

**Terrorist Union
(A Democratic Approach to the EU's New Proposal of Firearms Regulation)¹**

I. Firearms regulation until now in the EU – What is a Firearm?

The regulation in force on firearms in the European Union is the 91/477/EEC Directive which was enacted in 1991. Being a directive only, this measure sets minimal requirements for member states that they are expected to introduce into their national legal systems through a national act. The minimal conditions in the regulation are clear; the national acts are to meet at least these requirements but they are also given the authority to include more stringent rules than the directive – which they do.

However, the directive renders little assistance in defining firearms since its annex merely states that firearms and accessories are divided into four categories, “A”, “B”, “C” & “D”, but it does not explain what firearms are.

There is, however, an exact definition in the Hungarian legal system, based on the directive; “2.§ 29: *A firearm is such a device, belonging to category A, B, C, or D [...], that can fire a solid projectile using flammable propellant.*”²

As can be seen, firearms are divided into four categories by the EU's directive. The point in this case is in their authorization process:

Firearms of category “D” have a minimum standard that nobody under the age of 18 may purchase or possess such weapons.

Firearms listed in category “C” are weapons subject to declaration. Such devices must be registered but the process of authorization can be dispensed with by the member state.

Firearms in category “B” are subject to authorization; these arms can only be purchased by members of the public if a previous process of authorization was successful. These are the most typical firearms in civilian applications; most of this group are semi-automatic and repeating firearms with a total length under 60 centimeters, including both center-fire and rim-fire percussion.

Firearms of category “A” are restricted to civilian purposes with minimal exceptions – this category includes every kind of explosive military missile, launcher and automatic weapon as well special military devices produced for them such as suppressors, explosives, and penetrating or incendiary ammunition.

It is clear that unlike in the American constitution the European Union does not treat the right to bear firearms as essential and in its regulation it defines only the substantive background of how and what firearms can be purchased and kept. The regulation includes nothing in regard to whether it is a basic right to do so, nor does it explain the purpose of weapons possession.

In the civilian sector firearms can be authorized for several purposes including self-defense, sport and commercial security work, but above some minimal requirements defined by the EU, member states have been free to create their own firearms policy. The new proposal would bring this to an end.

II. The new proposal and the way Hungary would implement it

There has recently been a new initiative, probably because of increasing terrorist activity. The new proposal of the EU legislative is to categorize all magazines under category “A” that

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² Act XXIV. of 2004 on Firearms and Ammunition (2004. évi XXIV. törvény a fegyverekről és lőszeréről)

contain more than 20 center-fire bullets in the case of handguns (pistols and revolvers) and more than 10 center-fire rounds in the case of rifles (long firearms). (Firearms with rim-fire ammunition are exempt).

The proposal's aim is to limit the risk that a civilian firearm can mean should it be used for improper purposes – an act of terrorism in particular. As handguns can be easily concealed they can be kept hidden until a violent crime is initiated and thus the limitation of magazines would ensure that the handgun would quickly become empty, while the more accurate and therefore more dangerous rifles are limited even more.

There is much reason to doubt that this proposal would be truly effective. Reloading a semi-automatic handgun requires a single second and the final quantity of ammunition is not limited in this way – actually it is completely irrelevant whether 60 bullets are loaded into two magazines with a capacity of 30 in each or this amount of ammunition is separated among three magazines with a capacity of 20 (and the proposal does not limit the amount of magazines one can have). Actually this suggestion is an agreement between the Commission and the Parliament. Certain elements of the original proposal were refused by the Parliament as the Commission had proposed a total ban of certain semi-automatic firearms (considered to be “particularly dangerous”) such as the Kalashnikov and other assault rifles as well as the magazine capacities were also supposed to be limited to 10 rounds in case of all center-fire firearms. Still, the president of the European Commission is being optimistic for in his opinion this agreement is just the beginning:

*“We have fought hard for an ambitious deal that reduces the risk of shootings in schools, summer camps or terrorist attacks with legally held firearms. Of course **we would have liked to go further**, but I am confident that the current agreement represents a milestone in gun control in the EU.”*³ A convincing opinion; and a total restriction of airplanes would ensure that they could no longer be employed neither for terrorist attacks against skyscrapers nor to kill hundreds of people by suicidal pilots in the Alps. And in addition we could add; Juncker fought bravely against *legally* held firearms as he had emphasized in this speech but should not the power pay more attention to illegally held firearms instead, as terrorist actions are committed mainly with such weapons?

Being only a directive, this regulation is to be introduced into the national legal systems all over the EU through local laws. This regulation – if it were to be enacted in the EU – would be damaging in the civilian sector even in this form. But the Hungarian implementation will be far more harmful.

Such proposals are nothing new in the history of the Union – in 2016 the Netherlands did its best with a proposal that every kind of firearm - apart from single-shot guns - were to be restricted for all uses (luckily unsuccessfully). The peculiarity in Hungary is in its own proposal on the national regulation based on the potential modification of the EU's firearms regulations. It is hard to understand why a member state is so busy preparing for a modification that may never become actual and even if it did, the national legal system would be given years to catch up with the modification.

