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THE CONCEPT AND FEATURES OF FORMING STATE POLICY IN THE FIELD OF CIVILIAN FIREARMS CIRCULATION

Abstract. Purpose. The purpose of this article is to reveal the concept and specific features of forming state policy in the field of civilian firearms circulation. **Results.** The article defines the permissive model of civilian firearms circulation functioning in Ukraine, which constitutes an administrative and legal mechanism of a preventive nature, aimed at ensuring public safety and law and order through clear administrative and legal regulation of citizens' access to firearms. It is demonstrated that the essence of the permissive model lies in the establishment of a system of special permits, which serve as a mandatory condition for acquiring, storing, carrying, and using certain categories of firearms. This creates a narrow scope of legitimate actions for the subjects of legal relations in this area, while simultaneously providing for legal consequences in the event of deviation from the established procedure. The article defines that state policy in the field of civilian firearms circulation in Ukraine is a systematic, authoritative activity regulated by current legislation, implemented by state authorities in cooperation with civil society institutions. This activity involves the formulation, implementation, and control of strategic, administrative, and organizational-tactical decisions aimed at regulating, organizing, and ensuring the safe functioning of social relations related to the lawful acquisition, storage, use, and circulation of civilian firearms. It is further revealed that the state policy in this sphere aims to ensure public safety, strengthen national security, prevent illegal firearms circulation, protect the constitutional order and human rights by implementing an effective administrative and legal mechanism, creating transparent procedures, carrying out preventive control and relevant oversight, and forming a favorable legal environment for realizing the balanced interests of the state, society, and individuals under conditions of dynamic socio-political transformation. **Conclusions.** The article notes that the state policy in the field of firearms circulation in Ukraine has the following characteristics: – legal certainty and regulatory framework; – integration of the interests of the state, society, and individuals; – interagency nature; – preventive and security-oriented focus; – adaptability to transformational processes (including the conditions of full-scale invasion); – orientation toward digitalization (aspiration to implement electronic registries, automated firearms accounting systems, simplified electronic procedures for accessing public information and control measures); – increased level of oversight; – development of a legal culture of firearms ownership and use as a separate direction; – institutionalization of public control, expert examination, and civic participation; – a specific legal regime of responsibility; – international coordination in combating illegal circulation.

Key words: administrative regulation, administrative legal relations, administrative procedures, administrative and legal mechanism, state policy, expert examination, firearms, control, legal system, subjects.

1. Introduction

Following the full-scale invasion of Ukraine by the Russian Federation, the issue under consideration has gained heightened relevance due to several determinants. Firstly, new methods and channels for acquiring weapons have emerged, along with a significant increase in the quantity of firearms present within Ukraine. Secondly, the threat to personal security has

intensified, the mechanisms of civil protection have expanded, and a negative socio-psychological climate has formed – a combination that, in the presence of weapons, may pose a threat to the life and safety of citizens. Thirdly, there has been a growing demand for personal protection, which may be satisfied through the unlawful acquisition of weapons. Therefore, it is essential to address the issue of regulating arms circula-

tion, establishing mechanisms for the lawful use of firearms under current conditions, and ensuring their removal or disposal once the need for their use no longer exists, or in cases where possession was unlawful or violated legislative norms (Shyts, 2023).

The administrative and legal aspects of state policy regarding arms circulation in Ukraine have been comprehensively studied by scholars such as V. Vasyliiev, S. Didenko, O. Drozd, K. Kastornov, M. Komissarov, M. Kulyk, V. Litoshko, V. Makarchuk, V. Otsel, I. Pokhlylenko, R. Serbyn, O. Fomenko, T. Shumeiko, among others.

Nevertheless, arms circulation in Ukraine remains insufficiently regulated, particularly by norms of administrative law. Accordingly, scholarly inquiry into this area is both timely and of significant relevance.

The aim of this article is to examine the concept and specific features of the formation of state policy in the sphere of civilian firearms circulation.

2. Specific Features of Arms Circulation Regulation

The circulation of firearms owned by private individuals is strictly regulated by legislation in the majority of countries and is subject to various restrictions. Depending on the degree of regulatory stringency, scholars generally distinguish among three main models of civilian firearms circulation: the liberal, the liberal-permissive (hybrid), and the permissive model (Kurinni, 2021).

