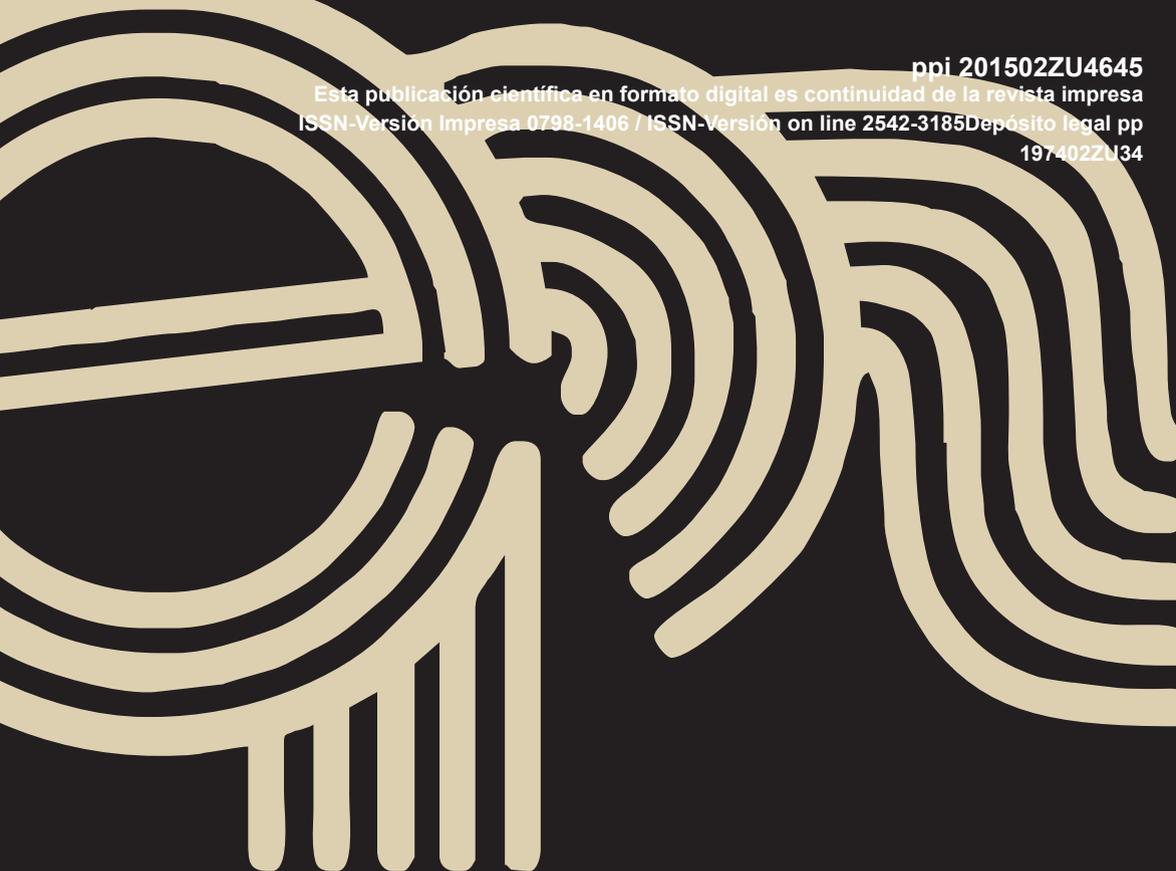


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Differences between the service in the national police and military service of law and order

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Andrii Ivanytsia *
Oleksandr Yunin **
Andrii Fomenko ***
Mykhailo Loshytskyi ****
Serhii Shevchenko *****

Abstract

By combining the dialectical and systemic structural method, the purpose of the article was to determine the peculiarities in the differences between the service in the National Police of Ukraine and the Military Public Order Service. As for their practical significance, there are three main types of service: civilian, militarized and specialized. It is shown that the service of the National Police of Ukraine, like the Military Public Order Service, is a militarized state service, but the Military Public Order Service is purely military and the service of the National Police of Ukraine is “paramilitary”; although both institutions perform relatively similar law enforcement functions and tasks. The research assessed the international experience of police and military institutions. It is concluded that, among the ways to improve the current administrative and legal support for the regulation of social relations in the sphere of law enforcement service and, order in the army, in the territories where war hostilities are actively developing, the institute of civilian service should be realized on the issue of differentiation of types of service, namely: the division into civilian and militarized.

