



**Illicit Trafficking in Firearms,
their Components and Ammunition in the
Comparative Penal Legislation
(Romania and Republic of Moldova)**

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Abstract: This scientific paper is meant to **formulate** some conclusions *de lege lata* and recommendations *de lege ferenda* obtained as a result of the systems of actual international regulations in the field of preventing and counter attacking illicit trafficking in firearms, their components and ammunition as well as the comparative analysis of the penal and extrapenal legislation both in Romania and the Moldovian Republic, in order to clarify the juridical nature of the objective aspect of contraventions. The **norms** of this study comprise some international **normative** documents at European level besides some normative documents of penal and extrapenal nature in Romania and the Moldovian Republic. As a result of the undertaken study, some legislation shortcomings were pointed out which have to be removed so as to improve the internal legislation, and to ensure a better collaboration in the area of preventing and fighting against illicit trafficking of firearms and ammunition. The main research approaches were: the systemic method, the comparative method, analysis and synthesis. The author made a comparative analysis of the penal and extrapenal **norms**, identified some shortcomings of the legislative approach and demonstrated the necessity of revising some legislation concepts which, finally, will contribute to redefining the present penal law.

Keywords: firearms; ammunition; lethal arms; non-lethal arms; forbidden arms

1. Introduction

The critical approach of some penal and extrapenal norms in the field of respecting the legal regime of arms and ammunitions in the comparative law (Romania and the Moldavian Republic) carried out by the establishment of *de lege data* and the formulation of the suggestions *de lege ferenda*, regarding the clarification of the

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illicit trafficking in firearms, their components and ammunition, in the penal legal legislation of both countries, is the main aim of the research carried out in this study.

This research is based on a thorough study not only of some provisions included in the Special Part of the New Romanian Law Code implicitly the Special Chapter on the Penal Law of the Moldavian Republic but also, equal attention is paid to debatable aspects in the extra penal legislation concerning firearms and ammunition in both countries.

To ensure a common viewpoint in the research only one objective aspect has been chosen-*the objective side of the infringement of the law affecting the social relationships in the field of respecting the trafficking of firearms, ammunition*, their components and mechanisms, according to the provisions of art. 342, 343, 344 the New Romanian penal law, and, implicitly, art. 290 and 201 from the Penal Law of the Moldavian Republic. We are not concerned about the research of other types of firearms in our study, therefore we will not deal with them.

To attain a superior degree of scientific research we will also deal with the study of the extra penal laws regarding the firearms, ammunition, their components and mechanisms both in Romanian legislation and the legislation of the Moldavian Republic, our main objective being the: *identification of the weak points of the present legislation norms and recommendations meant to eliminate some theoretical-practical divergencies in the future.*

From a doctrinarian point of view, we realise that there are some vital scientific studies regarding the topic under discussion, both in Romania and the Republic of Moldova, but we also notice the absence of some thorough studies of compared law.

2. International Law Consequences

According to the demands of the norm no.477/1991 the EU countries have the responsibility for checking the sale, acquisition and possession of these firearms, on condition that the norms of buying and owning ammunition are identical with the one of possessing the firearms for the purpose they are manufactured.

Referring to **acquisition and possession** of a firearm the Norm no. 477/1991 has some specific demands, these specific actions are allowed when a person:

1. has a sound reason to buy and possess it (e.g, a legal collector, or implicitly a target shooting club);
2. has reached the age of 18, even though there is an exception to this norm regarding firearms for practising hunting and shooting at the target (e.g in some cases, the firearms can be used to practise hunting and shooting at the target by people under 18 if they are closely supervised by parents/adults who have a firearm licence or in an authorize dintruction centre);
3. it does not represent a danger for itself and the attendance.

