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ПРАВОСВІДОМІСТЬ ТА ПРАВОВА КУЛЬТУРА ЯК ПЕРЕДУМОВА РОЗШИРЕННЯ ЧИННОГО ОБСЯГУ ПРАВА ЛЮДИНИ НА ЗБРОЮ В УКРАЇНІ

Анотація. Сучасна юридична наука відкриває нові перспективи в дослідженні проблем правової системи, яка є самостійним напрямом загальнотеоретичної юриспруденції. Забезпечення конституційних прав і свобод людини і громадянина в повному обсязі є доволі непростим процесом. Зокрема, існує істотна невідповідність між сучасними правовими регуляторами, юридичними засобами та справжнім станом реалізації культурних прав і свобод людини в Україні. Проблемою в Україні залишається відсутність законодавчого регулювання обігу зброї. Тому стаття присвячена з'ясуванню ролі правової свідомості особи та правової культури у суспільстві за умов ймовірного розширення чинного (на сьогодні) обсягу права людини на зброю в Україні. В роботі використано соціально-детерміністична система визначення змісту прав людини (зокрема права людини на зброю) та діалектичний підхід. Проаналізовано загальнотеоретичні підходи до визначення термінів «правосвідомість» та «правова культура» в контексті правосвідомості осіб-суб'єктів права на зброю. Авторами виявлені чинники, які впливають на культуру поводження зі зброєю, серед яких: традиції сімейного виховання, навчальні заклади, спортивні секції та інші. Встановлено, що необхідним елементом формування високого рівня зброєвої культури є достатня розвиненість комплексу позашкільної освіти. Також виділені проблеми щодо реалізації прав людини і громадянина на зброю в Україні. Встановлено, що приклади практики запровадження країнами легалізації зброї для самозахисту надають повну картину наслідків впливу таких дій на суспільство. Аргументовано твердження про те, що джерелом права людини на зброю є не тільки норми законодавства, а й корпоративні норми та правовий звичай. Проаналізовано корпоративні норми, які є джерелом права людини на зброю. Зазначено про позитивний вплив соціальних регуляторів, які впливають на підвищення рівня правової свідомості осіб та правової культури в суспільстві в контексті права людини на зброю.

Ключові слова: правова свідомість, вогнепальна зброя, право на зброю, культура поводження зі зброєю, права людини, профілактично-виховні заходи.

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ON THE ISSUE OF LEGAL AWARENESS AND LEGAL CULTURE AS A PRECONDITION OF THE ENLARGING OF THE CURRENT AMOUNT OF THE RIGHT TO ARMS IN UKRAINE

Abstract. *Modern legal science opens new perspectives of researching problems of legal system that is the independent branch of general theoretical jurisprudence. Provision of constitutional rights and freedoms of a human and a citizen in its entirety is the difficult process. In particular, there is significant discrepancy between modern legal regulators, legal arrangements and real state of implementation of cultural rights and freedoms of a human in Ukraine. The problem is still absence of legislative regulation of traffic in arms. That is why the article is devoted to clarifying the role of legal awareness of a person and of legal culture in society in the context of the likely expansion of the current level of the human right to arms in Ukraine. In the writing, social and deterministic system to determine the right of a human (in particular, the right to arms) and dialectic approach were used. The general theoretical approaches to the definition of the terms “legal awareness” and “legal culture” are analysed in the context of legal awareness of persons who are the subjects of the right to arms. The authors have revealed factors that affect the culture of weapon handling, among them are: tradition of family education, educational institutions, sports clubs and others. It has been established that the necessary element to form a high level of arms culture is sufficient development of out-of-school education. Also, the issues on implementation of rights to arms of a human and citizen have been selected. It has been established that examples of the practice of introducing weapons legalisation for self-defence by countries provide a complete picture of the consequences of such actions for society. The statement that the source of the right to arms of human is not only legislation norms, but also corporate norms and legal custom has been proved. Corporate norms that are source of right to arms have been analysed. The positive influence of such social regulators on raising the level of legal awareness of individuals and legal culture in society in the context of the human right to arms is indicated.*

Keywords: legal awareness, legal culture, the right to arms, weapons, culture of handling of weapons, human rights.