Hungary is already a state in which the regulations are over complicated. To cite just one example; in Hungarian regulation in addition to automatic firearms and special ammunition other equipment is also listed among the prohibited category “A” devices. Such equipment includes laser aiming or night scope optics that are mounted on firearms. Even this kind of regulation is unclear and inaccurate. Such equipment may not be owned if it is designed as attachments for firearms. However, a simple laser pointer, attached to a firearm is not illegal. Nor are the devices (the so-called “mounts”) that enable the user to fix a smart phone on a rifle. Once they are mounted on the rifle they can be equipped with night vision or heat-

³ http://europa.eu/rapid/press-release_IP-16-4464_en.htm

sensitive cameras and with a simple application the “night scope” becomes operational, which is illegal, and so according to this interpretation all the smart cell phones might very well also be illegal. Yet still it is unlikely that anyone with such equipment would be considered a terrorist, and so what is the purpose of a restriction that can so easily be avoided?

The initiation of the Hungarian Ministry of the Interior follows the logic of the European proposal but in fact it means something entirely different. The national suggestion would introduce a limitation of 20 bullets in the case of handguns and 10 in the case of rifles, but it considers the firearms themselves, not the magazine:

5. [Category “A”] includes center-fire, semi-automatic firearms

“a) that are handguns (short firearms) able to fire at least 21 rounds without reloading, provided their charger exceeds 20 rounds or separable magazine with a capacity above 20 rounds can be attached to them.

b) that are rifles (long firearms) able to fire at least 11 rounds without reloading provided, their charger exceeds 10 rounds or a separable magazine with a capacity above 10 rounds can be attached to them.”⁴

The national act would declare all firearms restricted that can contain more ammunition than mentioned above. Apart from the fact that this regulation could not be interpreted (as a self loading firearm can technically contain a single bullet within the barrel – all the others are contained by the magazine which is an accessory, not a part of the firearm) it would cause total havoc among a quarter of a million firearms nationwide. Would this regulation mean that original magazines are to be taken under consideration or does the suggestion refer to any purchasable magazines ever produced for firearms?

The proposal in this form will totally ban most of the legally owned firearms all over Hungary. To cite one example; Glock semi-automatic pistols are among the most popular firearms in Hungarian civilian application. Being produced in Austria, priced at only half that of a Sig Sauer or a Smith and Wesson, the Glock is extensively used by sport shooters and hunters. For several models special magazines are being manufactured, these include the 9mm Parabellum series, including models Glock 17 Standard, 17L Competition, 18 Automatic, 19 Compact, 26 Subcompact and 34 Practical-Tactical. Extra size magazines can be purchased for these handguns, with a capacity of 30 bull¹ (BM/3460/2017.)

ets.

In the case of rifles this regulation would affect another wide group, including mainly replicas of the well-known automatic assault rifles redesigned for civilian use, such as the clones of the Russian Kalashnikov or the American Colt M series. These weapons are semi-automatic, but they employ typical military calibers such as 223. Remington or 7.62x39 and their magazines can hold up to 30 (or even more) bullets. If the Hungarian reform was to pass thousands of legal firearms would be withdrawn from civilian use. Perhaps it is unnecessary to add that given the Hungarian legal system, compensation for the withdrawn firearms would be highly unlikely regardless of the constitutional civil rights governing private property.

The purpose of the European firearms restriction proposal is to decrease the likelihood of terrorist acts being committed within the EU – yet it is not clear why such a strict regulation would be necessary in a state like Hungary, where a terrorist attack has never been committed.

III. The weakness in firearms restrictions – what are firearms good for?

Europe is clearly suffering from a sort of “firearms-phobia”. It is probably the case that neither politicians nor members of the public are truly aware of what firearms are, yet this is not a problem. However, it provides sufficient justification to eradicate firearms – if the civil

⁴ (BM/3460/2017.)

population agrees with such a proposal and it is politically advantageous too (we shall see why that is so), why would anyone defend the rights of citizens to keep firearms? It does not matter that legally owned weapons and terrorism have nothing to do with one another. Restriction is always easier than recognition.

Firearms are regarded as tools of criminal activity. Hence those who oppose the civilian right to own firearms argue that if such weapons had been restricted criminal violence or at least the threat of a potential violent crime would decrease. The theory is convincing or at least logical. But to see whether it is true or not, we need to observe the criminal statistics in pro- and contra-firearms states, and there is no better place to do that than in the United States of America.

