

Regulating Access to Firearms

Lukasz Butryn

PhD student, advocate trainee
Faculty of Law, Administration and International Relations
Andrzej Frycz Modrzewski Cracow University (AFMKU)
Gustawa Herlinga-Grudzińskiego 1, 30-705 Kraków, Poland
Phone: 0048663668516
Email: lukaszbutryn@hotmail.com

The subject of this article are the legal and criminal aspects of regulating access to firearms. This issue has become extremely important in recent years for sociality. Furthermore, the availability of firearms has been widely discussed in Poland.
Keywords: law, criminology, regulation, weapon, firearm.

Šaunamųjų ginklų prieinamumo reglamentavimas

Šio straipsnio tema yra šaunamųjų ginklų prieinamumo reglamentavimo teisiniai ir su nusikaltimais susiję aspektai. Šis klausimas pastaraisiais metais tapo ypač svarbus socialinis klausimas. Be to, Lenkijoje buvo plačiai diskutuojama apie šaunamųjų ginklų prieinamumą.

Pagrindiniai žodžiai: teisė, kriminologija, reglamentavimas, ginklas, šaunamasis ginklas.

Introduction

The primary aim of this paper is to provide a detailed analysis of the legal and criminal issues related to firearms possession in Poland with a view to verifying the following thesis: does the possession of firearms by the civil population actually contribute to overall public safety, or more precisely: is the right to own a firearm an effective means of self-defence, and do the social benefits resulting from a widespread ownership of firearms outweigh any social costs involved? (Wójcikiewicz, 1999, p 7).

In seeking to alleviate their heightened sense of insecurity, people often turn to firearms. However, the fact that the possession of firearms may pose a threat to public safety is not sufficiently taken into account. On the other hand, firearms have been unfairly demonized due to the fact that their increased availability is seen as the underlying cause of acts of violence (Bomanowski, 2009, p. 221). Guns are not only seen as a tool designed to facilitate the commission of a prohibited act, but also as a catalyst for aggressive behavior. This self-contradictory nature of firearms has significantly affected the formation of administrative and criminal laws in Poland and abroad.

The important question is how we actually define “safety,” is Poland a “safe” country, and why some people resort to using guns while others oppose the very notion of facilitated access to guns.

Furthermore, the psychological and social aspects of private ownership of guns should also be discussed.

Received: 05/05/2020. **Accepted:** 03/07/2020

Copyright © 2020 Lukasz Butryn. Published by Vilnius University Press

This is an Open Access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

1. Criminological Aspects of Owning a Firearm

1.1. Psychological Aspects of Owning a Firearm

In psychological terms, the underlying motivation for ownership of firearms is to ensure safety at personal and family levels. Furthermore, a would-be attacker would think twice before threatening a person who holds a gun. Similarly, a would-be burglar is likely to reconsider robbing the house in which a firearm is kept. It follows from the above that firearms – at least in the eyes of the public – are meant to provide a level of public safety the state authorities have failed to ensure (Turczyn, 2018).

Guns are often used to boost confidence and self-esteem. Of course, there is another side of the coin: the person who already suffers from low self-esteem or other psychological problems is likely to pose a serious threat to public safety if armed with a gun – for this reason all applicants for a permit to possess guns must undergo psychological evaluation (Adamczyk, 2016, p. 147–164).

At this point, it is worth referring to an experiment conducted in 1964 by Leonard Berkowitz on “the effect of firearms.” This experiment (which was repeated many times) showed that the mere presence of an object associated with aggressive behavior increases the level of aggression in the subject. Thus, the mere sight of a firearm may give rise to aggressive behavior and attitude, which then triggers a specific action (Efekt broni – czyli jak broń wpływa na agresję i zapamiętywanie, undated).

It is worth considering whether a sense of personal safety afforded by firearms does not in fact work like a double-edged sword – to the detriment of the gun owner. “It’s not the trigger that pulls the finger, but it’s actually the other way round” (Lipczyński, 2007, p. 42).