Ukraine applies the permissive model. From a legal standpoint, the permissive system of arms circulation constitutes a specialized administrative law institution, established by administrative legal norms. It defines a narrowed legal “corridor” for rights holders regarding the issuance of permits for the acquisition, possession, carrying, and transportation of certain categories of firearms. It also governs the planning, construction, establishment, and operation of facilities where weapons are stored or used. Moreover, it sets out a clear (permissive) list of possible and necessary actions for legal subjects operating in this sphere; any deviation from these procedures constitutes an administrative offense and entails liability for the persons at fault (Didenko, 2016).

At the same time, the regulation of arms circulation directly affects the legal regime governing the use of firearms among the general population and specific social groups. It influences the legality of weapons circulation and the state’s capacity to combat illegal arms trafficking and armed violence. Currently, no universal approach exists among countries regarding arms regulation. Consequently,

the scope of permitted firearm ownership, carrying, and use by civilians varies significantly – from mandatory possession or use (as in Norway and Switzerland), to complete prohibition (Luxembourg, Malaysia), or substantial restriction (Vatican City, Ireland, etc.). Some jurisdictions impose temporary bans on carrying firearms (Colombia, the Dominican Republic), restrict carrying in specific territories (Afghanistan, Yemen), or promote voluntary surrender of weapons (Argentina, the United Kingdom, Thailand) (Nersesian, 2023).

Thus, the permissive model of civilian firearms circulation functioning in Ukraine represents an administrative and legal preventive mechanism aimed at ensuring public safety and legal order through clearly defined administrative regulations governing citizens’ access to firearms. Its essence lies in the establishment of a system of special permits, which are mandatory prerequisites for acquiring, possessing, carrying, and using certain categories of firearms. This creates a narrow framework of legitimate actions for legal subjects in this domain, while simultaneously establishing legal consequences for deviation from the prescribed procedures. Under the permissive model, the state exercises its supervisory function by determining clear legal boundaries, procedures, and criteria for firearm ownership. This, in turn, enables effective monitoring of the legality of arms circulation, prevention of abuse, and combatting of firearms-related crime. Although this regulatory regime significantly restricts the opportunity to use weapons, it is oriented toward securing collective safety and maintaining legal order.

Further, it is necessary to define the concept of *state policy*. It is well known that the term “policy” originates from the ancient Greek word *polis* (city-state), as well as *politike* (the art of governance) and *politicas* (a statesman), and refers to activities related to the leadership and administration of society based on public authority. Hence, policy influences not only society as a whole but also specific social groups that fall within the scope of its governing functions. Accordingly, policy is capable of ensuring the realization of public, personal, and group interests, as well as regulating interpersonal relations in order to preserve societal cohesion.

A key form of policy is state policy (that of the government, the president, the parliament, and various ministries), which undergoes transformations in response to changes in its political and functional dimensions and has therefore become a subject of theoretical and methodological (often contested) academic inquiry. A policy is considered *state* not only because it influences society, but because

its initial stage of formulation begins within governmental or other public institutions.

The use of various inadequately and ambiguously translated foreign-language terms by scholars has led to confusion in interpreting definitions of “policy” (*policy* vs. *politics*), “state policy” (*public policy* vs. *state policy*), and “state policy research” (*public policy study* vs. *state policy study*). A deeper analysis of state policy (its formulation, adjustment, implementation, and evaluation) heavily depends on a clear and constructive interpretation of conceptual terminology (Lavruk, 2018).

Traditionally, policy is also defined as the art of governing the state. It reflects the interests of social groups, classes, and nationalities and is always conditioned by the economic state of society. According to the authors of the *Political Science Encyclopedic Dictionary*, policy is “the organizational, regulatory, and supervisory sphere of society, within which social activity is carried out, aimed primarily at the attainment, maintenance, and exercise of power by individuals and social groups in order to satisfy their demands and needs” (Shemshuchenko, Babkin, 1997; Andriiash, 2013).