INTRODUCTION

Numerous writings of scientists-representors of different social sciences are devoted to study different aspects of the right to arms. A weapon is the object of respective attention. Also, of the legal scholars who are representatives of different branches of law. Thus, certain aspects of legal regulation of a weapon handling have been researched within the science of administrative law (as an object of authorisation system), civil law (as a thing, as an object of property right), criminal law (as a thing of

respective offence or as a crime instrument), forensic science (in aspects of forensic identification and registration of weapons), etc.

Representatives of legal scholars who studied the issue of weapons handling in various scientific aspects are G. Avdeyeva, Yu. Baulin, P. Berzin, P. Bilenchuk, O. Boki, K. Gorislavsky, O. Kaplina, A. Korniyets, A. Kofanov, A. Kryvosheyev, M. Maystrenko, M. Mazur, V. Mikhalov, S. Moskalenko, I. Musienko, J. Novak, P. Orlov, M. Panov, E. Pidlisniy, M. Pinchuk, N. Plyushkevich, J. Ponomarenko, V. Rechitsky, O. Romanov, O. Sarnavsky, O. Sulyaev, V. Tatsiy, P. Fris, O. Frolov, O. Kharitonov, V. Shevchuk, V. Shepitko and others.

At the same time, certain (first of all, general theoretical or philosophical and legal) aspects of such human right are not sufficiently researched at the scientific level. Relevant issue of today's Ukraine is issue on appropriateness of *expanding the current scope of the human right to arms* (this term was proposed to replace commonly used term "*legalisation of a weapon*" [1]) at the present stage of development of society. The issue concerning weapon "maturity" of Ukrainian society, the level of legal culture and legal awareness is quite relevant in recent years. It is necessary, in our view, to pay a particular attention to them.

Therefore, the object of the study *is to determine the role of legal awareness of a human and legal culture of society* in regulation the scope of the right to arms by the legislative body and implementation of this right by its entities. It is worth mentioning that this study has researched specifics of regulation of relations connected with handling exceptionally civilian weapons by only civilians.

1. METHODOLOGY

The main methodologic toolkit of the study is social and deterministic system to determine the right of a human (in particular, the right to arms) and dialectic approach. Methodologic basis of the research is the system of philosophical, general scientific and legal methods and principles that are used in interconnection. Aristotelian method, analysis and synthesis had the individual role as methods of research. The study was conducted with consideration of principles of methodologic pluralism and integral approach to understanding of law.

The method of analysis revealed that another necessary element of formation of the high level of arms culture is sufficient development of the complex of out-of-school education. This should include shooting clubs, sport clubs and sections, respective events of public organisations. Because of them anyone who wants (with minimum age restrictions) has the opportunity to try handling weapon safely or indulge in sports or hobby at the professional level.

Unfortunately, for today statistics on accessibility of shooting sport is negative. During the period from 1991 to 2002, the number of shooting clubs decreased from 2,245 to 166, respectively. This fact, undoubtedly, virtually eliminates the legal satis-

faction of the natural interest of children in weapons and obtaining important psychological training for them [2].

In addition, in our view, despite different advantages and disadvantages of military duty for men in the state, the fact that military service teaches strict compliance with the rules of safety of weapons handling and serves as a psychological and practical training in its use, is indisputable.

Examples of practice of introducing arms legalisation for self-defence provide the full picture of consequences of such actions for society. Negative consequences of arms legalisation have not been researched in a full extent, but the positive consequences are considered more significant. Many countries differ in the practice of introducing weapons and methods of regulating them. For example, Australia, which is one of the safest countries according to various indicators of world agencies. For a long time Australia treated civilian traffic in arms liberally, but because of resonance mass murders with use of firearms, the number of which increased as well as the number of victims, Australia reformed respective laws. Many arms were bought and destroyed by the state.

2. RESULTS AND DISCUSSION

2.1. Analysis of legal awareness and legal culture

Firstly, it is necessary to define the terms *legal awareness and legal culture*. Thus, legal awareness is “totality of subjective elements of legal regulation: ideas, theories, emotions, feelings and legal settings, by which the legal reality is reflected and the following are formed: attitudes to law and law practice, value orientation concerning legal behaviour, development areas and perspectives of legal system from the point of providing decent life of a human, justice in human relations, effective organisation of activity of the state and society” [3]. Thus, legal awareness is the totality of subjective inner components of regulation that belong to a person indirectly.

