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## FORMATION AND DEVELOPMENT OF THE LEGAL STATUS OF GUARD POLICE: HISTORICAL AND LEGAL ANALYSIS

**Abstract. Purpose.** The purpose of the article is the historical and legal analysis of the formation and development of the legal status of the Guard Police. **Results.** It is underlined that the Soviet period of formation and development of the legal status of the Guard Police became a real breakthrough in the area being studied. First of all, it should be noted that at this stage the guard agencies of the Soviet militia have acquired the legal status as the state law enforcement bodies that performed the functions of extra-departmental guard, not of some “private police”. These bodies were part of the internal affairs bodies, had a regulatory legal framework for their activities and were financed from the State budget. In fact, in the Soviet era the model of the Guard Police agencies was formed, which was later borrowed in the time of Ukrainian independence. It is established that the adoption of Law of Ukraine 580-VIII “On the National Police” of July 02, 2015, which effectively terminated the former internal affairs agencies of Ukraine and gave rise to a new structure of the national police, was a turning point in the history of the establishment and development of extra-departmental security agencies. These reform processes have led to the transformation of the guard militia bodies into Guard Police, which is still evolving in parallel with the development of the domestic law enforcement system based on European standards. **Conclusions.** It is concluded that the historical and legal analysis showed that the development of the legal status of the Guard Police traces its roots back to ancient times. It is established that the foundations of the guard activities of the police were laid in the period of the ancient States, culture thereof has impact on the territory of Ukraine for centuries. Subsequently, the foundations of the work of quasi-police bodies were transformed during the times of Kyivan Rus and in the subsequent years of national fragmentation. However, the formation of the legal status directly of the agencies of the extra-departmental Guard Police, the creation of the legal basis for their activities took place in the 19th century and continued to evolve in the Soviet Union. Soviet trends in the studies on the topic became the basis for the construction of the Guard Police Department under the Ministry of Internal Affairs in the time of independence of Ukraine.

**Key words:** duties, guard services, guard unit, society.

### 1. Introduction

The historical review enables to compare the mistakes of ancestors and the positive achievements of modern generations, which ultimately helps to understand the future goals. We are convinced that the application of such a form will contribute positively to the study of the legal status of the Guard Police, because the use of this form will reveal the specificities of the formation and development of this State body.

First of all, it should be noted that the “core” of any historical and legal analysis is periodisation. It helps to systematise a large array of historical material, highlighting specific events in

a separate time frame, on the basis of which it is easier to formulate conclusions about the object of research and its state at a certain point in development. In modern scientific literature, periodisation of the history of the formation and development of the legal status of the Guard Police does not have an adequate definition, however, this problem has been partially studied when considering various events of the general history of Ukraine.

### 2. The historical stage of formation and development of law enforcement bodies

The approaches of scientists to periodisation of the history of Ukraine are different, but

are based on a single model which distinguishes various stages with reference to specific historical events. Based on this important aspect, we have concluded that the historical and legal analysis of the formation and development of the legal status of the Guard Police should be conducted in the following stages:

- The formation of law enforcement bodies in the times of ancient States (until the 9th century AD);
- The development of the system of law enforcement and guard component in their activities during the Kyivan Rus (the 9th – 13th centuries);
- The functional-legal status of law enforcement bodies in the period from the 14th to the 17th century;
- The police departments of Imperial Russia and the emergence of special Guard Police units on their territory (the 17th - early 20th century);
- The development of extra-departmental guard in the Soviet militia (20-90s of the 20th century);
- The legal status of the Guard Police during the time of independence of Ukraine (90s of the 20th century till now).

The analysis of the first historical stage of the formation and development of the legal status of the Guard Police relates to the emergence of police bodies in the territory of ancient states, such as Egypt, Greece, Rome, etc. The importance of considering this part of the historical material depends on the fact that in ancient times the culture of the peoples of these countries had partial and sometimes quite deep impact on the territory of Ukraine and in the future influenced the development of the law enforcement system and the Guard Police, including.

