

DOI: https://doi.org/10.34069/AI/2021.38.02.19

The main directions of State policy in the area of arms trafficking in Ukraine

Основні напрями державної політики у сфері обігу зброї в Україні

Received: February 27, 2021 Accepted: April 3, 2021

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Abstract

The purpose of the article is to provide general description of the draft laws, which define the main directions of the State policy in the area of arms trafficking in Ukraine. Methodology: dialectical method, method of analysis and synthesis, logical and semantic method, system method, method of classification and grouping, inductive method were used in the course of the research. Research results: The scope of the draft laws in the area of arms trafficking in Ukraine is their shortcomings, analyzed, gaps and identified. contradictions are Practical consequences: Based on the study, it is concluded that it is necessary to develop and legislative implementation of the general concept of arms trafficking in Ukraine, which should define the main directions of public policy in this area. Value / originality: The author's view on the expediency of distinguishing certain areas of State policy in the area of arms trafficking in Ukraine is substantiated.

Анотація

Метою статті надання загальної характеристики законопроектам, у яких напрями визначено основні державної політики у сфері обігу зброї в Україні. Предмет Предметом дослідження є дослідження: законопроекти, в яких визначено основні напрями державної політики у сфері обігу зброї в Україні. Методологія: діалектичний метод, метод аналізу та синтезу, логіко-семантичний метод, системний метод, метод класифікації та групування, індуктивний метод. Результати дослідження: Аналізується сфера дії таких законопроектів, визначаються їх недоліки, суперечності. Практичні прогалини та наслідки: На основі проведеного дослідження робиться висновок про необхідність розробки законодавчого ухвалення загальної концепції обігу зброї в Україні, в якій мають бути визначені основні напрями державної політики у вказаній сфері. Цінність / оригінальність: Обґрунтовується авторський погляд на доцільність виокремлення тих чи інших напрямів державної політики у сфері обігу зброї в Україні.

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Key Words: firearms, State policy, legalization, arms trafficking, legal regime of weapons ownership.

Introduction

The relevance of the chosen topic of the article is due to the fact that the sphere of arms trafficking is almost the least regulated area of public life in Ukraine nowadays. Active legislative work, as well as significant amount of scientific researches on this issue, has long failed to yield the expected results; the quality of legal regulation of this important issue remains extremely low. The situation only becomes more complicated with every year, gaining serious scale and causing more and more various negative consequences. Unfortunately, the limited scope of this scientific article does not allow us to fully analyze all the factors influencing the development of public relations in the area of arms trafficking. Therefore, below we propose to briefly outline only those that determine the central vector and the main directions of development of public policy in the analyzed area.

Firstly, there is the lack of a proper mechanism and reliable guarantees for the realization of the rights of the citizens of Ukraine granted to them by the Constitution of Ukraine (Law no. 254k/96-VR, 1996). First of all, we are talking about Part 2, Article 27 of the Basic Law, which guarantees every citizen of Ukraine the right to protect his (her) life and health, the lives and health of others from unlawful encroachments. Besides, Part 1, Art. 92, which contains a requirement exclusively for the legislative regulation of human and civil rights and freedoms, guarantees of these rights and freedoms and the legal regime of ownership, including arms, is also worth mentioning.

Secondly, there is low quality of legal regulation of public relations in the area of arms trafficking. Today, almost all issues related to the circulation of weapons are regulated by the by-laws of the Ministry of Internal Affairs of Ukraine and other agencies. Many of them are now anachronism, and the rest are contradictory, outdated, and in fact duplicate the basic provisions of former Soviet law.

Thirdly, there is the lack of proper legal regulation of the significant number of issues that arise in the area of arms trafficking. And this is not only modern challenges, but also established public relations in the area of arms trafficking. In

Ключові слова: вогнепальна зброя, державна політика, легалізація, обіг зброї, правовий режим власності на зброю.

particular, it is the issue of the absence of the State register of the owners of weapon, official classification of the weapon, legal bases for the activity of shooting sports organizations, etc.

Fourthly, there is imperfection of control and supervision mechanisms in the area of arms trafficking. Currently, all levers of influence in this area are actually concentrated in the hands of one executive body – the Ministry of Internal Affairs of Ukraine. Such usurpation of power not only contributes to the development of bureaucracy in the area of arms trafficking, but also creates significant corruption risks.