The United States is not homogenous in regard to firearms regulations – some states are busy working on the total restriction of firearms owned by civilians arguing that the presence of such weapons in the public sphere is increasing the level of violent crimes, while other states barely exert any control over the civilian purchases of firearms including military technology and automatic assault rifles. But if this case is observed, this half of one thing and half of another regulation system is able to prove or disprove this argument, namely that the presence of firearms increases the potential for violent crimes. The criminal statistics on the number of violent crimes per 1,000 citizens in the various American states and their capitals are as follows:⁵

Capital:	State overall:
Montgomery: 5.19	Alabama: 4.72
Juneau: 8.7	Alaska: 7.3
Phoenix: 5.93	Arizona: 4.1
Little Rock: 14.96	Arkansas: 5.21
Sacramento: 7.47	California: 4.26
Denver: 6.75	Colorado: 3.21
Hartford: 11.46	Connecticut: 2.18
Dover: 8.08	Delaware: 4.99
Tallahassee: 10.86	Florida: 4.62
Atlanta: 11.77	Georgia: 3.78
Honolulu: 2.84	Hawaii: 2.93
Boise: 3.1	Idaho: 2.16
Springfield: 10.88	Illinois: 3.84
Indianapolis: 13.08	Indiana: 3.88
Des Moines: 7.14	Iowa: 2.86
Topeka: 5.67	Kansas: 3.9
Frankfort: 3.95	Kentucky: 2.19
Baton Rouge: 8.82	Louisiana: 5.4
Augusta: 4.49	Maine: 1.3
Annapolis: 5.22	Maryland: 4.57
Boston: 7.15	Massachusetts: 3.91
Lansing: 11.61	Michigan: 4.16
St. Paul: 7.12	Minnesota: 2.43
Jackson: 9.65	Mississippi: 2.76
Jefferson City: 3.96	Missouri: 4.97

⁵ US criminal statistics are based on Neighborhood Scout data: www.neighborhoodscout.com

Helena: 6.34	Montana: 3.5
Lincoln: 3.98	Nebraska: 2.5
Carson City: 3.15	Nevada: 6.96
Concord: 2.42	New Hampshire: 1.99
Trenton: 12.16	New Jersey: 2.55
Santa Fe: 3.91	New Mexico: 6.56
Albany: 8.09	New York: 3.8
Raleigh: 4.2	North Carolina: 3.47
Bismarck: 1.46	North Dakota: 2.39
Columbus: 5.48	Ohio: 2.92
Oklahoma City: 7.66	Oklahoma: 4.22
Salem: 3.58	Oregon: 2.6
Harrisburg: 12.08	Pennsylvania: 3.15
Providence: 5.69	Rhode Island: 2.3
Columbia: 7.99	South Carolina: 5.04
Pierre: 4.29	South Dakota: 3.83
Nashville: 11.26	Tennessee: 6.12
Austin: 3.78	Texas: 4.12
Salt Lake City: 8.61	Utah: 2.36
Montpelier: 1.71	Vermont: 1.18
Richmond: 5.38	Virginia: 1.96
Olympia: 4.12	Washington: 2.84
Charlestown: 2.62	West Virginia: 5.04
Madison: 3.6	Wisconsin: 3.06
Cheyenne: 1.92	Wyoming: 2.22

From these data we can clearly see some general facts; urbanized areas appear to be far more dangerous than rural ones – the only exceptions to this are the capitals of Hawaii, Missouri, Nevada, New Mexico, North Dakota, Texas, West Virginia and Wyoming.

In addition to the previous data the crime rates for the ten most populous American (US) cities can be compared with the national meridian:

US most populous cities
New York (NY): 5.78
Los Angeles (CA): 6.45
Chicago (IL): 9.08
Houston (TX): 9.69
Philadelphia (PA): 10.3
Phoenix (AZ): 5.93
San Antonio (TX): 5.86
San Diego (CA): 4.06
Dallas (TX): 6.98
San José (CA): 3.36

Metropolises clearly have a higher rate of crime but this rule is not absolute; particularly if the ten most populous cities of the USA are considered – though nine of them are all above the national criminal meridian of 3.8 crimes per 1,000 citizens on average with only the smallest, San José, being under that, these cities are still not as dangerous as their sizes would suggest. Some of them (such as LA, Dallas, Chicago, Houston and Philadelphia) do indeed have higher rates of crime way above the national average, but other cities all over the States have even higher rates – for example the capitals Little Rock, Hartford, Tallahassee, Atlanta, Springfield, Indianapolis, Lansing, Trenton, Harrisburg and Nashville belong to those cities that are more dangerous than any of the ten biggest metropolises in the States. But most of the other capitals are also more dangerous than the median, with only Boise, Carson City, Concord, Bismarck, Salem, Austin, Montpelier, Charlestown, Madison and Cheyenne being safer than the national average.

This allows us to see that the density of population in metropolises has no true connection to violent crime. Indeed it can be said that if somewhere is densely populated then crime can increase, but this is not due to an increase in the population but rather an increase in needs and poverty, poor education and low living standards. Violent offenders and increasing criminal activity is a failure of the state and the authorities. And they must not be treated violently nor by restrictions.

Civilized members of the public are aware of the responsibility of owning firearms and they treat them accordingly – there are millions of legally owned firearms in the European Union and it is highly likely that there are even more in the United States despite its smaller population. A main element of the counter-firearm propaganda is that every once in a while armed crime is committed within the US and in the EU and hence the gun laws should be far stricter. The only thing forgotten in such arguments is that in a significant percent of these illegal acts the weapons used are also illegal and therefore no regulation on the legally kept guns will change this, while on the other hand it is true that some crimes are committed with the legally owned firearms but out of several hundred thousand weapons this amount is negligible – just in Hungary there are more than a quarter of a million firearms owned by civilians but gun crimes are committed only once every few years.

