COMMUNITIES’ PARTICIPATION IN ENSURING LAW AND ORDER IN UKRAINE

Executive Summary

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The study analyzes the state of legal regulation of the activity of various public order protection establishments at the national and local levels. In particular, special attention is devoted to the following subjects: organizational and legal status of public establishments, their authority, procedure for creation and liquidation, and court practice regarding complaints against violations committed by such establishments. Based on the study results, recommendations for government bodies aimed at improving legislation and practical aspects of public establishments are developed.

The publication is geared towards a broad range of lawyers, scholars, law enforcement officials, and everyone else interested in law enforcement reforms.

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The content of this study is the responsibility of the Centre of Policy and Legal Reform and does not necessarily reflect the position of the European Union.

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INTRODUCTION

The experience of other countries indicates that the development of local police is significantly affected by a territorial community, which defines the scope of police’s work, competence, authority, and legal status in general, as well as exercises control over the effectiveness of local law and order bodies.

The following factors influencing the legal status of local police in foreign countries should be singled out: form of government, situation with crime levels, population size, and level of public legal culture.

Thus, the establishment and development of local police in Ukraine could take place within the context of decentralization of functions related to ensuring law and order, simultaneously with expanding the authority of local self-governance bodies and strengthening the role of territorial communities in this regard. At least, this is suggested by the experience of other countries in Eastern Europe that are similar to Ukraine.

METHODOLOGY

The goal of this study is to research the activities of local communities and law and order establishments created by them, to identify problems which they have faced and possible ways for resolving them, as well as to measure the adequacy of legislative framework for enabling their work.

The study was carried out by a team of experts of the Centre of Policy and Legal Reform and the Ukrainian Public Law and Administration Network (UPLAN) during January-September 2019.

Researchers applied common scientific methods; in particular, the study is based on a combination of quantitative and qualitative methods for data collection and analysis.

The study consisted of two principal stages: (a) analytical (analysis of legislation, statistical data, etc.); and (b) field (conducting 16 in-depth semi-structured interviews in five cities in Ukraine, etc.).
I. PUBLIC LAW AND ORDER PROTECTION ESTABLISHMENTS

Legal framework for operation of public law and order protection establishments in Ukraine


Substantively, the work of such establishments is auxiliary and is coordinated by local administrations, local self-governments, police, and border control service. Their operations are voluntary and not-for-profit.

By their legal nature, public establishments are created on voluntary basis by active citizens who are willing to assist state and local self-governance bodies in ensuring law and order within a particular territory — be it at their place of employment, study, or residence.

Decisions to create public establishments are adopted by meetings (conferences) of citizens upon the citizens’ own initiatives. The establishments themselves operate with legal entity status.

Number of public law and order protection establishments in Ukraine

If one were to analyze the dynamics of the number of public establishments in Ukraine, one would see that their number has been declining over the past several years.

According to data provided by the Prevention Activities Department of the National Police of Ukraine, there were 2,889 public law and order establishments operating in Ukraine in 2016, and their number went down to 2,073 in 2017 and 1,386 in 2018. The negative dynamics of the number of public law and order establishments has changed proportionally; whereas there were 70,958 citizens active in all public establishments in Ukraine in 2016, their number went down to 56,583 and 47,502 citizens in 2017 and 2018, respectively.
As far as public establishments for state border protection are concerned, the State Border Control Service of Ukraine data indicates there were 376 such units in Ukraine with a total of 5,092 citizens as of January 1, 2017; 222 units with a total of 2,951 citizens as of January 1, 2018; and 148 establishments with a total of 2,223 citizens as of January 1, 2019.

Public law and order protection establishments are created by their future members, with their list registered by local justice authorities following the consent from local administration, police, and/or border control service.

Decisions to create public establishments are adopted by meetings (conferences) of citizens with a minimum of 10 participants (the maximum number of participants is not specified).

Only individuals 18 years of age and older who voluntarily expressed their desire to participate in public law and order and state border protection can be members of such associations. The Law also contains another requirement for members — namely, the ability to carry out their commitments based on their business and moral qualities and health condition, which is further specified through prohibitions on participation in public establishments by certain categories of citizens. It should also be noted that only citizens of Ukraine can become members of public establishments. Presumably, this restriction is not justified for the entire territory of Ukraine, given the increase in the number of foreign citizens in the country. Public establishment members are required to undergo legal and specialized training.

