

of a system of entities for the protection of the cyber space of the state in the conditions of martial law and in the perspective of the neighborhood with the Russian aggressor cannot fully ensure the fulfillment by the armed forces of Ukraine of their main functions regarding the protection of the country. The need to create cyber troops in the state is argued in view of their potential functionality and its difference from what is inherent in cyber defense entities already existing in Ukraine.

Attention is paid to the issues of recruiting personnel for future cyber troops. Their forms and types are noted in view of Ukrainian realities and the state of civil society. The problems of cooperation between state institutions and subjects of public initiative in the field of cyberspace protection in the state are indicated. Examples of potential and actual violations of legislation by law enforcement agencies in relation to representatives of the public cyber community are given. Approaches to the formation of the personnel reserve of cyber troops are proposed, taking into account their subjectivity. Signs of procrastination, unprofessionalism, bureaucracy, sabotage and treason on the part of representatives of state bodies, neutralization of efforts by representatives of the active cyber community, lack of proper consolidation of efforts with all sectors of society in matters of state protection in the field of information technologies are indicated.

In the course of the research, the statement that the development of the military situation in the country necessitates the need to make adjustments to the implementation plan of the Cybersecurity Strategy of Ukraine, approved in 2021, is argued in order to intensify the development of the corresponding draft law on the creation of cyber troops. It is noted that the lack of appropriate dynamics in the issue of law-making on this issue deprives the Armed Forces of Ukraine of the Ministry of Defense of the timely creation and provision of an effective tool for countering the enemy for the protection of the country. Proposals are made regarding possible approaches to the staffing of cyber troops at the preparatory and intermediate stages of the launch of this state institute.

Keywords: *Cyber Security Strategy, cyber army of the Ministry of Defense of Ukraine, personnel support of cyber army, legislative support of cyber army, cooperation of state bodies with IT specialists.*

UDC 340

DOI 10.31733/2078-3566-2022-5-60-65



Rostyslav MOLCHANOV[©]
Ph.D. (Law), Associate Professor
(Dnipropetrovsk State University
of Internal Affairs, Dnipro, Ukraine)

MUNICIPAL GUARDS IN UKRAINE: CURRENT STATE AND PROSPECTS OF ACTIVITY

Ростислав Молчанов. МУНІЦИПАЛЬНА ВАРТА В УКРАЇНІ: СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ ДІЯЛЬНОСТІ. У статті досліджено проблему діяльності муніципальної варти в Україні та визначено перспективи її подальшої діяльності. Наголошено на тому, що поширеною європейською тенденцією сучасності є децентралізація поліції та реалізація принципу спільної відповідальності за стан публічної безпеки і порядку на території поліцейського обслуговування, що є втіленням загальної практики "Community policing". Остання успішно імплементована у діяльність поліцейських структур багатьох розвинутих країн світу.

Зроблено висновок, що це передбачає делегування окремих поліцейських функцій недержавним структурам, що дозволяє певною мірою "розвантажити" державну поліцію від розгляду і вирішення ординарних конфліктних ситуацій та типових правопорушень, що не вирізняються високим ступенем суспільної небезпеки. Для підтримання рівня правопорядку на належному рівні місцевими органами влади в Україні створюються принципово нові структури, наділені окремими поліцейськими функціями – муніципальна варта.

Обґрунтовано, що зосередження значних повноважень в межах однієї інституції на території громади матиме наслідком посилення корупційних ризиків та потенційних зловживань службовим становищем. А тому прерогативу муніципальної варти на здійснення охоронної діяльності доцільно

© Molchanov R., 2022

ORCID iD: <https://orcid.org/0000-0002-1751-9832>

appad404@gmail.com

відкинути. З іншого боку, законодавче закріплення цього інституту вимагає, насамперед, визначення принципів і стандартів діяльності підрозділів муніципальної варти, їхнє впорядкування та облік. Без цього вести мову про належний контроль і нагляд за цією інституцією вбачається неможливим.

Перспективним напрямками діяльності муніципальної варти в Україні визначено наступні: а) прийняття базового Закону; б) стандартизація – прийняття Типового статуту; в) встановлення граничних меж чисельності особового складу та фінансування; г) уніфікація однострою.

Ключові слова: муніципальна варта, комунальне підприємство, публічний порядок і безпека, примус, взаємодія.

Relevance of the study. Since 2015, the National Police has been operating in Ukraine as a central executive body that serves society by protecting people's rights and freedoms, fighting crime, and maintaining public safety and order. One of the principles of police activity is interaction with the population on the basis of the partnership (Article 11 of the Law), which provides for close cooperation and interaction of the police with the population, territorial communities and public associations on the basis of partnership and aimed at meeting their needs [1].

