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## **DETERMINATION OF FIREARMS IN THE POLISH LAW**

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### **ABSTRACT**

Firearms are subject plays a greater or lesser role in our lives, and above all in the area of our security. Discussion on the need for surveillance of both access to firearms, as well as forms that it has taken must be based on the establishment of the Polish legislation defines as firearms. The concept is caused and causes a lot of controversy in doctrine and jurisprudence. Seeing the need in the article, the author presents the determination of firearms, paying particular attention to the importance of its legal determination in the law on firearms and ammunition and its evolution. Indicates the impact that EU law has had in its shape in the current content. The author presents the elements, the occurrence of which causes that we are dealing with firearms. Draws attention to the achievements of the doctrine, the necessary technical expertise conditioning knowledge of the subject which is the weapon. This indicates that they are necessary for the proper determination of its designations. The result indicates the elements that determines the occurrence of that we have to deal with weapons under Polish law. The author presents and attempts to unravel the dilemmas which arise as a result of a literal reading of the recognition of firearms in the law on firearms and ammunition. Not based upon the definition of substance only firearms, but also emphasizes the importance of determining the span of her discussing succession weapon: fighting, hunting, sporting, gas alarm and signaling. It also draws attention to how problematic recognition as a firearm finished or machined significant part of the weapon. Presented in the development of firearms issues certainly will deepen their knowledge in the stated range, and in the future accurately evaluate the behavior of the perpetrators as criminal acts or not prohibited.

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The issue of firearms ownership evolves over time. The approach to the issue has been changing depending on the historical period and, whether we speak of a time when carrying weapons seems to be a self-evident matter, acceptable because of the need to ensure safety (e.g. during war). The issue of restrictions on access to firearms occurs with the formation of state structures, i.e. practically since the beginning of the Middle Ages. Then, weapons ceased to be identified only with a working tool, depending on the social status—affiliation to particular social

class—but it became an attribute of the ruling power and nobility. Given the history of regulations on weapons, we could speak of having a weapon as a certain “voice” of freedom, returning to the noble traditions to display weapons as a symbol of social status. The symbolism of this, as well as social factors, historical or legal decide the role of weapons in interpersonal relations – social.<sup>1</sup>

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<sup>1</sup> See. J. Wójcikiewicz, *Posiadanie broni palnej przez obywateli*, Warszawa-Kraków 1999, p. 16

Regardless of the reasons why people want to own a gun, firearms play more or less major role in our lives, especially in the area of our security. In particular firearm. The public is not indifferent as to weapons (firearms), which are often desired.<sup>2</sup> For this reason, firearms are treated as an object available not only to well-defined groups of people, often institutionalized, but to growing group of individuals. Proposals for new regulations relating to the possession of weapons, and the information appearing in the media, prove the existence of demand in society for getting wider, easier access to weapons. These aspirations verify events such as Breivik's bloody terrorist attacks in Norway, after which it has been called for stricter laws governing the possession of weapons, valid throughout the EU. Discussion on the need for surveillance of both access to weapons (especially firearms), as well as forms that it has to take, must be based on determining whether or not to restrict access to weapons, and if it is really necessary, because of the impact it has on safety—whether it is merely the result of persisting in a well-established system for centuries constraints dictated by concerns about the use of power weapons against it. This discussion must be preceded by a presentation of what the Polish legislation defines a firearm as a concept caused and causes much controversy. They arise even from the fact that the law on weapons, munitions and explosives of 1961<sup>3</sup>, and preceding the presidential regulation of 1932 - Law on weapons, ammunition and explosives<sup>4</sup> does not define the concept of a firearm, although classify arms in a positive enumeration. The Act on weapons,

<sup>2</sup> See. W. Poznaniak, *Spoleczno-psychologiczne aspekty posiadania broni*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2003, vol. 2, p. 265.

<sup>3</sup> Ustawa z 31 stycznia 1961 r. o broni, amunicji i materiałach wybuchowych (DzU nr 6, poz. 43 z późn. zm.).

<sup>4</sup> Rozporządzenie Prezydenta z 27 października 1932 r. — Prawo o broni, amunicji i materiałach wybuchowych (DzU nr 94, poz. 807 z późn. zm.).

ammunition and explosives indicated only in art. 1 paragraph. 1, that whenever this Act is referred to weapons without further determination, it should be understood as short firearms and hunting weapons and for sporting purposes.