State policy is an essential component of societal functioning. It has numerous dimensions and characteristics and forms a corresponding system and mechanisms of socially oriented public governance, since it aims at improving citizens’ quality of life and ensuring social stability (Andriiash, 2013). State policy should be comprehensive in its functional orientation toward resolving interrelated political and socio-economic problems. It must respond in a timely manner to transformational changes taking place in the state and society, and it must always be effective (with optimal distribution of governmental authority, structured quality of public administration decisions, and well-defined goals and measures), result-oriented, and socially acceptable (Lavruk, 2018).

T. Shumeiko defines state policy in the sphere of arms circulation in Ukraine as a targeted, organized, and relatively stable form of public administration activity (including both action and inaction) by public authorities (as well as activities of civil society actors) aimed at regulating, developing, and resolving issues related to the proper course of social relations and processes in the area of arms circulation. This is achieved through the implementation of an administrative and legal mechanism for forming and conducting this policy (Shumeiko, 2022).

In terms of its form, the essence of state policy in this field is manifested in the decisions (actions or inaction) of competent state bodies made in accordance with the require-

ments of Part 2 of Article 19 of the Constitution of Ukraine (including actions of civil society actors). In terms of substance, it is revealed through its conceptual foundation (the current doctrine of administrative law) and the ideological principles of state policy (Shumeiko, 2022).

In our view, state policy in the field of civilian firearms circulation in Ukraine is a system-based and authority-driven activity, regulated by current legislation and implemented by state authorities in cooperation with civil society institutions. It involves the formulation, implementation, and oversight of strategic, administrative, and organizational-tactical decisions aimed at legally regulating, organizing, and ensuring the safe operation of social relations concerning the lawful acquisition, possession, use, and circulation of civilian firearms.

3. State Policy in the Sphere of Civilian Firearms

Among the objectives of state policy in the field of arms circulation control, V. Vasylevych identifies the following: 1) establishing state control over arms circulation; 2) promoting compliance with legislation governing arms circulation; 3) implementing preventive measures to prevent firearms from entering the illegal market; 4) setting rules for the circulation of legally manufactured firearms; 5) identifying firearms found in illegal circulation; 6) eliminating firearms in illegal circulation; 7) establishing legal liability and holding accountable those responsible for violations of the law and involvement in illegal firearms circulation; 8) developing international cooperation in the field of arms control (Vasylevych, 2023).

Important elements of state policy in the field of illicit firearms trafficking include: the establishment of criminal liability for the illegal manufacture and circulation of firearms, their parts and components, and ammunition; falsification, or unlawful destruction, removal, or alteration of firearm markings; firearm marking to ensure effective tracking and identification; systematic record-keeping of information regarding firearms and international operations involving firearms, their parts and components, and ammunition for tracing purposes; legal provisions for the confiscation of illegally manufactured or traded firearms, their parts and components, and ammunition, followed ideally by their destruction; licensing of all international transactions involving firearms and mandatory marking of all imported firearms (Vasylevych, 2023).

In our view, state policy in the field of civilian firearms circulation in Ukraine aims to ensure public safety, strengthen national security, prevent the illegal circulation of weapons, protect the constitutional order and human

rights. This is achieved through the implementation of an effective administrative and legal mechanism, the establishment of transparent procedures, the exercise of preventive control and appropriate oversight, as well as the creation of a favorable legal environment for realizing the balanced interests of the state, society, and the individual in the context of dynamic transformations of the socio-political landscape.

What are the key traits or characteristics of state policy in the field of civilian firearms circulation in Ukraine? According to T. Shumeiko, the main features of state policy in the sphere of arms circulation in Ukraine are as follows:

1. Purpose – aimed at creating the most favorable conditions in the state for the development of relations and processes in the relevant field, which: a) expand legal opportunities for: – the state in protecting its sovereignty, constitutional order, rule of law, society, citizens, and their property; – citizens in defending their lives and health, including through the use of firearms, and in conducting economic activities related to firearms circulation; b) define the characteristics of lawful behavior in the sphere of arms circulation while preventing illegal arms trafficking and other security risks;

