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Stiernstedt, Peter ORCID: <https://orcid.org/0000-0003-0824-8396> (2019) Privatizing police discretion—‘private security criminal investigations’ in Sweden. *Policing: A Journal of Policy and Practice*. ISSN 1752-4512

<http://dx.doi.org/10.1093/police/paz074>

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Privatising police discretion – “Private security criminal investigations” in Sweden

Abstract

This paper highlights the commodification of private security criminal investigations in Sweden. Today, the reach of the private security industry extends to almost all responsibilities traditionally reserved for the police. Regulation is constantly trying to catch up with the ever-changing scope and nature of private security. When looking at private security industry regulation in the European Union, Sweden enjoys one of the most comprehensive frameworks. There are, however, gaps and private security criminal investigation is one which, if left unchecked, could possibly lead to a dangerous commodification of justice and decreasing trust in the police. In this article, these issues are explored through interviews with a number of stakeholders. The interviews reveal that the potential danger lies in circumstances whereby police are, for various reasons, forced to turn down investigations. Citizens and organisations alike then have the opportunity to proceed with the investigation through a private security service provider. Presented with a complete substratum for prosecution, the police are incentivised to proceed. Thus, police discretion as to whether or not to proceed with an investigation is effectively for sale. The paper consequently calls for a revision of Swedish private security regulation.

Introduction

When exposed to a crime one can turn to the police. The police then investigate the event to determine if there is sufficient evidence to call for prosecution. This is the chain of events in the criminal justice process in Sweden, which is similar to many other liberal democracies around the world. The entirety of the criminal justice process rests with the state, at least from a traditional perspective. Yet lately, the private security industry has taken on more and more responsibilities that traditionally were reserved for the state through the police (See Button and Stiernstedt, 2017). These movements can be attributed to a number of new policies, which includes the ideas of New Public Management that permeates current Swedish governance ideology (Hall, 2013). This could be a reflection of a more general inclination towards a neo-liberal way of state governance (Whyman, 2018). While the causes of these movements lie beyond the scope of this paper, one effect in particular constitutes the focal point for the following examination. That is, when exposed to a crime one can turn to the police but when they for some reason fail to provide the services, and by extension justice, that one is entitled to – turning to the private sector is an option.

There are many plausible explanations to the driving forces behind the growth of the private security sector, but part of it can arguably be seen as a failure of state with privatisation and responsibilisation efforts as a natural response. Though, Garland (2001) convincingly argued for the successive responsibilisation of security in society, the logical conclusion is not to totally alleviate the state from responsibility but rather “an enhanced network of more or less directed, more or less informal crime control, contemplating and extending the formal controls of the criminal justice state” (p. 124). As will be discussed the state have a responsibility to provide security, at least from the perspective of Swedish citizens (Medieakademin, 2019). Thus, while a

comprehensive exploration of state responsibilities vis a vie society is far beyond the reach of this paper, the state is considered to at least have some responsibility. Similarly, there is a debate on whether private security is “good” or bad”, which in its entirety too lies beyond the scope of this paper. It is nevertheless important to state that this research axiomatically treats private security as a force for good. Nonetheless, just like any other force for good, it needs checks and balances, and just as a functioning state needs law the private security sector needs regulation.

At first glance the public-private dichotomy may seem easily distinguishable where public entities are funded by and/or part of the state and private entities are operated by companies for a fee (Button, 2019). In 2007 Ian Loader and Neil Walker wrote the seminal book *Civilizing Security*, they argue that security can have an instrumental role in promoting a more democratic and broadly civilised relationship between individuals and between them and the state (Loader and Walker, 2007). This is based on two main assumptions, that security needs civilising and that security itself is civilising. The state has a monopoly on policing and exacting justice which, even in the most liberal states, can be a major threat to the fundamental rights and liberties of the citizens in a democracy. To avoid this threat the state itself must be civilised. The second, and contextually more relevant, assumption is that security is civilising. Individuals not trusting the state and its governance can have detrimental effects on society (Rothstein and Uslaner, 2005; Rothstein, 2012). When the boundaries between public and private are unclear, as increasingly in the case of private security, the trust in either becomes intertwined and indivisible.