One other thing that can also be concluded from the data above is that the presence of firearms does not make people more violent. The truth is quite the opposite; while the traditionally democratic areas are the metropolises and urbanized areas like the states of Illinois, New York and California, the rural areas tend to support the Republicans. As the democrats are better known for supporting stricter firearms regulations (although it is quite a challenge to understand the logic that democrats tend to restrict basic rights the most) than the Republicans, those states that are traditionally democrats should therefore be less violent than the republican states based on the philosophy according to which firearms make people violent and their deficiency would result in peaceful surroundings. But, as was already mentioned, the truth is the opposite. Illinois and California are well known for having extremely restrictive regulations in the US, but neither Los Angeles, nor Chicago would prove that the firearms restriction is efficient.

There are guns on the streets of these cities even though they are illegal – the restriction is able to deter those from having a firearm who have no violent intentions with them. Those who would like to have firearms for self-defense are unable to have them; those who would like to commit a crime with them are ready to buy them illegally. In fact a properly prepared criminal would never use a legally owned firearm that could be traced to him via police records – a bullet shot from such gun can be identified by ballistic experts just as the shells left behind while the caliber itself can easily be matched to a given individual. Should one intend to use a firearm illegally one would definitely purchase that firearm in an illegal way as

well. The same applies for crimes in which vehicles are used – even in a simple robbery criminals who crush ATMs do so with stolen cars. No one with the least common sense would do such a thing with their own car with a clearly visible license plate on it.

Another reason why states and cities with liberal firearms regulations are more safe than others (such as Salem, capital of Oregon, or Montpelier, capital of Vermont, which are the safest capitals in America), is simply the fact that people are or can be armed. These states allow the possession and carrying of firearms for self-defense – even openly carrying is allowed which would be unimaginable in Illinois. But the situation is that these states themselves and their capitals are safer than Illinois or California where firearms are not permitted. (To be fair, there are exceptions; Alaska is another liberal state in regard to firearms but both the state itself and its capital, Juneau are far more dangerous than Hawaii and Honolulu for instance, where firearms are prohibited).

But the main scheme is simple; where people are given the right and opportunity to defend themselves, they are more likely to do so – it would be interesting to observe beyond the simple statistics on violent criminal activity how many of these crimes were successful and how many of them failed. Though it is hard to acquire such data it is clear that in those states where firearms are illegal the victims themselves are unable to defend themselves while in other states, where firearms are accessible, even if there are violent crimes attempted and therefore being recorded for the statistics there is no certainty in regard to if they were successful and broke the resistance of the victims or if the victims were able to fend off their assailants. The presence of self-defense firearms in the civilian sector is a deterring factor against violent crimes in itself; an armed assailant can feel comfortable in the United Kingdom or in Illinois, let alone in Hungary as he can be quite sure that his victim is going to be unarmed and therefore unprotected. In states where people are widely allowed to carry concealed firearms, a criminal can never be sure if a potential victim will be able to resist or not.

This is the situation in many cities within the US but it is even more typical in the restrictive surrounding of the European Union. London, which is the most populous metropolis within the EU (for as long as it remains in it) with a population of over eight million – making it comparable to New York only within the US – has far worse criminal statistics than American cities. The UK is restrictive in regard to firearms but this has little effect on the criminal statistics; while the size of New York and London are nearly equal, the crime rate is five times higher – 27.5 (crimes per 1,000 citizens) in London⁶ compared to 5.78 in New York. No capital or any of the ten most populous agglomerates of the US can compete with such criminal statistics; while the recorder of the worst criminal statistics of the metropolises in the States is Philadelphia with 10.7, even among the capitals there is none to be found that comes even close to London as the most dangerous is Little Rock, capital of Arkansas, with 14.96 crimes per 1,000 citizens. Even the national meridian of the UK is way above the US statistics; 16 compared to 3.8.

The United Kingdom decided to enact an almost total restriction on civilian firearms after a school-massacre in 1997,⁷ just ten years after a similar such event. The British firearms regulation was already quite strict by then – self-defense had not been considered by the police as an acceptable reason for carrying a concealed weapon since the 1940s, and by the time the restriction came into force gun possession was not prevalent in the UK. But the regulation did not solve the problem of firearms used in violent crimes as firearms are still included in dozens of homicides countrywide each year and one homicide out of fifteen are committed with a firearm.

⁶ UK criminal statistics are based on Metropolitan Police data – www.met.police.uk

⁷ Firearms (Amendment) (No.1-2) Act 1997

Public safety must be provided by the state but it would be naive to presume that the authorities can prevent each and every crime. We know full well that based on statistics the police can place security cameras in more dangerous areas, and they can increase their presence in such places, but they cannot prevent every crime from being committed. Hence the people should be given the right and the necessary means to defend themselves – or each other. It cannot be emphasized enough that the right and the capability to do something is only meaningful if given at the same time. This can be illustrated by citing the Hungarian legal system as an example; on self-defense Hungary has more liberal regulations than most American states. The Hungarian Penal Code stipulates that:

“22.§(1) No act is considered to be an indictable offence if its required to fend off any actual or potential illegal assault on one’s or somebody else’s person, private property or the public interests.

