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Decentralization of management and current trends in the law and order field at the regional and local levels in Ukraine

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The article consists of two draft laws; submitted to the Verkhovna Rada of Ukraine; which determine the trends and prospects for law and order at the regional and local levels in Ukraine in terms of public decentralization and governance reform.

Keywords: law enforcement; decentralization; municipal guard; local government police.

Introduction

The decentralization of public authority and administration necessitate the formation of a new mechanism for interaction between local governments and law enforcement agencies in matters of public safety and law and order at the regional and local levels in Ukraine. This managerial tendency presupposes the transfer of some law enforcement functions to local self-government agencies, which presupposes the need to establish the structures to provide with public safety and order, which are formed by local self-government agencies and subordinate to them. These structures should become the foundation for the new mechanism of interaction between local governments and law enforcement agencies.

This issue has not been either studied and or analyzed by Ukrainian scientists.

The goal

Purpose of article is to analyze two most detailed draft laws, submitted to the Verkhovna Rada of Ukraine, which anticipate the formation of a new public institution - the municipal guard, which should be the basis for a modernized mechanism of interaction between local governments and law enforcement agencies in decentralization of public administration.

Results and discussions

The purpose of decentralization reform is to form the effective local self-government and territorial organization of power to create and to maintain a full living environment for citizens, to provide with high quality and affordable public services, to establish the institutions of direct democracy, to harmonize the interests of the state and territorial communities. The reform anticipates the responsibility of local governments to the voters and the state for the effectiveness of their work.

This goal extends to law enforcement in regions and in cities, towns and other settlements. For that, the Verkhovna Rada of Ukraine has already passed the second reading of the draft law on municipal guard, thanks to which the local governments are expected to provide with an effective tool to bring order to the controlled areas. The municipal guard is the security forces that should monitor law and order, illegal garbage dumps, proper parking of vehicles, etc. but has no rights to engage in criminal cases, which remains the sole responsibility of the police.

The municipal guard is an executive agency in the system of local self-government [1] and its main goals is as it follows:

- To ensure the protection of public order in jurisdiction of councils at urban and settlement communities, which are formed on a voluntary basis and interact with police units;
- To take part in crime prevention;
- To inform the agencies and divisions of the police about revealed criminal offenses;

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- To implement certain administrative penalties;
- To protect the communally owned property;
- To provide certain types of legal and social assistance to citizens, local governments, enterprises, institutions and organizations, located in the respective communities;

- To contribute to the implementation of the decisions by councils of urban and settlement communities, which formed the municipal guard, in particular:

- 1) to control over the use and protection of lands and other natural resources of national and local significance;

- 2) to landscape, to control over the compliance with sanitation rules, cleanliness of streets, parks, squares and adjacent territories;

- 3) to protect local self-government authorities, state symbols, symbols of the territorial community and monuments of history and culture; architecture and urban planning, parks and manor complexes, nature reserves;

- 4) parking of motor vehicles;

- 5) organization of trade events, public catering;

- 6) to save people's lives, to protect their health, to preserve the material values in cases of natural disasters, environmental catastrophes, epidemics, epizootics, fires and other emergencies;

- 7) to ensure the public order during quarantine measures at epidemics and epizootics;

- 8) to take part within the limits, set up by authorities, in cases when the state of martial law and state of emergency are announced;

- 9) to assist to the police agencies and subdivisions, other law enforcement agencies, state agencies that ensure the inviolability of the state border and protection of Ukraine's sovereign rights in its exclusive (maritime) economic zone, in the exercise of their authorities [1].

The decision to establish or to dismiss a municipal guard and the agency of its structure and staffing (no more than 10 employees per 10 thousand of local population) is made by resolution of councils at urban and settlement communities and the territorial police is notified about this decision within ten days. The municipal guard is not a subdivision of the national police structure and its officers do not have any rank. It operates by the Regulations on Municipal Guard and the Model Disciplinary Statute of Municipal Guard, approved by the Cabinet of Ministers of Ukraine. The decision to eliminate it is made pursuant to two grounds:

- inability to maintain them at the expense of the local community;
- improper performance of its legal authority by the municipal guard.

The activity of the municipal guard may be temporarily suspended in case if the National Security and Defense Council of Ukraine decides on the need to take the urgent measures to resolve the crisis situations that threaten to the national security of Ukraine in the territory, where the relevant municipal guard is operating.

The functions of the municipal guard, in case of its dismissal or temporary suspension, are transferred to the local police.

The head of the municipal guard holds the open meetings with deputies and representatives of the relevant council in order to establish the effective cooperation

between the municipal guard and the population monthly and reports to local councils every six months.

Article 10 of this draft law entirely describes the interaction of the municipal guard with police units, and Article 11 - with local governments. The municipal Guard interacts with police agencies and departments in order:

- to prepare and to implement the joint plans for deployment of forces and patrol service;

- to carry out the joint actions to protect the public order, including in crowded places, to hold the sports and entertainment events, etc.;

- to establish the exchange of operational information between those forces;

- to use the joint activities to train the municipal guards and police officers.

Interaction of the municipal guard with local governments, enterprises, institutions, organizations and public associations on the following issues:

1. The executive agencies of the relevant council at an urban or rural community, formed as a result of a voluntary association, enterprise, institution, organization, public association, located in the territory of the relevant council, which has decided to establish a municipal guard, are obliged to assist it to solve the functions, having been set before it, to participate in provision with protection of public order.

2. The municipal guard has the right to involve the persons (with their consent) to take the preventive and other measures to ensure the protection of public order.