At the same time, a widespread European trend of modern times is the decentralization of the police and the implementation of the principle of joint responsibility for the state of public safety and order in the territory of the police service. The corresponding trends are the embodiment of the general practice of "Community policing", which has been successfully implemented in the activities of police structures in many developed countries. Among other things, this involves the delegation of certain police functions to non-state structures, which allows to a certain extent to "relieve" the state police from examining and solving ordinary conflict situations and typical offenses that are not distinguished by a high degree of public danger.

In contrast to European trends, in Ukraine the issue of the functioning of non-state institutions endowed with police powers is insufficiently developed. At the same time, local self-government bodies today create structures with different legal status, which are entrusted with the performance of certain police functions within the territorial boundaries of the respective communities.

Recent publications review. Problems related to the participation of the population in ensuring public order and security are traditionally the focus of police scientists. Among others, the works of O. Vdovychenka, O. Kobzarya, O. Kuznichenko, M. Loshytskoho, V. Orlova, S. Shevchenko, A. Fomenka, O. Yunin and many other specialists. Separately, let us point out the monographic research of Yu. Topchiy, devoted to the administrative and legal aspects of the activity of communal security enterprises (municipal guard).

The article's objective is to highlight the current state and prospects of the municipal guard in Ukraine.

Discussion. Today, the National Police in Ukraine is developing in accordance with European standards for the organization of law enforcement forces. Along with attempts to reform individual components of the police system (police services and units), too little attention is paid to the issue of involvement of the local population in the protection of public order and security in the territory of the community. In turn, it should be recalled that the basis of the activities of the police forces of developed European countries is the practice of "Community policing", i.e., the interaction of state and non-state forces for the common goal of protecting public order and security.

As noted by B. Logvynenko and I. Kravchenko, the common international term "Community policing" can act as a guide for improving the police's activities and building its interaction with society on the basis of partnership, and has as its goal cooperation with individual citizens, groups of citizens, public organizations to identify and solve problems that negatively affect quality of life and the state of law and order in specific settlements, districts and regions [2, p. 4].

In the Soviet period, such cooperation was achieved by a wide combination of coercive and ideological methods, when police in the USSR was facilitated by the so-called "voluntary people's wives", formed by employees of enterprises, students, and workers. After Ukraine gained independence, the ideological component was rejected, while the principle of voluntariness was preserved. As a result, in accordance with the Law of Ukraine "On the Participation of Citizens in the Protection of Public Order and the State Border" dated 22.06.2000, the right of citizens of Ukraine to create public associations for participation in the

protection of public order and the state border in accordance with the Constitution and in accordance with the procedure established by this Law was established border, assistance to local self-government bodies, law enforcement agencies, the State Border Service of Ukraine and executive authorities, as well as officials in preventing and stopping administrative and criminal offenses, protecting the life and health of citizens, the interests of society and the state from illegal encroachments, as well as saving people and property during natural disasters and other extraordinary circumstances [3].

In practice, this led to the formalization of such cooperation, because most of the relevant formations were created on paper, and real cooperation was reduced to the realization by their participants of the right to purchase traumatic weapons without real assistance of the police in law enforcement activities.

Positive developments in this matter took place after the formation of the National Police in 2015 and the implementation of a number of local initiatives such as "Neighborhood Watch", "Sheriffs for New Communities", etc. However, it should be noted that positive local practices do not spread at the national level, which cannot be considered correct. Despite the declaration of a crime prevention strategy, the state lacks conceptual strategic documents on its organization at the departmental and national levels. Crime prevention occurs without a centralized approach to involving the public in this process, which deprives the police of such an important partner as society in combating crime.

In response to the current situation, local authorities created fundamentally new structures endowed with separate police functions – the municipal guard. Having analyzed the Constitution of Ukraine, national and international legislation, V. Orlov concludes that the legal basis for the creation and operation of the municipal guard in Ukraine is built on four basic levels: 1) Constitutional level (fundamental norms, law enforcement and law enforcement norms); 2) Legislative level (prohibitory norms, regulatory norms); 3) International level (international norms and standards, international acts on maintaining public order); 4) Local level (statutes of territorial communities, decisions of local councils on the creation of a municipal guard, local acts regarding the granting of powers to the municipal guard) [4, p. 67].

In general, one should agree with the proposed systematization of the legislation related to the functioning of the municipal guard in Ukraine. The most important thing to point out is that no key legal act regulating the status of the municipal guard in one or another city in Ukraine has been adopted. This leads to the fact that the formed structures differ significantly among themselves in terms of the scope of powers, methods and forms of activity, etc.