In the absence of a legal definition of a firearm used a variety of shots of her doctrine developed by the. Apart from the technical-military and linguistic definitions of firearms the following can be distinguished, which are not applicable in law and criminology:<sup>5</sup> general definitions - they are rarely used because they are not precise enough. They have a form of a simple classic definition; definitions for classification - in fact, they do not define what a firearm is and they merely list the types – they are found in older textbooks of criminology<sup>6</sup>; general axiomatic definitions - the definitions of an axiomatic statement express the requirements that must be met by an object to be considered a weapon. They shall determine the characteristics of firearms;<sup>7</sup> axiomatic definitions of specific nature - specify the name of a firearm by mentioning a number of significant features and components of weapons or even discuss the principle of its operation.<sup>8</sup>

According to the accepted way to develop further discussion will be limited to discussion

<sup>5</sup> W. Brywczyński, J. Kasprzak, *Nielegalne posiadanie broni i amunicji*, Studium prawno-kryminalistyczne, Białystok 2013, pp. 107–111.

<sup>6</sup> Eg. B. Lewenberg, L. Schaff, *Kryminalistyka*, Warszawa 1949, p. 147; M. Kulicki, L. Stępa, D. Stucki, *Kryminalistyczno-prawna problematyka broni strzeleckiej. Komentarz do przepisów o broni i amunicji*, Kraków 2003, p. 157 et seq.; M. Kulicki, *Dowodowa problematyka współczesnej broni strzeleckiej*, Kraków 2001, p. 253 et seq.

<sup>7</sup> Eg. S. Adamczak, *Pojęcie broni palnej*, „Problemy Kryminalistyki” 1967, No 66, p. 208; B. Zając, *Wybrane prawno-kryminalistyczne aspekty nielegalnego posiadania lub wyrobu broni palnej i amunicji*, „Problemy Kryminalistyki” 1984, No 166, p. 616 et seq.; J. Kasprzak, *Kryminalistyka — podręcznik dla Żandarmerii Wojskowej cz. 1 — Technika kryminalistyczna*, Warszawa 1995, p. 166;

<sup>8</sup> Eg. P. Horoszowski, *Kryminalistyka*, Warszawa 1958, p. 428; T. Hanausek, *Kryminalistyka — zarys wykładu*, Kraków 1996, pp. 128–130.

of firearms which is the designation of its legal definition contained in the Act of weapons and ammunition from 1999<sup>9</sup>. This does not mean that doctrine achievements in this field will be dismissed. It is interesting and must be used in determining the designations of firearms.

The definition of a firearm is contained in Art. 7 paragraph 1 of the Act on Firearms and Ammunition. It has evolved from the 2003 definition through further clarification of what is meant by signal guns and alarm guns. Prior to the change of 2011<sup>10</sup>, Art. 7 paragraph 1 defined a firearm as a device dangerous to life or health, which as a result of compressed gases resulting from the combustion of propellant is capable of firing a projectile or substance from the barrel or an item replacing the barrel, and thus hitting a target at a distance. This definition seemed to be coincident with the basis used in Polish forensic science<sup>11</sup>, which usually defines a firearm as a dangerous object (tool) that, due to its construction and the use of gases from a burning propellant provided by the manufacturer or the user, has the ability to launch a projectile with sufficient energy so as to be likely to cause death or serious injury to a human body. The forensic definition excludes recognition of a simple device (e.g. properly sealed tube), which potentially is capable of firing a projectile or substance, as a firearm for forensic purposes. It embodies consideration of the purpose for which the device has been manufactured or used, and whether the discharged projectile could hit

targets with a force which is lethal or severely damaging to the human body. The existing legal definition of a firearm does not take only these elements into account, and thereby encompasses a wider scope than the definition used within the field of forensic science<sup>12</sup>.

On reading the legal definition of a firearm specified in the Act on Firearms and Ammunition before the change of 2011, it is clear that:

- the device is dangerous to life or health,
- it works as a result of compression of gases from the combustion of a propellant,
- it is capable of firing a projectile or substance,
- it has a barrel or element in lieu,
- it is capable of hitting a target at a distance.

