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**GUN CONTROL IN THE
FEDERAL REPUBLIC OF GERMANY**

Prepared by Edith Palmer
Senior Legal Specialist
European Law Division
Law Library of Congress
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Summary

Germany has one of the more stringent systems of gun control in Western Europe. A license is required for the private acquisition and possession of all types of handguns and long arms. The purchase of ammunition is also limited to licensed persons. An additional carrying license is required for anyone wishing to carry a weapon for self-defense. Hunters must also be licensed and they may carry weapons only for hunting purposes. Anyone entitled to carry weapons must have liability insurance.

Licenses are granted only after extensive background checks by the authorities to scrutinize the applicant's integrity and ability to handle a weapon. In addition, the applicant must prove his or her need for a weapon. Whereas hunters, recreational shooters, and collectors are deemed to require the weapons suitable for these legitimate pursuits, a need to own and carry a gun for self-defense will be recognized only if the applicant is significantly more endangered than the population at large.

Restrictions are also imposed on the types and numbers of weapons that can be owned. For defensive purposes, a license will usually permit only one handgun. Licensed hunters may acquire an indefinite number of hunting rifles but only two handguns. All weapons owned by individuals must be recorded in the license. Weapons that in the United States would be classified as assault weapons are banned.

In Germany, the right to bear arms is **not** rooted in legal concepts.¹ Instead, Germany was among the first countries to impose a strict licensing system for gun owners. The Weapons Law of 1938, enacted by the Nazi regime, is often cited as proof that tough gun control laws are symptomatic for dictatorships. Ironically, that law was less restrictive than its predecessor of 1928.

Currently, German gun control law is based on the philosophy that the availability of firearms must be restricted in order to prevent crime.² This principle is somewhat contested. Whereas those in favor of gun control would like to limit the overall numbers of guns in circulation, legitimate users and the weapons industry want to preserve the right of unblemished citizens to possess guns and use them for legitimate purposes.

¹ K. Oswald, *Das neue Waffenrecht* 9 (Melsungen, 1980). However, the right to self defense is based on constitutional foundations [T. Maunz & G. Dürig, *Grundgesetz, Kommentar*, note 73 to art. I, ¶ 2 (München, 1985-)].

² 80 *Verhandlungen des Deutschen Bundestages* 11434 (1972).

Historic survey

The development of German gun-control law has not been an easy process, and it mirrors the turbulent history of Germany. After World War I, several regulations and laws³ were issued to retrieve the vast quantities of guns that had never been relinquished by returning soldiers. These efforts proved unsuccessful. At that time, Germany was torn by civil strife and plagued by paramilitary groups that were not adverse to making their political views known by violent action.⁴

In 1928, the first comprehensive federal Firearms and Ammunition Law was enacted.⁵ It laid the groundwork for the licensing and recording system on which gun control is still based today. A license was required for the acquisition of long and short firearms and ammunition. Exempted were, however, collectors items and guns that because of their large size or limited power were considered less dangerous.⁶ A special license was required for the carrying of weapons. It was granted only in case of a special need. The 1928 Law was resented as an infringement on personal liberty, and the turbulent political situation made its implementation difficult.⁷ Between 1930 and 1933, further restrictions were enacted, including an emergency regulation that required an evaluation of the applicant's need for a weapon when deciding on an acquisitions license⁸ and prohibitions of the carrying of weapons, particularly at political meetings.⁹

After the Hitler regime confiscated the firearms of the "enemies of the state," and prohibited the importation of handguns, gun-control law was again reformed and made less restrictive in order to make the German people more militarily fit¹⁰ and to assist the German weapons industry.¹¹ The Weapons Law of 1938¹² permitted the unlicensed acquisition of long arms by adults, but required a license for the acquisition of handguns. The licensing criteria for the carrying of guns remained generally unchanged, except that National Socialist Party officials and other favored groups were exempted. The licensing and labelling provisions for manufacturers and dealers were made more stringent, and imports remained subject to control.

³ Verordnung, Dec. 14, 1918, *Reichsgesetzblatt* (RGBl., official law gazette of the German Reich) p. 1425; Verordnung Jan. 13, 1919, RGBl. p. 31; Gesetz, Aug. 7, 1920, RGBl. p. 1553.

⁴ J. McKenzie, *Weimar Germany 1918-1933*, 163 (London, 1971); G. Schulz, *Aufstieg des Nationalsozialismus* 285-290 (Frankfurt, 1975).

⁵ Gesetz über Schusswaffen und Munition, Apr. 12, 1928, RGBl. I, p. 143.

⁶ E. Reiber, *Die Entwicklung des Deutschen Schusswaffenrechts* 45 (Marburg, 1981).

⁷ G. Schrötter, *Waffen und Waffenrecht von A-Z* 11 (München, 1981).

⁸ Vierte Verordnung des Reichspräsidenten, Dec. 8, 1931, RGBl. I, p. 742.

⁹ Gesetz gegen den Waffenmissbrauch, Mar. 28, 1931, RGBl. I, p. 77.

¹⁰ G. Potrykus, *Waffenrecht* 1 (München, 1977).

¹¹ W. Hoche, *Waffengesetz* 13 (Berlin, 1938).

¹² Waffengesetz, Mar. 18, 1938, RGBl. I, p. 265.

After World War II, demilitarization was carried out by the Allied Powers under very strict occupation laws. Large quantities of guns and ammunition were removed from the population. The purpose of this effort was to forestall an armed uprising. Gun collectors, however, still decry the loss of historic weapons that were destroyed during that era.¹³

In East Germany, the measures of the occupation regime were followed by very restrictive Communist legislation. Private ownership of guns was prohibited, except for the privileges of high-ranking politicians. Hunters and sportsmen had to leave their weapons in clubs or special depots. The East German authorities considered any kind of weapons possession as a subversive act that threatened the regime. On the other hand, shooting clubs under governmental auspices were encouraged in order to train the East German youth in the use of weapons so as to prepare them for military service.¹⁴ This two-pronged approach toward guns persisted until the unification of Germany in 1990.

In West Berlin, gun control was one of the few subject matters that continued to be governed by occupation law until the German unification in 1990. The former 1938 gun control law of the Hitler regime was applicable to some extent. However, it had been purged of its national-socialist content and was applied in a manner that practically disallowed any private possession of guns.¹⁵

In West Germany, on the other hand, gun-control law took a slightly more permissive turn. The post-war restrictions were gradually eased in the interest of hunters and recreational shooters.¹⁶ When the occupation regime ended in 1955, the 1938 Weapons Law regained effectiveness in the various West German *länder* (states), except for its National Socialist provisions.¹⁷ At that time, the legislative power over private possession and use of firearms had fallen into the domain of the *länder*,¹⁸ and the resulting lack of uniformity thwarted the gun control efforts of the more restrictive *länder*. In Hesse and Bavaria, licensed hunters could acquire any number of handguns.¹⁹ By the late 1960s a reform of gun control law was felt necessary because of the increased incidence of gun abuse. This was ascribed to the large number of useable guns in private possession, the lack of an acquisitions license for long arms, and the lack of restrictions on private construction or alteration of guns.²⁰

¹³ Schrötter, *supra* note 7.

¹⁴ W. Schuller, *Geschichte und Struktur des politischen Strafrechts der DDR* 109 (Ebelsbach, 1980).

¹⁵ *Waffenbesitz und Waffengebrauch in Österreich. Parlamentarische Enquete* 11 (Wien, 1984).

¹⁶ E. Apel, *Waffenrecht* 8 (Köln, 1977).

¹⁷ Grundgesetz für die Bundesrepublik Deutschland (GG) May 23, 1949, *Bundesgesetzblatt* (BGBl., official law gazette of the Federal Republic of Germany) p. 1, art. 125.

