

New epistemological interpretations of the place and function of private security

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ABSTRACT: It is the responsibility of the owner to ensure the protection of property. Up until the 1990s, 97% of property in Hungary was state owned property, with private property ownership being less than 3%. Private security was therefore insignificant, or almost meaningless. The guarding and protection of social property was carried out by state employed factory police or factory guards, the state police organisations, and guards employed by the municipalities and cooperatives.

The change of the political regime brought about a profound change in the ownership structure, with private ownership exceeding 70% by the end of the 20th century. The new owners had to manage the guarding and protection of their property, which they were not capable to do. Not only did they lack the professional culture for this activity, but also the basic legislation. It took several decades to develop the conditions (personnel, professional, organisational, legal, etc.) for private security. To this day, the legislator and law enforcement agencies consider private security as a quasi-police activity. This approach - which we believe is fundamentally flawed - is the reason for the failure of many attempts at proper legislation. We believe that the private security sector in Hungary lacks proper legislation and a scientific approach. A systemic understanding of the activity requires clarification in several areas and the consideration of alternative options for effective correction. In this article, we would like to present new possible interpretations of private security and private security services, defining their precise conceptual framework and their relationship with public security.

KEYWORD: security, private security, public security

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I. Introduction

The instinct to live, to survive, is a reflexive and inherent mechanism of the human species, the primary biological need that determines and achieves all of our basic purposes and actions. In the course of social development and sociological evolution, security has become an increasingly complex system of subsystems for mankind, which are more and more interconnected and whose operation necessarily involves the identification and recognition of data and information about the sources of danger, the definition of objectives, i.e. the protected values, the definition and application of appropriate tools and methods, and the assessment of events. The concept, meaning and value of security is constantly evolving and changing, as is our society and our civilization. But at its heart has always been the human being. The interpretation of security has always depended on the given historical period, and has always been influenced by the social class, ethnic group, ethnicity, historical tradition, values, religious and cultural system, and existence. Security initially meant the security of the individual, and as human existence became communal, the desire for security was extended to the community and evolved into a social demand, taking its present form, where it has become a system based on many components and constant variables, which can be considered as a process.

In our view, security is an independent, partly interdisciplinary, partly multidisciplinary science, which is at least as closely related to police science as it is to sociology or even criminology, not least the engineering and technical sciences, and law.

In the course of human evolution, when caveman realised that he had to hide in caves against the forces of nature or to escape from wild animals, the early concept of private security was born, and further evolved when he realised that fire had to be preserved not only to keep it from going out, but also to prevent it from spreading and harming man himself or his initial possessions. Then, when his hard-to-hunt animals or plant food was stolen and eaten by his companions, he realised that he had to look after it for self-sustaining purposes. This was the moment from when we can talk about asset protection. Admittedly, the aim was not to protect the assets in question, but to preserve them for subsistence. The above - hard to refute - line of thought simply points out some

very important facts for us. First of all, that private security is not the same as asset protection. Further, that in the classical sense, the human species typically had to provide for property protection as a purposeful activity when it began to live in a social or initial, communal version of the social form of existence. Before that, it was typically necessary to protect themselves and their possessions against threats from the nature or wildlife. We can state that public security could only come into being at a much later stage of this type of social existence, as a result of the new umbrella concept of private security as a set of expected conditions, the securing of which became a task not for the individual but for the community as a whole. In later stages, at both community and individual level, the issue of private security has shifted towards the protection of property. The main reason for this is that human evolution, technical and social progress has taught us to overcome the dangers that nature and the animal kingdom pose to us. Furthermore, the above evolutionary process has had another effect.

Wealth was no longer just a means of subsistence, and socialisation created wealth-based social distinctions: rich and poor. Property crime, and crime as a social phenomenon, has brought with it the development of jurisprudence in this direction. The jurisprudence that was to regulate the concept of crime, its social perception and, not least, the forms of defense and prevention against it, whether at the individual - or at a later stage - community or state level.

