

DELIMITATION OF PUBLIC POLICY IN THE AREA OF ARMS TRAFFICKING IN UKRAINE: REVIEW OF DRAFT LEGISLATION

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ABSTRACT

Description: *The aim of the article to review officially registered draft laws on weapons in terms of legislative definition of the State policy in the area of arms trafficking in Ukraine.*

The Subject of Study: *The subject of the study is officially registered draft laws on weapons in terms of legislative definition of the State policy in the area of arms trafficking in Ukraine.*

Methodology: *The methodological basis for the article is the following methods of scientific knowledge: historical and legal method, formal and dogmatic method, dialectical method, comparative and legal method, abstract and logical method.*

The Results of the Study: *General characteristic of the draft laws aimed at regulating public relations in the area of arms trafficking in Ukraine is provided.*

Practical Implications: *The approaches to defining delimitation of State policy in the area of arms trafficking are compared; their shortcomings, contradictions and gaps are identified.*

Value/Originality: *Based on the study, the author's view on the content of State policy in the area of arms trafficking in Ukraine, which takes into account generally accepted international standards, as well as the socio-political situation in our country, is presented.*

Keywords: Draft Law, Service Weapons, Firearms, Ammunition, Civil Weapons.

INTRODUCTION

Ukraine is on the path of significant changes at the present stage of its development: the structure of economic relations is changing, new subjects of property and political activity are being formed, basic values are being transformed (Kyslyi et al., 2020). All this also necessitates the renewal of State policy in the field of arms trafficking. Unfortunately, we are forced to state that today, the Verkhovna Rada has not adopted a single legislative act on the circulation of weapons, and all public relations in this area continue to be governed exclusively by regulation

despite active legislative activity. The following negative points should be noted in the context of the above mentioned.

Firstly, such by-laws have different areas of legal regulation and are adopted by a large number of entities-ministries and departments. This is the main reason for the emergence and existence of numerous gaps and contradictions, ambiguous and inaccurate regulation of similar issues.

Secondly, most of these by-laws are outdated and in fact duplicate the provisions of Soviet law. In turn, a significant number of anachronisms, inconsistency of existing acts with the current socio-political situation in the country, as well as the lack of a single concept of legislation in the field of arms trafficking negatively affect Ukraine's international prestige and significantly reduce its investment attractiveness.

Thirdly, the very principle of departmental regulation of arms trafficking contradicts the main provisions of the Constitution of Ukraine, civil and criminal law, which provide only for legislative regulation of public relations in the area of arms and ammunition. Therefore, bringing a person to legal responsibility for violating by-laws in this area should a priori be considered illegal and such as unreasonably restricts the rights and freedoms of citizens.

Clearly, this is by no means a complete list of negative consequences of the lack of a basic regulatory law on arms trafficking in Ukraine. However, even it is enough to draw the following conclusion: the boundaries of State policy in the area of arms trafficking should be determined exclusively by law, as only such an approach can ensure unity and coordination of all subjects of administrative and legal mechanism of State policy in the analyzed area.

Given the above, the purpose of this scientific article is to review the officially registered draft laws on weapons in terms of legislative definition of the state policy in the field of arms circulation in Ukraine, as well as the formulation of the author's view on this issue.

MATERIALS AND METHODS

In order to achieve the goal of the Article, the following methods of scientific knowledge were used. Historical and legal method helped to investigate the process of establishment and development of the legislation in the area of arms trafficking in Ukraine. Formal and dogmatic method was applied when analyzing legal acts regulating the circulation of weapons in Ukraine. Dialectical method was used to study the legal nature of arms trafficking in Ukraine. Comparative and legal method allowed comparing the provisions of different draft laws aimed at regulating public relations in the area of arms circulation in Ukraine. Abstract and logical method was used to formulate the relevant conclusions and suggestions.

RESULTS AND DISCUSSION

The first officially registered Draft Law of Ukraine "*On Weapons*" was the Draft Law no. 1032 of May 13, 1998 (Law of Ukraine, 1998). By the way, this Bill was not only the first one, but also the only project submitted to the Verkhovna Rada at the initiative of the Cabinet of Ministers of Ukraine. The initiators of all other bills were the people's deputies of Ukraine. Without going into a detailed analysis of the content of the Bill no. 1032, we note that it did not directly define either the principles of formation and implementation of State policy in the area

of arms trafficking, or the delimitations of such policy. It did not even clearly define the scope of the future Law. However, its preamble stated that:

“This Law defines the general concepts of weapons and ammunition, the rules of possession, use and disposal by all State bodies, enterprises, institutions, organizations, regardless of ownership, officials and citizens, and regulates legal relations that arise in matters of circulation of weapons and ammunition”.