(2) Illegal assault is to be considered potentially lethal should it be committed

aa) at night,

ab) armed,

ac) with firearms,

ad) in a group

against person, or should it be committed

ba) at night,

bb) armed,

bc) with firearms,

bd) in a group

by entering a private residence.”⁸

The regulation above is theoretically giving authorization to any civilian to defend themselves with lethal force in certain situations where there is no obvious indication that the assailant truly intended to commit a murder. In addition, according to the judicial praxis of the criminal courts, violent sexual crimes, mainly rape, can also be answered with lethal force despite the fact that they are obviously not attempted murder. Such regulations are welcomed by a modern legal system which recognizes the fact that the police are unable to control every situation (especially in the case of sexual crimes that are typically committed or attempted in private places for understandable reasons), while the civilian in a situation of self-defense is unable to anticipate the damage an assailant might inflict as a result of his or her resistance, or the lack of it. In addition the Hungarian criminal judicial system did include in the 1996/292 Decision that the assailant must suffer the consequences of his actions as he should be aware of the hazards of his behavior and that violent resistance might ensue.

Based on these regulations and judicial praxis the conclusion could be drawn that the Hungarian legal system is enlightened on the matter of self-defense and public safety. But if the entire legal background is considered it becomes clear that the opposite is true:

The right to self-defense is something to be appreciated. But the law does not create the possibility nor does it give an opportunity. It is just law. According to the penal code mentioned above; in a public area one can defend oneself with lethal force from illegal assault if that assault meets certain requirements. The only question that must be posed is “how?”

If someone is equipped with devices that “can cause lethal injury” someone is considered to be armed and it is strictly prohibited and punished by the 175/2003 (X.28.) Edict of the Cabinet on Devices Particularly Dangerous to Public Safety.

⁸ Act. C. of 2012. on the Penal Code (2012. évi C. törvény a Büntető Törvénykönyvről)

We could naturally use firearms for self-defense if our lives were under threat; in this case the situation is clear – one is under attack and draws a firearm to shoot. The only problem is that members of the public in Hungary are not permitted to carry firearms for self-defense or for any reason whatsoever. The police have the authority to decide whether a request to carry a concealed firearm can be justified or not, and if not, the request will be denied. A good cause – according to the police - that would justify carrying a firearm is as follows: “at least one successful attempt of homicide on one’s life might prove satisfactory”. This phrase actually has a point.

According to the regulation on the authorization of self defense firearms;

25. § (1) *“For the purpose of self-defense the acquisition and possession of handgun and ammunition can be permitted for those who prove that their life and safety – thanks to the danger of a predicament that can be repelled by a firearm – require intense protection.”*⁹

The legal ordainment is quite clear yet the police still managed to misinterpret it. This can be demonstrated by an anonymous case in which authorization was requested but the police office refused to grant permission as it was – in the opinion of the authority – unjustified. The problem is that the decision of the authority not to grant permission was based on a misinterpretation of the previous legal act:

*“For the purpose of self-defense, firearms can **only** be permitted for those who can **undoubtedly** prove that their life and safety – thanks to the **imminent** danger of a predicament that **cannot be repelled without** a firearm – require intense protection.”*

As closing of the decree – though no one asked the authority’s opinion – the police, not being without a humanitarian spirit and helpfulness, suggested the application of gas pistols that are accessible to and can be carried by everyone.

If we do not wish to vote assurance to this decision being satisfactory, the serious problems in regard to the application of the gun laws are clear. First of all, it can clearly be seen that the authority is over reaching its scope while formulating additional requirements that do not exist in the normative edict. It is difficult to imagine any situation that meets such criterion; what kind of danger can only be repelled by a firearm? If something can be repelled by a firearm then it most likely can be repelled with explosives. Or with tanks. Or a thermonuclear missile. It can also be asked whether the authority is allowed to require “undoubted” proof in a simple process of firearms permission procedure. Such requirements can be found in judicial processes at a court of law. Not before the police. And finally; even if the police granted permission, the whole duration of this process is 30 days in which period the firearms must be purchased, then a certain permit is produced and given to the individual, and only then can ammunition be bought. This is at least 50 days in total. In what kind of “imminent” danger would anyone start an official process to receive a permit for self-defense of a firearm instead of calling the emergency services? If someone is in a life threatening attack they need to dial 112 immediately. Not wait 50 days for a permit. It is practically impossible to meet such requirements – impossible legal directives are not law any more.¹⁰

As for the police suggesting gas pistols; such weapons are widely known for being unreliable. Gas pistols produce extreme amounts of dross when being used – in the case of a self loading gas pistol it makes the gun jammed after five-six shots while revolvers are difficult to reload and hence they are of a similar efficiency. Even if they operate, gas pistols are not effective under stormy conditions in the outside like wind or rain, while indoors it is unadvised to use them for obvious reasons. Even if all the conditions are optimal, the gas is too weak to deal with a determined attacker and has absolutely no effect on criminals under the impact of alcohol or drugs. Still the worst potential of gas pistols is hidden in their design; being similar

⁹ 235/2004. (VIII. 31.) Edict of the Cabinet on Firearms and Munitions [235/2004. (VIII. 31.) Kormányrendelet a lőszerekről és fegyverekről]

¹⁰ András Tamás: Legistica; 126.

to real firearms (which is intentional as they are supposed to invoke fear) they might provoke an assailant to use a real firearm (even if it was not their original intention) if the criminal is indeed at all intimidated by the victim who uses a gas pistol. Such suggestion is indeed a life insurance.

