

LEGAL OPINION

LEGAL WEAPONS– ECONOMIC AND SOCIAL RELEVANCE IN BRAZIL

CLIENT: ABIAMB – Associação Brasileira de Importadores de Armas e Materiais Bélicos
 (“Brazilian Association of Importers of Weapons and War Materials”).

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I. BACKGROUND OF CONSULTATION

I.1. The Client asked us about the legal aspects in the current scenario of the trade in legal firearms in Brazil from the viewpoint of economic, social, and public safety relevance.

I.2. The following pieces of legislation were analyzed to conduct the study:

- ACT10,826, OF DECEMBER 22, 2003
- REFERENDUM OF2005
- DECREE No. 9,785 OF DE07/MAY/2019
- DECREE No.9,845 OF 25/JUNE/2019
- DECREENo.9,846 OF 25/JUNE/2019
- DECREENo.9,847 OF 25/JUNE/2019
- DECREENo.9,981 OF 20/AUGUST/2019
- DECREE No.10,030 OF30/SEPTEMBER/2019
- DECREE No.10,627 OF12/FEBRUARY/2021
- DECREE No.10,628 OF12/FEBRUARY/2021
- DECREE No.10,629 OF12/FEBRUARY/2021
- DECREE No.10,630 OF12/FEBRUARY/2021
- ADI 6675MC 12/APRIL/2021

II. LEGISLATION HISTORY –BRIEF COMMENTS

II.1. The legal history of gun policy in Brazil started at the turn of the 21st century. At the beginning of the country's history, between 1603 and 1830, possession of a pellet gun or similar firearm was not allowed in accordance with the ordinances and laws of the Kingdom of Portugal.

II.2. When Brazil was no longer dependent on Portugal, the use of weapons in 1831 was only allowed for members authorized by the justice of the peace. After 1890, with the Proclamation of the Republic, crimes involving the use of firearms went beyond the aggravating factor known as superiority in weapons.

II.3. In 1934, during the Vargas Era, there were changes in legislation with the publication of Decree No. 24,602, which provided for the installation and inspection of factories and trade in weapons, ammunition, explosives, aggressive chemicals, and related materials. Later, in 1941, carrying a firearm outside one's residence was treated as a crime.

II.4. Another advance occurred in 1986; prior to the Brazilian Federal Constitution, Decree No. 92,795 was created, dealing with the registration and federal authorization for the possession of firearms and their permitted use throughout the country. This period marked by the end of the military dictatorship and the beginning of democracy in Brazil.

II.5. In 1997, during the Fernando Henrique Cardoso Administration, Act No. 9,437 was published, which established a body of the Ministry of Justice in the scope of the Federal Police, with operations throughout Brazil called the National Weapons System (SINARM).

II.6. This body is now in charge of recording seizures of firearms, both those seized and those by police and legal authorities. During this period, proof through documentation of the bearer's full capacity to handle the weapon became mandatory.

II.7. The aforementioned legal text brought considerable innovations regarding the sale and illicit use of firearms, as provided for in Article 10, which states that whosoever owns, holds, carries, manufactures, purchases, sells, rents, exhibits for sale or supplies, receives, has in deposit, transports, assigns, even if free of charge, lends, sends, employs, keeps in custody and hides a firearm, of permitted use,

without authorization and in disagreement with legal or regulatory determinations, will be subject to the penalty of imprisonment of 01 (one) to 02 (two) years and a fine.

II.8. Any act typified above would be classified as a crime, which by applying the principle of alternativeness, any of the various acts provided for in the same article would result in a punishable illicit act.

II.9. In 2003, after the end of the Cardoso government and the start of the Lula government, Act No. 10,826 was published, reducing the circulation of weapons and preventing the illegal possession of firearms.

II.10. This Act became known as the Disarmament Statute.

II.11. The Disarmament Statute was enacted with the aim of reducing the circulation of weapons and establishing strict penalties for crimes such as illegal possession and smuggling. The statute was regulated by means of a decree that went into effect on June 1, 2004.

II.12. The statute laid out new, more restrictive rules for the purchase and possession of weapons in the country, as well as tougher penalties for the illegal possession and possession of unregistered firearms.

II.13. The statute even maintained the legal sale of firearms and ammunition in the country, yet increased the rigorous procedure for a person to legally purchase a weapon, such as mandatory courses to learn how to handle it; be at least 25 years of age; have a lawful occupation and residence; not subject to a police investigation or criminal case; not have a criminal record in federal, state, military, and election courts; and having a genuine need to possess the weapon.

II.14. Possessing or keeping a firearm, accessory, or irregular ammunition in one's custody, that is, without complying with the determinations of the statute, is punishable by imprisonment from one to three years, plus a fine.

II.15. Carrying a weapon, accessory, or ammunition without authorization or in disagreement with the legal determinations is punishable by two to four years in prison, plus a fine.

II.16. The fact is that the measure was considered controversial and resulted in the formation of two factions, those who defended it and those critical of the limitations it imposed.

II.17. Those who defended it argued that the fewer registered guns in circulation in the country, the fewer guns will be available to criminals, resulting in a decline in the number of violent deaths.

II.18. The critics of disarmament claimed that the homicide rate in Brazil did not decline with the passage of the statute and, among other shortcomings, it did not present objective criteria to determine what would be considered a "genuine need" to have a weapon.

II.19. Following the time line, in October 2005, as already foreseen in December 2003, Brazil held a referendum to consult the public on the prohibition of the sale of firearms and ammunition, one of the passages covered in the statute .

II.20. The question presented to the people was: Should the sale of firearms and ammunition be prohibited in Brazil? The choices were "no" (against the ban) and "yes" (in favor of the ban). The "no" voter typed the number 1, and the "yes" voter, the number 2.

II.21. At that time, the majority (63.68%) were against Article 35 of the Disarmament Statute, which prohibited the sale of firearms and ammunition, except for the Armed Forces, the police force, and private security companies.

II.22. But regardless of the demonstration against the prohibition of sale, the statute retained the greater restrictions on the purchase of firearms. Since 2003, the statute has undergone changes in its text; Act 11,706 of 2008, for example, led to the main changes in the wording of the text.

II.23. Among the changes in the text is the section that addresses the possession of weapons by residents in rural areas, which now defines the types of firearms and also what documents are necessary for their possession.

II.24. Another change was made through Decree 8,938 of 2016, which changed the regulation of the statute. The amendment opened the possibility of donating seized weapons to the Brazilian security forces.

II.25. In recent years, from 2019 onwards, efforts have been made through the publication of decrees and other regulations to make it more flexible for ordinary Brazilian citizens to purchase and possess firearms, emphasizing that there is no need to confuse said flexibility with the concession of right to carry, which is not the object of this study.