Fifthly, there is a significant number of legal conflicts in the area of law enforcement when prosecuting illicit weapons.

Sixthly, there is a significant public response, which raises the issue of legalization of firearms, as well as the ambiguous attitude of different social groups to this issue at different stages of development of our State. Giving a permission to carry a weapon always entails too great risks and can lead to significant negative consequences. It is extremely difficult to anticipate all of them, as well as to introduce safety mechanisms in time.

Seventhly, there is traditional classification of weapon as the most effective means of exercising the right of citizens to self-defense in the vast majority of foreign countries. A lot of developed countries have provided such right to their citizens at one or another historical stage of their development, and often such a step has helped to reduce the number of violent crimes against the person and mercenary-violent crimes against property, as well as positively affected the structure and dynamics of crime.

Eighthly, there is extremely large number of firearms in Ukraine. And with each passing year of the armed conflict in the Eastern Ukraine, the number of such weapons is only growing.

These factors, as well as the other ones, necessitate not only theoretical understanding, but also legislative consolidation of the main directions of State policy in the area of arms trafficking in Ukraine.



So, the purpose of this scientific article is to generalize scientific approaches to determining the content and boundaries of State policy in the area of arms trafficking in Ukraine, taking into account the current socio-political situation, national traditions and positive foreign experience.

Methodology

To achieve scientific objectivity of the research results, a set of general scientific and special methods of scientific cognition was used in the work. Thus, historical and legal method was used to examine development of the legislation in the area of arm s trafficking in Ukraine. Dialectical method allowed to study the features of the legislation regulating arms trafficking in Ukraine. Analytical method and synthesis method were used in the study of the Draft laws in the area of arms trafficking and formulating the propositions to address their shortcomings. The application of logical and semantic method and the method of transition from the general to the individual made it possible to deepen the conceptual apparatus of the studied issues (the concept of the arms trafficking). Systematic method was used to determine the stages of legislative regulation of arms trafficking in Ukraine. The methods of classification and grouping were applied to determine the issues regulating by the Draft laws in the area of arms trafficking in Ukraine. With the help of the inductive method the main problems of the Draft laws in the area of arms trafficking in Ukraine were determined.

Literature Review

When analyzing the views of different scholars on State policy in the area of arms trafficking in Ukraine, one can see that there are two positions on this issue. The proponents of the liberalization of State policy on the circulation of weapons, including short-barreled firearms (pistols and revolvers), justify their position with the following arguments: firearms are an effective means of exercising the constitutional right to self-defense; the vast majority of civilized countries have granted this right to their citizens and this has helped to reduce the number of violent crimes against the person; officially registered weapons are generally not used in the commission of intentional crimes: the militaryindustrial complex of Ukraine is able not only to meet the demand for weapons within the country, but also to produce them for export; growing demand for weapons will be an important factor

in increasing the production not only of weapons enterprises, but also the growth of Ukraine's economy as a whole, which will create new jobs, decrease unemployment in the State, etc.; high price and tax on weapons as a special type of property will contribute to the replenishment of the State budget and eliminate the continuous militarization of the population; the state is not yet able to guarantee the safety of its citizens from criminal encroachments, and the possibility of armed repulse will be a deterrent for a significant number of criminals (Shakun, 2003, p. 477).

The proponents of the idea of free circulation of short-barreled weapons sometimes refer to the experience of foreign countries, without considering the problems of our society, the economic and political situation in the country and, ultimately, the mentality of our citizens (Shkurlatov, 2004, p. 32).

According to another view, the danger of granting citizens the right to acquire, store and carry short-barreled firearms (pistols and revolvers) is as follows: 1) short-barreled firearms are more dangerous than other kinds of weapon; 2) carrying, transportation and storage of firearms does not require special protective equipment, so it can cause harm to the owner; 3) the relative ease of causing harm, including through negligence; 4) the use of firearms in public places can lead to a large number of victims. That is, free circulation of such weapons threatens to complicate the tense criminogenic situation in the country and may make the State dependent on criminal structures (Kulyk 2011, p. 182).

