



UDC 343.9:351.753(477)

DOI: <https://doi.org/10.32631/pb.2024.2.07>

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**FIREARMS CONTROL AS AN ELEMENT OF CRIMINOLOGICAL SECURITY  
IN THE CONCEPT OF TRANSITIONAL JUSTICE FOR UKRAINE<sup>1</sup>**

The article is devoted to the development of a criminological model of firearms trafficking control in the context of transitional justice for Ukraine.

It is established that illicit firearms trafficking lays down long-term trends of deterioration of the criminogenic situation, including in the post-war period, and in the future threatens to strengthen the functionality of organised criminal groups and a surge in violent criminal activity. The article proposes a criminological model for establishing control over firearms circulation which provides for: 1) preservation of the existing legal regime of firearms circulation for civilians until the end of the armed conflict and the legal regime of martial law; after the lifting of martial law, a balanced legalisation of civilian (short-barreled) weapons with strict control, verification and constant monitoring is required; 2) for military personnel (including those discharged from service): a) a special type of exemption from criminal liability under Articles 263 and 410 (regarding misappropriation of firearms, ammunition, explosives or other munitions) of the Criminal Code of Ukraine, subject to presentation for inspection, registration and issuance of a permit (*de lege ferenda*); b) obtaining a permit (*de lege ferenda*) for storage of firearms (in the amount of no more than one unit per person) and ammunition (in the amount of no more than 60 pieces); 3) criminal liability for violation of the conditions of the permit to keep and carry firearms.

It is concluded that the enhancement of criminal liability for the illegal acquisition, transfer or sale of firearms, ammunition, explosives or explosive devices under martial law or a state of emergency is an example of excessive criminalisation of socially dangerous acts. Law enforcement agencies, by complying with the requirements on the general principles of sentencing (Article 65, paragraph 11, part 1, Article 67 of the Criminal Code of Ukraine), have sufficiently effective tools to assess and take into account the degree of social danger of various manifestations of illegal handling of weapons.

The proposal is to supplement the disposition of Part 1 of Art. 263 of the Criminal Code of Ukraine with an indication of such an object of a criminal offence as a constructive part of a firearm, setting it out in the following wording: "Carrying, storing, purchasing, transferring or selling firearms or their constructive parts (except for smooth-bore hunting rifles and their constructive parts), ammunition, explosives or explosive devices without a permit provided for by law – ...".

**Key words:** *war, armed conflict, firearms, criminogenic risk, criminological security, criminal liability, transitional justice.*

*Original article*

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<sup>1</sup> The article was prepared within the framework of the project 'Protection of Human Rights in the Concept of Transitional Justice: Ukrainian Model' (reg. no. 2022.01/0204), implemented with the support of the National Research Foundation of Ukraine.

**INTRODUCTION.** Increased trafficking in firearms, ammunition, explosives and devices is an inevitable consequence of any armed conflict, especially one as large as the current Russian-Ukrainian war. The unprovoked aggression of the Russian Federation against Ukraine has naturally led to the involvement of a significant number of people in the hostilities. The attempts to organise an effective national resistance, especially at the beginning of a large-scale invasion, in the context of the need to take urgent measures to arm territorial defence units, often took place in disregard of the formal requirements of the registration procedure. But for the sake of fairness, it should be acknowledged that the situation demanded such actions. Delaying the arming of the direct subjects of the armed aggression was too risky, threatening a faster pace and greater scope for the occupation of Ukraine's territory. This had to be avoided. However, the expected consequence of this practice was further replenishment of the shadow sector of firearms trafficking.

However, not even this circumstance, but the subsequent development after the first weeks of the full-scale invasion on 24 February 2022 the expansion of the combat theatre, Ukraine's mobilisation activities, an increase in the number of military personnel involved in combat missions and legal possession of firearms, ammunition and explosives, have become the factors that have led to a tendency to replenish the volume of illegal trafficking in these items through the outflow from the combat zone, correlated with rotation processes. It should now be acknowledged that military personnel have become the main source of replenishment of illegal weapons in the hands of the population. Symbiotic forms of reproduction of general criminal organised and military crime are partly recorded. Ordinary criminals are interested in obtaining military weapons. This trend should be stopped. A strategy for establishing control over arms trafficking as an element of transitional justice for Ukraine should be urgently developed.

The problem of illegal trafficking in firearms, ammunition, explosive devices, including under martial law and in the post-war and post-conflict period, was addressed in separate scientific articles by V. S. Batyrgareieva, V. V. Holubosh, R. Jamieson, I. P. Katerynchuk, E. A. Kobruseva, V. O. Merkulova, D. O. Kolodin, O. M. Lytvynov, J. Lee, O. S. Soklov, V. V. Sokurenko, P. L. Fries, S. Huntington, and others. At the same time, the conceptual approach that could form the basis of an appropriate criminological strategy to control illegal arms trafficking, prevent related crimes committed with their use, and ensure security as an integral element of transitional justice remains unresolved and debatable.

**PURPOSE AND OBJECTIVES OF THE RESEARCH.** *The purpose* of the article is to define the basic characteristics of the criminological model for preventing illicit firearms trafficking and crimes committed with their use through a combination of control, incentive and jurisdictional (repressive) measures. *The objectives of the study are:* 1) to describe the state and some peculiarities of the dynamics of illegal firearms trafficking and crimes committed with its use; 2) to empirically substantiate the demand for establishing control over illegal firearms trafficking and its specific model; 3) to determine the validity of certain legislative initiatives in the field of criminal liability for illegal firearms trafficking.