II.26. Possession is nothing more than the authorization for the purchase and registration of firearms and ammunition in the residence or place where the holder of the authorization works and is legally responsible for the place but is not authorized to move about freely while carrying a firearm, the authorization only allowing the bearer to remain in a safe place, at home or at the place of business of the permit holder.

II.27. Thus, in order for possession to be granted to the citizen who applies for it, the individual must undergo evaluation tests for a technical and psychological opinion for handling a firearm, be over 25 years old, be employed and have fixed residence.

II.28. In Brazil, the bodies responsible for the inspection and control of firearms are the Federal Police and the Army.

III. FLEXIBILIZATION – CONSTITUTIONAL AND LEGAL ASPECTS

III.1. This is established in the 1988 Constitution of the Federative Republic of Brazil, *in verbis*;

Art. 5: All are equal before the law, without distinction of any kind, **WHEREBY BRAZILIANS AND FOREIGNERS RESIDING IN THE COUNTRY ARE GUARANTEED THE INVOLABILITY OF THE RIGHT TO LIFE, LIBERTY, EQUALITY, SECURITY, AND PROPERTY**, in the following terms: [...]

LXXIX –the right to protection of personal data is ensured under the terms of the law, including in digital media¹.

III.2. Following the line of flexibilization recently initiated, and within the constitutional guarantees expressed in the above provision, and, above all, without losing sight of the need to observe the limits established by Act No. 10,826, of 2003, the decrees propose a series of measures designed to streamline the procedures².

¹Included by Constitutional Amendment No. 115 of 2022

²<https://www.gov.br/pt-br/noticias/justica-e-seguranca/2021/02/governo-desburocratiza-procedimentos-sobre-uso-de-armas>

III.3. The Decrees also aim to enhance the clarity of the rules governing the possession and carrying of firearms and the activity of collectors, shooters, and hunters (CACs), reduce the discretion of public authorities in granting the possession and carrying of firearms, expand the contradictory guarantees and broad defense of those administered, and adjust the number of firearms, ammunition, and reloads to the quantity necessary for the exercise of individual rights and the fulfillment of the institutional mission of the categories authorized to possess and carry firearms by law.

III.4. The amendment packages sought to embody the right that persons authorized by law have to purchase and carry firearms and carry out the activity of collectors, shooters, and hunters, within the spaces and limits permitted by law, as exemplified below.

III.5. Decree No. 9,845 –The proposed amendment in Decree No. 9,845, of 2019, basically allows persons authorized by Act No. 10,826/2003 to purchase up to six permitted weapons, allowing careers that depend on the possession and carrying of firearms to carry out their duties, such as the Armed Forces and the police, and members of the Judiciary and the Public Prosecutor's Office (MP), may purchase two more restricted-use firearms.

III.6. Decree No. 9,846 –The main innovations embodied in Decree No. 9,846 of 2019, which regulates the purchase and registration of firearms by collectors, shooters, and hunters (CACs) are:

Clarification of the conditions required for the purchase of a firearm by a CAC (25 years of age, technical capacity and psychological aptitude attested by a psychologist registered with the Federal Board of Psychology);

Streamlining bureaucratic procedures, for example, now making it possible to obtain the Registration Certificate, the Firearm Registration Certificate, and the Guide for Carrying a Firearm in the same administrative process, thereby saving time for athletes and public resources. It will also be possible to replace the technical capacity report with a certificate of habituality given by the shooting entity when the athlete has a minimum frequency of six days, during the year, on a shooting range;

Permission for shooters to purchase up to 60 firearms and hunters up to 30, with authorization from the Brazilian Army only being required when this number is exceeded;

Increase in the annual quantity that sportsmen can purchase of supplies for reloading cartridges (2,000 for restricted-use weapons and 5,000 for permitted-use weapons registered in their name). The justification for this increase is that restricted calibers are still widely used by shooters and hunters involving rifled-bore firearms in competitions and in hunting activities. A competitor easily shoots 500 shots per month, just in training, so the 1,000 units of ammunition and supplies for reloading currently planned are not enough to participate in the Brazilian Championship, which is spaced out in ten stages throughout the year; and the Guarantee to the CACs of the right to transport the firearms, for example, in training, exhibition and competitions, by any route between the place in which the firearms are normally kept and the place where these events are held.

III.7. Decree No. 9,847 –Amendments to Decree No. 9,847 of 2019, which

regulates the carrying of a firearm, aimed to:

Allow professionals with firearms registered in the SIGMA (the computerized system managed by the Army) to use them in the application of the necessary tests for the issuance of technical capacity reports;

Establish parameters for the analysis of the request for granting the right to carry firearms, with the public authority taking into account the factual circumstances of the case, the activities carried out, and the personal criteria described by the applicant, especially those that demonstrate a risk to life or physical integrity, and justify possible denial;

Allow categories that have the right to carry to transport sport marksman firearms;

Define the categories that have the possibility of using personal firearms in service, a list of instructors and institutions (Courts and MP) that can issue a technical capacity report, and the list of institutions that can request the Army to purchase and import controlled products for restricted use (Courts, MP, and Federal Revenue Service);

Give approval, issued by the Army, of the strategic planning for the purchase of arms, ammunition, and controlled products for restricted use by Public Safety Institutions, with the effect of authorizing the purchase or import of firearms;

Establish a period of 60 business days for the Army to evaluate this strategic planning, implying the absence of declaration in

tacit authorization; and

Establish a procedure for donating seized weapons to the Armed Forces and Public Safety Institutions, destroying them only when they are unusable.

III.8. Decree No.10,030 – The main innovations in the regulation of products controlled by the Army (object of Decree No. 10,030, of 2019) are:

The declassification of some products, such as PCEs;

The waiver of the need to register with the Army for merchandisers of pressure weapons (such as pellet guns);

The regulation of recreational shooting;

The possibility of the Federal Revenue Service and the CACs requesting authorization to import firearms and ammunition;

The clear attribution of the Army's competence to regulate the activity of shooting schools, shooting instructors, and the apostille;

Authorization for the collection of restricted-use automatic and semi-automatic weapons with more than 40 years of manufacture; and

The expansion of the contradictory guarantees and full defense of those administered, when it expresses the need for motive and justification for the suspension of activities involving controlled products.

III.9. The fact is that since the publication of these decrees, much has been discussed about their alleged unconstitutionality insofar as the presidential decree would be hierarchically inferior to an ordinary law and, for this reason, cannot modify or contradict a law.

III.10. However, the interpretation does not have to be strict in this case, especially in view of the systematic concessions established by Federal Act No. 10,826/03, also known as the Disarmament Statute.

III.11. At the outset, it is necessary to go through the provisions of the aforementioned rule regarding the carrying of a firearm and the nature of the treatment adopted there, since there was a segmentation of this right into two aspects.

