

## Análise crítica do estatuto do desarmamento<sup>1</sup>

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### Resumo

*Este artigo tem como objetivo fornecer comentários sobre os crimes previstos na Lei 10.823 / 2003, conhecido como Estatuto do Desarmamento. Através de pesquisas doutrinárias e jurisprudenciais, e também das legislações vigentes. Cabe ao Estado Democrático de Direito criar um mecanismo de controle do crescimento dos crimes violentos em nossa sociedade, a criação de formas autônomas e penas mais rígidas contribuirá para a redução dos crimes cometidos com armas de fogo e da sua posse ilegal e posse.*

**Palavras-chave:** estatuto. Desarmamento. Lei nº 10.826/2003.

### Abstract

*This article aims to provide comments on the crimes foreseen for in Law 10.823/2003, known as the Disarmament Statute. Through doctrinal and jurisprudential research, and also current laws. It is up to the democratic rule of law to create a mechanism to control the growth of violent crimes in our society, the creation of autonomous types and stricter penalties will contribute*

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<sup>1</sup> Critical analysis of the disarmament statute

*to the reduction of crimes committed with firearms and the reduction of their illegal possession and possession.*

**Keywords:** statute, Disarmament. Law nº 10,826/2003.

## **INTRODUCTION**

This article aims to provide comments on the crimes foreseen for in Law 10.823/2003, known as the Disarmament Statute, which provides for registration, possession and commercialization of firearms, crimes and the Sistema Nacional de Armas (National Guns System) – SINARM.

Through the exposed information, bringing together the law, doctrinal and jurisprudential understanding, criticisms about the crimes, purpose and understandings of the before-mentioned Statute will be exposed, in order to enrich the debates on the issue of disarmament, violence and combating crimes involving weapons.

### **The possession of firearms**

The crime of possession of a firearm, present in the article transcribed above, consists of keeping the firearm inside the residence (or dependence thereof) or in the workplace. (BRASIL, 2003).

Art. 12. Possessing or keeping under their guard a firearm, accessory or ammunition, of permitted use, in disagreement with legal or regulatory determination, inside their residence or dependence thereof, or even in their place of work, provided that be the owner or legal guardian of the establishment or company:

Penalty – detention, from 1 (one) to 3 (three) years, and fine.

There are two typical nuclear actions: (a) to possess: it means to have in its power, to enjoy the possession of something, in this case, a firearm, accessory or ammunition, of permitted use; (b) keep under your care: means to keep under your care, preserving, in this case, the artifact, on behalf of a third party. It differs from the warehouse, as it consists of guarding the weapon for oneself. It is a common, intentional, mere conduct and permanent crime.

Moreover, the article 12 of Law 10.826/03 typifies the conduct of possessing, without authorization, firearm ammunition of permitted use. The scope of the rule is to guarantee public safety, established as a fundamental right by the Major Law (art. 5, caput, Federal Constitution/1988), which transcends the mere protection of personal safety, the probability of damage, not its actual occurrence.

Dealing with the crimes established by the Disarmament Statute, Damásio de Jesus highlights:

The legal purpose, in most traditional offences, it belongs to the man, the legal person or the State. in crimes of carrying a gun and similar figures, the legal objectivity main belongs to the community (public safety, collective security), this being its outstanding feature.

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[...]

However, nothing prevents the recognition of a secondary legal objectivity, since the penal rule, protecting the collective interest of public safety, it protects by indirect way individual interests, such as life, integrity physical, health, etc.

Like most blood crimes, assaults, robberies etc. is committed with the use of a weapon, usually with illegal possession, the rule seeks to prevent these occurrences, punishing manufacture, transport, possession, sale, etc. carried out without the authorization of the competent authority and in disagreement with the legal system.

[...]

Really, this legal interest, that is, the security public, of a collective nature, is not fictitious, does not constitute simple abstract reference created by the legislator. is a good palpable, as it is related to all members of the collectivity. These interests, taught HELEN CLAUDIO FRAGOSO, do not fail to refer to the concrete reality social' ( Lições , cit., p. 278). So when injured, interfere in the real life of all members of society or of part of it, before there is individual damage.

[...]

