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ILLEGAL ARMS TRAFFICKING: CRIMINAL LAW ASPECTS

Abstract. The development of new technologies brings progress to society and possible threats to the national and military security of the country.

Criminals are increasingly using the results of progress to commit illegal acts. In this regard, special attention should be paid to the study of the issue of arms trafficking.

The trend in this area today is to simplify and reduce the cost of its production processes. One of the technological directions is the manufacture of plastic weapons on 3D printers, practically at home.

At the same time, the number of such weapons can vary from one copy to several hundred units per day. And its types can be represented by firearms, grenades, ammunition, etc.

In turn, domestic criminal legislation, one of the tools for preventing offences, should be ready for such phenomena to protect citizens and the democratic foundations of the rule of law.

In this regard, the author proposes to revise the provisions of certain parts of Articles 287 and 288 of the Criminal Code of the Republic of Kazakhstan within the framework of the article, introducing an appropriate qualifying feature into them.

Keywords: security; crime; weapons; ammunition; production; legality; state; plastic.

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ҚАРУДЫҢ ЗАҢСЫЗ АЙНАЛЫМЫ: ҚЫЛМЫСТЫҚ-ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ

Аннотация. Жаңа технологиялардың дамуы қоғамға тек прогресс қана емес, сонымен бірге елдің ұлттық және әскери қауіпсіздігіне қауіп төндіреді.

Қылмыскерлер прогресс нәтижелерін заңсыз әрекеттерді жасау үшін көбірек пайдаланады. Осыған байланысты қару айналымы мәселесін зерттеу ерекше назар аударуды қажет етеді.

Бүгінгі таңда бұл саладағы үрдіс оны өндіру процестерін жеңілдету және арзандату болып табылады. Технологиялық бағыттардың бірі – үй жағдайында дерлік 3D принтерлерде пластиктен қару жасау.

Сонымен қатар мұндай қарудың саны күніне бір данадан бірнеше жүз бірлікке дейін өзгеруі мүмкін. Ал оның түрлері атыс қаруы, гранаталар, оқ-дәрілері және т.б. ретінде ұсынылуы мүмкін.

Өз кезегінде, құқық бұзушылықтардың алдын алу құралдарының бірі болып табылатын отандық қылмыстық заңнама азаматтарды және құқықтық мемлекеттің демократиялық негіздерін қорғау үшін осындай құбылыстарға дайын болуы тиіс.

Осыған байланысты автор осы мақаланың шеңберінде Қазақстан Республикасы Қылмыстық кодексінің 287 және 288-баптарының жекелеген бөліктерінің ережелерін оларға тиісті біліктілік белгісін енгізе отырып, қайта қарауды ұсынады.

Түйінді сөздер: қауіпсіздік; қылмыс; қару-жарақ; оқ-дәрі; өндіріс; заңдылық; мемлекет; пластик.



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НЕЗАКОННЫЙ ОБОРОТ ОРУЖИЯ: УГОЛОВНО-ПРАВОВЫЕ АСПЕКТЫ

Аннотация. Развитие новых технологий привносит в общество не только прогресс, но и возможные угрозы национальной и военной безопасности страны.

Преступники все чаще используют результаты прогресса для совершения противоправных деяний. Особого внимания в этой связи требует изучение вопроса оборота оружия.

Трендом в этой сфере сегодня является упрощение и удешевление процессов его производства. Одним из технологических направлений является изготовление оружия из пластика на 3D-принтерах, практически в домашних условиях.

При этом количество такого оружия может варьироваться от одного экземпляра до нескольких сотен единиц в день. А его виды могут быть представлены огнестрельным оружием, гранатами, боеприпасами и т.д.

В свою очередь, отечественное уголовное законодательство, являющееся одним из инструментов предупреждения правонарушений, должно быть готово к подобным явлениям для защиты граждан и демократических основ правового государства.

В этой связи автором в рамках статьи предлагается пересмотреть положения отдельных частей статей 287 и 288 Уголовного кодекса Республики Казахстан, внедрив в них соответствующий квалифицирующий признак.

