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GUARD POLICE IN THE SYSTEM OF LAW ENFORCEMENT BODIES OF UKRAINE

Abstract. Purpose. The purpose of the article is to determine the place of the Guard Police in the system of law enforcement bodies of Ukraine. **Results.** Law enforcement bodies, along with secondary (auxiliary) ones, perform one or more main law enforcement functions that are decisive in their activities (preventive, protective, re-socialisation, operative-search, crime investigation, court proceedings, consideration of cases on administrative offenses, consideration of cases on financial and administrative-economic offenses, execution of sentences, decisions, rulings and resolutions of courts, decisions of bodies of inquiry and pre-trial investigation and prosecutors). The law enforcement function is to ensure the rights of freedoms and legitimate interests of society, to protect the latter from any unlawful encroachments or crimes in a particular area of its activity. Due to its content, the essence of such function may change, and therefore its expression is possible through related types of power activities. The law enforcement function is a unifying factor between the Guard Police and all other law enforcement bodies, as it is the common link that determines the status and role of these agencies in the public authority sector, as well as establishes the functional orientation of their work. **Conclusions.** It is concluded that the system of law enforcement bodies of Ukraine is a complementary, multifunctional, structured totality of authorities, objectively independent and not subordinate to each other, activities thereof are aimed at ensuring and protecting the rights and freedoms of man and citizen from any unlawful encroachments in various sectors of public life, as well as ensuring state security, law and order. The place of the Guard Police in the system of law enforcement bodies of Ukraine is determined by the tasks entrusted to it, according to which the Guard Police is an agency with a special administrative and legal status, which is part of the structure of the National Police of Ukraine, activities thereof are aimed at implementing both the general full powers of the National Police of Ukraine and special ones in the field of guarding material and physical objects in accordance with the provisions of the regulatory legal framework. In other words, the Guard Police is actually a “body within a body” that also performs law enforcement functions, but within its own rather narrow competence.

Key words: guarding of facilities, Guard Police, movable property, immovable property, business entity.

1. Introduction

State power is not a static phenomenon that governs society within a certain territory, but an ordered set of organisations vested with power, each of which has its own competence and performs part of the functions of the state enshrined in the Constitution and other legislation of Ukraine. Today in our country there are many different groups of these agencies, each of which is responsible for the duties assigned to it. One of the most important among all state organisations is the system of law enforcement bodies, which is entrusted with ensuring the most important priority – the rights and freedoms of man and citizen and law and order in the state. The Guard Police is of importance in this system.

Frequently, the term “law enforcement bodies” is applied to police units. At the same time, in their totality, the latter constitute a fairly large system, the features of which affect the status of its elements (specific bodies, one of which is the Guard Police), determine their place and functional orientation. Another problem is the lack of a sustainable approach to defining the content of law enforcement bodies in scientific and legislative terms.

2. Specificities of the definition of law enforcement bodies of Ukraine

Referring to the views of scholars on the definition of the concept under study, it should be noted that, for example, S.Y. Lykhova proposes that law enforcement bodies include those that,

firstly, in their activities act on behalf of the state, secondly, are vested with power and, thirdly, act in the interests of the entire society (Lykhova, 1984, pp. 74–75). R. Tevlin believes that state bodies that are specially established to ensure law and order, respond to offences and crime and which for this purpose are empowered to apply the measures of state coercion and rehabilitation of offenders provided by law, are law enforcement bodies (Tevlin, 1985, pp. 52–53). M.I. Melnyk emphasises that a law enforcement body is a state, as a rule, armed body that performs law enforcement functions and, in this regard requires specific material and other support. In order to effectively perform their duties, employees are endowed with various specific rights, have appropriate benefits, external signs of belonging to law enforcement bodies, and enjoy increased legal protection (Melnyk, Khavraliuk, 2002, pp. 43–44). E.P. Grigoris's definition of law enforcement bodies is of interest. Thus, law enforcement bodies should be considered in a broad (theoretical) and narrow (legislative) sense. In the broad sense, it is the court, the prosecutor's office, the police, and in the narrow sense, only the police. Furthermore, he provides the criteria by which a particular body belongs to law enforcement bodies. Firstly, they are executive bodies; secondly, they all carry out law enforcement activities, which are aimed at combating offences in the form of certain forms that are provided for by law; thirdly, they are armed bodies that have a certain procedure for recruitment and service. Advocacy and notaries are defined as non-state law enforcement bodies (Grigonis, 2002, pp. 16–18).