1.2. Social Aspects of Possessing Firearms

The social aspects of firearm possession are also worth discussing. Theoretically speaking, a widespread availability of firearms may pose a threat to public safety and order, which means that the social costs of this approach may outweigh any potential benefits that this would bring to society (Wójcikiewicz, 1998, p. 407).

At this point, it is worth referring to the findings of the research conducted by the Public Opinion Research Centre in 2001, in which a group of 1000 people were surveyed on access to firearms (Poczucie bezpieczeństwa obywateli i opinie o dostępie do broni palnej, 2001). When asked the question “Are you interested in guns?”:

- 36% responded in the affirmative,
- 64% of respondents said they were not interested in firearms.

When asked the question: “Do you like firearms?” the respondents gave the following answers:

- 16% responded in the affirmative,
- 46% responded in the negative,
- 38% said that they did not like firearms and were afraid of them.

Of 1000 surveyed, only 4 people had firearms, (0.8% of all respondents – men aged over 35 years), of which 21% said they would want to own a gun; 37% responded in the affirmative to the question “Do you know how to use firearms?”

A breakdown of the responses to the question “Do you think the public should have greater access to firearms?” is given below:

- 17% said that access should be extended,
- 46% stated that current laws are sufficient to regulate this issue and should not be amended,
- 21% said that access to guns should be limited,
- 16% stated that access to firearms should be strictly prohibited.

This shows that as many as 83% of respondents are against extending access to guns. The survey also reveals that 14% of respondents said they came into contact with or were aware of the people who illegally held firearms, but only slightly more than half of them found this situation to be morally unacceptable. This led to another question: “What would you do if you learned that your neighbor (acquaintance) owned an unregistered firearm?”, to which the following answers were given:

- 4% would notify the police without delay,
- 39% would notify the police, but only if the firearm was used in a morally reprehensible way (e.g. to intimidate),
- 14% said they would need time to think it through,
- 7% would pretend not to know anything about the illegally-owned firearm,
- 36% would not report this fact at all unless such an illegal possession would pose an imminent threat to their own safety.

These studies have provided specific evidence on how the public perceives the issue of legal and illegal firearm possession. This shows that Poles are not willing to abide by the rules on firearms: only 4% of respondents said they would report illegal possession to the police, despite being legally required to do so. Whereas as many as 75% of respondents would use their own judgement to determine the best course of action.

Prof. Jan Widacki shared his views on firearms in a commentary to the Act on firearms and ammunition. He said that the Act is based on four myths (Widacki, 2007, p. 73), which is true even today.

The first false notion is that in totalitarian states citizens’ access to firearms is restricted, whereas democratic countries allow citizens unlimited access to guns.

Another myth is that Polish society demands access to firearms to defend themselves against criminals, because they have lost confidence in the police. This does not, however, reflect the actual situation. The recent CBOS (Polish Public Opinion Research Centre) survey shows that 83% of Poles believe that possession of firearms should be restricted.

The third false notion is that an ordinary man (“John Smith”) – when armed with a gun – would be able to defend himself against the attacker. US studies on this topic have revealed that for every 200 deaths by firearm, 166 are suicides, 20 are murder victims, and the remaining few are killed as a result of careless handling of guns, with only one of them (the attacker) being shot down during assault. This proves that guns are seldom used in self-defence.

The last false notion is that criminals do not find it difficult to illegally obtain guns, while law-abiding citizens are not able to obtain necessary permits, leaving them practically defenceless. Jan Widacki says that both practical experience and extensive research have confirmed that there is a constant ratio between the number of illegally and legally held guns. Thus, an increased supply of legal firearms automatically leads to increased illegal possession. According to the author, this means that greater access to guns for law-abiding citizens will result in better access to illegally held firearms for criminals. Consequently, a risk to public safety will be higher than before (Widacki, 2007, p. 73–75).

