessment. The BDSW was referring to a legal gray area that the German law gives: The classic crowd management, which was used in this assessment, and the measures to be found here, such as queuing distances and limiting the number of people in the shop, are not subject to any qualification requirements. This was intended to open up the market because even before the corona crisis, around 12,000 security guards were already missing to provide existing services in contracts. But it was not only the opening of the market for unqualified personnel that played a role here, they also wanted to accommodate the security forces that were released due to the significantly reduced travel at airports.

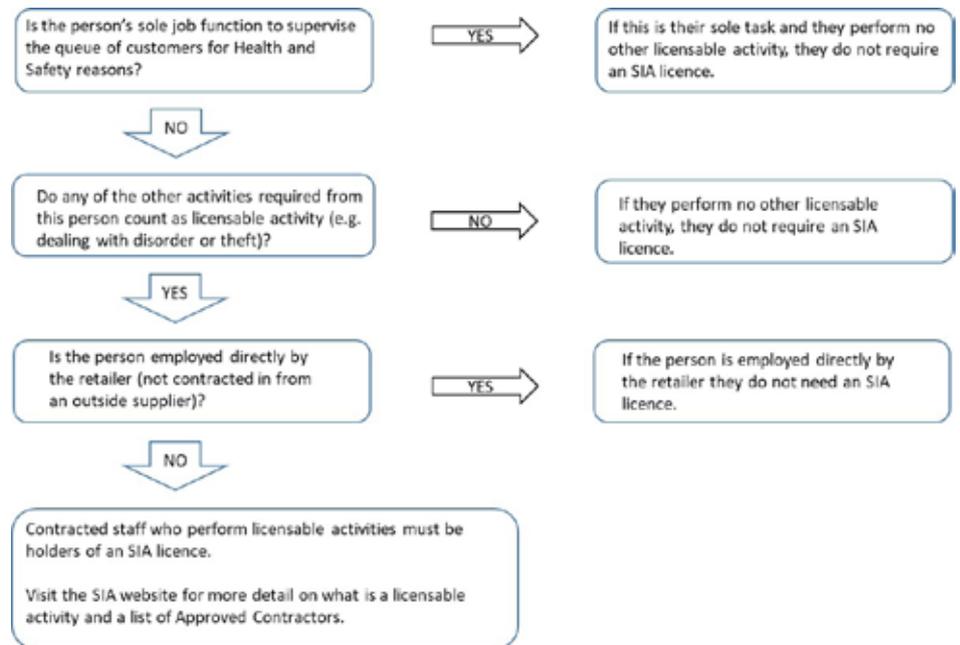
In recent years, a separation of classic fields like property protection and airport security had been pushed on. The latter typically do not fall under the activity of § 34a GewO and therefore they do not have this minimum qualification and a reliability check. Having said this did not allow them to take over previously described activities in supermarkets. This factor is an aspect that should not be neglected, which was also driven by economic horror scenarios and slumps in sales into the state and federal politics. The goal was to override the right of guard (personal note: fortunately, this requirement did not come into force).

But back to the discussion about the BDSW paper. The criticism was based on two main pillars: On the one hand, the fact that an employers' association should represent the essential interests of its entire security industry and opening the door for companies outside the industry, should not be an interest. Likewise, it should not be forgotten that the industry has been trying to be an accepted and reliable partner of the state authorities and police for decades and failed in the first real challenges.

Economic risks

On the other hand, this train of thought was completely unrealistic. In Germany, the presence of security forces in supermarkets is not a standard and has therefore not yet been budgeted. This initially creates additional costs. The legal (theoretical) assessment relied exclusively on the friendly reference to certain regulations. The practical necessity of preventing access as well as solving problems in the market (e.g. theft) could not have been done by the additional personnel, but only by market personnel due to the legal provisions from § 34a GewO. High costs would therefore not add any general added value for the supermarket.

I was able to experience a similar discussion from a distance in Great Britain, but with a completely different approach by the SIA: While the security service provider in Germany was encouraged to fully exploit the legal gray areas, the customer was educated by the SIA to not allow the legal gray areas according to the graphic (right).



In addition to this weakness, the German security industry also showed another one: it relied solely on its personnel service, even if the additional costs in the millions for the retail sector indicated that the search for technical substitutes would be relatively quick. Electronics retailers in particular launched electronic people counting systems after two months and reduced security staff considerably - a shortness of breath. Cooperation with tech companies may have established the private security service provider in retail.

Despite all the economic horror scenarios, the security industry was the one of the winner of the corona crisis: Despite all the difficult external conditions, the year-on-year increase in sales increased by 1.6% compared to the same quarter in 2019. Likewise, only 3.5% of the security companies had to use government aid to support them during the corona crisis.

Future risks

Despite the easing of measures in June and July, the mask was insisted on in local public transport. After a high response from the population, a laissez-fair attitude crept in quickly and the number of people wearing masks on trains and buses decreased drastically in some cases.

The state governments were once again faced with the problem of how the Corona Regulation works as an administrative regulation, which this time only affected passengers and authorities. Only the police could have a control and sanctioning function here. Now you have to know that we also have different responsibilities in Germany: the federal police are responsible for the federal railways (mainly Deutsche Bahn AG), the state police for regional, urban transport companies - both police offices can only work on the basis of official assistance.

The resources - primarily the human resources - of the authorities are of course also finite and the transport companies, in addition to the non-corona measures and the core tasks, represent only a small fraction of the duties of the local

police. The federal police have already withdrawn from the implementation, since the containment regulations only apply refer to state law, the implementation of which cannot be carried out by the federal authority. This means that the transport companies are in a media-legal area of tension: Without a legal implementation option, the press is increasingly reporting on the failure of the companies. In the future, Berlin will go its own way and legally enshrine that Berlin Traffic Operations (BVG) can control and sanction compliance in the future on its own responsibility. For this purpose, 200 security guards are charged with the possibility of imposing a fine of € 50 for violations. The refusal of the mask was included in the conditions of carriage (house right) as a contractual penalty, above all to relieve the local police.

This becomes interesting in two respects: On the one hand, of course, the question of whether this measure increases acceptance among the population with regard to the obligation to wear, but on the other hand, there is also the question of the number of attacks against security staff.

The area of public transport is already in the annual evaluation of accident statistics (which also includes criminal assaults) with most cases in third place in all areas of activity of the security industry - already a conflict-prone area. The extensive and sometimes violent demonstrations against the corona measures from the past few months have shown that a mask that is not worn is not due to forgetting (oversight), but a mix of refusers, right-wings and conspiracy theorists. I also see this mix as critical and dangerous regarding to an increase in physical attacks on security forces after the transfer of the sanction option to the BVG.

Leaving the grey area creates new risks from the implementation of the corona measures. Only the future can show which are more critical.



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