According to T.O. Pikulia, law enforcement bodies include bodies that, along with secondary (auxiliary) ones, perform one or more main law enforcement functions that are decisive in their activities (preventive, protective, re-socialisation, operative-search, crime investigation, court proceedings, consideration of cases on administrative offenses, consideration of cases on financial and administrative-economic offenses, execution of sentences, decisions, rulings and resolutions of courts, decisions of bodies of inquiry and pre-trial investigation and prosecutors). According to the author, in the broad sense, law enforcement bodies include the court, prosecutor's office and law enforcement bodies to combat crime, in the narrow sense – only law enforcement bodies combating crime (police, tax police, Security Service of Ukraine, State Protection Department, State Border Guard Service, Military Law Enforcement Service in the Armed Forces of Ukraine, State Customs Service, State Department of Ukraine for the Execution of Sentences) (Pikulia, 2004, p. 179).

V.T. Nor, N.P. Anikina and N.R. Bobchenko argue that law enforcement bodies are state bodies specially authorised by the state to exercise control and supervision over the observance of the Constitution, laws and other legal regulation, to ensure law and order, to apply measures of state coercion to offenders whose characteristic features are the implementation of law enforcement activities (ensuring law and order, combating offenses, protecting the legitimate rights and interests of citizens, legal entities, society and the entire state); the availability of appropriate state full powers to carry out law enforcement activities; the ability to directly apply various coercive measures (e.g. detention, arrest, imprisonment, etc.); their activities are under special state control and supervision, and they operate only according to and in the manner established by law (Nahorna, 2018, p. 46).

V.V. Zaichenko and Y.O. Zahumenna, relying on the review of the current legislation of Ukraine and theoretical and methodological sources, define the following features of a law enforcement body:

1. A law enforcement body is authorised by a special law to carry out law enforcement activities, which disclose the tasks of the organisation and the purpose of this body;
2. It performs its activities in compliance with the rules and procedures established by law.
3. Law enforcement bodies in their activities have the right to apply measures of state coercion to persons who have committed an offence.
4. Lawful and justified decisions made by state bodies are binding on officials and citizens.
5. It is an integral totality, the system-forming factor of which is not a structural (organisational), but a functional criterion, that is law enforcement activities, determined by their common functional purpose, which is primarily to protect and defend the law. Unlike other systems of state bodies, the system of law enforcement bodies is characterised by the absence of a traditional organisational structure, such as the system of executive bodies (Zahumenna, 2010).

According to T.O. Shkulia, law enforcement bodies include bodies that, along with secondary (auxiliary) ones, perform one or more main law enforcement functions that are decisive in their activities (preventive, protective, re-socialisation, operative-search, crime investigation, court proceedings, consideration of cases on administrative offenses, consideration of cases on financial and administrative-economic offenses, execution of sentences, decisions, rulings and resolutions of courts,

decisions of bodies of inquiry and pre-trial investigation and prosecutors). According to the author, in the broad sense, law enforcement bodies include the court, prosecutor's office and law enforcement bodies combating crime, in the narrow sense, only law enforcement bodies combating crime (police, tax police, Security Service of Ukraine, State Protection Department, State Border Guard Service, Military Law Enforcement Service in the Armed Forces of Ukraine, State Customs Service, State Penitentiary Department) (Shkulia, 2004, p. 179).

Therefore, the diversity of opinions reveals that scientists in the study of the content of law enforcement bodies consider them from the perspective of certain features. Moreover, each separate scientific view focuses on certain specific aspects.

3. The system of law enforcement bodies of Ukraine

It can be determined that in their totality law enforcement bodies are characterised by several common features.

1. Firstly, all law enforcement bodies without exception constitute a single system.

2. Secondly, their functions include law enforcement functions, the content of which is broad and multidimensional, therefore, it is revealed in the activities of each body in its own way.

3. Thirdly, law enforcement bodies of the state perform their activities in accordance with their own competence. Each of them has its own role and importance in the governmental apparatus of the state. At the same time, in total, their work is aimed at achieving a common goal determined by the law enforcement sector of the state.

