
IMPACT OF LEGAL REGULATION OF WEAPON TURNOVER
ON PUBLIC AND NATIONAL SECURITY

Jānis Teivāns-Treinovskis¹, Margarita Nesterova², Sergey B. Shchepanskiy³, Marina Proshina⁴

^{1,2,3,4}*Daugavpils University, Vienibas Str. 13, Daugavpils LV-5401, Latvia*

¹*Turība University, Graudu Str. 68, LV-1058 Riga, Latvia*

E-mails: ¹janisteivans@inbox.lv; ²margarita.nesterova@du.lv;

³s.shchepanskiy@gmail.com; ⁴m.proshina@gmail.com

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Abstract. The concepts of security and weapons are closely related, which equally applies to both public security and national security. In order to ensure their national security, countries are trying to purchase the most effective weapons. In order to achieve the necessary level of public security, the country arms law enforcement personnel. Such armament is legitimate and contributes to the strengthening of general security. At the same time, the purchase of weapons by the population for individual security purposes is not so unambiguous. On the one hand, law-abiding citizens have the right to protect their lives and health from criminal threats. On the other hand, a free turnover of a large number of weapons increases their accessibility and the possibility of getting hold by individuals who are able to use them for criminal purposes. The question arises: which weapons can be available to the population and which not. After all, weapons can be different. A special position in the category of weapons is occupied by cold weapons, the criminal liability for the possession of which is provided for in some countries. Moreover, the question of what should be considered a cold weapon is sufficiently disputable. All these issues are to be studied in the framework of this article.

Keywords: firearms; cold weapons; illegal weapon turnover

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1. Introduction

In recent years, issues related to the legal and illegal turnover of firearms and other weapons have become more and more topical in society (Tumalavičius; Ivančiks; Karpishchenko 2016). In countries with the most liberal regulation of the weapon turnover, the issue of prohibiting their free sale is increasingly raised (Tumalavičius et al. 2017a, 2017b). As an argument in favour of such a decision, there is a growing number of cases of illegal use of firearms, which resulted in a large number of victims. Moreover, more and more often violent crimes involving the use of weapons are committed by persons previously held criminally liable (Zahars, Stivrenieks 2016; Prause et al. 2019). In this situation, at first glance, it seems logical to tighten the legal regulation of the weapon turnover (Bayzakova 2013). But is this as justified, as it may seem? As an example, we can consider the situation in countries with more tightened regulation of the turnover of firearms and cold weapons.

2. Situation in countries with more tightened regulation of the turnover of firearms and cold weapons

One of these countries is undoubtedly the Russian Federation. There along with firearms, the turnover of cold weapons is limited as well. Moreover, some conflicts allow a fairly ambiguous interpretation of the rules on the turnover of cold weapons, in some cases, including among cold weapons collection items, which are antiquarian. It should be noted that in the Republic of Latvia there is no criminal penalty for possession of cold weapons at all. This approach is based on the conception that the infliction of bodily injuries or causing death to a person can be committed with objects that are not related according to their parameters to cold weapons, but are no less dangerous (ax, kitchen knife, etc.). From this point of view, maintenance of criminal liability for possession of cold weapons looks absolutely pointless. There is no significant difference in the legal regulation of the turnover of cold weapons in Lithuania and Estonia.

In the United States, the right to own a weapon is considered an integral part of human rights and a serious deterrent that prevents most of the violent crime. In American society, there is an opinion that persons inclined to commit crimes will always have the opportunity to get weapons illegally, while law-abiding citizens will be strictly limited in their actions by law. In this situation, great importance is attached to the awareness of their own safety of this category of citizens.

Returning to the issues of the legal regulation of weapon turnover in the Russian Federation, it should be noted that an objective assessment of the current Criminal Code of the Russian Federation and the identification of gaps and shortcomings in it testifies to the need to improve the legal technique for creating legal norms of criminal law. Normative legal prescriptions according to the definition developed in the general theory of law are legal formulas expressing a completed thought, in the form of which the content of the rule of law is stated in the text of the law. This problem does not bypass also the criminal legal norms concerning illegal weapon turnover. This situation is aggravated by the fact that the legal norms providing for criminal liability in this area are blanket, that is, they do not describe criminal acts themselves, but refer to another normative act. And this leads to an accumulation of a degree of conflict or uncertainty.