II. SECURITY, PUBLIC SAFETY, PRIVATE SECURITY

The desire for security, the need to create security, is inherent in human nature and, as such, is ancient to humanity. The caveman's need for security was still exhausted in his struggle with the forces of nature: he sought to obtain food, a cave, a wife... With the development of society, the needs became more and more complex, security as a question changed from a monistic to a dualistic or multi-layered one: it was no longer only a question of acquiring natural resources, of fighting against the forces of nature, but also of fighting with other people, other groups of people - both figuratively and literally. Security is not a given fact, even if one tends to take it for granted, like air, and usually only notices its absence.¹

2.1 Interpretative framework: the concept of safety

The Latin word "*securus*" (sine = without, cura = fear) is the origin of the word security and means a state of being without fear (or, in other translations, without worry). Security for citizens is an existence free of dangers and distractions, where everyone can live, work and feel safe and secure about themselves, their loved ones, their possessions - everything and everyone that is important to them. Security - according to Lajos Berek and his co-authors - is "*the state of persons and organisations, defined by the interaction of intentional unlawful conduct that threatens their existence or proper functioning and the resources used to protect them*".² Security, in this approach, is an optimal state that is usually preferable to vulnerability, i.e. "*a threat against which no adequate countermeasure is available*".³

And we can hardly argue with the truth of what Albert Takács says: man is "*a being threatened by his environment and by himself*",⁴ and must be prepared for the constant or recurrent threat posed to him by the natural and technical environment, by society or by his fellow human beings.

While in earlier centuries security was kind of static, this is far from true for the modern interpretation: the factors that provide security and those that erode it are in a state of constant change, with periods of feeling comfortable, to just tolerable alternating with periods of insecurity for the communities. What is considered comfortable depends largely on the tolerance of the individual and the community.⁵ The total absence or low level of security creates permanent insecurity, but there is no such thing as absolute security, and efforts to achieve it are an obstacle to development while limiting human rights and freedoms.⁶ Security can therefore nowadays be described more as a state of equilibrium, in which the factors that support the functioning of the individual and the community are balanced against those that hinder proper functioning.⁷

¹ László Christián (2018): Private security. Teaching Guide within the framework of the KÖFOP-2.1.5-VEKOP-16-2016-00001 project "Strategic support for the staffing of a competitive civil service". Budapest. 5.

² Lajos Berek - Tamás Berek - László Berek: Security of persons and property. Budapest, Óbuda University, 2016. 6.

³ Ferenc Gazdag - Péter Tálás (2008): On the limits of the concept of security. Nemzet és Biztonság, Janury 2008. 3-9. 6. Available at: http://www.nemzetesbiztonsag.hu/cikkek/gazdag_ferenc_talas_peter_-_biztonsag_fogalmanak_hatarairol.pdf

⁴ Albert Takács (2019): "We affirm that the citizen and the state share the common goal of good life, security, order, justice and freedom." In: András Patyi (ed.): An unusual commentary on an unusual preamble. Dialóg Campus, Budapest. 339.

⁵ Imre József Hadnagy (n.a.): The modern understanding of security - or safety is more uncertain today than ever before. 3. Available at: <http://www.vedelem.hu/letoltes/anyagok/135-a-biztonsag-korszeru-ertelmezes-avagy-a-biztonsag-ma.pdf>

⁶ Ákos Cserny - László Christián (2020): Reflections on enhancing security at (sports) events. Belügyi Szemle, 2020/11. 71-88.

Available at: <https://ojs.mtak.hu/index.php/belugyiszemle/article/view/4926/3968>

⁷ Géza Finszter (2018): Law enforcement doctrine. 62.

