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## Firearms as a means of committing criminal offenses

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### Abstract

The article analyzes the current legislation on weapons and the opinion of scientists on firearms, ammunition, explosives or explosive devices. The fundamental importance of firearms in the forensic characterization of crimes is emphasized. It is noted that firearms are goods subject to a special regime of regulation, which can be carried out only by the Law of Ukraine. It is a particular type of weapon intended for attack, defense or sound signals, which is set off by the energy of gunpowder combustion gas. The authors' definition of firearms is given and the characteristic features of ammunition, explosives and explosive devices are highlighted. It is concluded that, for the purpose of legislative regulation of relations arising during the circulation of civilian firearms, as well as similar to weapons and ammunition products, in particular, to avoid free interpretation of the assessment of the actions of a person involved in crimes with the use of weapons, the development of a corresponding law comprehensively regulating this criminal methery is needed.

**Keywords:** criminal offenses; forensic characteristics; firearms; ammunition; explosive devices.

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## Las armas de fuego como medio para cometer delitos

### Resumen

El artículo analiza la legislación vigente en materia de armas y la opinión de los científicos sobre armas de fuego, municiones, explosivos o artefactos explosivos. Se enfatiza la importancia fundamental de las armas en la caracterización forense de los delitos. Se señala que las armas de fuego son bienes sujetos a un régimen especial de regulación, que solo puede llevarse a cabo por la Ley de Ucrania. Es un tipo particular de arma destinada al ataque, defensa o señales sonoras, que se pone en marcha por la energía de gas de combustión de pólvora. Se da la definición de armas de fuego de los autores y se destacan los rasgos característicos de municiones, explosivos y artefactos explosivos. Se concluye que, a los efectos de la regulación legislativa de las relaciones que surgen durante la circulación de armas de fuego civiles, así como similares a armas y productos de municiones, en particular, para evitar la libre interpretación de la evaluación de las acciones de una persona involucrada en los delitos con uso de armas, se necesita el desarrollo de una ley correspondiente que regule integralmente esta materia penal.

**Palabras clave:** delitos penales; características forenses; armas de fuego; municiones; artefactos explosivos.

### Introduction

In the forensic characterization of crimes, information about the features of the subject is of fundamental importance for their investigation. This is due to the fact that the properties of the object of encroachment are naturally related to the peculiarities of the conditions of crime (conditions of existence of the object). The same correlation exists between the object of encroachment and the identity of the offender and other elements of the mechanism of the crime. Thus, the subject of the crime largely determines the actions of criminals to prepare, commit and conceal the crime, which, in turn, are associated with the formation of certain traces - sources of evidence (Volobuev, 2000; Kravchuk, 2015).

Traditionally, the subject of a crime is understood as any thing of the material world, with certain properties of which the law of criminal liability connects the presence in the actions of a person signs of a specific crime (Baulin and Borisov, 2002). Clarification of the exact concept of the subject of the crime, its content allows more accurately, fully and accurately reveal the content of the crime (Zagorodnikov, 1951), to establish a connection between the object and the objective side and other elements of the crime,

determine the nature and degree of its social danger (Panov, 1984). It is this circumstance that necessitates the study of these issues within certain methods of investigation.

The subject of crimes committed with the use of firearms is of fundamental importance in the forensic characterization of such crimes, as it affects its other elements. In particular, it determines the characteristics of the offender, certain ways of committing and concealing it (Luzgin, 1991), as well as other crimes related to illicit trafficking in weapons, explosives and ammunition, helps to clarify the manner of crime, determine its consequences, the identification of the suspect and his accomplices.

Hence the importance of clearly defining the properties, characteristics of material objects that have entered the orbit of criminal justice and can be identified as weapons, ammunition, explosives and substances.

