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## GENERAL LEGAL PRINCIPLES FOR MAKING PUBLIC POLICY ON FIREARM CIRCULATION IN UKRAINE

**Abstract. Purpose.** The aim of the article is to form an up-to-date scientific perspective on the essence and system of general legal principles for making public policy on firearm circulation in Ukraine.

**Results.** The article forms an up-to-date scientific perspective on the essence and system of general legal principles for making public policy on firearm circulation in Ukraine. The principles under study are considered as a set of basic (fundamental) ideas that contribute to the legitimate, optimal and effective making of public policy on firearm circulation in Ukraine, as a democratic and social State governed by the rule of law. The system of general legal principles for making public policy in this field comprises such principles as the rule of law; humanitarianism; justice and legal equality (non-discrimination); legality; and the inevitability of liability. The analysis of the requirements deriving from these general legal principles allows proving that these principles provide a legal basis for the legalization of civil (non-special) firearm circulation in Ukraine.

**Conclusions.** The general legal principles governing making public policy on firearm circulation in Ukraine, in accordance with their social and legal significance, are aimed at an efficient (effective, rational, intended, desirable) conduct of processes and relations in the field of firearm circulation in the State, the conduct of the managerial activity of public policy makers in this field, in the course of which the tasks are carried out and the objective of the phenomenon under study is achieved. The observance of the principles outlined in this scientific article by the actors cooperating in firearm circulation contributes to Ukraine's development without let or hindrance as a democratic and social State governed by the rule of law, capable to realize own Euro-integration and Euro-Atlantic objectives. The State bodies operating in the field of firearm circulation, as a consolidating and systemically controlling determinant of the conceptual and ideological, regulatory and legal, institutional and actual development of relations and processes in this field, require to constantly focus on the general legal principles of making public policy on firearm circulation. The failure of these entities to respect the relevant principles will preclude the achievement of the objective of the relevant public policy, call into question the authority of these State bodies and the existence of the State as a modern State governed by the rule of law, able in the future to become a member of the EU and the North Atlantic Treaty Organization.

**Key words:** public policy on firearm circulation, general legal principles, weapons, firearm circulation, principles, implementation of public policy, formation of public policy.

### 1. Introduction

Objectively, the principles of public policy on firearm circulation form a solid conceptual perspective for making this policy in a State governed by the rule of law due to well-known fact that: 1) The principle “is a central concept, a fundamental idea that underlies the system of any knowledge and subordinates it” (Lopushniak, 2010, p. 75); 2) The principle is objectified in “close relationship between objectively exist-

ing defined rules having a basic, starting meaning and subjective properties such as internal conviction, views” (Pochtovyi, 2009, p. 6); 3) Making public policy is a managerial activity, and any activity is always based on certain leadership principles, has its own foundation and, so to speak, basic orientations, embodied in the respective areas of such activity” (Ahanina, 2014, p. 60). The principles of making public policy on firearm circulation in Ukraine nec-

essarily include general legal principles. This is due to the fact that: 1) Making this type of public policy is a legal phenomenon, objectivised in a State governed by the rule of law; consequently, the relevant basic principles of law necessarily underline or generally permeate it; 2) The conformity of the legal models of the various mechanisms (above all public policy) with the general principles of law is an indicator of the conformity of the State with the criteria of a modern State governed by the rule of law; 3) The incompatibility of a certain legal model with general legal principles results in it acting in the national legal system as an alien phenomenon with which phenomena built on general legal principles cannot interact. The result is an automatic decline in the effective functioning of the State in a certain sector, while public policy, which is not based on general legal principles, becomes non-binding and ineffective. This demonstrates the practical need for scientific perspective on the general legal principles of making public policy on firearm circulation.

Despite the importance of the general principles of law in making public policy on firearm circulation in Ukraine, it should be noted that this issue has not yet been studied by domestic legal experts in administrative law. However, the essence of the general legal principles of various types of State politics have already been under focus by S.V. Ivanov, D.O. Koshykov, V.V. Mushenok, V.O. Nehodchenko, and other scientists. The scientific findings of these and other scientists testify to the actual possibilities of identifying and defining theoretically the essence of the general legal principles of making public policy on firearm circulation in Ukraine, taking into account the legal nature and legal content of this type of public policy, as well as the specificities of making this policy.