**METHODOLOGY.** The philosophical level of the methodology for researching criminological security in terms of controlled firearms trafficking is based on the principles and laws of dialectical determinism: universal connection, historicism, systematicity, dialectical contradiction, balance. Their application, supplemented by general scientific methods (analysis, synthesis, induction, comparison, modelling, etc.), made it possible to structure the criminogenic risks associated with illegal arms trafficking, to propose an information criminological model of appropriate control. The use of such scientific methods as statistical analysis (official statistical reporting), content analysis (112 media reports), surveys (1,723 citizens, 7,209 police officers, 105 members of the Armed Forces of Ukraine), expert assessments (27 experts from among criminal lawyers and criminologists) allowed us to present a system of arguments in favour of a specific criminological model for establishing control over firearms trafficking.

**RESULTS AND DISCUSSION.** Countering illicit arms trafficking is traditionally an important element of war criminology (Sokurenko, 2023; Lea, 2020). It is usually associated with the issues of adaptation of military personnel to the conditions of peaceful life. And this problem is a classic one (in the academic sense), described in scientific works after the Second World War (Huntington, 1957). It has not lost its acuteness in the later period, in particular in the 1990s in Europe and in the twenty-first century (Jamieson, 1998) against the background of armed conflicts and migration (Jamieson, 2014).

Based on the official statistical reporting of the Prosecutor General's Office on the number of criminal offences committed (Statistical Reporting Form No. 1), it is safe to say that the war has largely contributed to the increase in the level of illegal handling of weapons (Articles 263, 410 of the Criminal Code of Ukraine, hereinafter – the CCU), as well as crimes related to their use (Articles 115, 121, 187 of the CCU) (see Figure 1).

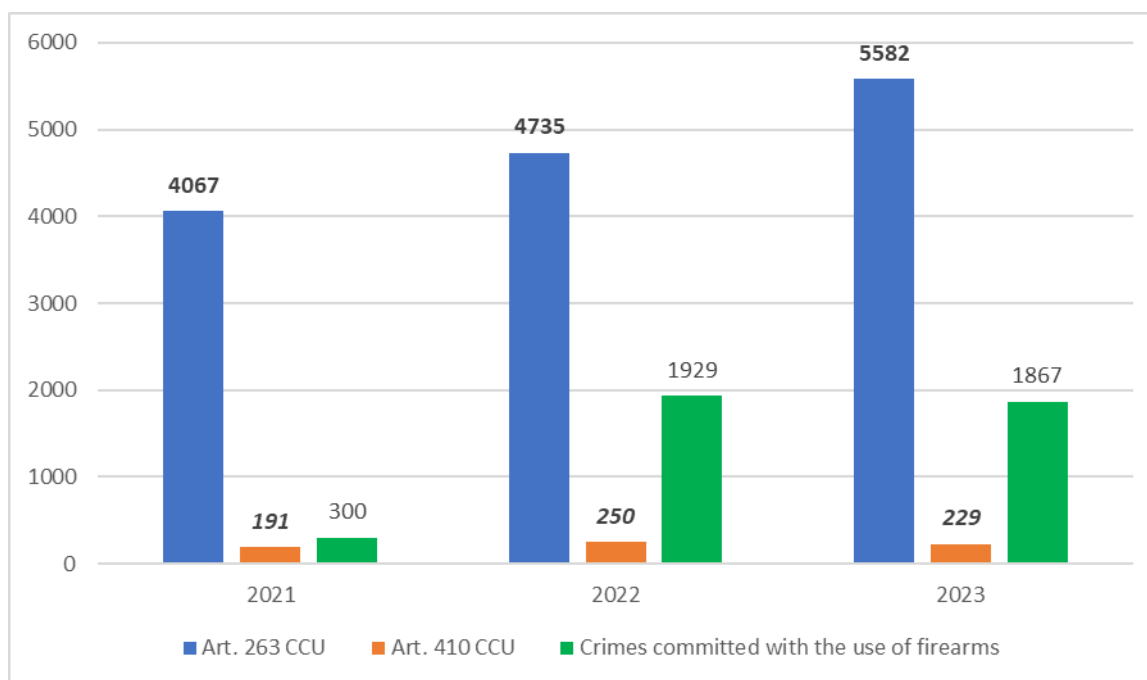


Figure 1. Graphical representation of the level and dynamics of crimes related to illegal firearms trafficking in 2021–2023

Figure 1 shows that there is a significant increase in crimes under Article 263 of the Criminal Code of Ukraine. While in 2021 there were 4,067 registered, in 2022 there were 4,736 (an increase of 1.164 times), and in 2023 there were 5,582 (an increase of 1.373 times in comparison to the base year of 2021). Even more intense is the increase under Art. 410 of the Criminal Code of Ukraine – a special military criminal offence related to the theft, misappropriation, extortion by a serviceman of weapons, ammunition, explosives or other munitions, vehicles, military and special equipment or other military property, as well as their acquisition by fraud or abuse of office<sup>1</sup>. Although the subject matter of this criminal offence is not only firearms, ammunition, explosives, but also other categories of property, the analysis of investigative and judicial practice shows an absolute predominance (78.2 %) of these items restricted for civilian use in the structure of these crimes.