## **1. Methodology of the study**

The methodological basis of the study were methods and techniques of scientific knowledge. Their application is due to a systematic approach, which makes it possible to consider the problems of research in the unity of their social content and legal form. The leading research method is dialectical, which uses laws and categories to determine the nature of firearms, ammunition, explosives or explosive devices as a means of committing criminal offenses, as well as legislation governing their circulation in Ukraine. The use of the laws of formal logic and its methods such as analysis and synthesis, induction and deduction, allowed to determine the structural and logical scheme of a scientific article, identify properties and features of the phenomenon under study, create a general idea of its content.

The historical and legal method was used to study the state of legislation and scientific works on the problems of the circulation of weapons; dogmatic - to interpret legal categories such as "firearms", "ammunition", deepening and clarifying the conceptual apparatus; functional and typological - in order to identify the most typical subjects of criminal offenses of this type; method of system analysis, system-structural and formal-logical methods - to clearly define the properties, characteristics of material objects that have entered the orbit of criminal justice and can be identified as weapons, ammunition, explosives and substances; methods of modeling and forecasting - for the formation of proposals for improving certain provisions of the legislation; statistical method - during the analysis and generalization of the empirical base.

## 2. Analysis of recent research

The study of the theory and practice of issues related to the optimization of the investigation of criminal offenses, the means of which are weapons, researched in their works, Scholars such N. Akhtyrskaya (Akhtyrskaya, 2022), P. Bilenchuk (Bilenchuk *et al.*, 2003), I. Bogatyrev (Bogatyrev, 2011), V. Figursky (Figursky, 2015), M. Klymchuk (Klymchuk *et al.*, 2021), O. Kravchenko (Kravchenko *et al.*, 2022), M. Maistrenko (Maistrenko, 2010), A. Martyniuk (Martyniuk, 2017), V. Shevchuk (Shevchuk, 2007).

The scientific results obtained by these researchers have theoretical and practical significance, and some of them do not lose their relevance and can be used in modern criminal justice. However, some provisions and recommendations of the predecessors, given the changes in the legal regulation of the circulation of weapons, are outdated and unusable in practice.

This emphasizes the importance of clarifying the nature of firearms, ammunition, explosives and explosive devices, identifying the most common weapons in the commission of criminal offenses committed with their use, and more.

## 3. Results and discussion

The main guiding normative documents regulating the circulation of weapons and defining them are international conventions ratified by Ukraine, certain Laws of Ukraine, Resolution of the Cabinet of Ministers of Ukraine, Resolutions of the Plenum of the Supreme Court of Ukraine, Regulations on Permitting System, Instruction of the Ministry of Internal Affairs of Ukraine and natural resources of Ukraine, etc.

According to official information, the citizens of Ukraine legally own firearms in the total number of about 1.3 million units. Despite such a significant amount in circulation, these legal relations in the country, unlike all European and most post-Soviet countries, are still not regulated by any law (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020). The difficulty of legal qualification of events related to the circulation of weapons is that in Ukraine there is no general law on weapons, and instead the existing structure consists of many regulations issued by various authorities (Martyniuk, 2017).

All issues related to the circulation of this type of weapon are resolved exclusively by bylaws of the Ministry of Internal Affairs and other ministries and departments. Moreover, these regulations actually duplicate the basic provisions of the former Soviet legislation. The vast majority of norms are

now an anachronism and do not regulate even established public relations in the field of arms trafficking (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020). This creates numerous difficulties in investigative and judicial practice, forcing access to international documents, various laws and regulations governing the handling of various weapons.

The definition of both the general concept of weapons and their type of firearm is considered in various branches of law through the prism of its subject, including forensics, forensic ballistics, ballistic weapons, criminal law, civil law, international private and public law, and also in operational and investigative activities. The Academic Dictionary of the Ukrainian Language defines weapons as tools for attack or defense (Dictionary of the Ukrainian Language, 2012).