Empirical surveys have found that generalised trust is higher in Nordic societies than in other European societies and the United States (Kouvo, 2014). This includes trust in the police (Hough et al., 2012) as well as private security (Saarikkomäki, 2017). Trust is promoted by a sense of

security, and thus, a public good promoting a democratic society. Therefore, the state needs to be subject to democratic scrutiny and legal control of its capacity to police and exact justice. Loader and Walker (2007) however, argued that “it cannot be assumed that the state remains pre-eminent in either authorising or delivering policing” (p. 22). In Sweden over the last decade this has been confirmed by an increase in private security providers, i.e. non state-actors, providing policing and justice to fill the gaps where the state is lacking (BYA, 2015). While the gap in research for this area has been highlighted (see eg. Button, 1999; Gill and Hart, 1997) and thus known for quite some time, from a Swedish Perspective little has been written about the concept of private security criminal investigations.

The need to clarify and define the role of private security investigative services was stressed in the latest report of the Inspection Unit of the Swedish Police Authority (2018). Despite the fact that private security investigators technically do not perform criminal investigations, in reality for some parts of the criminal investigation (primarily the onset) the distinction is semantic and as will be explored the differences do not justify another locution. This paper, therefore, explores the nature of private security criminal investigations, the possible implications and the role of regulation. It does so by first providing context in a consideration of the legitimacy and accountability of the private security sector. The next section describes the investigative process from a theoretical perspective to provide an understanding of how the process is designed to work. This leads to a number of questions of how this translates to reality and thus the subsequent section describes the methodology devised to shed light on those questions. Then the findings are presented and discussed, particularly regarding the lack of regulation, before the paper is concluded.

Private security – Legitimacy and accountability

The growth, not only in size but also in role of private security providers can be seen all over the world (Shearing and Stenning 1982, Cunningham et al. 1990, Button and Park 2009, Palmer and Button 2011). In Europe where there has been a number of studies on various aspects and nature of the private security industry, it can be seen that private security providers have taken a prominent role in the provision of policing (Jones and Newburn 2006, Ocqueteau 2006, Van Steden and Sarre 2007, CoESS 2011, Button and Stiernstedt, 2017). The involvement in policing, together with a range of other factors such as the use of force and exercise of legal powers, have led to special regulatory frameworks for the private security sector (De Waard and Van De Hoek 1991, De Waard 1993, 1999, Button 2007, CoESS 2011, Button and Stiernstedt, 2018). These frameworks are constantly reformed and changed (Scheerlinck, 2019), partly in an effort to keep up with the societal changes driving the expansion and evolution of the private security sector. Recent research, comparing the regulatory systems of the Member States of the EU, puts Sweden overall in 5th place (Button and Stiernstedt, 2018). Notably, when examining the underlying data, the score for *societal foundation*, i.e. the actual implementation of legislation into the private security industry put Sweden in first place (ibid. p. 407). Hence, the deduction is that if there is regulation available the private security industry in Sweden would adhere to it, but what about areas where there are none? One such area, and the focal point of this paper, is private security criminal investigations.

In a wider context, legitimacy is power that is perceived as morally justified (Cavadino and Dignan, 2002). More specifically, Garland (2001) described changes in the culture of state control, one of which is an expansion of the infrastructure for crime prevention and the commercialisation of crime control. In line with Garlands (2001) predictions and in line with the findings of this research, there

is a rise in criminal investigations provided by the private sector in Sweden. Although private security providers operate under a legal framework defined by the state this does not mean that they are operating under state direction. The private security sector has arguably emerged partly because corporations, organisations and citizens have decided to use it (Shearing, 2004). In short, the police operate under a state mandate, and are accountable thereto (McLaughlin, 2007). In contrast the private security sector work under a hybrid public/private mandate. This loosely defined mandate raises questions about both legitimacy and accountability. With their historical legacy and symbolic power, the police are typically seen as more legitimate than private security (Loader and Walker 2006, 2007; White 2012). This is true also in Sweden (Sifo, 2019). White (2012) however, notes that people do not usually want private security and prefer the public police. The extent of generalisability of this conclusion is uncertain but nevertheless calls for attention being paid to how the private security sector would legitimise their services.

