

Ukrainian Society and the Illicit Proliferation of Firearms as a Threat to Public Safety

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Abstract. Ukrainian society is being militarised, among other things, because of the noticeable transformation of the socio-political processes. At present, one of the priorities of the Ukrainian state and society is to ensure security in important spheres of life of every human being and citizen. The areas at risk include, inter alia, constitutional rights and the freedoms of man and citizen, religious, moral, ethical, cultural, historical, intellectual and material values, informational values, as well as the constitutional system, sovereignty, territorial integrity and the inviolability of Ukraine's borders. The article has been developed as part of an international research project: Reaction of European security entities to threats related to the use of firearms, hazardous materials and instruments in public places (IBIPP-4/2013/P/JT) by a team of Ukrainian authors of the Lviv State University of the Internal Affairs. The authors believe that the illegal circulation of firearms in Ukraine is currently becoming one of the most serious problems. The counter-terrorism operation (ATO) in Donbass promotes the illegal proliferation of firearms. The number of crimes and cases associated with the use of arms is increasing according to the number of armed citizens throughout the country. The state of the normative and legal regulation of firearms circulation in Ukraine is unsatisfactory, due to the lack of legislative regulations concerning their acquisition, storage, carrying and use for self-defence. According to the authors, there is a need to activate further research aimed at developing regulations and practical recommendations for the regulation of administrative and legal rights of citizens to self-defence and to use firearms. Particular attention should be paid to the transparency of the rules on the procedure for the authorisation of firearms.

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Introduction

The transformation of social and political processes and other factors taking place in Ukraine has triggered a dynamic of change, which is reflected in the fact that Ukrainian society is opening up to the military.

Currently, security issues, important for the life of human and civil interests, society and the state, which ensure sustainable development of society, early detection, prevention and neutralisation of real and potential threats to national interests in various areas, are one of the priorities of the Ukrainian state, society and citizens. Of course, taking into account events that take place in the eastern part of our country, constitutional rights and the freedoms of man and citizen, religious,

moral, ethical, cultural, historical, intellectual and material values, information and the natural environment and natural wealth of Ukrainian society, and also the constitutional regime, sovereignty, territorial integrity and inviolability of Ukraine are endangered.

The illegal circulation of weapons in Ukraine will become one of the most serious problems in the near future. The anti-terrorist operation (ATO) in Donbass results in an illegal circulation of weapons and a growing number of armed citizens across the country, and consequently an increase in the number of crimes and cases related to their use.¹

Main Part

In the news there is more and more information about the explosion of grenades in residential houses, restaurants, cafes, or shooting on the streets. People have had time to obtain a weapon, unfortunately illegal. Information on the removal of arsenals of weapons and explosive devices reaches us every day. It should be remembered that in reality, there is a war in Donbass and many weapons come from that region. There is no shortage of such commodities on the black market. However, such a huge influx of weapons was not caused by accident. Experts associate it with armed conflict in the east of the country. Even those who did not deal directly with the war live in constant anxiety and fear. In addition, the citizens feel terrified by the marked increase in crime on the streets.

Reports of incidents with weapons and ammunition are coming almost every day — in Lviv a cruise bus was shot at and a businessman was killed, in Kiev region criminals threw a grenade at a road police station, in the capital three people were killed as a result of shooting, in Lviv region a cargo of weapons and ammunition was secured, which was transported in the car from Donbass to Zakarpacie. Nobody is surprised by the fact that freight and passenger trains coming from the counter-terrorism zone have been checked. What is more they are not surprised that there are packets of guns in Lviv's trams, and that armed people are also appearing on the streets of cities. All this is a consequence of the war and, as a result, the spread of weapons beyond the reach of the front-line zone. The case that took place in Ivano-Frankivsk, where a man who detonated a grenade at the midwifery centre was a clear and frightening example of the militarisation of life and easier access to weapons and ammunition.

The reason for this was jealousy of a midwife-nurse, and her colleagues are currently fighting to save her life. According to local media, the man was a volunteer in the anti-terrorist operation zone, from which he recently returned, and the grenade was probably brought from the front.