To conclude, there is no single universal method or approach that would successfully address all aspects of gun possession and access. Research into this area has given inconsistent results due to different timeframes being adopted for research work and the changing nature of public attitudes. The issue of firearms has been and still is exploited for political gains to win favor with the electorate.

2. Regulation Systems in Selected Countries: Comparative Background

2.1. General Issues of Firearms Restrictions in Selected Countries

A liberal approach prevails in some countries, where it is believed that each and every citizen should have a right to own a firearm. Under this model, certain groups of people are given unlimited access to guns, subject to certain restrictions on type of firearm. This model is most typically used in such countries as the United States of America and Finland (based on: Olejniczak, undated).

A completely different approach is where access to firearms for citizens is strictly prohibited by national laws (except for the police and military forces). This approach has been adopted by Japan. In this country, firearms can only be owned by members of the public for use during hunting and sport, subject to prior approval from the Public Safety Commission. As a rule, permits to possess guns are not issued to minors, mentally disturbed people, drug addicts, or convicts. Once issued, each permit must be updated every three years and is subject to rigorous checks. In Japan, illegal possession of guns is punishable by imprisonment for up to 10 years (Law Controlling Possession, etc. of Fire-Arms and Swords', 1978; Holyst, 1994, p 231).

Between these extremes there is a middle ground where the acquisition and possession of guns is allowed subject to prior permission from competent state authorities. This model is used in Great Britain, Russia, Italy, France, Spain, Lithuania, and Poland (Wójcikiewicz, 1999, p. 16).

2.2. Firearms Regulation in Selected Countries

The following issues should be addressed when discussing various aspects involved in obtaining permits to possess firearms in Poland and criminal issues that may arise in this context:

Article 10 of the Act on firearms and ammunition (hereinafter "the Act") sets out criteria for acceptable use of firearms:

- personal security,
- protection of property and persons,
- hunting,
- sports,
- historical reconstructions,
- collecting,
- commemorative purposes,
- training.

It should be noted that the most common reason for applying for such permit is to ensure personal protection as well as the protection of other people and property (Kurzępa, 2010). In accordance with statutory requirements, the person applying for a permit must provide duly substantiated reasons and justification as to why they are eligible. This issue has been addressed by the Supreme Administrative Court in a series of judgements, i.e., in its judgement of 12 February 2003, the Court stated: "The mere fact that the person applying for a gun permit is not disqualified under Article 15.1 of the Act on weapons ammunition must not be construed as requiring the competent authority to issue such permit to that person." The Police Authority, after investigation, decides on whether to issue such permit on grounds of personal protection. The argument of heightened insecurity, which is often raised in applications for firearm permits, is not legally entrenched. The Supreme Administrative Court referred to the concept of "heightened insecurity" in its judgements, seeking to formalise the use of this term. For example: "A number of people admit to having a heightened sense of insecurity. This does not

mean, however, that permission to possess firearms should be granted to each and every applicant. A permit to possess a firearm should not be issued on grounds of exceptional military service (veterans) or extraordinary professional achievements.”

The holder of a firearm is subject to the following restrictions, otherwise losing his right to own a firearm:

- the holder of a firearm is required to comply with any restrictions on the carrying of firearms if required by the authority which issued the permit to possess firearms,
- upon losing a firearm, the firearm holder is legally required to notify the competent authority of this fact within 24 hours after the event. Otherwise, the authority which issued the firearm permit will revoke the same:
- the permit will also be revoked if the holder has been carrying the gun while drunk or intoxicated (Act on firearms and ammunition).

The authority issuing a gun permit may revoke the permit in the following cases:

- the applicant failed to comply with the registration obligation,
- the applicant failed to undergo periodic medical and psychological tests,
- the applicant failed to notify the competent authority that his place of residence has changed,
- the applicant has given his gun to another person for unauthorized use (Article 18).

The person who has lost his right to possess a gun must dispose of it immediately and promptly notify the competent authority in writing of this fact (Articles 21 and 22.).