We question the qualification of crimes of abstract danger. In these, the danger is presumed by the legislator, not allowing evidence to the contrary. It violates the principle of legality, which makes it depend the crime of law that defines it. And crime is, in principle, a fact typical, which has its first requirement in the conduct. So that the subject is responsible for the committed fact, and the legislator cannot extend, by presumption, the responsibility to the part of the type not realized.

[...]

In fact, the offenses of carrying a firearm and the like, such as shooting in a public place, are infractions of injury (of damage to the legal object) and simple activity (mere conduct).

[...]

In them, the legal asset is harmed and not just put in danger. As noted, the FC, in art. 5th, caput , protects the rights of citizens to personal safety; therefore, there is collective interest that social relations develop within a level of safety. Every time someone manufactures, sells, ports, etc. an firearm illegally, acts outside the circle of permission state government and lowers the level of collective physical security.

In its text, the article 12 of the Disarmament Statute states that not only possessing or keeping a firearm is a crime, but also the accessory and ammunition. In this sense, Luiz Flávio Gomes states that:

“(...) unarmed ammunition 'read: isolated ammunition, with no chance of being used by a firearm' as well as the possession of accessories for a weapon. They do not have any real damage. They are objects (in themselves considered) absolutely unsuitable for any crime. All these conducts are formally provided for in the law (disarmament statute), but materially they do not constitute any crime. Any interpretation to the contrary constitutes, in our opinion, a serious offense to freedom and to the constitutionally focused criminal law”. (GOMES, 2013).

Thus, the article 12 of Law 10.826/2003 (Disarmament Statute) typifies as a crime, with a penalty ranging from 1 to 3 years of detention, when someone owns or keeps under their guard a firearm, accessory or ammunition, of permitted use, in disagreement with legal or regulatory determination, within the residence or workplace, as long as you are the owner or the legal responsible for the establishment or company. However, there is a jurisprudential understanding (such as the one mentioned below) which states that storing ammunition at home without a firearm, or that storing a weapon without ammunition is an attitude that does not put society at risk.

Firearm (irregular possession). Lack of ammunition (hypothesis). Atypical behavior (case). 1. The weapon, to be a weapon, must be effective; otherwise, the weapon is not taken care of. Such is the case of a firearm without ammunition, which, as it is ineffective, cannot be considered a weapon. 2. Therefore, the illegal possession of a firearm does not commit a person who keeps an unarmed firearm under his guard, especially in the case of handcrafted garrucha without any ammunition. 3. Order granted.

(STJ - HC: 86624 MS 2007/0159186-7, Relator: Ministro NILSON NAVES, Data de Julgamento: 13/10/2009, T6 - SEXTA TURMA, Data de Publicação: DJe 18/12/2009RB vol. 555 p. 28)

Contrary to this understanding, the majority jurisprudence does not exclude the typicality of the crime if the weapon is unarmed, but has the ability to fire.

CRIMINAL. CRIMINAL PROCEEDINGS. CRIMINAL APPEAL. IRREGULAR POSSESSION OF RESTRICTED FIREARMS. ART. 16 OF LAW 10.826/2003. PRISON REPORT IN FLAGRANTING. SEIZURE OF RESTRICTED USE FIREARMS. WITNESS EVIDENCE. CONFESSION. SUFFICIENT EVIDENCE ASSEMBLY. WEAPON MISSED. ABSTRACT DANGER OFFENSE. ATYPICITY OF THE FACT AWAY. REMEDY IMPROVED. 1- Documentary evidence (report of arrest in flagrante; report of presentation and seizure of the firearm; police occurrence), expert (criminal expertise report - firearm of restricted use, suitable for the specific purpose - serial shooting, report expert of the image of the establishment's security cameras that demonstrate the appellant carrying the weapon), the testimonial (military police officers who narrated, uniformly and coherently, the circumstances of the approach, the seizure of the weapon and the appellant's arrest in flagrante delicto, security testimony of the cafeteria and the two defendants), all of which, together with the appellant's confession, form a coherent and harmonious set, sufficient as a support to the conviction under the terms of art. 16 of Law 10.826/2003, without mentioning either acquittal or disqualification for a different penal type. 2-the position adopted by the Court of origin is consistent with the jurisprudence of this Superior Court of Justice, which is in the sense that the crime provided for in art. 16 of Law n. 10.826/2003 is of abstract danger, and it is unnecessary to inquire about the concrete harm of the conduct, as the legal object protected is not physical safety, but public safety and social peace, put at risk with the possession of a firearm, even if devoid of ammunition, proving the offensive potential of the artifact through an expert report is irrelevant." (AgRg in AREsp 1219142/SP, Reporting Minister RIBEIRO DANTAS, QUINTA TURMA, judged on 04/17/2018, DJe 25 /04/2018) 3 - Appeal known and rejected.