Among the main problems related to the normative and legal regulation of the activities of the municipal guard, S.I. Shevchenko, indicates the absence of such regulation at the legislative level. The expert emphasizes the expediency of adopting the Law "On the Municipal Guard", the norms of which would establish the powers of the guard, including the maintenance of public order and security, crime prevention and security activities as the priority areas of the guard's activities, the administrative and legal status of the guard, would determine the sources of funding (local budget of the community), accountability and control of representatives of the municipal guard [5, p. 552].

Partially agreeing with the above, we would like to point out that the concentration of significant powers within one institution on the territory of the community will result in increased corruption risks and potential abuse of office. And therefore, in our opinion, the prerogative of the municipal guard to carry out security activities should be rejected. On the other hand, the legislative consolidation of this institution requires, first of all, the determination of the principles and standards of activity of municipal guard units, their arrangement and accounting. Without this, it will not be possible to talk about proper control and supervision of this institution.

The already mentioned V. Orlov provides a thorough classification of subjects of law enforcement activity, which will help us determine the place of the municipal guard among other organizations and officials at the local level. The following are proposed to be classified as private entities: a) private security companies; b) private detective associations, or detectives carrying out their activities individually. Communal (public) subjects of law enforcement include: a) municipal guards; b) municipal parking inspections; c) municipal employees carrying out law enforcement activities (specialists in interaction with law enforcement bodies and ensuring public order and public order; inspectors for the protection of law and order and public order; instructors in informing the population about the prevention of violations; public order). Public subjects of law enforcement activities include: a) public formations for the protection of public order; b) security coordination offices; c) public assistants of the precinct police officer

on a voluntary basis [6, p. 263-264].

Having determined the place of the municipal guard from among other subjects of relations in the law enforcement sphere, one should refer to the draft legislation. Thus, the draft law "On Municipal Guard" No. 2890 dated 05/18/2015 should be considered an attempt to unify the status of municipal guards. The draft stipulated that: "Municipal guard is an executive body in the system of local self-government, created in accordance with the procedure established by this Law, with the aim of ensuring the protection of public order, legality, rights, freedoms and legitimate interests of citizens in the territory under its jurisdiction city councils of the regional and/or republican Autonomous Republic of Crimea, the cities of Kyiv, Sevastopol, as well as the jurisdiction of the village, settlement, city council of the territorial community formed as a result of a voluntary association, and is maintained at the expense of the appropriate local budget" [7]. It should be noted that the mentioned project did not find support in the Verkhovna Rada of Ukraine despite its adoption in the first reading and significant interest in it by local self-government bodies.

As indicated on the Internet resource of the Association of Cities of Ukraine, the municipal guard is a community-controlled mechanism for ensuring law and order. The creation of municipal law enforcement agencies is provided for by the Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine (Decree of the Cabinet of Ministers of Ukraine dated April 1, 2014 No. 333). The guard will be financed from the funds of the relevant local budget and will perform the role of a community-controlled mechanism for ensuring law and order in the territory of the relevant administrative-territorial unit. When maintaining public order, municipal guard units will interact with national police units, exchange operational information, conduct joint activities, etc. The creation of a municipal guard is supported by European experts, based on the experience of EU countries. Experts of the Council of Europe, in particular, point out that the strengthening of the role of local self-government in the sphere of ensuring the protection of public order is necessary within the framework of the decentralization of power and the reform of local self-government [8].

O. Vdovichenko also points to the foreign experience of the functioning of the municipal guard as a component of local self-government bodies. The specialist notes that the legal basis for the activities of the municipal guard in Poland at the state level is a special legislative act, and at the local level – the statute of the municipal guard. He also considers it possible to solve the problem of determining the status of the municipal guard by adopting the appropriate law and relying on the positive practice of Poland [9, p. 7].

If the status of the municipal guard is still not defined at the legislative level, the situation is the opposite at the local level. Yu. Topchii, comes to the conclusion that communal security enterprises (municipal guards) created by local self-government bodies are subjects of authority that perform management functions to ensure the implementation of the law enforcement policy of the state and the protection of the rights and interests of the territorial community, man and citizen [10, p. 197].