Moreover, public establishments themselves are able to provide for additional restrictions on participation in public establishments. For example, some of the establishments practice a 1-year apprenticeship period, during which a person is involved in an establishment’s operations, but does not have status of a member.

Public law and order establishment members are required to wear identification bands on their sleeves. The Law clearly provides that a public establishment’s participation in law and
order protection is only possible after receiving the respective band (insignia). The band only serves the purpose of informing the public of a public establishment member’s exercise of authorized functions to protect law and order, without the ability to identify a particular member of an establishment, should such a need arise.

**Charter of a public law and order protection establishment**

Public law and order protection establishments operate on the basis of a statute (charter), which is adopted with consent of the territorial branch of the National Police of Ukraine and/or the State Border Control Service of Ukraine, as well as of the executive body of a council exercising jurisdiction over the territory covered by such establishment. A model charter of a public law and order and state border protection establishment was adopted by the Cabinet of Ministers Resolution No. 1872 of December 20, 2000.

Although the public establishments’ charters are typically modeled after the model charter, occasionally there are instances when these provisions, which have utmost importance for their organizational existence, contain excessive — and sometimes unlawful — authority that the public law and order protection establishments assign to themselves.

**Financing and providing for activities of public law and order protection establishments**

The charter (statute) of a public law and order protection establishment must include information regarding sources of revenue and procedures for use of funds and other property of the establishment.

Financing of public establishments’ work carries no specific restrictions and reflects general rules regarding the financing of nonprofit civic associations. It is clear that the funding must come only from lawful sources and that public establishments are required to report their respective revenues and expenditures to fiscal authorities.

**Functions and activities of public establishments**

One of the most important functions is the joint patrolling of streets together with police or of border territories jointly with border control service. The Law provides for the possibility
of independent patrolling by public establishments’ members only in rural areas, in response to specific authorization issued by the head of one of the above-mentioned government bodies. Following the joint patrolling, public law and order establishment members prepare a report for the police, indicating place, time, patrol route, number of participants, etc.

Patrolling may be initiated either by the public establishment members or by police. In the latter case, it is possible primarily due to the shortage of public security forces engaged in ensuring public order during the conduct of state holidays, celebratory events, etc. Similarly, civic organizations and local administrations can refer to public establishments with a request to ensure public order during the conduct of mass events.

It is not infrequent to engage public establishment members as witnesses in cases of administrative or criminal offenses, particularly during carrying out of personal search or search of a person’s belonging taking place on the premises of law enforcement bodies (Art. 264 of the Code on Administrative Offenses, Article 208 cl. 3 of the Criminal Procedure Code of Ukraine).

Additionally, the Law entitles them to engage in measures to cease administrative offenses and crimes jointly with police officers, as well as to coordinate with other bodies engaged in individual prevention efforts with individuals predisposed to committing administrative offenses or crimes, etc.

Provisions of the Code on Administrative Offenses provide for a number of functions for public establishment members, specifically:

1. **Compiling protocols of administrative offenses** according to Article 255 of the Code of Administrative Offenses, for offenses punishable under Article 92 (Violation of Legislative Requirements Concerning Protection of Cultural Heritage), Article 148 (Damaging of Payphones), etc. Depending on the type of an offense, such cases are handled by the National Police of Ukraine, executive committees of local councils, or court.

   At the same time, these functions are not carried out in practice, as the public establishment members do not have access to pre-approved sample protocol templates. There are also constitutional law issues concerning the legislator’s ability to charge a non-state body (i.e., a public establishment) with authority to hold individuals administratively liable.

2. **Delivering the offender to the public law and order/state body protection establishment’s headquarters** under Article 259 of the Code on Administrative Offenses.

   In practice, however, public establishments most frequently apply the so-called “public detention”, i.e. a detention without a warrant by an investigate judge or a court carried out
by an unauthorized public official under a suspicion of commission of a criminal offense. Such a detention is possible with respect to a person committing a crime at this instant, or during a pursuit immediately following such a crime, in the manner set forth by Article 207 of the Criminal Procedure Code of Ukraine.

