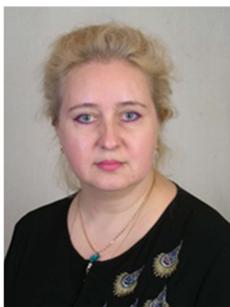


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### **CRIMINAL LIABILITY FOR THE ILLEGAL CIRCULATION OF ARMS IN CRIMINAL LEGISLATION OF FOREIGN COUNTRIES**

**Світлана Шалгунова, Олександра Скок, Таїсія Шевченко. КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА НЕЗАКОННИЙ ОБІГ ЗБРОЇ В УКРАЇНІ ЗА КРИМІНАЛЬНИМ ЗАКОНОДАВСТВОМ ЗАРУБІЖНИХ КРАЇН.** Порівняльно-правовий аналіз кримінального законодавства зарубіжних країн завжди викликав інтерес у вітчизняних дослідників, оскільки надавав можливість вивчити різні підходи до розуміння ряду категорій та інститутів кримінального права іноземних держав, що найчастіше є передумовою для їхнього використання з метою подальшого удосконалення українського кримінального законодавства. Варто визнати, що в ряді іноземних держав питання, пов'язаному з незаконним обігом зброї на законодавчому рівні надається більшого значення, ніж у КК України.

Незаконний обіг зброї у світі є багатоаспектною проблемою. Він включає в себе незаконне виготовлення зброї, її контрабандне переміщення через національні кордони, нелегальну торгівлю зброєю. Останнє вже тривалий час є частиною нелегального бізнесу організованої злочинності різних країн. Кількість злочинів із застосуванням різноманітних видів зброї зростає поряд із розповсюдженням предметів озброєння у світі.

Як і будь-який механізм, що розробляється, а потім втілюється і працює у суспільстві, система норм, що регулює обіг зброї на території України не є досконалою і має певні недоліки. Одним із таких недоліків є відсутність належної нормативно-правової бази, що регулює обіг зброї на території країни. Необхідність посилення протидії злочинності, з незаконним обігом зброї, удосконалення з цією метою законодавства обумовлює необхідність в розробці відповідних заходів щодо протидії незаконному поводженню зі зброєю, з'ясування сутності кримінально-правових відносин. Для створення певних заходів, необхідно звернути увагу на досвід різних країн з цього питання, розглянути кримінально-правову характеристику норм, що встановлюють відповідальність за незаконні дії, пов'язані з використанням, придбанням, зберіганням, носінням зброї, бойових припасів тощо за законодавством різних держав.

Боротьба з нелегальним розповсюдженням вогнепальної зброї індивідуального використання є достатньо складним завданням, тим більше, в умовах військового конфлікту на території будь-якої держави. Це пояснюється тим, що незаконною торгівлею зброєю займаються не тільки транснаціональні злочинні угруповання, в операціях з нелегального обігу зброї активну участь беруть державні органи, що діють під прикриттям.

Успіх протидії незаконному обігу зброї в багатьох випадках залежить від правового режиму використання тих предметів озброєння, що перебувають у цивільному обігу, ступеня до їх доступу для населення, а також організації контролю над ними.

**Ключові слова:** кримінальна відповідальність, зброя, незаконний обіг, вибухова речовина, боєприпаси, володіння зброєю, зберігання зброї, торгівля зброєю, виробництво зброї, передача зброї.

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**Problem statement.** The problem under study is relevant not only for Ukraine but for the entire world community. The issue of combating illicit trafficking in arms has received considerable attention from many international organizations. Many special sessions of the General Assembly of the International Criminal Police Organization on Improving the Effectiveness of Firearms Accounting and the implementation of measures to improve international cooperation in this fight are devoted to addressing this issue.

According to an employee of the General Secretariat of Interpol, D. Manross, awareness of the problem of gun ownership at the national level is high enough, at the same time, the reaction to the use of firearms for a large number of killings is rather slow [1].