Results and Discussion

Harmonization of legislation is equivalent to a purposeful process of convergence, harmonization and interaction of national legal systems on the basis of common international legal standards declared within the relevant legal space (Dzhafarova, Ivanova, Zahorodniuk & Zaiets, 2020, p. 14). The need for legislative regulation of arms trafficking arose almost from the moment of Ukraine's independence. However, the first Draft Law "On Weapons" was officially registered in the Verkhovna Rada only on May 13, 1998 (Draft Law of Ukraine No. 1023, 1998). By the way, it was not only the first one, but also the only bill introduced in the Verkhovna Rada at the initiative of the Cabinet. The initiators of all other projects were the People's Deputies of Ukraine (Shumeiko,

Hurkovskyy, Sydoruk, Tymoshenko, & Zelena, 2021).

Almost two dozen more bills were registered in the Verkhovna Rada over the next 22 years, which were more or less aimed at regulating public relations in the area of arms trafficking. However, despite such a long and fruitful legislative work, only the last three projects, initiated by the people's deputies of Ukraine of the ninth convocation, contained a separate article devoted to defining the main directions of the State policy in the area of arms trafficking in Ukraine.

For the first time, a separate article outlining the main directions of the State policy in the area of arms trafficking appeared in the Draft Law of "On Trafficking" Arms (Draft Law of Ukraine No. 1222-1, 2019), which was registered in the Verkhovna Rada on September 20, 2019 under no. 1222-1 at the initiative of the people's deputies of Ukraine Bakumova, Medianyk, Sushchenko and the others (hereinafter - the Draft Law no. 1222-1). Given the specifics of our study, we should first pay attention to the provisions contained in the Preamble, Articles 2, 4 of the analyzed Draft Law.

Thus, the Preamble to the Draft Law no. 1222-1 states that this Law regulates relations arising "during the circulation of firearms, melee weapons, pneumatic weapons, ammunition in Ukraine, as well as structurally similar weapons and ammunition products, and determines their legal status, the rights and responsibilities of persons who possess them; establishes requirements for the production, acquisition, use and alienation, as well as regulates other social relations related to the circulation of weapon. However, if we compare this provision with what is enshrined in Art. 2 of the same Draft Law, one can see significant differences between them. Thus, Part 1 of this article outlines the scope of the future Law, in particular, it states that the Law applies to "public relations that arise during the circulation of firearms, melee weapons, ammunition, as well as structurally similar to weapons and ammunition products".

Thus, as one can see, the authors of the Draft Law propose to limit the scope of the Law, extending it only to the issues related to the "trafficking" of weapon and ammunition, which is much narrower in content than the tasks defined in the Preamble. Another argument in favor of this conclusion is the official interpretation of the concept of "arms trafficking", which is contained

in Part, Art. 1 of the Draft Law. In particular, one proposes to understand under this concept "arms production, arms trade, sale, transfer, acquisition, collection, display, inheritance, accounting, storage, carrying, transportation, use, seizure, destruction, import of weapons into Ukraine and export of weapons from Ukraine".

As for the main directions of State policy in the area of arms trafficking, their list is contained in Art. 4 of the Draft Law no. 1222-1. In particular, it is noted that "the State policy in the area of arms trafficking is aimed at: 1) establishing State control over the circulation of weapon in Ukraine and compliance with the legislation on arms circulation; 2) prevention of illegal circulation of weapons; 3) establishment of rules of arms circulation in Ukraine; 4) establishment of technical requirements for weapons and ammunition; 5) development of international cooperation in the area of arms control".

It would be logical to assume that if the Law outlines the main directions of State policy in the area of arms trafficking, it should necessarily define the principles of their implementation. These can be both norms of direct action, and norms of blanket or reference character. However, after having thoroughly studied the content of the Draft Law no. 1222-1, we came to the conclusion that it does not meet this requirement, since it does not disclose most of the features of State policy in the area of arms trafficking enshrined in Article 4. For example, the basic rules of arms trafficking (paragraph 3, part 1 of Article 4 of the Draft Law) are defined in Section III (Fundamentals of trafficking of arms and ammunition), as well as in Section IV (Peculiarities of trafficking of arms and ammunition). General principles of State control over arms trafficking in Ukraine and compliance with the legislation on arms trafficking (paragraph 3 of Part 1 of Article 4 of the Draft Law) are enshrined in Section V (State control over the circulation of weapons ammunition). As for the prevention of illicit trafficking, the establishment of technical requirements for weapons and ammunition, as well as international cooperation in the area of arms control (paragraph 2, paragraph 4 and paragraph 5 of Part 1 of Article 4 of the Draft Law), these areas of public policy are not disclosed in the Draft Law.

