

UDC 342.95:351.753(477)

DOI <https://doi.org/10.32849/2663-5313/2021.8.12>**Tetiana Shumeiko,***PhD in Law, Postdoctoral Student at the Department of Police Law, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, TetianaShumeiko@ukr.net***ORCID:** orcid.org/0000-0003-0103-300XShumeiko, Tetiana (2021). Particularities of public policy on firearm circulation in Ukraine. *Entrepreneurship, Economy and Law*, 8, 78–82.

PARTICULARITIES OF PUBLIC POLICY ON FIREARM CIRCULATION IN UKRAINE

Abstract. *The purpose* of the article is to clarify and analyse the key features of public policy on firearm circulation in Ukraine. **Results.** The state policy on arms circulation in Ukraine is a complex social and legal phenomenon, which in the process of its objectification can be distorted by the subjects of this state policy consciously or unconsciously due to the difficulty of understanding the essence of this phenomenon. However, a critical analysis of the modern features of public policy on firearm circulation in Ukraine allows one to fully understand its essence. The article reveals and comprehensively analyses the system of key particularities of public policy on firearm circulation in Ukraine. The author argues that nowadays the key features of this public policy are: 1) its objective (creating the most favourable conditions for the conduct of relations and processes in firearm circulation in the State which contribute to the enhancement of the legal capacity of citizens to protect their lives and health, in particular, using firearms), tasks (establishing relations and processes in the field of firearm circulation, ensuring the highest possible level of citizens' safety and national security of the State through the proper functioning of the firearm circulation mechanism, etc.) and functions (derived from the functions of the State and of the actors involved in the preparation and implementation of relevant public policy); 2) the special sector of manifestation (in the field of firearm circulation); 3) the constituent actors (covering the different levels of exercise of public power in Ukraine, and primarily, legislative, executive and judicial powers, as well as by civil society actors); 4) the legal and regulatory framework (laws and other legal regulations of the Parliament dealing with firearm circulation, by-laws regulating various aspects of firearm circulation); 5) guiding lines of the implementation of this public policy (determination of the legal regime governing firearms ownership, restrictions on the rights and freedoms of natural and legal persons in the field of firearm circulation, etc.); 6) existence and operation of an administrative and legal mechanism for the development and implementation of appropriate public policy. **Conclusions.** The conclusions of the article summarize the results of the study and also outline a list of managerial standards that the actors of public policy under study will comply with in order to prevent its distortion and abuse in disregard of its purpose of development and implementation.

Key words: public policy on firearm circulation, firearms, firearm circulation, legal and regulatory framework, implementation of public policy, specificities, formation of public policy.

1. Introduction

Public policy on firearm circulation in Ukraine is based on the provisions of current legislation, targeted, organized and managerial performance of the actors of state power related to regulating, developing and solving the problems of good social relations and processes in the field of firearm circulation. It is provided for by the legal and administrative mechanism for development and implementation of this public policy. At the same time, public policy is developed and implemented not only in the actions (omissions) of the relevant actors of administrative law, but also in their decisions. Therefore, the managerial performance of the actor of this public policy, in the form of actions or omis-

sions, should also be interpreted as managerial activities related to decision-making or refusal to make such decision.

2. Purpose, tasks and functions of the state policy in the field of arms circulation in Ukraine

Thus, public policy on firearm circulation in Ukraine is a complex social and legal phenomenon that may be deliberately or unconsciously distorted by the actors of this public policy in the course of their objective activities, because of the difficulty of understanding the nature of the phenomenon. However, a critical analysis of the modern features of public policy on firearm circulation in Ukraine allows one to fully understand its essence. Therefore, the practice

requires to identify the list and the key specificities of public policy in this field.

The wide range of challenging issues related to firearm circulation in Ukraine have been under focus of domestic scientists, but it should be noted that legal experts in administrative law have not yet attempted to define a system of essential particularities of public policy on firearm circulation in Ukraine. However, many legal experts in administrative law and specialists in public administration (such as V.A. Demianchuk, A.V. Merzliak, A.A. Mozhova, V.M. Pasichnyk, A.V. Ruban, H.P. Sytnyk, D.A. Tykhomyrov et al.) have already revealed the essence and regularity of the legal nature of public policy in fields intersected in one way or another with public policy under study. The scientific findings of the mentioned scholars together with the studies of public policy on firearm circulation will form the theoretical basis for a comprehensive scientific understanding of the system of essential specificities of public policy on firearm circulation in Ukraine.