Therefore, the aim of the article is to form an up-to-date scientific perspective on the essence and system of general legal principles for making public policy on firearm circulation in Ukraine. This aim will be achieved by fulfilling *tasks*, such as: 1) to define the concept of “general legal principles for making public policy on firearm circulation in Ukraine”; 2) to outline the structure of the principles being studied and to analyse the requirements set by these principles for making of public policy in this field to be proper; 3) to sum up the results of the study.

## **2. The principle of the rule of law and anthropocentrism in the field of arms circulation in Ukraine**

The general legal principles of making public policy on firearm circulation in Ukraine are a set of basic (fundamental) ideas that contribute to the legitimate, optimal and effective making

of public policy in this field in the State, which is a democratic and social State governed by the rule of law. These principles should include:

1) The rule of law. This principle, “formed under the influence of globalizing, international and European integration processes” (Ivanuta, 2017, 79), is the basis on which the legal and democratic State is built. This meaning of the principle under study is due to the fact that the very phenomenon of “the rule of law” is, first, “the primacy of human rights over the duty of the State to ensure all human rights and freedoms”; second, it is “the primacy of natural human rights over the rights of the State, the rights of social groups, the rights of society” (Malyshev, 2012, p. 14). Consequently, we may consider that this principle, in the context of the issue under consideration, requires the following: a) legal regulations and law application instruments in the context of making public policy on firearm circulation should be developed and adopted considering the provisions of the Constitution of Ukraine and the principles of law; b) in the course of making public policy on firearm circulation, the actors concerned should take into account that the right to human security is a basic human right, which every person has the right to provide for oneself, through the ownership and use of firearms in a lawful manner and under conditions prescribed by law;

2) Anthropocentrism. According to the scientist T. Tarakhonych, first, humanitarianism is “a vivid manifestation of personal human rights, namely the right to life, health, inviolability, security, freedom, honour, dignity, namely the right to life, health, inviolability, security, liberty, honour, dignity, based on the vital needs and human interests” (Tarakhonych, 2017, p. 281). This is due to the fact that humanitarianism is a “mainstreaming of humanistic trends in the modern era, a departure from rationalized pragmatic imperatives” (Nevmerzhytska, 2015, p. 293), as well as “not only the personal requirement ‘to serve’ for the State, but also its duty (Melnyk, 2017, p. 8). Therefore, the principle under consideration, in the context the study, requires that making public policy on firearm circulation should take into account the rights and legitimate interests of the individual and the fact that the individual (one’s life, health) in Ukraine is understood as the highest social value. Accordingly, State bodies that, through their actions (decisions), form and/or implement public policy in question should not enable firearm circulation in Ukraine to lead to a decrease in the level of human security, an increase in the risks of various kinds of threats to human life and health. In addition, humanitarianism of making this public policy

provides a legal basis for the legalization of civil (non-special) firearm circulation in Ukraine;

3) The principle of justice and legal equality (non-discrimination). Equity as a principle is “an ethical-legal phenomenon valued in the process of applying the law, achieving an optimal balance between private and universal values (Kostiuk, 2016, p. 7). Furthermore, the principle of equality is conceptually related to justice as the idea expressed in basic provisions such as: the establishment and application of uniform legal means forming the basis of a legal regulatory mechanism, i.e. the rules of law, legal facts and acts for the exercise of rights and obligations of all participants in public relations; anticipation of a system of exceptions to the general legal regime for individual participants in public relations; provision of a system of organizational means necessary for the realization of the rights and obligations of participants in public relations; equal rights and obligations of participants in public relations, including constitutional rights and obligations” (Zhuravlova, 2016, 46). Consequently, in the context of our study, these two principles come together in one fundamental idea, which objectively requires the following: a) In the course of formulating public policy on firearm circulation in Ukraine, the regulatory and legal basis for the operation of the corresponding administrative and legal mechanism, which may not unjustly violate rights, freedoms and legitimate interests of entities having the same legal status, as well as determine other discriminatory practices in public administration; b) The implementation of public policy on firearm circulation in Ukraine as an administrative activity cannot be characterized as creating a discriminatory regime for firearm circulation (however, this does not mean that there can be no exceptions to this rule, namely, when the discrimination in question is justified by the real common good of society and the State; but the continuing limitation of the human right to protect one’s life and health through the use of firearms is not fully justified); b) The State should have a mechanism for monitoring and supervising the making of public policy on firearm circulation, which will constantly monitor compliance with the requirements of justice and equality in this field and influence those who violate the principle under consideration;