Use and application of weapons and specialized tools

According to the Ministry of Interior Order No. 379 of June 13, 2000, public establishment members are included in the category of persons authorized to carry self-defense equipment — namely, gas and traumatic weapons. Members of public establishments who have the right to purchase, carry, and apply special tools are authorized to resort to physical influence measures during joint patrols and to use their own special tools or those issued by the state body, within limits set forth by law. There are also provisions allowing the purchase of special tools at the public establishments’ own expense, as provided by its statute (charter).

Procedures for using weapons and special tools are as follows: weapons and special tools are stored in weapon rooms of the police or border control service station. They are issued only following completion of legal and specialized training and tutorship by the public establishment’s member. During joint patrols, they are issued to on-duty officers of the border control service and the public establishment members, with a note to this effect in special documents. Following the return from patrolling, a public establishment member is required to sign off about returning weapons and special tools.

In practice, there have been reports of instances of such permits being repealed on the grounds of announcement of a suspicion to a public establishment member, presence of information about systematic violations of public order, abuse of alcohol, etc.

At the same time, the law does not specify grounds and procedures for the use of physical force, special tools, or weapons. One may assume that these grounds and procedures should be identical to those envisioned by the Law “On National Police”.

Liquidation (termination) of a public law and order protection establishment

The Law provides that the activities of a public law and order and state border protection establishment may be terminated by means of involuntary dissolution or self-dissolution.
Thus, according to the Prevention Activities Department of the National Police of Ukraine, a total of 203 public law and order protection establishments were terminated upon the police bodies’ petitions in 2016; with this number increasing to 599 in 2017 and 630 in 2018.

**Conclusions and recommendations for the chapter**

In their substance, public law and order and state border protection establishments are a single, specialized form of citizens’ participation in public order protection, which is directly envisioned by law. At the same time, the legislative framework for their activity is outright outdated and, in many respects, repetitive of the “Soviet” model of voluntary people’s guards (*druzhynyntik*).

At the same time, legislation and regulations contain a large number of gaps that pose risks of violations of human rights and freedoms by public establishments. It is necessary to review and revise them on a conceptual level, renewing the legislative framework in line with contemporary demands and moving toward unification of existing initiatives in this area. It is necessary to have clear functions, authorities, procedure for creation and liquidations, strict and systemic control by state and local self-governance bodies, etc.

### II. LOCAL PUBLIC ORDER PROTECTION ESTABLISHMENTS

**Legal framework for operation of local public order protection establishments in Ukraine**

Local establishments are created by local council decisions in a manner provided for by the **Law of Ukraine No. 280/97-BP “On Local Self-Governance in Ukraine”** of May 21, 1997, in the organizational forms of municipal enterprises, municipal organizations (institutions), or — less frequently — as executive local self-governance bodies (e.g., municipal guard department of Lutsk City Council).

**Officials of local establishments**

In the event of a local establishment being set up as an executive local self-governance body, its officials have **the status of a local self-governance public officials.**
Identification (insignia) of local establishments

The law does not provide for any special insignia for local establishments. In practice, they do use a uniform similar to those worn by the police or municipal fatigues, so that they can be identified as law enforcement bodies.

The title of a local establishment must contain information about its organizational form and name. It is important to note a problem that is related to the titles of local establishment and that, until recently, was not regulated in an adequate manner; specifically, this refers to the presence of a word “police” as part of the title. At present, this is directly prohibited by law, with provisions for administrative responsibility for the use of a title and/or a uniform containing the word “police”.

Authority of local establishments

In order to accomplish their goal and to carry out their objectives, local public order protection establishments engage in the following types of activities within their competencies:

- raids and patrols aimed at preventing offenses;
- public order and public security protection;
- security assignments;
- drafting inspection acts ordering the removal of violations in the area of community welfare;
- preparing protocols on administrative violations;
- awareness and outreach efforts aimed at preventing offenses;
- reviewing complaints by citizens, etc.

At the same time, officials of local establishments have no legal ability to cease the commission of an offense and, in the event of detecting an offense in progress, are required to report to authorized bodies (primarily, the police)\(^1\). They are only able to detain an offender when a person is committing a crime at this instant, or during a pursuit immediately following such a crime, in the manner set forth by Article 207 of the Criminal Procedure Code of Ukraine (so-called “public detention”).