The accountability of the private security sector is obfuscated by the increasingly blurred lines between the police and the private security providers (see. White and Gill, 2013) and in some respects a convergence between public and private risk and security (see Williams, 2004). Historically, the lack of accountability has been one of the central arguments when discussing the control of the private security sector (Johnson, 1992; George & Button 1996; Newburn & Jones 1996). More recently, several scholars have examined why the market for security services is so entwined with the symbolic capital of the state (see e.g. White, 2010, 2012; Abrahamsen and Williams, 2011; Thumala et al., 2011). These scholars identify two reasons for this. One, that in an effort to reduce the dissonance between economic values this appeals to the universality and equity associated with the state. And two, that it makes good business sense. “Through their appropriation of the symbolic capital of the state, these sellers are in effect reinserting the

moral values of buyers back into the logic of universal commodification—they are reshaping the goods they supply in line with the nature of the demand.” (Loader and White, 2018 p. 1404). It thus seems that Stenning and Shearing’s (1979) argument forty years ago that “if private security personnel are in reality no different from ordinary citizens, a law which treats them alike seems appropriate. But if in reality they are not, and the law still treats them as if they were, it becomes inappropriate” (p. 263), is still valid today. Because it is not hard to imagine a conflation between the accountability of the provision of state policing and the services provided the private security sector. For private security criminal investigations this would not be a cause for concern if they were all carried out ethically and within the law, where the former pose dilemmas addressed by other scholars (see e.g. Loader and White, 2018) but not further explored here. Nonetheless, in reality many private security criminal investigations do not lead to criminal or civil proceedings and the legal constraints on gaining information are arguably lower than the police are faced with. This, and other factors such as financial strength, physical resources and specialist competencies, enable some private security providers to undertake investigative activities that the police could not.

The investigative process

The official position of the Swedish criminal justice system is that crime should be prevented (Ministry of Justice, 2015), and when it is not, society and the state should provide some sort of restitution. According to the Police Act the duties of the Swedish Police Authority are to prevent and detect crime, maintain public order and safety, and investigate crime. In Sweden the private security industry provides these services too, and to understand how this works specifically for criminal investigations one must theoretically understand the process from a traditional state-oriented perspective.

The start of the criminal investigation

The investigative process starts when a crime is brought to the attention of the police, as it then must be investigated. This is called a preliminary investigation (förundersökning) which in essence and practice is synonymous with a criminal investigation (brottsutredning) (Swedish Prosecution Authority, 2019). For simplicity the paper will use the latter formulation. The criminal investigation process is a joint effort between the Swedish Police Authority and the Swedish Prosecution Authority, for simplicity here referred to as the Police and the Prosecutor. Until a specific person (or persons) can be suspected of a crime, it is the Police that lead the criminal investigation. From the point of identifying a suspect the lead of the criminal investigation is turned over to the Prosecutor¹. Note that as a result of the “Limitation of criminal investigations” introduced in 2013 in an effort to optimise police resources, investigations of minor offences can either be discontinued or led, from beginning to end, by the Police (Swedish Police Authority, 2018). The purpose, in any case, is to ascertain any suspects and to determine if there is enough evidence to prosecute.

During the criminal investigation

During the investigative process the Prosecutor constantly follows the developments of the investigation and takes decisions as to what measures are deemed necessary. In cases of serious and/or complex offences the Prosecutor can take an even more active role and participate in, for example, reconstructions of the crime and sit in on hearings and interrogations. Primarily, however, the various activities of the criminal investigation are conducted by the police who inter alia question suspects, interact with victims, examine witnesses and collect evidence. These activities

¹ Under certain circumstances the prosecutor can lead the investigation even if there is no suspect.

may also include coercive measures executed by the police such as arresting, detaining, searching of premises, seizing of assets, and intercepting phone calls and e-mails. With the exception of arrest, which in Swedish law on citizen's arrest is available to anyone, these are available exclusive to the police and not to the private sector. How the criminal investigation is undertaken in more detail are subject to the type and seriousness of the underlying crime and beyond the scope of this paper.

The end of the criminal investigation

At the end of the investigative process, when the criminal investigation is concluded, the Prosecutor decides whether or not there is enough evidence to prosecute or if the investigation should be discontinued. Importantly, the decision to discontinue the investigation or not to prosecute can be reopened in the light of new cause and/or evidence. Thus, if the Prosecutor is presented with cause for revision, e.g. the discovery of a procedural error, the investigation may be reopened. Further, there are no restrictions on how that evidence is produced. The Swedish Code of Judicial Procedure stipulates the free sifting of evidence in the judicial process. This means that all evidence, regardless of origin, is allowed. What follows is a free evaluation of that evidence where the evidence, even if illegally obtained, should be judged on its own merits.