According to the National Police, “5,168 firearms were seized from illicit trafficking: 1,567 assault rifles, 997 pistols and revolvers, 921 grenade launchers, 1,683 units of converted weapons, etc. The police also seized: 17,815 grenades, 16,798 mines, fuses, explosive devices, more than 1,800,000 rounds of ammunition and

2,935 kg of explosives<sup>2</sup>”; “police documented 695 facts of arms sales. They found 117 caches, which is more than 7,000 units of various types of weapons. The two largest caches were dismantled in Kyiv and Cherkasy region. It was established that a resident of Cherkasy region planned to sell the weapons to criminals. Anti-tank guns, rocket launchers, grenade launchers and many other items were seized from the offender<sup>3</sup>”; “thanks to the checkpoints, more than 1,000 facts of illegal weapons transportation were documented. 422 firearms were seized, including 234 automatic weapons, 61 pistols and revolvers, 79 grenade launchers, as well as 2,815 grenades and 1,065 mines, fuses and other explosive devices<sup>4</sup>”.

The situation with crimes committed with firearms is also alarming. Their increase is approximately sixfold: from 300 crimes in 2021 to 1,867 in 2023. Among them, premeditated murders predominate (36 in 2021, 247 in 2022, and 909 in 2023), grievous bodily harm (1 in 2021, 18 in 2022, and 14 in 2023), and robberies (1 in 2021,

<sup>1</sup> Verkhovna Rada of Ukraine. (2001). *The Criminal Code of Ukraine* (Law No. 2341-III). <https://zakon.rada.gov.ua/laws/show/2341-14>.

<sup>2</sup> National Police of Ukraine. (2024, January 15). *National Police seized over five thousand firearms and 1.8 million rounds of ammunition – results of work for the year*. <https://www.npu.gov.ua/news/natspolitsiia-vyluchyla-ponad-5-tysiach-odynits-vohnepalnoi-zbroi-ta-18-mln-boieprypasiv-i-naboiv-rezultaty-roboty-za-rik>.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

32 in 2022, and 23 in 2023). A strong correlation between the dynamics of reproduction of criminal offences under Articles 263 and 410 of the Criminal Code of Ukraine, on the one hand, and ordinary violent crimes under Articles 115, 121 and 187 of the Criminal Code of Ukraine, on the other hand, gives grounds to assert that the establishment of effective, criminologically sound control over firearms trafficking will have a comprehensive preventive effect.

In this regard, it is quite natural that initiatives related to the so-called legalisation of firearms circulation come into the focus of criminologists' attention. Among other things, as rightly noted by D. B. Sanakoiev (2023), discussions continue on the possibility of civilians being granted the right to freely possess firearms to protect their own lives in a full-scale war.

It is known that the circulation of civilian weapons (firearms, short-barreled weapons) is quite common in the world (Didenko, 2018; Korniiets, 2011); the relevant legislation is developed; foreign experience (Kobrusieva, 2022) is certainly worth studying and, possibly, implementing. At the same time, for modern Ukraine, the issue of controlling the circulation of firearms is somewhat different: how to ensure the controlled circulation of military weapons, ammunition, and explosive devices, the volume of the illegal segment of which has increased dozens or even hundreds of times since the start of full-scale aggression against Ukraine. So, on the one hand, we are not dealing with an ordinary situation when the population seeks to protect themselves from violent attacks (including robberies). The priority is to work with:

a) current and/or former military personnel of the Armed Forces of Ukraine, the National Guard of Ukraine, the State Border Guard Service of Ukraine, police officers (combatants) who illegally (as a result of theft, misappropriation) possess firearms, ammunition, explosives and devices of military type (mainly automatic weapons, grenades and grenade launchers, mines);

b) organisers and members of organised criminal groups (organised groups, criminal organisations, including gangs) who improve their armaments by illegally supplying (selling) weapons from the army through individual servicemen and their groups. The operative units of the Security Service of Ukraine, the State Bureau of Investigation and the National Police regularly identify and block the relevant supply channels.

On the other hand, in the context of the availability of significant volumes of criminal weapons, it is quite understandable that civilians request the

legalisation of the circulation of short-barreled weapons for self-defence. We believe that these two trends will become decisive in the post-conflict, transitional period for the basic configurations of violent crime. The security of citizens will largely depend on how these contradictions are resolved. Therefore, relevant criminological models should be incorporated into the concept of transitional justice.

For a more detailed understanding of the parameters of social demand for the legalisation of the wide circulation of firearms, as well as the relevant expert assessments, we propose to draw attention to the results of a survey of several categories of respondents (internally displaced persons, military personnel, police officers and the public, experts) conducted in October-November 2023 (using network analytical resources) within the framework of the project 'Protection of Human Rights in the Concept of Transitional Justice: Ukrainian Model' (registration No. 2022.01/0204). Thus, contrary to popular belief, the public (1,723 respondents) has a negative attitude to the idea of broad legalisation of firearms circulation (see Figure 2).

Thus, the majority of citizens (63.8 per cent) are still against the mass legalisation of weapons. Only the idea of limited legalisation is accepted: a) of short-barreled weapons (25.7 %); b) subject to thorough checks and further control (1.2 %); c) unconditional support, including legalisation of the circulation of automatic weapons, but only for combatants (8.2 %); d) only for law enforcement officers (1.1 %).

Police officers (7,209 respondents) demonstrated a substantially identical, but more pronouncedly negative attitude to the idea of legalising civilian firearms circulation (see Figure 3).

Overall, about 72 per cent of police officers are unequivocally against the legalisation of civilian arms circulation during the war. Only 0.2 per cent of respondents admit the possibility of such legalisation after martial law is lifted. At the same time, it is also symptomatic that approximately one in five police officers admits the possibility and expediency of such legalisation, however, only for short-barreled weapons. At the same time, 8 per cent of respondents support the mass legalisation of weapons, including automatic weapons, for combatants. Thus, in total, 28 %, in fact, every fourth police officer, supports legalisation in one format or another.