**3. The principle of legality, the principle of justice and legal equality and the principle of inevitability of legal responsibility in the field of firearm circulation in Ukraine**

4) The principle of legality. Legality in its form and content actually is “an abstract idea, expressing the principle of general binding law corresponding to the rule of law” (Muravenko,

2012, pp. 383). At the same time, I. Polonka argues that the principle of legality is “the systems of guidelines and ideas, which are a means of creating motives for lawful conduct and persuading actors about necessity of compliance with laws” (Polonka, 2016, p. 40). Consequently, in this context, “the principle of legality is the most important criterion of lawful conduct” (Polonka, 2016, 40), which is indirectly derived from the provisions of the Basic Law of Ukraine, namely from the content of art. 6, part 2 of art. 19, articles 24 and 43 of the Constitution of Ukraine and yet, in fact, is one of the most frequently violated principles (Pochtovyi, 2009, p. 7).

Furthermore, a national scientist M. Pochtovyi defines the broader manifestation of this principle, pointing out that the underlying idea, in fact, “affirms the universality of the requirements for compliance with laws and by-laws adopted in accordance with them, the unity of legality, the equality of citizens before the law and the court and, as a consequence, the inevitability of liability of any person for an offence committed” (Pochtovyi, 2009, p. 7). In this context, we argue that the principle of legality requires the following: a) The process of making public policy on firearm circulation should be carried out by State bodies authorized to do so in accordance with their competence and powers (with regard to the participation of civil society actors in the process, it should be considered that they should exercise their rights to participate in good faith, without hindering the proper functioning of the State); b) The makers of public policy on firearm circulation should act only on the grounds provided for in the Constitution and laws of Ukraine, each time acting (taking decisions) in the manner provided for in the Constitution and laws of Ukraine in specific cases; c) In the course of making public policy on firearm circulation, these makers shall amend and repeal provisions of law relating to firearm circulation, taking into account the principles of law and the hierarchy of legislation, as well as the provisions of the Constitution of Ukraine; d) Public policy makers in the field of firearm circulation should not make this type of public policy so that their actions (decisions) will damage the legal certainty of the law;

5) The principle of the inevitability of liability. Freedom, as we know, is not unlimited, and a person shall be responsible for the exercise one’s freedom. This is directly related to the issue under study, because: a) The principle of legality is a constitutional principle that is most violated by the State and private individuals, revealing, first, a low level of legal culture, tolerance to unlawful conduct and a high level of legal nihilism in the State; secondly,

the dangerous consequences of such practices in firearm circulation; b) On the one hand, the improper implementation of policy on firearm circulation in Ukraine, as well as the failure to comply with obligations in this field, on the other hand, the unfair exercise of rights in this field, may pose a real danger to the individual, society and the State. Consequently, among the general legal principles for making public policy on firearm circulation in Ukraine, the principle of the inevitability of liability requires the following: a) In the course of making public policy on firearm circulation, regulatory restrictions should be provided as to whether the violation of obligations and the improper exercise of rights in the field of firearm circulation constitute a factual ground for liability of the type concerned; b) In implementing public policy on firearm circulation, the actors concerned should understand that their actions (decisions) give rise to certain legal effects, including negative ones, for example, bringing them to justice; c) The process of making public policy on firearm circulation may not create biased exceptions or otherwise impede liability of certain persons (groups of persons), who have committed unlawful acts in this field and are liable to legal prosecution.