III.12. Therefore, in accordance with Article 6, Act No. 10,826/03 consolidates the authorization to carry a weapon in institutional and prerogative terms, the latter subdivided into functional and personal. In Article 10, the Legislator provided for the possibility of obtaining the possession of a firearm by ordinary citizens, thus understood as those who were not included in the hypotheses of Article 6, below *in verbis*;

Art. 6 –It is prohibited to carry a firearm throughout the national territory, except in those cases provided for in specific legislation and for:

I – members of the Armed Forces;

II - members of the Armed Forces; members of bodies referred to in items I, II, III, IV, and V of the heading of Art. 144 of the Federal Constitution and those of the National Public Safety Force (FNSP); (wording provided by Act No. 13,500, of 2017);

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

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

V – agents of the Brazilian Intelligence Agency and agents of the Security Department of the Institutional Security Office of the Presidency of the Republic (See Decree No. 9.685, of 2019);

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

VII – members of the staff of prison agents and guards, members of prisoner escorts and maritime port guards;

VIII – private security and cash-in-transit companies established under the terms of this Act;

IX – members of legally constituted sports entities, whose activities require the use of firearms, in accordance with the regulations of this Act, complying with the environmental laws, where applicable;

X – members of the Auditing Department of the Federal Revenue Service of Brazil and Labor Tax Auditing, Tax Auditors, and Tax Analysts (wording provided by Act No. 11,501 of 2007);

XI – courts and tribunals of the Judiciary Branch, as described in Art. 92 of the Federal Constitution, and the Federal and State Public Prosecutor's Offices, for the exclusive use of their staff members who are exercising security functions, in the form of a regulation to be issued by the National Justice Council (CNJ) and

the National Council of Public Prosecution (CNMP).

III.13. As can be seen, the legislator directly included those individuals to whom carrying a firearm is not prohibited, a rule that was introduced in the respective law.

III.14. In order to do so, institutional criteria were adopted for members of (I) the Armed Forces and (II) public safety bodies provided for in the Federal Constitution; by jurisdictional prerogative for those with the right provided for in specific legislation (heading) and members of certain professions; and by personal prerogative, in the case of sports shooters, included with this exception in item IX.

III.15. Therefore, to these groups of individuals, the ban on carrying a firearm, by express option of the Legislator, is no longer applicable from its inception, and there is no controversy about the fact that, if not prohibited, then they are authorized to do so, even if, in some cases, it is necessary to observe the regulation of the law for the formalization of the right.

III.16. However, in addition to the exception to the rule prohibiting carrying a firearm, the Disarmament Statute also provides for the possibility of granting this right to ordinary citizens, exceptionally, provided that, in addition to objective requirements linked to their qualification (technical and psychological) and suitability, the applicant demonstrates a genuine need.

III.17. And this demonstration, by the law itself, was based on two criteria: risky professional activity or threat to physical integrity, all according to Act No. 10,826/03, Article 10, *in verbis*:

Art. 10. Authorization to carry a permitted firearm, within the national borders, is the responsibility of the Federal Police and will only be granted after authorization from Sinarm.

§ 1 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 whether the applicant:

I – DEMONSTRATES THEIR GENUINE NEED TO EXERCISE A PROFESSIONAL ACTIVITY WITH RISK OR THREAT TO THEIR PHYSICAL INTEGRITY;

II – complies with the requirements set out in Art. 4 of this Act;

III – presents documentation of ownership of a firearm, as well as its proper registration with the competent authority;

§ 2 The authorization to carry a firearm, provided for in this article, will automatically lose its effectiveness if the bearer is arrested or approached in a state of intoxication or under the influence of chemical or hallucinogenic substances.” [highlight of transcript].

III.18. And what exactly does “risky professional activity” or “threat to physical integrity” mean?

III.19. As the legal text did not define the framework to the rule, naturally, it could be done through infralegal norms, whether direct regulations or administrative ones, such as ordinances or normative instructions, until the administrative act is made clearer.

III.20. Therefore, until the enactment of Decree No. 9,785/19, which defined, in practice, that if someone was engaged in a risky profession or in a situation of threat to their physical integrity, then the federal police chief was responsible for granting the permit to carry, that is, a public agent linked to the Executive Branch who acted under the guidance of the Ministry of Justice. This system was authorized by the general

provision laid out in Decree No. 5,123/04³, Art. 12, §1, and, mainly, by Federal Police's own normative instructions.

III.21. Among the administrative acts of the Federal Police addressing this subject, the most effective was Normative Instruction No. 23-DPF, of September 1, 2005, revoked on November 14, 2018 (more than thirteen years later). In that Normative Instruction, which was in force without any challenge for such a long period, there was an express presumption of risky professional activities.

III.22. Therefore, the regulation on firearms via presidential decrees that are now called into question no longer represent any innovation. This was exactly the system that had already been established for a long time, and this was a mere Normative Instruction of the Federal Police, which introduced the necessary definitions for the application of the law and which had been absent therein.

III.23. As discussed above, given the lack of a specific legal concept or a direct regulatory norm, it was up to the Federal Police, through normative instructions, to establish the criteria for the evaluation of professional activities that pose a risk and threaten the integrity of the individual interested in obtaining the permit to carry a firearm, including their assumption.

III.24. The normative acts on this subject were, as seen, in a very low position in the hierarchy of norms in our Legal Order and were never questioned.

III.25. Thus, it remains clear that if such measures were already present in the Brazilian infralegal order, it does not seem systemically reasonable to infer that a regulatory act of a legal nature, such as a presidential decree, much higher in the aforementioned hierarchical order, would not be able to regulate.

³http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5123.htm

III.26. However, it is important to highlight that Decree No. 9,785/19 did not grant the carrying of a weapon to any other category in addition to those provided for Act No. 10,826/03, Art. 6, but only the conceptual modification of one of the necessary requirements for obtaining the possession of a firearm by those not included therein was established.

III.27. Furthermore, it complied with the exact delimitation established in Federal Legislation, that is, following the criteria of risky professional activity and specific situations of inherent threat to physical integrity.

III.28. To this end, we suggest reading the provisions of Article 20, § 3º, of the analyzed norm, in the light of Act No.10,826/03⁴, Article 10, § 1º, to reach this conclusion.

Art. 20. The possession of a firearm, issued by the Federal Police, is personal, non-transferable, will be valid throughout the country, and will guarantee the right to carry any firearm, accessory, or ammunition from the interested party's collection with a valid registration in Sinarm or Sigma, as the case may be, by presenting the bearer's identification document.

[...]