The UN Commission on Crime Prevention and Criminal Justice has conducted an expert survey on the regime of firearms possession of different countries by forces of experts from 50 countries. The study showed that in all countries there is a tendency to tighten regulation of the circulation of firearms. This is especially true of Australia, Canada, the United Kingdom, Russia, the Czech Republic, Estonia, Latvia, Lithuania, Moldova, France, China, which have already adopted the relevant regulations. In Brazil, Denmark, India, such new legislation is under preparation.

Quantities in possession of firearms range from less than 1 individual owner per 1,000 population (Tunisia, Singapore) to over 120 (Germany). In Finland, the number of firearms reaches 400 per 1000 people. In this country, about half the population have firearms in their families. There (as well as in Germany, Denmark, Sweden, Romania and other countries) there are no prohibitions on the possession of long-barreled, hand-held types of civilian firearms [2].

There is no reliable data on how many firearms in the world are being produced illegally, how many are smuggled into the countries, what is the amount of military weapons and weapons stolen from legitimate owners. Foreign publications have provided only an approximate amount of funds received annually for arms trafficking worldwide: approximately \$ 500 billion [3].

It is also difficult to estimate the degree of arming of the population and the criminal world. One can only give an approximate estimate using the information received from law enforcement agencies, the results of a population survey and research conducted on the issue. Such information gives reason to believe that the uncontrolled proliferation of firearms contributes to the increase in the number of crimes. Whatever supporters of the legalization of free arms trafficking in Ukraine say, such a move will only exacerbate the criminogenic situation and increase rates of violent crime, which have increased significantly over the last 5 years.

**Analysis of publications that started solving this problem.** Foreign scientists involved in the study of the relationship between the presence of firearms in the population and mortality due to violent crimes, accidents and suicides concluded that as soon as the firearm becomes readily available to the population, the likelihood of deaths of people will be increased. Such a situation is illustrated by statistics cited by American scientists: F. Cook, D. Nayzhin, M. Wolfgang, G. Zaisela, D. Zuela, F.E. Zimming, an English researcher by D.P. King [4], Canadian criminologists I. Waller [5] and S. Fitzsimmon [6] and others.

According to the study of F.E. Zimring, the likelihood of murder in a gun attack was five times higher than that of a cold weapon attack. Thus, it appears that the five-fold difference in mortality is explained by the greater risk of firearms, commonly referred to as the technical superiority effect [7].

The **objective** of the study is to summarize our foreign experience of criminal regulation of arms trafficking, which is based on several points. First, the study of the criminal law of the Commonwealth of Independent States (CIS). Secondly, the study of the experience of European countries, due to the fact that Ukraine is part of Europe and at this time is actively integrated into the trading and political European space. Thirdly, the experience of establishing criminal liability in those countries with which Ukraine has borders is important to us, as arms smuggling is one of its ways of receiving weapons and weapons into Ukraine.

**Basic content.** Legislative acts regulating the issue of arms trafficking in the CIS countries are the Model Law on Weapons and the Model Criminal Code.

The Model Law on Weapons, adopted in 1997, regulates legal relationships arising from the circulation of civilian, service, and combat small arms and light weapons, ammunition and ammunition in the territory of the CIS countries and aims at protecting the life and health of citizens, property, public safety, nature protection, natural resources, development of international cooperation in the fight against illegal proliferation of weapons and ammunition [8].

The structure of this Law, as well as any other law, consists of articles, parts of articles, their clauses. This law contains 30 articles. According to the provisions of this Law, it regulates

the main issues: terminological concepts (Article 1), types of weapons and their characteristics (Articles 3-5), restrictions on the circulation of civilian and service weapons (Article 6), the procedure for certification, licensing and registration of weapons and ammunition, revocation of licenses (Articles 7-13, 26), the procedure for the acquisition, sale, production, storage of weapons and ammunition (Articles 14-22), the procedure for collecting fees when issuing licenses and permits for possession of weapons and ammunition (Article 23), use of weapons (Article 24), accounting procedures in carrying, transporting, destroying, collecting and destroying weapons (Article 25), seizing weapons and ammunition (Article 27), as well as control of weapons accounting (Article 28) and compliance with legal acts and provision its implementation (Articles 29-30).