At the same time, it should be noted that the definition of the term “weapon” is not fixed at the legislative level, but only its types are described. Model Law “On Weapons”, in Art. 1 under the weapon means devices and objects constructively designed to destroy a living or other target and give signals “(Model Law on Weapons, 1995). It is clear that such definitions give only a general idea of this category as the subject of crimes committed with firearms, which requires detailed analysis.

The concept of weapons, depending on the rule of law, is interpreted differently - from a narrow meaning - firearms or melee weapons - to, for example, jet or missile equipment, which is in service with the military unit (Baulin and Borisov, 2002). A special type of weapon is a weapon of mass destruction which includes toxic chemicals, chemical, biological (bacteriological), nuclear weapons.

There is also no common approach among lawyers to the definition of “weapon”, which means: a weapon designed to hit targets with projectiles that receive directional movement in the barrel (using the pressure force of gases formed by combustion of metal charge) and have sufficient kinetic energy to hit a target at a certain distance; objects and mechanisms specially designed to hit a living target or target, made according to certain models that meet these objectives and have no other purpose; an object specially designed (manufactured) for the destruction of a living target, which has no household purpose. Forensic scientists define weapons as devices and objects designed to destroy a living target, to provide sound or light signals (Bilenchuk *et al.*, 2004).

References characterize weapons as: devices and means used in armed struggle to defeat and destroy the enemy; means of attack and defense; a set of means adapted or technically suitable for attack or defense. Combat weapons can be traditional (firearms, cold steel, pneumatic, metal, incendiary weapons, mines, artillery, missiles, torpedoes), non-traditional

(laser, electromagnetic, psychotropic weapons) and weapons of mass destruction (nuclear, chemical, biological, chemical, (Shevchuk, 2007).

In accordance with the provisions set out in paragraph “a” of Art. 3 of the Protocol “against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition”, supplementing the United Nations Convention against Transnational Organized Crime of 31 May 2001, firearms are any Portable firearms designed or can be easily adapted to fire or accelerate a bullet or projectile due to the energy of an explosive, except for old firearms (Law of Ukraine, 2013).

In the annexes to the European Convention on the Control of the Acquisition and Storage of Firearms by Private Persons, adopted in Strasbourg on 28 July 1978, “firearms” means: 1) any object prepared and belonging as a weapon from which a charge, a bullet or other projectile or harmful gas, liquid or other type, may be released by explosive, gas or air pressure or other means; 2) trigger mechanism, chamber, drum or barrel of any of the above items; 3) any charge or material clearly intended to be ejected by the above items; 4) optical sights with illumination or optical sights with electronic light-amplifying-infrared device, intended for installation on one of the above objects; 5) muffler for the nozzle on any of the above items; 6) any grenade, bomb or other projectile containing an explosive or incendiary device. The following types of weapons are distinguished: automatic, semi-automatic; multi-charged, disposable, short-barreled, long-barreled (European Convention on the Control of Acquisition and Storage of Firearms by Private Persons, 1978).

In this case, firearms do not include items that: have become irreversibly unusable; do not fall due to weak power under control in the countries of their use; designed to sound alarms, other signals, rescue operations, slaughter cattle, hunt or fish with a harpoon or for industrial or technical purposes, provided that they can be used only for that purpose; are not subject to control in the country from which they move due to prescription (European Convention on the Control of Acquisition and Storage of Firearms by Private Individuals, 1978).

Instruction on the procedure for manufacture, purchase, storage, accounting, transportation and use of firearms, pneumatic, melee and melee weapons, domestic devices for firing cartridges equipped with rubber or similar non-lethal metal projectiles, and ammunition for them, as well as ammunition to weapons, main parts of weapons and explosives, approved by the order of the Ministry of Internal Affairs of Ukraine N<sup>o</sup> 622 of August 21, 1998 in paragraph 8.2 defines that firearms are weapons designed to hit targets with projectiles receiving directed movement in the barrel (using the force of pressure of gases formed by combustion of metal charge) and have kinetic energy to hit a target at a certain distance (Order of the Ministry of Internal Affairs of Ukraine N<sup>o</sup> 164, 1993).