Literal analysis of the content of the Preamble in its relation to other provisions of the Draft Law allows us to draw the following conclusions: firstly, this Bill did not take into account general theoretical developments in the analyzed area, i.e. violated the principle of unity of theory and practice (for example, the *“possession, use and disposal of weapons”* and the *“circulation of weapons”* are mentioned separately in the preamble, although these concepts are correlated as part and whole). Secondly, the Bill covered a rather narrow area of legal regulation and left out a number of issues that were related to the circulation of weapons and needed to be resolved. A few days after the registration of the Draft Law no. 1032 in the Verkhovna Rada on the initiative of the People’s Deputy of Ukraine O.Yu. Danilchuk, the alternative Draft Law 1032-1(Law of Ukraine, 1998) was registered. However, this Draft Law, like the previous one, did not outline the delimitation of State policy in the area of arms trafficking, nor did it clearly define the scope of its provisions. Numerous remarks caused the content of the preamble to the Draft Law no. 1032-1, which stated that:

“This Law defines the legal basis and principles of regulation of relations arising from the circulation of military, service and civilian weapons, ammunition in Ukraine, and aims to protect life and health of citizens, property, protection of public order, nature and natural resources, as well as strengthening international cooperation in the fight against crime and illicit proliferation”.

Thus, firstly, the analysis of the content of the Bill shows that neither the *“legal basis”* nor the *“principles of regulation of relations arising from the circulation of weapons in Ukraine”* (as noted in the preamble) were defined in it. However, as we know, these issues are the basis, the foundation of State policy in the area of arms trafficking. Secondly, in our opinion, the authors of the bill unreasonably and artificially limited its scope, stating that its provisions apply only to the circulation of *“military, service and civilian weapons”* in Ukraine. Other types of weapons are not mentioned, although their circulation in Ukraine should be carried out on a uniform basis. Thirdly, the purpose of its legal regulation is reduced to the implementation of only three tasks:

1. Protection of life and health of citizens, property;
2. Protection of public order, nature and natural resources;
3. Strengthening international cooperation in the fight against crime and illicit proliferation.

At the same time, as we will prove below, the State policy in the area of arms circulation is aimed at implementing a much wider range of tasks.

That is why, at the initiative of the People’s Deputies of Ukraine Yu.A. Karmazin and V.V. Mukhin another Draft Law of Ukraine *“On Weapons”* no. 1032-2 (Law of Ukraine, 1998) was registered. As for the general shortcomings of the analyzed bill, it should be noted that it did not indicate the scope of legal regulation and there was ambiguity with the delimitation of State

policy in the area of arms circulation. In part, the answers to these questions can be found in the Preamble to the bill, which states that:

“This Law regulates legal relations arising from the circulation in Ukraine of handguns, military, civilian weapons and ammunition. The Draft law was aimed to ensure the protection, life and health of citizens, protection of property, public order, nature and natural resources, protection and reproduction of game animals, development of hunting and shooting sports, and strengthening international cooperation in combating crime and illicit arms proliferation. The articles of this Law applied only to those types of weapons and ammunition that meet State standards, have a certificate of the appropriate sample and are included in the State Cadastre of service and civilian weapons. The Draft Law did not apply to weapons used by military formations and law enforcement agencies of the State, the organization and activities of which are determined by law, to perform the tasks assigned to them”.

Comparing the content of the Preamble to the Draft Law no. 1032-2 with the content of the preamble to the Draft Law 1032-1, we can find several significant differences. Firstly, the subject of legal regulation of the Draft Law no. 1032-2 was significantly narrowed. In particular, this applies to such a category as “*military weapons*”, which was limited to “*handguns*”. Secondly, the purpose of legal regulation of the Draft Law no. 1032-2, on the contrary, was expanded due to such a task as

“Protection and reproduction of game animals, development of hunting and shooting sports”

However, it is obvious that even in such an extended version of the purpose of the Draft Law does not cover all the tasks to be solved by the State in the area of arms circulation at the present stage of social development. Thirdly, the scope of the Draft Law no. 1032-2 was limited, in particular, by the provision that:

“The is applied only to those types of weapons and ammunition that meet State standards, have a certificate of the appropriate sample and are listed in the State Cadastre of Service and Civilian Weapons”.

In our opinion, such a restriction is artificial, and its legislative enshrinement is unjustified.