As can be seen from the analysis of the content of this Law, in 1997 the basic principles and rules of arms trafficking in the CIS countries were determined. In spite of such detailing of the procedure for ensuring legal trafficking and limitation of illicit trafficking in weapons and ammunition in the CIS countries, Ukraine did not accept this Law as a basis for streamlining its own legislation on these issues.

Positive, in our opinion, in this Law is that it defines the concept of a weapon that has both legal and major criminal trafficking in Ukraine, its main types, the procedure for its issuance, storage, transportation, collecting, destruction. In addition, this Law provides for the procedure for the legal use of weapons by citizens of the CIS countries. This law can be called ancillary to the current legislation of Ukraine on the activities of the police, the Security Service of Ukraine and other law enforcement agencies, which provide for the prevention of crime, part of which is illegal arms trafficking. Also, this Law gives citizens who have been victims or witnesses to crimes a right to defend their own rights, freedoms and interests against criminal offenses (Article 24): citizens have the right to use the weapons they legitimately have to protect life, and property in the state of necessary defense or urgent need. The use of a weapon must be preceded by a clearly stated warning to the attacker against whom the weapon is being used, except when a delay in the use of the weapon poses a real risk to human life or may entail other grave consequences. Of course, the use of weapons should not create a risk to the lives of other citizens who are not related to the incident (that is, to third parties).

Seizure of weapons and ammunition to it, according to the specified Law, is carried out by the police (police) and can be carried out in the following cases: absence of licenses for the production of civilian and service weapons and ammunition to it; the absence of licenses for the collection and display of civilian and service weapons and ammunition; absence allowed to store and carry weapons; revocation of permits and licenses in accordance with the procedure established by law; violation by the legal or natural persons of the rules of circulation (transfer, acquisition, collecting, exhibiting, storage, carrying, transportation, transportation and use) of weapons before the relevant decision is made by the state bodies in accordance with the procedure established by national legislation; identification of self-made or proprietary weapons and ammunition, with modified ballistic and other technical characteristics; the occurrence of the death of the owner of the weapon to resolve the issue of inheritance of his property; liquidation of a legal entity that was licensed to carry out arms trafficking (repair, sale, etc.).

The control over the circulation of civilian and service weapons and ammunition is carried out by internal affairs bodies (police) and the relevant government bodies, which issue licenses for the production of such weapons and monitor compliance with standards in their manufacturing (Article 28).

It is necessary to define also that this Law provides that after its entry in force of the CIS countries must within three months bring the national legislation into conformity with the provisions of the Model Law under consideration (Article 29). However, as we can see, the Verkhovna Rada of Ukraine has not yet taken the appropriate steps in this direction. The draft Law on Weapons has been under consideration since 1992, several drafts have been prepared, most recently the drafts by S. I. Fris and V. Zelensky in 2019, but the requirement of the Model Law on Weapons has not been fulfilled. Thus, it is impossible to speak of a real and effective prevention of crimes related to the illicit trafficking in weapons in the territory of the Ukrainian state. In our view, the prevention of both the illicit trafficking of weapons and the regularization of existing legal trafficking, as well as the prevention of crimes committed with the use of weapons (both firearms, cold and stun guns) is possible only on the basis of the current legal framework, which should cover the whole complex of issues: from definition of basic terms, to establishment of types of legal responsibility for different according to the degree of public danger of offense in accordance with the rules of the Administrative Code and the Criminal

Code of Ukraine.

The Model Criminal Code for CIS Member States provides for crimes under the heading of weapons, weapons, explosives and explosives in various sections and chapters.

Most of the crimes involving criminal liability for trafficking in weapons are classified as grave and particularly grave. Serious crimes are punishable by imprisonment of up to 12 years, and especially serious crimes – imprisonment for a term of more than 12 years.

The Criminal Codes of Russia, Belarus, Georgia, Moldova, Kazakhstan and Tajikistan criminalize unlawful acts related to trafficking in weapons, ammunition, explosives and explosives. But, in the presence of many common features of responsibility for actions, which include the concept of illegal carrying, storage, purchase, manufacture of firearms (other than smooth-bore hunting), ammunition, or explosives, there are significant differences between them that are missing in Ukrainian law.

