

В. Індюкова
слухач магістратури навчального центру
післядипломної освіти,
Київський національний університет внутрішніх справ
Науковий керівник: к.ю.н. Вихрист С.М.

Law regulation in firearms turnover as ensuring citizens rights in Ukraine

The article deals with general analysis of current situation in ensuring rights of Ukrainian citizens by law enforcement authorities in the sphere of firearms turnover and questions of establishment, perspectives of development of the Firearms Act of Ukraine.

Проаналізовано сучасний стан забезпечення конституційних прав людини та громадянина правоохоронними органами в сфері обігу вогнепальної зброї та питання становлення, перспектив розвитку Закону України «Про зброю».

Проведен анализ современного состояния обеспечения конституционных прав человека и гражданина правоохрнительными органами в сфере оборота огнестрельного оружия, а также рассмотрены вопросы становления, перспектив развития Закона Украины «Об оружии»

Key words: the Firearms Act, firearms turnover, the registration and accounting of firearms.

Subject of research

There are deep social, economic and political transformations in Ukraine nowadays. Obviously, progressive processes of construction of a legal democratic state, aside from positive achievements, have unavoidable adverse effects. Thus, the number of people and refugees who have no means for living and permanent residence has increased. Accordingly, the number of crimes has increased, the effectiveness of law-enforcement authorities has become lower, and the latter have no means to ensure protection of private, municipal and/or state ownership, personal rights and freedoms, protect individuals from infringements on them.

Paragraph 2 of Article 27 of the Constitution of Ukraine states that «everyone has a right to protect his life and health, and life and health of other people from illegal infringements» [4]. This constitutional norm has mirrored in other branches of law. In fact, Article 36 «Necessary defence» of the Criminal Code of Ukraine foresees that there is a real opportunity for using this institute with application of firearms by any person [5]. So, one of the ways to protect the abovementioned human rights is the right of a person to bear arms.

Analysis of relevant publications

It is possible that the right to bear arms of one person would conflict with the right to life and health of other individuals, as the earlier determines potential opportunity of using firearms against other individuals. There are many scientists who have devoted their research to these problems. Among them: P.D. Bilenchuk, A.V. Kofanov, O.F. Suljava, Ya.Yu. Kondratev, A.I. Kaplunov, D.A. Koretskyj, V.V. Nazarov, V.I. Antipov, O.I. Rements, L.M. Kononenko, A.S. Matsko, I.V. Bojko, O.M. Pidzharenko, C.O. Nevskij, and others.

Aim of research

Strengthening the rule of law is one of the most important functions of the state, which is connected with a wide range of social, economic, political and organizational activities. Combating illicit trafficking of firearms place an important role in crime prevention by law-enforcers, because it fulfils a two-fold function: in addition to seizure of illegal weapon, it prevents serious consequences that may arise as a result of its unlawful use.

Summary statement

Unfortunately, the number of crimes involving the use of firearms has increased. According to the statistics of the Ministry of Internal Affairs of Ukraine (MIA), in the year of 2009 410 crimes involving firearms were recorded (including 100 murders and attempts to commit a murder), while in 2008 – 311 (84) and in 2007 – 311 (75) respectively. Thus, against the background of different international, general social tensions, and also insufficient legitimate appeal of weapons in general, the trend of today's criminals to possess and use firearms inevitably increased [8, 9].

In particular, according to the above statistics, in 2009 MIA authorities seized 3080 firearms (including smooth – 314, rifled – 1402, and other types – 1364), while in 2008 – 2974 (313, 1402, and 1385 respectively). It is clear, therefore, that the dynamics leaves much to be desired [8, 9].

In general, the accounting departments of licensing system of MIA supervises over more than 1 841 objects with weapons, which store and use 59 570 firearms and more than 1 650 other objects of the licensing system. In addition, there are approximately 699 756 holders of hunting firearms, and about 810 995 firearms in use [2]. Of course, effective control of all of that requires a system of tools, techniques and methods in place, developed and improved in all areas of criminology and forensics which are based on studying investigation and expert practice. There are a number of laws in this field that complement each other. However, a range of problems remain, such as trafficking of certain types of firearms and devices for shooting rubber bullets or ammunition with similar characteristics of non-lethal action, etc. First of all, the most acute problem in this area is that so far Ukraine has not adopted a special law – the Firearms Act – to deal with the turnover of firearms between civilians and satisfy all regulatory needs in this field.

Legislative control over the ownership and use of firearms in independent Ukraine began with the adoption of the Decree «On ownership of certain types of property» of 17 June 1992, and Annex 2 to it, containing a special procedure for acquisition of property rights for certain types of a property. On October 12, 1992 the Cabinet of Ministers of Ukraine approved the Regulations on the permit system, directly dealing with the control of firearms turnover in Ukraine and vesting main responsibilities in the area with MIA [1, p. 11]. Officially, the legal procedure establishing the control system over trafficking of firearms in Ukraine was completed on August 21, 1998, when MIA approved the «Regulation on the procedure for production, acquisition, storage, transportation and use of firearms, air and cold weapons, devices of domestic production for shooting rubber bullets or ammunition with similar characteristics of non-lethal action, and cartridges and ammunition for the weapons and explosive materials»

This instruction identified: (1) the task of MIA to implement the permit system; (2) permitting procedure for acquisition, storage, transportation and use of weapons; (3) control of facilities of licensing system; (4) a detailed procedure for the acquisition, storage, securing, transportation and use of weapons and military supplies. Nowadays short-barrelled firearms are completely forbidden for the use by civilians. Citizens can buy firearms only for hunting. The barrel of such firearms shall not be shorter than 450 mm, and the total length of a firearm shall not be less than 800 mm [7].