For example, at the beginning of the development of the ancient country of Egypt, an important place in the system of the state mechanism was occupied by priests, whose functions were not limited to religion. The priesthood preached the sanctity of the pharaoh's personality, his divine origin and the immutability of power on earth. Any attempts at doubt were pursued by the priests, that is, in fact, it was peculiar political police. On the other hand, the priests sought to push the pharaoh out of power at the occasion, not allowing on the throne to be a man who is not able to perform their state functions (Makarchuk, 2015).

In subsequent years, the Egyptian police force was formed as a separate centralised apparatus. It included the police itself, the secret service of the pharaoh, the border guard, special guard units, which supervised the security of irrigation and other structures, guarded

the pharaoh and state dignitaries. There was a special police unit to protect the pyramids, as the tombs of the pharaohs attracted many with their wealth. The robbery of the pyramids was punished quite severely, the robbers were subjected to various mutilations, put on a stake, but this did not stop those who wanted to profit from the tsarist wealth. The police were composed mainly of Nubian prisoners, who also served as executioners and slave guards.

Similar to Egypt, the police emerged in parallel with the evolution of statehood in a number of other ancient States, notably Greece. The central city of this country was Athens. On the territory of the latter, the police apparatus occurred in about 800-600 BC, borrowed by other Greek cities and subsequently Greek colonies in the territory of the Northern Black Sea. In Athens, for example, police units maintained order and monitored compliance with the law. The main function of the police was to maintain public order. With the exception of high-ranking police posts, to which members of the dominant social classes were appointed, the police consisted mainly of slaves and released (Hetmanchuk, 2010).

The Roman concept of the police force as a law enforcement body has its roots in the use of paramilitary forces to preserve peace and tranquillity. In the early stages of the development of the Roman State such a militarised force was the Praetorian Guard, which later had the duties of the Imperial Guard, guarding the palace and the Emperor's personality. Purely police functions were performed by city cohorts, ensuring order and peace in the city. It should be noted that during the period of the Roman Empire significant progress was made in the development of methods of protection of law and order. This system continued until the collapse of the Latin-speaking Roman Empire, and its repercussions were visible in the Middle Ages. It was not until the 5th century AD that police functions began to rely on governors and local nobles. An interesting position was that of prefect in Rome, whose main duty was to maintain order and tranquillity in the city, as well as to oversee the political credibility of its inhabitants (Kormych, 2009).

Therefore, during the first historical stage, the police was formed as a separate part of the State apparatus. This process was the separation from the military organisation of special militarised groups whose main task was to protect public order in the towns. At the same time, for example, Egypt had more sophisticated organisations engaged in quasi-investigative activities in the political field. Nevertheless, despite a wide range of achievements, during the first period the police have

only acquired an organisational framework. In other words, the scope of its activities was initiated, but the process was by no means defined in legal terms, so that there were no legal documents regulating the work of the police agencies of the time, much less the units within their structure.

The second historical stage covers the period when the Ukrainian lands experienced the development and decline of Kyivan Rus. This State was a feudal monarchy led by the Prince. He ensured the internal and external security of the State, dealt with the peace and tranquillity of the subjects and acted as the legislative administrator in all spheres of public relations (Pashchenko, Vodotyka, 1999, p. 25). At the initial stage of development of Kyivan Rus, the main instrument of ensuring the State was the military retinue, that is, an army with a wide administrative role and powers in peacetime. In the first centuries of the development of this State, the relationship between the prince and the military retinue was ambiguous: the military retinue could not be instructed, only convinced. In the ancient historical chronicals, Ihor was depicted as the prince dependent on the military retinue. During his reign, the power of the prince was not yet strong enough. Therefore, Ihor was forced to obey his military retinue not only about the conclusion of peace with Byzantium, but also under its pressure to resort to a disastrous campaign for the Drevlians' tribute.