Ключевые слова: безопасность; преступность; оружие; боеприпасы; производство; законность; государство; пластик.

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Introduction. Countering illegal arms trafficking, as well as control over its production, storage, and distribution, is one of the strategic tasks to ensure the security of the state.

According to the Committee on Legal Statistics and Special Accounts, in the period from 2020 to 8 months of 2023, about 787 criminal offences involving firearms and explosives were registered in the country (in 2020 – 230 facts, in 2021 – 202, in 2022 – 267, in 8 months of 2023 – 97 facts)¹.

As noted in paragraph 8 of the Military Doctrine of the Republic of Kazakhstan, one of the main conditions that can lead to military threats is a decrease in the effectiveness of measures taken to limit the access of destructive forces to weapons of mass destruction, conventional weapons, ammunition, explosives and other means, technologies of their production².

The research objective is to study the issues of improving criminal law norms to improve

the current legislation in the illicit trafficking of weapons and ammunition.

The current criminal law provisions require revision due to the emergence of new types and methods of producing weapons and ammunition. *Materials and methods.* Comparative legal and systemic methods, induction and deduction, and logical and statistical approaches to obtaining scientific knowledge were used to study the issue.

A preliminary analysis of the issue showed that specific problems of arms trafficking and its prevention were highlighted in studies by both Kazakhstani and foreign scholars.

In particular, these issues are highlighted in the works of E.M. Bimoldanov, S.M. Imanbaev, K.E. Ismagulov, M.J. Naimanbaev, O.S. Pozdeeva, S.Z. Shamarin, M.I. Useynov and others.

Discussion and Results. Due to the ongoing armed conflicts in the world, the facts of mass

¹ Statistical reports / Portal of the Committee on Legal Statistics and Special Accounts of the Prosecutor General's Office of the Republic of Kazakhstan [Electronic resource] – Access mode: <https://qamqor.gov.kz/crimestat/statistics> (Access date: 09.01.2023).

² On the approval of the Military Doctrine of the Republic of Kazakhstan: Decree of the President of the Republic of Kazakhstan dated September 29, 2017 №554 [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/U1700000554> (Access date: 09.01.2023).



theft of weapons and ammunition from military depots, illegal arms trafficking is taking on dangerous proportions. Accessibility to that allows criminal elements and destructive forces to arm themselves, which carries the threat of violating the rule of law and ensuring the constitutional rights of citizens. Vivid examples were demonstrated during the «January events» of 2022.

Such a situation may lead to the fact that law-abiding citizens will also en masse arm themselves to ensure their safety due to law enforcement and special agencies' insufficient performance of their functions.

Illegal trafficking in weapons, ammunition, and explosive devices can lead to grave and especially grave consequences, which significantly affect the criminal situation in the country and pose a threat to the military and national security of the state.

One of the most striking examples of the use of new technologies for producing weapons at home, but almost on an industrial scale, is the 800-gram antipersonnel bomb called the «Zaychyk» or «Rabbit».

A 3D printer makes its body filled with explosives and damaging elements. One team creates plastic shells on a 3D printer for about 1,000 bombs per week.

Homemade bombs are used against infantry. Their area of damage is 20 meters. Drones can carry them. Some bombs can also be used against armoured vehicles.

According to the Economist, the pace of production is being increased. At the same time, Ukrainian customs officers classify this product as children's toys or candlesticks³.

Another example is the creation in 2012 in the USA of a pistol printed on a 3D printer. It was designed in 2012 by American Cody Wilson. The gun, dubbed Liberator, was smoothbore and single-shot. The pistol's design consisted of 15 plastic parts and a metal hammer made of a nail. The weapon was printed using ABS plastic, the cheapest and most common material for 3D printing. The cost of the pistol was 9.3 US dollars. The gun's design made it possible to fire

several shots from it.

At the same time, despite the prohibition of such content on the Internet, instructions for creating pistols, hand grenades, ammunition and even automatic weapons using 3D printing made of plastic are freely available.