¹⁸ Bundesverfassungsgericht decision, Apr. 29, 1958, 8 *Entscheidungen des Bundesverfassungsgerichts* 143 (1958).

¹⁹ M. Kirn, "Das neue Waffengesetz," 88 *Deutsches Verwaltungsblatt* 201 (1973).

²⁰ Possession of firearms was estimated at 20 million in 1972, in a population of approximately 60 million [Verhandlungen, *supra* note 2]; in 1970, sawed-off shotguns were used in 370 criminal incidents [*Id.* at 11440].

After the West German Constitution had been changed to confer legislative power over gun control in the Federation,²¹ a federal Weapons Law was enacted in 1972.²² It brought about many restrictions, including a restriction of weapons licenses to those who need a weapon; and, for the first time in German history, a license was required for the mere possession of short or long arms. The new law, however, was hastily drafted under the impact of some spectacular crimes in 1971,²³ and it soon required a major reform that made access to guns somewhat less cumbersome for law abiding citizens and closed some loopholes.²⁴

The repromulgated version of 1976²⁵ is currently still in effect. Although friend and foe have decried its complexity,²⁶ and reforms have often been attempted,²⁷ it has undergone little change until the present. A 1978 amendment was prompted by terrorist attacks; it increased the penalties for possession of automatic weapons.²⁸ An amendment of 1980²⁹ was made to allow for the border-crossing of weapons in compliance with the requirements of the Council of Europe Convention on Control of the Acquisition and Possession of Firearms by Individuals.³⁰

In 1990, when Germany was unified, the West German Weapons Law became effective also in West Berlin and former East Germany.³¹ A six months transition period was provided for East German gun owners to obtain new licenses or relinquish their weapons. Since unification, the former East Germans have made use of the more permissive West German Weapons Law and their demand for guns has increased the sales volume of gun manufacturers and importers.³² Some, however,

²¹ Einunddreissigstes Gesetz zur Änderung des Grundgesetzes, July 28, 1972, BGBl. I, p. 1305. The German Constitution is frequently and easily changed by a qualified majority in Parliament [GG, art. 79].

²² Waffengesetz (WaffG), Sept. 19, 1972, BGBl. I, p. 1797. The new law repealed all *länder* legislation on gun control and also a Federal weapons law [Bundeswaffengesetz, Apr. 14, 1968, BGBl. I, p. 633] which had dealt with the manufacture and sale of weapons.

²³ Reiber, *supra* note 6, at 142.

²⁴ Gesetz zur Änderung des Waffengesetzes, Mar. 4, 1976, BGBl. I, p. 417.

²⁵ WaffG, repromulgated Mar. 8, 1976, BGBl. I, p. 432, as amended.

²⁶ Schrötter, *supra* note 7, at 12.

²⁷ The latest reform bill was presented to parliament in 1987 [17 *Juristenzeitung*. *Gesetzgebungsdienst* 68 (1987)]. It would have eased some restrictions; however, it was not enacted.

²⁸ Gesetz, Mar. 31, 1978, BGBl. I, p. 646.

²⁹ Gesetz, July 14, 1980, BGBl. I, p. 956.

³⁰ Signed June 28, 1978, at Strasbourg, entered into effect for West Germany Aug. 16, 1980, BGBl. II, p. 953.

³¹ Einigungsvertrag, Aug. 31, 1990, BGBl. II 889 (916).

³² "Berlin, Alexanderplatz," 28 *Deutsches Waffen-Journal* (DWJ) 411 (1992).

continue to be worried about the communist legacy: in 1991 two of the new German *länder* that formerly were part of East Germany introduced a bill to the Federal Council (upper house of the German Parliament) to deny gun ownership to functionaries of the former East German regime and intelligence agencies. This proposal is unlikely to succeed because of various constitutional issues.³³

German implementing legislation for the European Community directive of 1991 on a European firearms pass³⁴ is expected to be enacted in the near future. German law is more stringent than the gun control required under the directive. The latter allows the unlicensed possession and acquisition of single-shot long firearms. For repeating long firearms, the Directive merely requires a notification of the authorities. In Germany, licenses are required for the acquisition and possession of weapons in these categories. Since the Directive allows national laws to provide for more stringent requirements, Germany does not have to make any changes in its licensing system to harmonize its laws with the European requirements. However, Germany still has to enact implementing provisions for the realization of an internal market in weapons and for accepting the European firearms pass at the borders.

Current reform proposals and the politics of gun control

Currently, a major reform of German gun-control law is being discussed. In November 1992, a working group of experts from federal and land ministries was instituted to draft a new gun-control law. According to government spokesmen, the reform aimed at producing a more legible and less complex text; a centralized and automated gun register was also envisioned. However, further restrictions were also planned, among them, limiting the number of long arms that marksmen and hunters may possess.³⁵ Throughout 1993, the German associations of recreational shooters and hunters had been commenting on these developments.³⁶ By the beginning of 1994, the plan had been abandoned to attempt passage within the current legislative period which is expected to end in the fall of 1994. The political parties might have felt that this controversial topic would better be taken on after elections.³⁷

The German gun lobby consists of hunters, sportsmen and gun collectors as well as gun manufacturers and merchants. These groups are opposed to more stringent gun control legislation, particularly as to the numbers and types of guns that can be privately owned. Hunters and target shooter are anxious to keep their traditional prerogatives. They decry excessive regulation and point out that legitimate users are rarely involved in violent crimes.³⁸

³³ R. Hinze, "Zuverlässigkeitsregelung im Waffenrecht," 43 *Recht der Landwirtschaft* (RdL) 228 (1991).

³⁴ Council Directive (91/477/EEC) on Control of the Acquisition and Possession of Weapons, June 18, 1991, *Official Journal of the European Communities* No. L 256/51.

³⁵ H. Scholzen, "Gastkommentar. Neuer (verschärfter) Entwurf des Waffengesetzes," 29 DWJ 813 (1993).

³⁶ G. Bärlein, "Seid weiter so wachsam," 29 DWJ 1144 (1993).

³⁷ "Einflussnahme. Novellierung oder Verschärfung des Waffenrechts," 29 DWJ 620 (1993); "Auf ein Neues," 30 DWJ 3 (1994).

³⁸ H. Schankliss, "Das Mass ist voll," 23 DWJ 991 (1987).

Germany has about 5 million legitimate gun owners³⁹ and close to 2 million of them belong to a hunting or recreational shooting association. These associations want to preserve the traditional prerogatives of hunters and target shooters. Some of these associations play an activist role on matters related to gun control. They comment on legal issues of gun control, exert an influence on the political process, and do not shy away from litigation to protect the interests of their memberships.

Moreover, the manufacture and sale of guns is a sizeable industry which is also organized in associations.⁴⁰ In the German political process, the participation of industry associations and other interest groups in the discussion of proposed legislation is institutionalized. Comments are already made when legislation is drafted by the pertinent ministry (the case of guns, the Federal Ministry of the Interior), before introduction in parliament.

On the whole, the German gun lobby has become more activist in recent years to forestall what they perceive as inroads into their freedoms. The German groups also were quite influential in the shaping of the European Directive. They became particularly active when the European Parliament had discussed the banning of all semi-automatic firearms. This proposal never was enacted.⁴¹

Those in favor of gun control are found mainly on the left side of the political spectrum. The Green Party, in particular, would like to ban all private weapons possession and use. The Green Party also sees the sheer number of guns in circulation -- allegedly some 25 or 30 million pieces -- as a reason for curtailing possession and acquisition. However, there are no reliable statistics on the number of guns that are privately owned in Germany. Generally, those on the political left are concerned about arsenals in the hands of right wing radicals. Marksmen, hunters and collectors, on the other hand point out that they are law-abiding groups and that they should not be lumped in with extremists just because they tend to be conservative.⁴²

Yet, danger to the public safety does not only come from the far right but also from the far left. Germany is still plagued by a terrorism problem that saw its heyday in the 1970s. Various law reforms have attempted to improve law enforcement against terrorist attacks. Terrorists have a history of obtaining guns by criminal means and using them in violent assaults.⁴³ Yet, last year there was more violent crime from the radical right than from the radical left. Although the neo-Nazis and their sympathizers rarely use guns when brutalizing aliens, one gun-abuse incident with fatal consequences occurred in 1993.⁴⁴

³⁹ K. Schinmeyer, "Auf den Kopf gestellt," 29 DWJ 1219 (1993).