\(^1\) For example, Cherkasy Appellate Court Decision of November 12, 2018 in the case No. 33/4823/51/18.
Problems during the exercise of authority by local public order protection establishments

Representatives of local guards operating as municipal enterprises often believe they are engaged in providing security services and, as such, carrying out economic activity in this area. The charters of the majority of establishments that were analyzed contain detailed lists of objectives relating to security work that, by charter, are “permissible”. This includes providing security and public order in areas where secured facilities are located, etc.

In our opinion, it is erroneous to equate the concepts of “public order security” and “security of individual and legal entities’ property, personal security”, which are governed by the Law on licensing of certain types of economic activity. Even though entities or facilities that fall within the scope of responsibility of municipal enterprises may be found in a public place, this does not mean that they are entitled to resorting to police measures with respect to persons in that territory (e.g., peaceful assemblies being conducted outside of a secured facility that does not employ special access regime).

Additionally, according to their license, security entities are authorized to use and apply special tools and certain types of weapons (e.g., gas pistols and revolvers with 6, 8, or 9 mm gauge bullets, or loaded with tear-causing and irritant substances). This is also explicitly mentioned in the lists found in the charters of some of the establishments.

The local establishments’ authorities in the area of public welfare, as found in their charters, include:

- carrying out raids and inspections of municipal territories and facilities with regards to the state of their development, verification of compliance with relevant legislation by entities engage in economic activity, institutions, and organizations (regardless of ownership form) and by citizens;
- preventing offenses threatening public order and public security;
- delivery to police authorities of persons who committed administrative offenses in the area of public welfare, consumer protection, waste management, or public order, provided that a person cannot be identified at the place of committing the offense in a manner set forth by the Code on Administrative Offenses (e.g., City of Yuzhne Municipal Guard, City of Pokrovsk and City of Vinnytsia Municipal Police).
- etc.
Thus, local establishments (neighborhood guards/police/watches) are a widespread phenomenon in Ukraine that, so far, has not been adequately legally regulated. Their officials do not have police authority, but are de facto attempting to not only look like police, but to also act as one by taking over some of their functions.

At the same time, the need for introducing local police — i.e., decentralization of police bodies or engagement of volunteers working under “community-local police” model — has come up as a cornerstone of public debates regarding public order protection.

Conceptually, the possibility of community having more police resources and being able to independently set their priorities at the expense of a local budget is a viable notion, particularly since it is present in various European countries. Several draft laws relating to municipal police have been registered in Ukraine throughout its independence, and the idea itself has been raised by various political forces multiple times.

The National Police, as a whole, is not opposed to delegating its least substantial functions in the area of public order, notably a portion of patrol police functions. This is evidenced by the current prevalence of “community policing” practices. This could significantly lower the burden of the National Police and would look logical, since some of the police functions do not require significant professional training.

At the same time, the prevalence of corruption, as well as the insufficient community control over law enforcement authorities results in the lack of clarity with regards to two potential organization models:

1. centralized law enforcement authorities should continue to remain as they exist currently; or

2. law enforcement authorities should remain centralized as it relates to pretrial investigation, whereas public order security units should be created by and subordinated to local self-governance bodies.
Parking inspectors

The introduction of parking inspectors is the result of adoption of the Law of Ukraine No. 2262-VIII “On Amending Certain Legislative Acts of Ukraine Concerning Reforms in the Area of Vehicle Parking” of December 21, 2017. The Law went into effect in September 2017; however, its implementation is still ongoing.

The Law provided for the introduction of parking inspectors as officials of executive bodies of local councils.

Granting the parking inspectors the status of local self-governance officials was an intentional step on the part of legislators, given their authority relating to limiting private property rights to vehicles and to imposing administrative responsibility.

Parking inspectorates are created by relevant local councils. Such services have already been created in 11 oblast center cities. In practice, a parking inspector’s work in cities is introduced in three stages. During the first stage (so-called testing or pilot), they only engage in informational and awareness work. The inspectors’ role is to warn drivers of violations and conduct explanatory discussions. During the second stage, they provide photo recording of traffic rules violations and issue citations/fines. An important point here is the need to certify recording devices, which often results in delaying this stage. During the third stage, they carry out towing of vehicles as precautionary measure.