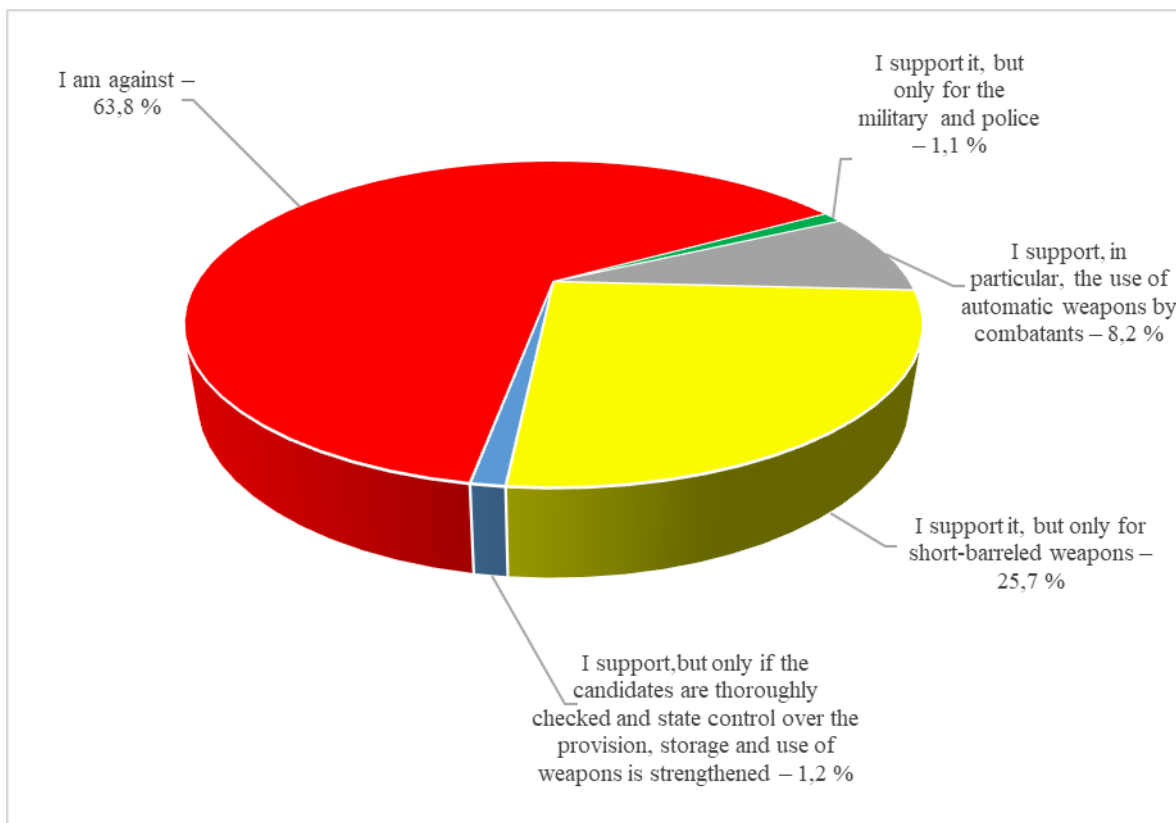


Figure 2. Citizens' attitudes towards legalisation of firearms circulation

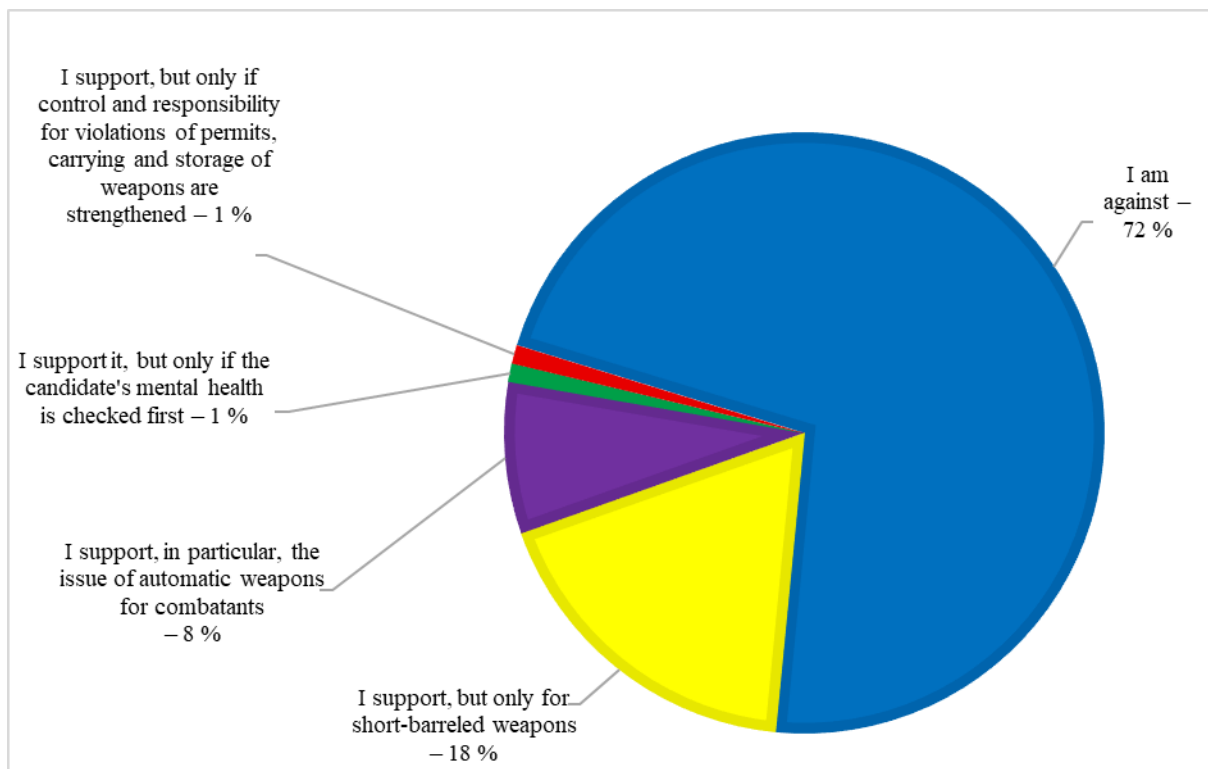


Figure 3. Police officers' attitudes to the idea of legalising civilian firearms circulation

A completely opposite situation was recorded in the survey of military personnel of the Armed Forces of Ukraine, the vast majority of whom were combatants (83.3 %) and held officer ranks (66.7 %). However, the question for this

category of respondents (105 people) was somewhat different from the previous ones and concerned their desire to keep automatic firearms for permanent storage after leaving the Armed Forces of Ukraine (see Fig. 4).

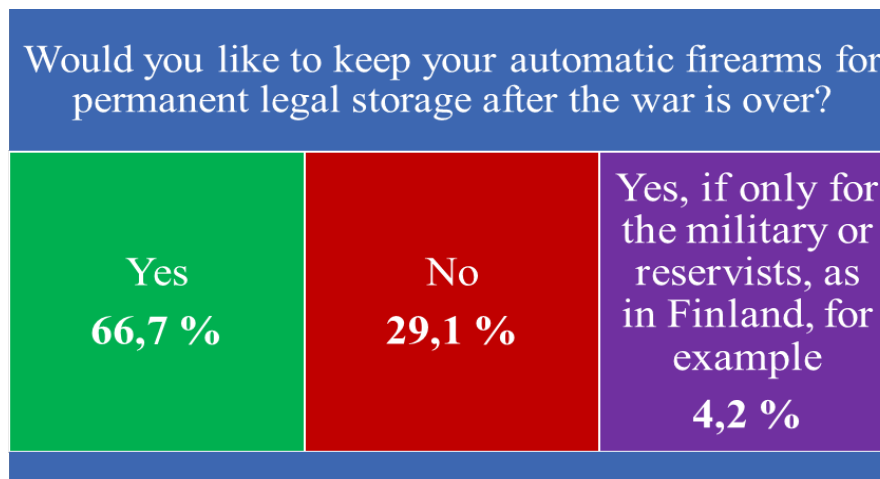


Figure 4. Attitude of servicemen to the idea of leaving automatic firearms in permanent storage after the war

Therefore, the majority, almost 71 per cent, want to keep their weapons after the conflict ends. In this context, it is also worthy of special attention that, according to the data we received during the survey, more than half (54.2 %) consider it appropriate to transfer power in Ukraine in the post-war period to the military. It should also be noted that the majority of respondents were officers.

However, this aspect of transitional justice deserves a larger separate study in the context of the criminogenic risks of the transitional period. Here, we would like to emphasise that there is a certain imbalance between the aspirations of the military, on the one hand, and civilians and police officers, on the other. This contradiction is a direct consequence of the criminogenic effect of the war and, according to criminal statistics, is already being recorded. Indeed, the military want to possess weapons and do not intend to voluntarily give them up even after the end of the armed conflict.

