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LICENSE FOR CARRYING WEAPONS IN ITALY: FREEDOM AND SECURITY IN THE TERMS OF RECENT JURISPRUDENTIAL INNOVATIONS

Analysis of the principal legislative indications regarding imprisonment and army transportation for sportive, hunting, defensive or collecting use in a balanced view between private interest and public integrity, as highlighted in the sentence n. 635/2015 by the Tar of Toscana which refused the license on a historic base indicating a dangerous subject, even if not recognized by a definitive sentence.

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- 1) Generic overview and brief history

The question of license fluctuates historically between ambition of the single, generally connected to personal defense necessity, and general security guaranties which constitute the prevalent anxiety of the sentence. Whether historically the use of weapons for self defense was recognized (to use the words of the Latin legal expert Paolo, it does not show an *animus occidendi* the person that is in possess of a *tutandae salutis* weapon), with the modern age and the diffusion of guns the State, which is subject to the rule of law, begins to understand the necessity of regulating the private use of instrumentations with the purpose to offend other's integrity: so, in France during Luigi XV's period the weapon license was forbidden to everyone not noble or royal dependent, differently in Sardinia the subject in possess of arquebus or rifle risked till two years. The Italian legislator of the liberal era does this cultural retrospective marrying the theory which whom living in the modern society does not require, basically, the free possession of weapons to support the self integrity, being the State (in particular police force) a sufficiently vigilant guardian: the Law of public security of the Italian Reign(1865) propose so the acquisition of weapon to the possession of a license; as it does the Zanardelli Code (1889) that affirms that "whoever, is caught without a license by the proper authority, and outside its home or its belongings, with a weapon that requires the license, it is punished with reclusion to a month or with a fine with a maximum of 200lire". In agreement with this, the Rocco Code (1930) remarks the authorization and, according with the art. 585, makes a difference

between proper and improper weapons, disposing that: it is referred as proper, weapons "[...] used to shooting, and the ones naturally destined to offend the person"; on the contrary, are called improper weapons "[...] all the instruments thought to offend, of which is severely forbidden the license, meant with no justified reason." (e.g. scissors, cutlery, utensils and so on).

The policy framework, wide and incoherent, is completed in its essential words from the Consolidated Law of the Public Security Law, declared with the Decree n. 773/1931 still in effect (even with a lot of modifications), and from L. 110/1975, dictating "Integrative Policy of the effective subject for the supervision of weapons, munitions and explosives". In particular TULPS disposes specifically strict policies regarding weapon trading (art.34), authorizations (art. 35) and prefectural powers (artt.39-40), while the L. 110/75 establishes the subject of the authorization to which the legitimate possession of weapons in our country is subordinate.

2) Nowadays system: permission and license

The present system regarding weapons follows two distinct paths: the security of the community, guaranteed by a number of supervisions over weapons, requesting authorizations, traders and worker of the area, and the liberal choice of the citizen who, respecting the law, can legitimately possess a weapon for a purpose determined by the State. This purposes are: **sportive use - personal defence - hunting use - collecting**. Every field is referred generically to the model of "license for carrying weapons" but, in reality, it presents technical-practical peculiarities which obliges to a basically separated analysis. In the beginning tough, is however, relevant, the distinction between permission and license: this one, indeed, is a mere authorization of acquisition and possession of weapon, and as it is, it does not allow to bring them out of the main home. The permission is released from the Commissioner on the base of the petition from the interested person, whether this presents all the documentation required, which consist of the ability certificate to use weapons (granted from a branch of National Shooting Gallery or proven by the military or police service within the previous 10 years), in a certificate of psychophysical ability released by the ASL and in a replacement declaration where the person who requires it, confirms to be in possess of the conditions expected by the law, and so, in not being conscientious objector and not be responsible of crimes which constitute a limited condition in the release of the permission. License subject indeed, is definitely more articulated and as it is, it needs an accurate analysis.

Sportive use. The license for a sportive use establishes a necessary authorization to practice those sportive subjects which requires the use of firearms (mainly trapshooting, shooting sports and linked sports). The authority in charge for the release is the

Commissioner and the authorization has an effectiveness of six years renewable. As the first motion, the person who requires it has to exhibit the declaration of psychophysical ability released by the ASL and the ability certificate (in the terms already examined), which represents the basic documentation and what is more has to be subscribed in a shooting federation affiliated with the Italian National Olympic Organization (CONI). The use of weapon is limited in the space and in the use: the person can indeed take advantage of it only for sportive finalities certified by the authority of public security, during the trip that occurs from its home to the shooting range has to keep the gun unloaded in the main case and he/she is expected to (*) always have with him/her the so called approved “green card” which authorizes the transport itself.

Personal defence. The license for self defence, which constitutes the logic of every discussion regarding this subject, is conditioned to a very pressing discipline that tends to offer the private the possibility to have a weapon after an evaluation of the reasons for the request, limiting the concession to the cases of proven necessity. This evaluation is made by the Prefect and represents a part of the documents necessary for the release of the license, together with the general documents necessary for the other procedures. The case of a license for personal defence and the legit worries for what concern a liberal use of it explain the temporal quota (the limit is indeed one year) and procedural (to renew it, the process is the same as the release, minus the ability to use it since it is already proven afore the concession): the person that asks for the renew has to demonstrate to the temporary authority, the serious reasons that oblige the person to have a license for the weapons.

