

An Interpretation of the Fundamental Concepts of Law Enforcement in the Hungarian Legal System

BUZÁS Gábor¹

Is there any reason to use the phrase “order protection” (rendvédelem) instead or beside law enforcement (rendészet) in Hungarian? What does it really mean? My personal opinion is: it is unnecessary and disturbing. In the second part of my paper I am examining the correlation – as the legal basis of the police action – between the scope of authority and power of authority. In the third part of my paper I will write about the differences and content of the public safety and public order.

Keywords: law enforcement, protection of public order, responsibilities, power of authority, scope of authority, public security, public order

In this brief document I am writing about one type of interpretation of the most important concepts of law enforcement based on the research findings of recent years.

1. Law enforcement – protection of public order.
2. Law enforcement – responsibilities – power of authority and scope of authority.
3. Law enforcement – public security – public order.

Law enforcement – protection of public order

The first – although least important – section investigates the legitimacy of the term *protection of public order* (*rendvédelem* in Hungarian), which came into use in Hungary at the end of the 1980s. At first it appeared at professional conferences, but later it was also applied in the fields of law and public administration.² Later, the term was unfortunately also used by the Legislation. In recent times, “a precarious chaos has evolved regarding the completely random confusion and interchangeability of the terms ‘law enforcement’ (*rendészet* in Hungarian) and ‘protection of public order’ (*rendvédelem* in Hungarian) both in literature and in legal language terminologies.”³

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- 1 BUZÁS Gábor PhD police lieutenant-colonel National University of Public Service Faculty of Law Enforcement Department of Applied Law Enforcement associate professor
Dr. BUZÁS Gábor c.r. alezredes PhD főiskolai docens, NKE Rendészettudományi Kar, Rendészeti jogi és igazgatási Tanszék
buzas.gabor@uni-nke.hu
 - 2 PAPP Judit: *Rendvédelem vagy rendészet? Tanulmányok a jogvédelem és a rendvédelem köréből*, RTF Jog – és államtudományi Tanszék, 1998, 64
All quotations are translated by the author unless stated otherwise.
 - 3 BALLA Zoltán: *Közigazgatás és rendészet*, Új magyar közigazgatás 6(2013)/12, 15–22.

I have not found any plausible reasoning for using the term protection of public order besides and instead of *law enforcement* (*rendészet* in Hungarian) or any information concerning possible new and additional contextual elements covered by protection of public order. It might be the sense of novelty that has made an impact on scholars and later on legislators and prompted them to use it. "In order to protect public security and internal order, the Police carrying out its crime prevention, criminal prosecution, public administration and law enforcement tasks."⁴

When the Police Act 1994 came into force, only law enforcement was mentioned in the statute. It is important to question that necessity of the separation of public administration and law enforcement. However, in the Police Act 1994 the following was formulated:

"The Police is an armed public law enforcement (public order maintenance) authority performing crime prevention, criminal prosecution, public administration and law enforcement functions."⁵

From these passages, we can conclude that law enforcement is part of the maintenance of public order, and as a public order maintaining authority it performs law enforcement duties as well. However, this conclusion would be a mistake.

"Among the criteria, the term 'state administration' within the collective concept of 'public administration' does not require special explanation. From the asset inventory of state administration, in the activity of the Police, it is authority law application and the direct enforcement of specific legal acts that are the highlighted elements. Combatting crime covers crime prevention, crime intelligence and investigation activities that are related to criminal justice. By nature these activities are the application of law and the execution of legal acts. The law enforcement body, as a criterion, refers to law enforcement duties. A law enforcement activity is an enforcement modality and as such does not have the specificities of branches of law. Its main property – as opposed to the application of law – is the direct and forceful enforcement of legal provisions. The authorisation to the application of forceful measures to maintain and protect public order are the major distinctive features of the Police force which separates it from other state authorities and defines it as an armed organ protecting public order. Its attribute 'state' refers to the fact that the state is in charge of the mentioned duties which can exclusively be performed by state organs. The bill is therefore based on the notion of a homogenous state Police."⁶

The underlined passage demonstrates that content-wise there is no difference between the two terms (*law enforcement and protection of order*). What exactly does the text say? The main features of law enforcement activities are the direct forceful actions. In the following sentence the law refers to forceful actions with the purpose to maintain public order. It is therefore clear that the two terms are identical, meaning that direct forceful actions and the application of forceful measures mean the same.