The definition of a firearm discussed does not provide any indication as to how technically advanced (simple or complex) the device must be in order to be classified as a firearm. It does say, however, that it must be "dangerous to life or health". Contrary to the literal wording of the definition it cannot be considered that there is intrinsic danger to the life or health from the device itself. Without a doubt, there are many devices that are dangerous to life and health in use, but are not considered firearms (e.g. pneumatic hammer, axe). A danger to health and even life should derive from the context of the holistic definition of a firearm. First of all, it must be due to the operation of the equipment and the potential to hit a target at a distance with a projectile or substance, and this it seems is the essence of a firearm.

An essential element for an item to be considered a firearm is that it is able to hit a target at a distance using a projectile or substance as a consequence of the compression of gases resulting from combustion of a propellant. To be recognized as firearms, therefore, weapons had to base

<sup>9</sup> Ustawa z 21 maja 1999 r. o broni i amunicji (tekst pierwotny DzU nr 53, poz. 549; tekst jedn. DzU z 2012 r., poz. 576).

<sup>10</sup> Ustawa z 5 stycznia 2011 r. o zmianie ustawy o broni i amunicji oraz ustawy o wykonywaniu działalności gospodarczej w zakresie wytwarzania i obrotu materiałami wybuchowymi, bronią, amunicją oraz wyrobami i technologią o przeznaczeniu wojskowym lub policyjnym (DzU nr 38, poz. 195, z późn. zm.).

<sup>11</sup> See. eg. S. Adamczak, *Pojęcie broni palnej*, „Problemy Kryminalistyki” 1967, No 66, p. 205; M. Kulicki, *Kryminalistyka. Wybrane problemy teorii i praktyki śledczą-sądowej*, Toruń 1994, p. 362.

<sup>12</sup> See. M. Kulicki, L. Stępka, D. Stucki, *Kryminalistyczno-prawna problematyka...*, p 28–39.

their action on the chemical reaction of combustion<sup>13</sup>, and not just of anything but something that fulfils the characteristics of a propellant. The Act on Firearms and Ammunition did not specify (and it is still not determined) what a propellant is. It should be recognized that it may be any material capable of generating so much gas as is necessary to achieve the effect in the form of firing a projectile (or substance) at a distance with a destructive force which brings an accompanying danger to life or health. Anyone who has even a casual knowledge of the laws of physics knows that this effect is dependent on many factors, including what kind of propellant is employed.

It was not very fortunate that the capability of firing a projectile or substance from a barrel or element in lieu was included in the definition of a firearm. The definition does not provide any precision in relation to the design or materials used in the construction of the projectile or substance. The only requirement is that it is a threat to life or health when fired. Furthermore, it has to be launched from a barrel or something substituting for a barrel which is itself part of the weapon. A little more space will be devoted to this later in the study. On its own, the effect of the actuation of the device under consideration, i.e. hitting the target at a distance, does not itself decide whether we are dealing with a firearm or not. The impact must be great enough to endanger the life, or at least the health, of a human being, although even this is only implicit in the legislation. Consequently, we return once again to the start of the definitions discussed. The device, which as a result of compressed gases resulting from combustion of a propellant is capable of firing a projectile (or

substance) from the barrel (or the element replacing it) to effect hitting a target at a distance, will not be considered a firearm unless it is capable of an impact that endangers life or health.

In view of the above, the classification of a device as a firearm is dependent on the existence of the totality of all of these characteristics, although with some alternatives as to the components (a barrel or a barrel substitute).

Unfortunately, the new legal definition within the Act on Firearms and Ammunition of 5 January 2011, does not facilitate precise determination of its application. As we read in the explanatory memorandum to the Act<sup>14</sup> introducing the new definition, it was required because of the need to adapt national law to the Directive of the European Parliament and of the Council Directive 2008/51/EC of 21 May 2008<sup>15</sup> which amended Council Directive 91/477/EEC on the control of the acquisition and possession of weapons<sup>16</sup>. This change was in turn a consequence of the signing of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, by the European Commission on behalf of the European Community on 16 January 2002. Directive 2008/51 in considering firearms to be barreled weapons that can expel a shot, bullet or projectile by the action of a combustible propellant also included items that could be modified, i.e. something that has the appearance of a firearm and as a result of its construction or the material from which it is made can be converted to that use. Therefore, it was decided to use new wording in Art. 7 paragraphs 1 and 2 of the amended Act on Firearms and Ammunition.