The language of the criminal law is a system of lexical and grammatical means of expressing criminal provisions, while a significant amount of lexical composition is terminology – a set of terms used in the criminal law. The terminology of the criminal law is not homogeneous according to belonging to certain field, that is, not all terms used in the criminal law are actually connected to crime. The specificity of criminal legislation is that one of its tasks is to protect the most important goods, interests and social relations from the criminal threats, which are regulated by other branches of law, stipulates the presence of terms of different fields.

N. I. Pikurov (1998) states that “if the term is associated with a specific sphere of social relations governed by law, then its terminological field will be the field or a set of fields that regulate these relations”.

Terms of other fields are present in the criminal provisions of various types, and in the General, and in the Special Part of the criminal law. But basically they are contained in the formulations of blanket criminal prohibitions (blanket dispositions of criminal law norms – according to the generally accepted classification); therefore, following the other authors, it is appropriate to call this group of terms a blanket terminology.

When using blanket terminology in the criminal law, the legislator faces two problems:

- the problem of the unity of terminology;
- the problem of inter-branch harmonization of the content of blanket terms.

In the modern period, practically all branches of the Russian legislation are in a state of permanent update, therefore the problem of the unity of terminology arises, and quite often, in connection with the change of terminology in the corresponding legislation. In the Russian criminal law, traditionally, the criminal legislation does not include a special section on criminal terminology. This leads to a difference in the interpretation by courts of certain concepts, and as a consequence, not always the fair application of criminal law. The legislator has no right to ignore the requirements of the practice of uniform interpretation and application of criminal law norms.

They constitute an impressive group of inaccurate, unclear features of many crimes, already identified by science and practice over the years of operation of the Criminal Code 1996 of the Russian Federation.

Taking into account the punitive nature of the criminal law, which is expressed in the criminal prosecution of a person for the commission of an action (inaction) falling under the signs of a crime, formulated including blanket terminology, a uniform definition of these terms is essential. The legality of criminal prosecution and imposition of criminal penalties depends on the correct interpretation.

In accordance with the principle of the systemic nature of legislation, one of the manifestations of which is the compliance of the criminal law with legislation of other fields, the solution of this problem can be the only one. It consists in the fact that the replacement or exclusion of existing ones or the introduction of new terms in the corresponding legislation should entail an appropriate adjustment of the blanket terminology in the criminal law.

However, in the practice of lawmaking, it is often possible to observe otherwise. It is characteristic to apply in practice Article 222 of the Criminal Code of the Russian Federation, which is a blanket rule referring to the Federal Law of the Russian Federation of December 13, 1996, No.150-FZ "On Arms". At the same time, this Federal Law lacks a number of terms and definitions that allow qualifying items as weapons and their types. In practice, this leads, in the final result, to unlawfully prosecuting persons who have not committed crimes, that is, the socially dangerous act.

With the Federal Law No.391-FZ of December 5, 2017 "On Amendments to Certain Legislative Acts of the Russian Federation" amendments were made to the Federal Law No.150-FZ of December 13, 1996 "On Arms" (on improving the rules on the turnover of weapons of cultural value), which prohibits the acquisition of a cold weapon having a cultural value, without obtaining a license.

The adoption of this Federal Law was carried out with the aim of enforcing the Judgment of the Constitutional Court of June 17, 2014 No.18-P "On the Case on the Verification of the Constitutionality of Part 4 of Article 222 of the Criminal Code of the Russian Federation and Article 1, 3, 6, 8, 13 and 20 of the Federal Law "On Arms" in connection with the complaint of the citizen N. V. Uryupina", decriminalizing the illegal sale of cold weapons of cultural value, and liberalization of the rules on the turnover of antiquarian and other cold weapons of cultural value to ensure compliance with constitutional rights of its owners.

At the same time, the Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation" (on improving the rules on the turnover of weapons of cultural value) not only restricts the acquisition of all types of antiquarian weapons and most types of weapons of cultural value by licensing it, but also does not introduce any changes in the norms of the Criminal Code of the Russian Federation and the Code of Administrative Offenses of the Russian Federation on liability for the illegal weapon turnover and violation of turnover rules. This completely contradicts the Judgement of the Constitutional Court of the Russian Federation of June 17, 2014 No.18-P, since according to part 4 of Article 222 of the Criminal Code of the Russian Federation, recognized partially inconsistent with the Constitution of the Russian Federation, the responsibility for the illegal sale of cold weapons of cultural value is not excluded, and the Code of Administrative Offenses of the Russian Federation does not establish liability for violation of the rules of turnover of cold weapons of cultural value corresponding to the degree of danger of the given weapons and providing legal protection of cultural values.