According to the Resolution of the Plenum of the Supreme Court of Ukraine № 10 of December 22, 2006 “On Judicial Practice in Hooliganism Cases” firearms are devices of factory or artisanal production designed to hit a living target with a projectile (bullet, shot, etc.), which is set in motion by the energy of powder gases or other special combustible mixtures (On Judicial Practice in Hooliganism Cases: Resolution of the Plenum of the Supreme Court of Ukraine, № 10, 2006).

According to the Resolution of the Plenum of the Supreme Court of Ukraine of April 26, 2002 № 3 “On Judicial Practice in Cases of Theft and Other Illegal Treatment of Weapons, Ammunition, Explosives, Explosive Devices or Radioactive Materials”, firearms include all types of weapons , sports, rifled hunting weapons, both mass-produced and homemade or remanufactured, for the shot of which uses the pressure force of gases produced by the combustion of explosives (gunpowder or other special combustible mixtures) (On the case law on abductions and more illegal handling of weapons, ammunition, explosives, explosive devices or radioactive materials: Resolution of the Plenum of the Supreme Court of Ukraine, 2002).

V. Figursky and O. Nikiforak understand firearms as a mechanical device, structurally and functionally designed for multiple action to hit a target at a distance with a projectile that flies out of the barrel and receives directional movement through the use of energy generated in the results of combustion of gunpowder or other charge (Figursky and Nikiforak, 2015).

We consider the most successful to define this type of weapon as a firearm in the draft law for № 4335, as any portable firearm, which is designed to hit targets with projectiles that receive directional movement in the barrel (using the pressure force of gases produced by burning metal charge) and have sufficient kinetic energy to hit a target within a certain distance, except for old unloaded firearms, which were manufactured up to and including 1899 and are not intended for firing cartridges with metal cartridges of central combat and ring ignition. Kinetic energy is sufficient to hit the target, the value of which at a distance of one meter from the muzzle of the weapon must be equal to or greater than 0.5 J / mm<sup>2</sup> (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020).

The above allows us to summarize that firearms are objects of property subject to a special regime of regulation, which can be implemented only by the Law of Ukraine. It is a type of weapon designed for attack, defense, sound signals, which is set in motion by the energy of combustion of powder gas.

Scientific analysis of the positions of criminologists and other specialists in the field of weapons studies allows to identify a number of essential



features of weapons, namely: - weapons are the object of the material world in the form of monolithic objects, structures, devices, materials, substances, chemicals, biological beings ; - weapons are created only as a result of purposeful human activity; - the basic purpose of the weapon - causing damage to fatal people or animals. Destructive impact on flora, fauna, inanimate objects (natural and artificial) is an optional feature of weapons; - an object used as a weapon must not only be specially designed (constructed) and manufactured, but also suitable for its purpose (Bogatyrev, 2011).

In view of the above, a thorough analysis is needed to determine whether the components of ammunition and additional equipment for weapons belong to the subjects of individual crimes. Bill N<sup>o</sup> 4335 stipulates that ammunition components are separate components of ammunition for firearms (gunpowder, metal elements (shells, bullets), metal charges, capsules, shell casings, warts, gaskets, containers, etc.) (On the circulation of civilian firearms and ammunition for it: Draft Law of Ukraine N<sup>o</sup> 4335, 2020).

Weapon accessories are devices specially designed or adapted for mounting on a weapon, which serve to improve its appearance, ergonomics (user properties), comfort in use, adaptation to the anatomical features of the owner, devices (permanent or temporary) to perform appropriate tasks (self-defense, hunting or sports, etc.). Additional equipment includes recoil reduction devices, flame arresters, additional sighting and targeting means, optical sights, optical-electronic sighting devices, night vision sights and lighting devices (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine N<sup>o</sup> 4335, 2020).