But neither the authority on the first and second decree did share such worries on the legal background of the decision and nor did the Administrative Court that judged the decision to be fully correct; originally the models of the State of Law (*Rechtsstaat*) were designed to limit the governmental power of the Police State (*Polizeistaat*).¹¹ It seems that they are already able to cooperate in accordance.

The efficiency of the Hungarian penal codes on self-defense can be summarized as follows: it is worth less than nothing. Members of the public are given permission to fend off attacks with lethal force, but no means are given or at least authorized for them to do so. There is only one small loophole in the 253/2004 Edicts regulation on firearms storage;

“42. § (3) The firearm and the pertaining ammunition can be stored without separation or seclusion in the constant presence of the owner [...].”

In respect to the regulation on self-defense burglary in a private residence is also considered to be a “lethal assault” and hence can be repelled by lethal force too – in this case the firearms owner, even though his possession may be for a different reason than self-defense, is able to defend himself as he can employ the firearm quickly. Or at least until the new regulation on firearms comes into force, because from that time no weapons will be allowed at all that can be used for self-defense.

In the European Union the Czech Republic stands alone. After the downfall of the totalitarian communist dictatorship and the separation of Slovakia, the Czech Republic took a similar approach to firearms regulation to that of the United States. The Czechs observe the right to firearms possession as an insurance of public political rights and self-defense. Among the Czech population it is widely acceptable to carry firearms. And - if such a thing is possible - the regulations were eased even more after the French terrorist attacks. The authorities grant permission on the basis of objective criteria such as examinations and clean criminal records, but the police do not have the authority to refuse permission based on subjective arguments as do the Hungarian police. The Czechs not restrict such permission to their own citizens; any citizen of the EU resident in the republic are welcome to the same permission to carry concealed firearm under the same conditions.

The criminal statistics of the Czech Republic demonstrate that both Prague and the Republic on the whole are safer than any other EU capitals or counties, including the UK, France or Hungary. Of course gun crimes do take place in the Czech Republic as they do in those US states that allow firearms possession, but gun crimes take place in such countries that do not allow the possession of firearms as well.

IV. What is the connection between firearms, terrorism and democracy?

One of the most essential and basic purposes of the existence of states is to ensure internal and external security. Maintaining law and order is mainly the duty of the police in every country but – since most obviously the police cannot be everywhere at the same time – self-defense is also there for the public to protect themselves.

According to the European Commission the new proposal on firearms regulation is to increase citizens' security. But the truth is on the contrary; it will decrease public security and increase oppression. In some cases the civil rights are protected by means that are impugn that certain right.¹² The problem in this case is that if the means prove to be inefficient than we have a

¹¹ András Tamás: Theory of Administrative Law; 244-264.

¹² Dudley Knowles: Punishment and Rights; 32.

limitation in civil rights but without realizing any profit in exchange. Unarmed members of the public are unable to defend themselves from terrorism and other violent crimes. It is quite clear that legally owned firearms are suitable for committing a crime but not for self-defense unless they are precisely permitted for such. One would not carry a sports handgun for the purpose of self-defense since it is illegal to do so. But even if a weapon is owned in accordance with the legal regulations it can still easily be employed in an intentional violent crime such as robbery. (These weapons are not suitable for terrorism thanks to their small ammunition capacity and the lack of rapid fire since the maximum permitted to the public are semi-automatics). But the new restriction will not change that possibility; it is possible to commence an illegal violent action with a handgun with a magazine of twenty bullets as a maximum capacity. If the potential victim cannot possibly be equipped with any kind of firearm to defend themselves, firepower with twenty bullets would be more than decisive in an assault. A firearm with a single shot is more than enough to break the resistance of an unarmed opponent. Such regulation is pointless since assailants are aware of the weakness of their victims and can utilize a weapon regardless of whether he/she has purchased it legally or illegally.