In the news you can also find a much information about the shootings of veterans or about the withdrawn weapons that were carried from the front to other regions of Ukraine. This is because thousands of people, military officers and Internal affairs officers, return home at different intervals, with a strong sense of justice and a habit of solving problems by means of weapons. Some demobilised individuals try to use

¹ *Electronic source:* <http://www.depo.ua/ukr/life/nelegalna-zbroya-z-donbasu-posh-iryuetsya-po-vsiv-ukrayini--15102015140500>, accessed: 7.11.2017.

imported weapons to resolve personal problems, believing it to be a very quick and effective way to solve conflicts.²

Analysing the current state of crime, it is worth drawing attention to the problem of the presence of a large number of compact explosive devices in the population. Hand grenades of different types, brought from the counter-terrorism zone, are often the means of attack in public places or the means of threatening an act. Good combat experience allows the participants of the counter-terrorist operation to make the most of the impact force of hand grenades.

Photo 1. Grenade trap attached to the vehicle



Photo 2. Expandable grenade trap



Citizens have been waiting for changes in legislation in the field of using weapons, taking into account the situation in the country, but so far they have not seen this, so they have decided to solve the problem themselves — using the black market, where you can buy weapons, according to experts, at half the price compared to legal trade. According to the Chairman of the Supervisory Board of the Ukrainian Arms Owners Association, Georgia Uczajkina, around 4.5 million firearms are circulating on the arms black market and this number is increasing as a result of the almost daily “deliveries” from the counter-terrorism operation zone.

Despite the noticeable experience in the activities of the security forces in comparison with the first problems in May 2014, it is regrettable that the state has completely lost control of the arms trade. All the experts believe that the situation will not be solved or reduced without the adoption of some laws. The police cannot cope with it on their own. According to the experts, illegal weapons in large quantities come from the area of armed conflict and are delivered by the soldiers themselves. The army sells arms unofficially. According to some sources, for “their arms” these can cost 3–4 thousand hryvnias (UAH). In practice, the black market exists, but nobody takes official note of it. This phenomenon is perceived as “selling weapons to their fellow-patriots”.

In April 2016, the Security Service of Ukraine detained a soldier who sold arms and ammunition. The operation took place in Zaporozhe. He was a man who, incidentally, continued to carry out combat operations in the area of counter-terrorist

² Electronic source: <http://vestnik.in.ua/2015/06/06/nelegalna-zbroya-z-ato-chim-ce-zagrozhuje-susplstvu>, accessed: 8.11.2017.

operations, together with a resident of the Donieck region. They were selling a batch of weapons at the same time. Undercover workers secured an automatic grenade launcher and two boxes of ammunition, four machine guns, over four thousand rounds of different calibre ammunition, twelve F1 grenades and eight RGD5 grenades. And this is not the whole list. The men tried to sell a batch of weapons for a hundred thousand hryvnia. And there are quite a few such cases presented in the SBU (Security Service of Ukraine) reports.

Another reason for the militarisation of Ukraine is the so-called trophy weapon. This is a major problem not only for small arms, but also for F1 and RGD grenades. The use of the F1 grenade is more dangerous because of the large area of damage: if you throw this grenade, shrapnel can wound many people. A striking but not the sole example of the problem of accessibility of so-called trophies is the incident which took place on 31 August 2015 during a gathering near the Supreme Council of Ukraine. There was a clash with law enforcement officers, during which the demonstrators used physical force and explosive materials, namely a RGO hand grenade with fragmented elements.

According to official data, three people died as a result of these clashes, and more than 150 suffered injuries of various severity. Among the victims there were more than 130 police officers, 11 civilians, including one minor, and three representatives of the media.³

The problem is complicated by the fact that hand grenades are small, compact, easy to hide and discreetly worn.

There are many incidents in the “New Post Office” where grenades are confiscated from people who send parcels from the war zone to their homes.

Thirdly, the weapons are sold by the separatist terrorists. This means that there are many sources of arms trafficking everywhere.

Photo 3. Withdrawn weapons that had been removed from the ATO zone.



³ Electronic source: <http://www.dw.com/uk.мвс-в-україні-зростає-незаконний-обіг-зброї/a-18462327>, accessed: 8.11.2017.

If a country is at war, then the state control over the arms trade is complicated. Criminals are given more opportunities, ranging from military operations to the increase in the number of military units.

At the same time, it should be noticed that a significant increase in smuggling of illegal weapons is more dangerous for the general destabilisation of a country than an increase in the terrorist threat.

Ukrainians keep a large proportion of the weapons smuggled from the battle zone at home 'just in case', especially considering the destabilization of the situation in different regions of the country. But there is also a contraband flow for criminal purposes only. The bulk of these end up on the black market and pose a threat to the situation across the entire country.