The Criminal Code of the Republic of Kazakhstan contains four parts. In Part 1 of Art. 251 provides for the responsibility for the illicit purchase, transfer, sale, storage, transportation or carrying of firearms (other than smooth-bore hunting), ammunition, explosives and explosive devices. Part 2 of Art. 251 of the Criminal Code of Kazakhstan establishes responsibility for the same actions, committed by a group of persons by prior consent or repeatedly. Part 3 of the same article – the same acts committed by an organized group, and finally part 4 indicates the criminal responsibility for the illegal carrying or sale of daggers, Finnish knives or other cold weapons, except when carrying a cold weapon is associated with industrial hunting.

According to the Criminal Law of the Republic of Tajikistan in Art. 195 establishes responsibility for the illicit purchase, transfer, sale, storage, transportation or carrying of weapons, ammunition, explosives and explosive devices. It is worth noting that Part 4 of Art. 195 of the Criminal Code of Tajikistan provides for the responsibility for the illicit purchase, transfer, sale or carrying of gas weapons, daggers, Finnish knives or other cold weapons, including small arms.

The Criminal Code of the Republic of Belarus contains directly an article in which the object of the abduction is weapons, its main parts, ammunition, explosives, explosive devices (Article 297) property or no forfeiture. The theft of nuclear, chemical, biological or other weapons of mass destruction or major parts of such weapons – shall be punishable by imprisonment for a term of five to ten years from confiscation of property or confiscation.

It should be noted that the criminal legislation of Denmark does not provide for liability for crimes related to nuclear, chemical, biological and other weapons of mass destruction.

Thus, there are significant differences in the Criminal Codes of Ukraine and Denmark in establishing the responsibility for the abduction or theft of a weapon. They concern, first and foremost, the size of the sanctions – Denmark's criminal law is far less severe than Ukrainian law. Secondly, the Danish Criminal Code does not contain a special rule establishing responsibility for the theft or theft of a weapon. Third, the Criminal Code of Denmark does not provide for liability for the illicit circulation of nuclear, chemical or other weapons of mass destruction, as well as materials or equipment that can be used in the creation of weapons of mass destruction. In our opinion, the Ukrainian Criminal Code has significant advantages in this aspect.

The analysis of the rules of the Criminal Code of Switzerland [9] indicates that they are rarely mentioned in weapons, which are mentioned in the sections on state crimes, crimes against life, liberty and sexual integrity of a person. It is likely that these issues are dealt with in more detail in cantonal criminal law, which is also a source of criminal law in this country. Positive and logical, in our opinion, in the criminal law of Switzerland, we can recognize that the legislator, in formulating criminal law, providing responsibility for the illicit trafficking in weapons and its use in the commission of other crimes (murder, theft, robbery), pays attention to the sub the more effective aspect of guilt is the presence of the target of the guilty person to use a weapon in the commission of any crime. The criminal law of Switzerland provides for criminal liability for the illicit trafficking of weapons, explosives in independent warehouses, for the commission of each of which provides for different types of punishment. In the Criminal Code of Switzerland, as well as in the Criminal Code of Denmark, there is no specific rule that provides for the responsibility for the theft of nuclear, chemical or other weapons of mass destruction.

Article 135-72 of the Criminal Code of France stipulates that the use of a weapon in the commission of a crime is a liability. In Art. 311-8 of the Criminal Code of France states that theft is punishable by 20 years' imprisonment and a fine of 1 million francs if it is committed with the use or threat of use of a weapon (first case), if the person carrying the weapon requires permission or carrying a weapon is prohibited (second case). Paragraph 10 of Art. 222-13 of

the Criminal Code of France provides for criminal liability for violent acts involving the use or threat of the use of weapons, which does not entail complete disability for more than 8 days, in the form of 3 years in prison and a fine.

A more systematic and streamlined regulatory act governing the circulation of weapons in France is the Law on Weapons, adopted on April 18, 1939, the advantage of which is that it established the classification of weapons and defined the rules, regulations governing the production, trade, storage and use of weapons. According to this law, all weapons are divided into eight categories.