Hunting use. The main characteristic of the license for hunting use is the necessity from the person to have a qualification in the hunt activity in order to request the authorization to the public security officer (the Commissioner). This qualification is given after the good votes in the public exam in which the judging organization is a regional commission: the requestor has to demonstrate the knowledge of the specific rules as for the use of weapons and as for the environment and animals, giving so proof of the use of the license, of the weapons in a conscientious and responsible way. The hunting license is not supposed to function as a substitution neither of the declaration of use of weapons (released by the Shooting Gallery Federation or substituted by the declaration of military service within ten years from the request) or the ability certificate given by the ASL. The license for shooting use has a validity of six years and in order to renew it must be followed the same path as the sportive use. Collecting. A particular form of concession is the license for concession. From a strictly technical point of view, this license does not constitute a real “license” for carrying guns since it is not allowed to the person who owns it, to bring the firearms outside the house or the place referred for collecting. Nonetheless, under the arrangements for granting, is useful classify it with the arrangements for the license: indeed, is necessary the ASL certification, as well as the ability self-declaration,

whilst is not requested the ability of use, considering the ban of keeping munitions. Generally the license for collecting has as a subject artistic weapons, ancients (previous to 1890) or rare but it can be released also for common use weapons and there is no temporal deadline.

3) Quantitative limits and medical assessment of the suitability

Article. 10 of Law 110/1975 dictates mandatory limitations about the amount of weapons that an individual may legitimately possess. The subject may have in its availability a number of common firearms of not more than 3 and a number of sporting weapons not exceeding 6, while the number of hunting weapons is unlimited. The quantitative indication may however be waived with the issuance of a license to own collection that allows a greater number of weapons but still within the objective limits of a specimen for each model. The medical examination to ascertain the psychophysical ability is done by ASL, according to the criteria set by the Ministry of Health in MD 28 April 1998. The decree distinguishes the requirements for sports and hobbies from those for self-defense, and in particular: for sports and hunting is needed a visual acuity of at least 8/10 even using optical back-up (i.e. glasses) on the eye that sees better, proper sensory perception, the absence of neurological dysfunction and physical (the use of implants is admitted). Hearing must be contained within a certain range, the passing of which allows the exercise of hunting only hunting. About the self-defense, both visual requirements (it's required a binocularity ability of 10/10, with strict limitations about the use of lenses) and hearing have to be increased. The authorization can not be released to persons who have suffered from seizures disorder during the past two years before application. For both areas the authorization is still subject to the absence of personality, behavioral and psychological disorders, as well as addictions to alcohol, drugs and psychotropic drugs. Control is made by a single presiding physician and against his judgment recourse to a medical board set up at the provincial ASL is always allowed.

4) The decision n ° 635/2015 of the TAR of Tuscany

The analysis of the discipline has highlighted how each stage of the procedure for granting authorizations on weapons to individuals is based on the principles of protection and public safety. Beyond special powers entrusted by TULPS to Prefect (Art. 45 "Where there are in any province or municipality abnormal conditions about public security, the Prefect may revoke, in whole or in part, with public manifesto, licenses bear arms.") is more generally the whole procedural system to meet the demands of the general guarantee that the use of weapons by a private ends hopelessly to generate. Considering the abovementioned aspects, it is therefore easier to understand the 20 April 2015 TAR of Tuscany's decision that rejected the appeal of a person who had seen revoke the firearms

hunting license because of an incident of sexual harassment regarding a less than 15 year-old person that had not resulted in a criminal conviction for lack of complaint.

Specifically, the Tar argues that "the courts have repeatedly recognized as on the issuing of firearms licenses, the administration [...] has a wide discretion in evaluating the reliability of the subject to make good use of weapons [...] hence the release of firearms licenses and permission to benefit hereinafter require the applicant is a person exempt from faults and above all suspicion and / or negative sign [...]. " The administrative judge noted how the power of the administration is essentially discretionary because the private interest to carry firearms is always subordinate to the public, which is the guardian and guarantor of the authority itself. The judgment of the police headquarters in Siena on the suitability of the subject thus takes prognostic character and may be challenged only in terms of reasonableness and coherence, while it cannot be disputed from a purely discretionary which may involve "[...] the ability evaluations abuse based on probabilistic considerations and facts backed by mere elements of "fumus", because the subject in question the expansion of the sphere of freedom of the individual is, in fact, destined to terminate in front of the right of collective security [...]" (State Council, Section IV, No. 4604/2006, as recalled by the TAR of Tuscany). Even in this pronouncement is therefore evident the manifest character of authorization procedure, which maintains not suppressible discretionary aspects which often can lead to sacrifice the aspirations of individuals in the name of collective welfare. The delicacy and importance of the issue justified the fear of authority of public security in granting too easily the license to carry firearms and legitimize the rejection of the same on the basis of mere assumptions or not qualifying clues in other legal order's areas, whereas, on the contrary, on the private plan is always required formal and substantial correctness about documentation produced without leaving areas of discretion to the applicant.

(*) By virtue of a ministerial circular of 1998 (OJ General Series 48 of 02.27.1998) the green card is no longer the only instrument authorizing the transport of weapons for sporting art. 3 of the law 25 March 1986 n. 85, constituting the transport license already entitled to transfer the weapon from one place to another. The green paper also allows you to "transport from custody to the section (s) of the national shooting which are recorded all the common firearms used in or in sections of belonging."