The creation and maintenance of an optimal level of security imposes duties and obligations on both the individual and the state, and as the Constitution states, "*the common goal of the citizen and the state is [...] the achievement of security and order [...]*".⁸ The individual has the right to expect the state to be sufficiently stable and capable of protecting him or her, but the state cannot or may not be able to do this alone, and must therefore give individuals the necessary powers to defend themselves when necessary - without infringing the rights of others -.⁹ Maintaining public security is therefore the task of the state, which fulfils this task through the law enforcement agencies, within the framework of public law. This statement of fact will be very important in the rest of this article. Private security, on the other hand, is (predominantly) a service provided by private security companies, governed by private law.

1.2. The concept and nature of public safety

Public safety is a primary, crucial element of security, which democratic states see as a state objective. Its creation and maintenance are the responsibility of the executive power, it is a constitutional value¹⁰ that can be protected in the field of law enforcement by sanctioning unlawful conduct and by using official coercion against those who engage in such conduct. Public security is therefore a value that must be protected - in a specific emergency situation - even at the cost of restricting fundamental human rights.¹¹ However, it is essential to stress that the state cannot undertake to ensure the integrity of public security, but only to protect it.¹² The only way for the state to fulfil its commitment is for citizens themselves to do their part to prevent risks. Public safety is, as the former national strategy for crime prevention points out, "*a collective product of value, the creation and preservation of which is a common concern*",¹³ or in other words "*a collective social product that is the outcome of the activities of individuals and their communities, the actions of the public authorities, the self-defence capabilities of the citizens and the services provided by the business sector*".¹⁴ Security is not a state monopoly, and voluntary compliance is crucial.¹⁵

The work of the law enforcement agencies responsible for maintaining public security is supported and complemented by citizen "self-defence", which in practice means the various organisations of local authorities and citizens (civil guards), as well as private security companies operating on a market basis.¹⁶

I feel that this position needs some clarification. It is not disputed that security, e.g. the general security of a municipality, including the security of local residents and their property, can only be achieved through targeted cooperation between the public and private sectors. However, the primary manifestation of so-called civil self-defence is the self-defence of the individual. It should only be transferred to service providers in certain cases and for specific purposes. In this case, we mean about private security services, which must be separated from the concept of private security! The provision of security is interpreted as a service in itself, which happens to be provided by the public authority under the rules of public law, while its relationship with the customer is hierarchical.

However, the nature of the private security service is unquestionable, it is a service that is given substance by the rules of private law and the contracts concluded on the basis of those rules, while the relationship is subordinate between the contracting parties, who can take action against the infringer on the basis of the legitimate defence under criminal law or the protection of possession under civil law.¹⁷ It is common to see private security as a relatively new phenomenon, even though it has existed in some form for centuries. Even the ancient Greeks protected their possessions with locks and padlocks, and in Rome, wealthy citizens employed special key-keeping slaves to guard the keys to locked boxes.¹⁸ Private security as we know it today came into being in the 1800s, partly in the context of municipal autonomy and partly in the development of maritime trade: towns set up municipal police forces to protect the lives and property of their wealthy citizens, and insurance companies hired security men to guard against pirate attacks. Private investigation, a specialised field of private security, has its

⁸ The Constitution of Hungary (25 April 2011). National Creed.

⁹ Takács (2019) i.m. 339–340.

¹⁰ 13/2001. (V.14.) AB hat. section III. 1.6.1

¹¹ Géza Finszter (2018): Law enforcement doctrine. Dialóg Campus, Budapest. 55.

¹² Géza Finszter (2008): The legal basis for the operation of law enforcement agencies. RTF Alkotmányjogi és Közigazgatási Jogi Tanszék, Budapest. 24.

¹³ The Crime Prevention Strategy adopted by Government Decree No. 1744/2013!!!!!!!

¹⁴ Finszter (2018) i.m. 63.

¹⁵ Janza Frigyes (2009): Energy security and policing. Presentation, 11 May 2009, BHKK Conference, Budapest; cited in: László Christján - Violetta Rottler (2019): The concepts of private security and municipal policing. In: László Christján - László Major - Csaba Szabó (eds.) (2019): Handbook for Security Managers. Dialóg Campus, Budapest. 13–36. 14.