Private security and the criminal investigation

There are a number of possible entry points, at the start, during, or at the end of a criminal investigation, for the private security sector to provide services. The first point of contact with a private security provider may actually occur before anything is reported to the police. This could be of interest if the client for any reason is uncertain if an official criminal investigation is the best

or desired course of action. A crime brought before the police by law has to be investigated, whereas the private sector, with some exceptions², is subject to no such law. Note that the private security sector also provides a number of other investigative services not necessarily classified as criminal investigations; this paper focuses only on the latter. That includes investigations into irregularities (oegentligheter) that once discovered and investigated may or may not prove to constitute a crime.

The client can choose if and when to involve the police. If the police subsequently decide to initiate an official criminal investigation the private security provider may assist in identifying and finding suspects, as well as collecting and collating evidence. This is particularly relevant since all evidence is allowed in the Swedish judicial process. Allowing free sifting of evidence is intended to create equality before the law and ensure fairness. This, however, could be an opportunity for private security providers to bend or even break the law in their pursuit of evidence to the benefit of their client's interests. Whether or not this bending or breaking leads to another criminal action against the private security provider is another question that will not affect the evaluation of the evidence for the client's case. Even if not transgressing the law the private security provider may have far greater resources (manpower, specialist competencies, technology, etc.) at its disposal than the police – as long as the client pays for them. Taken together there is ample opportunity for the private security sector to increase significantly the possibility of having their client's investigations leading to prosecution.

² Exceptions include crimes against children, crimes against humanity and war crimes.

Even in the end of the investigative process, if the prosecutor decides to discontinue the investigation, the private security provider may continue the investigation in an effort to produce new evidence to reopen the investigation formally. Further they can scrutinise the official procedures that have been undertaken to look for any procedural shortcomings and bring them to the attention of the prosecutor who then may have to reopen the investigation to comply with criminal investigation rules and regulation. Private security companies in Sweden need authorisation from the Regulator, which in this case is made up by the various County Administrations (Länsstyrelser). Each is responsible for a particular region and the private security companies therein. Inspections to ensure that the companies are following regulation are done every other year. There is, however, no special regulation for criminal investigation services provided by the private security sector. Special regulation would imply anything that directly addresses the criminal investigative process, as opposed to sector wide regulation that encompass the private security sector in general. Thus, even though Sweden enjoys one of the most comprehensive regulatory frameworks when it comes to the private security sector in general (Button, 2007; Button and Stiernstedt, 2018), criminal investigations are excluded from scrutiny. The questions arising from this include, what is the nature of investigations provided by the private security sector in Sweden, what are the implications and what role does regulation play in the way forward?

Methodology

In an effort to answer those questions the following research methodology was applied. The research underpinning this paper can best be described as exploratory as there are few studies on the topic from this particular perspective. This means that several research methods were employed starting with a traditional literature review, followed by a number of interviews with key

stakeholders and expert group discussions. The literature review followed a traditional approach with the three main objectives to; first, survey the literature on the topic, second, critically analyse the information gathered, and third, synthesise that literature into the paper. This was an ongoing process throughout the research process and as data was collected and analysed, this informed the gathering and review of further literature. This approach, where data analysis informs subsequent data collection is useful in exploratory research projects. This and the purposive sampling of initial interviews has roots that can be traced back to Grounded Theory (see e.g. Glaser and Strauss, 1967, Charmaz, 2006; Corbin and Strauss, 2008), which arguably, too, is an exploratory method. The strength of this approach is using multiple and diverse sources of information of a rich and nuanced picture. Another double sided effect of this approach lies in the constant comparative nature of the analysis where new data is constantly compared to previous in an effort to reach a higher level of abstraction. The flip side, however, is the difficulty with which single interview quotes as illustrative representations of the conclusions can be drawn out from the data.

The interviews were both formal and informal. In the case of the latter they were conversations and correspondence not necessarily initiated or specifically intended for the purposes of this research. The formal interviews were semi-structured and were based on an interview guide drawn up after an early literature reading and review by the academic expert group. Interview questions and prompts asked participants about, procedure, challenges and implications. Where *procedures* were intended to outline practical aspects of private sector investigations. The *challenges* intended to outline any issues, practical, moral, regulatory, financial or otherwise, to doing these investigations. And the *implications* as a more theoretical perhaps even esoteric account of what both the current and future effects of the investigations are on an individual, organisational and societal level. Interviews were focused by an open stimuli approach, i.e. beginning with some open-

ended questions. These questions were used as a starting point for the development of a more discursive style of interviewing. This interviewing style is suitable with participants that are professional, articulate, and will defend their views as well as making their experience understood (Furniss et al., 2011) From a qualitative research methodological standpoint all interviewees can be seen as key informants, being expert sources of information in their respective area.