These features should be considered separately for a more precise determination of the place and importance of the Guard Police in the system of law enforcement bodies of Ukraine. The first and one of the key points of the law enforcement bodies of our country and the Guard Police in particular is the system nature of the latter. Thus, the term "system" (from the Greek *the whole, composed of parts; connection*) is a set of elements that are in relations and connections with each other, which creates a certain integrity, unity. When defining the concept of "system", it is necessary to consider its closest relationship with the concepts of integrity, structure, connection, element, relationship, subsystem, etc. Since the concept of a system has an extremely wide scope of application (almost every object can be considered as a system), its sufficiently complete understanding implies the construction of a family of appropriate definitions, both substantive and formal. Only within such a family of definitions it is

possible to express the basic system principles: integrity (principally the system properties are not the sum of properties of its constituent elements and the latter properties do not constitute the whole; dependence of each element, property and relation of the system on its place, functions, etc. within the whole); structurality (the possibility of describing the system through the establishment of its structure, that is, the network of connections and relations of the system; the conditionality of the behaviour of the system is not so much the behaviour of individual elements, but the properties of its structure); the interdependence of the system and the environment (the system forms and manifests properties in the process of interaction with the environment, being the leading active component of interaction); hierarchy (each component of the system in its turn can be considered as a system, and the system under study in this case is one of the components of a wider system); the multiplicity of description of each system (due to the fundamental complexity of each system, its adequate cognition requires the construction of many different models, each of which describes only a certain aspect of the system), etc. (Averincev, Arab-Ogly, Il'ichev, 1989, p. 584).

According to some scientists, such as M. Meskon, M. Al'bert and F. Heduori, a system is a certain integrity consisting of interdependent parts, each of which contributes to the characteristics of the whole (Meskon, Al'bert, Heduori, 1994, p. 79). N.I. Budenko and M.I. Kapinus argue that: a system is an integrity internally organised on the basis of a particular principle, in which all elements are so closely related to each other that they act in relation to the environment and other systems as something unified. Elements of the system are the minimum units within the whole and perform certain functions in it. The nature of the relationship that exists between the elements of the system forms the concept of its structure, which is a mutually conditioned set of connections of individual elements within the system, which determines its qualitative specificity. Therefore, the system is a unity of naturally arranged and interconnected parts. Thus, the key features of the system, according to the authors, are: the presence of components, elements in the system; interconnection, interaction between these elements (if these elements are not connected and do not interact with each other, then it is not a system, but a summative formation); each system has systemic features that appear only as a result of the relationship and interaction of its elements. Systemic attributes are qualities that are specific to a particular system and distinguish one system from another (Kapinus, 2001, p. 90).

Therefore, in aggregate, law enforcement bodies are an integral system, which indicates their close interconnection and complementarity in the security sector of our country. Thus, the factor of system nature in no way encroaches on the independence of each law enforcement body, in particular, the Guard Police. Nevertheless, as an integral part of a single ordered totality, the latter cooperates with other government agencies both in the performance of its functions and in the context of providing assistance to other bodies.

In addition, system nature is explicitly provided for in the legislation governing the activities of the Guard Police and other law enforcement bodies. According to Article 5 of Law 580-VIII of Ukraine “On the National Police of Ukraine” of July 02, 2015, the police and all its structural elements in the course of their activities interact with law enforcement bodies and other state authorities, as well as local self-government bodies in accordance with the law and other regulations (Law of Ukraine On the National Police, 2015).

Similar provisions can be found in the departmental regulatory framework of other law enforcement bodies, namely:

1. One of the main principles of the National Anti-Corruption Bureau of Ukraine (hereinafter – NABU) is interaction with other state bodies, local self-government bodies, public associations. In its work, the NABU interacts with the police, the Security Service of Ukraine and other law enforcement bodies (Article 3,19-1 of Law 1698 of Ukraine “On the National Anti-Corruption Bureau of Ukraine” of October 14, 2014).

2. The Security Service of Ukraine (hereinafter referred to as the SSU) interacts in its work with the Guard Department of Senior Officials of Ukraine, law enforcement and revenue and duties bodies in the manner and on the principles determined by the laws, decrees of the President of Ukraine and acts of the Security Service of Ukraine and the relevant agency adopted on their basis (Article 17 of Law 2229-XII of Ukraine “On the Security Service of Ukraine” of March 25, 1992).