⁴⁰ "ARD -- Das wollen wir nicht sehen," 30 DWJ 88 (1994).

⁴¹ G. Bärlein, "Miteinander sprechen," 27 DWJ 1139 (1991).

⁴² *Supra* note 40.

⁴³ *Verfassungsschutzbericht 1991* 24 (Bonn, 1992).

⁴⁴ G. Bannas, "Der Bundesminister ist dagegen," *Frankfurter Allgemeine Zeitung* (Apr. 15, 1994), p. 3.

Gun control is also favored in big cities, such as Frankfurt, where drug-related violence is a major problem. There is a large market of illegal drugs that is dominated by organized crime. Consequently, it is not surprising that the more densely populated and urbanized states are more in favor of tougher gun control than the partially rural states in southern Germany.

Structure of gun control legislation

The most important enactment for gun control purposes is the Weapons Law.⁴⁵ It regulates dealings with weapons suitable for private use. Its core provisions contain the licensing requirements for private possession, acquisition, and the carrying of firearms. Manufacture and trade are also governed by this Law, as is the proving of guns. Criminal and administrative penalties are provided for violations of this Law. The provisions on banned weapons and numerous definitions are also of importance. The Weapons Law is not easy to understand for lay persons without technical knowledge. The Law has to be read in conjunction with its six federal implementing regulations and a federal directive.⁴⁶ On procedural aspects, the *länder* have also issued regulations.⁴⁷

In addition to the Weapons Law, a number of other federal laws have had an impact on gun control. One of these is the War Weapons Law that was originally enacted in 1961.⁴⁸ It establishes tight federal control over the manufacture, import and export of war weapons. Considering that portable machine guns and some semi-automatic weapons are classified as war weapons, it is not surprising that there is a certain overlap between the Weapons Law and the War Weapons Law, as is described below in the chapters on assault weapons and criminal penalties. The German concept of *war weapons* has also influenced the European Firearms Directive which also bans machine guns.⁴⁹

The Law on Explosives⁵⁰ is of importance for gun owners because its restrictions and permit requirements are applicable to some types of ammunition. The acquisition of loose gun powder for the refilling of cartridges, for instance, requires a permit under the Law on Explosives. The permit requirements for explosives have been tightened in recent years because of the continued threat of terrorism.⁵¹

⁴⁵ *Supra* note 25.

⁴⁶ Erste Verordnung zum Waffengesetz (1. WaffV), repromulgated Mar. 10, 1987, BGBl. I, p. 777; Zweite Verordnung zum Waffengesetz (2. WaffV), Dec. 13, 1976, BGBl. I, p. 3387; Dritte Verordnung zum Waffengesetz, repromulgated Sept. 2, 1991, BGBl. I, p. 1872; Vierte Verordnung zum Waffengesetz, repromulgated Apr. 20, 1990, BGBl. I, p. 780; Fünfte Verordnung zum Waffengesetz, Aug. 11, 1976, BGBl. I, p. 2117; Sechste Verordnung zum Waffengesetz, June 18, 1985, BGBl. I, p. 1150; Allgemeine Verwaltungsvorschrift zum Waffengesetz (WaffVwV), repromulgated Nov. 29, 1979, reprinted in *Waffenrecht* 155 (München, 1981).

⁴⁷ Apel, *supra* note 16, at 550.

⁴⁸ Kriegswaffengesetz, repromulgated Nov. 22, 1990, BGBl. I, p. 2506.

⁴⁹ D. Phillips, "Frontiers and Firearms: The Drafting of a European Directive," 3 *CJ Europe* 7 (1993).

⁵⁰ Sprengstoffgesetz, repromulgated Apr. 17, 1986, BGBl. I, p. 577, as amended.

⁵¹ H. Scholzen, "Erschweris für den Wiederlader," 29 *DWJ* 623 (1993).

The Federal Hunting Law⁵² and the hunting laws of the *länder* define the criteria for hunting licenses. This is of importance for gun control because the hunting license documents the need for hunting weapons and allows for the carrying of weapons for hunting purposes. The integrity checks imposed on hunters are very similar to those required for gun licenses.

Although the Weapons Law, the Law on Explosives, and the Federal Hunting Law are all federal laws, they are nevertheless administered by the authorities of the *länder*. The execution of federal laws by the administrative apparatus of the *länder* is a fundamental principle of German federalism, and it prevails for many branches of administrative law.⁵³ This system combines the advantages of uniform legislation with a regulatory practice that reflects the local circumstances.

There is some disparity in the interpretations of the gun-control law among the *länder*. The partly rural land of Bavaria has a more accommodating attitude toward hunters and recreational shooters than the more densely populated land of North-Rhine Westphalia. On some issues, however, the *länder* try to harmonize their practice, as, for instance, when discussing whether a particular weapons falls into the category of banned weapons⁵⁴

Harmonization is also accomplished by case law. Administrative decisions on gun control can be appealed to the administrative courts. In the first and second instance, these courts are administered by the *länder*, even though they adjudicate on federal law. Ultimately, however, a unifying influence is exerted by the Federal Administrative Court, which is the court of last resort for these matters, unless constitutional complaints are involved.⁵⁵ The Federal Administrative Court tends to be restrictive in its interpretations of the licensing criteria.

Weapons categories and definitions

The Weapons Law distinguishes between guns that are banned, guns that require a license for private possession or use, and guns that can be circulated freely. Very few devices fall into the last category, among them toy guns, blank pistols and gas pistols suitable for defensive uses;⁵⁶ yet these might also become restricted should a bill initiated in 1992 by the Federal Council (upper house of Parliament)⁵⁷ become enacted into law. To some extent, collector's weapons that have been made dysfunctional are also unrestricted.⁵⁸

⁵² Bundesjagdgesetz (BJG), repromulgated Sept. 29, 1976, BGBl. I, p. 2849, as amended.

⁵³ GG, art. 83.

⁵⁴ H. Scholzen, "Bermuda-Dreieck," 29 DWJ 992 (1993)

⁵⁵ R. Hinze, "Schwammige Auslegung," 27 DWJ 1512 (1991).

⁵⁶ Provided that their projectiles are propelled with a force of no more than 0.5 *joule*. Other relatively harmless devices are also exempted [1. WaffV, § 1].

⁵⁷ *Bundesrat. Drucksache* No. 891/92.

⁵⁸ Apel, *supra* note 16, at 279.

Machine guns and some other assault weapons are banned as is described below. Banned are also certain cutting and thrusting weapons, in particular, such criminal implements as blackjacks, switchblade knives, and brass knuckles. Banned weapons cannot be imported, and they cannot be recorded on a weapons license.⁵⁹

For the vast majority of guns, a license is required; and, this licensing requirement, particularly for single and double shot long arms, is one of the elements that makes German gun control more restrictive than that of neighboring countries.

In establishing the extent of gun control, an important role is played by definitions and technical specifications. These are scattered throughout the Weapons Law and its regulations and these intricate definitions contribute a great deal to the complexity of German gun-control law.