Consequently, the aim of the article is to clarify and analyse the key particularities of public policy on firearm circulation in Ukraine. This aim is achieved by implementing the following tasks: 1) to identify a system of specificities of public policy on firearm circulation in Ukraine; 2) to analyse identified specificities of public policy being investigated; 3) to summarize the results of the study.

3. Implementation of state policy in the field of weapons in Ukraine

Public policy on firearm circulation in Ukraine derives from the phenomenon of "public policy", and therefore, it is natural that the type of policy being studied has the key specificities of public policy. With this regard and taking into account the elements that Ukrainian scholars usually use to characterize the legal phenomena they study (Borko, 2013; Slynko, 2015; Kovalyk, 2014), we argue that the key features of public policy on firearm circulation in Ukraine are:

I. The aim of public policy on firearm circulation in Ukraine which involves creating the most favourable conditions for the conduct of relations and processes in firearm circulation to enhance the legal capacity of citizens to protect their lives and health, in particular by the firearms use, as well as establishing lawful conduct in firearm circulation that shall prevent illegal trafficking in firearms and the existence and occurrence of other security risks in this field.

II. The tasks of public policy on firearm circulation in Ukraine. Public policy, like any other human activity (activities of people's associations), cannot be properly implemented without its attribute component, such

as the tasks in the form of appropriate ways of achieving the policy's objective. Currently, the main tasks are the following ways of achieving the objective of public policy on firearm circulation in Ukraine:

1) streamlining of relations and processes in the field of firearm circulation and progressive anti-shadowing of firearm circulation in the country;

2) ensuring the highest possible level of citizens' safety and national security of the State through the proper functioning of the firearm circulation mechanism;

3) eliminating security risks for the individual, society and the State in the field of firearm circulation in Ukraine (in particular, the expansion of the so-called "black market" of firearms coming from the territories of the United Forces operation) and the prevention of crisis situations in this field;

4) establishing a legal and regulatory basis for the circulation of firearms in Ukraine, monitoring their relevance and ability to be effective (fully meeting the security interests of the individual, society and the State by ensuring the proper circulation of firearms in the country), as well as identifying possibilities for improving the legal regulatory mechanism for firearms in the State;

5) establishing (as well as standardisation of the status), organization and maintenance of the functioning (as well as social, legal, economic and political provision of administrative influence) of the system of State bodies and other actors that develop and implement public policy on firearms circulation in the State;

6) development, approval and implementation of State strategies and targeted programmes in the field of firearm circulation in Ukraine;

7) monitoring and supervising relations and processes in the field of firearm circulation in the country, as well as the processes of development and implementation of this type of public policy in general;

8) involving the scientific community and the public in the development of public policy on firearm circulation in Ukraine, as well as taking into account the scientific ideas and proposals of civil society in the development and implementation of relevant public policy;

9) international cooperation to ensure the inviolability of the legal regime governing firearm circulation in Ukraine and in other States of the world.

III. Functions of public policy on firearm circulation in Ukraine. First of all, it should be noted that the functions of this type of public policy are determined by:

1) the basic (general) functions of the State, following them in a harmonious and logical man-

ner. According to domestic lawyers, the State's modern core functions include: "political; ideological; economic; fiscal; function of protecting human and civil rights and freedoms; law enforcement; social; function of state support for science, education and culture; environmental; information; national security function; defence; international integration function" (Heorhiievskiy, 2016, p. 32);

2) the functions, powers and competencies of the actors authorised to develop and implement public policy on firearm circulation in Ukraine, since the functions of this type of public policy are, in practice, objectify precisely through the operation of those actors. In this context, the functions of public policy on firearm circulation are a manifestation of public administration in this field, and thus are a purely administrative and legal phenomenon.

In the light of the above, we can conclude that the functions of public policy on firearm circulation, as the main (general) areas of state activities (as well as components of the managerial performance of the authorized actors in the relevant field), aimed at stabilizing this field, ensuring the manageability (predictability) of the processes and relations in the field of firearm circulation, as well as enabling citizens to use full range of ways to protect their lives and health, etc., include: target, prognostic, regulatory, coordination, information, stimulation, supervision, protection, security functions.

IV. The special sector in which public policy on firearm circulation is manifested in Ukraine, namely, the sector in which social relations and processes for the production, repair, trade, acquisition, use, carrying, use, storage, record-keeping, seizure, destruction, collection, exhibition, promotion, transfer, inheritance, gifts transport, export, import, coming-in, transit transfer and export from the territory of Ukraine of firearms, their components and ammunition are established, carried out, discontinued and certified, as well as other civil and economic transactions or operations with regard to firearms, their main components and/or ammunition are carried out in accordance with valid permits for this type of activities.