2. Special tasks – organizing and regulating relationships and processes in the arms circulation sphere; consistently removing the sector from the shadow economy; ensuring the highest possible level of citizen and national security through proper functioning of arms circulation mechanisms; developing, approving, and implementing national strategies and targeted programs in the field; exercising oversight and supervision over relationships and processes related to arms circulation, as well as over the formation and implementation of this type of state policy in general;

3. Functions – derived from the fundamental functions of the state and those of the subjects responsible for forming and/or implementing the relevant policy;

4. Specific domain of application – the arms circulation sector;

5. Subjects involved in policy formation and implementation – including the legislative, executive, and judicial branches of government, as well as civil society actors;

6. Specific normative foundation – distinct legal basis underpinning this type of policy;

7. Implementation within specific directions – such as defining the legal regime of firearms ownership; restricting the rights and freedoms of individuals and legal entities regarding firearms circulation; parliamentary and public oversight of the policy's implementation;

8. Existence of an administrative-legal mechanism for the formation and implementa-

tion of state policy in the field of arms circulation (Shumeiko, 2022).

In our view, state policy in the field of arms circulation in Ukraine is characterized by the following features: –legal clarity and regulatory certainty; integration of the interests of the state, society, and the individual; interagency coordination; –preventive and security-oriented focus; –adaptability to transformational processes, particularly in the context of full-scale military invasion; –digitalization-oriented approach (striving to implement electronic registries, automated firearms tracking systems, simplified electronic access to public information and control procedures); –enhanced level of oversight; –formation of legal culture of firearm ownership and use as a separate focus area; –institutionalization of public control, expert evaluation, and participation; –special legal liability regime; international coordination in combating illicit firearms trafficking

4. Conclusions

Overall, the formation of state policy in the field of civilian firearms circulation in Ukraine is a complex and dynamic process that emerges at the intersection of the state's security, legal, and socio-cultural priorities. State policy serves both as a tool for regulating legal relations related to the production, acquisition, storage, use, and disposal of firearms, and as a mechanism for ensuring national, public, and personal security under conditions of security challenges (particularly in the context of full-scale invasion). The substantive content of this policy involves regulating arms circulation, fostering a legal culture of firearm ownership, establishing a system of preventive control and accountability, and ensuring effective governmental and public management of processes related to both legal and illegal arms circulation.

References:

- Andriiash, V. I. (2013). *Derzhavna polityka: kontseptualni aspekty vyznachennia* [State policy: Conceptual aspects of definition]. *Derzhavne upravlinnia: udoskonalennia ta rozvytok*, (9), 71–75. (in Ukrainian)
- Didenko, S. V. (2016). *Pravovi aspekty poniattia ta klasyfikatsii zbroi v Ukraini* [Legal aspects of the concept and classification of weapons in Ukraine]. *Naukovyi visnyk Khersonskoho derzhavnogo universytetu*, (3), 135–140. (in Ukrainian)
- Kurinyi, Ye. (2021). *Pro model obihu tsyvilnoi zbroi v Ukraini* [On the model of civil weapons circulation in Ukraine]. *Naukovyi visnyk Dnipropetrovskoho derzhavnogo universytetu vnutrishnikh sprav*, (2), 125–130. (in Ukrainian)
- Lavruk, O. V. (2018). *Sutnist poniattia derzhavnoi polityky* [The essence of the concept of state pol-

icy]. *Universytetski naukovi zapysky*, (3–4), 254–263. (in Ukrainian)

Nersesian, A. S. (2023). *Zakonodavcha rehlymentatsiia ta efektyvnist rehliuvannia obihu zbroi za zarubizhnym zakonodavstvom* [Legislative regulation and effectiveness of arms circulation regulation under foreign legislation]. *Pravova derzhava*, (34), 518–528. (in Ukrainian)

Shemshuchenko, Yu. S., & Babkin, V. D. (1997). *Politolohichni entsyklopedychnyi slovnyk: Navchalnyi posibnyk dlia studentiv vyshchych navchalnykh zakladiv* [Political science encyclopedic dictionary: A teaching aid for university students]. Kyiv: Heneza. (in Ukrainian)