Hand firing weapons, as defined by the Law, are small arms whose projectiles are driven by hot gasses. They can be short or long weapons, and they must be proof fired individually before they can be sold. *Handguns*, on the other hand, are defined by barrel length (less than 60 centimeters).⁶⁰

Automatic or self-loading weapons are "firearms in which further shots may be fired through the same barrel by merely setting the trigger in motion after the first shot." Considered as *fully automatic* are firearms suitable for continuous firing or the emission of thrusts of fire.⁶¹ *Semi-automatic* firearms are those in which the trigger has to be activated for each individual shot, such as, for instance, double-action revolvers.

Firearms retain their legal classification even after they have been rendered useless, as long as they can be reconstructed with commonly available tools. Silencers and essential parts of firearms are equally restricted as firearms. Moreover, to prevent the circumvention of handgun restrictions, long firearms that are collapsible or can easily be disassembled into parts of handgun size are banned.

Assault weapons

Due to the restrictions of German gun-control law, Germany has not experienced a proliferation of assault weapons in private hands. Assault weapons are not a defined category in the German Weapons Law. However, the law bans certain types of weapons that are frequently used in the commission of crimes or that are particularly dangerous. The manufacture, trade, acquisition and possession of these weapons is sanctioned by criminal penalties. Most weapons that in the United States would be considered as assault weapons fall under this ban, even though the German descriptions of banned weapons are somewhat ambiguous and, therefore, are subject to varying interpretations.

The Weapons Law specifically bans fully automatic weapons. It also bans firearms which create the appearance of being fully automatic war weapons and semi-automatic weapons which could

⁵⁹ WaffG, § 37.

⁶⁰ WaffG, § 28, para. 2.

⁶¹ WaffG, § 1, para. 5; Potrykus, *supra* note 10, at 17.

easily be turned into fully automatic weapons. Firearms are deemed to resemble fully automatic weapons if they have certain characteristics such as a protruding long magazine or drum magazine, a muzzle brake or stabilizer, cooling devices, shoulder supports or other support devices, or a hilt that is attached in a pistol-like fashion to the trigger or the fore-end.⁶² Even war weapons that are no longer functional are banned because these could be used to threaten people.⁶³

The banning of some semi-automatic weapons has led to a fair amount of litigation. Even though the Federal Criminal Office has prepared a list of prohibited devices,⁶⁴ it is difficult for merchants and purchasers to predict whether a particular weapon falls into the banned category according to the definitions of the Weapons Law. The issue is further complicated by certain overlaps with the War Weapons Law, which defines semi-automatic weapons as war weapons except for those designed for hunt or sport. Because of this distinction, gun manufacturers are producing semi-automatic guns with a large magazine capacity that look like hunting rifles. There is quite a market for these weapons among German gun collectors and marksmen, and the debates with the authorities on the limits of legality are an ongoing process.⁶⁵ The current prerogatives of hunters also allow for the acquisition of fairly powerful semi-automatic guns, even though game can be hunted in Germany with nothing more elaborate than guns that can hold one or two cartridges in one magazine.⁶⁶

Yet when weapons can at all be associated with war they are easily banned. This is exemplified by a court decision of 1992 which denied an individual the right to acquire a manually repeating long rifle that was used by the British Army in World War II on the grounds that this weapon was still considered a war weapon in Germany in 1972 and that some British military units still use it.⁶⁷

Manufacture and sale

Manufacturers and merchants of firearms and ammunition must be licensed under the Weapons Law to ensure governmental control over their potentially dangerous activities in the interest of public safety.⁶⁸ The license criteria for merchants and manufacturers are variations of those employed for private possession and use (see below). In particular, a background check on the integrity of the applicant is required. Licenses can be denied to aliens and non-residents, with the exception of citizens of other European Community countries. Special rules apply to the latter to ensure that the Community's required freedom of movement is not impeded while German concerns of

⁶² WaffG, § 37.

⁶³ Potrykus, *supra* note 10, at 188.

⁶⁴ Apel, *supra* note 16, at 182.

⁶⁵ H. Scholzen, "Ratespiel," 29 DWJ 270 (1993).

⁶⁶ BfG, § 19, para. 1, no. d.

⁶⁷ Oberverwaltungsgericht Rheinland Pfalz decision, docket number 2A11245/91.OVG; summarized in H. Scholzen, "Bermuda-Dreieck," 29 DWJ 993 (1993).

⁶⁸ Potrykus, *supra* note 10, at 58.

public safety are satisfied. This is accomplished by a set of equivalency rules for foreign certificates and experiences in weapons manufacture and trade.⁶⁹

A manufacturer's license must be obtained by the owner or corporate representative of a manufacturing enterprise. To qualify for the license, it is necessary that not only the applicant but also the general manager and branch managers of the enterprise have passed integrity checks.⁷⁰ Proof of technical ability is not required for the manufacturer's license because the quality of the products is assured by the proving process for certain guns and the licensing by construction type for other firearms and ammunition.⁷¹ However, various requirements of knowledge and skills may be imposed by the numerous regulatory schemes of the industrial laws.⁷²

For a dealer's license, a comprehensive knowledge of weapons technology and gun-control law is required, in addition to the background check. Managers and branch managers must prove their expertise in an examination. Exempt from this examination requirement are gunsmiths who are licensed according to the provisions of the Artisan's Law.⁷³ A gunsmith's license permits the manufacture and sale of firearms. Germany is well-known for the quality of its vocational training programs, and to become a gunsmith involves lengthy and extensive practical and theoretical instruction.

Commercial manufacturers and dealers in guns must comply with gun-control law which includes many record keeping, labelling, and notification duties. Only guns that have been officially proved can be put into circulation. Guns and ammunition can be sold only to those entitled to acquire them. Extensive requirements for the safekeeping of all weapons and ammunition apply.⁷⁴

A license is also required for the construction or alteration of guns on a non-commercial scale. Such private activities are tightly supervised not only as to the technical ability of the individual but also to his or her reliability and a justified need for the activity.⁷⁵

Export and import

For gun-control purposes, an importer must have a license entitling him to acquire the firearms and ammunition he wishes to import. This applies to both commercial and private importers. The authorities must be notified of imports, and private importers must have their imported firearms

⁶⁹ 2. WaffV.

⁷⁰ WaffG, §§ 7 & 8.

⁷¹ WaffG, §§ 15-16.

⁷² WaffG, § 60; Gewerbeordnung, repromulgated Jan. 1, 1978, BGBl. I, p. 97, as amended.

⁷³ Handwerksordnung, repromulgated Dec. 28, 1965, BGBl. I, p. 1966, as amended.

⁷⁴ WaffG, §§ 34 and 42; Apel, *supra* note 16, at 210.

⁷⁵ WaffG, § 41.

recorded in their license.⁷⁶ The importation of banned weapons and of firearms without recognized proof marks or recognized licenses by construction type is prohibited.⁷⁷ Germany is a member of the Convention on the Reciprocal Recognition of Proof Marks on Small Arms.⁷⁸

Generally, travellers cannot bring a gun into Germany unless they have a German weapons possessions card. Easier conditions, however, apply to hunters and recreational shooters who wish to pursue their sport in Germany. Hunters who have a foreign hunting license that is equivalent to the German hunting license can obtain permission to bring two hunting rifles and the appropriate ammunition to Germany for up to one month.⁷⁹ Likewise, marksmen who are participating in a shooting event in Germany can bring two sporting firearms and ammunition hunting rifles to Germany for one month if they observe certain border-crossing formalities.⁸⁰

Until Germany has implemented the European Directive on the European firearms pass,⁸¹ the German rules on exports, imports, border-crossings with weapons, etc., will remain in effect in dealing with exports and imports from other European Community countries.⁸²

In keeping with the liberal German foreign trade policy, the import of weapons and ammunition suitable for private use is not restricted by any protectionist devices. On the other hand, the export of these weapons is subject to some permit requirements under the laws governing foreign trade. For various foreign policy reasons, trade to particular countries can be restricted at any given time. The export of war weapons is subject to a very cumbersome permit proceeding according to the War Weapons Law.⁸³

Recording of firearms

The record keeping, labelling, and notification duties of the Weapons Law are designed to afford the authorities accurate information on the firearms and ammunition in commercial and private possession, to allow for the supervision of weapons production and trade and to facilitate the tracing of individual weapons in the detection of crimes.