There were seven formal and recorded interviews lasting about 90 minutes, two with private security service providers, two with police representatives, two with Swedish private security regulators, and one with a trade organisation representative. Some of the informal interviews included, private security investigators, regulatory administrators, ex-police investigators, and journalists. The formal interviews were carried out between April and June 2019. Informed consent was provided along with assurances that anonymity would be maintained, note that this anonymity also encompasses the informal participants. Further, in accordance with the research ethics protocol, interviewees and quotations have been anonymised and in-text participants are only identified categorically. Data collection and analysis was managed using the Nvivo software to facilitate the systematic categorisation and identification of themes and their interconnections.

At the onset of this research an academic expert group was established. The purpose of this expert group was on one hand to ensure scientific rigour and research relevance, and on the other to support and advise the research process by assisting in the interpretations of the findings. The use of the expert group was not to find (or force) consensus as a way to discover and reach conclusions but rather as a guide throughout the research providing insightful and useful comments (see Landeta, 2006). Defining an expert is a contested endeavour (see e.g. Quast, 2018) but since the expert group's statements were treated as advice rather than absolute dictums the selection criteria

somewhat loosens. Nevertheless, all three of the expert group members are criminologists with a PhD in the humanities/social sciences and all held the position of professor at the time of the research. The participatory nature of the expert group provided not only quality control, but also insights from an academic perspective, in what can best be described as a validation process. Thus, just as the last interview went back to a previously interviewed stakeholder for member-checking to assess whether the analysis was an accurate representation of their accounts and elicit further complementary information, the expert group served a similar function. From a constructivist perspective this type of member checking and validation is perhaps the most developed form of assessment as this enables the participants to check the rendering of data (Furniss et al., 2011).

Findings

The findings revealed a number of relevant points to clarify the nature of private security criminal investigations, their implications and the role of regulation. The analysis first led to an understanding of the reasons to choose to opt for a private investigation in the first place. The research then examined the procedure of a private security led criminal investigation and the advantages thereof. This further led to a consideration of the thresholds to access the market of private security criminal investigations as well as some of the possible disadvantages of using these services.

Reasons for using private security

There are two main reasons to use a private security provider for a criminal investigation. Either to seek justice or to seek control. The first means that if you are the victim of a crime and simply seek justice the chance of getting that justice is increased by utilising private security services. The

Police and Prosecutor are constantly striving to balance pressure, political, societal and internal, to achieve certain objectives with limited resources. The pressure dictates that the prime objective is that as many crimes as possible need to be resolved which is juxtaposed by a finite number of resources. This leads to a propensity to discontinue the case if it is not considered resource effective, i.e. a close scrutiny of the likelihood that a case will be solved with the resources available. This permeates all stages of the investigative process, all the way from the reporting, to the preliminary investigation to the decision to prosecute. Consequently, unless the injured party is familiar with the criminal justice process it is likely that justice may not prevail. Not because the case is unprovable or that there are no suspects, witnesses or victims – but because the Police and Prosecutor do not have the resources to properly ascertain that. Both Police and Prosecutor attest to the situation as both frustrating and demoralising.

Consider the following three hypothetical examples. First, you have just been a victim of crime. You call the police and they arrive to the scene. The police do not necessarily have your interests at heart and have little concern for any reputational damage that the investigation may have. Further, if they do not consider that the case can be solved with the resources they have, it is likely that it will be discontinued. Whereas a private security provider would have only your interests at heart and could theoretically muster all the resources that you are willing and able to pay for. It should be noted that the private security providers uniformly attest to being fastidious in establishing both the purpose and the goal of their client's request for services. Nevertheless, there was no available documentation as to the quality control of that process. It is considered good for business to signal ethical behaviour as part of a Corporate Social Responsibility, but these intentions may have little real effect if not standardised and regulated.

Second, you go to the police office and sit down to leave a report of a crime that happened some time ago and that you now have decided to report. Not being familiar with the police procedures there is a chance that you do not provide the “right” information necessary to bring this case to light. For a layman the fact that there has to be an investigation is easily misunderstood and interpreted as that there has to be an adequate investigation. Again, the police officers taking the reports have an agenda not necessarily aligned with yours and may or may not choose to ask the correct questions to elicit the “right” information. Moreover, even if they do you may not have prepared your narrative and fail to provide it in a cogent manner enough for an investigation to proceed. Because, for minor crimes the police are allowed to handle them from beginning to end without involving the Prosecutor. That may mean that it begins and ends right there and then, with the police officer taking the report. On the other hand, by using a private security provider your narrative can be prepared beforehand. The helpful and experienced investigator (often with a background and extensive knowledge about police procedure) will create a report that will be more likely to result in opening an investigation.