In our opinion, such an approach to the legislative regulation of the arms trade in Ukraine is unacceptable and carries a large number of threats. And the biggest of such threats is the incompleteness and low quality of legal support



of the analyzed sphere of public relations. Outlining the main directions of the State policy in the area of arms trafficking and nonestablishing the general principles of their implementation in a single legislative act will inevitably lead to the emergence of numerous legislative gaps, to eliminate which it will be necessary to adopt new regulations. At the same time, it is obvious that such acts will be adopted by different subjects of law-making, at different times, most of them will be by-laws and will not comply with the general rules of rule-making techniques. Under such conditions, it is unlikely that numerous legal conflicts will be avoided.

In addition to the shortcomings we analyzed above, the Draft Law no. 1222-1 contained a number of contradictory provisions. Due to this, it was not included in the agenda of the session of the Verkhovna Rada and in February 2020 and was returned to its initiators for the revision.

The next stage of legislative work in the area of arms circulation falls on November 2020. It was in this month that two bills on this issue were registered in the Verkhovna Radaof Ukraine. The first one was the Draft Law of Ukraine "On the circulation of civilian firearms and ammunition" of November 06, 2020 no. 4335, which was submitted to the Verkhovna Rada on the initiative of Fris, Bakumov, Fediienko and other people's deputies of Ukraine (hereinafter - the Bill no. 4335) (Draft Law of Ukraine No. 4335. 2020(1)). The second one was the Draft Law of Ukraine "On Civil Weapons and Ammunition" dated of November 24, 2020 no. 4335-1, which was submitted to the Verkhovna Rada on the initiative of the People's Deputy of Ukraine Sharanskyi (hereinafter - the Draft Law no. 4335-1) (Draft Law of Ukraine No. 4335-1. 2020(2)).

The main issue to pay attention to when analyzing the content of the above bills is their scope. It is indicated in general terms in the Preambles and is detailed in Articles 2 of both bills. Thus, according to the Preamble, Draft Law no. 4335 is aimed to regulate "relations arising in the area of trafficking of civilian firearms, ammunition in Ukraine, as well as structurally similar to weapons and ammunition products, and determines the legal regime of ownership of civilian weapons, establishes the basic rights and responsibilities of individuals and legal entities for the production, acquisition, possession, alienation, carrying, transportation, repair, use of civilian firearms and ammunition, as well as other public relations directly related to it taking

into account Ukraine's international obligations. With regard to the Draft Law no. 4335-1, its Preamble is virtually indistinguishable from the Preamble to the Draft Law no. 4335, but has several important differences. Firstly, instead of the word "trafficking" of the weapon, the word "circulation" is used here. Secondly, the subject of regulation is interpreted here in broad sense; in particular, it is not only "civilian firearms", as it is in the Bill no. 4335, but all "civilian weapons".

The scope of both Draft laws is detailed in Articles 2 respectively. In particular, it is envisaged that the Draft Law no. 4335: 1) determines the legal basis and procedure for the circulation of civilian firearms and ammunition and regulates public relations on these issues; 2) determines the categories of civilian firearms; 3) determines general rights and obligations of legal entities and individual entrepreneurs whose activities are related to the production, trade, repair and use of civilian firearms and ammunition; 4) determine the characteristics of weapons prohibited for civilian use; 5) establishes the principles of maintaining the Unified State Register of Civilian Weapons. With the amendments we mentioned above, the scope of the Bill № 4335-1 is outlined. This Draft Law, in contrast to the Draft Law no. 4335, explicitly states that "this Law regulates the legal regime of ownership of weapons". However, it is not specified what kind of "weapon" we are talking about: civilian, service, firearms, etc.

Comparing the content of Articles 2 of both Draft laws with other provisions of these bills, we can draw some general conclusions:

- firstly, the scope of the Law is defined in broader sense than the relevant Preamble;
- secondly, the provisions enshrined in them are not consistent with other provisions of the relevant bills, which address a much wider range of issues;
- thirdly, they do not cover all the most important aspects of arms trafficking;
- fourthly, they do not correspond and in some cases contradict the main directions of State policy in the area of arms trafficking, defined in Articles 4 of both Draft Laws.

And although each of the above shortcomings is worth returning the bills for revision, below we propose to analyze only the last one in more detail.