Resolving this situation in an imperative way, i.e. through an absolute ban on the possession of automatic and civilian short-barreled firearms after the end of martial law and legislative prescriptions for the unconditional surrender of existing models in circulation, does not seem appropriate, will be ineffective and will be ignored primarily by the majority of military personnel who have weapons, especially trophy weapons, obtained in combat. In this regard, we consider it possible to propose the following criminological

model for establishing control over the circulation of firearms and ammunition:

1) development and adoption of the basic law of Ukraine on firearms circulation. As P. L. Fris (2015) reasonably notes, for those countries that have legalised the wide circulation of civilian weapons, it is typical that legalisation is preceded by status and legal regulation of weapons. Consequently, first, a law is needed that would answer the question of how and what to protect with such weapons;

2) until the end of the armed conflict and the legal regime of martial law, the existing legal regime of firearms circulation for civilians shall remain in force, including the possibility of possessing them on the grounds specified by the Law of Ukraine 'On Ensuring the Participation of Civilians in the Defence of Ukraine' of 3 March 2022 No. 2114-IX<sup>1</sup>. After the cancellation of martial law, a balanced legalisation of civilian (short-barreled) weapons with strict control, verification and constant monitoring. This position is also supported by the expert opinions we have received from forensic and criminological experts. The idea of legalising the circulation of civilian firearms is supported by 71.4 per cent of experts

Today, in accordance with the provisions of the current regulatory documents, Ukrainian citizens

<sup>1</sup> Verkhovna Rada of Ukraine. (2022). *On ensuring the participation of civilians in the defence of Ukraine* (Law No. 2114-IX). <https://zakon.rada.gov.ua/laws/show/2114-20>.