(TJ-DF 20150710153909 DF 0015059-16.2015.8.07.0007, Relator: MARIA IVATÔNIA, Data de Julgamento: 02/08/2018, 2ª TURMA CRIMINAL, Data de Publicação: Publicado no DJE : 10/08/2018 . Pág.: 142/180)

In this sense, it can also be observed:

SUMMARY: CRIMINAL APPEAL - ILLEGAL POSSESSION OF A FIREARM WITH PERMITTED USE - ABSENCE OF MATERIALITY - WEAPON DEMUNICATION - IRRELEVANCE - JURISPRUDENTIAL PRECEDENTS - REMEDY IMPROVED. 1 – As it is an abstract danger crime, it is unnecessary for the weapon to be loaded in its configuration. 2 - Appeal known and not granted.

(TJ-ES - APL: 00004350320138080007, Relator: PEDRO VALLS FEU ROSA, Data de Julgamento: 20/09/2017, PRIMEIRA C MARA CRIMINAL, Data de Publicação: 29/09/2017)

The majority understanding is firmly based on the text of the law, in view of the offensive potential of the crime and the risks it can pose to public safety.

CRIMINAL APPEAL. ARTICLE 16, "CAPUT", OF LAW No. 10.826/2003. ILLEGAL RESTRICTED USE OF FIREARMS. DEFENSE APPEAL. ATYPICITY. WEAPON MISSED. IMPOSSIBLE THESIS. CRIME OF MERE CONDUCT AND ABSTRACT DANGER. PUBLIC SECURITY. CONSTITUTIONAL WARRANTY. PRINCIPLE OF OFFENSIVENESS. APPEAL DENIED. 1. Since the defendant was caught illegally "carrying" and "hiding" a restricted-use firearm, even if unarmed, the conviction for the offense typified in article 16, "caput", of Law 10,826/03 is imposed, once that it is a crime of mere conduct and abstract danger. 2. Resource devoid. (TJ-DF 20150310211137 DF 0020780-58.2015.8.07.0003, Relator: SILVANO BARBOSA DOS SANTOS, Data de Julgamento: 25/01/2018, 2ª TURMA CRIMINAL, Data de Publicação: Publicado no DJE : 02/02/2018 . Pág.: 158/170).

The majority jurisprudential understandings strictly follow the letter of the law, despite the fact that there are currents of thought resistant to the possible danger of unloaded weapons or the possession of their accessories and ammunition without the presence of a firearm. However, there are facts that can be forgotten that are decisive for the fight against firearms in the country. Weapons, even if they are unarmed, do not remain so independently, as they can be loaded, and, being in full working order, they can fire without further hindrance, if only someone pulls the trigger. A literal interpretation of the law is also important to prevent the illegal trade in weapons, as even if they are allowed in the country, they cannot be carried by everyone. Analyzing the general intention of the Disarmament Statute, the growing violence involving arms in Brazil, the illegal, profitable and growing arms industry, such an understanding is not only consolidated as repressive, but also preventive, which highlights its importance for combating violence in its various forms.

### **Firearm possession**

The Law n° 10826, of December 22, 2003, is the legislation that governs the possession and registration of firearms in Brazil, replacing Law 9.473/97 . In its 3rd chapter, it deals with the postage. It is known that peace and social well-being are , without a doubt, the "mens legislatoris" of legal provision n° 10.826/03, as stated in the words of the president of the republic who signed the law: "Peace is the point of departure and arrival. It is the demarcation line of any society," he said. And he added: "Peace must be given its true name: social justice." According to Lula, reaffirming peace as a social prerogative is the deep meaning of the Disarmament Statute (O Povo, of December 23, 2003)."