It should be noted that the military retinue played the role of the police, especially in the early stages of development of Kyivan Rus. It was entrusted with the functions of public order and the search for criminals in peacetime. Subsequently, the police functions were put in place administratively, but they remained within the military jurisdiction. In the 10th-21st century, the key role in this field was played by *sotnykchiliarches – tŷsiatskyi*, who were military administrators of cities. For example, when conquering tribes Kyiv princes had to put in tribal or other large centres their garrisons. In the important centres they set up a large garrison - a thousand, divided into hundreds; the chiliarch was the commander of the garrison, and the centurions – *sotnyk* – the commanders of individual units. In the cities of less importance, the smaller garrison was set commanded by the centurion. Since the middle of the XII century, the “princely court” has been at the forefront of the administrative sector of the State, as a separate and influential authority structure, which was entrusted to organise public order and cities, that is, directing military forces towards the police functions (Morozan, 2013).

To sum up, the most outstanding moments in the second phase of the development of the embryo of policing in general and the basic work of the Guard Police are:

- First, unlike the ancient States on the territory of Ukraine, police functions were concentrated in the hands of military administrations;

- Second, the content of policing of the time consisted in the search activities and protection of public order in the cities, in particular the physical protection of the prince;

- Third, the first written sources of law were formed, containing rules that regulated social relations of almost all sectors of social life of the time and police activities including.

The third stage, the XIV - XVII centuries, was characterised by the division of the lands of Ukraine between three states - Poland, Lithuania and the Moscow Empire, which was a consequence of the decline and actual termination of the existence of Kyivan Rus as an independent country. The formation and development of the law enforcement system during this period, and of the police, in particular, were based on the trends of the dominant countries.

For example, the Lithuanian legislative monument of the 16th century, the Statute of the Grand Duchy of Lithuania, which had three editions (1529, 1566, 1588), gave rise to the development of law enforcement bodies. The issue of the identification of law enforcement bodies corresponded to the general trend of the internal policy of the Grand Duchy of Lithuania as a State. In particular, the essence of such an internal policy was as follows: “at the mercy of the master to preserve the old, to consolidate the social, political and legal system of the land”. A turning point for the development of law enforcement in the Ukrainian lands was the political union between Lithuania and Poland, accompanied by the improvement of the norms of ancient Rus law through the application of the legal achievements of the Polish State, borrowing from their social regulation practices. For example, the main achievement of the Lithuanian-Polish era in the development of police activity is the identification of procedural law as a separate branch and the addition of various procedural actions to the judicial process (Khamula, 2015).

On the lands of Poland and Lithuania, and then Rzeczpospolita, changes occurred in the administrative management of the police, which was directly related to the development of Magdeburg law. For example, since its introduction, the role of local authorities in local economy, local finance, law enforcement, local administration and justice has been increasing. In the cities of Magdeburg law, the local author-

ities were the magistrates, who held all the powers. The Magistrate was in charge of city administration, court, economy, finance, police, etc. and composed of a Council dealing with administrative and economic affairs and the bank dealing with court cases (Kyrychenko, 2011).

Thus, on the lands of the Polish-Lithuanian State, police functions were under the control of city officials, who carried out them through the City Guard or other similar units. Decentralisation was a characteristic feature of the police at the time. Its structure and functioning were determined at the local level. The legal status of the police, which performed mainly protection tasks, was regulated by acts of local authorities.

With regard to the Moscow Empire, under whose authority a part of the Ukrainian lands came, by the 17th century there were provisions defining the legal status, functions and structure of the police bodies. In addition, during the period in question, the work of the law enforcement bodies of the Moscow Tsardom clearly reflected the elements of the indictment and search procedure. The analysis of the regulatory legal material of the time reveals that the legal origins of the law enforcement bodies at that time were concentrated in the Cathedral Code of 1649, according to which law enforcement functions were assigned to persons, who performed search and the *zemstvo* police (Tihomirov, 1961).

To sum up, in the third stage of the historical development of the legal status of the police and police bodies on the territory of Ukraine, in general, several law enforcement systems have been formed in the territory of our State. This was due to the deep fragmentation of the State between three immediate neighbours: Poland, Lithuania and the Moscow Tsardom. In this regard, there was no single legal and regulatory framework for the police force at that time and its legal status. However, there have been a number of positive developments in the third period, namely

- First, the police have been fully separated from the military sector;
- Second, both in the territory of the Moscow Empire and in Poland, numerous regulatory acts have been issued on the work of the police in the field of urban security, the search for persons involved in offences, the maintenance of public order, etc.;
- Third, a police management structure was established, with a local official in charge, who guided policing in almost all cases.