In fact, the Judgement of the Constitutional Court of the Russian Federation of June 17, 2014 No.18-P remains unenforced in violation of the Federal Constitutional Law "On the Constitutional Court" and Article 1 of the Criminal Code of the Russian Federation, since the recognition by the Constitutional Court of a rule of the law partially or completely inconsistent with the Constitution of the Russian Federation requires the legislator to amend this rule, and amendments to the Criminal Code of the Russian Federation are introduced only by federal laws subject to inclusion in the Criminal Code of the Russian Federation.

At the same time, a rule recognized as partially or wholly inconsistent with the Constitution of the Russian Federation loses its force as to its inconsistency with the Constitution of the Russian Federation from the moment of its passing, and the Judgement of the Constitutional Court has the force of law and is effective immediately before the legislator makes appropriate amendments to this rule.

Nevertheless, the courts continue to be guided by this norm of the Criminal Code of the Russian Federation, for example, the sentence of the magistrate of the court circuit No.108 of the Bogorodsky district of Moscow of July 8, 2016 in the case No.1-2 /2016, who condemned N. under part 4 of Article 222 of the Criminal Code of the Russian Federation for the illegal sale of cold weapon, with the confiscation of antiquarian weapon. This sentence violates the logic of the norms of the Criminal Code of the Russian Federation, Articles 1, 13 and 22 of the Federal Law “On Arms” in the version of the Federal Law of July 10, 2012 and the Judgement of the Constitutional Court No.18-P of June 17, 2014.

The Constitutional Court ordered the legislature to pass a federal law on liability for the illegal sale of these weapons, corresponding to its degree of danger, but such a law has not been adopted to the present day, which does not negate the effect of the said Judgement of the Constitutional Court, as having the force of law and entailing loss of power of part 4 of Article 222 of the Criminal Code of the Russian Federation as contradicting the Constitution of the Russian Federation with regard to the liability for the illegal sale of cold weapons of cultural value. Therefore, the illegal sale of cold weapons of cultural value cannot entail responsibility under part 4 of Article 222 of the Criminal Code of the Russian Federation, but in the case of its illegal sale or trade, liability under Article 14.2 of the Code of Administrative Offenses of the Russian Federation – for the illegal sale of goods, the free sale of which is prohibited or restricted by legislation, which provides for optional confiscation of items – is possible.

3. Legal and logical basics for liberalization of the legal regulation of circulation of arms.

The introduction of amendments to Article 222 of the Criminal Code of the Russian Federation is necessary, since the objectives of the adoption of this Federal Law No.391-FZ were the execution of the Judgement of the Constitutional Court of June 17, 2014. N18-P through the final legalization of the decriminalization of the illegal sale of cold weapons of cultural value and the liberalization of the rules of turnover of antiquarian and other cold weapons of cultural value in order to reduce the negative legal effect on its owners and ensure compliance with their constitutional rights.

But the adopted Federal Law No.391-FZ only strengthens the pressure on the owners of these weapons and does not introduce amendments to the Criminal Code of the Russian Federation that decriminalize the illegal sale of cold weapons of cultural value. The Federal Law No.391-FZ introduces the duty of the owners of antique weapons, their copies and replicas, as well as cold weapons of cultural value, to obtain licenses for collecting weapons for their acquisition and possession.

Weapons of cultural value, as well as copies and replicas of old (antique) long-barrelled firearms, not intended for shooting cartridges, manufactured before the end of 1899, are intended for use in cultural and educational purposes. Currently, the rules on the acquisition, sale (with the exception of trade), transfer and transportation of many types of weapons of cultural value are absent in the Federal Law “On Arms”, which indicates the existence of the right to perform these actions of their turnover by any persons, taking into account the provisions of part 3 of Article 15 of the Constitution of the Russian Federation and Clauses 1 and 2 of Article 129 of the Civil Code of the Russian Federation.

At the same time, citizens of the Russian Federation who have attained the age of 18 have the right to purchase old (antique) cold weapons, to which the antique cold weapons manufactured before the end of 1945 (the federal law “On Arms” 1996) is attributed. These weapons are purchased without a license and is not registered (part 4 of Article 13 of the Federal Law “On Arms”). Possession of civilian weapons, which is purchased without a license and whose registration with an authorized body is not required, is carried out without permission

to possess weapons (The federal law “On Arms” 1996).

