PATROLLING AND SECURITY GUARDS : INVENTORY AND STAKES

At a time when a grand bill on "internal security" including stricter regulation of firms dealing in guarding is announced for the near future, it is important to shed some light on the context and the stakes involved.
We will briefly recall how the 1983 legislator came to set up a normative framework for some aspects of the security trade. This should facilitate comprehension of the limits of the prefectoral administration's power to control the morality of employers and employees in companies dealing in prevention and security. Following which, some of the main points of a research project[1] on the practical efficacy of the present system will be presented and discussed.

THE NEED FOR REGULATION

It is mostly because insurance companies have incited private businesses open to losses (banks, industry, chain stores...) to protect themselves against a growing number of risks (fires, breakdowns, theft, frauds, various other threats...) that they have gotten into the habit of resorting to agencies specialized in the prevention of intrusions and malevolent acts. This type of prevention through a business contract, believed to be more profitable than the creation of an in-house security department, is not specific to "organized, collective victims", but is rarely resorted to by private citizens. Many public establishments and local communities also now resort to security guards and remote patrolling. In the 1970's, firms supplying this type of service were still mostly small-scale. They have gradually diversified or become more specialized, and have structured their business in accordance with the constraints of the market, so that a multitude of services are now available. Severe competition for contracts, and the prospect of the opening of the European market in 1993, for which some companies are actively preparing, explain the complexity of the market. It is comprised of reputedly serious national and even international corporations, (with the capacity to invest in a great many technical and human services), along with medium-sized and small companies, whose human services, although relatively mediocre, are greatly appreciated. The sale of devices (alarms) and the "renting" of personnel (security guards) are sources of easy profits, because some users are still convinced that investments in loss prevention techniques are improductive, and therefore resort to "budget" services.
In fact, it was the occurrence of many extremely disturbing incidents, leading to the realization of the potential infringement on civil rights by this trade, which brought legislators to take the first steps toward regulation in 1983 and 1986[2]. Interference of security guards in labor relations (company police) and the establishment of listings by these firms are prohibited, and some aspects of security guard work are strictly regulated (weapons, dogs, clothing, equipment...). The purpose was essentially to clean up this sector by eliminating the most dubious elements (among employers and employees).
The texts actually put into writing the doctrine in general use, which - having acknowledged the existence of 55,000 presumably irreplaceable individuals who patrolled and guarded industrial sites and places of business in the early 1980's - viewed them as "police auxiliaries" (whose job is initial action and alerting the authorities) but did not grant them any greater powers of restraint than those usually bestowed on all citizens by law. Their main contribution, then, was the delegation to the prefectures of the authority to register *a priori* such service companies and in-house departments, following two types of checks : - on conformity with the "specialization rule" (for instance, work as a bodyguard is exclusive of any other service ; a multiservice company cannot sell devices...) - and on the bulletin n° 2 of the criminal record[3] of both employers and employees, on which registration or rejection is based.
The present investigation attempted to evaluate the role and consequences of the prefectoral administration[4] of this clean-up, after four years of implementation. It yielded : 1) an assessment of the exact numbers on file ; 2) an evaluation of the way in which the "law" is gradually assimilated; 3) an understanding of the legal restrictions which apparently hamper the efficacy of the law.

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1 - This article contains some elements of a research to be published in early 1992 : Ocqueteau, 1992. For further information, the reader is referred to the same author, 1986, 1991.

2 - Law n° 83-629 dated 12 July 1983, regulating private patrolling, security guards and transportation of money. Decree n° 86-1058 dated 26 September 1986 on the administrative authorization of and recruiting of personnel by companies dealing in patrolling, security guards, transportation of money and the protection of individuals. Decree n° 86-1099 dated 10 October 1986 pertaining to the use of material, documents, uniforms and insignia by companies dealing in patrolling, security guards, transportation of money and the protection of individuals.

3 - The criminal record contains three bulletins : only the judiciary authorities have access to B1, on which all convictions are shown (art. 774 CPP); B2, to which some administrative agencies, duly listed, have access, excludes certain types of duly enumerated convictions (art. 775 and 776 CPP); B3, to which all citizens have personal access, only shows unsuspended sentences for major and moderately serious offences (art. 777 CPP).

4 - Representing the State at the *département* level.