3. The municipal guard has the right to use, as a last resort, the property of individuals and legal entities to perform its functions [1].

This draft law defines the status of the head at municipal guard, the rights and responsibilities of its employees, who are prohibited to be engaged into any other activity, the rules of recruitment (with taking the oath) and the grounds for dismissal, terms of payment, special significance is paid to the professional requirements for employees and their professional training.

Along with this draft law, the draft law "On Local Self-Government Police", was proposed in 2014 and developed by the Ministry of Regional Development in cooperation with the expert community from the Council of European Program "Strengthening the Institutional Capacity of Local Governments in Ukraine" and the Association of Ukrainian Cities and was discussed at a joint meeting for representatives of local government associations.

The purpose of the draft law is to create the legislative prerequisites to improve the public administration in the field of law enforcement, based on decentralization as transferring of certain powers to protect the public order to local government.

The authors of that draft law defined the term "local self-government police is a special law enforcement agency in the system of local self-government, established by a city (town of national, regional significance), district council or local councils of several neighboring administrative units (within one region) to exercise the local self-government powers for such provision in the territory under the jurisdiction of the relevant council, law and order, protection of rights, freedoms and legitimate interests of citizens and is maintained at the expense of the relevant local budget "[2].

The structure and the number of police will be approved by the relevant council. Such police will not be a part in organizational chart for territorial agencies of the Ministry of Internal Affairs of Ukraine but will be subordinated to the council that decided to establish it.

The functions of local government police may be divided into three groups. The first one includes the functions, transferred from the Ministry of Internal Affairs of Ukraine during decentralization of management in the field of law enforcement – to ensure the implementation of certain administrative penalties; protection of public order, crime prevention; protection of communal facilities. The second group includes the functions to provide with implementation of decisions by relevant council, to assure the legal assistance to members of the local community, local governments. The third group of functions is to assist to the Ministry of Internal Affairs of Ukraine and other law enforcement agencies in their activities within the jurisdiction of the council.

The draft law defines four areas within the main functions of local government police:

1. Functions, transferred from the agencies of the Ministry of Internal Affairs of Ukraine during decentralization of management in the field of law enforcement, to provide with human and civil rights and freedoms within the territory of the council:

- to ensure the implementation of certain administrative penalties as imposition of fines;
- to secure the public order (in coordination with the units of the Ministry of Internal Affairs);
- personal safety of citizens;
- crime prevention;
- protection of communal objects and communal property.

2. To provide with the legal and social assistance to citizens, local governments, enterprises, organizations and institutions that operate in jurisdiction of the council.

3. To facilitate the implementation of decisions by the relevant council and its executive agencies as it concerns:

- control over observance of land and nature protection legislation, use and protection of lands, other natural resources of national and local significance;
- landscaping, control over the cleanliness of streets, parks, squares and adjacent areas;
- parking of motor vehicles;
- to protect the historical and cultural monuments, architecture and urban planning, parks and manor complexes, nature reserves;
- to organize the trade, public catering and consumer services;
- to save people's lives, to protect their health, to preserve the material values in case of natural disasters, environmental catastrophes, epidemics, epizootics, fires and other emergencies;
- to control over the maintenance of public order during meetings, rallies, demonstrations and demonstrations, sports, entertainment and other mass events.

4. To assist to the agencies of the Ministry of Internal Affairs of Ukraine and other law enforcement agencies in their activities in the territory of the council's jurisdiction in order to ensure the public safety.

The draft law is anticipated to standardize the issues of personnel, logistics, and financial support of local government police.

These two draft laws are almost identical in essence and ideology and are aimed at creating the law enforcement agencies of local self-government, which should assist the national police to perform their duties, taken into consideration that the employees of these local law enforcement agencies are aware of local characteristics.

The differences between them are as it follows:

- in the name of law enforcement agencies;
- regulations on municipal guard are approved by the Cabinet of Ministers of Ukraine, and the ones for local self-government police are approved by the local council, and the Disciplinary Charter is approved in both cases by the Cabinet of Ministers of Ukraine;
- local self-government police are accountable to and under the control of the national police as it concerns the following:
 - a) assistance to the territorial agencies at the Ministry of Internal Affairs of Ukraine in their functions in the territory under the jurisdiction of the relevant council;
 - b) storage of special means, information and documents with limited access;
 - c) professional training, retraining and advanced training of local government police officers.
- the organization of interaction between the local self-government police and the national police structures is charged to the head of the relevant council, and the interaction is carried out on the basis of agreement (areas of interaction are more specifically defined);
- training and retraining for local self-government police is organized by the national police;
- in case of emergencies, the chairman of the relevant council transfers the local self-government police unit to the subordination and operational command of the Ministry of Internal Affairs;
- united territorial communities have the right to form a united local self-government police;
- local self-government police may still be dismissed on the basis of court decision;
- local self-government police units must perform the rescue and medical functions and provide with information and reference services to citizens within their powers, and to keep the preventive records of offenders;
- local self-government police officers have the right to detain offenders for three hours or to detain them for delivery to the national police;
- municipal guard officers do not have special ranks, and local government police officers do;
- functions, rights and responsibilities of the local self-government police and its interaction with the agencies of the Ministry of Internal Affairs are written more broadly and carefully.

Conclusions

Therefore, these two draft laws are driven by the purpose to create the legislative preconditions to improve the public administration in the field of law enforcement, based on decentralization of public administration system as the transfer of certain powers for the protection of public

order to the local government. They determine the current trend in development of law enforcement agencies in Ukraine and their interaction at the local and regional levels.

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