One more example is the creation in 2012 in the USA of a pistol printed on a 3D printer. It was designed in 2012 by American Cody Wilson. The gun, dubbed «the Liberator», was smoothbore and single-shot. The pistol's design consisted of 15 plastic parts and a metal hammer made of a nail. The weapon was printed using ABS plastic, the cheapest and most common material for 3D printing. The cost of the pistol was 9.3 US dollars. The pistol's design makes it possible to fire several shots from it⁴.

Meanwhile, despite the prohibition of such content on the Internet, instructions for creating pistols, hand grenades, ammunition and even automatic weapons using 3D printing made of plastic are freely available.

In turn, the legislator imposes specific requirements on legal entities that produce weapons and cartridges. So, they must ensure the safety of production, control over it, the appropriate quality of products, and their accounting and safety.

All these requirements for the manufacturer lose their meaning in manufacturing plastic weapons. This creates a potential base for anyone with a printer to produce and sell weapons without identification data (for example, an individual number or markings), acquiring «invisibility» for the stages established by law during the turnover of weapons.

Tracking such weapons will be almost impossible since they have limited resources and are easily destroyed. Its parts are freely available.

In addition, as experts emphasize, 3D printing technologies open the possibility of recreating missing or damaged parts for industrial firearms to repair and restore their operability [1].

This situation creates the risk of criminal elements organizing a shadow market for the sale of «disposable weapons» on an

³ Ukraine's latest weapons in its war with Russia: 3D-printed bombs [Electronic resource] – Access mode: <https://www.economist.com/science-and-technology/2023/08/01/ukraines-latest-weapons-in-its-war-with-russia-3d-printed-bombs> (Access date: 09.01.2023).

⁴ 3D-printed guns prompt US House to renew prohibition on plastic firearms bombs [Electronic resource] – Access mode: <https://www.theguardian.com/world/2013/dec/04/3d-guns-house-renew-prohibition-plastic-firearms> (Access date: 09.01.2023).



unpredictable scale. Illegal distribution and production of weapons, as can be seen from the above example, is also facilitated by the possibility of selling plastic weapons via the Internet and its low cost.

As experts of the international organization Global Initiative Against Transnational Organized Crime note: «Studying the links between illicit trafficking in firearms and other forms of organized crime requires an analysis of how weapons enter illegal markets; how they allow other criminal markets to flourish; what actions are being taken by governments to control their turnover inside and outside the country; and what role firearms play in exacerbating crime and violence in communities around the world»⁵.

In this regard, it is necessary to study the problem of preventing the illegal trafficking of such weapons and ammunition, including revising the current criminal law norms.

The legislator provides for several articles in the Criminal Code of the Republic of Kazakhstan to prevent the facts of illegal trafficking of weapons and ammunition. However, as the study of these norms has shown, some of their provisions require revision.

According to Part 3 of Article 287 of the Criminal Code of the Republic of Kazakhstan, illegal acquisition, transfer, sale, storage, transportation or carrying of firearms (except smoothbore hunting), ammunition, explosives or explosive devices are punishable by a fine of up to five thousand monthly calculation indices or correctional labour in the same amount, or restriction of liberty for up to five years, or imprisonment for the same period, with or without confiscation of property.

A similar sanction is provided for committing a criminal offence under part 1 of Article 288 of the Criminal Code of the Republic of Kazakhstan (illegal manufacture or repair of firearms, their primary (component) parts, and unlawful manufacture of ammunition, explosives or explosive devices).

The object of criminal offences provided for in parts 1 and 3 of Articles 287 and 288 of the Criminal Code of the Republic of Kazakhstan is public relations in trafficking in weapons,

ammunition, etc.

The composition of the above two criminal offences is formal.

Within the framework of these norms, the legislator determined that the severity of the crime does not depend on the number of weapons purchased, marketed, or manufactured but qualifies as a single crime and constitutes a continuing crime.

At the same time, this legislator's approach carries many risks since it does not consider the significant social danger of the quantitative factor.

It should be agreed with Tara Karta's opinion that the threat of illegal arms trafficking in developing countries is much more severe than just economic erosion or financial losses. In many places where organized crime has taken root, it either seeks to seize the state with its help or merges with the conflict, turning it into a full-fledged military security threat [2].