M. Maistrenko offers the following classification of firearms: a) according to tactical and technical data: firearms: rifled, smoothbore, combined; short-barreled, medium-barreled, long-barreled; cold: bladed, non-bladed, combined, chopping, prickly, prickly-chopping, prickly-cutting, shock-crushing; gas; pneumatic; b) by purpose: military; full-time; civil: hunting, sports, self-defense; museum, antique (historical); c) by method of manufacture: industrial; artisanal; unauthorized (Maistrenko, 2010: 33).

At the same time, in many corpus delicti provided for in the Criminal Code of Ukraine, there are no exceptions to the nature of firearms. That is, the legislator actually equates smooth-bore hunting weapons to other types of firearms: in the criminal law sense, smooth-bore hunting and rifled weapons are equivalent (Sokolovsky, 2017).

Some bills do not provide an unambiguous answer to the question of classifying / not classifying smooth-bore hunting weapons as other weapons. In particular, in the bill N<sup>o</sup> 4335 Art. 5 to category D refers "long-barreled smooth-bore firearms" (On the circulation of civilian firearms and

ammunition to it: Draft Law of Ukraine № 4335). At the same time from the text of the proposed changes to Art. 263 of the Criminal Code of Ukraine (in the comparative table) of the draft law № 4336 it follows that by category D firearms the legislator means “civilian firearms” (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4336, 2020).

This inconsistency and arbitrary use of such key terms does not stand up to criticism, and confuses the understanding of the essence of the changes proposed in the bills.

Analyzing criminal proceedings on the use of firearms, ammunition, explosives or explosive devices made it possible to identify the most common items of the following criminal offenses: firearms (submachine guns: Kalashnikov - all models, submachine gun submachine gun system Shpagin, Scorpion pistol, Uzi, Saiga carbine, etc.; anti-tank grenade launchers; Makarov, Tokarev, Astra, Beretta, Browning, Colt, Glock, Grand Power and other, revolvers: “Nagan”, “Smith & Wesson”; rifles: hunting, “Mosina”, DSR, etc.); ammunition (ammunition, artillery shells); explosives (hexamethylene triperoxide diamine, plastid, gunpowder, grenades); explosive devices (grenades, mines, fuses, detonators, detonating caps).

In order to prevent a free interpretation of the assessment of the actions of a person involved in the commission of crimes involving weapons, we consider it appropriate to legislate relations arising from the circulation in Ukraine of civilian firearms, ammunition, and structurally similar to weapons and ammunition products.

## **Conclusions**

The above allows us to summarize:

1. The subject of crimes committed with the use of firearms, ammunition, explosive devices and substances is of fundamental importance in their forensic characterization, as it affects other elements.
2. Firearms are objects of property subject to a special regime of regulation, which may be exercised exclusively by the Law of Ukraine. It is a type of weapon designed for attack, defense, sound signals, which is set in motion by the energy of combustion of powder gas.
3. The most correct definition of firearms as any portable firearm designed to hit targets with projectiles that receive directional movement in the barrel (using the pressure force of gases formed by combustion of metallic charge) and have sufficient kinetic energy

to hit a target within a certain distance, except for old unloaded firearms, which were manufactured up to and including 1899 and are not intended for firing cartridges with metal cartridges of central combat and ring ignition.

4. Ammunition and explosives are related as part and all, because explosives are an integral part of ammunition, from which you can always get explosives. Characteristic features of explosive devices are determined: single use, due to the design features of the product; the ability to cause severe effects by releasing, dispersing or exposing toxic chemicals, biological agents, toxins, radiation, radioactive material and other similar substances.
5. For the purpose of legislative regulation of relations arising during the circulation in Ukraine of civilian firearms, ammunition and ammunition, as well as constructively similar to weapons and ammunition products, in particular to prevent a free interpretation of the assessment of the person involved in crimes, the means of committing which are weapons.

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