Third, you use the internet to file a crime report. In an effort to increase police reporting accessibility the Police provide an online function for reporting crime. Nonetheless, here even more so you are left to your own devices in terms of being able to provide the necessary information. While there are a number of elements in crime reporting that can easily be formatted into tick boxes, drop-down menus and even free text boxes, that help and guide you through the reporting process, there are still potential drawbacks. If not ticked, selected and described correctly, the outcome may not result in an investigation. Subsequently, private security providers strictly advise against their clients using this service and instead to opt for a more formalised report handed in by

the provider on behalf of the client. Thus, ensuring the quality of the report and subsequently increasing the likelihood of correct processing by the police.

The second reason to utilise the private security sector for investigations is control. From an organisational perspective, this is not a novel discovery (see e.g. Gill and Hart, 1999) and in the Netherlands Dorn and Meerts, (2009) outline the advantages of private, confidential and controllable private security solutions. In the Swedish context, to an extent, the concept of control seems to have grown to also encompass civil society. In the case of criminal activity, regardless if it is only suspected or actually experienced, you want to proceed with an investigation that you as a client effectively control. Control, not so much in terms of outputs but, more importantly, in terms of outcomes. Although the clients seek information and evidence, they can control the outcomes which include the choice to continue formally with civil or criminal proceedings. Alternatively, the client preserves the data and may choose to informally deal with the matter, internally for an organisation and privately for a private citizen. For example, “organizations that may be subject to some form of fraud or other white-collar crime call investigators so examine any concerns that they may have and make a report as to whether or not there is evidence to substantiate such concerns” (Gottschalk, 2016, p.1), and thus maintain control of the outcome. It should be noted that the majority of clients are reported to be corporations or organisations and while the private citizen client exists, they are rare. Nevertheless, it is this element of control that gives the private security provider an edge over the standard police route. Process control thus provides the client with a degree of control as to whether or not to proceed with civil and criminal proceedings, and a way to manage any reputational risks, information leakages, possible lawsuits, and share price fluctuations, etc.

Thresholds to market access

Irrespective of in pursuit of justice or control it may be advantageous to use a private security provider to assist in the investigative process. So why is it that these services are not always used, or at least in a far greater extent? The research data provided two distinct answers, knowledge and price. First of all, it is impossible use a service of which you are not aware. While the use of private security services in general is on the rise the situation for criminal investigations is a bit different. The private security providers report growth in this area too but not so much from an increase in the number of clients as in current clients using the services more. Further, the clients that do use these services are almost exclusively large corporations or organisations. This is explained by a lack of knowledge of not only the provision of the services themselves but also what they actually entail. That they “go beyond the hiding in the bushes trying to get photographic evidence of infidelity” to “more advanced and rigorous investigations than the police normally provide” (Provider). Yet, this does not explain why large corporations and organisations has knowledge of these services and chose to use them, and why SMEs and private citizens does not. The price, however, provides part of the answer.

The lack of profound knowledge of the private security services provided within the realm of criminal investigation may be an issue, but one that is most likely more or less evenly distributed among, corporations, organisations, SMEs, NGOs and private citizens alike. Wealth is not. There is a substantial price associated with these services and while it is believed that many more SMEs and private citizens want to use these services, they simple cannot afford them. In some cases, the underlying cost is high too, in for example some technological solutions, but normally the underlying resources is manpower and subject to traditional supply and demand predicates.

The response from the private security providers is that the price issue could be addressed by the insurance companies. It is suggested that the standard home insurance would have cover for private security services should they be needed. One private security provider state that there are currently ongoing discussions with an insurance company on how to incorporate their services in the various insurance packages. Another private security provider has a more cautious take on this solution and views it as a possible complementary solution to enhance market access, but not as a complete solution. There is, however, no tangible explanation of what a complete solution entails.

The issues of knowledge and cost form two thresholds to market access, and while the private security industry seems to recognise the factors there is no clear strategy on how to address them. In a market economy given the importance of knowledge, particularly if interpreted as marketing, and price, based on generally low costs, this is somewhat surprising. Even more so since the interest to overcome these thresholds seem rather high or at least well-articulated, whereas the actual strategies and remedies articulated in the research data are few.