An European licence for firearms is emitted by the authorities of a EU country to anyone who legally possesses and uses a firearm. The owner has the obligation to have the the licence for the firearm mentioned on it. Those eligible for buying and possessing a firearm are given a *multiannual licence*, under the obligation of complying with some formal procedures: to communicate the competent authorities any circulation of the firerm; to undergo the regular control regarding the fulfilment of the requirements by the respective person; to respect the maximum time provisions specified by the internal legislation.

According to art. 6 from the Norms, the states belonging to the Union should take the necessary measures to forbid the acquisition of firearms and ammunition stipulated by the A category. The competent authorities can emit, in special cases, licences for the previously mentioned firearms and ammunition, if they do not contravene the security and public order.

According to art. 7 from the Norms, nobody can buy a firearm mentioned in the B category on the territory of aEuropean Union country without the permssion of the respective country. Such a permission cannot be given to any resident of another member country without having its previous agreement.

Any seller or armourer or any other private person should inform the authorities of a member country of the union about where the transfer or delivery of each firearm from category C will take place, mentioning the identification elements of both the person purchasing the firearm and of the firearm as well. If the person purchasing it is a resident of another state member of EU, this state should be informed about the purchase by the country where the purchase takes place or even by the purchaser himself.

The Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Components and Ammunition, supplementing the United Nations Convention

against Transnational Organised Crime and The Protocols Thereto United Nations, adopted in New York, on November, 15, 2000, stipulates that each state should adopt legislation measures as well as other measures, which are absolutely necessary to label the offences committed deliberately:

a) illicit manufacturing of firearms, their parts and components and ammunition;

b) illegal trafficking in firearms, their parts and components and ammunition;

c) falsifying and obliterating, removing or illegally altering the distinctive mark(s) the should be found on any firearm, according to art. 8 of this Norm.

What's more, the Protocol offers the possibility to set up a system meant to regulate the intermediary activities. Continuing the analysis of the no. 477/1991 Norm, according to this international law, "*intermediary*" means any physical or juridical person, except armourers (this is our opinion-n.a). The armourers must keep a register with the firearms they received or delivered during the whole period they worked. "*Armourer*" according to no. 477/1991 Norm, means any physical or juridical person whose professional activity consists in partially or entirely manufacturing, trading, exchanging, renting, repairing or altering the firearms.

According to paragraph 3, art.2 of the Common Position 2003/468/PESC of the European Council from June 23.2003, regarding the control of the firearms brokering, by "*brokering activities*" we mean activities performed by people or groups of people/communities:

- who negotiate or organise transactions that involve the transfer from a third country to any other third country of articles included in the common list of military equipment applied by EU, or

-who proceeds to purchasing, selling or transferring these articles that are in their possession from a third country to another third country;

Unfortunately, according to the Romanian penal and extrapenal legislation as well as the one of the Moldovian Republic, the brokering activity, according to the Common Position 2003/468/PESC of the European Council, does not represent a type of illicit trafficking in firearms and ammunition, this factual way not being mentioned, therefore, this juridical reality will make it impossible to start the penal activity of brokering, which can be considered complicity to offence, only in some cases.

However, according to the provisions, Lit. 1) art. 8) (Registration of Firearms) from the Protocol against the manufacturing of and illegal trafficking in firearms, their parts and components, as well as ammunition, supplementary to the United Nations Convention against organised transnational crime, adopted in New York, on November, 15, 2000, from 31.05.2001, in order to identify and register the firearms, the member states must:

- a) impose, the very moment a firearm is manufactured, a unique way of marking indicating the name of the manufacturer, the country or place where it was manufactured, the series number, maintain any other mark that makes it unique and achieved in a simplified way, based on a numerical code or, and/alphanumeric, which will allow all member states to easily identify the country where it was manufactured;
- b) to impose a simple adequate marking for each imported firearm, to allow the identification of the country importing it, and if possible, of the year the import was done, thus to make it possible for the competent authorities of this country to identify it, as well as a unique mark, if the firearm does not have such a mark;
- c) when a firearm from the deposit of a country is transferred, in order to be permanently used, a unique corresponding marking must be applied, which will allow all the involved states to identify the country it comes from.