The provisions of the said normative act provide for severe sanctions for misuse of the first four categories of weapons. Based on Art. 1 of the French Law on Arms, any individual, enterprise or community intending to manufacture or trade in weapons in the first seven categories is required to submit a statement to the police prefecture. A similar application is made in the case where a functioning manufacturer or seller of weapons has the intention to convert or discontinue manufacturing or trade.

The categories of weapons are divided into prohibited and authorized by laws or the competent authority. The illicit trafficking in weapons in Section 1 includes the offenses set out in Articles 563, 564, 566, 567, 568, 569, 570 of the Criminal Code of Spain.

The issue of the regulation of criminal liability for the illegal trafficking of weapons is reflected in detail in the rules of the Criminal Code of Spain [10]. Section 1 of this Code deals with the illicit trafficking of weapons and is entitled "On the Possession, Trade and Storage of Weapons, Ammunition or Explosives and on Terrorism." Responsibility is differentiated depending on the affiliation of the weapon to a particular group, which classifies the weapon, its number, the affiliation of the perpetrator to the armed criminal organization and the purpose of the use of the weapon. This section contains two sections related to trafficking in weapons: Section 1 (on the possession, trade and storage of weapons, ammunition or explosives) and Section 2 (on terrorism).

The Criminal Code of Europe sets out the historically long-established Criminal Code of the Federal Republic of Germany (Criminal Code of Germany) of May 15, 1871. Germany's Criminal Code is one of the world's oldest codified criminal laws. It does not envisage a large number of offenses related to the trafficking in weapons. Such a turn is overwhelmingly governed by administrative law or a separate legal act. In two articles of the Criminal Code of Germany the weapon acts as the object of crime. Thus, theft of personal firearms (for possession of which a special permit requires a special permit), machine gun, machine gun, automatic weapons, explosives, military weapons (item 7 h. 1 243) is considered a particularly serious type of theft. The manufacture of, obtaining for itself or for another person, storing or handing over to another person a firearm, explosive or substance or device intended to organize an explosion or fire for the purpose of attacking air or inland water transport (paragraph 4 h.). 2 316c). The Criminal Code of Germany does not have a criminal ban on the illicit use of arms without a specific purpose. But the use of weapons for unlawful purposes increases the punishment for the committed crime.

The Criminal Code of the Netherlands does not contain such acts where special objects or implements are weapons, ammunition, explosives, explosive devices; nuclear, biological, chemical weapons of mass destruction. In separate articles of the Criminal Code of the Netherlands it is stipulated that committing theft (art. 310), extortion (art. 317), appropriation (art. 321) of the said items entails criminal liability [11]. The Criminal Code of the Netherlands, unlike the codes already considered, does not contain any crime, in which the weapon or other substances considered by us are the object of the crime. The issue of arms trafficking may be governed by other regulations in the Netherlands.

As is well known, UK law is not codified. Responsibility for the illicit trafficking in weapons in the UK is governed by a large number of regulations, some of which apply to the whole country and the other to its individual territories. Moreover, some acts are adopted by parliament and have the level of laws, while others are issued by executive bodies with the prior authorization of the parliament (so-called delegated legislation). The peculiarity of these acts is that they, as a rule, are complex in nature, that is, they include rules of various branches of law, most often criminal and administrative.

In 1972, the UK Criminal Justice Act imposed strict liability for firearms offenses. In 1996, the UK Offensive Weapons Act increased the punishment for carrying a weapon that could be used for assault, increasing the maximum sanction from 2 to 4 years in prison. Criminal liability for carrying a firearm in public places has been increased to two years in prison.

On 1 July 1997, the Law on Small Arms in Personal Use was put into effect in the United Kingdom with the relevant supplement, which prohibited the possession of small arms of small caliber to all citizens of the country. The adoption of the same law on small arms was expected later after being considered in the British Parliament.

In addition to European countries, in our opinion, it is advisable to consider the experience of other foreign countries that are not in the European space.