During the terrorist acts committed in France in 2015 the assault rifles used by the terrorists were illegal – further restriction is hence pointless. The French intelligence services proved to be unable to identify the imminent terrorist acts and the police also failed to prevent them. Therefore, dozens of people fell victim to violent acts and without the presence of the police units they were unable to defend themselves. Despite the fact that the national security forces in every country in the EU increased their public presence after the terrorist atrocities it is clear on the one hand that this is of scant comfort to the victims and in addition even an increased police presence does not mean they can be everywhere to protect unarmed members of the public. But even if they could be, is that really something to aim for? Should we be happy in 21st century Europe that the police are able to keep everything under control, that they can be everywhere and aware of everything that is happening? If that was truly a goal, would it not be akin to the goals familiar from the methods of totalitarian systems from the Nazi Germany through the Jacobin Dictatorship of the French Revolution to that of the Soviet communist dictatorship? If the modern democratic states of Europe truly achieve this ambition of police potential, combined with the informational power given by technology including monitoring cell phones, localizer street cameras, drones and so on, how much longer would we be able to call the entirety of statehood and its political surroundings “democratic”? Dealing with terrorism is a cardinal question in the EU and the whole Union is united against terrorism. A common enemy is the easiest way to create common homogeneity,¹³ and it can also be considered to be a necessary element and activity in holding a community together.¹⁴ But the threatening menace of a potential enemy (even if it’s distant and not serious) can also be used by the power to limit political rights and the liberty of civilians.

During the terrorist attacks in Nice, more than seventy people were mowed down and killed by a stolen truck. Similar terrorist attacks were launched in Berlin, with twelve people killed. Both attacks took place after the Paris events and hence the national security agencies, the intelligence and the police were all alert but still failed to prevent the attacks (in the latter case the police not only failed to prevent the scheme from being realized but also failed to apprehend the terrorist who managed to escape from Germany only to be shot in Italy by the local police). Yet this is hardly surprising; a stolen truck, used as a tank to crush dozens of people in a crowd, is such a simple strategy that it is hard to uncover in advance. In these two events nearly a hundred people were killed. Yet a similar incident took place in Israel. The

¹³ Bertrand Russel: Power; 18.

¹⁴ Carl Schmitt: *Der Begriff des Politischen*

script was quite identical; terrorists were able to steal a truck and drive it into a crowd. Three people were killed – until armed and military trained citizens shot and killed the assailant. Had there been just half a dozen members of the public in the pub where the Paris attack took place who were carrying concealed firearms for self-defense, perhaps we would have seen a very different outcome. The same applies to the Nice and Berlin attacks.

The purpose of terrorism is to spread fear among the public. It is not a coincidence that terrorism occurs in Western societies like the US and the EU as the alliance of the West is so powerful that on one hand no other nation would be able to seriously hurt them, while on the other hand they employ their military power to satisfy their international ambitions.¹⁵ Terrorists are unable to fight their enemies on the battlefield and therefore engage in attacks on unarmed civilians and non-military targets. Being too weak to oppose its adversaries in warfare terrorists seek to break the population of its enemies rather than its military. It is wise to be alert, but this means that terrorism has already achieved its goal. As a result of armed violent terrorist acts, the new proposal is about to decrease civil rights, betraying private property and at the same time, through its anticipated effect, it treats every holder of legal firearms as potential terrorists.

Firearms restriction can be legal or democratic. If the ninety percent of the population do agree about something, then it is quite democratic – or at least that is what we could easily believe. But think deeper about democracy and its nature; democracy has two aspects, in one hand it means how the political system is to be constituted but it also means the way political power is to be practiced.¹⁶ Democracy does not only mean that the majority of citizens are allowed to take part in the political decision making. A democratic system is also supposed to support political and civil rights and such rights must be given regardless of the actual number of those who would like to utilize them.

A good example would be the right to have homosexual marriage. Most probably a great majority of people would never like to have such relationship. But for the sake of homosexuals, a modern and democratic state acknowledges their relationship.

If democracy meant that the majority could make all the things prohibited they don't like, soon nothing would be allowed. In democracies each element of civil rights can be considered to be small victories as liberty has slowly been achieved while power has been limited. It is up to democrats to use the civil rights and to expand their volume while if they are neglected or left unprotected, civil rights are taken from the people by the actual power.¹⁷ A democratic state should consider what can be allowed. Not banned.

According to the basic philosophy of law, everything is allowed except for those things that are prohibited in law. Generally that is true but if the methods of the law itself are recognized it is not necessary to accept that it is only valid when people are on their own. Just for example; somebody would like to swim in a river. If it is not forbidden it is permitted to do so. No specific authorization is required by law – the lack of restriction is enough. But in situations where the cooperation of the state is needed, the opposite is true. If people believed that their dogs would make excellent drivers and so decided to get them driving licenses some problems would certainly be encountered. It is not as if the law explicitly states that “dogs may not be given driving licenses”. Such a restriction is not required in this case. The reason is that if the cooperation of a state's administration is needed then we can no longer say that everything is possible if it is not restricted. In these cases only such things are possible that administrative law has provided the procedural methods to do.¹⁸ Dogs are unable to obtain

¹⁵ Michael Mann: *Power in the 21st Century*; 133-134.

¹⁶ Giorgio Agamben: *Introductory Note on the Concept of Democracy*; 1.

¹⁷ Rudolf von Jhering: *Der Kampf um's Recht*

¹⁸ András, Tamás: *Theory of Administrative Law*; 66.

driving license not because it is forbidden but because the law did not create the methods to do so.

The same applies for firearms as people require permission and registration to purchase them. It is quite easy to prevent this – not by restriction but simply by not providing the necessary legal methods to obtain them. It is good to believe that self-defense is irrelevant as the police are there to protect us.