TABLE I - NUMBER OF FIRMS DEALING IN SECURITY SERVICES
Evolution of prefectoral authorisations (1988 à 1991)

	FIRMS			EMPLOYERS			EMPLOYEES		
	1988	1991	↑ %	1988	1991	↑ %	1988	1991	↑ %
- guards -ming	1271	2203	+75,0	1542	2546	+65,1	39430	51897	+31,6
guards g and	230	278	+20,9	322	360	+11,8	14718	17546	+19,2
g -y (*)	107	130	+21,5	136	160	+17,6	2332	3504	+8,4
ards	26	42	+61,5	29	46	+58,6	293	399	+36,2
AL	1634	2673	+63,6	2029	3112	+53,4	57673	73346	+27,2

TABLE II - NUMBER OF IN HOUSE DEPARTMENTS
Evolution of prefectoral authorizations (1988 to 1991)

	DEPARTMENTS			EMPLOYERS			EMPLOYEE	
	1988	1991	↑ %	1988	1991	↑ %	1988	1991
	1343	1762	+31,2	1655	1978	+19,5	11525	15003
	13	10	(**)	17	10	-	116	457
	5	2	-	7	2	-	39	10
	-	-	-	-	-	-	-	-
	1361	1774	+30,3	1679	1990	+18,5	11690	15470

- administration records registration on the basis of the registered office of firms and places of business. There are actually no longer more than about twenty money-escorting firms in France
- gression not calculated because of insufficient numbers.

1 - STATISTICS :

A - For the first time, national administrative statistics on "authorizations" of firms and in-house services are available. They are in general agreement with the partial figures provided by trade organizations and the INSEE[5], but are more accurate : according to calculations, an additional 15,000 employees work for small companies unaffiliated with any trade organization; secondly, the size of in-house staffs, a figure which escapes the notice of the INSEE (cf tables I and II), could be determined.
Two remarks :
▸ there is a 75 % increase in the number of firms dealing in patrolling and security guards. An analysis of numbers in each *département* shows that this rise simply reflects a spectacular increase in "self-employment" since the first count in 1988
▸ the size of in-house staffs has risen by 30.2 %, and is mostly the outcome of the regularization of the situation of many more in-house services over the last four years. Indeed, officials tended to pay more attention to specialized firms at first.
The ratio of "in-house" workers/workers "on contract" has remained constant : it is 1 to 5 in France. This shows the considerable extension of the process of "externalization" by which firms subcontract or retrocede preventive functions, where these were formerly an internal, makeshift affair, at best.

B - If we focus on the work of the Paris Prefecture of Police (which handles more applications than any other prefecture, representing about one third of all workers on record), we find that over a four-year period it delivered 378 receipts for applications (granted 331 authorizations and rejected 47 for nonconformity). The final number of "authorized" firms and in-house departments at the end of 1990 was 228, following mergers, closings and changes of registered office. The list shows :
▸ 137 firms dealing in patrolling and security guards (3 with over 1,000 employees ; 3 with 500 to 999 ; 31 with 100 to 499 ; 21 with 50 to 99 ; 57 with 10 to 49 ; 41 with 1 to 9 employees).
▸ 24 multiservice firms, including transporting of money (the largest employs 1,800 people and the other 23 have fewer than 360 employees).
▸ 79 in-house departments (including 5 department stores with over 100 workers ; 1 public establishment with 67 ; 1 public company related to National Defence with 56 ; and all banks, with about ten each, etc....).
▸ 20 firms supplying bodyguards (the largest of which has a personnel of over 100 people).
In four years, the B2 of 24 to 25,000 employees was checked in Paris, but the exact number of those rejected is difficult to determine. In any *département*, the rejection rate increases as the number of applicants rises. However, it seems reasonable to estimate it globally at 3 to 8 % in those *départements* which deal with the largest groups. For instance, an extremely concise statistic from one "Ile de France" prefecture shows that among the 80 % of total figures represented by 20 firms with over 20 employees, the applications of 4.6 % of workers were rejected. The rate rises to 7 % if one large company whose registered office had only recently been transferred there is excluded. This means that in practice, the legislator's goal was relatively effectively attained.

2 - CLEAN-UP PRACTICES

Clean-up practices are based on article 5 of the 1983 law, which mentions "the perpetration of acts contrary to honor, honesty or morality, personal offences or ordinary property offences, and disciplinary sanctions or punishment by an unsuspended prison sentence". The Civil Liberties office of the Ministry of the Interior has advised prefects to refuse access to these jobs as follows :
▸ rejection of individuals convicted of desertion of family, incitement to use drugs, failure to report to the armed forces, hit and run, breaking the laws on weapons and explosives, insulting a government official ;
▸ individual examination of each case of conviction for driving without a license, drunken driving, desertion, rebelliousness, drunkenness in public and insulting a police officer ;
▸ possibly shutting their eyes on convictions for non-payment of a pension or non-declaration of address to the creditor by the debitor of a pension.