In 1968, the United States passed two important laws to combat crime, including the fight against arms trafficking: the Gun Control Act and the General Crime and Safety Control Act on the streets ( Omnibus Crime Control and Safe Streets Act). Pursuant to the Firearms Control Act, the types of licenses were determined depending on the type of weapon and explosives. All parties to such an agreement must have appropriate authorization. The Law stipulates that the parties to the agreement are obliged to register their business transactions in accordance with a provision established by the Ministry of Finance. If the license holder violates the legal conditions for conducting business related to firearms, the Minister of Finance has the right to terminate his license early. A license for entrepreneurial activity is not granted, and weapons are not sold to the following categories of citizens: convicted of a serious crime; accused of a serious crime and hiding from criminal proceedings; patients with mental illness and recognized by such a court; to those in treatment at a psychiatric hospital, to drug addicts.

According to this law it is forbidden to sell handgun firearms to persons under 21; rifles and carbines – to persons under 18; firearms – to persons released from the United States Armed Forces for acts of dishonor; non-US citizens, foreign nationals who reside illegally in the United States. The gun control law provides for severe sanctions. Yes, providing false information in an application for the purchase of a weapon is punishable by imprisonment for a term up to 5 years and / or a fine of up to \$ 5 thousand.

According to another regulation – the United States Federal Armed Career Act (1984) – a person who has committed a felony using a firearm and has three or more convictions for robbery or theft with penetration is punishable by imprisonment for a term of 15 years without parole.

Strict sanctions are applied to committing crimes in the field of illicit trafficking. Thus, in the United States, the person who committed the theft of a firearm, explosives, is punishable by imprisonment for a term up to 10 years and / or a fine (Article 844, 924 of Section 18 of the US Code). A more severe punishment is imposed on a person who has conspired with others to commit a crime related to the import or import of firearms or ammunition. Such a person shall be punished by imprisonment for a term up to 20 years and / or a fine (Article 924 of Section 18 of the US Code).

**Conclusion.** The modern historical period is characterized by the active activity of many countries in the world to improve their criminal legislation. New criminal codes have been drafted and adopted by the legislators of Germany, Austria, Spain, France. The experience of other states makes it possible to develop their own criminal law with greater efficiency. It is worth noting that the laws of several US states impose severe sanctions on crimes related to the use of firearms. 18 states, such as Arizona, Michigan, Florida, South Carolina, provide for such sanctions. In the 1990s, steps were taken in many western countries to increase the stringency of legislation regarding the sale of firearms to the public on the one hand and to withdraw it through voluntary extradition, including for monetary consideration – on the other. It should also be noted that in the vast majority of foreign countries, crimes committed with the use of firearms and explosives are classified as particularly serious by law.

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#### Summary

The article deals with the issue of criminal liability for the illegal trafficking of weapons in the criminal law of the countries – members of the Commonwealth of Independent States, Europe and the United States of America.

**Keywords:** *criminal liability, weapons, illicit trafficking, explosives, ammunition, weapons possession, weapons storage, arms trafficking, weapons production, weapons transfer.*

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#### ORGANIZATIONAL PECULIARITIES OF CONDUCTING INDIVIDUAL (INVESTIGATIVE) ACTIONS IN THE INVESTIGATION OF CRIMES IN THE FIELD OF THE AGRICULTURAL COMPLEX

**Володимир Єфімов. ОРГАНІЗАЦІЙНІ ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОКРЕМИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ ПРИ РОЗСЛІДУВАННІ ЗЛОЧИНІВ У СФЕРІ АГРОПРОМИСЛОВОГО КОМПЛЕКСУ УКРАЇНИ.** У статті досліджуються організаційні особливості проведення окремих слідчих (розшукових) дій при розслідуванні злочинів в сфері агропромислового комплексу України. Акцентується увага на послідовності проведення слідчих (розшукових) дій при розслідуванні економічних злочинів, що вчинюються в агропромисловому комплексі, яка залежить від способу виявлення, закріплення та збереження інформації, а також черговості виявлення й фіксації слідів злочинного посягання. Висвітлюються задачі проведення слідчого огляду: – фіксація та процесуальне оформлення місця, де відбувалось вчинення злочину; –

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