§3º The requirement set forth in Act No. 10,826 of 2003, Art. 10, §1º, item I, is considered fulfilled when the applicant is:

I - a shooting instructor or gunsmith accredited by the Federal Police;

⁴<https://www2.senado.leg.br/bdsf/bitstream/handle/id/70307/696171.pdf>

**II - COLLECTOR OR HUNTER WITH A FIREARM REGISTRATION
CERTIFICATE ISSUED BY THE ARMY COMMAND;**

III -a public official, even one who is inactive;

a) In the public safety field;

b) In the Brazilian Intelligence Agency;

c) In prison administration;

d) in the socio-educational system, provided that it is allocated in the inpatient units referred to in Act No. 8069, of July 13, 1990, heading of Art. 112, item VI – the Statute of the Child and Adolescent; and

e) performing an activity with administrative or correctional police power on a permanent basis;

f) the police bodies of the House of Representatives of the States and the Legislative Chamber of the Federal District;

g) holder of an elective term of office in the Executive and Legislative Branches of the Union, States, Federal District, and Municipalities, when exercising the duties of that office;

h) is a practicing attorney; and

i) is a court officer;

III - OWNER OF AN ESTABLISHMENT THAT SELLS FIREARMS OR SHOOTING SCHOOL; OR

IV - SHOOTING CLUB DIRECTOR;

V -resident in a rural area;

VI - media professional that covers police stories;

VII -child protective services;

VIII - traffic cop;

IX - company drivers and self-employed cargo transporters; and

XI- employees of private security and cash-in-transit companies.

§4^oThe presumption referred to in §3^o extends to employees of establishments that sell firearms, shooting schools, and shooting clubs that are responsible for guarding the arsenal stored in these places.

III.29. As can be seen, what is provided for in the above provisions is a mere conceptualization of elements already contained in the regulated legal text, establishing, in place of the subjective performance of the Federal Police Chief, authorized by Normative Instructions, specific hypotheses in which the individual will be understood as being engaged in a risky professional activity or in a situation of threat to his or her physical integrity.

III.30. Such regulatory structuring, as seen, in no way affronts or goes beyond the provisions contained in Federal Act 10,826/03, and quite the contrary, it aims to enable conditions of applicability under the mantle of greater legal certainty.

III.31. It is only a question of the role of the President of the Republic, therefore, within the exact limits of Article 84, IV, of the Federal Constitution, which thus guarantees *in verbis*;

Art.84.It is exclusively incumbent upon the President of the
Republic to: [...]

**IV –SANCTION, PROMULATE, AND PUBLISH LAWS, AS WELL AS
ISSUE DECREES AND REGULATIONS FOR THEIR FAITHFUL
IMPLEMENTATION;**

III.32. And on this subject, it is important to highlight what the Minister of the Federal Supreme Court, Alexandre de Moraes, teaches in his work⁵, *in verbis*;

In relation to the regulatory power of the President of the Republic, the Federal Constitution, in Article 84, item IV, provides that he or she is responsible, privately, for issuing decrees and regulations for the faithful execution of the law.
THE REGULATIONS, THEREFORE, ARE NORMS ISSUED PRIVATELY BY THE PRESIDENT OF THE REPUBLIC, WHOSE PRIMARY PURPOSE IS TO FACILITATE THE EXECUTION OF LAWS, REMOVING POSSIBLE PRACTICAL OBSTACLES THAT MAY ARISE IN THEIR APPLICATION AND ARE EXTERNALIZED BY DECREE,

⁵MORAES,Alexandre de.DireitoConstitucional.15.ed. – SãoPaulo:Atlas,2004.P. 441/442

**THEREFORE, ASMARCELO CAETANO, AN IMPORTANT SOURCE
OF ADMINISTRATIVE LAW, REMINDS US.**

III.33. So, putting the lessons of the renowned constitutionalist and now Illustrious Minister of the Supreme Court into practice, it is noted that the establishment of Presidential Decrees on firearms is, in fact, **AN EXPRESSLY REGULATORY PROVISION, ESTABLISHING COMPLEMENTARY CONCEPTS TO THE ORIGINAL LEGAL PREVISION IN ORDER TO ENABLE ITS FAITHFUL COMPLIANCE, WITHOUT RISING TO EXCESSIVE SUBJECTIVITY.**

III.34. The constitutional offenses and the stains of illegality under discussion today cannot be confirmed, considering the definitions that are absolutely typical of the regulatory activity of the Executive Branch.

III.35. Therefore, among the powers of the Chief Executive, there is one of substantial importance, namely, his regulatory power, and although regulations do not form part of the list of Article 59 of the Federal Constitution, these acts are eminently normative and, consequently, keep the force of law in their material aspect as they regulate an unpredictable number of situations and are covered with the characteristics of abstraction and generality, qualities that are proper to laws.

**IV. ECONOMIC AND SOCIAL ASPECTS – A CRITICAL VIEW AND
RELEVANCE**

IV.1. As already mentioned, Brazil held a referendum in October 2005 to consult the public on the prohibition of the sale of firearms and ammunition, one of the sections addressed in the statute, and the question asked at the time was: Should the sale of firearms and ammunition be prohibited in Brazil? The answer choices were "no" (against the ban) and "yes" (in favor of the ban). The "no" voter typed the number 1, and the "yes" voter, the number 2.

IV.2. As a result, the majority of voters (63.68%) came out against Article 35 of the Disarmament Statute, which prohibited the sale of firearms and ammunition in Brazil, except for Armed Forces, police, and private security companies.

IV.3. Even with the people having expressed their opposition to the prohibition, the statute remained with even tighter restrictions imposed on the purchase of firearms.

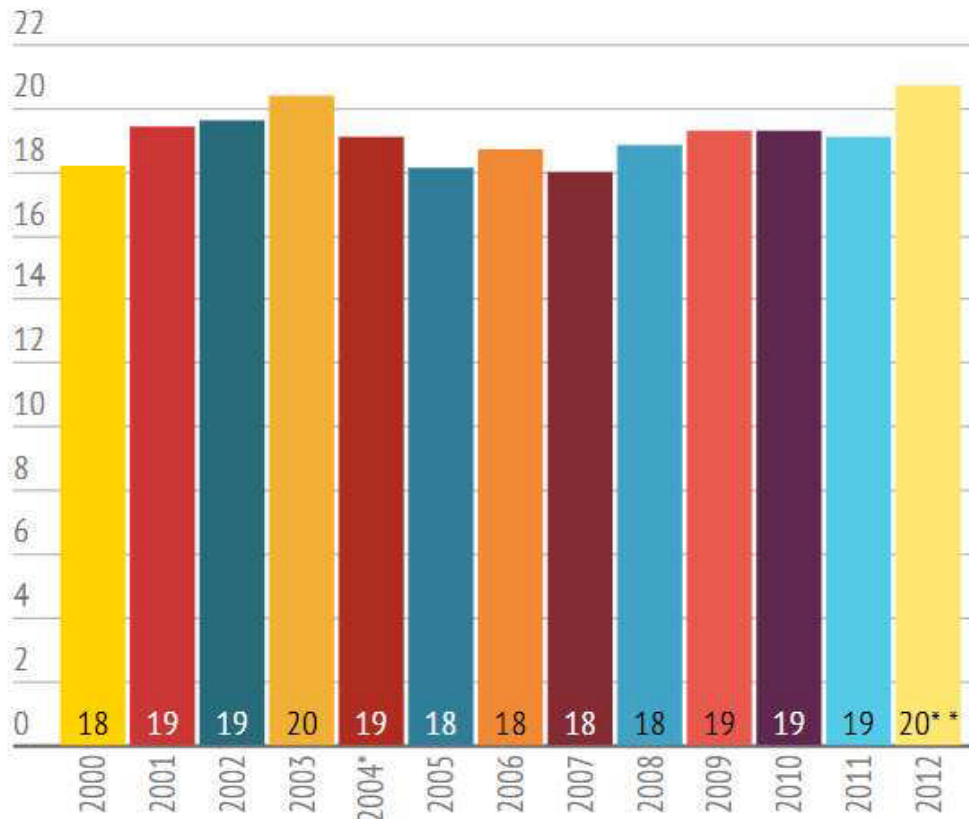
IV.4. The fact is that the defenders of the disarmament policy assume that, by controlling access to firearms, the State would be expanding its capacity to identify criminals and reducing their chances of committing homicides since there would supposedly be a fewer firearms in circulation.