4 Part 2, Section 1 of Act XXXIV of 1994 – 20 April, 1994

5 Part 1 of Section 3 of Act XXXIV of 1994 – 20 April, 1994.

6 Reasoning for of Act XXXIV of 1994 (for Section 3) – underlined for emphasis by author.

Despite all the arguments mentioned above, the Act, which has been effective since 1st of January 2012, leaves the second part of Section 1 unaltered while the passage of the statute quite simply declares: “The Police is a state-empowered, armed, order maintaining agency.”⁷ Apparently, the maintenance of order cannot be left out, even though the amendments do not contain any reasoning for its use in this case either.

I do not wish to analyse this issue in unnecessary length. In fact, perhaps I should not have even worked on it at all. It is, however, clear that the *protection of order* has unfortunately become a firm element of public administration law, even though so far it has only been given contents identical with those of law enforcement.

In my opinion the two terms can co-exist but must be used appropriately. The term *protection of order* should not be applied for the law enforcement organs of public administration. According to Judit Papp, “the attempt to create the new concept of ‘order protection’ has not been completely successful. We still believe that these attempts were highly respectable, beneficial and instructive.”⁸ I agree with the author that the analysis of the two terms have brought up many interesting issues.

Regarding the application of the term *protection of order*, I can see two possible options: As I have already pointed out in my PhD dissertation,⁹ there is a compromise, according to which there are law enforcement organs or organs performing law enforcement activities, which can be two-fold: Activities of the law enforcement agency that does not require protective or corrective measures – e.g. the Police carry out routine jobs such as issuing permits, patrolling, controlling activities, providing security services for events within a legal framework – are covered by the term *law enforcement*.

However, when public order has to be protected or maintained, the Police must re-establish or protect lawful order against trouble-makers the term *protection of order* is allowed to be applied. In summary, regarding the traditional conceptual elements of law enforcement such as maintaining public order, crime prevention, the re-establishment of lawful order the term *protection of order* does not contain any added value or information and is therefore unreasonable and pointless.

According to my opinion the task of maintaining order is a part of law enforcement. When analysing the individual activity patterns of the Police force we can distinguish between law enforcement and order maintaining activities. Acknowledging, that my compromise is somewhat artificial hereby I present a second one that looks more effective: “It is our definite opinion that the term *order protection* must be eliminated from law enforcement literature and legislation.”¹⁰

7 Part 1 of Section 4 of Act XXXIV of 1994 – text in force since 1 January, 2012.

8 PAPP Judit: *op. cit.*, 170.

9 BUZÁS Gábor: *Közigazgatás – rendészet – rendőri intézkedés*, PhD dissertation, Pécs, 2011.

10 BALLA Zoltán: *op. cit.*

Duties, scope of authority, authoritative power in law enforcement

I must begin with a fundamental fact: authority measures – and therefore the measures of the law enforcement body – can be listed among activities of administrative law application within the field of public administration law. I would also like to emphasise that, in my opinion, law enforcement actions are clearly public administration actions as well. Thus, law enforcement is part of state administration and as such, of public administration. Police actions can be described with the following concepts:

Police actions are the actions of police officers¹¹ as representatives of the Police, a state-operated law enforcement body exercising public authority:

- which are normally carried out verbally,
- have immediate executorial implications for the person subject to the action,
- are applied for legally defined and specified public purposes, such as the protection and maintenance of public order,
- may apply lawful physical measures to achieve their goals and
- result in a public administrative legal relationship between the Police force and the person subject to the measure.¹²

In this chapter, I will investigate the legal or non-legal resources that authorise the police officer to enforce a certain measure.