Volunteer assistants to precinct inspectors

At present, the law regulates citizens’ participation in public order protection only in their status of a public establishment member. Thus, the presence of individuals who refer to themselves as “assistants of precinct police inspectors” is a rudiment of regulations that were repealed in 2017.
At the same time, there exist alternative forms for citizens’ participation in public order protection, which are not provided for under law (e.g., public information inspectors for law and order protection employed under the “Sheriff” program by Employment Centers, local council inspectors on law and order and community redevelopment, etc.)².

Local council inspectors on law and order (“sheriffs”)

Most frequently, “sheriffs” are referred to as local council inspectors on law and order and community redevelopment. **Inspectors are local self-governance officials, who are appointed and removed from office by a local mayor’s directive.** They are subject to rights and responsibilities set forth in the Law of Ukraine “On Service in Local Self-Governments”. Depending on official terms of referenced approved by the mayor, inspectors may have different subordinations.

**The inspectors’ objectives include various types of preventative, inspection actions, measures in response to violations, etc.** For example, keeping records of enterprises operating within a particular territory, explaining environmental legislation to them, raids aimed at preventing unorganized trade, etc. In other words, this include administrative violations that fall within local self-governments’ competency.

Thus, local council inspectors on law and order and community redevelopment essentially duplicate local law and order protection establishments. At the same time, **they operate independently and, typically, in those places that have insufficient police force presence.** As such, the level of their funding by local authorities is significantly lower, as is the scope of their activities.

In sum, the activity of local “sheriffs” can be assessed positively. Typically, even though they are not empowered with police authority, their conflict resolution efforts can be quite effective, as they function as intermediaries among local residents. “Sheriffs” are able to cover those areas under police bodies’ jurisdictions where these bodies are simply absent due to shortage of resources and centralized administration.

² The “Sheriff” Project: An All-Ukrainian Scope, p. 196 (Kherson: Gileya, 2018).
1. **Ukraine’s legislation provides for quite diverse forms of community participation in ensuring law and order.** There are both volunteer public law and order protection establishments and specialized units of local self-governance bodies. There are both paid officials with narrow functions (parking inspectors) and local council inspectors on law and order, as well as volunteer precinct assistants. In this regard, Ukraine formally meets the requirements of European standards concerning decentralization of law and order protection functions. At the same time, police remains centralized, while the creation of municipal law and order units is still only being debated.

2. **This being said, none of the above forms of community participation in securing law and order (other than parking inspectors) has been widely and systematically adopted across the entire country.** Thus, the legal status of local self-governance units within territorial communities varies, due to the absence of a special law. In light of this, these units are being created both in the form of executive local self-governance bodies and in the form of municipal enterprises. Such diffuse approach does not help such units with exercise of their functions. On the other hand, provisions of the Law of Ukraine No. 1835-III “On Citizens’ Participation in Public Law and Order and State Border Protection” of June 22, 2000 are unclear when it comes to issues of registration of such establishments, while certain provisions relating to application of special tools or procedures for liquidation of establishments need to be amended. Conceptually, this Law replicates the format of joint patrols by police and voluntary people’s guards (druzhynnik), which has existed since the Soviet times.

3. **The number of public order protection establishments and of their members are currently in the midst of an obvious decline.** National Police bodies have thus far failed at developing a systemic cooperation format with these establishments; however, the main reason is that local budgets do not provide even for bare minimum financing or material provisions for the work of these establishments, thus forcing them to rely purely on their members’ enthusiasm and sporadic charitable donations. All attempts at systemically building up their work with support from regular allowances from local budgets or businesses have been unsuccessful, since it is difficult for public establishments to explain to the society their effectiveness and necessity.
4. **Effectiveness (results) of public establishments’ work is impossible to determine.** Data on their numbers and prevalence, as well as on the number of joint events with government bodies are hard to correlate with the answer to a question about practical outcomes of their work or about their assessment in terms of utility to society. Normatively, there are provisions for collecting (but not for summarizing) only the date concerning public order protection establishments that are envisioned by law. Thus, there is no information about activities of all other establishments, aside from brief reports in local media or sporadic informational reports by government bodies.