We cannot agree with the stated thesis. For example, the Decision of the Dnipro local council of the VII convocation dated 21.02.2018 No. 51/30 "On the approval of the Statute of the Communal Enterprise "Municipal Varta" of the Dnipro City Council in the new version", established that the purpose of the creation and operation of this enterprise is economic activity to achieve economic and social results and for profit. And the subject of economic activity for the realization of this goal is the provision of a number of functions. Among such functions: provision of services for the protection of citizens, as well as the property of citizens, legal entities under private and public law, conducting patrols on the streets of the city in order to detect violations of the rules of city improvement, protection of officials of the Dnipro City Council during the performance of their official duties [11].

Some scientists and human rights defenders express their concerns regarding the granting of appropriate powers to utility enterprises, because security activities are regulated by the relevant Law and are a licensed type of economic activity. In addition, it creates grounds for considering the municipal guards as local armed structures subordinate to local authorities.

From the foregoing, the problem of the need to find appropriate mechanisms to preserve the principle of independence in the activities of the municipal guard emerges. Of course, such enterprises are on the balance sheet of local budgets, which are obviously different, as are the capacities of individual territorial communities. And here we return again to the need to unify the relevant structures, which can be done by adopting the relevant law.

Conclusions. In conclusion, I would like to note that the legal status of the municipal

guard in Ukraine remains uncertain and deconsolidated. In order to solve the problem that arose around the diversity of approaches to understanding the status and tasks of the municipal guard, it is necessary to adopt the Law of Ukraine "On Municipal Guard". As for the tasks and functions of the municipal guard, the legal status of its employees, we do not support the identification of the corresponding structure with the prospects of the formation of the municipal police. The police is a professional body (state or local funding) in contrast to the municipal guard, which is staffed by local residents without the status of civil servants.

We consider the following to be promising areas of activity of the municipal guard in Ukraine: a) adoption of the Basic Law; b) standardization – adoption of the Model Charter; c) establishment of the upper limits of the number of personnel and funding; d) unification of uniformity.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Про Національну поліцію: Закон України від 02.07.2015 № 580-VIII. URL : <https://zakon.rada.gov.ua/laws/show/580-19#Text>.
2. Логвиненко Б. О., Кравченко І. С. Взаємодія поліції та суспільства на засадах партнерства в діяльності підрозділів превентивної діяльності: Методичні рекомендації. Дніпро: Дніпроп. держ. ун-т внутр. справ. 2018. 20 с.
3. Про участь громадян в охороні громадського порядку і державного кордону: Закон України від 22.06.2000 № 1835-III. URL: <https://zakon.rada.gov.ua/laws/show/1835-14#Text>
4. Орлов В. А. Правові засади становлення муніципальної варті в Україні. Правовий часопис Донбасу. 2019. 1(66). С. 62-69.
5. Шевченко С. І. Участь муніципальної варті у підтриманні громадського порядку: вітчизняний та зарубіжний досвід. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2021. Спец. вип. № 2 (115). С. 549-553
6. Орлов В. А. Недержавні суб'єкти правоохоронної діяльності: їх правовий статус та роль у забезпеченні правопорядку в Україні URL : https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3759626.
7. Проект Закону про муніципальну варту. № 2890 від 18.05.2015. URL : https://ips.ligazakon.net/document/view/jh28a00a?ed=2015_05_18
8. АМУ сподівається, що новобраний парламент підтримає законопроект «Про муніципальну варту». 24 липня 2019. URL : <https://www.auc.org.ua/novyna/amu-spodivayetsya-shchoprovobranuyu-parlament-pidtrymae-zakonoproekt-pro-municipalnu-vartu>.
9. Вдовиченко О. М. Організація забезпечення громадського порядку органами місцевого самоврядування в ЄС: вивчення позитивного досвіду. *Південноукраїнський правничий часопис*. 2018. № 4. Ч. 1. С. 3-7.
10. Топчій Ю. М. Адміністративно-правові аспекти діяльності комунальних охоронних підприємств (муніципальної варті). Дис. д-ра філос. 081 право. Одеса. 2019. 247 с.
11. Статут Комунального підприємства «Муніципальна вартя» Дніпровської міської ради. URL : https://dniprorada.gov.ua/upload/editor/statut_pidpriemstva.pdf.

Submitted: 30.11.2022

1. Pro Natsionalnu politsiiu [About the National Police]: Zakon Ukrainy vid 02.07.2015 № 580-VIII. URL : <https://zakon.rada.gov.ua/laws/show/580-19#Text>. [in Ukr.].

2. Lohvynenko B. O., Kravchenko I. S. Vzaiemodiia politsii ta suspilstva na zasakh partnerstva v diialnosti pidrozdiliv preventyvnoi diialnosti [Interaction of the police and society on the basis of partnership in the activities of units of preventive activities] : *Metodychni rekomendatsii*. Dnipro : Dniprop. derzh. un-t vnutr. sprav, 2018. 20 p. [in Ukr.].