IV.5. However, with all due respect, such a narrow view is nothing more than a mistake since, by violating people's freedom, taking away the possibility of owning a firearm, at the same time the State will be depriving citizens of the benefits of the defensive use of firearms and leaving their safety at the mercy of police protection, which is almost never effective.

IV.6. Contrary to this position are studies that point to the very opposite conclusion, that crime is on the rise while good citizens continue to have no access to weapons that easily reach the hands of those with malicious intent.

IV.7. The Disarmament Statute went into effect in December 2003. The escalation of murders was curbed in its first years of application but it has recently started to climb again.

IV.8. The homicide rate with firearms in 2012 was the highest ever recorded by the Map of Violence.



IV.9. According to the United Nations (UN)⁶, in 2012, 10% of homicides in the world occurred here, and in 2019, Brazil had the second highest homicide rate in South America, says a UN report⁷.

IV.10. According to the map of violence⁸, published by the Latin American School of Social Sciences (Flacso), with national headquarters in Brasília, considered

⁶<https://dssbr.ensp.fiocruz.br/relatorio-da-onu-lancado-mundialmente-em-abril-mostra-que-brasil-registrou-cerca-de-11-dos-homicidios-ocorridos-no-mundo-em-2012>

⁷<https://www.unodc.org/lpo-brazil/pt/frontpage/2019/07/brasil-tem-segunda-maior-taxa-de-homicidios-da-amrica-do-sul--diz-relatrio-da-onu.html>

⁸<https://flacso.org.br/project/mapa-da-violencia/>

the most reliable source on homicides in Brazil, no serious study has proven the relationship between firearm ownership and the number of murders in a country.

IV.11. Therefore, as shown by scientific studies, even after the passage of the Disarmament Statute, violence continued to grow.

IV.12. On the other hand, data⁹ from the 16th yearbook of the Brazilian Public Safety Forum show that the country recorded the equivalent of 130 deaths per day over the past year

IV.13. Brazil recorded 47,503 homicides over the past year, tantamount to 130 deaths per day, according to data released by the Brazilian Public Safety Forum.¹⁰

IV.14. This number represents a substantial drop when compared with the figures in 2020 and is the lowest number recorded since 2011, when the historical series began.

IV.15. As can be seen, disarmament itself was not and is not a guideline for the reduction of violence in the country. To the contrary, in practice, the Disarmament Statute only made it extremely difficult for citizens to access weapons and, at the same time, encouraged those who already had them to turn them over to authorities, with no effect on reducing crime or helping to identify criminals.

IV.16. In this scenario, it is essential to rethink the Disarmament Statute, notably in relation to streamlining the bureaucracy in accessing and carrying firearms, which implies the need to repeal the Act in force after the enactment of laws that

⁹<https://www.cnnbrasil.com.br/nacional/brasil-tem-menor-taxa-de-homicidios-em-dez-anos-diz-anuario/>

¹⁰<https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>

areable to provide citizens with an effective means of defending and protecting themselves and their families.

IV.17. Furthermore, only after such bureaucratic streamlining will it be possible to ensure the population the necessary public safety.

IV.18. Streamlining the bureaucratic process here cannot be translated into deliberate facilitation since it does not mean the absence of objective criteria, nor loss of supervisory control.

IV.19. Contrary to the arguments that are devoid of technical knowledge they address, there is nothing to discuss with regard to effective facilitation and insecurity in gun control in the country.

IV.20. Nowadays, there are numerous security and tracking systems in place that allow full and effective control of legal weapons, as shown below.

IV.21. **SISCOMEX**-Siscomex, an acronym for Sistema Integrado de Comércio Exterior (Integrated Foreign Trade System in English), is a Federal Government portal that gives access to a registration system used exclusively for foreign trade operations. It is a facilitator that integrates all the necessary information for foreign trade activity.

IV.22. It is through Siscomex that authorization is granted for exporters, importers, and other individuals to carry out this type of operation. In this way, the portal keeps track of such operations, controlling and centralizing all foreign trade information.

IV.23. Siscomex was put into practice back in 1993 based on Decree No. 660, published in September 1992. However, at the time, the system served only operations related to exports. It was only in 1997 that Siscomex started to handle imports, when a special module was created for these operations.

IV.24. SiscomexImportação Web went into production in 2012, bringing a series of functionalities and facilities on a new platform. But it was only in 2014 that the federal government created the Single Foreign Trade Portal Program with the idea of serving the different needs of Siscomex in one single place.

IV.25. From that moment on, all the systems of the bodies involved in the export and import processes in the country were unified. In this way, the system allows queries to situations and progress of export registrations, import licenses, and dispatches of foreign trade operations, linking the area's different sectors, such as the government and the private sector (importers, exporters, customs brokers, and transporters, among others).

IV.26. Thus, Siscomex makes the entire process easier, more agile, and increases the transparency of activities in the sector. Companies and inspection bodies are able to simplify and standardize operations, in addition to reducing the volume of documents and administrative costs.

IV.27. **SICOFA** -Importers (legal entities governed by public and private law) of firearms must follow the provisions of Art. 55 of Ordinance No. 1.729-Cmt Ex, of October 29, 2019, on the occasion of customs clearance:

Art.55. To schedule a physical inspection of the imported goods, the importer must submit a request (Appendix I), in two copies, to the Commander of the Military Region with jurisdiction over the place where the import customs clearance will be carried out, attaching the following documents, as the case may be:

...

VI-a spreadsheet containing the data and serial number of the firearms imported for loading in the Weapons Factory Control System (SICOFA), using the model provided by the DFPC;

...

§ 2 The documentation, except the application, can be attached in the "Attachment of Digitized Documents" module of the Single Foreign Trade Portal (PUCOMEX).