Only those authorities are entitled to take authoritative measures whose legally effective responsibilities (by a legal provision or legal act) make it necessary. The said police officer must have the necessary competence and scope of power to fulfil these duties. The broadest concept is duty and function; the scope of authority must be matched to these. The following is a generally accepted view on the above: “Duty expresses the social task of the public administration body, while specific authorisations, the specific possibilities to exercise public authority are granted by the scope of authority. The scope of authority covers all rights and duties necessary for the public administrative body to carry out its tasks. In the case of a public administrative body, rights and duties coincide.”¹³

It is obvious that this definition has withstood the test of time. The only addition regarding the tasks themselves was made in 2010. According to it, a distinction must be made between function and duty. “The interpretation of the term *functions* of public administration is very controversial. Many identify the concept of *function* as the concept of *duty* and use the terms interchangeably. *Function* – in my opinion – should be understood more broadly and more generally than *duty* and defines the essence of

11 Police officers are the officially serving members of the law enforcement force fulfilling law enforcement, crime combating and crime prevention activities directly. (Reasoning of Act XLIII of 1996)

12 The first version of the concept can be found in the M.A. thesis of the author written in 1999 and defended on 21 February, 2000.

13 BERÉNYI, MARTONYI, SZAMEL, SZATMÁRI: *Magyar államigazgatási jog* (Hungarian State Administration Law), Tankönyvkiadó, 1966. 160.; BERÉNYI, MADARÁSZ, TOLDI: *Magyar államigazgatási jog*, BM Tanulmányi és Propaganda csoportfőnökség, 1975. 106.; BERÉNYI Sándor, SZAMEL Lajos, BARACKA Róbertné, IVANCSICS Imre: *Magyar államigazgatási jog*, BM Könyvkiadó, 1984, 151.; FICZERE Lajos (ed.): *Magyar közigazgatási jog*, Osiris Kiadó, 1998, 132.; FICZERE Lajos – NAGY Marianna(eds.): *Magyar közigazgatási jog*, Osiris Kiadó, 2004, 139.

the social purpose of the organ. The term *duty*, however, marks the specific actions and tasks necessary to fulfil the functions.”¹⁴

The dictionary defines *duty* as the following: a moral or legal obligation. By *responsibilities* it understands “all specific duties and tasks which someone must carry out”, while *function* is defined as “operation, activity – in the field of technology and science – purpose and role.”¹⁵

Apparently, according to the rules of the Hungarian language both definitions are applicable, perhaps another definition could be more useful, which would lead us toward the direction of law enforcement activities and measures. With respect, I would argue with the view of my predecessors, as I believe that *responsibilities* clearly express a societal purpose, which the founders of the law enforcement body wish to achieve by operating it. For instance, in accordance with the Police Act of 1994: “Besides the duties defined by the Constitution, the Police are also in charge of border control, fighting terrorism as well as control defined by law with the purpose of crime prevention and intelligence.”¹⁶ And based on the relevant provision of the Constitution: “The core duties of the police shall be the prevention and detection of criminal offences, and the protection of public security, law and order and the order of the state borders.”¹⁷

I think these two provisions clearly state the duties of the Police. Or more precisely, the *responsibilities* and *function* of the Police as a public administration organ. In agreement with the ideas of Lajos Lőrincz quoted above, *function* means the social purpose of the organ, which is actually also its *responsibility*. *Duties*, however – not the *responsibilities* – are the specific tasks which lead to the social purposes defining its *responsibility*. The Section 2 of Article 1 defines these specific duties. By carrying out these duties and taking the necessary actions, the *function* of the Police can be established. The *scope of authority*, in turn, covers the legal authorisation and obligation necessary to fulfil the duties. It is important to clarify that *function* and *responsibility* should not require a *scope of authority*, as the latter is too general. This is exactly why it is vital to specify the individual tasks of the Police force.

The concept of *authoritative power* is connected to the *scope of authority* but has a clearly narrower meaning, as it denotes a potential forceful action necessary to have certain tasks implemented. It is obvious, however, that not all tasks require forceful action. Since it is a fundamental criterion of the efficient operation of public administration organs that the enforcement of the decisions of the organs cannot be made dependent on the will of the client or the person subject to this decision, the execution of certain tasks may require forcefulness; consequently, the organ must be granted the necessary authorisation. Naturally, forcefulness might often simply mean the application of lawful physical force and does therefore require competence. As a result, many public administration organs do not have this type of legitimisation but have the possibility to authorise another more competent and qualified organ – mainly the Police – to apply the necessary forceful actions.

