

UDC 342.9

DOI <https://doi.org/10.32849/2663-5313/2022.11.03>**Olha Bashtova,***Postgraduate Student at the Department of Police Law, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, bashtova_olga@ukr.net***ORCID:** orcid.org/0000-0002-4143-1773Bashtova, Olha (2022). Control of civilian firearm circulation: object composition. *Entrepreneurship, Economy and Law*, 11, 15–18, doi: <https://doi.org/10.32849/2663-5313/2022.11.03>

CONTROL OF CIVILIAN FIREARM CIRCULATION: OBJECT COMPOSITION

Abstract. Purpose. The purpose of the article is to analyse the object composition of civilian firearm circulation through the prism of the relevant administrative and legal mechanism. **Results.** The article studies some problematic issues of control of civilian firearm circulation as an object and target of the relevant legal relations, clarifies the framework of categories and concepts of the mechanism concerned, and specifies the role and place of the administrative and legal mechanism in regulating these legal relations. It is proved that at the current stage of formation of Ukrainian statehood and in the context of its active defence against Russia's armed aggression, the issue of regulating civilian firearm circulation is of utmost importance, as it is a means of protecting each citizen individually only if the State ensures strict control of these processes. **Conclusions.** The author substantiates the perspective that civilian firearms are a specific phenomenon for Ukrainian legislation, and regulation of the relevant provisions will take time, although today, certain provisions of legal regulations of both national and local, situational or departmental significance already regulate certain procedures. In addition, the article proves the perspective that civilian firearms as an object of control and control as a form of organisation of the functioning of the administrative and legal mechanism of this process are extremely important elements which, interacting at the institutional and legal, organisational and managerial levels, will make this mechanism efficient and prevent violations of human and civil rights and freedoms which may occur as a result of reckless and inappropriate use, application and other forms of handling of firearms. Further research of the administrative and legal mechanism for controlling civilian firearm circulation may be aimed at the analysis of the structural composition of such an institutional formation and the urgent need to outline this mechanism and all its elements and components.

Key words: firearms, control, responsibility, police, civilian firearms, object of control.

1. Introduction

At the current stage of the legal system of Ukrainian society, the main issue is to ensure the safety of citizens and the population, which, in turn, according to the legislation of Ukraine, is possible, among other things, due to the right to self-defence. Hence, the issue of ensuring effective control, including over civilian firearm circulation, which is the most effective tool for self-defence in the context of Russia's armed aggression against Ukrainian independence, is a priority task for the state and its individual bodies.

It should be noted that modern methods and means of self-defence, in the context of critical saturation of society with illegal firearms, as well as ongoing active hostilities, are transforming from healthy sports and self-defence techniques into a real need for society and its members to master skills in handling firearms, which necessitates effective control of its circulation at all stages.

The purpose of the article is to analyse the object composition of civilian firearm circulation through the prism of the relevant administrative and legal mechanism. This, in turn, requires solving the following research tasks: 1. To outline the content and essence of the concept of civilian firearm circulation and the corresponding concept of control; 2. To prove the perspective on the content of the phenomenon of civilian firearms as an object of control and subject matter of circulation; 3. To outline conclusions, proposals and recommendations for further research.

The object of the article is public relations in the field of public security and law and order.

The subject matter of the study is the object composition of control of civilian firearm circulation.

2. Problematic aspects of civilian firearm circulation in Ukraine

The issue of regulating certain problematic aspects of civilian firearm circulation has

long haunted both the legislator and the entire Ukrainian society. This problem has become especially acute in light of Russia's ongoing large-scale armed aggression against Ukraine, which is accompanied by a critical saturation of society with illegal firearms. This problematic issue may have a number of solutions, one of which, according to scholars and practitioners, is to ensure control of civilian firearm circulation, organise and regulate the exercise of the right of Ukrainian citizens to self-defence by creating opportunities for the possession and use of firearms.

Furthermore, the issue of effective control of such circulation is of paramount importance but given that control as a theoretical and legal category and a state institution is defined by scholars in different ways, although it has several mandatory structural characteristics, we propose to characterise it through the prism of modernity.

According to A. Korinets, in the context of distortion of public legal consciousness, disregard for the norms of law and morality, rights and legitimate interests of other people, the idea of possessing and using firearms has become attractive (Korinets, 2007), which, in our opinion, is somewhat inconsistent with reality, since the majority of Ukrainian citizens consider possession of civilian firearms as a tool for self-defence, an opportunity to defend their rights, which have already been attempted or to resist Russia's armed aggression fragmentarily.

The researchers note that Article 2 of Directive 91/477/EEC states that its provisions: 1) is without prejudice to the application of national provisions concerning the carrying of weapons, hunting or target shooting, using weapons lawfully acquired and possessed in accordance with this Directive; 2) do not apply to the acquisition or possession of arms and ammunition under national legislation on the armed forces, police or public authorities. Therefore, we can conclude that this regulation of EU secondary legislation is aimed at regulating exclusively civilian weapons circulation in the Union. This is important in view of the fact that today in Ukraine there is a need to create a special legislative regulation on weapons circulation in general. Therefore, the provisions of the Directive under consideration can be considered mainly in the context of improving firearm circulation in our country in this narrow context (Shumeiko, 2021).