¹⁶ Christján (2018) i.m.

¹⁷ Finszter (2018) i.m. 278.

¹⁸ Violetta Rottler (2019): Reflections on private security. Magyar Rendészet 2019/4. 81—95. 81.

roots in the 19th century, when Allan Pinkerton's now legendary (and still existing) private detective agency began its operations in the United States.¹⁹

1.3. The creation and concept of private security

The creation of private security cannot be separated from the recognition of private property. Many people believe that the state has sought to guarantee the security of the citizens' persons and property, but over time it has become clear to both decision-makers and citizens that maintaining the state's monopoly on policing is not always appropriate, and that in some cases it is more economical and efficient to allow certain activities to be outsourced.²⁰ The emergence of the private security sector is thus a clear sign that citizens are dissatisfied with the level of security provided by the state and are forced to *"take security matters into their own hands"*.²¹ Our view is that the above assessment is the result of an incomplete or flawed chronological approach. The private security sector has developed spectacularly in the second half of the 20th century, but particularly in the last three to four decades, especially in North America and Europe.²² And today, we are witnessing an increasing number of states allowing individuals, institutions and businesses to use the services of private security companies operating on market terms.²³

Nevertheless, private security is still a poorly researched area, with a literature that is not as broad as that on public security, with no uniform definitions. This is because different countries do not necessarily mean the same activities by private security.

According to the British authors Button-George, the private security sector is like an iceberg, with only the parts above the sea level seen, namely personal protection, property protection and private investigation, but in reality it is a much more diverse field, capable of further development in many different ways, and therefore cannot be defined in a single way that applies to all situations.

To use a more metaphorical description: the parts under sea level include, for example, safety inspections carried out under official measures, safety engineering and technology, and private military. So the parts under the sea level are much more extensive, and private security is much more than first thought.²⁴

Several attempts have been made in the international literature to define the concept of private security. Some of the definitions are limited to a list of job functions, for example, the RAND Corporation in one of its early studies defined private security as all organizations and individuals that provide security-related services, whether it is private investigation, guarding, patrolling, lie detection, armored transport or even the installation and operation of signaling and alarm systems.²⁵ Others (e.g. Cunningham et al., 1990) have argued that it is wrong to see private security as "private policing", because it is not crime prevention and detection in a private setting.²⁶ Bottom and Kostanoski (1983) argued that private security provides protection not only against crime, but also against four other threats: waste, accident, error and unethical practice.²⁷ Green (1981) defined private security as *"services provided by persons, organizations or non-law enforcement agencies primarily for the purpose of preventing crime and harm to persons, organizations or facilities"*.²⁸

Nowadays, private security, its role and its responsibilities are being understood more and more broadly. For example, the American Society for Industrial Security (ASIS), the largest organization of security professionals in the United States, has defined private security as *"the nongovernmental, private sector practice of protecting people, property and information, conducting investigations and otherwise safeguarding the assets of organizations"*.²⁹ ASIS has argued that private security has a role to play in *"assisting and securing the private*

¹⁹ Christián-Rottler (2019) i.m. 22

²⁰ Kerezsi K., Nagy V. (2017): A critical approach to police science. In: Boda J., Felkai L., Patyi A. (eds.): A commemorative volume in honour of Frigyes Janza, to his 70th birthday. Dialóg Campus, Budapest. 275.

²¹ Christián-Rottler (2019) i.m. 21.

²² Klára Kerezsi - László András Pap (2017): The future of crime and crime control. In Géza Finszter - István Sabjanics eds.: Security challenges in the 21st century. Budapest, Dialóg Campus. 573-574.

²³ László Christián (2014): The theoretical foundations of private security. Budapest, National University of Public Service, Faculty of Police Sciences, 2014. 22.

²⁴ Rottler (2019) i.m. 84.