IV.28. Notes: If the importer is not registered with SICOFA, he must request its registration by means of a letter sent to the DFPC, informing the CNPJ, Corporate Name, Telephone, contact e-mail, to this address: Headquarters of Army-Bloco H-4th Floor-Urban Military Sector Brasília-DF - CEP: 70630-901 or by email: faleconosco_pj@dfpc.eb.mil.br. The importer is exempt from sending the spreadsheet and other files directly to the DFPC, and must do so as described above.

IV.29. **SINARM**-The National Arms System (Sinarm), established in the Ministry of Justice within the scope of the Federal Police, with circumscription throughout the national territory, is responsible for controlling firearms held by the population, as provided for in Act 10,826/03 (Disarmament Statute).

IV.30. **SISGCRP | SIGMA**-The Corporate Management System (SisGCorp) is a governance solution adopted by the Brazilian Army through the Controlled Products Inspection Board, which comprises the computerization of CORE, MANAGEMENT, and SUPPORT processes used by users of the Inspection of Controlled Products.

IV.31. The system, as a whole, consists of a computerized platform aligned with the latest technologies that aims, through a friendly interface, to make the tasks required by those who wish to purchase and use Products Controlled by the Army faster and safer (PCE).

IV.32. **SICOEX**- For the purchase of explosives, it is necessary to register with the Army with activity that presupposes the purchase and with the storage activity apostilled, as provided for in Art. 63 of Ordinance No. 147-COLOG, of November 21, 2019.

IV.33. **SICOVEM| OTHERS** - Establishes the Ammunition Sale and Inventory Control System (SICOVEM), which classifies and defines the amount of ammunition and respective parts, susceptible of sale. THE STATE MINISTER OF DEFENSE, in the use of the attributions conferred by Act No. 10,826, of December 22, 2003, Art. 24, combined with § 2 of the article.

IV.34. One of the databases used in the inspection of products controlled by the Brazilian Army, the Ammunition Sales and Inventory Control System (Sicovem), is owned by the Companhia Brasileira de Cartuchos (CBC), a private company, which owns the records and rights related to the database.

IV.35. Despite a recent renovation, the Army still uses this database, which is viewed with trepidation by specialists in public safety and information technology. In 2016, an audit carried out in part by the Army itself for the Federal Court of Accounts cited the possibility of hackers invading the system and leaking information, in addition to other problems.

IV.36. Created through a collaboration between CBC and a partner company in Recife, the Sicovem website has been registered on the internet since the end of 2006 and is still in the name of the company, expiring only in 2025. The domain data were registered at NIC.br, the association responsible for carrying out domain name registrations and the allocation of network addresses in Brazil.

IV.37. **SISCAPEC-Siscapec**[®] with a system registered at the National Institute of Industrial Property (INPI) since Dec 5, 2017 under number 913839442, was developed to control the purchase of ammunition and supplies from duly identified users (registered companies, shooting entities and schools, and CACs). The system as a whole consists of a computerized platform whose objective is to make processes faster and more reliable, maintaining control of the quota/limit, registration of suppliers and

their PCEs (ammunition and supplies for reloading [gunpowder, fuse, case, and projectile]) in compliance with current legislation.

IV.38. The Siscapec® database is created through the Shooting House server, which is assisted by Green Olive Tree (<https://greenolivetree.net/>), a U.S. company, which has already provided services to large data center companies (servers), such as RackSpace, one of the largest in the field.

IV.39. As such, there are countless instruments and mechanisms of effective control in action in the country, rendering any discourse of untraceability void of content.

IV.40. Let it be clear that **THE FIREARMS AND SUPPLY MARKET CANNOT BEAR THE BLAME FOR VIOLENCE IN THE COUNTRY**, as scientifically proven, and along these lines, we cannot lose sight of the economic relevance that the market has for Brazil.

IV.41. According to the National Classification of Economic Activities (CNAE), a system developed by the National Classification Commission (CONCLA) of the Brazilian Institute of Geography and Statistics (IBGE), the production of firearms is found in Section C (manufacturing industries), Division 25 (Manufacture of metal products, except machinery and equipment), Group 25.5 (Manufacture of heavy military equipment, weapons, and ammunition), and Class: 25.50-1 (Manufacture of heavy military equipment, weapons, and ammunition), a class that has two subclasses, Subclass 2550-1/01 (Manufacture of heavy military equipment, except military combat vehicles) and Subclass 2550-1/02 (Manufacture of firearms, other weapons, and ammunition).

IV.42. The Electronic System of the Citizen Information Service (e-SIC) reveals that of the total of 4,937,861 business units classified in the CNAE, considering all sections, 17 units are in Group 25.5 which is equal to 0.000344% of the total, proving to be a market with solid entry barriers for new companies.

IV.43. The set of all companies registered with the CNAE indicated, in 2018, a contingent of 52,217,587 employees, with the 17 armament producing units responsible for a total of 6,514 employees, of which 6,490 were classified as “salaried employed persons”. Among the salaried workers, 4,835 were male and 1,655 were female, 879 had completed college or university, and 5,611 had not.

IV.44. Also in 2018, CEMPRE points out that these companies transferred the amount of R\$ 278,361,000.00 as salaries and other remuneration, of which R\$ 222,771,000.00 went to male workers and R\$ 55,589,000 went to female workers.

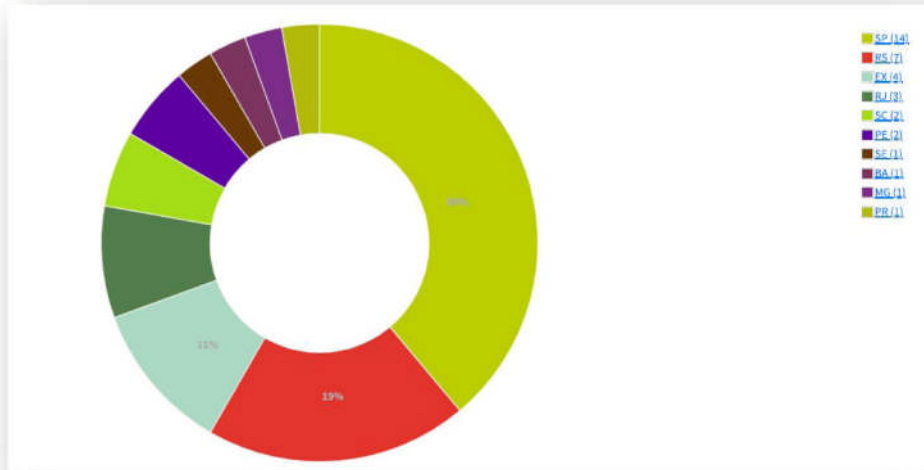
IV.45. Of this total, R\$ 75,681,000.00 were allocated to workers with a university degree and R\$ 202,680,000.00 were allocated to workers without a university degree.