Manufacturers and importers must affix in an indelible manner on an essential part of each gun the name or trademark of the manufacturer or dealer, the type of ammunition to be used, and a serial

⁷⁶ WaffG, § 27.

⁷⁷ Apel, *supra* note 16, at 130.

⁷⁸ Done at Brussels, July 1, 1969, 795 UNTS 247; entered into effect for West Germany Oct. 10, 1971, BGBl. II, p. 1276.

⁷⁹ 1. WaffV, § 9.

⁸⁰ WaffG, § 27.

⁸¹ *Supra* note 43.

⁸² "EG-Waffenrichtlinie. Umsetzung noch nicht abgeschlossen," 29 DWJ 1151 (1993).

⁸³ *Supra* note 48.

number. Retail packages of ammunition must also be labelled. Only properly labelled firearms and ammunition can be sold. Dealers and manufacturers must keep records indicating the types and numbers of the weapons produced and to whom they were sold. Retailers of ammunition must also keep books on acquisitions and dispositions.⁸⁴

Private individuals who purchase a weapon must have it entered on their weapons possession license by the authorities. The license must also be brought up-to-date after each sale of a weapon by a private individual. In that case, the particulars of the transfer are recorded in the license of the seller and the competent authorities for the purchaser are notified to ensure the proper recording on his license.⁸⁵

Currently, the records on the possession of guns are kept by the local authorities in the *länder*; many of these records are kept in paper files and are, therefore, hard to use. In the ongoing discussion for a new gun control law, it has been suggested that an automated and centralized gun register be established. This would allow law enforcement personnel to get an idea of how many guns a suspect might have. It remains to be seen if this proposal will come to fruition. Germany has very strict privacy legislation. It limits the storage and transfer of personal data in various ways.⁸⁶

Private possession and use

General licensing principles

The private possession and use of firearms is permitted only to licensed individuals. Licenses are granted only after a thorough governmental investigation of the applicant to ensure that he or she meets the statutory criteria of integrity, expertise, and a need for the weapon. Liability insurance is also required for the carrying of a weapon. The minimum age for a license is eighteen, and it lies in the discretion of the authorities to deny a license to aliens, particularly if they have resided for less than three years in Germany.⁸⁷ Licenses can or must be revoked if they were obtained surreptitiously or if the prerequisites for their granting no longer exist.⁸⁸

Licenses differ by user groups and they can also be tailored to the specific requirements of the individual case by describing the number and types of weapons for which they are valid; special conditions, restrictions, or time limitations can also be imposed. If a license is issued for more than one weapon, it contains a separate rubric for each weapon.

Licensees must observe the rules on the safe-keeping of weapons, both in their homes and when the weapons are being transported. The rules on the transport of guns are fairly strict, yet the

⁸⁴ WaffG, §§ 12 & 13.

⁸⁵ WaffVwV, § 28.

⁸⁶ Bundesdatenschutzgesetz, repromulgated Dec. 20, 1990, BGBl. I, p. 295, §§ 14-16; H. Scholzen, "Datenweitergabe nur ausnahmsweise," 28 DWJ 99 (1992).

⁸⁷ WaffG, § 30.

⁸⁸ WaffG, § 47.

rules for the safe-keeping of guns in private homes are not nearly as stringent as those imposed on merchants and manufacturers. For handguns, it is generally required that they be locked up even when they are in a locked house or apartment. Special safeguards are also required for weapons kept in hunting chalets that are not constantly inhabited.⁸⁹ Currently it appears that the authorities do not have the right to inspect the safe-keeping of weapons in the private home of the gun owner. However, it has been rumored that a provision to that effect has been suggested in the on-going law reform.⁹⁰

Integrity of applicants

The Weapons Law defines integrity twofold: first, as the absence of facts indicating that a person might abuse weapons, handle them carelessly or pass them on to non-qualified persons; and second, by supplying a catalog of specific disqualifying criteria which lists convictions for certain offenses and personal disabilities such as addiction to alcohol or drugs, mental illness or feeble-mindedness.⁹¹ In practice, the most important step in determining the law-abiding character of an applicant will be to check his criminal record.⁹² This is easily accomplished, because criminal justice records are kept for all of West Germany by the Federal Central Register (*Bundeszentralregister*) in Berlin.⁹³

Disqualifying offenses are crimes against internal and external security, sexual offenses, violent crimes, and crimes against property; negligent offenses resulting from the use of weapons, ammunition, or explosives; intentional violations of the gun control laws; and commission of two criminal offenses in an intoxicated state. These offenses remain an impediment to a license for five years after the conviction has become final, and this five-year period does not begin to run while the offender is serving a sentence.

These integrity criteria are applied restrictively so that one conviction for tax evasion⁹⁴ or drunk driving⁹⁵ can lead to the revocation of the weapons license. The law and the ensuing practices are considered as unduly harsh by German gun users. In particular, it has been alleged that the list of offenses and the five-year period after finality of judgment have in some cases excluded hunters and other legitimate users from the right to possess weapons for too long a period. In 1987, a reform of these criteria was contemplated in a draft to reform of the weapons law. This reform never came to pass.⁹⁶ In the meantime, however, the Federal Hunting Law has reformed the integrity criteria for

⁸⁹ Apel, *supra* note 16, at 203.

⁹⁰ O. Obermeyer, "Jetzt geht es zur Sache," 29 DWJ 1318 (1993).

⁹¹ WaffG, § 5.

⁹² B. Wilhelm, "Grundsätze der Bedürfnisprüfung," 19 *Die öffentliche Verwaltung* 33 (1960).

⁹³ Bundeszentralregistergesetz, repromulgated Sept. 21, 1984, BGBl. I, p. 1229.

⁹⁴ Bundesverwaltungsgericht (BVerwG) Decision, Apr. 24, 1990, reprinted in 122 *Bayerische Verwaltungsblätter* (BayVBl.) 182 (1991).

⁹⁵ BVerwG Decision, Sept. 19, 1991, 123 BayVBl. 217 (1992).

⁹⁶ R. Hinze, "Zuverlässigkeitsregelung im Waffenrecht," 43 RdL 228 (1991).

hunting licenses by allowing the authorities more discretion in evaluating convictions for misdemeanors while disallowing the license for all felony convictions.⁹⁷

Need for a weapon

The most restrictive aspect of the German licensing process is that a need for a weapon must be proven. For defensive purposes, a need will be recognized only if the applicant substantiates that:

...he is significantly more endangered by attacks on his life and limb than the population at large and that the acquisition of firearms or ammunition are suitable to reduce this danger.⁹⁸

This statutory criterion is narrowly interpreted by the administrative authorities and the courts. In the mid-1970s, the law was generally interpreted to recognize a need for persons who are endangered by their occupation, such as those who transport or have custody over desirable goods such as money, drugs, or weapons.⁹⁹ Since then, however, the administrative practice has become reluctant to grant licenses even to those in endangered occupations and an opinion by the local police is frequently sought to find out whether persons in a particular profession had been victimized in a particular area.¹⁰⁰

As a result of this practice, the overall number of licenses granted is small. In the *land* of North Rhine-Westphalia, with a population of 17 million, it has been estimated that there are only about 500 licensees who can possess and carry a weapon for defensive purposes.