3. In the course of performing its functions, the State Bureau of Investigation (hereinafter referred to as the SBI) cooperates with the prosecutor’s office, the bodies of internal affairs, the National Anti-Corruption Bureau of Ukraine, the Security Service of Ukraine, the central executive body that ensures the formation and implementation of the state tax and customs policy, the central executive body that implements public policy on prevention and counteraction to legalisation (launder-

ing) of proceeds from crime or terrorism financing, etc.

Next, the prevalence of the law enforcement function in the work of all law enforcement bodies should be underlined. In our opinion, it is this point that determines the unity of the system of these state agencies. The content of this function has been repeatedly revealed by many scholars. For example, I.P. Lavrinchuk argues that the law enforcement function involves the protection of each member of society from unfair treatment by others (Lavrinchuk, 1999, p. 99). Thus, Y.I. Horinetskyi makes proposal to define the law enforcement function of the modern state as an independent and priority direction of public policy, which is implemented by legal means to achieve a social effect of the protection of law in general, the foundations of the constitutional order, including the rights, freedoms and legitimate interests of man and citizen and other objects, strengthening of law and order, and at the same time is a legal form of achieving other goals of society and the state (Horinetskyi, 2005, p. 7).

Relying on the existing scientific perspectives, the law enforcement function is to ensure the rights of freedoms and legitimate interests of society, to protect the latter from any unlawful encroachments or crimes in a particular area of its activity. Due to its content, the essence of such function may change, and therefore its expression is possible through related types of power activities.

Again, the proof of this perspective can be found in the provisions of legislation. For example, Law 580-VIII of Ukraine “On the National Police” of July 02, 2015 states that the police is a central executive body that serves the society by ensuring the protection of human rights and freedoms, combating crime, maintaining public safety and order (Law of Ukraine On the National Police, 2015).

In turn, the NABU bodies shall prevent, detect, deter, investigate and disclose corruption offenses under its jurisdiction, as well as prevent the commission of new ones (Law of Ukraine On the National Anti-Corruption Bureau of Ukraine, 2014).

According to the legislation, the SSU is a special purpose state body with law enforcement functions, which ensures the state security of Ukraine, while the Prosecutor’s Office of Ukraine is the only system that is in the manner prescribed by law, carries out the functions established by the Constitution of Ukraine in order to protect human rights and freedoms, general interests of society and the state (Law of Ukraine On the Prosecutor’s Office, 2014; Law of Ukraine On the Security Service of Ukraine, 1992).

Therefore, the law enforcement function is a unifying factor between the Guard Police and all other law enforcement bodies, as it is the common link that determines the status and role of these agencies in the public authority sector, as well as establishes the functional orientation of their work.

Finally, the unity of purpose and differentiation of competence of law enforcement bodies should be considered. According to the articles of the Constitution of Ukraine, a person, his/her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms, and guarantees thereof determine the content and direction of the state activity. The state is accountable to the individual for its activities. Affirming and ensuring of human rights and freedoms is the main duty of the state. In addition, the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, a matter of concern for all the Ukrainian people. Ensuring state security and protection of the state border of Ukraine are entrusted to the relevant military formations and law enforcement bodies of the state, the organisation and procedure of which are determined by law, etc. (Constitution of Ukraine, 1996).

Therefore, the activities of law enforcement bodies are aimed at ensuring the constitutionally guaranteed freedoms of man and citizen, ensuring state security and law and order in the country. These goals are key and ensure the integrity of the vector of activity of the entire system of law enforcement bodies.

In addition, the implementation of these goals in the day-to-day work of law enforcement bodies, including the Guard Police, is carried out within the relevant competence, which is determined by the legislation and by-laws of each individual authority. In particular, the National Police of Ukraine is entrusted with the tasks of:

1. Ensuring public safety and order.
2. Protection of human rights and freedoms, as well as the interests of society and the state.
3. Combating crime and providing, within the limits defined by law, services to assist persons who for personal, economic, social reasons or as a result of emergency situations need such assistance (Law of Ukraine On the National Police, 2015).