Shumeiko, T. A. (2022). *Administratyvno-pravovi zasady formuvannia ta realizatsii derzhavnoi polityky u sferi obihu zbroi v Ukraini* [Administrative and

legal principles of the formation and implementation of state policy in the sphere of arms circulation in Ukraine]. Kyiv: National Academy of Internal Affairs. (in Ukrainian)

Shyts, O. (2023). *Nezakonnyi obih zbroi yak zahroza natsionalnii bezpetsi. Tsili derzhavnoi polityky v sferi kontroliu za obihom zbroi, povnovazhennia derzhavnykh orhaniv v tsii sferi* [Illegal arms circulation as a threat to national security. Objectives of state policy in the field of arms circulation control and powers of state bodies in this area]. Kyiv. (in Ukrainian)

Vasylyevych, V. (2023). *Derzhavna polityka u sferi kontroliu za obihom zbroi v umovakh viiny* [State policy in the field of arms circulation control under war-time conditions]. *Kryminolohichna teoriia i praktyka*, (1), 17–20. (in Ukrainian)

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ПОНЯТТЯ ТА ОСОБЛИВОСТІ ФОРМУВАННЯ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЦИВІЛЬНОЇ ВОГНЕПАЛЬНОЇ ЗБРОЇ

Анотація. *Мета* статті полягає у тому, щоб розкрити поняття та особливості формування державної політики у сфері обігу цивільної вогнепальної зброї. *Результати.* У статті визначено дозвільну модель обігу цивільної зброї, що функціонує в Україні, та є адміністративно-правовим механізмом превентивного характеру, спрямованим на забезпечення публічної безпеки та правопорядку шляхом чіткого адміністративно-правового регламентування доступу громадян до зброї. Розкрито, що сутність дозвільної моделі полягає у встановленні системи спеціальних дозволів, які є обов'язковою умовою для набуття, зберігання, носіння та використання певних категорій зброї, що створює вузьке коло легітимних дій для суб'єктів правовідносин у цій сфері, водночас передбачаючи правові наслідки за відхилення від встановленого порядку. Визначено, що державна політика у сфері обігу цивільної вогнепальної зброї в Україні – це системно-владна та регламентована чинним законодавством діяльність органів державної влади у взаємодії з інститутами громадянського суспільства, що полягає у формуванні, реалізації та контролі стратегічних, адміністративних та організаційно-тактичних рішень, спрямованих на нормативне врегулювання, впорядкування та безпечне функціонування суспільних відносин, пов'язаних з правомірним набуттям, зберіганням, використанням та обігом цивільної вогнепальної зброї. Розкрито, що державна політика у сфері обігу цивільної вогнепальної зброї в Україні має на меті забезпечення публічної безпеки, зміцнення національної безпеки, запобігання незаконному обігу зброї, захист конституційного ладу та прав людини, шляхом упровадження ефективного адміністративно-правового механізму, створення прозорих процедур, здійснення превентивного контролю та відповідного нагляду, а також формування сприятливого правового середовища для реалізації збалансованих інтересів держави, суспільства й особи в умовах динамічних трансформацій суспільно-політичного простору. **Висновки.** Зазначено, що державна політика у сфері обігу зброї в Україні має наступні особливості: – правова визначеність та нормативна регламентованість; – інтеграція інтересів держави, суспільства та громадянина; – міжвідомчий характер; – превентивно-безпекова спрямованість; – адаптивність до трансформаційних процесів (зокрема, до умов повномасштабного вторгнення); – орієнтація на цифровізацію (прагнення до впровадження електронних реєстрів, автоматизованих систем обліку зброї, спрощених електронних процедур доступу до публічної інформації та контрольних заходів); – підвищений рівень контролю; – окремим напрямком є формування правової культури володіння та користування зброєю; – інституціоналізація громадського контролю, експертизи та участі; – особливий юридичний режим відповідальності; – міжнародна координація у сфері протидії нелегальному обігу.

Ключові слова: адміністративне регулювання, адміністративні правовідносини, адміністративні процедури, адміністративно-правовий механізм, державна політика, експертиза, зброя, контроль, правова система, суб'єкти.