### **3. Development of extra-departmental guard in the Soviet militia and the Guard Police during the independence of Ukraine**

The formation and development of the legal status of the police during the fourth stage

took place during the period of the accession of Ukrainian lands to the Russian Empire. This is indeed a revolutionary stage in the development of policing. For example, the bulky autocratic apparatus, extended to large areas, needed constant support and protection, especially in the early stages of its establishment, when the new model of power was quite “fragile” and unstable. Any intra-state fluctuations could have led to destructive processes, which, of course, was not the central government’s plan. The provision of law enforcement in the State was entrusted to a system of extensive police bodies, for the first time in history having a clearly defined legal status.

The first substantial steps towards a functional police system were taken in 1775 during the governorate reform. The main features of the organisation of administrative and police bodies according to it were: decentralisation of local government, strengthening the role of governors-general or deputies of civil governors and provincial boards; the division of provincial police bodies into city and county, and police officers into appointed “from the crown” and elected; the formation of a unified system of police organisation in cities and counties: by abolishing the “deanery” and lower county courts. However, in the early 19th century, this system changed. For example, the Ministry of Internal Affairs and the Ministry of Police were created. The police bodies were distributed to the police of cities and the county police - *zemstvo*. There were also the fiefdom police, which was a significant appendage to the State police. In the first quarter of the 19th century, the Tsarist government focused on the central management of the police and the organisational and staff strengthening of the city police, while in the second quarter of the 19th century, the development of the police was characterised by an improvement in the structure of the district police, which was due to the acute social situation in the village on the eve of the abolition of serfdom. The main bodies of the city police were the administrations of the “deanery” under the guidance of the police chief (sometimes two) in the governorate and the mayor in the county (Terliuk, 2011).

A significant milestone in the history of police bodies in Ukraine is the creation of gendarmerie corps – the political police. For example, according to the Decree of 1836, the entire Russian empire was divided into seven gendarmerie districts under the direction of gendarmerie generals. They consisted of gendarmes commanded by headquarters officers. At first, the latter were assigned one to the territorial unit, which comprised three

governorates and then to each governorate. Gendarmierie crews were used to enforce court sentences, search for thieves, fugitive peasants, pursue bandits, smugglers, escort particularly dangerous thieves, maintain order at fairs, during church holidays and public gatherings, that is, the functions performed by the police (Barmak, 2011).

Therefore, during the times of the Russian Empire the legal status of police bodies was formed, their administrative organisation was defined, and, most importantly, the structure of these State agencies was built. During this stage, the Imperial Police system has emphasised the functional orientation of each element. For example, urban law enforcement bodies, political police and search police units have been established separately. All these changes had a regulatory and legal basis, which was a broad framework of official State acts of the central authority and departmental documents. In addition, it was during the time of the Russian Empire that Guard Police activities began, which was the possibility of creating special police agencies to protect specific sites.

The fifth stage of the formation and development of the legal status of the Guard Police was marked by revolutionary events, which virtually ceased the existence of the Russian Empire and contributed to the creation of a new State on its ruins - the Soviet Union. In the first years of its existence, the country's law enforcement and political systems were formed under serious pressure from foreign States, and subsequently under the influence of the war of 1941-1942. In this connection, law enforcement bodies within this period focused their work mainly on countering anti-Soviet and anti-espionage activities.