14 LŐRINCZ Lajos: *A közigazgatás alapintézményei*, HVG-ORAC, 2010.

15 *Magyar értelmező kéziszótár*, Akadémiai kiadó, 2003.; *A magyar nyelv értelmező szótára*, Akadémiai kiadó, 1979.

16 Part 1, Section 1 of Act XXXIV of 1994

17 Section 1 of Article 46 of the Constitution of Hungary

Very briefly, I must also discuss the concept of *territorial authorisation*, which means the geographical, territorial authorisation to perform duties and to have a certain scope of authority. Should several public administration organs have identical and relevant scope of authority in a specific public administration issue or situation to act, the one will be entitled to do that which is territorially authorised.

An increasingly important field of law enforcement activities is transnational police cooperation and the law enforcement actions performed within its framework. This cooperation may range from a police officer from a neighbouring country patrolling at Lake Balaton to the collaboration of the police forces of several states detecting severe criminal offences. In order to have an undisturbed and legitimate collaboration, these joint efforts must be regulated.¹⁸

The above-mentioned concepts had to be clarified because they were vital for the understanding of the measures of public administration organs, thus the actions of the Police as well. Only those authorities can enforce measures that have the necessary scope of authority and the appropriate territorial authority. Naturally, a given legal system can make exceptions, but in general, the above is the rule. The above-analysed authorisation system requires the following supplementary points firmly connected to and based on statutory law:

“We tend to regard *legal authorisation* as the sole source of law enforcement power, as we understand law enforcement in its modern conceptual meaning, which goes back only about three centuries. If we consider continental Europe, we can identify the origins of this perspective even more accurately, as here the Police have been authorised by public law, and thus, the Police are one of the attributes of independent sovereign nation states.

Law enforcement power, however, has also another root, which is the *need of the community for public security*. Modern public administration can also be perceived as the fulfilment of the common needs of the community – by the political system – that cannot be secured by the individuals themselves or by the community without the assets of authorised power.

The third source of law enforcement power is *expertise, occupational skills and competences*. Two things distinguish a police expert from a lay person: the skill to identify threat and the competence to apply the techniques of lawful force. Not all threats are to be treated with the tools of the police. Only human conduct can be shaped by forcefulness, thus the competence of the Police covers only these conducts. Certain threats are not rooted in criminal offences but must be combated centrally with strength and unity (e.g. floods). As long as cooperation is the main attribute of this combat, the authority does not apply force. Should the obligatory cooperation be offended, however, lawful force can be applied, which does not differ from the usual forms of legal forcefulness concerning its judicial nature.”¹⁹

18 See in detail: NAGY Judit: *A közös nyomozócsoportok az Európai Unió tagállamai közötti bűnügyi együttműködésben*, PhD dissertation, KGRE 2010.

19 FINSZTER Géza: *A rendészet elmélete és rendészeti eszközrendszer*, NKE, 2013.

Hence, in addition to legal authorisation – see the literature on responsibilities, scope of authority and authoritative power – law enforcement power is also rooted in the community need for security. Besides, it is quite an interesting remark in the quoted work that professional competence is also a sort of authorisation to exercise law enforcement power. In short, these three sources must be present so that law enforcement power can be exercised.

Let us now analyse the legal authorisation in detail with the help of the Police Act:

Section 13 (1) Acting within his/her competence, the police officer shall take or initiate measures if he/she finds, or is made aware of, a fact or circumstance that requires a police measure. This obligation also applies in an emergency if the police officer is not on duty provided that he/she is in a fit condition when the necessity of taking a measure arises.

(2) The police officer shall take measures in accordance with the law without any bias.

(3) If the police officer is hindered by an object in taking the measure, he/she may remove or otherwise eliminate the object, and the Police shall be liable for any damage caused to any uninvolved third party through such action.²⁰

In other words, the police officer is obliged to act only if the above-mentioned criteria are met. The purpose of the action can only be derived from the Constitution and the Police Act. The police officer – the representative of the law enforcement organ – takes the necessary steps in order to meet the targets set for the law enforcement body. The law authorises and obliges the law enforcement body – the Police – by the regulation on its scope of authority to fulfil its duties. It is the law enforcement organ and not the individual police officer that has duties and a scope of authority. The police officer only executes the duties of the law enforcement organ, naturally, in the area it is territorially authorised for. Consequently, only police officers are entitled to act who are representatives of the police force that has the scope of authority and is territorially in charge. The legal provision quoted above also refers to these criteria.