The criteria for acknowledging the needs of collectors and weapons experts are also very stringent. To be recognized, a collection must have cultural and historic merit. In fact, it must have museum-quality, which is discouraging for new collectors.¹⁰¹ There is a fair amount of litigation on what constitutes a collection. In one case, the administrative authority had disputed the merit of a collection that was limited to British weapons of World Wars I and II on the grounds that it was too contemporary.¹⁰²

More generous allowances are made for hunters and target shooters. They are deemed to require a fair amount of weapons for the pursuit of these legitimate uses, as is described below. However, in the ongoing discussion for a new weapons law a curtailment of these liberal allowances has been proposed on the grounds that even an avid hunter requires only a limited number of long arms.

⁹⁷ BfG, § 17, as amended by Drittes Rechtsbereinigungsgesetz, June 28, 1990, BGBl. I, p. 1221, art. 17.

⁹⁸ WaffG, § 32, para. 1, no. 3.

⁹⁹ Apel, *supra* note 16 at 154; Potrykus, *supra* note 10, at 153.

¹⁰⁰ O. Obermeyer, "Was planen Behörden," 29 DWJ 816 (1993).

¹⁰¹ Hinze, *supra* note 55.

¹⁰² Oberverwaltungsgericht Koblenz decision, docket no. 2A11245/91.OVG, as summarized in H. Scholzen, "Unseriös," 29 DWJ 100 (1993).

Expertise

Weapons expertise must be proven through an examination before a governmental board. The purpose of the examination is to ensure that the person can handle the weapon and the ammunition, understands the reach and effect of the weapon, and has a basic understanding of gun control law and the principles under which a gun can be used to defend himself or others. The exam consists of a theoretical and practical part; the latter includes a shooting test.

No separate examination is required for persons who have proven their expertise in other ways, such as hunters and gunsmiths. Exceptions are also made for those who have received adequate training as police officers, members of the armed forces, or members of recreational shooting associations.¹⁰³

The criteria for the granting of long-term hunting licenses are quite stringent. In Germany, hunting is a somewhat exclusive sport,¹⁰⁴ accessible only to those who have undergone extensive training in all aspects of the sport including proper marksmanship.¹⁰⁵

Liability insurance

Liability insurance is required for a weapons carrying license. According to the Weapons Law, the minimum coverage is Deutsche Mark (DM) 500,000 (U.S. \$300,000) for personal injury and DM 50,000 (U.S. \$30,000) for property damage.¹⁰⁶ This coverage would be applicable to someone who has been given permission to carry a weapon for defensive purposes.

For hunters, a higher coverage is required. According to the Federal Hunting Law, hunters can be licensed only if they have liability insurance with a coverage of at least DM 1 million (U.S. \$600,000) for personal injury and DM 100,000 (U.S. \$60,000) for property damage.¹⁰⁷

The exact requirements for the terms of the hunter's insurance policy vary from *land to land*. In Hesse, a regulation requires that the insurance must provide coverage for, among other incidents, liability arising from the possession or use of weapons during the hunt or while shooting at shooting ranges and also for negligence in exceeding the limits of self-defense, the defense of others, and the right to use weapons against poachers.¹⁰⁸ In North-Rhine Westphalia, a ministerial decree explains

¹⁰³ WaffG, § 31; 1. WaffV, §§29-32; H. Scholzen, "Erfreulich klar," 27 DWJ 1204 (1991).

¹⁰⁴ This was noted by the U.S. occupation government in Bavaria in 1949 which attempted unsuccessfully to democratize the sport. G. Mitzschke & K. Schäfer, *Kommentar zum Bundesjagdgesetz* 11 (Hamburg, 1982).

¹⁰⁵ BfG, §§ 14-17.

¹⁰⁶ WaffG, §§ 35 & 46.

¹⁰⁷ BfG, § 17, para. 1, no. 4.

¹⁰⁸ Durchführungsverordnung zum Hessischen Ausführungsgesetz zum Bundesjagdgesetz, July 16, 1979, as amended, E. Fuhr & E. Pfeil, *Hessische Verfassungs- und Verwaltungsgesetze* No. 180a (München, 1992-), § 12.

that the personal injury coverage of 1 million DM applies not for each insured event but for each personal injury.¹⁰⁹

Types of licenses

The two basic licenses for private individuals are the weapons possession license (*Waffenbesitzkarte*) authorizing the holder to acquire and possess designated types and numbers of guns, and the weapons carrying license (*Waffenschein*) authorizing the holder to carry a gun.¹¹⁰ Holders of these licenses are entitled to acquire the ammunition suitable for their weapons. Other acquirors of ammunition require an ammunition acquisition certificate (*Munitionserwerbschein*).¹¹¹ In additions to these licenses of the Weapons Law, the hunting license also functions as a weapons license to some extent.

A weapons possession license is generally valid for one year for acquisition purposes, but it is unlimited in time for possession. The purchaser of a weapon must show the license to the seller, and the registration number of each acquired gun must be entered into the license either at the time of the sale or shortly thereafter.

The weapons carrying license entitles the holder to carry one weapon outside of his fenced-in residential or business property. The carrying license may be limited to a particular area or particular occasions as, for instance, while engaged in a dangerous occupation. Even a carrying license does not allow for the carrying of a weapon at public gatherings. Such acts have been prohibited since the 1930's. Exceptions can be made, however, for processions and meetings of traditional marksmen's associations at which the participants are permitted to carry their rifles.¹¹²

A carrying license is not required for hunters while engaged in their sport, for the use of weapons at shooting galleries and ranges, and for the carrying of weapons within fenced-in property with the permission of the property owner. A carrying license is also not needed for the transportation of firearms that are unloaded and wrapped so that they cannot be readily used.

Terms of the licenses by user group

Given the complexity of the licenses and the special provisions for particular users, the following thumbnail sketch broken down by user categories may be helpful.

Hunters who have a long-term hunting license (one or three year license) can acquire any number of long arms and two handguns.¹¹³ Hunters must not show a weapons possessions license to the seller. The hunting license is sufficient for acquisition purposes. However, they must

¹⁰⁹ Mitzschke, *supra* note 104, at 234.

¹¹⁰ WaffG, §§ 28 & 35.

¹¹¹ WaffG, § 29.

¹¹² Versammlungsgesetz, repromulgated, Nov. 15, 1978, BGBl. I, p. 1789, as amended, § 2, para. 3.

¹¹³ Apel, *supra* note 16, at 158

obtain a weapons possession card from the authorities in order to have the weapons in their possession carefully recorded. Hunters do not require a weapons carrying license for the pursuit of their hunting activities. However, the hunting license does not entitle them to carry a weapon for defensive purposes outside of the hunting environment.

Recreational shooters do not have a special license, yet their entitlement to acquire guns is similar to that of hunters. Marksmen are given a special weapons possession card if, in addition to the passing of the background check, their shooting association certifies that they are members in good standing who practice regularly and have achieved a certain standard of marksmanship. This special weapons possession card¹¹⁴ entitles them to acquire any number of single-shot long arms, and they also can obtain a license for semi-automatic weapons and up to two handguns under somewhat easier conditions, if these are required for the practice of their sport.¹¹⁵ Recreational shooters must exercise their sport in approved shooting ranges or galleries or otherwise by special permit. As a group, they do not qualify for a carrying license, and they must transport their weapons in a manner that prevents their immediate use.

Collectors are granted a weapons possession license for the acquisition and possession of weapons that fall into the scope of their collection.¹¹⁶ Collectors who own more than ten functional handguns must observe the same rules for safekeeping as merchants.

For decorative purposes or theatrical performances, only weapons that have been rendered permanently useless can be acquired. Yet even these may not look like assault weapons.¹¹⁷

For self-defense purposes, individuals are usually granted a weapons possessions license for one handgun and a carrying license entitling them to the carrying of this weapon under certain circumstances.

Politicians and high government officials are deemed to have a need for a weapon because they might be exposed to personal attacks. They do not require weapons licenses to acquire and carry guns. Instead, their agency or legislative body certifies that they can possess and carry a weapon.