²⁵ Kakalik, J. S. – Wildhorn, S. (1971). Private police in the United States: Findings and recommendations (R-869-DOJ). Santa Monica, CA: Rand. 3. Available at: <http://www.rand.org/pubs/reports/2006/R869.pdf>

²⁶ Cunningham, W. C. – Strauchs, J. J. – Van Meter, C. W. – Hallcrest Systems, Inc. (1990): Private security trends 1970–2000: The Hallcrest report II. Boston: Butterworth-Heinemann.

²⁷ Bottom, N. K. – Kostanoski, J. (1983). Security and loss control. New York: Macmillan.

²⁸ Green, G. (1981). Introduction to security. Butterworth: Boston, MA.; cited by: Strom, K. – Berzofsky, M. – Shook-Sa, B. – Barrick, K. – Daye, C. – Horstmann, N. – Kinsey, S. (2009): The Private Security Industry: A Review of the Definitions, Available Data Sources, and Paths Moving Forward (ojp.gov) RTI International, NC. 2-2. Available at: <https://www.ojp.gov/pdffiles1/bjs/grants/232781.pdf>

²⁹ ASIS International (2009a): International glossary of security terms. Available at: <http://www.asisonline.org/library/glossary/index.xml>

sector business activity and critical infrastructure, whether it is to protect against natural disasters, industrial accidents or planned actions such as terrorist attacks, vandalism, etc."³⁰

The definition given by László Christián, which is currently considered to be generally accepted in the domestic literature, according to which "private security is a service provided by a licensed company (or natural person) operating on market terms for remuneration, which protects the personal safety and property of the client and facilitates the fuller exercise of his rights",³¹ needs to be clarified and supplemented in our view. However, it is important to underline that the functioning of private security is not independent from public security and the bodies responsible for its maintenance. According to Christián, private security can be understood as a set "which forms an increasingly large common subset with the set formed by public order and public security, and also has a considerable subset of its own".³²

III. INSTEAD OF SUMMARISING - EPISTEMOLOGICAL QUESTIONS

Creating and maintaining the security of society and its members is a complex and multifaceted task, which for a long time was typically undertaken by the state, but over time the state monopoly has been broken. The Handbook for Security Managers (2019) describes "law enforcement agencies exercising public authority" as complementary to municipal law enforcement, crime prevention organisations run by citizens' associations (civil guards) and private security.³³ Private security is also discussed in most domestic sources as part of policing, along with municipal policing and civil guards.

Policing is defined by Géza Finszter (2008) as "a branch of public administration whose social function is to protect society from human behaviour that is considered to be unlawful, by means of coercion by the authorities - using the monopoly of legitimate physical violence -".³⁴ The fact that private security is part of policing is something we would like to discuss later, but this is certainly not the case in terms of its means (it may be the case for municipal policing, and the legal status of the civil guard is also more prominent than that of the security guard). For this reason, many argue that the terminology of "complementary policing" is appropriate, as private security providers do not have the same powers as public authorities responsible for maintaining public security (police, national security services, etc.), but they do contribute to maintaining public security.

From this point of view, the following question is important: to which discipline private security should belong? We believe that the closest we come to the truth is to accept that it is a multi-, or even more so an interdisciplinary science.

Bence Mészáros (2017), examining the interface between police science and private security, identified 6 main areas, which are as follows:³⁵ The first, and most obvious, intersection of the two sets is the objective itself: police agencies and private security providers both seek to ensure the protection of persons and property for citizens, citizens' collectives and institutions. The second common area is crime prevention, which is considered to be the most important task of private security and is also part of the work of police agencies. Law enforcement is a state monopoly, but some private security actors (private investigators, asset protection companies) are also involved in the detection of crime. An example is when, in private prosecution proceedings, the attorney hires a private investigator to gather evidence to support the accusation. Methodology is also an interface, as private investigators and security guards protecting persons and assets sometimes use the same tools as the police (e.g. coercive measures, bag searches), and are bound by the same professional principles as the members of the authorities. The following two areas (unlike those listed so far) are not characterised by complementary activities but by a hierarchical relationship: on the one hand, the police, acting in its official capacity, exercises licensing and supervision rights over the private security sector (e.g. issuing operating licences, certificates authorising the exercise of activities, monitoring the regularity of operations, applying sanctions where justified).