<sup>13</sup> Combustion — physicochemical process, the basis of which is the rapid combination of a fuel with an oxidant (eg oxygen); this is accompanied by the emission of large amounts of energy, heat and flash (flame). *Słownik języka polskiego*, Ed. M. Szymczak, Vol. 3, Warszawa 1998, p. 262.

<sup>14</sup> <<http://www.sejm.gov.pl>>, March 2011

<sup>15</sup> Dz. Urz. UE z 8 lipca 2008 r. L 179/55

<sup>16</sup> Dz. Urz. WE z 13 września 1991 r., L 256/51.

As a result of the changes in Art. 7 paragraph 1 of the Act on Firearms and Ammunition, *under the Act the meaning of a firearm is any portable barreled weapon that expels, is designed to expel or may be converted to expel one or more projectiles or substance as a result of a propellant*. When analyzing this definition, in the first place it must be noted that it does not require firearms to and she was dangerous. It should be regarded as a curiosity. In analyzing this definition, it can be immediately seen that there is nothing to indicate that they have to be dangerous. This feature, as indicated above, is a constituent element for their regulation, or at least for increasing the criminal liability in the event of recourse to them when undertaking criminal activity<sup>17</sup>. It can, of course, be presumed that danger is implicit in the use of the term weapon which in itself contains an element of danger. However, the literal understanding of the word weapon included in many dictionaries does not seem to confirm this. The definition discussed also does not demand that a firearm is able to hit a target at a distance, which seems completely unintelligible. After all, the literature emphasizes<sup>18</sup> that the need for gun control is a result of the fact that firearms pose a threat to human life and are able to hit at a considerable distance. Removing these elements from the legal definition of a firearm therefore puts into question the legitimacy of their control.

According to the new definition the term firearm is used for a weapon with a barrel and therefore one which uses a barrel to expel a projectile or substance using a propellant system to give the projectile (or substance)

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<sup>17</sup> Article 159 of the Penal Code provides: *Who while taking part in a fight or beating someone uses a firearm, knife or other dangerous object (...)* Whereas article 280 § 2 of the Penal Code says that *if the perpetrator of a robbery uses a gun, knife or other dangerous object(...)* they are liable to more severe punishment.

<sup>18</sup> Eg. P. Palka, *O prawno-kryminalistycznej problematyce broni palnej słów kilka*, „Przegląd Policyjny” 1997, p.4

kinetic energy<sup>19</sup>. This definition does not consider devices with a substitute barrel or with no barrel to be firearms.

To sum up, it is clear that at present to be considered a firearm the weapon must meet cumulatively the following conditions: be portable; have a barrel; permit expulsion of, or adaptation to expel, one or more projectiles or substances; this expulsion results from the action of propellant. Use of the word “portable” in the definition appears to exclude the possibility of recognizing as firearms of all kinds of devices capable of firing missiles mounted permanently on vehicles or buildings.

Paragraph 1a was introduced to Art. 7 of the Act on Firearms and Ammunition in accordance to its justification. It says: *Within the meaning of the Act, an object shall be considered as capable of being converted to expel one or more projectiles or substances by the action of a combustible propellant if, as a result of its construction or the material from which it is made, it can be easily so converted*. It defines the object adaptable to expel in a manner characteristic of a firearm. Adding such a provision to the Act is strange. A firearm, after all, within Art. 7 paragraph 1, is not identified as a tool, device or an object. It means that one cannot talk about firearms in respect of an item that can be adapted to expel as described, unless the item is already a portable barreled weapon. If this is so, it must have a barrel propellant system, used to give the projectile (or substance) kinetic energy. This means that the way an item has been adapted to expel, as indicated in Art. 7 paragraph 1a, cannot relate to the expulsion referred to in Art. 7 paragraph 1 of the Act on Firearms and Ammunition. Of course, using a teleological interpretation one can determine for what purpose the provisions of paragraph 1a were added. However, this does not

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<sup>19</sup> See. S. Torecki, *1000 słów o broni i balistyce*, Warszawa 1982, p. 259; A. Ciepliński, R. Woźniak, *Encyklopedia współczesnej broni palnej*, Warszawa 1994, pp. 230–231.

change the fact that the new definition of a firearm is an example of defining the unknown by an unknown. It does not bring clarity about what should be designated a firearm. It is the result of the introduction into legislation literal solutions that have been formulated in the acts of European Union law; the use of translation made without professional knowledge of firearms brings problems, resulting in the use of terms which are ambiguous and colloquial<sup>20</sup>.