may own the following categories of small arms: long-barreled smooth-bore hunting weapons; long-barreled rifled hunting weapons; rifled and smooth-bore sporting weapons (including short-barreled), which may be stored only within shooting ranges and shooting ranges without the right to store them at the place of residence. In addition, certain categories of citizens may be allowed to possess short-barreled smooth-bore self-defence weapons (devices for firing rubber or similar projectiles) and award-winning short-barreled rifled weapons (Sokolov, 2019);

3) for servicemen who illegally possess (keep, carry) firearms, provide for a) a special type of exemption from criminal liability under Articles 263 and 410 of the Criminal Code of Ukraine (in terms of misappropriation of firearms, ammunition, explosives or other munitions), subject to presentation for inspection, registration and issuance of a permit (*de lege ferenda*) and mandatory checks for the use of weapons for committing crimes, including military ones; b) obtaining a permit (*de lege ferenda*) for possession of firearms (in the amount of no more than 1 per person) and ammunition (in the amount of no more than 60 pieces); possession is allowed in a discreet manner. ); it is allowed to carry them in an unloaded state, with the magazine disconnected to change the place of storage, unless otherwise provided by law;

4) criminal liability should be introduced for violation of the conditions of the permit to keep and carry firearms.

The main goal of this model is to satisfy the request of the military to keep the weapons and to register and control the existing units of the relevant weapons. We believe that such a mechanism has the potential to be implemented with the assistance of the military leadership, appropriate broad explanatory and preventive work, and appropriate changes in legislation.

At the same time, we note that the scientific literature generally expresses a well-founded opinion that 'the lack of effective legal regulation of arms trafficking in Ukraine creates favourable conditions for the proliferation of illegal firearms, which is a potential threat to our country and may also negatively affect international cooperation with European countries. Accordingly, the development and implementation of draft laws aimed at legal regulation of arms trafficking is one of the top priorities of the Ukrainian legislature (Kolodin, 2023). Moreover, legal regulation of arms trafficking is an important element of criminal law policy and crime policy in general (Orlov, 2023; Pysmensky, 2024). Therefore, it is not surprising that ideas and specific draft laws on strengthening criminal liability

for illegal arms trafficking regularly appear (Katerynychuk, Merkulova, 2017).

In this regard, it would be useful to make a few comments on the Draft Law of Ukraine on Amendments to Article 263 of the Criminal Code of Ukraine on Strengthening Liability for the Illegal Acquisition, Transfer or Sale of Firearms, Ammunition, Explosives or Explosive Devices in the Conditions of Martial Law or a State of Emergency (Reg. No. 10041) dated 13 September 2023 (hereinafter – Draft Law No. 10041)<sup>1</sup>.

It is declared that Draft Law No. 10041 is aimed at preventing offences in the form of illegal acquisition, transfer or sale of firearms, ammunition, explosives or explosive devices in the context of martial law or a state of emergency, promoting the use of firearms, ammunition, explosives or explosive devices exclusively within the legal framework, establishing law and order in Ukraine, to prevent the commission of offences and damage to public interests with the use of illicitly trafficked weapons during martial law or a state of emergency, it is envisaged to amend Article 263 of the Criminal Code of Ukraine<sup>2</sup>. However, several significant circumstances stand in the way of achieving the goals of Draft Law No. 10041.

First, it proposes to strengthen criminal liability for the *illegal acquisition, transfer or sale of firearms, ammunition, explosives or explosive devices in a state of martial law or emergency* by introducing a new part two of Article 263 of the Criminal Code of Ukraine that threatens to impose a sentence of imprisonment for a term of seven to twelve years and a fine of twenty thousand to fifty thousand tax-free minimum incomes<sup>3</sup>.

<sup>1</sup> Verkhovna Rada of Ukraine. (2023). *Draft Law on Amendments to Article 263 of the Criminal Code of Ukraine on Strengthening Liability for Illegal Acquisition, Transfer or Sale of Firearms, Ammunition, Explosives or Explosive Devices in the Conditions of Martial Law or State of Emergency* (No. 10041). <https://itd.rada.gov.ua/billInfo/Bills/Card/42776>.

<sup>2</sup> Verkhovna Rada of Ukraine. (2023). *Explanatory Note to the Draft Law of Ukraine 'On Amendments to Article 263 of the Criminal Code of Ukraine on Strengthening Liability for Illegal Acquisition, Transfer or Sale of Firearms, Ammunition, Explosives or Explosive Devices in the Conditions of Martial Law or State of Emergency'* (No. 10041). <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1982616>.

<sup>3</sup> Verkhovna Rada of Ukraine. (2023). *Draft Law on Amendments to Article 263 of the Criminal Code of Ukraine on Strengthening Liability for Illegal Acquisition, Transfer or Sale of Firearms, Ammunition, Explosives or Explosive Devices in the Conditions of Martial Law or State of Emergency* (No. 10041). <https://itd.rada.gov.ua/billInfo/Bills/Card/42776>.

The explanatory note to the Draft Law No. 10041 states that this is primarily due to the fact that there are currently problems with the actual prosecution of persons guilty of the acts under part 1 of Article 263 of the Criminal Code of Ukraine, but unfortunately, it does not specify what problems exist with the actual prosecution of such persons.