The problem is that democracy is not protected by police officers. Police officers are trained to follow orders and so are soldiers. This is why they are paid and their insubordination would have serious consequences including being dismissed at the least. It is unlikely that people chose such professions because they would be willing to help to create or maintain an anti-democratic society. But in some cases they are simply given orders to do so. Such scenarios could be seen in totalitarian systems of 20th century Europe. It is unlikely that most of the officers of the German police supported the Nazis' progress to power – they even did prevent it in the first place during the Munich coup in 1924. But when the rise of the NSDAP became legal and democratic they did nothing to prevent it after 1933. Of course there were special police forces like the Gestapo which were formed to deal with political enemies and their members were recruited from the SS, but this organization was only a small part of the whole police structure. Other officers supported the totalitarianism because that was their job and the same can be said of the soldiers in Germany at the time. Even the downfall of Nazism did not disturb the loyalty of many soldiers – they had fought for the Third Reich until the end of the war, but after the military defeat they were reorganized to serve the communist regime of the German Democratic Republic, which they did.

Police officers and soldiers can therefore be tools to maintain a good legal system and social structure but they can also be tools of oppression depending only on the actual political centre. Democracy can only be built and protected by the participation of democrats and the social alliance of free people and civilians. Democracy is their *property*. It is comfortable for someone to declare himself a democrat but call for someone else's aid to defend their democracy when it is endangered. Strong civil society can only exist in a democratic state with weak power.¹⁹

American democracy is based on the constitutional right to bear arms and the people's right to rise against tyranny, but even in the case of the US it would truly be fair to say that it is a formal democracy only. But what can be said about the European Union? Most of the EU consists of states that freed themselves from the totalitarian system of the Soviet Union less than thirty years ago.²⁰ Even the other member states have minimal experience with democracy; in (Western) Germany, Spain or Portugal democracy is less than a hundred years old, while in France it is two hundred. The whole apparatus of the EU is well known for being anti-democratic as well, and despite the increasing power of the European Parliament versus the Committee, if the US cannot be considered to be democratic nor can the EU (according to many, the US democracy is suffering from the influence of an elite's interests, making it a "formal democracy" only,²¹ while the political establishment of the EU is well known for having "democratic deficit"²²).

To make a conclusion we can declare that the proposal on firearms restriction is not in harmony with the realities; according to the European Commission the strict rules are required to minimize the threat of legally held firearms but in fact it cannot be proved that legally held firearms do hold such a threat that the restriction would be justifiable. According to the crime statistics of the United States we can clearly see that the violent crimes (gun crimes included)

¹⁹ Boaventura de Sousa Santos: Two democracies, two legalities; 311-313.

²⁰ Samuel P. Huntington: The Clash of Civilizations; 192-198.

²¹ Charles Wright Mills: Power Elite; 280.

²² Neil MacCormick: Who is Afraid of a European Constitution?; vi.

do occur irrespective of the firearms regulations. The constitutional right to possess firearms is an essential element of the American democracy in most States while in case of the European Union the Czech Republic stands alone with its liberal firearms regulation – in their case the democracy itself and the constitutional right to have firearms are linked together. This fact is to be considered natural as the regime of Czechoslovakia was one of the most totalitarian in all Eastern Europe and after the downfall of the Communism, the both the Czech and the Slovaks did demand strong guarantees of democracy and particularly in case of the Czech Republic the process of Westernization followed the American way of mindset in regard to the strong connection between firearms and democracy. The expansion of civil rights is a process that requires constant efforts from the civilians and the acquired rights are to be guarded and practiced otherwise they will most certainly be withdrawn by the power [von Jhering] – but both the efforts and the safeguard of civil rights do require necessary means.

Global domination and the resurrection of the West led to the confrontation among civilizations [as Mann, Huntington or Kissinger described] and the terrorism as a phenomena is a result of this process. Methodically terrorism fights for its goals against civilians, not soldiers, and hence it causes casualties within cities and not on the battlefields. Terrorism requires special ways to deal with and here comes the fight against terrorism in confrontation with democracy. The power decreases certain political and civil rights (like firearms possession, personal autonomy) to oppose terrorism but this way certain minimal elements of democracies are being limited – and such rights are essential as they serve private autonomy, private property and personal security. This way the power of the state is becoming omnipotent while its democratic transparency and democracy itself are weakening. This means that the political system is losing its democratic attitude as democracy is becoming formal instead of being real [Mills, Santos, Agamben, Rancière] while basic civil rights are also being limited.

Democracy as the ideology defined in the previous centuries is no longer viable under the modern circumstances. Representative democracies were opposing the totalitarian systems of the 20th century when they were still an acceptable option but this is no longer satisfactory today.²³

No matter what we would like to believe, democracy is an adventitious flower in the European arena and if we are to foster it, we need to attend to it carefully and keep it safe from the invasive weeds that would oppress it. As Francis Fukuyama said; *there is no democracy without democrats*.

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²³ Jacques Rancière: *Democracies against democracy*; 76.

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