It is a remarkable fact that the Police Act uses the term *authoritative power*, the definition of which is the following: “the field within a scope of authority or responsibility in which someone is entitled to exercise a certain right. It is in general the summarisation of rights connected to a certain kind of power.”²¹ My attempts to become more knowledgeable about this concept remained fruitless. The term *authoritative power* (or just power) does not appear in the Hungarian Catalogue of Legal Concepts, the Dictionary of Law, the Encyclopaedia of State and Legal Studies or in the 1903 publication of the Hungarian Pallas Lexicon of Law. Neither does the reasoning of Act XXXIV of 1994 contain the term, but it seems rather obvious from the single definition quoted above that the term *authoritative power* has essentially the same meaning as *scope of authority*.

Thus, should a police officer have the honour to teach at the Faculty of Law Enforcement at the National University of Public Service, he will not have the right or

²⁰ Section 13 of Act XXXIV of 1994

²¹ *Dictionary of the Hungarian Language*, Akadémiai Kiadó, Budapest 1979.

obligation to take police measures. In this case the entry in their license “entitled to take action and to carry a gun” refers to the fact that the police officer – in this case, the lecturer – has the necessary expertise and competence to exercise law enforcement power, but his/her legal authorisation is missing.

It is one of the conceptual elements of police measures that they bring about a public administrative legal relationship between the law enforcement organ and the individual subject to the action in question. However, upon the measures taken by a lecturer of the National University of Public Service, which law enforcement organ will be one of the parties in this legal relationship? The university has clearly no scope of authority to do so. Or based on the affiliation of the officer, is the Hungarian National Police Headquarters one of these parties? Is the affiliation, as one of the ways to modify the terms of service, suited to grant authority which is essential for the enforcement of police measures?

At the end of this chapter, we can only draw the conclusion that the representative of the law enforcement unit that has the necessary scope of authority and is territorially in charge is obliged and entitled to act.

Public security, public order and law enforcement

Several concepts have become more widely known thanks to those working with law enforcement. Thus, at this point, we must touch upon the concept of *law enforcement* and take our fair share of the dispute taking place between the advocates of the terms *public security* and *public order*. In my view, the *law enforcement* definition of Lajos Szamel has resisted all “attacks”, according to which “*law enforcement* can be defined as a state activity aiming to prevent the disturbance of public order and to combat directly offensive conduct and to re-establish order which was previously disturbed.”²²

We must emphasise that the author talks about *public order* and not *public security*.

Public security can be defined as the following: “Public security is a state in which the members of society – citizens, legal persons and associations of persons without a legal personality – are aware of and adhere by their rights and obligations and can trust that the state will take direct official steps against activities that impede the exercise and enforcement of rights. They can also trust that in a legally regulated procedure, the state controls and enforces the obligations lawfully prescribed towards them.”²³

László Salgó distinguishes the objective and subjective sides of *public security*: “Objectively, public security means an undisturbed state free from threats and offences. Subjectively speaking, however, it suggests the knowledge and sensation that our biological and physical existence and health, our property and liberty are respected, are not harmed or offended or threatened.”²⁴

Lajos Szamel understands public security as the following: “the integrity of human life, health, honour, freedom, property as well as the integrity and the unimpedability

22 SZAMEL Lajos: *A modern rendészet-fogalom és következményei*, Rendészeti tanulmányok 1(1992), 7.

23 NYÍRI Sándor: *A közrend és a közbiztonság*, Rendészeti szemle, 10(1994).

24 SALGÓ László: *Új típusú biztonság*, Candidate dissertation, KJK, 1994.

of the operation of the state and its institutions, with special focus on the protection of these legal interests from crime and offences.”²⁵

Géza Finszter proposes a two-fold approach to public security: First, about the normative concept of *public security*: “The normative concept of public security is a state goal which is to be reinforced by the executive power but is also a social value recognised by law, which must be protected even at the cost of the restriction of fundamental human rights.”²⁶