IV.46. The average monthly salaries were 3.3 minimum salaries, with men receiving an average of 3.5 salaries and women an average of 2.6 salaries. Employees with a higher education earned an average of 6.9 monthly minimum salaries while those without a higher education earned an average of 2.8 minimum salaries per month.

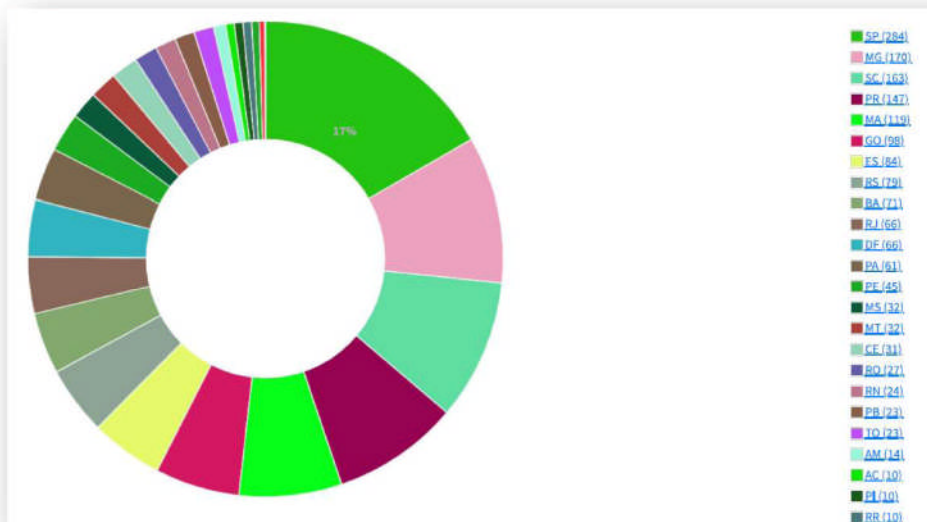
IV.47. Currently, to import a firearm, for example, pistols and revolvers, the following rates will apply: Import tax –II 16%; Tax on industrialized products – IPI 29.25%; Social Integration Program – PIS 2.10%; Social Security Financing Contribution – COFINS 9.65%; Goods circulation tax – ICMS 25%, in addition to the outgoing invoice tax depending on the taxation system that the company has adopted, plus freight, insurance, fees, storage, among others.

IV.48. The relevance of the market is once again demonstrated below.

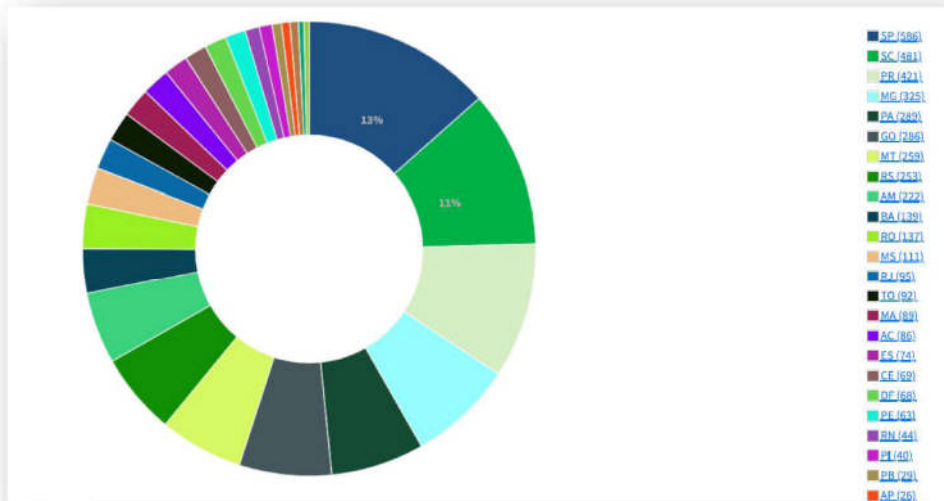
MAPPING –ARMS AND AMMUNITION MANUFACTURERS – BRAZIL (PRIMARY ACTIVITIES)



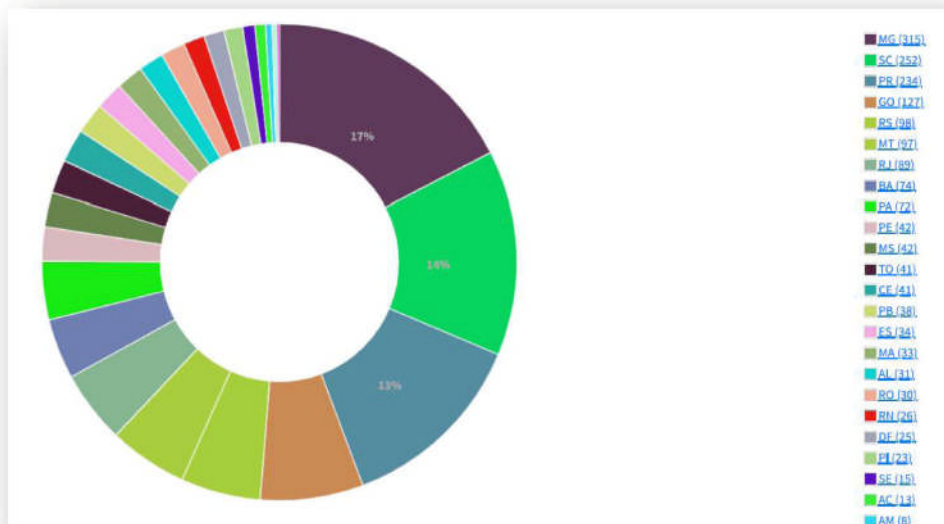
MAPPING –ARMS AND AMMUNITION DEALERS – BRAZIL (PRIMARY ACTIVITIES)



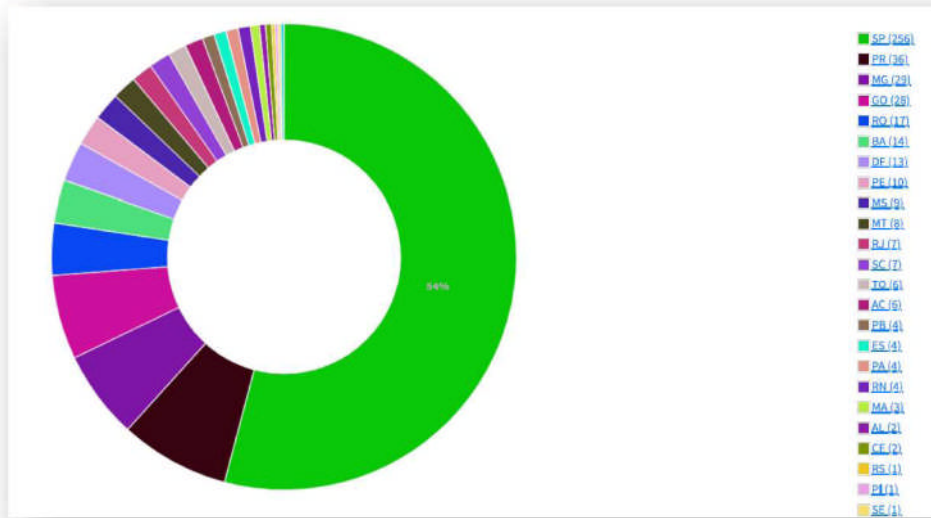
MAPPING –ARMS AND AMMUNITION DEALERS – BRAZIL (SECONDARY ACTIVITIES)



MAPPING –SHOOTING CLUBS – BRAZIL(PRIMARY ACTIVITIES)



MAPPING –SHOOTING CLUBS – BRAZIL(SECONDARY ACTIVITIES)



IV.49. It can be clearly seen that the market has considerable economic relevance; it moves approximately 420 billion dollars per year worldwide and is not restricted to factories and arms, ammunition, and equipment.