5. **The law delegates “police” functions solely to those public establishments that are envisioned by law.** All other types of establishments — such as municipal establishments or local self-governments’ law and order inspectors — are not entrusted with any authority relating to preventing or countering crime. Nevertheless, practice suggests that, given the general provisions in their charters, licenses to engage in security activities, and their own interpretation of relevant legislative provisions, such establishments do occasionally resort to “police” measures against individuals.

6. **Public trust in public establishments varies depending on the region and the categories of respondents expressing their perception.** Police officers and border control officers themselves are supportive of the work of public establishments, while citizens are largely either unaware of this work or treat such establishments with caution, equating them with Soviet voluntary people’s guards (druzhynnik). At the same time, municipal establishments are sometimes viewed as “the mayors’ pocket armies”, reflecting the outcomes of public order protection in the absence of relevant authority.

7. **At the same time, in reviewing the cases concerning violations by municipal establishments, their registration and liquidation procedures, etc., the courts do not uniformly interpret the scope of public establishments’ authority in light of their charters.** Thus, neither courts nor police or border control service have developed the practice of holding the members of public and municipal establishments accountable for violations. Viewed along with their encroachments on police functions, this creates a dangerous sense of impunity among both members of such establishments and the general public when faced with their work.
RECOMMENDATIONS:

To the Verkhovna Rada (Parliament) of Ukraine:

1. Adopt the Law on Municipal Guard while simultaneously banning the activity of municipal enterprises in the area of public order protection.

2. Amend the Law of Ukraine “On Citizens’ Participation in Public Law and Order and State Border Protection” with regards to the following:
   - defining government bodies and officials responsible for carrying out control and summarizing the information about public establishments;
   - allowing foreign citizens and stateless persons to participate in the work of public establishments;
   - introducing a ban on independent actions by public establishments without prior coordination with police or border control authority;
   - defining grounds and procedures for using special tools and weapons, as well as application of physical force by public establishments’ members;
   - clarifying the procedure for liquidation of a public establishment and its forced dissolution as a result of systematic violations by its members.

3. Amend the Code of Ukraine on Administrative Offenses with regards to removing the authority of public law and order and state border protection establishments to:
   - administratively detain and deliver offenders (Arts. 259, 262, 263);
   - compile protocols on administrative offenses in certain cases (sub-clause 1 of clause 9 of section 1, clause 2 of section 2 of Art. 255).

To the Cabinet of Ministers of Ukraine:

1. Amend the Regulation No. 1872 “On Adopting the Model Statute of a Public Order and State Border Protection Establishment, as well as the Descriptive Sample Templates of an Identification Document and a Sleeve Band of a Member of Such Establishments” of December 20, 2000, with regards to the following:
   - personal identification of public establishments’ members;
   - requirement to approve an annual activity report for establishments in the area of public order and state border protection, particularly in the instances of extraordinary situation; as well as to approve an audit commission’s report;
• providing for a new version of clause 22, as follows: “The head of an executive body shall ensure the execution of decisions issued by a general meeting and an executive body; shall annually report on the performance of the establishment’s key objectives before the special commission on the matters of joint activity by the National Police and the public; shall act on the establishment’s behalf without a power of attorney; shall enter into agreements within the scope of his/her competence; shall manage the establishment’s funds in line with the approved budget”;

• including an additional language in the referenced clause, as follows: “shall annually report on the performance of the establishment’s key objectives under its statute before the special commission on the matters of joint activity by the National Police and the public”

2. Amend the Regulation No. 877 on the National Police of October 28, 2015 with regards to ensuring legal and specialized training for persons who expressed the desire to become members of public establishments.

To the Ministry of Interior of Ukraine:

1. regulate the procedure for keeping records on public establishments, both at national and at regional levels;

2. finalize the introduction of a comprehensive automated system for parking payments oversight;

3. reinstate the institution of precinct police officer’s individual assistants (community police officer);

4. adopt methodological guidelines concerning training and listing of mandatory competencies that citizens must master in order to use special tools and physical influence measures, etc.

To Public Establishments:

• timely and objectively publicize the outcomes of their work to secure public order within the community; participate in legal awareness efforts within their communities;

• encourage active participants in public order protection within the community by the National Police and the local self-governance bodies, in line with current legislation.