After all, the law is made due to the desire of the population and the legislator to stop the growing acts of violence in the country. Article 6 of Law No. 10826/03 follows:

Art. 6 o The carrying of firearms throughout the national territory is prohibited, except for cases provided for in specific legislation and for:

I – members of the Armed Forces;

II - the members of bodies referred to in items I, II, III, IV and V of the main section of art. 144 of the Federal Constitution and those of the National Public Security Force (FNSP); (Wording given by Law No. 13,500 of 2017)

III – members of municipal guards in state capitals and municipalities with more than 500,000 (five hundred thousand) inhabitants, under the conditions established in the regulation of this Law; (See ADIN 5538) (See ADIN 5948)

IV - the members of the municipal guards of Municipalities with more than 50,000 (fifty thousand) and less than 500,000 (five hundred thousand) inhabitants, when in service; (Wording given by Law No. 10,867 of 2004) (See ADIN 5538) (See ADIN 5948)

V – the operational agents of the Brazilian Intelligence Agency and the agents of the Security Department of the Institutional Security Office of the Presidency of the Republic;

VI – the members of Organs police bodies referred to in art. 51, IV, and in art. 52, XIII, of the Federal Constitution;

VII – members of the effective staff of prison officers and guards, members of prisoner escorts and port guards;

VIII – private security companies and the transport of valuables incorporated under the terms of this Law;

IX – for members of legally constituted sports entities, whose sports activities require the use of firearms, in accordance with the regulation of this Law, observing, as applicable, environmental legislation.

X - members of the Auditing Careers of the Federal Revenue of Brazil and Labor Tax Audit, positions of Tax Auditor and Tax Analyst. (Wording given by Law No. 11.501, of 2007)

XI - the courts of the Judiciary Power described in art. 92 of the Federal Constitution and the Public Prosecutors of the Union and States, for the exclusive use of employees of their personnel who are effectively in the exercise of security functions, in the form of regulation to be issued by the Conselho Nacional de Justiça(National Council of Justice) - CNJ and by the Council National Prosecutor's Office - CNMP. (Included by Law No. 12,694 of 2012)

However, art. 6, caput, of Law No. 10826/03 there are two interpretations of the body of the law, which may cause controversies in the provisions: " It is prohibited to carry a firearm throughout the national territory, except" and article 35 of the same law: "The commercialization of firearms and ammunition is prohibited throughout the national territory except..."

The first controversy to be resolved by the regulation is the issue of exceptions, which are set out in the caput of articles 6 and § 1 of article 10 of the law. And they refer, basically, to people linked to the entities listed in the eight items of art. 6th.

The wording of article 10, in its first paragraph, says that:

§ 1º The authorization provided for in this article may be granted with limited temporary and territorial effectiveness, under the terms of regulatory acts, and will depend on the applicant:

I – to demonstrate their effective need for engaging in professional activity at risk or threatening their physical integrity ;

II – meet the requirements provided for in art. 4 of this Law;

III – present documentation of ownership of a firearm, as well as its proper registration with the competent body.

Would the applicant then be any of the persons listed in the clauses of Article 6? Or would it be any citizen, as provided for in article 7 of the already repealed Law 9,473/97? As it is written, the referred provision, having as rapporteur the Federal Deputy Luiz Eduardo Greenhalgh, was added in the works developed by the Federal Senate. The text lacked the necessary systematization.

If, as mentioned above, the law came to bring about social pacification, it cannot be understood that the norm is interpreted as the continuity of the possibility of granting a weapon, almost in the same mold as the previous law (Law 9,473/97). Apparently, the negotiations established in the Federal Senate tried to accommodate in the text the hypothesis, albeit exceptional, of carrying a weapon to the common citizen, even though, hurting the true spirit of the law.

If the interpretation prevails that the common citizen ("applicant", from paragraph 1 of article 10) may carry a firearm, the coherence of the law itself will be injured, for the reasons already mentioned. On the other hand, if this "applicant" is interpreted to be a person listed in the items of article 6 of the Disarmament Statute, the restrictions that paragraphs 2, 3 and 4 make to the referred article 6 with the items will have to be reconciled of paragraph 1 of article 10. This last solution, although somewhat laborious, seems to us to be more in keeping with the spirit of the law.