The performance of these tasks is entrusted to a centralised group of elements of the structure of the National Police of Ukraine, which currently includes: the criminal police; patrol police; pre-trial investigation bodies; special police; special operations police and guard

police (Law of Ukraine On the National Police, 2015). Patrol Police Department

The latter, as an element of the National Police of Ukraine, also ensures the implementation of the competence of this body, but it does this through a set of its own tasks, which include, in particular, the organisation and implementation of measures for the physical protection of objects and property of all forms of ownership, individuals, taken under protection on a contractual basis (Order of the Ministry of Internal Affairs of Ukraine On the organisation of official activities of the Guard Police to ensure the physical protection of objects, 2017). In addition, during the physical protection of objects, the Guard Police performs the tasks of organising the protection of movable and immovable property (objects) of business entities of various forms of ownership, cargoes, objects of state ownership in the cases and in the manner prescribed by the legislation of Ukraine, in accordance with the current legislation, provision of collection services, ensuring access and intra-facility regimes at security facilities, prompt response to alarms of technical security equipment at facilities, connected to the centralised surveillance points of the Guard Police, or other reports of offenses, personal and property security of individuals, public safety and order (public order and public safety) within the posts and routes of guarding, participate in the implementation of state protection, preventive measures, special operations (operational plans), prevent, detect and stop offenses in places of service. During the guarding of objects, the Guard Police participate in the fight against terrorism within their competence, defined by laws and other regulations issued on their basis (Order of the Ministry of Internal Affairs of Ukraine On the organisation of official activities of the Guard Police to ensure the physical protection of objects, 2017).

4. Conclusions

Therefore, the system of law enforcement bodies of Ukraine is a complementary, multi-functional, structured totality of authorities, objectively independent and not subordinate to each other, activities thereof are aimed at ensuring and protecting the rights and freedoms of man and citizen from any unlawful encroachments in various sectors of public life, as well as ensuring state security, law and order.

The place of the Guard Police in the system of law enforcement bodies of Ukraine is determined by the tasks entrusted to it, according to which the Guard Police is an agency with a special administrative and legal status, which is part of the structure of the National Police of Ukraine, activities thereof are aimed at implementing both the general full powers

of the National Police of Ukraine and special ones in the field of guarding material and physical objects in accordance with the provisions of the regulatory legal framework. In other

words, the Guard Police is actually a “body within a body” that also performs law enforcement functions, but within its own rather narrow competence.

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ПОЛІЦІЯ ОХОРОНИ В СИСТЕМІ ПРАВООХОРОННИХ ОРГАНІВ УКРАЇНИ

Анотація. Мета. Метою статті є визначення місця Поліції охорони в системі правоохоронних органів України. **Результати.** До правоохоронних належать органи, які поряд з другорядними (допоміжними) виконують одну або кілька головних правоохоронних функцій, які є визначальними в їх діяльності (профілактичну, захисну, ресоціалізаційну, оперативно-розшукову, розслідування злочинів, судового розгляду справ, розгляду справ про адміністративні правопорушення, розгляду справ про фінансові та адміністративно-господарські правопорушення, виконання вироків, рішень, ухвал і постанов судів, постанов органів дізнання і досудового слідства та прокурорів). Правоохоронна функція полягає у забезпеченні прав свобод і законних інтересів суспільства, захисту останнього від будь-яких протиправних посягань чи злочинів у тій чи іншій сфері його діяльності. Внаслідок свого змісту сутність подібної функції може змінюватись, у зв'язку з чим її вираження можливе через суміжні види владної діяльності. Правоохоронна функція виступає об'єднуючим фактором між поліцією охорони та усіма іншими правоохоронними органами, адже саме вона є спільною ланкою, яка визначає статус та роль зазначених відомств у секторі державної влади, а також встановлює функціональну направленість їх роботи. **Висновки.** Зроблено висновки, що система правоохоронних органів України – це взаємодоповнююча, багатофункціональна, структурована сукупність органів влади, об'єктивно незалежних та не підпорядкованих один одному, діяльність яких направлено на забезпечення та захист прав і свобод людини і громадянина від будь-яких протиправних посягань в різних сферах суспільної життєдіяльності, а також забезпечення державної безпеки та правопорядку. Місце поліції охорони в системі правоохоронних органів України визначається покладеними на неї завданнями, відповідно до яких поліція охорони – це відомство з особливим адміністративно-правовим статусом, яке входить до структури Національної поліції України та діяльність якого направлено на реалізацію як загальних повноважень Національної поліції України, так і спеціальних в галузі охорони матеріальних та фізичних об'єктів відповідно до положень нормативно-правової бази. Іншими словами, поліція охорони – це фактично «орган в органі», який також має правоохоронні функції, але виконує їх в межах власної досить вузької компетенції.

Ключові слова: охорона об'єктів, поліція охорони, рухоме майно, нерухоме майно, суб'єкт подарювання.

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