Actually, a person who is 21 years old may own a shotgun and a person who is 25 years old may own a rifle. In order to acquire a permit a person shall:

- submit a written application addressed to the head of respective MIA authority;
- fill in a card-application;
- be medically certified of having no restrictions for owning weapons;
- pass prevention drug inspection; and
- pass exam on material part of firearms and rules for using them.

If everything is completed MIA issues a license to purchase a weapon. The license is valid for 3 months and the purchased firearm should be registered within 10 days of a purchase.

Today legal relations in the field of firearms turnover are regulated by nearly 90 pieces of law (including laws, orders, decrees, etc.). However, they lack the main normative act – the Firearms Act. For instance, in Russian Federation the Firearms Act was adopted in 1993, in Belarus – in 2001, in Latvia – in 2002, and in the Republic of Moldova – in 1994 [1, c. 172].

Of course, since 1998 a significant number of draft laws «On weapons» were submitted for consideration to the Supreme Rada of Ukraine. Analysis of these drafts leads to the conclusion that:

- all submitted drafts are incomplete;
- many of them do not provide for the right of a person to own and use office-routine firearms; and those that do provide for such a right, contradict to Articles 3, 19, 21 and 24 of the Constitution of Ukraine;
- the most progressive is the draft law by L.M. Chernovetskyj, O.I. Rymaruk, O.Yu. Danilchuk and V.M. Nedryhaylo of October 2, 2002; and the most restrictive is the draft law by the Cabinet of Ministers of Ukraine of May 13, 1998;
- experts in firearms and art, historians, lawyers, economists and specialists in certification and criminal expert services should be involved in further improvement of existing drafts.

Only on March 4, 2004, an act number 1171-D was adopted by the Supreme Rada of Ukraine in the 1st reading. The draft Law of Ukraine 1171-A «On weapons» was a compromise, combining the most appropriate provisions of previous drafts (1171, introduced by Ju.A.Karmazin, L.M. Chernovetskyj, V.P. Nechyporuk, and A.I. Rymaruk, and 1171-2, submitted by J.V. Vinskij, V.I. Razvadovskyj, S.S. Bul'ba, V.M. Korol, and V.S. Zubov). The main feature of this draft Law is that it prohibits citizens to own short firearms (pistols and revolvers). Questions of readiness of our society to acquire such weapons, deliberation of all pros and cons of such a possibility deserve a separate study [3, p. 111].

Subsequently, the draft Law of Ukraine 2105 «On turnover of non-military weapons» was introduced for consideration to the Supreme Rada (authors: Moysyk V.R., Gritsak V.M. Prokopchuk Yu.V., Pudov B.M.). It was adopted in 1st reading on February 9, 2009. The document offered to reduce the age limit for the right to acquire, possess and use fire-smooth-bore hunting firearms, weapons of self-defence by citizens of Ukraine from the age of 21 to 18; and the right to acquire, store, carry a rifle – from the age of 25 to 21. It also included the extended list of self-defence pistols and revolvers, designed for shooting rubber bullets or ammunition of similar characteristics of non-lethal action, permitted for possession by citizens. On February 17, 2009 this draft Law was withdrawn. It seems to be appropriate, because with the adoption of this draft Law the arms of «self-defence» could have become a weapon of «attack»: many models of guns that shoot rubber bullets, can be converted into firearms, leading to outbreaks of a crime, taking into account the level of culture and aggressiveness of the modern Ukrainian society. On July 15, 2009 the draft Law of Ukraine «On turnover of non-military weapons» was re-introduced for consideration to the Supreme Rada.

Another important issue to discuss is that the Firearms Act should be in line

with corresponding international obligations of Ukraine. Among them those under the United Nations Program on the Illicit Trade in Small Arms and Light Weapons, and obligations on small firearms and light weapons taken under the auspices of the Organization for Security and Co-operation in Europe. It is also important to note that the agreement «On Cooperation of Member Countries of the Commonwealth of Independent States in Combating Illicit Trafficking in Firearms, Ammunition, Explosives and Explosive Devices» plays an important role in the development of national legislation on firearm trafficking. In addition, Ukraine is implementing resolutions and decisions of the United Nations Security Council, Organization for Security and Co-operation in Europe and within the Wassenaar Agreement. Implementation of sanctions regime is the governing principle in deciding relevant laws and regulations in Ukraine.