It should be noted that any of the analyzed bills was submitted to the Verkhovna Rada of Ukraine, and the people’s deputies of Ukraine returned to the issue of legal regulation of arms trafficking only a year and a half later. In particular, I. H. Bilas registered the Draft Law no. 1032-3 in July 2000 (Law of Ukraine, 2000). The analysis of the content of this Bill showed that its authors based its provisions on the Draft Law no.1032. And therefore, it had the same shortcomings that we identified above. The last Draft Law registered in the Verkhovna Rada of the third legislature was the Draft Law “*On Weapons*” № 1032-d (Law of Ukraine, 2002). Its initiators were People’s Deputies of Ukraine Karmazin Yu.A., Bilas I.H, Danylchuk O.Yu. and Mukhin V.V. And this gives grounds for the conclusion that the Draft Law no. 1032-d has become a kind of generalization, a synthesis of all previous bills.

Unfortunately, we are forced to state that, despite its generalizing nature, the Draft Law no. 1032-d did not eliminate the main shortcoming of previous attempts at legal regulation; in particular, it did not define the delimitation of State policy in the area of arms trafficking in Ukraine. The answer to this question could be partially found in the Preamble, which states that

“This Law regulates the legal relations arising from the circulation of firearms, pneumatic and bladed weapons, and ammunition in Ukraine and aims to protect life and health of citizens, property, protection of public order and public safety, nature and natural resources, strengthening international cooperation in the fight against crime and illicit proliferation”.

A verbatim analysis of the content of the above preamble allows us to conclude that the authors of the Draft Law no. 1032-d had once again changed the approach to defining the subject and purpose of legal regulation of arms trafficking. Thus, the subject of legal regulation was expanded; in particular, it included *“firearms, pneumatic and bladed weapons”*. As for the purpose of legal regulation, it, on the contrary, was narrowed again by excluding the provision of *“protection and reproduction of game animals, the development of hunting and shooting sports”*. At this point, the attempts of the Verkhovna Rada of the third legislature to regulate the circulation of firearms were finished. However, the work in this direction was continued by the People’s Deputies of Ukraine of the fourth legislature on the initiative, by whose initiative four draft laws on weapons were developed and submitted to the Verkhovna Rada. The first Draft Law no. 1171 was registered in 2002 (Law of Ukraine, 2002). It was based on the content of the Draft Law no. 1032-d, including its literally reproduced preamble. This circumstance gives grounds to conclude that the authors of the Draft Law no. 1171 did not even try to eliminate the shortcomings of the previous bill, including clearly define the delimitation of State policy in the area of arms trafficking, as well as to identify the subject and scope of legal regulation.

The second Draft Law no. 1171-1 (Law of Ukraine, 2002) was registered in the same year on the initiative of the same people’s deputies-Chernovetskyi L.M. and Rymaruk O.I. However, the text of the Draft Law no. 1032-1 was taken as a basis this time which, as we have already noted above, unreasonably limited the subject and purpose of legal regulation in this area. The third Draft Law no. 1171-2 (Law of Ukraine, 2003) was registered in 2003 on the initiative of the People’s Deputies of Ukraine Bulba S.S., Korol V.M. and Zubov V.S. This bill was based on the text of the Draft Law no. 1032-2, the shortcomings of which we have already discussed above. The fourth Draft Law no. 1171-d (Law of Ukraine, 2003) was registered in the same year. The authors of this bill stated that it was revised, but our analysis shows, the vast majority of its provisions, including the preamble, fully reproduced the content of the Draft Law no. 1171.

Thus, summarizing the above, we can conclude that the work of the People’s Deputies of Ukraine of the fourth legislature was not marked by a sound approach to the problem under consideration, although they made active attempts to regulate public relations in the field of arms trafficking in Ukraine. State policy on arms trafficking in Ukraine continued to be pursued without a proper legal basis, and its delimitation was never defined. Subsequently, the problem of the lack of legislative regulation of State policy in the field of arms circulation had been relegated to second place and lost its paramount importance for a long time. This is evidenced, in particular, by the analysis of legislative initiatives of the People’s Deputies of Ukraine of the fifth, sixth and seventh legislature. Thus, the Verkhovna Rada of the fifth and sixth legislature did not consider any draft law on weapons.

As for the People’s Deputies of Ukraine of the seventh legislature, they registered only one bill on weapons and two bills on the circulation of non-military weapons. In particular, in 2008 at the initiative of the People’s Deputies of Ukraine Hrytsak V.M. and Pudova B.M. the Draft Law 3069 (Law of Ukraine, 2008) was registered in the Verkhovna Rada. Although the content of this Draft Law differed slightly from the previous ones (some inaccuracies were taken

into account, some gaps and contradictions were eliminated), it also did not define the delimitation of State policy in the area of arms trafficking in Ukraine. Thus, the preamble to the Draft Law stated that

“This Law regulates the legal relations arising from the circulation of service and civilian weapons and ammunition in Ukraine, and is aimed at protecting life and health, rights and freedoms of citizens, all forms of property rights, protection public order and natural resources, creating conditions for military-patriotic education of youth, development of domestic arms production, shooting and hunting, restoration of traditions of the Ukrainian Cossacks, as well as strengthening international cooperation in combating crime and arms trafficking”.