V. The constituent actors of development and implementation of public policy on firearm circulation in Ukraine, covering the different levels of exercise of public power in Ukraine, and primarily, legislative, executive and judicial powers. Among them, the Verkhovna Rada of Ukraine, the President of Ukraine (together with the National Security and Defence Council of Ukraine), the Cabinet of Ministers of Ukraine, the Ministry of Internal Affairs and other central executive authorities; civil society actors are of particular importance.

VI. The legal and regulatory framework for public policy on firearm circulation in Ukraine and, by the way, on its development and implementation. These are mainly legal regulations such as:

1) laws and other legal regulations of the Parliament relating to firearm circulation (the Constitution of Ukraine; by-laws that regulate individual firearm circulation issues; legal regulations and parliamentary decisions, some provisions thereof regulate special firearm circulation issues);

2) by-laws regulating various aspects of firearm circulation in Ukraine, namely: a) issues relating to the operation of the authorization system and to the permit (licence) of the objects of the authorization system, as well as to the monitoring (supervision) of compliance with the legislation in this field; b) issues relating to the manufacture, repair of firearms and the acquisition, storage, transport and use of firearms, maintenance of shooting ranges, firing fields and stands, etc.

VII. Public policy on firearm circulation provides for guiding lines of the implementation of this public policy. In general, these are:

1) determination of the legal regime governing firearms ownership;

2) determination of the administrative and legal status of the actors of public policy on firearm circulation;

3) restrictions on the rights and freedoms of natural and legal persons in the field of firearm circulation;

4) guarantees for natural and legal persons to exercise the rights granted to them in the field of firearm circulation;

5) parliamentary and public supervision of the implementation of public policy on firearm circulation, etc.

VIII. Public policy on firearm circulation in Ukraine is implemented through the operation of an administrative and legal mechanism for the development and implementation of appropriate public policy, which is a legal framework establishing a mutually agreed system of legal, regulatory, institutional, enforcement and organizational forms and means, based on the current legislation, with a cumulative, holistic and consistent impact on actors, relations and processes in the field of firearm circulation, thus fulfilling the task of developing and implementing public policy in this field. The system of this legal mechanism includes:

1) the structural elements of a mechanism which are static (relatively static): a) elements of an ideological conceptual level (the doctrine of administrative law, legal culture); b) elements of a conceptual and fundamental level (principles for the development and implementation of public policy in this field); c) elements

of a legal and regulatory level (legal and regulatory framework for the development and implementation of public policy in question); d) elements of the institutional and democratic level (actors who develop and/or implement public policy on firearm circulation); e) acts implementing legal regulations on firearm circulation;

2) the structural elements of the mechanism that are dynamic: a) the performance of the actors of development and/or implementation of public policy on firearm circulation carried out in legal forms and methods, using certain means and methods of activity; b) administrative, legal and other relations in the field of firearm circulation; c) procedures for development and/or implementation of public policy on firearm circulation.

4. Conclusions

In general, public policy is a complex social and legal, political, economic and cultural phenomenon and determines the level of civilizational development of the State in this field in which it objectifies. In this context, public policy on firearm circulation in Ukraine is a specific phenomenon that is aimed at creating the most favourable conditions in a holistic manner, primarily, for the conduct of relations and processes in firearm circulation in the State to enhance the legal capacity of citizens to protect their lives and health, in particular by the firearms use, as well as to prevent illegal trafficking in firearms and the existence and occurrence of other security risks in firearm circula-

tion in the country. These favourable conditions are achieved through the implementation by the competent state bodies of the tasks of this public policy, which are reflected in the establishment of a legal and regulatory framework for the proper flow of relations and processes in the field of firearm circulation, implementation of authorisation, State control and supervision in this field, etc. However, public policy on firearm circulation in Ukraine will achieve its goal of development and implementation only when managerial decisions and managerial actions within the framework of this public policy will:

1) be based on the facts of objective reality, taking into account a set of requirements of part 2 of art. 19 of the Constitution of Ukraine;

2) be fully consistent with the aim, tasks and functions of public policy on firearm circulation in Ukraine, on the one hand, as well as with public policy and the values of the State and society, on the other hand;

3) be carried out in accordance with the basic methods of decision-making and action of the public administrator;

4) be adopted and implemented in accordance with the needs and legitimate interests, objectively arising at the time that justifies these legal facts;

5) be a consequence of a (deliberate, verified and organized) choice of a certain response to a certain fact of objective reality that requires a decision to be made or an action (inaction) to be taken.