However, Protocol 91/477/EEZ/ June 11, 1991, submits certain requirements to *identify* firearms, where each firearm and each elementary pack of ammunition must be marked when manufactured. Thus, in order to ensure these requirements, the EU countries, should maintain an electronic system to stock the firearms registration data, as long as the competent authorities can access this register. According to lit. 2) art. 8 (The firearms marking), the Protocol stipulates that the countries of the EU should take special measures to prevent the replacement or alteration of the marking, this being a way of encouraging the development of the firearms industry.

3. Sanctioning the Illicit Trafficking in Firearms, their Parts and Ammunition According to the Romanian Penal and Extrapenal Law

According to the provisions of Law no. 295/2004, regarding the regime of firearms and ammunition:

- **operations with firearms, their parts and ammunition** include producing, manufacturing, assembling, facilitating, altering, processing, repairing, experimenting, selling, buying, hiring, exchanging, donating, sharing, sponsoring, importing, exporting, transferring, reshipment, cassation, and destruction of the firearms, their parts and the respective ammunition:

- **using the firearm** - performing shooting;

Regarding the offence mentioned in **paragraph 1, art. 342** of the New Romanian penal law, the prejudicial offence is achieved by one of these actions:

I. The infractional offence (action/inaction) undertaking one of the following forms: possessing one or more lethal firearms; carrying one or more lethal firearms; manufacturing one or more lethal arms; carrying out the actions regarding the lethal firearms circulation (actions different from those previously mentioned); owning some firearms' ammunition, mechanisms and devices; carrying lethal firearms' ammunition, mechanisms and devices; manufacturing firearms' ammunition, mechanisms and devices.

II. Other objective circumstances: illegal execution

When we realise that the subject has performed some of these actions (owning and carrying or manufacturing and possessing a firearm), there will be only one offence under the provisions of paragraph (1) art. 342 from the New Romanian Penal Norm. On the contrary, if we realise that the same person has performed more actions, this will contribute to the individualisation of the punishment trial fulfilled by the trial instance (Rusu, 2017).

To consider it an offence it is enough to discover the theft of a single lethal or non-lethal firearm, (out of the number of those authorised) or of a certain amount of ammunition (no matter the quantity), mechanisms and devices of lethal or non-lethal firearms (Rusu, 2017). It is of no importance whether the firearm is loaded or not, if it can be seen or if it is hidden.

As regards, **paragraph 2, art. 342** from the New Romanian Norms, the possession or bearing of a non-lethal arm, is punishable. To supervene the penal responsibility, it is necessary to find out at least one offence out of the above mentioned ones.

I. *The offence (action/inaction)* expressed in one of the following forms: possession of non-lethal firearms belonging to those who are to be authorized and, possession of non-lethal firearms included in the category of those authorized.

II. *Other objective circumstances*: execution without the permission to do it.

According to **paragraph 3, art. 342** from the New Romanian Penal Laws, the theft of firearms and ammunition stipulated in paragraph 1 and paragraph 2 are simply condemned. To be penally responsible, it is enough to find out: prejudicial offence which means illegal and free possessor; prejudicial offences under the form of real patrimonial prejudice; the connection between the cause of the prejudicial offence and its prejudicial consequences. How it was stolen is of no importance when classifying the offence.

Paragraph 4, art. 342 from the New Romanian Penal Norms, condemns the possession of the firearms mentioned in paragraph 1 and paragraph 2 without licence, in the headquarters of public authorities, public institutions, or other juridical places of public interest, or in specially designated areas for elections.

To label an action as penal offence, it is enough to find out:

I. *The infractional offence (action/inaction)* expressed in the possession of firearms according to paragraph 1 and paragraph 2.

II. *Other objective circumstances*: to shoot without having the right to do it.

III. *The place where it was committed*: In the headquarters of public authorities, in the headquarters of public institutions, in the headquarters of juridic people of public interest, in areas especially designated for elections.