The reference to "cases provided for in specific legislation" in the caput of art. 6, brings certain reflections, based on Complementary Law 35/79 (Organic Law of the Judiciary) and Law 8,625/93 (Organic Law of the Public Ministry):

"In principle, we understand that only weapons for permitted use are authorized, as the purpose is self-defense (as can be seen from the wording of the Organic Law of the Judiciary. On the one hand, we have professionals who use (carry) State weapons, which are prohibited for use , for the exercise of their typical functions (police in essence). And on the other hand, we have professionals who receive from the State an authorization to carry weapons (judges and prosecutors) and in most cases the weapons will be their private property, and, furthermore, the purpose of such permission will not be the execution of special tasks, but self-defense..".



A Regulatory Decree can say what a "weapon of self-defense" is, without incurring a blemish on the principle of hierarchy. The function of the Decree is precisely to clarify generic terms of the law, making it enforceable.

With regard to the possession of weapons by private security companies and the transport of valuables, there is the right to carry weapons, guaranteed in art. 6, item VIII, of Law No. 10826, described below:

Art. 7 o The Firearms used by employees of private security companies and transport values, incorporated in the law, will be owned, responsibility and custody of the respective companies, only can be used when in service, should those watch the conditions of use and storage established by the competent body, with the registration certificate and the carrying authorization issued by the Federal Police on behalf of the company.

§ 1 o The owner or director in charge of private security company and CIT liable for the crime provided for in the sole paragraph of art. 13 of this Law, without prejudice to other administrative and civil sanctions, if you fail to register a police report and notify the Federal Police of loss, theft, robbery or other forms of loss of firearms, accessories and ammunition that are under its custody, in first 24 (twenty four) hours after the fact occurred.

§ 2 oThe security company and CIT must submit documentation supporting the fulfillment of the requirements set out in art. 4 of this Law regarding employees who will carry a firearm.

§ 3 oThe employees of the listing of the companies mentioned in this article should be updated every six months by the SINARM.

Private security companies and cash-in-transit companies have the right to own weapons, due to the risk they run in their activities. However, its agents cannot carry a weapon out of service, as provided for in the legal provision. The weapons used belong exclusively to the companies and are all registered in their name. In case of loss and/or loss of the company's weapon, the company's board or management must notify the Federal Police, who will send the information to SINARM so that the appropriate measures can be taken. Failure to communicate will result in them being held liable periodically, within a period of not less than 3 (three) years” (articles 4 and 5, § 2, of Law No. 10.826/03).

In turn, the art. 12 of Law No. 10.826/03 typifies as a crime the conduct of "possessing or keeping under their guard a firearm, accessory or ammunition, of permitted use, in disagreement with legal or regulatory determination, within their residence or dependence thereof, or , even at your place of work, as long as you are the owner or legal guardian of the establishment or company”

## **Registration**

### **Acquisition**

Regarding the requirements for the acquisition of firearms, article 4 of the Disarmament Statute prescribes that "to acquire firearms for permitted use, the interested party must, in addition to declaring the effective need, meet the following requirements":

- a) Proof of suitability, with the presentation of clearance certificates from criminal records provided by the Federal, State, Military and Electoral Courts and of not responding to a police inquiry or criminal process, which may be provided by electronic means;
- b) The presentation of a document evidencing legal occupation and correct residence; and
- c) Proof of technical capacity and psychological aptitude for handling a firearm, attested to in accordance with the regulation of this Law.

Once the requirements are met, under the terms of § 1 of article 4 of law 10.826/2003, SINARM will issue an authorization to purchase a firearm in the name of the applicant and for the indicated weapon, this authorization being non-transferable. Furthermore, ammunition can only be purchased in the caliber corresponding to the registered weapon and in the quantity established in the regulation of this Law (§ 2, art. 4 of Law 10.826/2003)

### **Record**

The Disarmament Statute states that "compulsory and the firearm registration with the competent organ" (art. 3 a ).