Legal culture, in its turn, is defined as “qualitative state of legal life of society that characteristic of level of development of legal system – condition and level of legal awareness, legal science, system of legislation, law enforcement practice, legitimacy and law and order, legal education and the degree of the guarantee of basic rights and freedom of a human” [3,4].

In the context of interconnection of legal awareness and legal culture, it is necessary to note that the level of legal awareness is the component of legal culture [3].

As it was mentioned, the necessary precondition to legalise short-barreled firearms or other expanding of the scope of the right to arms is that subjects of the right to arms have the respective culture of weapon handling and the high level of legal awareness [5].

It is needed to select factors that impact positively on raising the culture of handling weapons specifically and on legal culture and legal awareness of a human in general. In our view, such factors are:

- Respective traditions of family education (connection of generations);
- Respective educational disciplines in educational institutions (first of all, in schools and higher educational institutions);
- Development of sports clubs, sections, shooting clubs and other institutions that contribute to improvement of arms culture;
- Presence of general military duty in the state;
- Legal customs, norms of corporative law;
- Popularization of amateur and sport hunting [6].

The study has researched all of them.

Firstly, it is needed to note that during upbringing of a future weapon owner the education of a child by parents and other elder relatives is very important. The proof of this thesis is the thought of V. Mihalyov concerning collapse of such traditions of society when grandparents took the function of the main education of younger generation. We agree with the statement of the author that earlier children were taught basic skills of weapon handling by grandfathers because parents did not have time to do it. Exactly this traditional order existed to 1917, in particular, among Cossacks [2]. In our view, for today, such traditions are not fully extinct, but have become more exception than rule.

The good example of opportunities of such upbringing in modern time is forming of child's understanding of consequences of "illegal" use of toy guns (aiming at people or animals, shooting in place where parents do not allow, keep toys loaded, etc.). Such basic rules are analogies with existing requirements concerning safety with weapon handling and they form awareness of own responsibility.

The interesting example of analogic practice is educational and prevention means of police of foreign countries. They provide educative playgrounds in early childhood and school educational institutions, during which policemen visit children and teach safety in weapon handling. After children answer correctly to available question, they are given respective "permissions" that become a component of playing with toy gun. These events engage trading networks that participate in education of future consumers. In such way, person forms awareness that there are lawful procedures for handling of weapons and possession of weapons is possible only on the basis of a respective permission [2].

Secondly, it is impossible to deny efficiency of "arms" education at the lessons of primary military training where such training is conducted by competent person both in context of pedagogics and in context of experience of weapon handling. Unfortunately, it is widely known that in Ukraine many schools have very formal lessons on this discipline. First of all, this is related to the absence of necessary material and technical base: training weapons (maquette), school shooting clubs, air weapon, bullets, etc.

If to consider norms of imprescriptible right as factors that positively impact on culture of weapon handling, then, in our view, firstly these are respective customs of hunting-weapon community. The following are examples of such customs.

Firstly, if a hunter took a hare from a dog of other hunter, he has to give meat to an owner of a dog and receive in exchange bullets. Such approach is clever enough, because an argument of two armed men about property right may end tragically. That is, the implementation of mentioned legal custom in practice:

- complies with the principle of justice because factually is reward to other hunter for his dog work;
- complies with the principle of proportionality (reward of 2–3 bullets, in our view, proportionally compensates wasted bullets);
- has preventive function concerning possible argument about property right on a trophy between two armed humans in wilderness (that increases a probability of tragic consequences of this argument if there is no respective algorithm of its solution).
- forms respect among hunter to each other;
- contributes to increasing the level of culture of weapon handling and legal awareness in general.

Secondly, common custom demonstrates that during collective hunting, riding to hounds, a hunter, who has missed, in the following riding joins riders. In our view, such custom is aimed at forming awareness of responsibility for each shot, respect to work of colleagues in hunting. It is worth mentioning that during hunting any (dead or not) shot should be done only in clearly seen target that is why the custom meets requirements of safety during weapon handling and hunting.