Use of firearms

Generally, the discharge of firearms is permitted only in shooting ranges and galleries and in hunting environments. Shooting ranges and galleries are carefully supervised and regulated.

Even within fenced-in property, and with the permission of the owner, shooting is limited to certain relatively harmless firearms, and it is permissible only if adequate safety precautions have been

¹¹⁴ WaffVwV, § 32.2.1.

¹¹⁵ Apel, *supra* note 16, at 163.

¹¹⁶ WaffVwV, § 32.4.

¹¹⁷ 1. WaffV, § 3.

taken so that the projectiles cannot leave the property. A specific permit is required for any other discharges of firearms. Such a permit may be granted, for instance, for industrial uses.¹¹⁸

Additional restrictions exist for combat training. Such courses are limited to defensive techniques. They are available only to individuals with a particular need for such training.¹¹⁹ The organizers of combat training courses must inform the authorities of each training event, and they must keep records on the participants. There is, however, no official definition on what combat training is. Shooting associations are offering instruction similar to the restricted combat courses, and one such program has been approved by the Bavarian authorities.¹²⁰

Considering the strictures of German gun control law, it is surprising that German criminal law allows the use of weapons in self-defense to a broader extent than other West European countries.¹²¹ German law does not categorically exclude the use of guns to defend property,¹²² although there has to be some proportionality between the use of force and the threat. The use of a gun would be excessive in defense against a minor larceny, but it might be justifiable or excusable in more serious cases. In any event, it would be justified when an aggressor forcibly enters a private home.¹²³

While these principles apply to private individuals who defend themselves or others, a more stringent standard is imposed on the police. According to article 2 of the European Human Rights Convention¹²⁴ as it is interpreted in Germany,¹²⁵ law enforcement officers may use guns only as a defense against violent attacks on human beings.

Offenses and penalties

Violations of the Weapons Law are punishable either as criminal offenses or as contraventions of administrative law. The criminal sanctions of the Weapons Law are quite severe by German standards; yet the actually imposed penalties tend to be on the low side within the range of the punishments provided.¹²⁶

¹¹⁸ WaffG, § 45.

¹¹⁹ WaffG, § 44; 1. WaffV, §§ 38-41.

¹²⁰ O. Obermeyer, "Klarstellung. Warum ist das IPSC-Schiessen kein Verteidigungsschiessen," 29 DWJ 802 (1993).

¹²¹ H. Jescheck, *Lehrbuch des Strafrechts. Allgemeiner Teil* 314 (München, 1988).

¹²² *Strafgesetzbuch* (StGB), repromulgated Jan. 2, 1975, BGBl. I, p. 1, as amended, §§ 32-34.

¹²³ E. Dreher & H. Tröndle, *Strafgesetzbuch* 241 (München, 1993).

¹²⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, signed Nov. 4, 1950, *European Treaty Series*, No. 5., art. 2, para. II lit. a.

¹²⁵ Dreher, *supra* note 123, at 242.

¹²⁶ Reiber, *supra* note 6, at 200.

The most stringent penalty is imposed for the manufacture, possession, sale, or other disposition of banned automatic firearms. Such conduct constitutes a felony, punishable with imprisonment of one year to five years, and up to ten years under aggravating circumstances, such as organized crime.¹²⁷ Introduced in 1978 to combat terrorism, this sanction has been considered excessive in practice, because it also applies to collectors who failed to notify the authorities of their holdings.¹²⁸

Two ranges of punishment are provided in the misdemeanor category. The higher one, imprisonment of six months to five years, applies largely to misconduct on a commercial scale, such as unlicensed commercial sale and manufacture, the acquisition of firearms and ammunition with the intent of transferring them to unauthorized persons, and dealings with banned weapons.

Punishable with imprisonment up to three years or a fine are offenses such as unlicensed individual acquisition, possession or carrying of firearms, and transfer of a weapon to an unlicensed person. However, individuals are subject to the higher punishment range for unlicensed imports of or any involvement with banned weapons, and for exercising control over a firearm for which the individual does not have a license in restaurants or entertainment facilities that are open to the public.¹²⁹

The German criminal statistics indicate that the provisions against illegal gun ownership and similar offenses are enforced. In 1992, some 18,101 criminal violations of the Weapons Law were reported in what was formerly West Germany plus West Berlin, which represents a 10.5% increase over the previous year.¹³⁰ These statistics are prepared by the police. They give only the number of cases in which an offender was charged and not the conviction rate. However, it can be assumed that the conviction rate is substantial because Germany does not permit plea bargaining and cases can be dropped only if they are very minor.¹³¹

In addition to the criminal offenses of the Weapons Law, many other violations of that law and its regulations are punishable as administrative offenses with a fine up to DM 10,000 (U.S. \$6,000). Moreover, guns that were the subject of an administrative or criminal offense or were used in its commission can be confiscated.¹³²

According to the Criminal Code, the carrying of a weapons is an aggravating circumstance in the commission of many crimes, among them, resistance to law enforcement personnel, breach of the peace, theft, bodily harm, and robbery.¹³³ In the case of robbery, for instance, the minimum penalty

¹²⁷ WaffG, § 52a.

¹²⁸ "Entwicklung des Waffenrechts," 23 DWJ 660 (1987); R. Hinze, "Verbrecher oder unschuldig," 28 DWJ 350 (1992).

¹²⁹ WaffG, § 53.

¹³⁰ *Polizeiliche Kriminalstatistik 1992*, 28 (Wiesbaden, Bundeskriminalamt, 1993).

¹³¹ Strafprozessordnung, repromulgated Apr. 7, 1987, BGBl. I, p. 1074, § 153.

¹³² WaffG, §§ 55 & 56.

¹³³ StGB, §§ 113, 125a, 244 & 292.

is increased from one year to five years if committed with a weapon. German criminal penalties are rather low by American standards. However, the German conviction rate is high due to the absence of plea bargaining and the thoroughness of the law enforcement process.

Statistical evaluation

The West German statistics for the last three decades could support the assumption that the enactment and persistent enforcement of stringent gun control laws has a lasting effect on the reduction of gun abuse. In 1972, the year before the Weapons Law with its many new restrictions entered into effect, 20,805 criminal offenses were committed that involved the use of guns. In 1974, one year after the effective date of that law, this annual figure declined to 13,381 incidents. This figure rose again in 1975 to 15,600 cases, and it fell in 1977, the year after new restrictions became effective through the 1976 amendment to the Weapons Law, to 13,380 cases. Since then the annual incidence of gun-related crime rose to over 16,000 cases in 1982 and 1983; it hovered around 13,000 cases in the years 1984 through 1986 and then gradually fell to 10,774 in 1990.¹³⁴ During that period, the population of West Germany rose only slightly from 61.8 million in 1972 to 62.7 million in 1990, while overall criminality rose considerably; the number of reported crimes (excluding traffic offenses) per 100,000 inhabitants rose from 4,171 in 1972 to 7,094 in 1989.

In 1992, the statistics for the united Germany show a sizeable increase in gun abuse with a total of 17,240 reported offenses for a total population of 79 million. This amounts to a ratio of 21.6 gun abuse incidents per 100,000 inhabitants for all of Germany in 1992, as compared to 17 incidents of gun abuse per 100,000 inhabitants for West Germany in 1990. However, the increase is not ascribable to a higher gun abuse rate in East Germany. The rate of incidents per 100,000 inhabitants was around 21 in East Germany and also in West Germany combined with West Berlin.¹³⁵

A closer look at these statistics shows them to be less serious than at first appearance. In the majority of the cases the weapon was not discharged but instead used as a threat. In fact, the percentage of discharges as compared to threats has decreased in the last three decades. Whereas in 1972, a gun was discharged in 68% of the gun abuse cases, by 1992 a discharge occurred in only 36.7% of the cases. Furthermore, a large number of the incidents in which guns were discharged involved petty offenses. Thus, in 1992, one-third of the cases in which a weapon was discharged involved only poaching or minor property damage, such as shooting at traffic signs. However, another third of these incidents involved the inflicting of serious bodily harm. The incidents in which a gun was used to threaten a victim were generally also very serious. In 1992, some 85% of these cases involved robbery, kidnapping, and related offenses.