3. Pro uchast hromadian v okhoroni hromadskoho poriadku i derzhavnoho kordonu [On the participation of citizens in the protection of public order and the state border]: Zakon Ukrainy vid 22.06.2000 No. 1835-III. URL : <https://zakon.rada.gov.ua/laws/show/1835-14#Text>. [in Ukr.].

4. Orlov V. A. Pravovi zasady stanovlennia munitsypalnoi varty v Ukraini [Legal principles of the formation of the municipal guard in Ukraine]. *Pravovyi chasopys Donbasu*. 2019. 1(66). P. 62-69. [in Ukr.].

5. Shevchenko S. I. Uchast munitsypalnoi varty u pidtrymani hromadskoho poriadku: vitchyzniani ta zarubizhnyi dosvid [Participation of the municipal guard in the maintenance of public order: domestic and foreign experience]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*. 2021. 2(115). P. 549-553. [in Ukr.].

6. Orlov V. A. Nederzhavni subiekty pravookhoronnoi diialnosti: yikh pravovyi status ta rol u zabezpechenni pravoporiadku v Ukraini [Non-State law enforcement entities: their legal status and role in

ensuring law and order in Ukraine] URL : https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3759626. [in Ukr.].

7. Proekt Zakonu pro munitsypalnu vartu [Draft Law on Municipal Guard]. No. 2890 vid 18.05.2015. URL : https://ips.ligazakon.net/document/view/jh28a00a?ed=2015_05_18. [in Ukr.].

8. AMU spodivaietsia, shcho novobrani parlament pidtrymaie zakonoproekt "Pro munitsypalnu vartu" [UCA hopes that the newly elected parliament will support the bill "On Municipal Guard"]. 24.07.2019. URL : <https://www.auc.org.ua/novyna/amu-spodivayetsya-shcho-novobranyy-parlament-pidtrymaie-zakonoproekt-pro-munitsypalnu-vartu> [in Ukr.].

9. Vdovychenko O. M. Orhanizatsiia zabezpechennia hromadskoho poriadku orhanamy mistsevoho samovriaduvannia v YeS: vyvchennia pozytyvnoho dosvidu [Organization of public order maintenance by local self-government bodies in the EU: study of positive experience]. Pivdenoukrainskyi pravnychi chasopys. 2018. No. 4. Ch. 1. P. 3-7. [in Ukr.].

10. Topchii Yu. M. Administratyvno-pravovi aspekty diialnosti komunalnykh okhoronnykh pidpriemstv (munitsypalnoi varty) [Administrative and legal aspects of the activity of communal security enterprises (municipal guard)]. Dyss. DF. 081 – Pravo. Odesa. 2019. 247 p. [in Ukr.].

11. Statut Komunalnoho pidpriemstva "Munitsypalna varta" Dniprovskoi miskoi rady [Statute of the Municipal Enterprise "Municipal Varta" of the Dnipro City Council] URL : https://dniprorada.gov.ua/upload/editor/statut_pidpriemstva.pdf. [in Ukr.].

ABSTRACT

The article deals with the problem of the activity of the municipal guard in Ukraine and defines the prospects for its further activity. It is emphasized that the widespread European trend of modern times is the decentralization of the police and the implementation of the principle of joint responsibility for the state of public safety and order in the territory of the police service, which is the embodiment of the general practice of "Community policing". The latter has been successfully implemented in the activities of police structures in many developed countries of the world.

It was concluded that this involves the delegation of certain police functions to non-state structures, which allows to a certain extent to «relieve» the state police from considering and solving ordinary conflict situations and typical offenses that are not distinguished by a high degree of public danger. To maintain the level of law and order at the appropriate level, local authorities in Ukraine are creating fundamentally new structures endowed with separate police functions – the municipal guard.

It is substantiated that the concentration of significant powers within one institution on the territory of the community will result in increased corruption risks and potential abuse of office. Therefore, it is advisable to reject the prerogative of the municipal guard to carry out security activities. On the other hand, the legislative consolidation of this institution requires, first of all, the determination of the principles and standards of activity of municipal guard units, their arrangement and accounting. Without this, it is considered impossible to talk about proper control and supervision of this institution.

The following are the prospective directions of municipal guard activity in Ukraine: a) adoption of the Basic Law; b) standardization – adoption of the Model Charter; c) establishment of the upper limits of the number of personnel and funding; d) unification of uniform.

Keywords: *municipal guard, communal enterprise, public order and security, coercion, interaction.*