According to **paragraph 6, art. 312** from the New Romanian Penal Law, the act of not depositing the firearms and ammunition at an armourer within ten days from the expiry date of the validity of their licences considered offence

I. *The infractional offence (action/inaction)* expressed by not-depositing the firearm at an authorize darmourer;

II. *Time when the offence was committed*: the expiry period of validity of the firearm licence is considered offence (within ten days after the expiry date).

Paragrapgh 6, art. 342 from the New Romanian Penal Norms condemns the manufacturing and assemblage of lethal firearms, their parts or ammunition: a) from any essential components illicitly trafficked; b) without any licence emitted by a competent authority of a member state of EU where its manufacturig and assembling takes place; c) without marking the lethal arms assembled with the very date of their being manufactured, according to the legal provisions.

In order to supervene penal responsibility, it is necessary to realise: The offence (action /inaction) expressed as follows: manufacturing lethal firearms, their parts and the respective ammunition; assembling lethal firearms, their parts and the respective ammunition; and other objective circumstances: a)from any essential components illegally trafficked; b) without any licence emitted by a competent authority of the member country where the manufacturing and assembling takes place; c) without marking the lethal firearms on the very date of their production, according to legal provisions.

In the case of the offence stipulated in **paragraph 1, art. 343** from the New Romanian Penal Norms, the prejudicial offence is the result of one of the following actions: I. The offence (action/inaction) expressed by: the use of the lethal firearm and the use of the forbidden firearm; II. Other objective circumstances: manufacturing without having the permission to do it.

In the case of the offence stipulated in **paragraph 2, art. 343** from the New Romanian Penal Norms, the prejudicial offence is the result of one of the following actions: I. The offence (action/inaction) expressed by the use of the non-lethal firearm included in the category of those to be authorized; II. Other objective circumstances: manufacturing without having the permission to do this.

In the case of the offence stipulated by **art. 344** from the New Romanian Penal Norms (Counterfeiting or altering, removing or altering the marks on lethal firearms), the prejudicial offence is a result of one of the following actions:

I. The offence (action/inaction) expressed by one the following circumstances: counterfeiting the marks on the lethal firearms; obliterating the marks from the firearms; removing the marks from the firearms, and altering the marks on the firearms.

II. Other objective circumstances: manufacturing without getting the approval.

The objective aspect can be achieved by means of different actions which consist of counterfeiting, removing, obliterating, replacing, or altering the marks on the lethal firearms.

To round of the material element of the objective aspect, an **essential requirement** should be fulfilled, that consists of performing one of the four actions condemned by the law, without right, respectively not respecting the provisions of the special law.

4. Sanctioning the Illicit Trafficking in Firearms, their Parts and Ammunition in the Penal and Extrapenal Law of the Moldavian Republic

According to the Law of the Moldavian Republic regarding the regime of firearms and ammunition for civilians, no. 130 from 08.06.2012 more operations with firearms, their components and ammunition are regulated. Thus, operation with firearms and ammunition-import, export, reshiping, transit, introducing them into the country, taking them out of the country, manufacturing, assembling, experimenting, selling, purchasing, transporting, transferring, transshipping, depositing, keeping, cassation and destruction of firearms and ammunition, periodical technical examination, processing, testing, checking, disposal and firearms repairing.

This norm introduces a series of extrapenal regulations as follows: using a firearm, deactivation of firearms; illicit firearms manufacturing; marking; illicit transformation of the firearms manufacturing; repairing the firearms; illicit trafficking in firearms and ammunition.