* Candidate of Legal Sciences, Associate Professor, Associate Professor of the Department of General Law Disciplines of the Educational and Scientific Institute of Law and Innovative Education of Dnipropetrovsk State University of Internal Affairs (Dnipropetrovsk, Ukraine). ORCID ID: <https://orcid.org/0000-0001-8818-5334>

** Doctor of Legal Sciences, Professor, Honored Worker of Science and Technology of Ukraine, the First Vice-Rector of Dnipropetrovsk State University of Internal Affairs (Dnipropetrovsk, Ukraine). ORCID ID: <https://orcid.org/0000-0003-4846-2573>

*** Doctor of Legal Sciences, Associate Professor, Rector of Dnipropetrovsk State University of Internal Affairs (Dnipropetrovsk, Ukraine). ORCID ID: <https://orcid.org/0000-0003-3755-4130>

**** Doctor of Legal Sciences, Professor, Honored Lawyer of Ukraine, Professor of the Department of Public and Private Law of Rauf Abyazov East European University (Cherkasy, Ukraine). ORCID ID: <https://orcid.org/0000-0003-0533-0079>

***** Candidate of Legal Sciences, Associate Professor, Director of the Educational and Scientific Institute of Distance Learning and Advanced Training of Dnipropetrovsk State University of Internal Affairs (Dnipropetrovsk, Ukraine). ORCID ID: <https://orcid.org/0000-0003-4133-8860>

Keywords: public service; military service; military public order service; national police; public control.

Diferencias entre el servicio en la policía nacional y el servicio militar de orden público

Resumen

Mediante la combinación del método dialéctico y estructural sistémico, el propósito del artículo fue determinar las peculiaridades en las diferencias entre el servicio en la Policía Nacional de Ucrania y el Servicio de Orden Público Militar. En cuanto a su significado práctico, hay tres tipos principales de servicio: civil, militarizado y especializado. Se demuestra que el servicio de la Policía Nacional de Ucrania, al igual que el Servicio de Orden Público Militar, es un servicio estatal militarizado, pero el Servicio de Orden Público Militar es puramente militar y el servicio de la Policía Nacional de Ucrania es “paramilitar”; aunque ambas instituciones realizan funciones y tareas de aplicación de la ley relativamente similares. En la investigación valoró la experiencia internacional de las instituciones policiales y militares. Se concluye que, entre las formas de mejorar el soporte administrativo y legal actual para la regulación de las relaciones sociales en la esfera del servicio de protección de la ley y, el orden en el ejército, en los territorios donde se desarrollan activamente las hostilidades de la guerra, el instituto del servicio civil debe concretarse en el tema de la diferenciación de los tipos de servicio, a saber: la división en civil y militarizado.

Palabras clave: servicio público; servicio militar; servicio de orden público militar; policía nacional; control público.

Introduction

There are different systems of public service building in the world, its classification, approaches to its types, etc. These differences are due to the different historical paths taken by States, legal family, the form of government, the State system, established traditions, etc. The institution of militia has been existing for a long time in Ukraine, which we «got» as the Soviet heritage. Currently the National Police of Ukraine has undergone significant reforms, especially in the general philosophy of activity.

Thus, the National Police differs from the militarized Soviet militia by its emphasis on the civilian component and the provision of police services,

the priority of cooperation with civil society, etc. Nowadays, this agency is very specific social institution, the aim of which remains the same – to protect human rights and freedoms, provide property security, be perceived by society and support the government (Panova *et al.*, 2020).

At the same time, law enforcement relations also exist within the Armed Forces of Ukraine, which is handled by the Military Law and Order Service. However, the need to create a full-fledged Military Police institution within the Ministry of Defense of Ukraine has long been overdue. This has been repeatedly emphasized by different researchers; for example, in the recommendations and conclusions of the international scientific and practical conference “Military Justice System in Ensuring the National Security of Ukraine” the need to amend existing legislation on the main components of the national military justice system was noted, and one of them has a special status as a state law enforcement agency in the military sphere (Military Police of Ukraine).