Help in identifying firearms is given in Art. 4 paragraph 1 item 1 of the Act on Firearms and Ammunition, where the legislation establishes the range of firearms within the definition. According to this, the following are considered to be firearms: combat weapons, hunting weapons, sporting guns, gas guns, alarm guns and signal guns. The legislation therefore in defining a firearm is not only limited to providing a general definition with a description of the method of operation and the effects of use. The Act not only provides a nominal definition of a firearm, but also identifies a range of firearms by type or by use, i.e. combat, hunting, sporting, gas, alarm and signal.

It should also be noted that the legislation specifically covers firearms produced before 1850 and replicas of such weapons. These may be possessed without a permit (Art. 11 paragraph 1 of the Act on Firearms and Ammunition). It does not matter whether such a firearm is a combat, hunting, sports, gas, alarm or signal gun.

The Act on Firearms and Ammunition does not contain a legal definition for combat, hunting, or sports, or gas weapons. Therefore, it is clear that it is very difficult and questionable to define them. Including this in the Act would certainly facilitate their legal classification. The name "combat" is quite

unfortunate. In the ballistic literature<sup>21</sup> it is described as a military weapon designed for fighting, fulfilling tactical and technical requirements, both in peacetime and war. This means that such a weapon should be considered as one intended essentially for the army. Of course, nowadays we often deal with all kinds of firearms which were constructed for the needs of various types of special services, and not necessarily the military. Therefore, combat arms should be considered as those that correspond to tactical and technical requirements for use in all kinds of operations in both peace and war.

Hunting guns are described as weapons designed for hunting wild game which, depending on the construction of the barrel, are divided into smoothbore barrel (pellet – shotgun), rifled barrel (bullet – rifle) and combinations containing both smoothbore and rifled barrels (pellet-bullet – drilling [three barrels in any combination], combination shotgun/rifle)<sup>22</sup>. In the broadest sense, hunting weapons also include melee weapons, but these now play a minor role and are outside of our interest because they are not firearms, and sidearms (revolvers and pistols), used for hunting in some countries<sup>23</sup>.

Legally determining what type of firearms are to be counted as hunting weapons is not easy. To help determine the designations of these weapons, before the amendment of the Act on Firearms and Ammunition 2011, a regulation<sup>24</sup> was issued on the basis of Art. 10 paragraph 5 of the Act specifying, inter alia, weapons for the purposes of hunting. Unfortunately, this

<sup>20</sup> W. Brywczyński, J. Kasprzak, *Nielegalne posiadanie broni...*, p. 88.

<sup>21</sup> See. S. Torecki, *1000 słów o broni i balistyce*, Warszawa 1982, p. 38; W. Kwaśniewicz, *1000 słów o dawnej broni palnej*, Warszawa 1987, p. 36.

<sup>22</sup> G. Seilmeier, *Leksykon myślistwa od A do Ż*, Warszawa 2003, pp. 55–60; S. Torecki, *1000 słów...*, pp. 40–41.

<sup>23</sup> W. Lampek, R. Mahrhold, *Leksykon broni...*, p. 44–46.

<sup>24</sup> Rozporządzenie ministra spraw wewnętrznych i administracji z 20 marca 2000 r. w sprawie rodzajów szczególnie niebezpiecznych broni i amunicji oraz rodzajów broni odpowiadającej celom, w których może być wydane pozwolenie na broń (DzU nr 19, poz. 240 z późn. zm.) — not mandatory.

determined the weapons used for hunting purposes in a negative way.

Art. 10 of the Act on Firearms and Ammunition that was expanded as a result of the amendment of 2011, specifies that weapons for the purposes of hunting come under separate regulations. Weapons authorized for hunting are defined in the Regulation of the Minister of Environment of 23 March 2005 on the detailed conditions for the exercise of hunting and marking of carcasses<sup>25</sup>. According to this, hunting and the killing of animals which pose an extraordinary threat to human life, health or the economy, is only allowed using long barreled, centrefire, rifled or smoothbore weapons with a maximum capacity of six single shots, except that no more than two rounds can be put in the magazine of self-loading weapons. The use of black powder guns, pistols and revolvers is excluded. Rifles used for hunting must be of a minimum calibre of 5.6mm and be designed for ammunition with a projectile energy of not less than 1000 Joules at a distance of 100 m from the muzzle. Hunting guns with smooth barrels do not have to comply with this condition.