#### 4. Conclusions

The general legal principles governing making public policy on firearm circulation in Ukraine, in accordance with their social and legal significance, are aimed at an effi-

cient (effective, rational, intended, desirable) conduct of processes and relations in the field of firearm circulation in the State, the conduct of the managerial activity of public policy makers in this field, in the course of which the tasks are carried out and the objective of the phenomenon under study is achieved. The observance of the principles outlined in this scientific article by the actors cooperating in firearm circulation contributes to Ukraine's development without let or hindrance as a democratic and social State governed by the rule of law, capable to realize own Euro-integration and Euro-Atlantic objectives. Therefore, from a scientific perspective on the legal and administrative framework for making public policy on firearm circulation in Ukraine, it should be borne in mind that the State bodies operating in the field of firearm circulation, as a consolidating and systemically controlling determinant of the conceptual and ideological, regulatory and legal, institutional and actual development of relations and processes in this field, require to constantly focus on the general legal principles of making public policy on firearm circulation. The failure of these entities to respect the relevant principles will preclude the achievement of the objective of the relevant public policy, call into question the authority of these State bodies and the existence of the State as a modern State governed by the rule of law, able in the future to become a member of the EU and the North Atlantic Treaty Organization.

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## ЗАГАЛЬНОПРАВОВІ ПРИНЦИПИ ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЗБРОЇ В УКРАЇНІ

**Анотація.** *Метою статті* є формування актуальної наукової думки про сутність і систему загальноправових принципів формування та реалізації державної політики у сфері обігу зброї в Україні.

**Результати.** Стаття присвячена формуванню актуальної наукової думки про сутність і систему загальноправових принципів формування та реалізації державної політики у сфері обігу зброї в Україні. Досліджені принципи тлумачаться як комплекс базових (засадничих) ідей, що сукупно сприяють законному, оптимальному й ефективному формуванню та реалізації державної політики у сфері обігу зброї в Україні як у правовій, демократичній та соціальній державі. Систему загальноправових принципів формування та реалізації державної політики у вказаній сфері становлять принципи: верховенства права; людиноцентризму; справедливості та правової рівності (недискримінації); законності; невідворотності юридичної відповідальності. Аналізуючи вимоги, які випливають із зазначених загальноправових принципів, обґрунтовується, що ці принципи створюють правове підґрунтя для легалізації цивільного (неспеціального) обігу вогнепальної зброї в Україні.

**Висновки.** Загальноправові принципи формування та реалізації державної політики у сфері обігу зброї в Україні за своєю соціально-правовою значимістю цілісно спрямовані на забезпечення якісного (ефективного, раціонального, передбачуваного, бажаного) перебігу процесів та відносин у сфері обігу зброї в державі, здійснення управлінської діяльності суб'єктів формування та/або реалізації державної політики в зазначеній сфері, в процесі чого забезпечується вирішення завдань і досягається мета досліджуваного явища. Саме дотримання суб'єктами, що взаємодіють у сфері обігу зброї, окреслених у цій науковій статті принципів сприяє тому, щоби Україна безперешкодно продовжувала розвиватись як правова, демократична та соціальна держава, мала змогу реалізувати власні євроінтеграційні та євроатлантичні прагнення. Державним органам, які функціонують у сфері обігу зброї, постаючи консолідуючим і системно-керівним детермінантом концептуально-ідеологічного, нормативно-правового, інституційного та фактичного розвитку відносин і процесів у зазначеній сфері, необхідно повсякчас орієнтуватись на загальноправові принципи формування та реалізації державної політики у сфері обігу зброї. Ігнорування цими суб'єктами відповідних принципів унеможливлуватиме досягнення мети відповідного виду державної політики, ставитиме під сумнів авторитет вказаних державних органів, існування держави як сучасної правової, спроможної в перспективі набути членства в ЄС та в Організації Північноатлантичного договору.

**Ключові слова:** державна політика у сфері обігу зброї, загальноправові принципи, зброя, обіг зброї, принципи, реалізація державної політики, формування державної політики.

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