This registration depends on meeting the following requirements:

- I) proof of suitability, with the presentation of clearance certificates from criminal records provided by the Federal, State, Military and Electoral Courts and not responding to a police inquiry or criminal process, which may be provided by electronic means;
- II) presentation of document evidencing legal occupation and correct residence and
- III) proof of technical capacity and psychological aptitude for handling a firearm, attested in the manner provided for in the regulation [of Law No. 10.826/03]", which "must be proven.

In turn, the art. 12 of Law No. 10.826/03 typifies as a crime the conduct of "possessing or keeping under their guard a firearm, accessory or ammunition, of permitted use, in disagreement with legal or regulatory determination, within their residence or dependence thereof, or , even at your place of work, as long as you are the owner or legal guardian of the establishment or company".

Pursuant to art. 5, § 3, of the aforementioned legal diploma, "owners of firearms with property registration certificates issued by a state or Federal District agency up to the date of publication of this Law who do not opt for the

spontaneous delivery provided for in art. 32 of this Law must renew it through the relevant federal registry, until December 31, 2008, upon presentation of a personal identification document and proof of permanent residence, being exempt from the payment of fees and compliance with the other requirements contained in the items I to III of the caput of art. 4 of this Law".

### **Renewal**

This device was regulated only by Decree n°. 5.123/04, which presents the parameters for the firearm registration renewal process:

"Art. 70-B. For the renewal of the Firearm Registration Certificate referred to in § 3 of art. 5 of Law No. 10,826, of 2003, the documents provided for in art. 70-C and copy of the said Certificate or, if applicable, the police report proving its loss.

Art.70-C. For the renewal of the Firearm Registration Certificate or for the registration of the firearm referred to, respectively, in § 3 of art. 5th and art. 30 of Law No. 10,826, of 2003, the applicant must:

I -be at least twenty-five years old; II - present originals and copies, or certified copies, of the personal identification document and proof of permanent residence;

III- present the SINARM form duly completed; and

IV- present the provisional registration certificate and prove the personal data informed, if the procedure has been initiated by the World Wide Web – Internet.

§ 1 The firearm registration procedure, or its renewal, may be initiated by completing the SINARM form on the World Wide Web - Internet, whose printed proof of completion will be valid as a provisional registration certificate, for a period of ninety days .

§ 2 When filling out the form on the World Wide Web - Internet, the applicant must choose the Federal Police unit, or agency accredited by it, to which he/she will personally deliver the documentation required for registration or renewal.

3rd If the applicant fails to submit the documentation required for registration or renewal at the Federal Police unit, or agency accredited by it, chosen within a period of ninety days, the provisional registration certificate, which will be issued by the world wide web - Internet only once, will expire, making the possession of the weapon irregular”.

### **Registration expired**

The Superior Court of Justice has shed new light on the criminal treatment of illegal firearm possession. In the judgment of habeas corpus n° 294,078, originating in São Paulo, the court, through its Fifth Panel, for the first time ruled out the configuration of a crime for someone keeping in their possession a firearm with an expired registration. A very important precedent that, although not yet reflecting the majority of the understanding on the subject -

including in that court itself -, may indicate a significant evolution, not only in the application of the current disarmament statute , but in the very alteration of the laws that regulate access to weapons.

To renew the firearm registration, the private individual must go to a Federal Police unit with a completed application, pay the fee through the Union Collection Guide, in addition to presenting certified copies or original and copy of the following documents:

- (a) be at least 25 years old, except for the positions defined in article 28 of Law 10,826/03 ;
- (b) certified copies or original and copy of RG, CPF and proof of residence (Water, Light, Telephone, DECLARATION with notarized signature of the account holder or property owner, Marriage or Stable Communion Certificate); if it is in the name of the spouse or partner);
- (c) bank proof of payment of the fee due for issuing the document through the Federal Government Collection Guide - GRU;
- (d) declaration of not responding to a police inquiry or criminal prosecution;
- (e) proof of suitability, with the presentation of negative certificates of criminal record provided by the Federal, State (including Special Criminal Courts), Military and Electoral Courts, which may be provided by electronic means;
- (f) presentation of a document proving lawful occupation;
- (g) proof of technical capacity and psychological aptitude for handling firearms, carried out within a period not exceeding 01 year, which must be certified by a weapons and shooting instructor and psychologist accredited by the Federal Police;
- (h) 1 (one) recent 3x4 photo.