When discussing the criminal aspects of firearm access in the context of the American society, it is worth referring to the expert opinion “Posiadanie broni przez obywateli” (Private ownership of guns), prepared under the guidance of Prof. Jan Widacki (Ph.D.). This document examines in detail the issues and concepts that underpin policies on access to firearms and its regulation, with a particular focus on American society. The author of this paper relies on statistical data and figures included in that expert opinion (Wójcikiewicz, 1999, p. 7).

It is estimated that US citizens hold a total of 150–220 million firearms, with handguns accounting for one third of all firearms owned. It is assumed that half of US households have firearms. The figure has been steadily rising – e.g. from 13% in 1959 to 32% in 1993 (Cook, Molliconi, Cole, 1995, p. 81).

However, the homicide rate doubled in 1964–1974, reaching a stable level of 9.5 per 100 000 people in 1993. Given the above, it is important to notice that firearms were used to commit one in every twenty offences in the US. In 1993, nearly 70% deaths were caused by a firearm (Zimring, 1995, p. 5).

It is clear from these statistical data that the issue of firearm possession is a hotly debated topic in social discourse, subject to extensive research. For example, the Centre for Disease Control issued a number of expert opinions on the social costs of making firearms generally available to the public (Taubes, 1992, p. 213–115). This led to the following findings:

- acts of aggression committed using firearms against a family member or relative are 12 times more likely to cause death than when using other tools,
- if a firearm is used by a woman, her spouse, lover, or friend is 5 times more likely to be the target of her attack than an unknown intruder,
- people living in houses where firearms are stored are 5 times more likely to commit suicide than those living in gun-free houses.

The researchers carried out a comparative analysis of deaths caused by firearms in Seattle and the Canadian city of Vancouver. The studies showed that a total of 398 deaths by firearm were reported for

Seattle in the years 1978–1983, of which 2 were caused by an armed offender, 7 – as a result of acting in self-defence, 12 – unfortunate accidents, 41 were reported as murder cases, and 333 as suicides. Similar studies were carried out in Vancouver, covering the period from 1980 to 1986. These two cities were used for comparison because they share many similarities: their geographical locations, history and climate conditions, as well as social and economic conditions – the only notable difference being the availability of firearms. In Seattle, firearms are generally available, while the opposite is true for Vancouver (Wójcikiewicz, 1999, p. 11–12).

A comparative analysis of these two cities has shown that they have very similar crime rates as regards burglary, robbery, and assault, but differ significantly in terms of the number of people murdered, especially using a firearm. The statistics show that while the overall number of murders was significantly higher (by 60%) in Seattle, the number of murders using firearms in Vancouver was five times higher (by 500%) than in Seattle. It is clear from these findings that the number of murders in a given community may be reduced by limiting access to firearms.

On the other hand, it is estimated that a US citizen uses a gun in self-defence every sixteen seconds, with American women using a pistol or revolver 416 times a day on average to defend themselves against rapists. It is also reported that firearms stored at home are 216 times more likely to be used against criminals than random victims. It is estimated that in nearly all cases (98%) in which a gun is used in self-defence, the attacker is injured and not killed (Funk, 1995, p. 783).

Conclusion

There is no definite answer to the question of whether the possession of firearms by the civil population actually contributes to overall public safety, or, more precisely, whether the right to own a firearm is an effective means of self-defence and whether the social benefits resulting from a widespread ownership of firearms outweigh the social costs involved. Upon closer analysis, this apparently simple and straightforward issue becomes complex and multi-faceted, giving rise to a number of legal, social, and criminal problems.

The mere possession of firearms is not yet a cause for social concern; it only becomes such when in the hands of a mentally unfit individual. In view of the fact that a heightened sense of insecurity is a driving factor behind initiatives to extend access to firearms, it must be concluded that access to firearms should be regulated and the access rules effectively enforced.

Any legal acts aimed at regulating access to firearms should employ scientifically sound methods and take into account the specific nature of a given society. Firearms are always used within a specific social context, which is determined by historical, legal and social factors.