Experts see one way of solving this problem by strengthening measures to control the circulation of weapons, but this work is not possible in today's circumstances. A system of control over the transfer of weapons from the zone of combat operations was recently created, and over the last year all these movements were controlled very selectively. But when it comes to close control in the war zone, the process is interfered with ombudsmen, NGOs, etc. who refer to European norms and values, draw attention to the inadmissibility of establishing control areas for the control of people and search of persons and vehicles, citing the violation constitutional rights. But we must understand that in this country a war is going on, and it imposes on Ukraine obligations other than in the context of human rights.

Today Ukrainian society lives in "two dimensions". On the one hand, there is a war in Donbass, involving tens of thousands of people and affecting millions. On the other hand, most of the rest of Ukraine tries to pretend that the war is as it is but is not here, it is somewhere far away. It is obvious that getting out of this somewhat schizophrenic situation is about calling things by their own names rather than declaring various "states of increased readiness", as Ukrainian officials do. In this case, the biggest problem can be considered as the failure to declare official martial law. It is obvious that it is not implemented for political reasons, and if it does not work, then it is also very complicated for the relevant services to prevent arms smuggling. In our view, the problem of the illegal circulation of weapons should also be solved at the legislative level.

On the one hand, law enforcement officers want to strengthen control over arms smuggling, on the other hand, in both society and in political circles abroad the topic of firearm legislation for civilians is discussed.

Legal regulation regarding the procedure of arms circulation in Ukraine does not meet the requirements of time and has many disadvantages. Currently, social relations related to the circulation of weapons are controlled by regulations, among which are resolutions and orders. However, the law regulating the above issues has not yet been adopted. Some important aspects of this problem (the legal basis for the circulation of weapons, its place in the legislation of Ukraine and other countries, application in practice, etc.) to date remain little explored and require further scientific development. Lack of detailed theoretical analysis and difficulties in the practice of law enforcement, determine the current problem of illegal storage and carrying firearms and explosive devices.⁴

⁴ Міжнародно-правове регулювання обігу зброї у світі та національний досвід України. *Юридичний журнал*, 2005, No. 12.

In our opinion the analysis of this problem should begin with a study of legal regulations concerning purchasing of specific items by citizens, their right to own those items and some types of weapon. Legal restrictions in this regard started in Ukraine on 17 June 1992, when The Verhovna Rada of Ukraine issued the Act "about an ownership of some types of item" and Appendix nr 2 which defines special rules of purchasing by citizens some kinds of item. Thus, a special rule of acquiring an ownership right has been extended to smooth-bore hunting weapons and hunting rifles, gas pistols, revolvers and their ammunition, edged weapons and air guns.

If the citizens are allowed to buy some types of weapon, there should also be established a state authority that will directly control firearm trading and also a procedure of such a control. Thus, on 12 October 1992 Cabinet of Ministers of Ukraine issued a Resolution concerning "a system of licensing" which indirectly monitors weapon circulation in Ukraine and is a part of Ministry of Internal Affairs of Ukraine. Officially the procedure of legal authorisation of weapon circulation in Ukraine finished on 21 August 1998. On that day, with the Order of Ministry of Internal Affairs of Ukraine nr 622 was confirmed the instruction on production, purchasing, storing, recording, transporting and using of firearms, pneumatic weapons and edged weapons as well as items made in Ukraine used to strike people down which are equipped with rubber or analogous bullets having a non-lethal effect as well as ammunition and explosives.

According to the regulations included in the normative-legal act, the only special agents which can be considered as self-defensive and can be easily stored and carried by adult citizens are tear gas and sprays having an irritant effect. However, creating a democratic society where private, public and municipal properties are dominant, also requires a new direction in order to protect this property, rights of an individual as a human and life, honour and dignity from criminal attacks. The use of firearms for self-defence is among the measures to provide this protection.

Possession of a weapon- is one of the main human rights which can be eliminated only as a consequence of a court's decision, especially in case of committing a serious crime or as a result of a loss of legal capacity. A weapon enables a man to protect himself, his relatives, property against unlawful attacks (from criminals or usurping authority). The most efficient type of weapon for self-defence is a handgun. However, Ukrainian legislation does not provide any procedure for possession of a handgun by a private citizen.