This does not mean, however, that hunting weapons in general are limited to the weapons described above since, for example, European Union countries have different regulations permitting hunting with weapons in a wider or narrower range than that indicated<sup>26</sup>. Therefore any assessment of firearms used for hunting requires an individual analysis of their characteristics.

As with hunting firearms, one had to try to determine what was a sporting gun before the amendment of 2011, namely, to recognize that it is a firearm used in sporting activities. The scope of these will therefore be laid down in the rules of the sports concerned.

<sup>25</sup> DzU nr 61, poz. 548 z późn. zm.

<sup>26</sup> *Łowiectwo*, *Encyklopedia Larousse*, Warszawa 1994, pp. 53–84.

As in the case of hunting weapons, to help determine this, weapons which are considered sports weapons were identified in the regulation specifying, inter alia weapons for the purposes of hunting. This was done in a slightly better way than in the case of hunting weapons, as there was a positive enumeration. Although the regulation in § 6 defines weapons for which a license may be issued for the purposes of sport, this cannot however be equated with the legal definition of it as a sporting firearm, if only because it also pertains to pneumatic weapons.

The amended Art. 10 of the Act on Firearms and Ammunition indicates that, for the purposes of sports, the following types of firearms can be held:

- rimfire with rifled barrels and a calibre of up to 6 mm
- centrefire with rifled barrels, and a calibre of up to 12 mm
- smoothbore
- weapons adapted to shoot exclusively with black powder

A weapon used for personal defence (pistols, revolvers) that fires tear or nerve gas is commonly known as gas weapon<sup>27</sup>. The Firearms and Ammunition Act does not give a definition of a gas weapon. However, Polish norms<sup>28</sup> describe such weapon type. According to the norms a gas weapon is a device in the form of revolver, pistol or of other shape, used for throwing incapacitating chemical material at a distance with help of propellant charge. It is important to note that

<sup>27</sup> W. Lampek, R. Mahrhold, *Leksykon broni ...*, p. 40.

<sup>28</sup> PN-90/C-86100 Gas weapon. Requirements and research — in accordance with the Minister of Economy Regulation of 14th September 1999 on the introduction of the obligation to apply some of the Polish Norms (Journal of Laws No. 80, item. 911) total application of which was required only to 4 August 2001, in connection with the entry into force of the Minister of Economy Regulation of 5 which changed the above-mentioned Decree (Journal of Laws No. 74, item. 792); **PN-V-86005:2000 Gas firearm. Requirements and research** — standardises gas firearm in connection with state defence and security.



in the meaning of the Firearms and Ammunition Act a weapon is recognised as a gas weapon only if it meets the remaining requirements of firearms, i.e. it is a device dangerous to life or health, equipped with barrel or other element that serves as a barrel, and throwing of the chemical material results from combustion of propellant.

The definition given in art. 4 section 1 item 1 of the Firearms and Ammunition Act definitely classifies the gas weapon as a type of firearms. Additionally, the further description, given in art. 7 section 1 of the Act, concerning firearms allows to include gas weapons into firearms.<sup>29</sup> According to the given description a firearm is a device that with help of barrel, or the element that serves as a barrel, fires at a distance a bullet or a substance.

Before the Firearms and Ammunition Act came into force, gas weapon was not even classified as a weapon and definitely not as firearms, as a result only some regulations concerning firearms, ammunition and explosives<sup>30</sup> applied to the gas weapon. The problem of classification of gas weapons as firearms has been the subject of many judgements that differed considerably in their content<sup>31</sup>. Any questions concerning this problem are answered in the Supreme Court resolution<sup>32</sup>, passed as a result of differences in law interpretation of the following legal issue: *Is the gas weapon a kind of firearms within the meaning of both art. 263 § 2 and art. 280 § 2 of the Criminal Code?* In the justification of the resolution the Court pointed out that the literature<sup>33</sup> provides many

interesting disquisitions questioning the decision of the legislator, but they are not the source of arguments which are convincing enough to accept *de lege lata* different understanding of the notion of firearms within the meaning of the Firearms and Ammunition Act and the Criminal Code. The Court pointed out that the opinions opposing to the recognition of gas weapons as a kind of firearms were present in the literature<sup>34</sup> prior to the resolution of 1999, the legislator was familiar with them and nevertheless decided to adopt different model definition. Taking into consideration the fact that the task of jurisdiction is not to review legislative decisions, but only to decode the content of the law, the Court recognised that with effect from the date of entry into force the Firearms and Ammunition Act (4<sup>th</sup> July 1999) gas weapons are a kind of firearms within the meaning of both art. 263 § 2 and 280 § 2 of the Criminal Code<sup>35</sup>.