After the Second World War, however, the Soviet Union began to develop its internal power apparatus. Improvements have also affected the law enforcement system, in particular with regard to the development of the legal status of guard units. For example, on the basis of Resolution 4633-1835 of the Council of Ministers of the USSR of 29 October 1952 "On the use in industry, construction and other branches of the national economy of employees released from the departmental guard, for the improvement of the organisation of protection of economic objects of ministries and departments" and the order of the USSR Ministry of Internal Affairs of 17 November 1952 "On measures to implement Resolution 4633-1835 of the Council of Ministers of the USSR of 29 October 1952," an extra-departmental external guard at the police was created as an action to improve the organisation of protection of objects of various departmental subordination. The necessity of an extra-departmental protection was

dictated by the fact that the organisation of State property protection relied on the heads of enterprises and was carried out by squads of the departmental guard, which were expensive because of their disparity, weak organisation, lack of communication with the militia, failure to provide proper measures to prevent theft of property and the introduction of technical means of protection. For the management of the service of the police bodies, guard departments and units were created, acting as independent extrabudgetary organisations, enjoying the rights of legal entities, and their heads were at the same time deputy heads of departments of the external service of city district authorities. The creation of a single extra-departmental guard led to the fact that only in the first year of its existence the number of watchmen decreased by a third, the cost of maintaining the security significantly reduced, its reliability and professionalism of workers increased, the incidence of petty theft and theft of State property decreased (Uhrovetskyi, 2004).

Since then, the legal status of the Guard Police agencies has not actually changed, and the regulatory framework for their activities has been systematically improved. For example, according to the Order of the Ministry of Public Order of the Ukrainian SSR of July 17, 1965 on the reorganisation of the Guard Department into the Department of Extra-departmental Guard at the Police Department of the Ministry of Public Order of the Ukrainian SSR, 5 departments were established, as well as the Directorate of Extra-departmental Guard in 10 regions. In addition, Resolution 129 of the Council of Ministers of the USSR of February 18, 1966 approved the Model Regulations on Extra-departmental Guard at Police Bodies. The latter provides for that the extra-departmental guard, in addition to guarding facilities and inspecting departmental guards, were tasked with inspecting facilities in rural areas, assisting in the organisation of guard and the introduction of technical means at those facilities, development and implementation of measures to improve technical means, reduce the number and the cost of guarding objects. In the same year, the Council of Ministers of the Ukrainian SSR adopted the Resolution on Extra-departmental Guard under the Militia Bodies (Uhrovetskyi, 2004).

Therefore, the Soviet period of formation and development of the legal status of the Guard Police became a real breakthrough in the area being studied. First of all, it should be noted that at this stage the guard agencies of the Soviet militia have acquired the legal status as the state law enforcement bodies that performed the functions of extra-departmental

guard, not of some “private police”. These bodies were part of the internal affairs bodies, had a regulatory legal framework for their activities and were financed from the State budget. In fact, it was in the Soviet era that the model of the Guard Police agencies was formed, which was later borrowed in the time of Ukrainian independence.

As a proof of this theory, the sixth and last stage of formation and development of the legal status of the Guard Police should be considered, just in the time when Ukraine became a sovereign and independent state in internal and external relations.

In particular, the adoption of Law of Ukraine 565-XXI “On the Militia” of December 20, 1990 was an important step in the formation of the Guard Police bodies in independent Ukraine. According to its provisions, the militia in Ukraine was recognised as a State armed executive body, protecting the life, health, rights and freedoms of citizens, property, the natural environment, the interests of society and the State from unlawful encroachments. One of the structural elements of the Ukrainian militia was the guard militia (Law of Ukraine On the Militia, 1990).

Subsequently, a departmental regulatory framework was created, which established the legal status of the Guard Militia agencies. For example, in 1993, Resolution 615 of the Cabinet of Ministers of Ukraine adopted the Regulations on the State Guard Service, under which the State Guard Service attached to the Ministry of Internal Affairs was established, operating on the basis of self-financing. The main task of the latter was the protection of particularly important facilities, the performance of duties of the law enforcement State Service, the performance of a set of paid security services. This decision not only changed the historical name of the guard units but became a legal regulation of the work of the guard units in the conditions of independent Ukraine, which meets the requirements of democratic society and market economic relations (Mazepa, 2011). This provision has since been amended and supplemented several times.