Besides, it was proposed to establish State law enforcement agency with a special status in the military sphere on the basis of the Military Law and Order Service of the Armed Forces of Ukraine (Petryshyn, 2019). Aspects of differences in service are being updated against the backdrop of increased hostilities and the need to maintain law and order in the territories of Ukraine in conditions close to or under combat.

The purpose of the article is to determine the peculiarities of the differences between the service in the National Police of Ukraine and Military Service of Law and Order, to determine the prospects for improving the administrative and legal support for the regulation of public relations in the area of rule of law in the army, in the territories where active combat operations are conducted.

1. Methodology

The use of dialectical and system and structural methods allowed to analyze modern scientific approaches to the essence of the concepts of civil, militarized and specialized service, to clarify the legal status of Military Service of Law and Order as a special law enforcement formation within the Armed Forces of Ukraine.

Historical method made it possible to investigate legislative attempts to create the institution of the Military Police of Ukraine by examining the relevant Bills.

Logical and semantic method was used in the process of researching the characteristics of military and paramilitary service, mechanisms of organization and functioning, competence, tasks and functions of the Military Service of Law and Order.

Formal and logical method was applied in the analysis of the content of national legal instruments governing the activities of the National Police and Military Police.

Systematic approach helped to provide classification of police organization models, as well as features of militarized civil service and public service.

Forecasting and modeling method was helpful in outlining necessary amendments to the legislation of Ukraine on the Military Service of Law and Order in the Armed Forces of Ukraine in view of the continuation of the development process of the Draft Law of Ukraine “On the Military Police”.

2. Literature Review

Military law and order are an objective necessity and regularity of the development of the Armed Forces, which serves as a model for military personnel in their choice of behavioral decisions. Military service is a special type of public service, where lifestyle and activities of officers are regulated in detail by the provisions on military service.

Members of the armed forces have a special status and the exercise of their rights is subject to certain restrictions. A necessary stage of strengthening military discipline in the army is the creation of a unified system of military law enforcement and other bodies ensuring support for military discipline and crime prevention (Kovaliv and Drozdova, 2016).

Let us note the approach to the classification of law enforcement agencies of Ukraine by the scientist Muzychuk (2009), who proposed to distinguish two main groups in the system of law enforcement bodies: 1) indirectly law enforcement (Security Service of Ukraine, State Customs Service of Ukraine, State Tax Service of Ukraine (now – State Fiscal Service), State border service of Ukraine and others, including the Military Service of Law and Order); 2) direct law enforcement, which includes the relevant subdivisions of the specified indirect law enforcement agencies, which were specially created to protect the rights and freedoms of citizens, the interests of society and the State, primarily from criminal acts.

We consider this classification to be successful, because the law enforcement agency in the Armed Forces of Ukraine and its units perform not only direct law enforcement tasks, but also have other functions provided for by the legislation of Ukraine.

Instead, Shoptenko (2017) attributes the Military Service of Law and Order to the group of direct security forces that comprehensively implement law enforcement activities in various directions. The researcher assigned

bodies and units that implement separate law enforcement functions to the second group.

The ancient process of creating the Military Police Corps took place in the United States – more than 200 years ago. Its role is to provide the Army with soldiers – professionals in investigations to protect, preserve and promote the rule of law. The discipline of police operations and the methodology of military police operations shape the military police approach to the operational environment and provide a framework for which police operations are conducted. The basis of all activities of the Military Police Corps is six principles, providing, at the same time, operational concepts and an operational environment (Department of the Army, USA, 2019).

The Military Police of Canada provide a variety of operational, law enforcement, investigative and security services at bases and units in this country and around the world wherever the Canadian Armed Forces are deployed. There are currently over 2,000 military police officers in the Canadian Armed Forces. In addition, the military police are an integral part of the military justice system and, like the civilian police, operate within the framework of civil and criminal justice. Members of the military police are given certain powers to carry out their police duties. For example, they are entitled to arrest, detain and search, bring charges in civil criminal courts (Military Police Complaints Commission of Canada, 2018).

The main tasks of the Lithuanian military police are prevention of crimes and other violations of legal acts, investigation and detection of offenses, ensuring law and order in military territories and in the Armed Forces, and supporting safety of military traffic. Military police searches for servicemen who are suspected or accused of committing crimes and violations of legal acts, or missing soldiers, and act on instructions from prosecutors, judges and courts. Military police maintain military discipline and order by patrolling, guarding military transport, escorting convoys of military vehicles (Lithuanian Armed Forces, 2023).