Before the Firearms and Ammunition Act came into force, the signal, alarm as well as gas weapons were not treated as a weapon, but as an object to which applied only some regulations concerning firearms, ammunition and explosives<sup>36</sup>. Therefore when it comes to the signal and alarm weapons the remarks on the recognition of gas weapon as firearms seem to be valid for all three weapon kinds.

Originally the Firearms and Ammunition Act did not give the definition of a signal weapon. Used a so their terms developed by the Central Forensic Laboratory of the Police

<sup>29</sup> M. Tabor, *Gazowiec jak...*, p. 13.

<sup>30</sup> Rozporządzenia ministra spraw wewnętrznych z 29 października 1990 r. w sprawie rozciągnięcia..., § 1 pkt 1.

<sup>31</sup> See. The Supreme Court ruling of 22 January 2003, I KZP 46/02, „Prokuratura i Prawo” 2003, No. 3, item 10; the Supreme Court ruling of 4 November 2002, V KKN 376/01, „Biuletyn Sądu Najwyższego” 2003, No. 2.

<sup>32</sup> The Resolution of the Supreme Court of 29 January 2004, I KZP 39/03, „Biuletyn Sądu Najwyższego” 2004, No. 1.

<sup>33</sup> See. M. Kulicki, L. Stęпка, D. Stucki, *Kryminalistyczno-prawna...*; M. Nowożenny, *Przegląd definicji pojęcia „broń palna” z punktu widzenia prawa karnego i kryminalistyki* [in:]

*Nowa kodyfikacja prawa karnego*, (Ed.) L. Bogunia, vol. 7, Wrocław 2001; K. Gorazdowski, *Broń palna — broń gazowa?*, „Przegląd Sądowy” 2001, No. 5, pp. 62–65; Z. Jeleń, *Pojęcie broni palnej*, „Prokuratura i Prawo” 2002, No. 5, pp. 68–69.

<sup>34</sup> See. T. Hanausek, *Aktualne problemy dotyczące pojęcia broni palnej w polskiej teorii kryminalistyki*, „Przegląd Sądowy” 1992, No. 4, pp. 59 et seq.

<sup>35</sup> Ustawa z 6 czerwca 1997 r. — Kodeks karny (DzU nr 88, poz. 553, z późn. zm.).

<sup>36</sup> Rozporządzenia ministra spraw wewnętrznych z 29 października 1990 r. w sprawie rozciągnięcia..., § 1 pkt 1

Headquarters<sup>37</sup>. The amendment of 28 March 2003<sup>38</sup> adds to art. 7 of the Firearms and Ammunition Act sections 2 and 3 that concern signal and alarm weapon definitions. According to art. 7 section 2 signal firearm is a reusable device which with help of barrel calibre no less than 25 mm, is able to fire, as the result of the action of compressed gases produced in the reaction of propellant combustion, a substance in the form of pyrotechnic charge in order to make an acoustic or visual effect. The legal definition provided in the art. 7 section 3 of the Firearms and Ammunition Act says that the alarm firearm is a reusable device that uses compressed gasses, produced as a result of propellant combustion, in order to make an acoustic effect, and the substance fired from a barrel, or other element that serves as a barrel, strikes at a distance no longer than 1 metre. The special type of alarm weapon are the weapons having the calibre up to 6 mm. It is permitted by the legislator to possess such a weapon without licence (art. 11 clause 6 of the Firearms and Ammunition Act).

It is worth noticing that the joint characteristic of alarm and signal firearms, that has not been mentioned in the general definition of a firearm, is the fact that they are reusable devices. It is out of question to categorise a disposable device as the alarm or signal firearm.