An important aspect of the development of the guard militia in Ukraine was also the cre-

ation of special units. For example, Order 1432 of the Ministry of Internal Affairs of Ukraine of November 25, 2003 approved the Regulations on units of the guard militia “Titan”. In accordance with the said provision, special units of the guard militia “Titan” are an integral part of the State Guard Service of the internal affairs agencies, responsible for the implementation on a contractual basis of protection of the property of individuals and legal entities, ensuring the personal security of individuals from criminal infringements, provision of special guard services (Order of the Ministry of Internal Affairs On the organisation of service activities of special units of the Guard Militia “Titan”, 2003).

The adoption of Law of Ukraine 580-VIII “On the National Police” of July 02, 2015, which effectively terminated the former internal affairs agencies of Ukraine and gave rise to a new structure of the national police, was a turning point in the history of the establishment and development of extra-departmental security agencies. These reform processes have led to the transformation of the Guard Militia into Guard Police, which is still evolving in parallel with the development of the domestic law enforcement system based on European standards.

#### 4. Conclusions

Therefore, the historical and legal analysis showed that the development of the legal status of the Guard Police traces its roots back to ancient times. It is established that the foundations of the guard activities of the police were laid in the period of the ancient States, culture thereof has impact on the territory of Ukraine for centuries. Subsequently, the foundations of the work of quasi-police bodies were transformed during the times of Kyivan Rus and in the subsequent years of national fragmentation. However, the formation of the legal status directly of the agencies of the extra-departmental Guard Police, the creation of the legal basis for their activities took place in the 19th century and continued to evolve in the Soviet Union. Soviet trends in the studies on the topic became the basis for the construction of the Guard Police Department under the Ministry of Internal Affairs in the time of independence of Ukraine.

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## **СТАНОВЛЕННЯ ТА РОЗВИТКУ ПРАВОВОГО СТАТУСУ ПОЛІЦІЇ ОХОРОНИ: ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ**

**Анотація. Мета.** Метою статті є історико-правовий аналіз становлення та розвитку правового статусу поліції охорони. **Результати.** Наголошено, що радянський період становлення та розвитку правового статусу поліції охорони став дійсним проривом у досліджуваному напрямку. Преш за все варто відмітити, що саме на цьому етапі охоронні відомства радянської міліції набули правового статусу саме як державні правоохоронні органи, що виконували функції позавідомчої охорони, а не якась «приватна поліція». Дані органи входили у склад органів внутрішніх справ, мали регламентуючу нормативно-правову базу діяльності, фінансувались з державного бюджету. По суті, саме за радянських часів сформувалась модель охоронних поліцейських відомств, яку в подальшому запозичили вже за часів української незалежності. З'ясовано, що переломним моментом в історії становлення та розвитку органів позавідомчої охорони можна вважати прийняття Закону України «Про Національну поліцію» від 02.07.2015 № 580-VIII, який фактично припинив діяльність наявних до цього органів внутрішніх справ України та дав початок діяльності новій структурі Національній поліції. Ці реформаційні процеси викликали трансформацію охоронних міліцейських органів у охоронні поліцейські, становлення яких досі триває паралельно розвитку вітчизняної правоохоронної системи, що відбувається на ґрунті європейських стандартів. **Висновки.** Історико-правовий аналіз показав, що розвиток правового статусу поліції охорони тягне свої коріння у стародавні часи. Було визначено, що основи охоронної діяльності поліцейських органів було закладено ще у період Стародавніх держав, культура яких століттями проникла на територію України. Згодом засади роботи квазіполіцейських органів було трансформовано за часів Київської Русі та в подальші роки націо-

нальної роздробленості. Утім, формування правового статусу безпосередньо органів позавідомчої поліцейських охорони, створення нормативно-правової бази їхньої діяльності відбулось у ХІХ столітті та продовжило еволюціонувати у Радянському Союзі. Саме радянські тенденції в досліджуваній сфері стали підґрунтям побудови Державної служби охорони при Міністерстві внутрішніх справ за часів незалежності України.

**Ключові слова:** обов'язки, охоронні послуги, підрозділ охорони, суспільство.

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