3. Particularities of the definition of "weapons"

V. Litoshko argues that throughout history, mankind has considered weapons and the right to possess them an important topic. This is because the physical improvements provided

by weapons were necessary for warfare. Weapons have also been a driving force for progress because of their key role in warfare. Although in today's world we do not need to use guns for self-defence on a daily basis, their importance is still linked to the public's focus on their acquisition, storage and use in times of emergency, crisis or military threats (Litoshko, 2022). The historiography of Ukrainian statehood has demonstrated stages that clearly emphasise both the need for civilians to have weapons for self-defence and the need for extensive educational activities on the procedure and rules for handling them, and the cultivation of a culture of respect for firearms as an object of increased danger that can, first of all, harm human and civil rights and freedoms, and only then – as a tool to help in a critical situation.

Moreover, the issue of weapons control has been studied by many scholars and considered from several perspectives. For example, D. Pryputen believes that control is expressed in the form of such actions as verification, and there is an identification of such concepts as "control" and "supervision". However, scientific views on this issue are not so unambiguous, and discussions on the equivalence and variability of control and supervision are still ongoing. Control is an integral part of public administration, so we consider state control as one of the functions of public administration. In this case, the essence of state control is to analyse the activities of entities being controlled for compliance with legislative provisions (Pryputen, 2020). We argue that the very essence of the state as a social and legal entity determines the reasons and provides the basis for the creation of a system of safe circulation of civilian firearms, in a situation where such a need has become urgent and there is a social (public) demand for it. In addition, the forms, methods, actors of control and other components of the relevant administrative and legal mechanism should be clearly defined by the legislation of Ukraine.

The concept of weapons is also ambiguous, in part due to a lack of clarity in the legislation. The *Great explanatory dictionary of the modern Ukrainian language* defines the word "weapons" as an instrument for attack or defence (Busel, 2002, p. 349). Weapons are devices and means used in armed struggle for attack (offence) or protection (defence) with the aim of defeating or destroying the enemy" (Shemshuchenko, 1999, p. 295). Therefore, in light of the danger of the relevant facilities to society in general and individuals in particular, T. Shumeiko, analysing international law, argues that the need to "issue permits (licences) for the activities of arms dealers and brokers in Ukraine (as

well as constant monitoring of such public administration licensing activities), as well as supervision over the proper use of the obtained permit), in particular, in view of Council Directive 91/477/EEC of the European Parliament, Article 5, part 1, which specifies that the relevant permit (licences) shall be obtained only by a person who is at least 18 years of age, is not likely to be a danger to themselves or others, to public order or to (public safety)" (Shumeiko, 2021), is critical and necessary in Ukrainian society.

A. Korniets, V. Petkov and O. Frolov's approach is of interest because the concept of "weapons in general" today depends on, so to speak, "sectoral characteristics". The scholars argue that in administrative law, weapons are a component of the licensing system, an object for which it is necessary to obtain prior permission from the competent state executive authority, i.e., the circulation thereof is carried out in a permissive manner; in criminal law, a weapon is a means specially designed to hit a living target and have no other economic or household purpose; in criminalistics, a weapon is an object or device that has certain characteristics (a certain degree of efficiency, serviceability) that hypothetically allow inflicting lethal injuries; in civil law, a weapon is material goods that are the object of property rights, property that can be owned, used, disposed of at one's own discretion; in constitutional law, a weapon is a means of satisfying the constitutional rights of citizens to self-defence (Korniets, Frolov, 2008).

Accordingly, weapons as an object of control of circulation are an object of the material world, which by its functional (physical and other) properties is specially created and used to hit a living target (targets), and therefore, the social danger of this object gives grounds for creating a special procedure for its circulation and enabling state control of its circulation.

4. Conclusions

The article studies some problematic issues of control of civilian firearm circulation as an object and target of the relevant legal relations, clarifies the conceptual and categorical apparatus of the relevant mechanism, and specifies the role and place of the administrative and legal mechanism in regulating these legal relations.

It is proved that at the current stage of formation of Ukrainian statehood and in the context of its active defence against Russia's armed aggression, the issue of regulating civilian firearm circulation is of utmost importance, as it is a means of protecting each citizen individually only if the State ensures strict control of these processes.

The author substantiates the perspective that civilian firearms are a specific phenomenon for Ukrainian legislation, and to regulate the relevant provisions will take time, although today, certain provisions of legal regulations of both national and local, situational or departmental significance already regulate certain procedures.