One of the recent laws of the European Union in this field is the Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, amending Council Directive 91/477/EEC on Control of the Acquisition and Possession of Weapons. It should be emphasized that Article 4 of the Directive 2008/51/EC states that the Member States shall, by 31 December 2014, ensure the establishment and maintenance of a computerised datafiling system, either a centralised system or a decentralised system which guarantees to authorised authorities access to the data-filing systems in which each firearm subject to this Directive shall be recorded. This filing system shall record and maintain for not less than 20 years each firearm's type, make, model, calibre and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm [10].

Member States shall ensure either that any firearm or part placed on the market has been marked and registered in compliance with this Directive, or that it has been deactivated.

For the purpose of identifying and tracing each assembled firearm, Member States shall, at the time of manufacture of each firearm, either:

a) require a unique marking, including the name of the manufacturer, the country or place of manufacture, the serial number and the year of manufacture (if not part of the serial number). This shall be without prejudice to the affixing of the manufacturer's trademark. For these purposes, the Member States may choose to apply the provisions of the Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms; or

b) maintain any alternative unique user-friendly marking with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture.

The marking shall be affixed to an essential component of the firearm, the destruction of which would render the firearm unusable [10].

In our opinion, the abovementioned requirements of the Directive 2008/51/EC add to the effectiveness of prevention of illegal firearms turnover.

Investigation and disclosure of information about a crime and those involved in it has great importance for complete and comprehensive crime prevention in Ukraine. One of the information sources necessary for the investigation is criminalistics account, produced by MIA. Criminalistics account is a scientific system of registration of certain facilities and identification signs for the prevention and disclosure of crimes, investigation and identification of objects taken into account. This system and its use is based on strict adherence to the rule of law. Certificates of facilities doing criminalistics account, after their accession to the case, are used as evidence in legal proceedings (Article 65 of the Criminal Code of Ukraine). Accounting of firearms is regulated by the Order № 390 «On the approval of instructions for the functioning of criminalistics account of expert service of the MIA» of September 10, 2009 [6].

Conclusions

Forensic expert service of MIA plays an important role in this system, because its tasks include prevention as well as direct assistance to crimes investigation. Also one of the main forms of interaction of Forensic expert service with other departments of MIA is conducting criminalistics account. Besides, the expert criminal divisions conduct ballistic expertise and research.

The adoption of effective Firearms Act and development of Forensics Identification using criminalistics account is a cornerstone for successful combating crime in our society and, consequently, ensuring citizens' constitutional rights.

Bibliography

1. Біленчук П.Д. Зброезнавство : Правові основи обігу вогнестрільної зброї. Порівняльний аналіз вітчизняного та зарубіжного законодавства : Україна. Європа. Світ / П.Д. Біленчук, А.В. Кофанов, О.Ф. Сулява ; за редакцією проф. П.Д. Біленчука. – К.: Міжнародна агенція BeeZone, 2004. – 464 с.
2. Зброя за дозволом і під контролем : інтерв'ю з начальником Управління дозвільної системи та ліцензування ДГБ МВС Валентином Олександрович Медвідем / [укладач Т. Чепельська] // *Тижневик МВС України Іменем Закону*. – К. : *Преса України*, 2009. – № 42. – С. 10.
3. Кофанов А.В. Прийняття Закону України «Про зброю» як складова вдосконалення кримінального права / А.В. Кофанов // *Проблеми застосування кримінального законодавства України*. Вісник Луганського державного університету внутрішніх справ. – Луганськ : Луганський університет внутрішніх справ, 2007. – Спец. вип. – С. 110–112.
4. Конституція України : за станом на 16 лютого 2010 р. [Електронний ресурс] // Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%E2%F96-%E2%F0>.
5. Кримінальний кодекс України : за станом на 16 лютого 2010 р. [Електронний ресурс] // Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14>
6. Про затвердження Інструкції про формування, ведення і використання криміналістичних обліків Криміналістичного Центру МВС України : Наказ МВС України від 10 вересня 2009 р. № 390 [Електронний ресурс] // Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0963-09>.
7. Про затвердження Інструкції про порядок виготовлення, придбання, зберігання, обліку, перевезення та використання вогнепальної, пневматичної і холодної зброї, пристроїв вітчизняного виробництва для відстрілу патронів, споряджених гумовими чи аналогічними за своїми властивостями металевими снарядами несмертельної дії, та зазначених патронів, а також боеприпасів до зброї та вибухових матеріалів : Наказ МВС України № 622 від 21 серпня 1998 р. [Електронний ресурс]. – Режим доступу : <http://zakon.nau.ua/doc/?uid=1036.449.0&nobreak=1>.
8. Стан та структура злочинності в Україні Статистика МВС України 2007-2008 роки [Електронний ресурс] // Режим доступу : <http://212.1.76.10/mvs/doccatalog/document?id=170310>.
9. Стан та структура злочинності в Україні : Статистика МВС України 2008-2009 роки [Електронний ресурс] // Режим доступу : http://mvsinfo.gov.ua/statistika/StatistikaMVS_2009.xls.
10. Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 [Електронний ресурс] // Режим доступу: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:179:0005:0011:EN:PDF>