The exclusion of the possibility of using their types of cultural value as firearms, as well as copies and replicas of old (antique) long-barrelled firearms, not intended for shooting cartridges and manufactured before the end of 1899, is provided by the prohibitions on the sale of cartridges to firearms to persons, not authorized to possess their specific types, and gunpowder to persons who do not have permission to possess and carry hunting firearms (Article 18 of the Federal Law “On Arms”).

The weapon itself, which has cultural value, remains in the list of weapons, which is illogical, given the prohibition on its use to defeat the target and the lack of restrictions on the turnover of weapons of cultural value. There is also no clear definition in the blanket norms on the turnover of items of cultural value, but not weapons, to which items that were weapons in the past may be classified, and many of which can be used to defeat the target with the same risks of harm to health or death to a person or damage to a valuable item with which such a weapon can be used for this purpose.

The Federal Law “On Arms” lacks a precise definition of weapons of cultural value, indicating the specific types of weapons that can be attributed to it and the criteria for their difference from standard modern weapons, and the definition of cold weapons of cultural value indicating their specific types and the criteria for their difference from other cold weapons.

The above mentioned requires the introduction of a precise definition of the term of weapons of cultural value, given the lack of rules in the Federal Law “On Arms” on the acquisition and commission of many other actions concerning the turnover of the most dangerous types of firearms of cultural value and the introduction of licensing for the acquisition of all types of cold weapons, having a cultural value.

After the entry into force of this procedure, the acquisition and possession of cold weapons and weapons of cultural value in the Russian Federation has become more tightened than in a significant number of countries in the world in which many or all types of cold weapons can be freely acquired and to purchase antiquarian weapons is not required obtaining a license or it is enough to obtain a license issued without strict limitations.

The Federal Law No.391-FZ “On Amendments to Certain Legislative Acts of the Russian Federation” does not take into account the lack of rules on the turnover of many types of cold weapons that do not have cultural value, allowing their free turnover, and referring sporting cold bladed weapons to products that are constructively similar to weapons in part 5.1 of Section 5 of the State Standard GOST R 51215-98 “Cold Weapons. Terms and definitions” and in Article 1 of the Federal Law “On Arms”, in which it is classified as sports equipment constructively similar to weapons, the characteristics of which are fixed in the rules of the competition, but sports equipment that is constructively similar to weapons is classified as products constructively similar to weapons.

The adopted Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation” (on improving the rules on the turnover of weapons of cultural value) entered into force on January 1, 2018, without specifying the exact timeframe for obtaining licenses for collecting weapons by citizens, who are possessing weapons of cultural value, until the expiration of which it should be prohibited to bring these citizens to administrative responsibility for violation of the rules on the possession of weapons or the recognition that possession is illegal and bringing to administrative or criminal liability for illegal possession of firearms.

Thus, the adoption of this Federal Law may entail a massive administrative and criminal prosecution of citizens who have or are acquiring weapons of cultural value, as well as the seizure of their weapons prior to the obtaining of a license or its alienation and confiscation by a court decision in cases provided for by the Code on Administrative Offenses of the Russian Federation. This will entail a violation of Article 2, 19, 35 and 55 of the Constitution of the Russian Federation and the retreat of the Russian Federation from the principles of a democratic and rule-of-law country; therefore, the introduction of the above mentioned amendments are necessary.

Taking into account the above mentioned, this Federal Law violates the logic not only of the norms of the Criminal Code of the Russian Federation, but also of the norms of the Code of Administrative Offenses of the Russian Federation, the Federal Law "On Arms" and the constitutional legislation of the Russian Federation, which testifies to the need for a comprehensive study of violations of the logic of norms of several fields of law in the analysis of compliance with the logic of blanket dispositions of the norms of the Criminal Code of the Russian Federation on the illegal weapon turnover. Carrying out such a comprehensive study may be necessary for the analysis of other blanket dispositions of the norms of the Criminal Code of the Russian Federation, often referring to various legislative acts that define specific legal prohibitions.

One way to eliminate such problems when the legislator makes amendments to the criminal law is to comply with the rules of legal technique, including:

- linguistic (rules of clarity, accuracy, neutrality, economy of legal texts, unambiguity of terms used in the text, perfection of syntactic constructions, stability of ways of expression of norms, etc.);
- logical (the rules of identity of the interpretation of identical objects, the structuring of the text of the legal act, the crossability of legal standards, etc.);
- gnoseological (rules on the reflection of a social phenomenon with adequate linguistic means, accuracy of determining the subject of regulation of a legal act, knowledge of the context of the act being developed).