On the other hand, there are also cases where public authorities conclude a cooperation agreement with a private security service provider for the performance of a specific task; in this case, the authority and the service provider are subordinate and superior to each other, as the ministry or the police exercise official supervision over the private service provider's activities.³⁶

Authors Christián and Rottler (2019, 19) also consider it important to mention a seventh link. In the course of their work, private investigators and guards often come into contact with civilians, and their improper actions may

³⁰ ASIS International (2009b): Standards and guidelines. Available at: <http://www.asisonline.org/guidelines/guidelines.htm>

³¹ Christián (2019) i.m. 373.

³² Christián (2019) i.m. 373.

³³ László Christián (2019): Foreword. In: Handbook for Security Managers. 11–12.

³⁴ Géza Finszter (2008): The legal basis for the operation of law enforcement agencies. Budapest, RTF. 167

³⁵ Bence Mészáros (2017): The interface between private security and police science. In József Boda - László Felkai - András Patyi (eds.) (2017): A commemorative volume in honour of Frigyes Janza, to his 70th birthday. Budapest–Pécs, Dialóg Campus. 381–387.

³⁶ Mészáros (2017) i.m. 381–387.

result in violations of fundamental human rights and freedoms. In this respect, private security cannot operate without clear procedural guarantees and an effective complaints mechanism.³⁷

In the light of the above - and also on the basis of research findings - we believe that the position of private security as a discipline needs to be reconsidered. While we fully agree that the origins of the purpose of private security as an activity are in many respects vaguely similar to law enforcement, they do not cover it completely and for a number of reasons it cannot be called a policing activity.

These contradictions have not yet been resolved to an acceptable degree by anyone. Partly because the adherents of this view tend to relate private security as a concept exclusively applicable to an activity performed as part of some kind of service.

On the other hand, because policing - even admitted by the representatives of this position - is a branch of public administration, to which public powers belong. These criteria are valid for the whole set of policing, so private security cannot be included in this set, nor in a subset of it. Another problem I have with this position is that the establishment of public security, which is the basis of public order, is also the responsibility of the Police, as derived from the Constitution.

For this reason, we believe that private security as a complementary policing activity also needs to be clarified. For several reasons. Mostly because its maximum objectives are aimed at achieving a similar social state, security, as law enforcement. For this reason, we can accept its designation as quasi-complementary policing. This view is also supported by a conceptual development overview. As explained earlier, the need for the security of the individual, for one's own security, has developed much earlier than public security, which can only be understood in terms of community or social existence. So there is no question which is derived from which. Throughout history, private security as a hoped-for state and the means to achieve it have changed a lot. The human race lives in increasingly complex societies, with more and more complex interactions. As a result, some of the conditions and characteristics that constitute private security have become communal, i.e. shared, and interactions between the individual and the community have been created. The implementation of these situations and their security is both appropriate and possible within the framework of community rules and forces and methods. This is what public safety has become, and policing is the means to achieve it. Thus, public security can be derived from private security, provided that it is understood correctly.

In our view, it is also necessary to clarify the concept of private security in order to achieve meaningful progress on this issue. Private security as a definition cannot be appropriated to define such a service or activity in legal or scientific terms, as it goes beyond that in every respect. It is not debatable that we should talk about private security even if I fence my garden with a fence of my own design, build it myself, install two high-powered lights at night and take three large dogs into the yard. It may therefore be appropriate to clarify several concepts. In our view, private security is a dynamic state. The optimal, hazard-free state of an individual, business, organisation, institution, body, etc., that it expects, hopes for and is able to achieve, in part through private security activities. Private security activity is the totality of acts, measures, solutions and technical means used to achieve and ensure this state of affairs, without State or administrative authority. A private security service is a private security activity that is carried out commercially within the law.

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