The use of guns as murder weapons has increased in 1992 in the united Germany as compared to the West German figures of 1988 and 1989. The total number of intentional homicides (murder, manslaughter, homicide at the request of the victim, and murder in the perpetration of robbery) perpetrated with a gun in all of Germany in 1992 was 433. The equivalent figure for West Germany was 221 cases in 1989 and 220 in 1988. Thus, the increase in 1992 of 90% over the earlier figures is much higher than the 25% increase of the German population due to unification. The increased use

¹³⁴ *Polizeiliche Kriminalstatistik 1989* 33 (Wiesbaden, Bundeskriminalamt, 1990); H. Schankliss, "Das Waffengesetz und die innere Sicherheit," 28 DWJ 929 (1992).

¹³⁵ *Supra* note 130, at 54.

of guns as murder weapons is a phenomenon that is not restricted to Germany. It has also occurred in Switzerland in recent years, where it has been ascribed to an increase in drug trafficking.

A correlation between gun control and gun abuse could also be drawn from comparing the cities of Hamburg and West Berlin before unification. In 1982, West Berlin reported 25.5 criminal gun uses per 100,000 inhabitants whereas in Hamburg this figure was 75.1. At that time, West Berlin was still under occupation law and the private possession of guns was essentially prohibited. Undoubtedly the prohibition of private gun ownership in Berlin and the lack of a local market in which guns could be obtained was responsible for this relatively low criminal use statistic for a big city.¹³⁶

Another German statistic, however, could be used to cast doubt on further restrictions on lawful gun owners. A detailed statistic on weapons and explosives that was last prepared for the year 1990 shows that illegally obtained guns had been mostly used in crimes of violence. Of a total of 1788 armed acts of violence, only 139 were committed with lawfully owned guns.¹³⁷

Doubt on the effectiveness of German gun control law could also be cast by comparing the German gun-control statistics with those of Austria. Even though Austria has more permissive gun-control laws than Germany, Austria has a much lower incidence of gun abuse. The two countries have similar legal systems and much in common culturally. One difference between them, however, is that Germany is more densely populated. In 1991, the population density for all of Germany was 225 inhabitants per square kilometer and for former West Germany it was 254. In Austria, on the other hand, it was 91.¹³⁸

In 1992, in Austria, the use of a gun was threatened in 237 offenses and guns were discharged in 170 offenses.¹³⁹ These offenses combined, when applied to a population of approximately 8 million, amount to a ratio of 5.1 gun abuse offenses per 100,000 inhabitants. In 1990, in Austria, with a population of 7.6 million, the number of criminal threats with guns was 266 and the number of offenses in which guns were discharged was 168;¹⁴⁰ these offenses combined yield a ratio of 6 incidents of gun abuse per 100,000 inhabitants. The German ratios of 21.6 in 1992 and 17 in 1990 are much higher than the Austrian ones, even when taking into account that the German statistics include a sizeable number of poaching offenses which in Austria are excluded.

Austrian gun control law is structurally similar to that of West Germany. In fact, the Austrian Weapons Law of 1967¹⁴¹ influenced the German Weapons Law of 1972, particularly in developing the concept of integrity. Affinities also exist because both laws have their roots in the German Weapons

¹³⁶ *Supra* note 15.

¹³⁷ H. Lindner, "Grundgesetz gilt auch für Waffenbesitzer," 29 DWJ 995 (1993).

¹³⁸ 43 *Statistisches Jahrbuch für die Republik Österreich* 444 (Wien, 1993).

¹³⁹ *Polizeiliche Kriminalstatistik 1992*, Table 1 (Vienna, Bundesministerium für Inneres, 1994).

¹⁴⁰ *Polizeiliche Kriminalstatistik 1990*, Table 1 (Vienna, Bundesministerium für Inneres, 1992).

¹⁴¹ *Waffengesetz* 1967, Mar. 1, 1967, *Bundesgesetzblatt* (ABGBL, official law gazette of Austria) no. 121/1967, as amended.

Law of 1938.¹⁴² However, the Austrian Weapons Law is less complicated than the German one, and it is less restrictive. In Austria, anyone above the age of 18 can acquire and possess long arms without a license, and any law-abiding citizen over the age of 21 will be granted a license to acquire and possess up to two handguns. While carrying licenses will be granted only to those with a requirement, the criteria are less stringently applied than in Germany. The privileges of hunters and target shooters are somewhat comparable to those existing in Germany.¹⁴³

A comparison of the German gun abuse statistics with those of Switzerland, on the other hand, show no reverse proportionality between gun control and gun abuse. Switzerland (population density 163 inhabitants per square kilometer) has very little gun control and the right to bear arms is based on strong traditions. Moreover, several hundred thousand men of military age keep their military assault weapons and ammunition at home. When considering that the population of Germany is about ten times that of Switzerland, it follows that in 1992 Switzerland had a relatively higher incidence of intentional homicides with a gun than Germany (97 in Switzerland -- 433 in Germany), about the same rate of robberies at gunpoint (503 in Switzerland -- 5,560 in Germany) but significantly fewer criminal assaults and batteries with a gun (76 in Switzerland -- 3014 in Germany).¹⁴⁴

Conclusion

The German experience is interesting for a variety of reasons. Historically, an argument could be made that gun control flourishes under dictatorial regimes. This is shown by the East German experience. A closer look at the Hitler era, however, reveals a more complex situation. Undoubtedly Hitler's position was strengthened by disarming his opponents. This goal was furthered by a variety of regulations in the early 1930's that were based on a gun-control Law of 1928. Yet much of the taking of weapons was done by dictatorial methods that disregarded any due process and existing laws. Hitler's Weapons Law of 1938, on the other hand, was less restrictive than the preceding legislation. Therefore, if it were to be argued that gun control encourages dictatorships, then the German Law of 1928 should be seen as the culprit and not that of 1938.

The current regulatory practice in Germany is also worth studying. Germany relies on a large administrative apparatus and a sizeable body of case law to ensure that law-abiding citizens can have guns for legitimate uses while weapons are kept away from dangerous persons. It is difficult to say whether the complexity of German gun-control law and practice are a result of the German temperament and legislative style or whether they are an inevitable consequence of the efforts to balance the rights of hunters and recreational shooters with the public interest in keeping weapons out of the hands of dangerous individuals.

Comparing German gun abuse statistics with those of the United States certainly makes a case for the enactment of strict gun control laws, including the banning of assault weapons. On the other hand, a comparison between Austria and Germany might indicate that other factors besides gun control are responsible for the incidence of gun abuse and that, while it is important to restrict the ownership

¹⁴² Reiber, *supra* note 6, at 168.

¹⁴³ Waffengesetz, repromulgated Aug. 16, 1986, ABGBI no. 443/1986.

¹⁴⁴ *Polizeiliche Kriminalstatistik 1992* (Bern, Bundesamt für Polizeiwesen, 1993); *supra* note 130.

of handguns, there is no clear-cut evidence that restricting the circulation of hunting rifles reduces crime.

The German experience also shows that the drafting of gun-control legislation is a continuous process. Gun control is one of these topics like abortion on which people have fundamental philosophical positions on which they find it difficult to compromise. Whereas Germans would generally agree that those with access to handguns should be known to the authorities to forestall abuse, there is little agreement on anything else in German gun-control legislation. Consequently, it is difficult to predict whether the law reform that is currently being shaped will be enacted.

Prepared by Edith Palmer
Senior Legal Specialist
European Law Division
Law Library of Congress
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