Such a right does not apply to a legal body or business entity with the exception of law enforcement bodies, security agencies, collecting services and valuable cargo delivery services of National Bank of Ukraine. Also according to Act of The Verhovna Rada of Ukraine on 10 November 1994 nr 203/94 a combat firearm may be used by deputies and separately by service officers of the Ukrainian Parliament (Verhovna Rada). Citizens can purchase a firearm only in the form of hunting weapons (smooth-bore arms- when over 21 year of age and rifled hunting arms — when over 25 year of age).

Unfortunately we cannot agree with such a legislative solution of the problem. In our country, according to existing normative acts every person, regardless of sex, reaches legal age at 18. This is the age when a person gains full active legal capacity. We also think that the age of 21 and 25 is not completely appropriate to get a right to possess a firearm because normally those conscripted into the Military

Service of Ukraine are people above 18 years old who then complete induction training and start their military service using a firearm (for example in surveillance etc.) and what is more, it is not a hunting gun or a pistol, but an automatic weapon. In our opinion along with firearms also legal regulations should concern the right to possess a bullet shooting appliance filled with rubber or similar items having the properties of non-lethal bullets (commonly known as an appliance to shoot rubber bullets). Thus, the following citizens have the right to purchase, store and carry rubber bullets guns as a means of active defence according to rules and regulations of the current legislation: court staff, law enforcers and their close relatives, people taking part in a criminal procedure and journalists. The aforementioned weapon is used only to counteract an offender without causing serious injuries.

In Ukraine social relations connected with arms trade are regulated by nearly 90 normative-legal acts: orders, regulations, decrees and even acts (Ukrainian Constitution, Ukrainian Penal Code, Ukrainian Code of Penal Proceedings, Ukrainian Code of Administrative Offences, Ukrainian Act of "licensing of some types of business operations" etc.). Yet, the above mentioned legal acts lack a main document — a basic weapon control act.

Both the document and the subject became important due to the new development of a democratic, law-governed state whose main aim and purpose of its activity is provision and protection of human, citizen rights and freedom. The lack of clear, legally established classification and terminology makes it impossible to settle normative acts and conduct the development of legal social relations in terms of civil weapon and ammunition trade. The only normative-legal act enabling citizens to gain permission to purchase a weapon is the 'Instruction on production, purchase, storage, record, transport and usage of firearms, pneumatic and edged weapons, natively made shooting devices equipped with rubber or analogous with their properties non-lethal bullets and replaceable bullets as well as ammunition and explosives.

Considering the above mentioned one can come to a logical conclusion that neither the Laws of Ukraine nor the Acts of the Verhovna Rada of Ukraine nor the decrees of the President of Ukraine regulate one of the most important and the most dangerous area of social relations in our country. It can only be done by a departmental normative-legal act which is an internal document of law enforcement agencies.

Deficiency of the legally binding normative legal acts refers to a number of issues in this field and leads to an increase in the number of crimes with the use of illegal arms taken from battle zones or delivered by arms traffickers. The awareness of the people relates to stereotypes concerning the necessity of retaining the existing system of purchasing and using firearms because of fear of growing crime. Nowadays, even if somebody has a legal firearm at home, it is difficult to use it in self-defence and not be punished afterwards. The rules for using a firearm (mainly for self-defence) should be changed for the sake of citizens thus providing them with the possibility of using it for self-defence in order to protect themselves, their family members and other people. Also other regulations concerning using a firearm should be changed, including the right to a firearm repair and its modification. On the whole, the existing regulations allow citizens to take advantage of their right to possess a firearm.

Problems arise when attempts are made to adjust norms and regulations inherited from the Soviet Union to new reality and social relations. Therefore, according to the Instruction of the Ministry of Internal Affairs of Ukraine 'only perpetrators can repair' their own guns because all activities connected with repair or modification (modern weaponry, however, is modular in most cases and does not require the special skills of a repair man) are forbidden. Shooting in 'restricted areas' is also banned, and the procedure for getting permission to build a shooting range has been made so bureaucratic that it is almost impossible to implement, therefore, most towns lack places designed for shooting and an attempt to shoot in a desert-like gorge outside the town may result in a court sentence. Requirements concerning weapon transport are also so strict that its owner does not stand a chance of using a gun in cases of unexpected attack during the transportation.