The material concept of *public security* is defined as the following: “We obtain the material concept of public security by depicting public security as the combination of social contexts. This yields the concept of public security as it exists and can be experienced or as individuals can suffer from its absence in everyday life.”²⁷

Summarising the two concepts Finszter claims that “In constitutional democracies, public security cannot be more or less than a state goal for which we must incessantly work for without turning security into an enforceable subjective right and without security becoming an absolute reality for anyone to reach. As a state goal, public security is in close connection with the criminal legal protection of social values.”²⁸

The Constitutional Court has also attempted to define public security, but quite reasonably, they stated in advance that “the essence of public security, its relation to public order, internal order just as much as the conceptual definitions of the latter terms are subjects to academic disputes.”²⁹

Following this, they issued the following definition: “Public security is an essential criterion of the rule of law, and as such, is a constitutional value in general and a constitutional goal.”³⁰

Some years later, the Constitutional Court referred to the above concept without having created a new concept though.³¹

Prior to the investigation of the concept *public order*, I would like to remark that István Szikinger is of the opinion that *public order* and *public security* are identical concepts.³² Since I disagree with this statement, let us explore some of the definitions regarding *public order*.

Sándor Nyíri believes that “Public order – while not giving an absolutely accurate definition – is the antonym of anarchy and represents order in a judicial sense. It assumes the a jurisdiction that includes public interests as well as the presence and operation of a public administration, executive power and jurisdiction that are able to enforce the conducts prescribed the legal provisions.”³³

If we read this definition only superficially, we might come to the conclusion that the two terms *public security* and *public order* mean the same thing. If we read it more

25 SZAMEL Lajos: *op. cit.*, 6.

26 FINSZTER Géza: *op. cit.*, 37.

27 FINSZTER Géza: *op. cit.*, 42.

28 FINSZTER Géza: *op. cit.*, 42.

29 Decision of the Constitutional Court 13/2001. (14 May)

30 Decision of the Constitutional Court 13/2001. (14 May)

31 Decision of the Constitutional Court 44/2004. (23 November)

32 SZIKINGER István: *Rendőrség a demokratikus jogállamban*, Sik Kiadó, 1998.

33 NYÍRI Sándor: *op. cit.*

carefully, however, we must notice a significant difference: while public security denotes an ideal state of affairs, public order describes reality and the current state of affairs. Lajos Szamel regards public order as legal order which is, however, not identical with the complete law: “All unlawful conducts offend the judicial system but not all of them offend public order, while disturbing public order is also an offence to the law.”³⁴

Public order focuses on a specific content. It is clear that public order can be offended by a number of different conducts, which appear in real time. Offence to public order – a good community order – is independent of when the citizens become aware of it. We must therefore distinguish a certain requirement and a criterion describing an actual state of affairs. If we investigate the definitions of *public security*, we will encounter a system of criteria, a regulated and ideal state – practically a utopia – which would make the entire community content, though it might be a little boring. To my mind, Géza Finszter’s definition clearly points out that public security is a requirement, a state goal, which must be worked towards by law enforcement organs as if the goal could be achieved.

Public security is therefore a requirement. As opposed to public security, public order demonstrates to what extent society, its members and organisation have been able to achieve this goal. Thus, public order is the measure of public security. If we accept this – if public security is a requirement – we cannot protect it but can only strive to achieve it as much as we possibly can. If, however, *public order* reflects the current state of public security, we can definitely protect and strengthen it. This is why I believe public order to be a key concept in law enforcement.

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34 SZAMEL Lajos: *Jogállamság és rendészet*, Rendészeti szemle, 3(1993).

ABSZTRAKT

A rendészet alafogalmainak egyfajta értelmezése magyar jogi környezetben

BUZÁS Gábor

Van-e értelme a „rendvédelem” kifejezés használatának a „rendészet” helyett vagy mellett? Mit jelent egyáltalán? Véleményem szerint teljesen fölösleges és zavaró. A második részben a hatáskör és a hatósági jogkör összefüggéseit vizsgálom mint a rendőri intézkedés jogalapját. A harmadik részben a közbiztonság és a közrend fogalmának különbségeit, értelmezési lehetőségeit elemzem.

Kulcsszavak: rendészet, rendvédelem, feladatkör, hatáskör, hatósági jogkör, közbiztonság, közrend