Actually, certain prefects follow these recommendations to the letter, whereas others tend to "bargain" more. It is

5 - Institut National de la Statistique et des Etudes Economiques.

extremely rare for the head of a firm to have an authorization turned down because of a police record, even when the police report is negative. A recent decision by the administrative court of Marseille has corroborated the fact that no source other than the B2 may be considered for rejection of an application. Further, there is now a jurisprudence developing in industrial courts, with respect to the lay-off of employees because of a prefectoral injunction, distinguishing between the prefect's powers and those of heads of companies, now in competition, with the latter performing selection, of sorts, of their own employees (checking on the B3 at hiring, vouching on their honor). Any "untruthful" statement by an employee was viewed as a serious fault, and a reason for dismissal without compensation. Today, "if the employee committed the fault of not revealing to the employer any past judiciary events that are not mentioned on the B3 , which can only be consulted by prefects, this is not a serious enough fault to justify dismissal without compensation" (Appeals court of Nîmes, 26/9/1990).

3. *DE JURE* AND *DE FACTO* OBSTACLES

With time, the prefectures discovered that several legal and practical restrictions prevented the satisfactory working of this set-up :

- The first obstacle (although a circumstantial one) was, on the one hand, the 1988 amnisty law, which took effect at a particularly delicate time, and on the other hand, the rapid comprehension, by those involved, of the enormous possibilities of rehabilitation through judiciary prescription of incapacitation, stipulated by law.
- Owing to specific legal clauses, people receive different treatment for similar offences depending on whether they were sentenced to a fine or prison, causing prefects to feel there are "two weights and two measures" for the application of this purview. This has obliged many of them to accept businessmen and employees of dubious morality, against their will.
- Last, while many firms are more than reluctant with respect to spontaneous reporting of hiring of new employees (turnover tends to be considerable for security guards, since the market is very flexible), this difficulty is compounded by the fact that it takes 3 to 6 weeks for prefects to obtain the requested B2 from the National Criminal Record Registry. This means that even when firms accept routine cooperation with prefectoral services, a non-negligeable number of employees escape control, especially when they are hired temporarily, for a one-month stint, for instance.

PERSPECTIVES

While the administration attempts to play its policing role to the best of its ability, it does not view its vocation as one of tampering with freedom of enterprise. Legal solutions for repairing the pervers effects of this system may be found : a better definition of the rule of specialization, better repression of *de facto* heads of firms, the definition of systems of absolute incompatibility for non-conformity with the law, and above all, temporary authorizations for firms, so that their overall situation with respect to the law may be reexamined at regular intervals.

It is obviously impossible, however, to expect the administration to solve all of these problems. Cooperation with Clerks' Offices of commercial courts, to achieve an understanding of the legal situation of these businesses and of the services offered may be helpful. Another idea would be to make every attempt to persuade customers, both private and public (for instance, through the invention of non-negotiable clauses in public invitations to tender) to deal with serious firms only, so as to discourage low-cost, low-quality practices, still one of the main causes of continuing "unfortunate mistakes". Last, what about improving the "vocational" training of workers, and opening a broad public debate about their work, their rights and their duties ?
There is no indication, at present, of any possible decrease in today's ratio of two private security workers for five public agents (police and gendarmerie included). It is just as well, then, that the respective vocations of the two be publicly redefined, on a legal basis. The stakes are enormous, at a time when even a country like England, which has no system of *a priori* authorization, is beginning to visualize a solution similar to the one invented in France, and closely replicated by Belgium in 1990.

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References

Ocqueteau, F. (1986) Police(s) privée, sécurité privée : nouveaux enjeux de l'ordre et du contrôle social, *Déviance et Société*, 10, 3, 247-281.

Ocqueteau, F., (1991) Les marchés de la sécurité privée : développement et implications, *Les cahiers de la sécurité intérieure*, Paris, La documentation française, n°3, 81-112.

Ocqueteau, F. (1992) Gardiennage surveillance et sécurité privée (commerce de la peur et/ou peur du commerce), Paris, Cesdip, Déviance et contrôle social, n° 56.