According to experts one of the reasons which restricts passing the bill on guns is law enforcers' concern about the hypothetical possibility of mass gun supply to Ukrainian people who lack the basic knowledge of how to handle them. Such fear is therefore justified.

It should also be considered that a large number of people are not satisfied with the work of the present-day authorities, therefore, no one knows what actions could be taken by our citizens if gun trade was free. Taking dissatisfied citizens into consideration, even now we have thousands of humiliated and marginalised yet armed males. However, they do not commit violent acts against the authority representatives using their own guns. Taking into account the fact that legislation on gun circulation is still at the point of drafting and adopting, the prescriptive approach concerning gun circulation in Ukraine is at low level which triggers many controversial issues.⁵

It is thought that a 'sensible' exercise of one's right of free access to a firearm requires the creation of an effective system to fight against corruption both in the area of granting licence to carry and possess a gun and in the area of medicine; it is essential to create a register of gun owners which will include information on:

- gun owner;
- test results from firing the gun (which will render the illegal use of registered guns impossible);
- medical examination results of gun owners and the date of next examination;
- who gave the licence to carry and possess the gun;
- medical certificate;
- place where the particular person was trained to own a gun.

At the same time in our opinion one of the ways to solve the above mentioned problems could be passing a fundamental statute on gun circulation. Owing to that, the following would be possible:

- to guarantee citizens exercise of the inalienable right to defend their own life;
- to demonstrate a high level of trust of the state towards its citizens;
- to reduce the level of street and common crime;
- to reduce corruption in the area of gun circulation;

⁵ *Electronic source:* http://zbroya.info/uk/blog/9856_obig-zbroiyi-v-ukrayini-zbroia-ie-zakonu-nemaie, accessed: 7.11.2017.

- to stimulate development of domestic gun production;
- to create extra workplace;
- to increase the level of the country's defences.

The aforementioned legal act has to fulfil the following aims:

- differentiate between guns in open circulation and the ones banned in civilian-firearms circulation;
- introduce clear and transparent gun classification;
- establish a procedure for purchasing, possessing, storing and using a gun;
- set detailed requirements for Ukrainian citizens who want to be granted the right to possess a gun;
- establish a mechanism of suspending temporarily one's right to possess a gun and set clear rules and criteria for implementation of such a mechanism;
- set criteria and a procedure of cancelling a firearms licence;
- create an effective and transparent training system for a future gun owner (studying practical and legal aspects of gun possession and its use, acquiring skills of safe gun handling);
- establish authorities' rights to control civilian-owned gun circulation;
- ensure detailed court proceedings for all cases in which a firearm was used for self-defence, and particularly by the jury;
- guarantee the right to concealed possession of a firearm in order to defend oneself;
- plan the procedure of making amendments to relevant legal acts and regulations on gun circulation;
- take into account legal acts and experience of the European Union;
- create a mechanism of public control over the work of the system for granting licences/certificates to gun owners.

Summary

The right to free access to firearms is quite debatable. Regulations concerning firearms circulation in Ukraine are not satisfactory due to the lack of legislative acts (regarding purchase, carrying and use for self-defence. In our opinion, it is necessary to provide citizens with free access to firearms as an effective mechanism for preventing illegal interference. However, in order for the licence in question to be beneficial and not to bring more problems, the issues discussed must be addressed carefully, and the procedure of granting licences for possessing, carrying, storing and using a firearm must be transparent⁶.

Nowadays, when the subject of self-defence is extremely topical and the situation in a country is unstable, a compromise must be sought on the problematic issue such as the legalisation of firearms, which will satisfy all those involved in the dialogue. The most acceptable compromise in terms of granting citizens the right to firearms is the improvement of the administrative and legal rules governing the process of and procedures for granting citizens authorisation to possess and use

⁶ Цивільна зброя в Україні: міфи та реальність. Український інститут дослідження екстримізму. Київ: Видавничий дім «АДЕФ-Україна», 2015.

self-protective means, and the substantial extension of the list of these means. These activities will have a significant stabilising effect on public order and will become an important achievement of the national system for the protection of human and civil rights and freedoms. At the same time, a positive result can only be expected if there is a high level of legal culture and discipline on the part of the owners of self-defence measures, as well as if the effectiveness of control systems by law enforcement authorities is improved. The above reasoning indicates the need to activate further research aimed at developing academic laws and practical recommendations for the regulation of the administrative and legal right of citizens to means of self-defence and the use of firearms.

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