If the solution to the real problems of bringing to justice those guilty of the acts envisaged by the current part 1 of Article 263 of the Criminal Code of Ukraine relies only on strengthening the punitive impact by including in the sanction of the proposed Draft Law No. 10041 part 2 of Article 263 of the Criminal Code of Ukraine the threat of imprisonment for a term of seven to twelve years, it is appropriate to note that an important component of systemic actions to counter any type of criminal offence under the Special Part of the Criminal Code of Ukraine is the comprehensive implementation of general social and special criminological measures to counteract various manifestations of deviant practices developed by criminological science. The mere increase in criminal liability for any type of unlawful offence, including those related to the illegal acquisition, transfer or sale of firearms, ammunition, explosives or explosive devices, cannot effectively counteract such an extremely important and complex matter as combating various manifestations of criminal practices. The modern doctrine of criminal law and criminological science have proven that an increase (including a significant one) in the severity of the inevitable criminal repression has never stopped potential lawbreakers from committing specific unlawful acts. We are aware that any prohibitory criminal law provision of the Special Part of the Criminal Code of Ukraine, as normatively defined in the criminal law, to a certain extent provides a preventive effect on violators of the criminal law. However, it is possible that the normative certainty of the new version of Part 2 of Article 263 of the CC of Ukraine based only on the criterion of committing certain acts in martial law or a state of emergency will become an example of excessive criminalisation of socially dangerous acts. It is worth noting that law enforcement agencies, due to compliance with the requirements for the general principles of sentencing (Article 65, paragraph 11, part 1, Article 67 of the CC of Ukraine), already have many tools to assess and take into account the degree of public danger of various manifestations of illegal handling of weapons.

It is also worth noting that Draft Law No. 10041 proposes to increase criminal liability only for the purchase, transfer or sale of firearms

(except for smoothbore hunting weapons), ammunition, explosives or explosive devices without a permit provided for by law. Instead, the possession and storage of firearms, ammunition, explosives and explosive devices committed under martial law or a state of emergency will be subject to legal assessment and individualisation of criminal liability under Part 1 of Article 263 of the Criminal Code of Ukraine, using the already mentioned existing tools for appropriate criminal legal response.

Secondly, one cannot but pay attention to the proposal to include in the sanction of the new version of Part 2 of Article 263 of the Criminal Code of Ukraine the application of an additional mandatory punishment in the form of a fine of twenty thousand to fifty thousand tax-free minimum incomes. The imposition of a fine is a fairly efficient and effective way for the state to respond to violations of criminal law prohibitions. At the same time, there are certain doubts as to the possibility of its actual enforcement if imposed in the proposed amounts simultaneously with imprisonment for illegal handling of weapons, ammunition or explosives.

Thirdly, according to the current version of part 3 of Article 263 of the Criminal Code of Ukraine, as well as according to part 4 of Article 263 of the Criminal Code of Ukraine proposed by Draft Law No. 10041, the actions of a person who voluntarily surrendered weapons, ammunition, explosives or explosive devices to the authorities do not contain the elements of a completed criminal offence under parts 1, 2 and 3 of Article 263 of the Criminal Code of Ukraine, although it was present before. This is contrary to part 1 of Article 2 of the Criminal Code of Ukraine, according to which the commission by a person of a socially dangerous act containing the elements of a criminal offence under this Code is the basis for criminal liability, part 3 of Article 3 of the Criminal Code of Ukraine, according to which the criminal unlawfulness of an act is determined only by this Code, as well as part 3 of Article 4 of the Criminal Code of Ukraine, according to which the time of commission of a criminal offence is the time when a person commits an act or omission provided for by the law on criminal liability. The fact that a person voluntarily surrenders weapons, ammunition, explosives or explosive devices to the authorities is nothing more than one of the special types of effective remorse referred to in Article 45 of the Criminal Code of Ukraine, in connection with which a person is released from criminal liability, but not in respect of which criminal liability is excluded.



Fourthly, the proposed amendments to Article 263 of the Criminal Code of Ukraine do not take into account the real need to improve criminal law means of combating illegal firearms trafficking, especially in martial law, due to the cases of manipulation with technical components of firearms that have become more frequent in recent years. It is a method of evading criminal liability and complicating the possibility of proving a person's guilt in committing a criminal offence under Part 1 of Article 263 of the Criminal Code of Ukraine by disconnecting parts of firearms and transporting them in separate batches, for example, one person transports a batch of assault rifles without bolts, while another person transports a batch of bolts by another route and at another time. It is known that the subject of the criminal offence under Part 1 of Article 263 of the Criminal Code of Ukraine is a firearm suitable for shooting. The absence of structural elements that make it impossible to fire a shot does not allow to recognise the respective firearm as the subject of a criminal offence under Part 1 of Article 263 of the Criminal Code of Ukraine. And this state of affairs, given the scale and types of firearms, including automatic weapons, that are in illicit circulation in the context of the ongoing armed conflict, cannot be considered satisfactory. There is a need to amend and supplement the disposition of Part 1 of Article 263 of the Criminal Code of Ukraine to expand the list of objects of a criminal offence by adding the phrase 'constructive parts of firearms'.

**CONCLUSIONS.** The current state of crime related to illegal firearms trafficking lays the foundation for long-term trends of deterioration in the crime situation, including in the post-war period, which in the future threatens to strengthen the functionality of organised criminal groups and a surge in violent criminal activity. A significant proportion of illegal arms trafficking is accounted for by members of the Armed Forces of Ukraine. At the same time, there is an empirical demand for the legalisation of both civilian and military weapons.