References:

Borko, A.L. (2013). Poniattia i osnovni rysy administratyvno-pravovoho zabezpechennia funktsionuvannia sudovoi systemy Ukrainy [The concept and key specificities of administrative and legal support for the functioning of the judicial system of Ukraine]. *Publichne pravo – Public law*, no. 2, pp. 71–77 (in Ukrainian).

Heorhiievskyyi, Yu.V. (2016). Nerozdileni povnovazhennia mizh orhanamy derzhavnoi vykonavchoi vlady i mistsevoho samovriaduvannia: problemy vyznachennia [Undivided powers between state executive bodies and local self-government: problems of definition]. *Sotsiologhiia prava – Sociology of law*, no. 1–2(16–17), pp. 30–35 (in Ukrainian).

Kovalyk, V.V. (2014). Poniattia, osnovni rysy i pryntsyipy derzhavnoi sluzhby yak instytutu administratyvnoho prava [Concepts, key specificities and principles of civil service as an institution of administrative law]. *Naukovo-informatsiynyi visnyk Ivano-Frankivskoho universytetu prava imeni Korolia Danyla Halytskoho – Scientific and Information Bulletin of Ivano-Frankivsk University of Law named after King Danylo Halytsky*, no. 10, pp. 113–117 (in Ukrainian).

Slynko, D.V. (2015). Osnovni rysy ta struktura pravozastosovnoi diialnosti [Key specificities and structure of law enforcement activity]. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina – Bulletin of V.N. Karazin Kharkiv National University*, no. 20, pp. 21–24 (in Ukrainian).

Тетяна Шумейко,

кандидат юридичних наук, докторант кафедри поліцейського права, Національна академія внутрішніх справ, площа Солом'янська, 1, Київ, Україна, індекс 03035, Tetiana.Shumeiko@ukr.net
ORCID: orcid.org/0000-0003-0103-300X

СУТНІСНІ РИСИ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЗБРОЇ В УКРАЇНІ

Анотація. *Метою* статті є з'ясування та аналіз основних сутнісних рис державної політики у сфері обігу зброї в Україні. *Результати.* Державна політика у сфері обігу зброї в Україні є складним соціально-правовим явищем, яке у процесі своєї об'єктивації може спотворюватися суб'єктами цієї державної політики свідомо чи несвідомо (через складність розуміння сутності цього явища). Однак повною мірою зрозуміти сутність державної політики у сфері обігу зброї в Україні можна лише на підставі критичного аналізу її сучасних особливих рис. Статтю присвячено з'ясуванню та комплексному аналізу системи основних сутнісних рис державної політики у сфері обігу зброї в Україні. Автором обґрунтовується, що основними рисами цієї державної політики наразі є такі: 1) її мета (створення в державі найбільш сприятливих умов перебігу відносин і процесів у сфері обігу зброї, що розширюватимуть правові можливості громадян захищати своє життя і здоров'я, зокрема, з використанням зброї), завдання (упорядкування відносин і процесів у сфері обігу зброї, забезпечення найвищого можливого рівня безпеки громадян та національної безпеки держави за рахунок належного функціонування механізму обігу зброї тощо) та функції (постають із функцій держави та суб'єктів формування й реалізації відповідної державної політики); 2) особлива сфера вияву (власне, сфера обігу зброї); 3) суб'єктний склад (охоплено різні рівні реалізації публічної влади в Україні, насамперед законодавчу, виконавчу та судову гілки, а також суб'єктів громадянського суспільства); 4) нормативна основа (законодавчі акти та інші акти парламенту, норми яких стосуються питань обігу зброї; підзаконні акти, норми яких регулюють різні аспекти обігу зброї); 5) напрями реалізації цієї державної політики (визначення правового режиму власності на зброю, обмеження прав і свобод фізичних та юридичних осіб у сфері обігу зброї тощо); 6) існування та функціонування адміністративно-правового механізму формування й реалізації відповідної державної політики. **Висновки.** У підсумку роботи узагальнюються результати дослідження, а також окреслюється перелік стандартів управлінської діяльності, дотримання яких суб'єктами досліджуваної державної політики сприятиме тому, що вона не буде спотворюватися та використовуватися всупереч її меті формування й реалізації.

Ключові слова: державна політика у сфері обігу зброї, зброя, обіг зброї, правове регулювання, реалізація державної політики, риси, формування державної політики.

The article was submitted 13.08.2021

The article was revised 02.09.2021

The article was accepted 21.09.2021