Provided for in article 12 of the current statute, the crime of illegal possession of firearms for permitted use remained without practical application until December 31, 2009, at which time it was possible for the owners of such artifacts to carry out their re-registration or initial registration with the Federal Police, in a procedure popularly known as “amnesty”.

At the end of the term, all weapons started to require the renewal of their registrations every three years (Law 10.826 /03, art. 5 , § 2 ) and the penal type acquired its full effectiveness. Since then, he has been responsible for a good part of the convictions arising from the disarmament statute itself, and it is thanks to him that anti-weapon ideologues have managed, captively, to sustain the allegation that a large part of the weapons involved in crimes one day had a lawful origin.

That's because, until the recent decision of the STJ, the irregularity in the possession of the weapon for the configuration of the crime was taken in the broad sense, being equal to the weapons that had never been registered and those whose registration had expired. Thus, if someone who one day legally bought a weapon simply failed to renew its registration, it was already

committing a crime, even if exclusively restricted to its own possession, that is, it was enough that a weapon of lawful origin had its registration expired to be considered a “weapon of crime”.

The understanding now reached, however, established a clear distinction between intentionally irregular possession and that resulting from the mere non-observance of a bureaucratic procedure. As the ministers of the STJ understood, following the vote of the rapporteur Marco Aurélio Bellizze, if a weapon was originally registered, the non-renewal of the respective registration “cannot go beyond the administrative sphere”, therefore, not serving the configuration of a crime, a since, for Criminal Law, the mere lack of such renewal does not have relevance capable of automatically transforming the owner of the weapon into a criminal. Thus, it can be applied only administrative sanctions, but not criminal ones. There is also no specification between the use of the weapon in irregular possession and the possession of the illegal weapon, only without its use.

Considering criminal law as the “ultima ratio” , as a result of the principle of minimum criminal intervention, certain administrative sanctions such as the payment of a fine and perhaps the very seizure of weapons considered irregular (until the proper renewal of the registration certificate), would be enough to solve the supposed “lack of control” of the state over armaments.

As a matter of criminal policy, it is also unfeasible to imprison a citizen, depriving him of his freedom and leading him to criminal prosecution, for the simple loss of a deadline for the renewal of the registration document. If this individual went to the Public Power and demonstrated that he meets the requirements for the purchase of the firearm, it already shows the agent's good faith in complying with legal requirements, keeping the State informed about the status of his weapon.

It would be unfair to criminally punish an agent for omissive conduct when forgetting the date of renewal of his/her registration or even for ignoring it due to the numerous obstacles created by the Public Authority itself.

The Hon. Minister Rapporteur also refers, in his vote, to the bill of Law No. 3722/2012, pending in the Chamber of Deputies, which aims to replace the Disarmament Statute, and which provides as typical the conduct of owning a firearm without proper registration, but does not mention the supposed abstract irregularity as elemental of the type.

In fact, this is already a small step forward, however, the new Law, currently being approved, also leaves a lot to be desired with regard to the rights to possess and carry a firearm by the “common citizen”.

We can see, however, that the aforementioned bill had a positive influence on the unanimous decision of the 5th Panel of the STJ, in view of the difficulty of not interpreting literally the provision of article 12, of Law

No. 10,826, and analyzing it from a more final form, because in fact when we read the rule, the conduct seems to fit perfectly to the penal type.

### **International trafficking**

According to legal terminology, “Trafficking” is understood to be all facts that occurred in the market aimed at setting prices and distributing wealth, constituting trade in an illicit product.

In Brazil, there is no regulation of the Traffic in Firearms by the Brazilian Penal Code, but Law 10.826/03, in Articles 18 to 21, is popularly known as the Disarmament Statute. We will now pass the analysis of each of the articles.