The primary purpose of weapons and ammunition is to cause damage and hit a target.

For example, the storage, sale or production of an arsenal of weapons for criminal purposes, rather than a single copy, can become a factor contributing to an increase in the level of violent crime, the organization of a «shadow» arms business, as well as the uncontrolled entry of large quantities of weapons and ammunition without «identification marks» into the hands of representatives of destructive forces and criminal groups.

As M.Zh. Naimanbayev rightly noted: «Over the past decade, a rather difficult operational situation has developed, which has a connection with crimes in the field of illicit trafficking in weapons, ammunition, explosives and explosive devices. Crime related to illegal arms trafficking has changed and acquired modern methods and promising forms. Modern weapons have become a special commodity that generates huge revenues» [3, 3 p.].

In this regard, it seems necessary to use an approach when increased responsibility comes for the number of illegal weapons sold, produced, etc.

By part 2 of Article 39 of the Criminal Code

⁵ Arms trafficking and organized crime: Global trade, local impacts [Electronic resource] – Access mode: <https://globalinitiative.net/analysis/arms-trafficking-and-organized-crime/> (Access date: 01.09.2023).



of the Republic of Kazakhstan, punishment is applied to restore social justice, correct the convicted person, and prevent the commission of new criminal offences by both convicted persons and others.

It is hardly possible to prevent all crime. Still, the analysis of committed crimes, the contributing circumstances, and the development of counteraction measures allows, in several cases, to positively influence the state of crime, reducing the number of crimes committed or changing the structure of crime [4, 287 p.].

Another principle aimed at achieving the provisions on the fairness of punishment reflected in the Criminal Code of the Republic of Kazakhstan is the principle of its proportionality to the committed criminal offence, which, despite the lack of its normative consolidation in national legislation, is widely used in legal science, as well as judicial practice.

Thus, paragraph 1 of the Normative Resolution of the Supreme Court of the Republic of Kazakhstan, «On the qualification of repeated and aggregate criminal offences», dated December 25, 2006, №11⁶ states that the correct application of the criminal law protects from unjustified accusation and conviction of citizens, as well as the appointment of a fair, proportionate punishment to the defendants.

The use of these principles and their corresponding sanctions is visible when considering the provisions of Article 297 of the Criminal Code of the Republic of Kazakhstan (illegal manufacture, processing, acquisition, storage, transportation for sale, shipment or sale of narcotic drugs, psychotropic substances, their analogues).

So, following this article, the qualifying feature entailing increased sanctions is the size of narcotic drugs – large and giant sizes. The more narcotics the intruder has produced, sold, etc. seized, the greater the public danger of a criminal offence and the sanction for its commission.

This division indicates the need to graduate the public threat of individual criminal offences by quantitative indicators, where a formal approach (the presence of only the fact itself), which serves as the basis for bringing to justice, cannot be used.

As noted by I.S. Borchashvili, criminal legislation is designed to implement a particular set of basic ideas and provisions on strategic ways and means of combating criminal offences [5, 22 p.].

In this regard, we believe a similar differentiated approach should be used in Articles 287 and 288 of the Criminal Code of the Republic of Kazakhstan in illegal arms trafficking.

Conclusion. In the form that these norms are used today, the level of their real public danger is not taken into account, which violates the above principles of application of the criminal law and also contradicts the provisions of the Constitution of the Republic of Kazakhstan on the protection of the individual, society and the state from criminal encroachments.

The general warning function is practical in cases where potential criminals are deterred from committing crimes on pain of punishment. A private warning, as is known, is associated with the imposition of punishment, and the criteria for its effectiveness are the inevitability of criminal liability and the fairness of the sentence imposed by the court [6, 120 p.].

Thus, in parts 1 and 3 of Articles 287 and 288 of the Criminal Code of the Republic of Kazakhstan, it is proposed to single out the number of weapons as a qualifying feature with a corresponding increase in sanctions according to these norms due to their increased public danger.

These changes will allow observation of the principles enshrined in the current legal system, as well as use them more effectively as a measure to prevent criminal offences in the field of arms trafficking and threats to the national and military security of Kazakhstan.

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