The United States is the only country in the world in which every citizen has the right to possess firearms. In other countries, it is within the competence of state authorities to decide on whether to issue a permit to possess firearms to citizens. Whereas in Japan, the possession of guns is so strictly regulated that ordinary citizens are hardly likely to come across any firearms.

Therefore, it is not justified to transfer into our social context the laws and rules developed in countries which are geographically and culturally distant from Poland. It should be stressed, however, that the social benefits resulting from possession of firearms by the civil population outweigh any social costs involved. Threats to public safety resulting from making firearms generally available provide strong arguments against a liberal treatment of this issue. It should be noted, however, that a number of domestic and foreign studies indicate a close link between this model of access regulation and increasing crime rates.

Research carried out using different sources and methods may lead to different findings. Therefore, any restrictions placed on access to firearms should not be of the administrative nature. Access to firearms should be regulated (in a clear and unambiguous way) and effectively enforced, but not prohibited. State authorities should conduct an effective policy to ensure the highest possible level of public safety to discourage members of the public from resorting to the use of force through firearms.

Bibliography

Legal regulation

Act of 21 May 1999 on firearms and ammunition. *Journal of Laws*, 1999, 53, 549.

File Ref. III SA 1515/01, Lex No 137797.

File Ref. III SA 1857/01, Lex No 121776.

Law Controlling Possession, etc. of Fire-Arms and Swords' (1978), Law No 6, Art. 3, EHS Law Bulletin Series, No 3920.

Specialized sources

Adamczyk, E. (2016). Dostęp do broni palnej w celu ochrony osobistej. *Studia nad bezpieczeństwem*, 1.

Bomanowski, B.; Kurczewska, A. (2009). Materials from the scientific conference "III Dni Kryminalistyki Wydziału Prawa i Administracji Uniwersytetu Rzeszowskiego". Rzeszów.

Cook P. J.; Molliconi, S.; Cole, T. B. (1995). Regulating gun markets. *The Journal of Criminal Law & Criminology*, 86. *Efekt broni – czyli jak broń wpływa na agresję i zapamiętywanie* (undated) [online]. Available at: <http://www.psychologowie.info/efekt-broni-czyli-jak-bron-wplywa-na-agresje-i-zapamietywanie/>.

Funk, T. M. (1995). Gun control and economic discrimination: the melting – point case – in point. *The Journal of Criminal Law & Criminology*, 85.

Hołyst, B. (1994). *Japonia – przestępczość na marginesie cywilizacji*. Warszawa: Wydawnictwo Prawnicze.

Kurczępa, B. (2010). *Komentarz Legalis do art. 10 Ustawy o broni i amunicji*. Wyd 1. [online]. Available at: www.sip.legalis.pl.

Lipczyński, A. (2007). *Psychologia sądowa*. Warszawa: Wyd. Difin.

Olejniczak, D. (undated). *Prawo do posiadania i noszenia broni w Stanach Zjednoczonych* [online]. Available at: <http://biurosej.gov.pl/teksty/i-514.htm>.

Poczucie bezpieczeństwa obywateli i opinie o dostępie do broni palnej (2001). Public Opinion Research Centre. Research findings. Warszawa [online]. Available at: http://www.cbos.pl/SPISKOM.POL/2001/K_056_01.PDF.

Taubes, G. (1992). *Violence epidemiologists test the hazards of gun ownership*. Science.

Turczyn, A. (2018). *Tyrania i monopol broni* [online]. Available at: <https://trybun.org.pl/2018/02/10/tyrania-i-monopol-broni/>.

Widacki, J. (2007). *Pistolet dla Jasia Kowalskiego*. Reflections on law and justice. Kraków: Oficyna Wydawnicza AFM.

Wójcikiewicz, J.; Widacki, J. (1998). Społeczne koszty dostępności broni palnej. In Widacki, J.; Czapska, J. (eds.). *Safe Citizen – Safe State*. Lublin: Redakcja Wydawnictw KUL.