Lack of regulation

A third threshold that was discussed more tentatively throughout the interviews is the total lack of regulation for the private security provided criminal investigations. Internationally there has been a strong case for regulation of private security investigations for quite some time (Button and George, 1997) and the case still remains (Button, 2019). With a long tradition in Europe of the regulation of private security investigations (Button, 1998), Sweden despite its generally strong regulation of private security (Button and Stiernstedt, 2018) seems to be the exception. The consequence of this is that the private security providers are left up to their own devices to orient

their services within an unregulated landscape. The private security providers do not see this as a problem, and as a solution to the possibility of poor services due to an unregulated environment propose a *caveat emptor* approach. This is similar to the Thatcher era conservative approach arguing that the standard of a service is a matter for the purchaser, their prerogative and subsequently their risks (Button, 1998). When the Regulator is asked to comment upon this it became clear that the lack of knowledge and insight into what criminal investigation services the private security companies provide extends also to the Regulator. As expressed by one regulatory representative, “it is clear that we do not have the whole picture of what goes on in reality”. In theory the Regulator has the power to revoke the authorisation of a private security company, but the second representative stated that, given the current regulation of private security criminal investigations, “even if we knew it [that investigative activities are possibly in breach of regulation] is uncertain how much we actually could do” (Regulator).

One argument for the lack of regulation not being a major problem is that even if there were comprehensive regulation some providers would slip through the regulatory net and it would “only be the ones that subjected their activities to the scrutiny of the Regulator that would be controlled” (Provider). The impression conveyed is that currently there are a number of recognised providers of private security criminal investigations and these operate both ethically and according to the law. Other, more unscrupulous private security providers would not be largely affected by more stringent regulation. None of the private security providers had an official code of conduct that addressed the ethics of criminal investigations. Both, however, claimed that they pay close attention to the purpose and goal of their clients, but recalling the case of Catherine Ayling who was murdered after located by private investigators (The Times, 1994), this seems to be difficult without any code of conduct or formalised process to assess the legitimacy of their client’s claims.

Consequently, if client legitimacy decline, by extension so does that of the private security provider. Regulation, however, according to the private security providers would not remedy the lack of legitimacy. It would nevertheless possibly facilitate cooperation with the police, which is a point where the private security accounts harmonise with that of the police investigator.

Clients often come directly to the private security providers without previously having been in contact with the police. As previously discussed, this could be the result of a desire for outcome control but even in the case of a more prosecution-oriented approach the clients still prioritise the private solution. The answer to this is that “the police won’t do anything anyway”, which is a statement that both a Provider and a police investigator made independently. The police investigator went on, however, to say that this is not an ideal situation and it is not that the Police do not want to help but that they are unable. The inability is explained by lack of resources and pressure to deliver results. Here regulation could play a role in formalising the cooperation between the private security sector and the police. The findings thus reveal that private security criminal investigations may provide a redress for justice in acting as an auxiliary to the state driven investigative process. It can also provide the client with a greater control of the outcomes, which for some does not always mean that it has to end in prosecution. While prosecution is the logical conclusion of a state-ran criminal investigation, it may not always be in the state’s best interest that it does. Examples of such situations are not provided. Thus, the main issues established by this research surrounding private security criminal investigations in Sweden are; the lack of market accessibility, due to lack of knowledge and a high price for services, and the lack of legitimacy and accountability most notably embodied by the absence of regulation.

Discussion

This paper set out to answer questions about the nature of investigations provided by the private security sector in Sweden, the implications thereof and what role regulation may play. What follows is a discussion underpinned by the data and findings of this research, in a shorter discussion around the issue of accessibility and a longer one around the lack of regulation. This is not to imply that the latter is more important but rather that this is substantially where the data led.

In terms of market accessibility providing security services is complex. Loader and White (2018) convincingly argue the labour of private security practitioners as suffering from “incomplete commodification”. Accepting this connotation would sort (some of) the services provided by the private security sector with, for example, the trade in infants, human reproduction, sperm, eggs, embryos, human sexuality, human pain and human labour (Radin, 2001) – stressing the complexity. The research data underpinning this paper provides little guidance on how to overcome the accessibility threshold. Further, even if the issue of accessibility would be overcome, the assumption that the private security services can straightforwardly be readily transformed into vendible commodities is fraught with difficulties (Rigakos, 2016). Rather, it illustrates the tension between economic and moral incentives governing the provision of some private security services. Not least because of the criminogenic nature of the private security environment (Button 2008; Prenzler and Sarre, 2008) incentivising fraud and corruption, excessive use of force, false arrest and detention, trespassing, invasion of privacy and harassment. It is for these reasons that the call for appropriate regulation must be reiterated (See e.g. Prenzler and Sarre, 2014)