Nevertheless, in Russian criminal law, traditionally the criminal legislation does not include a special section on criminal terminology.

This leads to a difference in the interpretation by courts of certain concepts, and as a consequence, not always the fair application of criminal law. The legislator has no right to ignore the requirements of the practice of uniform interpretation and application of criminal law norms. They constitute an impressive group of inaccurate, unclear features of many crimes, already identified by science and practice over the years of operation of the Criminal Code 1996 of the Russian Federation.

4. Assessment of the real impact of liberalization of the legal regulation of civil arms circulation on public and national security.

As an option for eliminating these shortcomings, it would be useful to supplement the current Criminal Code of the Russian Federation with Section XIII "Concepts used in this Code", where provide the interpretation of all the concepts used, but the existing interpretations transfer to this section. It should be noted that in Latvia a similar law exists. This is the "Law on the Entry into Force of the Criminal Law of Latvia and its Application" of 1998. In this law, a number of terms associated with the application of certain norms and concepts are stipulated. At the same time, the amendments in any legal norms by the legislator must be carried out on a strictly scientific basis, which will allow a more fair application of the criminal law (Tumalavičius; Nikolayevskyy; Endziņš 2017).

The possibility of using the best practices of foreign countries, and re-evaluate the provisions of the criminal law relating to illegal turnover of cold weapons, should also be considered. The danger of turnover of cold weapons is associated with the possibility of causing serious harm to health or life of citizens by using them. The level of violent crime in countries with a liberal and more tightened legal regulation of weapon turnover should therefore be considered as the criterion of the effectiveness of the norms of the criminal law.

The number of intentional homicide per 100,000 inhabitants per year should be considered as the most objective criterion. In Russia, this indicator at the end of 1916 is 10.82, but in North Korea - 15.2. In the United States of America, with a free trade of weapons, this figure is more than two times lower - 4.9, and in Latvia, where the legal regulation of the turnover of weapons is considered the most liberal in the Post-Soviet space, this figure is 3.5 (List of countries by level ... 2016). In Canada, this figure is 1.8 (Statistics Canada, Police-reported crime ... 2016). That is, the validity of the requirement of more tighter regulation in the sphere of the researched issue in order to achieve a higher level of public security looks, to put it mildly, unconvincingly.

Much more important is the level of economic development of a particular country and the level of legal awareness and legal culture in it. We should not underestimate the preventive role of weapons which are possessed by a law-abiding citizen. In some cases, it can have a significant impact on both the offender who attempts to commit the crime and the owner of the weapon. The presence, or even the assumption of possession of a weapon by a potential victim, is a serious enough deterrent for the offender and a factor that gives confidence to the victim in the ability to protect his interests and those of others. This circumstance is fundamental in justifying a fairly liberal or absolutely free turnover of firearms. In turn, restrictions on the possession of cold weapons at home for economic or self-defence purposes have no rational justification at all, and the fine line separating cold weapons from collection items or from kitchen utensils facilitates the issuing of unlawful sentences and court decisions.

Conclusions

The analysis carried out in the course of this study allows us to conclude that tightening the legal regulation of the weapon turnover does not always bring the expected result. Moreover, the impact of this regulation on the level of violent crime, and, in the first place, the level of intentional homicide, is not noticeable. At the same time, rationally unreasonable restrictions in this area give rise to many problems related to the interpretation and application of these norms. Of great importance are explanations of the terms proposed by the laws themselves, contributing to the achievement of the required uniformity in the sentences of courts in identical or similar cases.

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About contributors:

Jānis TEIVĀNS-TREINOVSKIS – PhD, Professor, is a Dean of Faculty of Social Sciences of Daugavpils University, researcher of Turība University. Research interests: criminal law, penal law, criminology, issues of social security and sustainability.
ORCID ID: 0000-0002-1440-2153

Margarita NESTEROVA – PhD, is a researcher of the Institute of Humanities and Social Sciences. Research interests: Juridical and Social psychology, delinquent behaviour among teenagers and young people.
ORCID ID: 0000-0003-1278-0828

Sergey B. SHCHEPANSKIY – is a PhD student at Daugavpils University. Research interests: administrative law, administrative procedure law.
ORCID ID: 0000-0002-8556-1661

Marina PROSHINA – is a PhD student at Daugavpils University. Research interests: criminal law classification, application of criminal law.
ORCID ID: 0000-0001-9110-0004