3. Results and Discussion

There are different views on the division of public service in general. Thus, three basic types can be distinguished: civil service in the form of service in State authorities, in the apparatus of such bodies where there are no special titles, such as in the National Guard of Ukraine, the National Police, the State Border Guard Service of Ukraine, etc., militarized public service, in which employees perform labor activities in paramilitary or those that have signs of paramilitary structures, receive military or special ranks equivalent to military ones, have specific powers to exercise state coercion; their activities are regulated by separate laws (for example,

according to Article 3 of the Law of Ukraine No. 889-VII (2015), the scope of the Law does not apply to servicemen of the Armed Forces of Ukraine and other military formations; personnel of law enforcement agencies and other bodies, to which special ranks are granted; the third type appears in the form of specialized public service, that is, those employees who hold positions in state authorities with a special status; at the same time, they also hold special ranks and exercise certain specific powers, which may be related not only with state coercion, as this can be attributed to prosecutors, customs officials, as well as diplomats, judges, employees of the State Emergency Service (Mamchur, 2014).

In this regard, Strelchenko (2019) points out that militarized state service should be divided into military, that is, service in the Armed Forces of Ukraine, in the Security Service of Ukraine, and law enforcement or paramilitary State service, which should include the police, State Border Service, etc. Based on this separation, the service in the National Police of Ukraine, like Military Service of Law and Order, is a militarized state service, but the latter is purely military, and the first one is paramilitary, although both institutions perform similar law enforcement functions and tasks.

We, in turn, fully agree with the following list of features of militarized civil service: 1) it contributes to the State's performance of protection (defense) functions from external and internal threats; 2) real possibility of using coercion; 3) carried out by armed groups of people; 4) entry into service has a number of special requirements; 5) is based on a strict hierarchical principle combined with the obligation to follow orders; 6) specific legal status of employees, which implies special benefits and special accountability (Pysmennyi and Lypovska, 2015).

Some foreign researchers also distinguish three main groups of public service abroad: organizational models (divided into centralized and decentralized); group of models on the level of openness (career or closed and official or open); regional models of civil service (according to relations between the state as the employer and civil servant – Anglo-Saxon and continental (Sydorenko, 2016)).

If we talk about classifications of models of police organization, Rukolainina and Lemish (2017) highlight the following: centralized, decentralized and combined (integrated). It is important that researchers divide the centralized model into subspecies, namely the functioning of the civil police (Sweden, Denmark, Norway, Ireland, Finland), as well as the civil police with special units – the gendarmerie (France, Spain, Italy, Portugal, Belgium, Holland, Poland). The combined (integrated) model of police management, which is characteristic of Great Britain, Germany, Japan, and the Netherlands, provides, in addition to the “ordinary” police, for the possibility of special institutions with police functions (transport police, nuclear power police, military police, etc.).

Parkhomenko-Kutsevil (2015) stresses on the specific example of France and distinguishes three main types of the French civil service system: political civil service in the form of ministers and their deputies; civil, which includes administrative employees of ministries, departments, local state authorities and their employees, who are appointed mostly on a competitive basis and have guarantees against dismissal); paramilitary or militarized (military personnel, gendarmes and policemen). A fairly original division into five categories of civil servants exists in Hungary, one of which is called “agents in uniform” (policemen, military, firemen, customs officers and others).

Babych (2019) states that law enforcement agencies with military status operate in NATO countries in the field of defense and allocates military police, carabinieri and gendarmerie; he emphasizes that such services are endowed with broad powers to detect, cease and investigate war crimes. The experience of using military police in Italy in the matter of subordination to this institution is quite interesting; thus, Melnyk (2019) points out that such function is performed by Military Carabinieri, who in matters of defense are subordinate to the Italian Ministry of Defense of Italy and in matters of public order – to the Ministry of internal affairs.

As for France, their military police in the form of the National Gendarmerie have dual subordination: to the Minister of Defense of France (as a component of the Armed Forces) and to the Minister of Internal Affairs (as a component of the police system). The Gendarmerie is headed by the General Director. The number of the National Gendarmerie is about 110,000 employees, it also includes the Republican Guard, mobile gendarmerie, units deployed outside France, etc.