The criminological model of establishing control over firearms circulation is proposed, which provides for: 1) preservation of the existing legal regime of firearms circulation for civilians until the end of the armed conflict and the legal regime

of martial law; after the lifting of martial law - balanced legalisation of civilian (short-barreled) weapons with strict control, verification and constant monitoring; 2) for military personnel (including those discharged from service) a) a special type of exemption from criminal liability under Articles 263 and 410 of the Criminal Code of Ukraine (in terms of misappropriation of firearms, ammunition, explosives or other munitions), subject to presentation for inspection, registration and issuance of a permit (*de lege ferenda*); b) obtaining a permit (*de lege ferenda*) for the storage of firearms (in the amount of no more than 1 unit per person) and ammunition (in the amount of no more than 60 pieces).); 3) criminal liability for violation of the terms of the permit to keep and carry firearms.

Increased criminal liability for the illegal acquisition, transfer or sale of firearms, ammunition, explosives or explosive devices in martial law or a state of emergency is an example of excessive criminalisation of socially dangerous acts. Law enforcement agencies, by complying with the requirements of the general principles of sentencing (Article 65, paragraph 11, part 1, Article 67 of the Criminal Code of Ukraine), have many effective tools to assess and take into account the degree of public danger of various manifestations of illegal handling of weapons. According to the proposed Draft Law No. 10041, part 4 of Article 263 of the Criminal Code of Ukraine, the fact of voluntary surrender of weapons, ammunition, explosives or explosive devices to the authorities is nothing more than one of the special types of effective remorse referred to in Article 45 of the Criminal Code of Ukraine and in connection with which a person should be released from criminal liability, and not in respect of which criminal liability should be excluded.

The disposition of Part 1 of Art. 263 of the Criminal Code of Ukraine should be supplemented with an indication of such an object of a criminal offence as "constructive part of a firearm", setting it out in the following wording: "1. Carrying, storing, purchasing, transferring or selling firearms or their constructive parts (except for smoothbore hunting rifles and their constructive parts), ammunition, explosives or explosive devices without a permit provided for by law – ...".

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Received the editorial office: 17 March 2024

Accepted for publication: 19 June 2024

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## **КОНТРОЛЬ НАД ОБІГОМ ВОГНЕПАЛЬНОЇ ЗБРОЇ ЯК ЕЛЕМЕНТ КРИМІНОЛОГІЧНОЇ БЕЗПЕКИ В КОНЦЕПЦІЇ ПЕРЕХІДНОГО ПРАВОСУДДЯ ДЛЯ УКРАЇНИ**

Статтю присвячено розробці кримінологічної моделі контролю над обігом вогнепальної зброї в контексті перехідного правосуддя для України.

Встановлено, що незаконний обіг вогнепальної зброї закладає довготривалі тенденції погіршення криміногенної обстановки, зокрема в повоєнний період, у перспективі загрожують зміцненню функціоналу організованих злочинних угруповань, сплеском насильницької кримінальної активності. Запропоновано кримінологічну модель встановлення контролю за обігом вогнепальної зброї, яка передбачає: 1) збереження для цивільних осіб до завершення збройного конфлікту і правового режиму воєнного стану наявного правового режиму обігу вогнепальної зброї; після скасування воєнного стану потрібна виважена легалізація цивільної (короткоствольної) зброї із жорстким контролем, верифікацією та постійним моніторингом; 2) для військовослужбовців (зокрема, звільнених зі служби): а) спеціальний вид звільнення від кримінальної відповідальності за статтями 263 та 410 (в частині привласнення вогнепальної зброї, бойових припасів,

вибухових або інших бойових речовин) Кримінального кодексу України за умови пред'явлення для перевірки, реєстрації та видачі дозволу (*de lege ferenda*); б) отримання дозволу (*de lege ferenda*) на зберігання вогнепальної зброї (у кількості не більше однієї одиниці на особу) та боєприпасів (у кількості не більше 60 шт.); 3) за порушення умов дозволу зберігання й носіння вогнепальної зброї – кримінальна відповідальність.

Зроблено висновок, що посилення кримінальної відповідальності щодо незаконного придбання, передачі чи збуту вогнепальної зброї, бойових припасів, вибухових речовин або вибухових пристроїв в умовах воєнного або надзвичайного стану є прикладом надмірної криміналізації суспільно небезпечних діянь. У суб'єктів правозастосування через дотримання вимог щодо загальних засад призначення покарання (ст. 65, п. 11 ч. 1 ст. 67 Кримінального кодексу України) є належні ефективні інструменти для оцінки й урахування ступеня суспільної небезпечності різних проявів незаконного поводження зі зброєю.

Запропоновано диспозицію ч. 1 ст. 263 Кримінального кодексу України доповнити вказівкою на такий предмет кримінального правопорушення, як конструктивна частина вогнепальної зброї, виклавши її в такій редакції: «1. Носіння, зберігання, придбання, передача чи збут вогнепальної зброї або її конструктивних частин (крім гладкоствольної мисливської та конструктивних частин до неї), бойових припасів, вибухових речовин або вибухових пристроїв без передбаченого законом дозволу – ...».

**Ключові слова:** війна, збройний конфлікт, вогнепальна зброя, криміногенний ризик, кримінологічна безпека, кримінальна відповідальність, перехідне правосуддя.

**Цитування (ДСТУ 8302:2015):** Orlov Yu. V., Yashchenko A. M. Firearms control as an element of criminological security in the concept of transitional justice for Ukraine. *Law and Safety*. 2024. No. 2 (93). Pp. 76–86. DOI: <https://doi.org/10.32631/pb.2024.2.07>.

**Citation (APA):** Orlov, Yu. V., & Yashchenko, A. M. (2024). Firearms control as an element of criminological security in the concept of transitional justice for Ukraine. *Law and Safety*, 2(93), 76–86. <https://doi.org/10.32631/pb.2024.2.07>.