IV.50. There is an extensive chain of service providers, including shooting clubs, instructors, psychologists, lawyers, and other professionals linked to both sports shooting and the use of firearms as an instrument of defense.

IV.51. The relevance of these numbers should be highly regarded by the Brazilian State, given that we have one of the largest markets in the world right here, where the very nature of the country is ideal for the practice of outdoor sport and use of related products and there is a repressed demand for products and services related to practice shooting.

IV.52. Until 2019, Brazil was for firearms as it was in 1990 for automobiles due to the ban on importing products. For this reason, there are not even national ranges and qualifying matches for long-range shooting, like the qualifying matches of one kilometer or more that exist abroad.

IV.53. What has recently been verified from the actions of the Federal Government, through the Economic Freedom Act, was the promotion of economic sectors with a focus on reducing bureaucracy.

IV.54. As we discussed, there is a repressed demand by people with an address, CPF, clean name, psychologically prepared, technically ready to purchase firearms, frequent shooting clubs, buy equipment, and promote a lawful and economically very important activity.

IV.55. The mindset regarding firearms needs to be changed by providing correct information about the lawful activities that citizens can carry out with firearms without linking them to criminality.

IV.56. It is also necessary to look at this activity without prejudice, given that the annual double-digit growth in the arms sector in Brazil is higher than that of the international market.

IV.57. The world's 100 largest companies in the sector increased their sales in real terms by just 1.3% between 2020 and 2021, with revenues of US\$ 531 billion, according to a survey¹¹ by the Stockholm International Institute for Peace Studies (Sipri, in the English acronym).

IV.58. Considering the economic relevance, the fact is that the Federal Constitution guarantees citizens rights that, if violated, give rise to the exercise of self-defense, as provided for in Art. 5, item XI, which guarantees the inviolability of the home, so that no one can enter it except with the consent of the resident, or item XXII, which guarantees the right to property.

¹¹https://www.em.com.br/app/noticia/internacional/2021/12/06/interna_internacional,1328724/fabricantes-de-armas-aumentam-vendas-apesar-da-covid-19.shtml

IV.59. Now, when providing for the inviolability of the home and the right to property, it is assumed that the component also endowed the citizen with the legitimate right to protect them when they are faced with imminent threat.

IV.60. It is important to emphasize that public safety is a fundamental right of Brazilian citizens. The constitutional provision obliges the State to guarantee safety, promoting the necessary means to maintain social peace.

IV.61. The disarmament policy without criteria hinders self-defense, since how could citizens prevent the violation of their privacy, their lives, or their homes without the possibility of access to firearms?

IV.62. Self defense is a necessary right, ensuring the right to life, with self defense being a necessary and guarantor right, because it aims to protect the greatest legal asset of all, which is life.

V. FINAL REMARKS

V.1. In view of the above, it can be seen that the Disarmament Statute contributes to the rise in crime and does not fulfill its purpose of reducing it.

V.2. Notwithstanding the result of the 2005 referendum, that is, **THE POPULAR WILL DID NOT APPROVE ARTICLE 35 OF THE DISARMAMENT STATUTES**, the fact is, legislation actually does a disservice to public safety as it deprives citizens of the ability to protect themselves from those who, through illicit means, have access to the most powerful types of firearms.

V.3. Even after the Disarmament Statute went into effect, the number of homicides in the country committed with a firearm only grew. The rates of violence

failed to reflect the intended reduction so that, between 2004 and 2010, the annual number of homicides in the country remained at around 50,000, with a homicide rate per 100,000 inhabitants ranging from 25.2 to 27.

V.4. In addition to being totally without criteria, the disarmament policy proved to be innocuous, since, by exclusively affecting the law-abiding civilian population, it had no impact on the reduction of systemic violence.

V.5. And, repeating an earlier observation, the constitutional offenses and stains of illegality under discussion regarding the presidential decrees cannot be confirmed in view of the definitions that are absolutely typical of the regulatory activity exercised by the Executive Branch.

V.6. One should not remain under the illusion that state control will prevent crimes in general, since an overwhelming number of weapons in circulation are illegal, having been smuggled into the country, reflecting a weakness in the government's ability to control its borders.

V.7. With all due respect, the reasoning that legal and registered firearms will supply organized crime is puerile and quite shallow, since, as we know, the acquisition process is very thorough and rigorous, making it impossible for just any citizen to purchase them, especially for those who have an unsuitable history.

V.8. What is effectively sought is the constitutional guarantee of the right to safety, so that people can live in harmony in the social universe, with their physical integrity being preserved.

V.9. According to Article 144 of the Federal Constitution, it is up to the State to ensure that all citizens have this right respected insofar as making them feel safe and protected is one of society's aspirations.

V.10. The Magna Carta establishes the right to life, and it is up to the Government to develop policies that contribute to it; and, therefore, it is crucial to seek effective or at least reasonable means, **IT NOT BEING PLAUSIBLE TO ASSOCIATE THE RIGHT OF ACCESS TO FIREARMS AS A JUSTIFICATION FOR THE SYSTEMIC VIOLENCE THAT HAS ALWAYS PLAGUED THE COUNTRY.**

V.11. The Democratic Rule of Law has provided its citizens with the previously inconceivable freedom while guaranteeing them rights that, being so elementary, life without them is unimaginable.

V.12. Access to firearms, or rather, the right to them, **AS THE POPULATION DECIDED IN 2005, IS RELATED TO A FUNDAMENTAL RIGHT, THAT BEING SELF DEFENSE.**

V.13. With this in mind, it is necessary to reflect on the disarmament policy both in the public policy sphere and in the private sphere, since, when the State claims that the only form of effective defense is restricted to it, society turns out to be doubly vulnerable, first because it becomes completely dependent on State, which has already shown itself to be incapable, and, finally, because it becomes vulnerable to the State itself.

V.14. This constitutes and forms our opinion to the best of our knowledge.

BeloHorizonte, November 25,2022.

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