According to Art. 1 of the Law of Ukraine No. 3099-III (2002), Military Service of Law and Order is a special law enforcement formation within the Armed Forces of Ukraine, designed to ensure law and order and military discipline among servicemen of the Armed Forces of Ukraine in places where military units are deployed, military educational institutions and organizations, military towns, on the streets and in public places; to prevent criminal and other offenses in the Armed Forces of Ukraine, their termination; to protect life, health, rights and legitimate interests of servicemen, conscripts during trainings, employees of the Armed Forces of Ukraine, as well as to protect the property of the Armed Forces of Ukraine from theft and other illegal encroachments and to counteract sabotage and terrorist acts at military facilities.

As can be seen from this provision, a number of functions and tasks, such as precautionary measures, crime prevention, protection of public order, etc., are inherent in the police functions of the National Police of Ukraine.

It is worth noting that in 2019, at the international scientific and practical conference “Military Justice System in Ensuring the National Security of Ukraine”, a number of tasks were put forward that should be referred to the proposed new State law enforcement agency:

- protecting rights, freedoms and legitimate interests of military personnel, reservists and persons liable for military service, as well as their family members;
- ensuring law and order in the Armed Forces of Ukraine and other military formations established in accordance with the laws of Ukraine;
- prevention, detection and cease of offenses, combating crimes and corruption in the Armed Forces and other military formations, as well as in the defense and industrial complex of the State;
- carrying out pre-trial investigations in criminal proceedings in accordance with the specified jurisdiction;
- participation in the introduction and implementing measures of the legal regimes of martial law and state of emergency;
- ensuring rule of law in the areas of hostilities, operations of joint forces, peacekeeping and anti-terrorist operations, and in countering sabotage and terrorist acts at military facilities;
- providing road safety of vehicles and military equipment of the Armed Forces of Ukraine and other military formations;
- ensuring the execution of criminal penalties and administrative fines imposed on military personnel in accordance with the legislation and protection of military facilities determined by the Cabinet of Ministers of Ukraine (Petryshyn, 2019).

Clearly, granting pre-trial investigation powers and other powers to such a body power of pre-trial investigation and other powers is the subject of considerable discussion. Currently, the Verkhovna Rada of Ukraine has registered and included in the agenda the Draft Law No. 6569-1 (2022) “On the Military Police”, which defines such it as the central body of executive power with a special status providing the interests of the State in the sphere of defense and national security of Ukraine by performing law enforcement activities on the prevention, detection, termination, investigation and solving crimes, offenses assigned to its jurisdiction, as well as implementing preventive measures to ensure law and order in the Armed Forces of Ukraine, other military formations in the Ministry of Defense of Ukraine, forces and resources involved in the performance of territorial defense tasks, State clients in the sphere of defense, individual performers of the State contract (agreement) on defense procurement and

protection of the country's in the field of defense and national security in the manner determined by law.

The authors of the said draft law on the scope of the mandate went far beyond those recommended at the international scientific and practical conference "Military Justice System in Ensuring the National Security of Ukraine".

At the same time, among the tasks proposed in the bill there are none to take under hostilities across large parts of Ukraine, areas of operations of joint forces, peacekeeping and anti-terrorist operations. We suppose it is quite a valid thesis that near or directly in active theatre of combat operations, the civilian National Police, having no priority and no emphasis on military training in combat, is somewhat unsuitable for the performance of tasks of supporting law and order in the areas of hostilities.

The project also states that the activities of the Military Police are directed and coordinated by the Cabinet of Ministers of Ukraine, as well as the Minister of Defense of Ukraine within the limits set by law, and the independence of the Military Police is guaranteed by: 1) the special status of the Military Police, specific procedure for determining its general structure, financing and organizational activity support; 2) particular process for appointing and dismissing the Chief of the Military Police, the Deputy Chief of the Military Police, the Director of the Department of Investigations and Special Prevention, and the Deputy Chief of the Military Police, the Director of the Department of the Military Police, the Deputy, as well as an exhaustive list of grounds for terminating their mandate, etc.

Probably, among the priority tasks of the Military Police should be the maintenance of law and order in the areas of hostilities; besides, interaction or even direction and coordination of some issues related to public order should be legislated.