Article 18 of Law 10,826/03 provides for the legal type of international traffic in firearms such as import, export and favoring entry or exit from national territory under any title, firearm, accessory or ammunition without authorization from the competent authority, which prescribes the penalty of 4 to 8 years of imprisonment plus a fine. There are 3 incriminating figures present in the Caput of Art. 18, namely, import, which is the act of bringing from outside the country to the national territory, exporting, which is the act of taking from within the national territory to outside the country. country firearms that do not necessarily need to be produced on national soil and, finally, favor entry and exit, which is the punishment provided for the customs agent or the tax authorities that facilitate any of the previous hypotheses. The introduction of firearms, whether by air, sea or land, will always involve the same crime provided for in Article 18 of Law 10,826/03, however, there are loopholes. The first gap to be pointed out is the case of the use of weapons to defend the crew of merchant vessels, which, according to common sense, should be informed to the Brazilian port that the weapons are kept in a safe place, as well as the models, calibers and ammunition and their transported quantities. However, there is no regulation in this sense, neither with the Controlled Products Inspection body of the Army Command in the area nor with the Superintendence of the Federal Police.

Another gap to be pointed out in exports and imports concerns the temporary and return modalities of firearms, such as the drawback system , in which foreign companies send arms parts for national companies to assemble them here and return them to the country of origin , as in a tie-in, the quantity of pieces is not specified by number. Several of these parts that come as replacement parts are used to assemble extra weapons that will be sold later.

Brazil is a signatory of the CIFTA – Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials – enacted by Decree 3.229/99, making the related crimes in this convention within the jurisdiction of the Federal

Court. The convention provides that there will be bodies to control and investigate the legality of transit, import and export, which in Brazil is the Army Command and the body responsible for combating trafficking in firearms and ammunition is the DARM - Division of Repression of Illicit Arms Traffic – which is subordinate to the DCOR – Directorate for Combating Organized Crime – both belonging to the Federal Police Department, in the Ministry of Justice.

Brazil is one of the largest importers of firearms, without, however, having a law to do so. The main routes of international arms trafficking are found in Paraguay and Bolivia, as demonstrated in the Habeas Corpus jurisprudence filed with the STF by persons arrested for the crime of international trafficking in Firearms. Law 10,838/2003, the Disarmament Statute, tried, in vain, to impose a regulation on the entry of new firearms into the country, however, it brought a criminal offense to a crime that has long existed in foreign legal systems, International Traffic of Weapons. However, due to a lack of importance with the relevance of this topic, Article 18 of the law was left too lenient without a punishment commensurate with the offense that basically provides the foundation for Narcotics Traffic and other barbaric crimes.

The importance of an improvement in this type of criminal law lies in the main fact that the weapons that move internal criminality in Brazil, such as what happened so recently in Rio de Janeiro, are not conventional and sports weapons that are stolen by criminals, but the large caliber weapons for the exclusive use of the Brazilian armed forces. In addition to this fact, it is necessary to raise awareness on the part of the authorities towards the population that there is no future in crime and to make it possible, through education, health and adequate leisure, for them to naturally distance themselves and reject gun violence. With the reduction of this market, the control of the international traffic in firearms will be facilitated.

## **Conclusão**

The crime that plagues our country must be contained. It is up to the democratic rule of law to create a mechanism to control the growth of violent crimes in our society. By replacing the former Firearms Law, Law 9,437/97 by the Disarmament Statute, Law 10826, an attempt was made to create effective control over the weapons in circulation in the country that are closely linked to the growth of crime. The State gave its answer, or at least tries, because only the creation of laws that control access to firearms by the population will not reduce crime.

Organized crime is the one who seems to command the escalation of violence in the country. If the state does not create mechanisms to control the entry of

firearms, which enter the country clandestinely, in a few years the promulgation of the Disarmament Statute will have been of no use. Creating a specific type for arms trafficking will not stop a criminal from continuing to bring in weapons to equip his gangs. What contains the growth of criminality is the inspection and exemplary punishment of those who do not respect the Laws.

The fragmentation of article 10 of Law 9437/97 was an important initiative. The creation of autonomous types and stricter penalties will contribute to a reduction in crimes committed with firearms and a reduction in their illegal possession and possession.

The fulfillment of sentences must be carried out effectively and not in a positive way. What's the point of having good laws if your sentences are not served effectively?

Public security is everyone's right and it is the State's obligation to act together with all the agencies in charge of promoting it, giving them a solid and reliable structure so that each one can fulfill their mission, which is the social well-being and a free and secure society.

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