The main directions of State policy in the area of arms trafficking are defined in Articles 4 of both bills. However, it should be noted that the Draft Law no. 4335 defines the main directions of State policy "in the area of trafficking of civilian firearms and ammunition", and the Draft Law no. 4335-1 outlines the main directions of State policy "in the area of circulation of civilian weapons and ammunition".

In other respects, both bills are identical and define the following areas of State policy in the analyzed area:

- determination of the principles and procedure for the circulation of civilian firearms (civilian weapons) and ammunition in Ukraine:
- establishment of State control over the circulation of civilian firearms (civilian weapons) and ammunition in Ukraine of and the compliance with the legislation on their circulation;
- 3) preventing the introduction of civilian firearms (civilian weapons) and ammunition into illegal circulation;
- establishment of rules of circulation of civilian firearms (civilian weapons) and ammunition in Ukraine;
- 5) establishment of technical requirements for civilian firearms (civilian weapons) and ammunition:
- withdrawal of civilian firearms (civilian weapons) and ammunition from illegal circulation;
- 7) establishing responsibility for violation of the legislation on the circulation of civilian firearms (civilian weapons);
- 8) development of international cooperation in the area of arms control.

Conclusion

The modern world does not stand still. This thesis, despite its triviality, emphasizes the development trends of the world community. Many types of crime became possible only due to the development of the modern technologies (Bruevich, Gubanova, Leinova, Tsechoev & Sitkova 2019, p. 708).

The analysis of the content of the above directions of State policy in the area of arms trafficking allows to conclude that this issue is regulated more systematically and comprehensively in the Draft Laws no. 4335 and no. 4335-1, in contrast to the Draft Law no. 1222-1. However, this is the end of their positive performance. Much more attention should be

paid to the characterization of their shortcomings, without the elimination of which the adoption of the Draft law would be impractical, and the application of its individual provisions would be impossible in practice.

First of all, it is worth noting that most of the directions of State policy in the area of arms trafficking, which are defined in Draft Laws no. 4335 and no. 4335-1, have not found the appropriate detail in other articles of relevant laws. And there are far more such directions than there were in the Draft Law no. 1222-1. In particular, we are talking about: 1) the principles of arms circulation in Ukraine; 2) the order of circulation of civilian firearms (civilian weapons) in Ukraine; 3) measures aimed at preventing the introduction of civilian firearms (civilian weapons) into illegal circulation; 4) measures to be taken to withdraw civilian firearms (civilian weapons) from illegal circulation; 5) technical requirements for civilian firearms (civilian weapons); 6) areas of international cooperation in the area of arms control, etc.

It is obvious that such incompleteness of the Law would negatively affect the quality of administrative and legal regulation of arms trafficking and would be the main cause of numerous gaps and contradictions.

Another shortcoming of the Draft Laws no. 4335 and 4335-1 is the official definition of a far from complete list of the main directions of State policy in the area of arms trafficking in Ukraine. In particular, such important developments have not been adequately legislated: 1) definition of legal regime governing the ownership of weapons have not received due legislative 2) determination of enshrinement: administrative and legal status of the subjects of realization of the State policy in the area of arms trafficking; 3) restriction of the rights and freedoms of individuals and legal entities in the area of arms trafficking; 4) guarantees for the exercise of the rights granted in the area of arms circulation by individuals and legal entities; 5) parliamentary and public control over the implementation of the State policy in the area of arms circulation, etc.

This is by no means a complete list of State policy directions in the area of arms circulation, which are not enshrined in the text of the Draft laws no. 4335 and no. 4335-1. Many aspects still require detailed study and proper scientific justification, which cannot be done within one scientific article.



Another, and, in our opinion, the most important shortcoming of the Draft laws no. 4335 and no. 4335-1 is the unjustified and artificial restriction of the scope of their legal regulation by the issues of trafficking of exclusively civilian firearms (civilian weapons). The arms trafficking in Ukraine should be considered as a single, integral and indivisible legal category. Its differentiation into separate components, such as "civilian weapons", "firearms" or "civilian firearms", is possible only with a clear legislative definition of the general nature of arms trafficking in Ukraine. Therefore, first of all, it is necessary to approve the general concept of arms trafficking in Ukraine, which outlines the main directions of State policy in this area at the legislative level. And only then special legislation, in which the mechanism of realization of such directions will be defined, can be drafted and adopted.

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