As one can see, the authors of the bill, on the one hand, proposed to limit the subject of legal regulation of the Law exclusively to *“service and civilian weapons”*. However, on the other hand, they justified the expediency of expanding its public purpose.

The Draft Law of Ukraine *“On the circulation of non-military weapons”* no. 2105 (Law of Ukraine, 2009) was registered the following year. This Draft Law was in fact identical to the Draft Law no. 3069 in its essence and content, including literally reproduced preamble. The only difference was the subject matter of legal regulation, which the authors of the bill proposed to narrow down to *“non-military weapons”*. It is also worth noting that, unlike the Draft Law no. 3069 (and all previous bills on weapons, except the Draft Law no. 1171-d); this bill passed the first reading. However, in 2012, an updated Draft Law of Ukraine *“On the Circulation of Non-Military Weapons”* no. 0885 (Law of Ukraine, 2012) was introduced to replace it, but in 2014 it was withdrawn.

The Verkhovna Rada of the eighth legislature was also not effective in relation to the issue of legislative regulation of the arms trade in Ukraine. The People’s Deputies of Ukraine of the eighth legislature registered only two bills on weapons during their tenure. Going forward, we should note that both of them were not even submitted for consideration and in 2019 they were revoked. The first was the Draft Law of Ukraine *“On Civil Firearms”* no. 1135, which was registered in the Verkhovna Rada in 2014 (Law of Ukraine, 2014). The analyzed bill, like all previous ones, did not define the delimitation of State policy in the area of arms trafficking. However, it should be noted that it first included an article that clearly outlined the scope of the future law (Article 2 of the Draft Law). In particular, it was noted that

“This Law regulates the legal relations arising from the circulation of civilian firearms and ammunition, which may be owned by individuals and legal entities in Ukraine. The norms of this Law do not apply to the circulation of weapons and ammunition of law enforcement agencies and the Armed Forces of Ukraine (military weapons)”.

There was a further list of items and objects that were not within the scope of legal regulation of this Law (11 items in total).

The second (alternative) was the Draft Law of Ukraine *“On Civil Weapons and Ammunition”* no. 1135-1 (Law of Ukraine, 2014), which was registered in the Verkhovna Rada in the same year. This bill, as well as the previous one, also contained a separate article on defining the scope of the future law (Article 2). Among other things, it stated that:

“This Law regulates public relations, which:

1. *Establish the legal basis and procedure for civilian circulation of weapons and ammunition;*
2. *Establish the procedure and grounds for the use of civilian weapons and ammunition;*
3. *Determine the rights and obligations of entities whose activities are related to the civilian circulation of weapons and ammunition;*
4. *Regulate the issues of ensuring the safe circulation of civilian weapons and ammunition;*
5. *Regulate the procedure for organizing training courses for gun owners”.*

The list of items and objects that were not within the scope of legal regulation of this Draft Law was a bit wider and consisted of 12 items.

Thus, summarizing the above, we can draw the following interim conclusion: during the maintenance period of the Verkhovna Rada of the fifth-eighth legislature, the interest in the legislative regulation of State policy in the area of arms circulation had significantly faded. There is also a tendency to differentiate legislation in the area of weapons circulation, which is a consequence of the popularization of the radically narrowed approach to understanding the subject of legal regulation of weapons legislation.

However, the trends described above can be seen to change dramatically in the Verkhovna Rada of the ninth legislature. Firstly, legislative work in the area of legal regulation of arms trafficking has significantly intensified. Thus, in just one and a half years of Parliament's term, four bills on weapons were registered. Secondly, there is a plurality of approaches to development of the main vector of legal regulation. In particular, all four bills have different names and, accordingly, different areas of legal regulation: *“On weapons”*, *“On the circulation of weapons”*, *“On the circulation of civil firearms and their ammunition”* and *“On civil firearms and ammunition”*. Thirdly, all bills clearly define the scope of future laws, and most of them, for the first time, enshrine separate articles on defining delimitation of State policy in the area of arms circulation.