An important aspect remains the question of the controllability of such a structure, namely aspects of civil or public control, as official activities of law enforcement agencies is under careful attention on part of society (Sirokha et al., 2020). For example, there have been decades of implementation of standards and control regulatory support in European states (Yunin, 2021a). Democratic civil control should be carried out in the manner specified by the Law of Ukraine "On the National Security" (Law of Ukraine No. 2469-VIII, 2018).

According to it, citizens of Ukraine participate in the implementation of civil control through public associations, deputies of local councils, personally by applying to the Commissioner of the Verkhovna Rada of Ukraine for human rights or to the State agencies in the manner established by the Constitution of Ukraine and other legal instruments. The sphere of public supervision can be limited exclusively by the Law of Ukraine "On State Secret" (Law of Ukraine No. 3855-XII, 1994).

Instead, there is a separate section dealing with public control in the Law “On the National Police” (Law of Ukraine No. 580-VIII, 2015), but, unfortunately, the concept of such control is not defined there. Instead, Yunin (2021) proposes valid definition of public control over the activities of the National Police of Ukraine; thus, it is a complex of measures carried out by the representatives of the public (individual citizens and/or public associations) aimed at verification (observation, supervision) over the observance of legality by the National Police units or its individual officers during the performance of the tasks assigned to this body and the powers of the policemen, as well as at the interaction of the police with the public for the preparation and implementation of joint projects, programs and measures to meet the needs of the population and improve the effectiveness of the performance of the tasks assigned to the police.

Another Draft Law No. 1805 (2015) proposed to create such police in the form of law enforcement body subordinated to the Minister of Defense of Ukraine, appointed to ensure law and order in the Ministry of Defense of Ukraine and the Armed Forces of Ukraine; military police investigators should have become pre-trial investigators.

Among the arguments was that in the vast majority of the leading countries of Europe and the world, law enforcement agencies with military status (Military Police, Carabinieri, Gendarmerie) function within the structure of their armed forces, are subordinate to the Minister of Defense or have dual subordination, endowed with broad powers to detect, cease and investigate crimes committed by military personnel, as well as perform police and administrative functions in the interests of the entire country (Kuzmych, 2020).

Clearly, it raised a number of questions regarding the independence and effectiveness (in terms of impartiality) of the Military Police, which should be directly subordinated to the Ministry of Defense of Ukraine, so we consider additional guarantees in the 2022 project regarding its autonomy to be fully justified and proper. The modern Military Law and Order Service needs to be reformed into a full-fledged body of executive power in the form of the Military Police.

Conclusions

Thus, according to the set goal and the conducted research, we came to the following conclusions:

Civil service can be divided into civil, militarized and specialized. In turn, the militarized state service includes the Armed Forces of Ukraine, the National Police, the Military Service of Law and Order, etc. According

to current legislation, the Military Law and Order Service belongs to such a subtype of militarized service as the military, and the service in the National Police to the law enforcement or paramilitary state service as a subtype of militarized, although both institutions currently perform some police law enforcement functions.

Therefore, among the ways of improving the current administrative and legal regulation of social relations in the field of law-and-order protection service in the army, in the territories where hostilities are actively taking place, it is worth concretizing the institute of civil service in the matter of differentiation of types of civil service, namely the division into civil and militarized;

Militarized state service has a number of specific and inherent features: 1) law enforcement focus; 2) use of coercion method; 3) special criteria for admission, passing and dismissal; 4) availability of uniform and ceremonial; 5) a centralized system based on subordination; 6) regulation by special legislation.

Service in the National Police and the Military Law Enforcement Service has a number of differences, among which belonging to either the military or one that only has some features of military service. In the National Police, despite the militarized component, the civilian component is the main one in the issue of interaction and provision of police services to civilians, i.e., citizens of Ukraine, while the Military Law and Order Service is aimed primarily at the implementation of law enforcement functions among military personnel.

If we talk about draft laws “On the Military Police”, the differences are in the subordination, coordination and direction of the activities of the National Police of Ukraine or the Military Police, in the legal regulation of the issue of public control or civil democratic control over the activities of institutions.

We note that among the priority tasks of the Military Police should be the maintenance of law and order in the areas of hostilities, it is also worth legislating the order of interaction or even the direction and coordination of some issues related to public order, etc., which is more inherent in the functions of the National Police of Ukraine, by the Ministry of Internal Affairs.

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