In addition, the author proves the perspective that civilian firearms as an object of control and control as a form of organisation of the functioning of the administrative and legal mechanism of this process are extremely important elements which, interacting at the institutional and legal, organisational and managerial levels, will make this mechanism efficient and prevent violations of human and civil rights and freedoms which may occur as a result of reckless and inappropriate use, application and other forms of handling of firearms.

Further research of the administrative and legal mechanism for controlling civilian firearm circulation may be aimed at the analysis of the structural composition of such an institutional formation and the urgent need to outline this mechanism and all its elements and components.

References:

- Busel, V.T.** (2002). *Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy* [A large explanatory dictionary of the modern Ukrainian language]. K.: Irpin (in Ukrainian).
- Korinets, A.V.** (2007). *Orhanizatsiia sotsialnykh system obihu zbroi* [Organization of social systems of weapon circulation]. Zaporizhzhia (in Ukrainian).
- Korniets, A.V., Frolov, O.S.** (2008). *Orhanizatsiia sotsialnykh system obihu zbroi* [Organization of social systems of weapon circulation]. K., 2008 (in Ukrainian).
- Litoshko, V.V.** (2022). *Pravove rehuliuвання obihu vohnepalnoi zbroi v Ukraini: problemy ta perspektyvy* [Legal regulation of firearm circulation in Ukraine: problems and prospects]. *Nove ukrainske pravo - New Ukrainian Law*, 6, 36-41 (in Ukrainian).
- Pryputen, D.S.** (2020). *Derzhavnyi kontrol za obihom tsyvilnoi vohnepalnoi zbroi v Ukraini* [State control of civilian firearm circulation in Ukraine]. *Pravo.ua - Pravo.ua*, 3, 48-53 (in Ukrainian).
- Shemshuchenko, Yu.S.** (1999). *Yurydychna entsyklopediia* [Legal encyclopedia]. K.: Ukr. Entsykl. (in Ukrainian).
- Shumeiko, T.A.** (2021). *Perspektyvy pravovoho rehuliuвання tsyvilnoho obihu vohnepalnoi zbroi v Ukraini v konteksti dyrektyvy Yevropeiskoho parlamentu i rady № 91/477/IeES* [Prospects for the legal regulation of civilian circulation of firearms in Ukraine in the context of the directive of the European Parliament

and the Council No. 91/477/EEC]. *Vcheni zapysky TNU imeni V.I. Vernadskoho - Academic notes of TNU named after V.I. Vernadsky*, 4, 63-68 (in Ukrainian).

Ольга Баштова,

ад'юнкт кафедри поліцейського права, Національна академія внутрішніх справ, площа Солом'янська, 1, Київ, Україна, індекс 03035, bashtova_olga@ukr.net

ORCID: *orcid.org/0000-0002-4143-1773*

КОНТРОЛЬ ЗА ОБІГОМ ЦИВІЛЬНОЇ ВОГНЕПАЛЬНОЇ ЗБРОЇ: ОБ'ЄКТНИЙ СКЛАД

Анотація. Мета. Метою статті є аналіз об'єктного складу цивільного обігу вогнепальної зброї крізь призму дії відповідного адміністративно-правового механізму. **Результати.** У статті досліджено окремі проблемні питання контролю за обігом цивільної вогнепальної зброї як об'єкта та предмета відповідних правовідносин, уточнено понятійно-категоріальний апарат відповідного механізму, уточнено роль і місце адміністративно-правового механізму в регулюванні вказаних правовідносин. Доводиться позиція, що на сучасному етапі становлення Української державності та в умовах її активного захисту від збройної агресії росії надважливим є питання унормування обігу цивільної вогнепальної зброї, що є засобом захисту кожного громадянина індивідуально лише за умов забезпечення жорсткого контролю за цими процесами з боку держави. **Висновки.** Обґрунтовано позицію, що цивільна вогнепальна зброя є специфічним для українського законодавства явищем, і унормування відповідних положень потребуватиме часу, хоча на сьогодні окремі положення нормативно-правових актів як загальнодержавного, так і локального, ситуативного чи відомчого значення вже регламентують окремі процедури та порядки. Додатково обґрунтовано позицію, що цивільна вогнепальна зброя як об'єкт контролю та контроль як форма організації функціонування адміністративно-правового механізму цього процесу є надзвичайно важливими елементами, що, взаємодіючи на інституційно-правовому та організаційно-управлінському рівнях, уможливають якісну роботу цього механізму та не допустять порушення прав і свобод людини і громадянина, що можуть статись внаслідок необачного та недоцільного використання, застосування та інших форм поводження зі зброєю. Перспектива подальшого дослідження адміністративно-правового механізму контролю за обігом цивільної вогнепальної зброї може полягати в потребі аналізу структурного складу такого інституційного утворення та нагальної потреби в окресленні зазначеного механізму та всіх його елементів і компонент.

Ключові слова: зброя, контроль, відповідальність, поліція, цивільна вогнепальна зброя, об'єкт контролю.

The article was submitted 21.07.2022

The article was revised 11.08.2022

The article was accepted 30.08.2022