There are also a big number of other hunting traditions aimed at appropriate implementation of the environment laws, preservation of animal and forest fund, etc., but they do not indirectly relate to safety in weapon handling and weapon culture of a person. However, following such customs leads to improvement of legal culture and forming of legal awareness in general.

2.2 Analysis of corporative norms

It is needed to pay a separate attention to corporative norms as source of law of human right to arms. Thus, corporative norms mean “documents of regulative character that developed by political parties, public organisations, trade unions, funds, movements and other organised communities in order to implement interests of their members” [3]. In the context of this study, examples of act that have such norms include founding documents of public organisations, purpose of activity and membership, in which is connected with handling of a civilian weapon: “Ukrainian society of hunters and fishermen” (USHF), “Ukrainian association of gun owners” (UAGO) and others.

Corporative norms may repeat requirements of legislation that regulate the order of weapon handling and establish additional rights, duties and sanctions for violation of corporative norms (within own competence). Thus, for example, paragraph 6 of clause 4.5 of the statute of PO “USHF” obliges members of organisation “to comply with rules of hunting and fishing and follow established order of purchasing, preserv-

ing, using, registration (re-registration) and sale of firearms and ammunition” [8]. This norm repeats requirements of the current legislation. The example of norm that establishes additional (corporative) sanctions is clause 4.8 of mentioned statute. It establishes such means of public influence as sanctions for violation of norms of the statute: rebuke; reprimand; deprivation of the right to hunting and fishing in rangelands given to USHF, or the right to participate in competition of the organisation for two years; removing from governing bodies of the organisation; loss of rank “Honourable member of Ukrainian society of hunters and fishermen”, removing from membership of organisation” [8].

Also, it is needed to speak separately of paragraph 10 of clause 4.5 of mentioned statute that obliges members “not to commit acts that violate ethics of trading relations during hunting and acts that cause moral or material damage to the Society or its members” [8]. In our view, this norm at the corporate level legitimises customs of hunting society that were considered earlier as source of law of right to arms.

In such way, in the context of researching given examples of corporative norms, we agree with the statement that despite the fact that corporate norms are “weaker” in legal force (in comparison with the norms of law), their importance for functioning of public society is impossible to deny because they “expand their influence beyond boundaries of legal regulation” and are consequence of human activity, initiative [3].

The individual indicator of positive influence of corporative norms and legal customs on legal awareness and legal culture is the fact that on the official Internet representation of the President of Ukraine are many registered petitions concerning regulation of traffic in arms in Ukraine [9-12], (including decrease of scope of this right [13]). In addition, Ukrainian association of gun owners prepared own draft law of Ukraine [14; 15], the purpose of which is to overcome existing collisions and fill in the relevant gaps in regulation. Despite flaws of the draft, we think that the fact of its development (and the facts of registration of petitions) is the indicator of the high level of inner self-organisation in such public formations, high level of legal awareness of the initiators of the development of such projects and the desire of the arms community to resolve the issues in the manner prescribed by law.

CONCLUSION

The theme of legislative regulation of the human right to arms has the “place of honour” in domestic and foreigner law researches. Regulation of this right of a human may be implemented by not only legislative norms, but also corporative. Such additional social regulators are factors that positively influence both increase of the level of legal awareness of specific persons and increase of level of legal culture of society in general.

Law influence has multilayered structure, in particular, it manifests itself at the level of law perception and law implementation. Norms, values, settings and stereotypes concerning legitimate behaviour are broadcasted using mass-media, cinematograph,

literature, art, propaganda, agitation, etc. All these are means to form information and legal environment that includes information flows, channels of influence that human feels. In this, information “teared off” the object of reflection becomes the content of memory, participates in psychic processes, forms ideas, knowledge, skills, abilities. In other words, it is of psychological character and participates in determination of behaviour by a human.

At the same time, it is impossible to claim that there are means of valid measurement of the level of legal awareness or legal culture. That is why it is impossible to give an objective answer to the question “is in modern society the level of culture of weapon handling sufficient to expand the current scope of the human right to arms in Ukraine?” However, it is wrong to deny the necessity of means that positively affect both the level of culture of weapon handling and the level of legal awareness and legal culture in general.

Materials of the article may be significant for legal scholars, practising lawyers, students, teachers, participants of the legislative process and other persons who are interested in issues of regulation and implementation of the human right to arms.

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