Wójcikiewicz, J. (1999). *Posiadanie broni palnej przez obywateli*. Expert opinion by the Team for Public Safety and Police Reform under supervision from Prof. Jan Widacki as part of the "Safety – Citizen – State" programme. Warszawa – Kraków: Instytut Spraw Publicznych.

Zimring, F. E. (1995). Reflections on firearms and the criminal law. *The Journal of Criminal Law & Criminology*, 86.

Regulating Access to Firearms

Lukasz Butryn

(Andrzej Frycz Modrzewski Krakow University)

S u m m a r y

The subject of this paper are the legal and criminal aspects of regulating access to firearms. This issue has become extremely important in recent years for sociality. Furthermore, the availability of firearms has been widely discussed in Poland. The purpose of the paper is to attempt to discuss the issue of firearms possession in Poland and in the world. The most important task of this research work is an attempt to answer the following questions: does the possession of firearms

by civilians actually increase security? Is the possession of firearms an effective means of self-defense, and does the cost of universal firearms access provide a favorable balance of social losses and profits? The research method was based on an analysis of the normative material and the views presented in the literature of criminology. The research work also analyzed the statistical data collected in Poland and in the world. Research carried out using different sources and methods may lead to different findings. It is certain that access to firearms should be regulated (in a clear and unambiguous way) and effectively enforced, but not prohibited.

Šaunamųjų ginklų prieinamumo reglamentavimas

Lukasz Butryn

(Krokuvos Andrzej Frycz Modrzewski universitetas)

S a n t r a u k a

Šio straipsnio tema yra šaunamųjų ginklų prieinamumo reglamentavimo teisiniai ir su nusikaltimais susiję aspektai. Šis klausimas pastaraisiais metais tapo ypač svarbus socialinis klausimas. Be to, Lenkijoje buvo plačiai diskutuojama apie šaunamųjų ginklų prieinamumą. Darbo tikslas – aptarti disponavimo šaunamaisiais ginklais Lenkijoje ir pasaulyje problemą. Svarbiausias šio straipsnio uždavinys yra bandymas atsakyti į klausimą: ar civilių gyventojų disponavimas šaunamaisiais ginklais iš tikrųjų padidina saugumą ir yra veiksminga savigynos priemonė; taip pat svarbu aptarti, ar plačiai prieinamos galimybės naudotis šaunamaisiais ginklais išlaidos atitinka socialinių nuostolių ir pelno pusiausvyros dėsnius. Tyrimo metodas buvo paremtas norminės medžiagos ir kriminologinės literatūros analize. Tyrimo metu taip pat išanalizuoti Lenkijos ir pasaulio statistiniai duomenys. Skirtingi šaltiniai ir metodai gali lemti skirtingus rezultatus. Aki-vaizdu, kad šaunamųjų ginklų prieinamumas turėtų būti (aiškiai ir nedviprasmiškai) reglamentuojamas bei veiksmingai vykdomas, bet nedraudžiamas.

Lukasz Butryn is a PhD student at the Faculty of Law, Administration and International Relations at the Andrzej Frycz Modrzewski Krakow University (AFMKU). He is writing a doctoral dissertation under the scientific direction of the dean of this faculty, Prof. Dr. Hab. Jan Widacki. At the moment he is an advocate's trainee. He works in the legal office in Rzeszów (Poland), where he mainly deals with criminal and commercial law. His main interests and research areas include criminology and broadly understood aspects of access to firearms.

Lukasz Butryn yra Krokuvos Andrzej Frycz Modrzewski universiteto (AFMKU) Teisės, administravimo ir tarptautinių santykių fakulteto doktorantas. Jis rašo daktaro disertaciją, kuriai vadovauja šio fakulteto dekanas – prof. dr. hab. Jan Widacki. Lukasz Butryn taip pat yra advokato padėjėjas (stažuotojas). Jis dirba juridiniame biure Žešove (Lenkija), kur daugiausia užsiima baudžiamąja ir komercine teise. Tyrimų sritys – kriminologija ir šaunamųjų ginklų prieinamumas.