On the day the Republic of Poland became a member of the European Union, i.e. 1<sup>st</sup> May 2004, came into force the regulation adapting national legislation to the EU law<sup>39</sup>. The regulation introduces into the Firearms

and Ammunition Act, and other acts, a concept of permanently deactivated firearm. Deactivating the firearm of its functional characteristics means that all the essential elements of a firearm are be deprived of their functional characteristics in such a way that, despite the action of compressed gases developed as a result of propellant charge combustion, it is not possible to strike a missile or some substance from a barrel, or other element that serves as a barrel, or to make visual or acoustic effect, and restoring the functional characteristic to the firearm is not possible without taking specialist actions (art. 6a section 2 of the Act). This means that the deactivated firearm loses its attributes and is no longer firearm.<sup>40</sup> Therefore, using the term firearm to refer to such device is wrong as it is no longer one. At the same time it should not be the subject of regulation of the Firearms and Ammunition Act<sup>41</sup>.

The recognition of significantly processed component parts<sup>42</sup> (frame, baskila, barrel from the chamber cartridge, lock and chamber) is still an open issue. However it is worth noticing that the process of classification of the important component elements as a firearm derives from the regulation given in art. 5 section 1 of the Firearms and Ammunition Act, which says *Prepared or treated important component parts of a firearm or ammunition are treated as a weapon or ammunition*. However it seems that such reasoning is mistaken. To be more exact, art. 5 section 1 of the mentioned act uses the phrase (...) *is treated as a weapon or ammunition* instead of the phrase (...) *is treated as firearms or ammunition*). On

<sup>37</sup> Letter of the Head of Research Department of Weapon and Ballistics of Central Forensic Laboratory of the Police Headquarters of 7 March 2011 (Ldz. H-950/01).

<sup>38</sup> Ustawa z 14 lutego 2003 r. o zmianie ustawy o broni i amunicji oraz o zmianie ustawy o Biurze Ochrony Rządu (DzU nr 52, poz. 451).

<sup>39</sup> Explanatory Report of the Act of 8 January 2003 on the amendments to the Firearms and Ammunition Act and on the amendments to the Government Protection Bureau Act <<http://www.sejm.gov.pl>; <http://www.senat.gov.pl>>, 20 December 2007.

<sup>40</sup> K. Gorazdowski, *Prawo do posiadania broni palnej pozbawionej cech użytkowych*, „Przegląd Policyjny” 2003, No. 2, p. 49.

<sup>41</sup> A. Babiński, *Konsekwencje prawne niekonsekwencji ustawodawcy*, „Policja” 2004, No. 3, p. 36.

<sup>42</sup> M. Kulicki, L. Stępka, D. Stucki, *Kryminalistyczno-prawna...*, pp. 56–59; W. Brywczyński, J. Kasprzak, *Nielegalne posiadanie broni*. Studium prawno-kryminalistyczne, Białystok 2013, p. 117.

this basis, art. 5 section 1 does not relate to art. 7 section 1 of the given act. The legislator, stating that *Prepared or treated important component parts of a firearm or ammunition are treated as a weapon or ammunition*, does not treat them as firearms but as a weapon in the general sense. Therefore art. 5 section 1 does not relate to art. 7 section 1, but rather to art.4, where the general definition of a weapon is given. Article 5 sections 2 and 3 do not introduce any changes into the presented state. These sections do not say that the important component parts of firearms and pneumatic weapons are treated as firearms or pneumatic weapon, but rather it specifies which of their component parts are important. This means that the important component parts of firearms or pneumatic weapon should be treated as a weapon type, but without consequences of possession.

The described inaccuracy has probably not been noticed by the court that passes a ruling in which it is stated that, in accordance with art. 5 sections 1 and 2 of the Firearms and Ammunition Act, the important component parts e.g. barrel and chamber are treated as a firearm.<sup>43</sup>

To sum up, object recognition as firearms, referred to in of the Firearms and Ammunition Act, is problematic. It requires not only the technical knowledge of firearms, but also the knowledge of legal regulations concerning the issue and allowing to determine its designate. Presented in this paper the issue of firearms clearly proves it. This paper certainly would allow to deepen knowledge of the covered material and as a result accurately classify objects as firearms or no weapons. It will also contribute to accurate assessment of offenders behaviour as offences or acts not prohibited but penalized, and at the same time to take actions allowing to improve public safety.

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