Thus, the first bill *“On weapons”* no. 1222 was registered in September 2019 (Law of Ukraine, 2019). Article 2 of the Draft Law outlines the scope of the future Law, which, by the way, is much broader than it was in previously analyzed bills. In particular, it is noted that this Law regulates public relations of ownership of weapons and use of weapons; determines the legal grounds and procedure for civil circulation and use of weapons and ammunition; determines the classification of weapons; defines general rights and obligations of economic entities whose activities are related to the production, trade, mending and use of weapons and ammunition; regulates the procedure for organizing training (retraining) courses for gun owners; determines the list of weapons prohibited for civilian use; establishes the powers of public authorities in the area of arms trafficking, maintains the Unified State Register of Civilian Weapons.

In the same month an alternative Draft Law no. 1222-1 *“On arms trafficking”* (Law of Ukraine, 2019) was registered on the initiative of People's Deputies of Ukraine Bakumova O.S., Medianyuk V.A., Sushchenko P.M. and others. As for the scope of the future Law, it is written quite succinctly:

“Social relations that arise in the course of circulation of firearms, bladed weapons, air guns, as well as items structurally similar to weapons and ammunition”.

The list of subjects and objects that are not covered by the Law is also more uniform and consists of only 8 items. However, the greatest achievement of the analyzed Draft Law is that it

defines the main directions of State policy in the area of arms circulation. In particular, Article 4 of the Draft Law states that such a policy is aimed at:

“Establishing State control over the circulation of weapons in Ukraine and compliance with the legislation on arms trafficking; prevention of illegal circulation of weapons; establishing rules for the circulation of weapons in Ukraine; establishment of technical requirements for weapons and ammunition; development of international cooperation in the area of weapons control”.

However, it should be noted that both bills were not considered during the Verkhovna Rada sessions and in February 2020 were returned for the revision.

The Draft Law *“On the circulation of civil firearms and their ammunition”* no. 4335 (Law of Ukraine, 2020) was registered in the Verkhovna Rada in November 2020. Article 2 of the Draft Law traditionally defines the scope of the future Law, as well as provides for the list of items and objects to which it does not apply. However, Article 4 of the Draft Law, which outlines the directions of State policy in the area of circulation of civilian firearms and their ammunition, is of the greatest interest for our study. In particular, it is aimed at:

“Determining the principles and procedure for the circulation of civilian firearms and ammunition in Ukraine; establishment of State control over the circulation of civilian firearms and ammunition in Ukraine and compliance with the legislation on their circulation; preventing illegal circulation of civilian firearms and ammunition; establishing rules for the circulation of civilian firearms and ammunition in Ukraine; establishment of technical requirements for civilian firearms and their ammunition; withdrawal of civilian firearms and their ammunition from illegal circulation; establishing responsibility for violating the legislation on the circulation of civilian firearms; development of international cooperation in the field of weapons control”.

As one can see, the defined delimitation of public policy is quite wide. However, if we analyze them in a systematic connection with the provisions of the Draft Law, we can conclude that this Draft Law does not determine the mechanism for implementation of most of the declared areas of such public policy. And this fact, in our opinion, is its main drawback.

In the same month an alternative Draft Law *“On Civil Firearms and Ammunition”* no. 4335-1 (Law of Ukraine, 2020) was registered in the Verkhovna Rada of Ukraine on the initiative of the People’s Deputy of Ukraine Sharanskyi A. A. Article 4 of the Draft Law defines the main directions of State policy in the area of circulation of civilian weapons and ammunition, and, with minor syntactic differences, completely repeats the content of Article 4 of the previous Draft Law.

CONCLUSION

The problem of ensuring various rights and freedoms of Ukrainian citizens in the transition stage from totalitarian Russian influence to the principles of the rule of law of the European State under Russian terrorist aggression requires a new look on the principles and legal tools of arms circulation and use in Ukraine. The undertaking of the Anti-Terrorist Operation by the Armed Forces of Ukraine, other armed formations and volunteer battalions in Eastern Ukraine adds significant relevance to this study. At the same time, hostilities lead to significant illicit arms trafficking. Unaccounted weapons become a source of crime and fatal accidents.

Thus, the problem of legalization of arms trafficking and improvement of legal provisions for its use is extremely important for Ukrainian society.

Concluding the review of the main draft laws in the area of arms trafficking which have been registered in the Verkhovna Rada over the last 22 years, we can draw the following general conclusion: despite a rather long legislative process, only the latest bills registered in the Verkhovna Rada of the ninth legislature contain a separate article on main directions of State policy in the area of arms circulation in Ukraine. Although in general these directions reflect the specifics and limits of public policy in this area, but the mechanism of implementation of most of them has not been enshrined in the text of bills, which determines their declarative nature, and generally reduces the effectiveness of legal regulation of arms trafficking in Ukraine.

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