Effectively, the Swedish private security sector is regulated by the Swedish *Police Authority's instructions and general advice on private security companies and employees* (PMFS, 2017). Under Section 4 *Types of activities* it describes that in order to establish the boundary between the activities of the private security company and those of the police the private security company should describe their activities. From a reading of Swedish law, it is not clear exactly what this description entails but it is intended for the purpose of review by the regulator to get and maintain authorisation as a private security provider. Further, Section 4 states that from a general point of view it should be considered inappropriate for a private security company to produce evidence against a person who is already suspected of a crime. This also includes activities to investigate persons that are suspected of a crime. The final paragraph, however, states that it is not inappropriate for a private security company to conduct investigation to determine if there are criminal activities going on at all.

Apart from the ambiguity about what the stipulated description of activities should entail there are at least three things noteworthy about this section. First, investigative activities are considered inappropriate but not illegal. Second, the advice not to produce evidence applies from a *general* point of view, without providing a definition on what a *particular* point of view may be. Third, as long as there is officially no suspect, the private investigation may continue. Thus, these two paragraphs of a 100-page long document describing the private security regulation, with numerous extensive appendices describing other areas of activity such as key management and executive protection, effectively amounts to no regulation at all.

Regulation of the private security sector is about control and management such that it facilitates the fulfilment of legitimate goals and should be seen as “an intermediate process between

prohibition and *laissez-faire*” (Prenzler and Sarre, 2014, p. 857). The findings of this research found nothing that would point towards arguing for a prohibition of private security criminal investigations but enough issues to advocate for a lessening the current laissez-fair approach by regulatory inclusion. There are arguably three approaches, or levels to address, when regulating the private security sector. The organisational, practitioner, and activity level. The *organisational* level addresses the structure, finances and governance etc. of the private security company. The *practitioner* level looks at the employees and their experience, qualification, competence and character, etc. The *activity* level aims to control what services that can be provided and how they should be performed. These three levels are not mutually exclusive, and a regulatory framework can be weaved with threads from all levels. Finally, it is important that the regulatory body is independent, adequately funded and has the expertise and mandate to perform its functions effectively. It is the last two, expertise and (exercise of) mandate that are indicated as weak from the findings in this research. The regulator openly states that it does not fully know and/or understand the criminal investigation services and that even if it did, and it breached regulation, there is not much that can be done about it.

There are a number of conceptual considerations that should be taken into account if and when doing a regulatory revision to include private security criminal investigations. The outcome of the revision should address the danger of commodifying justice. If systematically and continuously presented with a complete substratum for successful prosecution, this could incentivise complacency among both the police and prosecutor who would depend and/or count on the private security sector. In turn this dependence of state on the private sector could lead to a reduction in trust in the police and criminal justice system as a whole. The lack of trust could be further exacerbated as the conflicts of interest between the “public good” approach by the police and the

economic values of the private security provider. Ultimately it is trust that keeps society together (Giddens, 1990). These are arguably “high concepts” constructed of floating abstractions (see Ericsson and Haggerty, 1997) that need grounding, but that is exactly what this paper call for by providing an outline of the gap in Swedish private security regulation. Because, if the market is left unchecked it could be driven to the point where private criminal justice investigations is the only redress to achieve justice.

Conclusion

The conclusion drawn here is that there is a gap in the regulation of private security criminal investigations in Sweden. Recognising the size, role and nature of the private security sector, and how regulation is applied to other parts of private security, this gap needs to be closed. To do so would arguably enhance the legitimacy and accountability of private security criminal investigations, especially considering the close proximity of private security services and those provided by the state. Even though that, in theory, there is little need for private security criminal investigations, in reality there is. This is confirmed by the interviews with key informants that provided a range of views and insights to the reasons for using private security, sometimes before even contacting the police, as well as thresholds to accessing the private security market. It is also clear that private security criminal investigations should be included in the Swedish regulatory framework. This would probably involve provisions on several levels including organisational, practitioner, and activity, related regulation. Further, there are conceptual considerations around the commodification of justice and trust in the state and the police. Taken together this may prove to be a challenge for our regulatory imagination but nevertheless a challenge that we need to accept.

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