At the same time, according to the provisions from Chapter II, Anexis I, of the Decision of the Government of the Moldavian Republic, no. 293/23.04.2014 regarding the approval of the Regulations concerning the regime of firearms and ammunition for civilians (Procedure authorising people to get, own, carry and use firearms and ammunition destined to civilians) in view of getting the authorisation to procure lethal and non-lethal firearms subject to authorisation, the citizens of the Moldavian Republic with permanent residence in the Moldavian Republic, who want to have the right to own or carry and use firearms, should register a file at the authorised office of the general Police Inspectorate or, according to the situation for the firearm with rail rod barrel, at the authorised office of the police

inspectorate of the district whose resident the owner is, a file containing documents, to justify the fulfillment of the provisions of paragraph 1 and 2, art. 7 from the Norms of the Moldavian Republic regarding the regime of firearms and ammunition for civilians, no. 130/08.06.2012.

The Penal Norms of the Moldavian Republic, art. 290, stipulates the penal responsibility for owning, carrying, obtaining, manufacturing, repairing, illegal trafficking in firearms and ammunition, as well as stealing them.

I. *The prejudicial offence* is reached by one of the following activities: owning the firearms, except for the hunting firearms with rail rod **barrel** or ammunition; keeping the firearms, except for the hunting firearms with rail rod barrel, or ammunition; procuring the firearms, except for the hunting firearms with rail rod barrel, or ammunition; manufacturing the firearms, except for the hunting firearms with rail rod barrel, or ammunition; repairing the firearms, except for the hunting firearms with rail rod barrel, or ammunition; trading the firearms, except for the hunting firearms with rail rod barrel, or ammunition; stealing the firearms, except for the hunting firearms with rail rod barrel, or ammunition.

II. *Other objective circumstances*: without the appropriate authorisation.

At the same time, paragraph 3, art. 290 CP RM stipulates the possibility of a person being absolved of a penal responsibility if he willingly disposed of the firearm and ammunition he had owned without proper authorisation, this is free of penal responsibility.

In this context we should mention that the extrapenal norms supplementing the norms, art. 290 CP RM does not include the definition of **carrying** the firearms and ammunition, that is why we will use the specific doctrinarian concepts. According to the opinion presented in the penal norms “*to carry a firearm*” means *having it on you and going with it from one place to another*. Carrying a firearm involves *its effective ownership (factual) if the firearm is on the person found guilty*. A main aspect will be that carrying firearms involves finding the firearms and ammunition in the accused’s clothes or somewhere close to his body; carrying them while the accused is moving or in his portable goods. The last definition does not permit us to make the difference between carrying and transporting the firearms and ammunition. Indeed, the means of transport can be considered portable, so that the offender could always use them according to their purpose. Transporting them by a means of transport, when the offender cannot use them according to their purpose in case of necessity, cannot be considered carrying, but transporting. When we

consider the offence, the period of time the person carried the firearms or ammunition is of no importance.

The author, A. Serbinov (Serbinov, 2017, pp. 36-46), mentions that it is not compulsory to procure firearms illegally to consider keeping it illegal, though. It is possible that the person should have procured the firearms legally but to have owned it illegally. To avoid getting the firearm licence means illegal possession of the firearm.

Illegal possession of the firearms as a normative way of the offence stipulated in art. 290, CP RM and the contraventional offence in paragraph 2 art 362 Conventional Norms of the Republic of Moldova, expressed by disrespecting the legal deadline for the endorsement of the firearms. To admit that it is an offence as stipulated by art. 290 CP RM, it is necessary that keeping the firearm should have as a premise the legalization of the firearm within the legal period of time. Once the legal legalising time is over one does not have the right to possess it any longer. Without this right, it is considered that the person keeps the firearm without proper authorisation.

A. Serbinov observes that in art. 290 CP RM such a normative way as transporting firearms and ammunition is missing. Even though it is not mentioned in the norms of incrimination, the transportation of such objects is condemned by art. 290 CP RM, but as complicity (supposing that a third person transports the goods to the author) or preparation for offence (supposing that the offender himself transports these goods in view of trading, keeping, bearing or repairing them) transporting is different from keeping the firearm in a means of transport when taking into consideration the offender's intention. When transporting the firearm, the offender intends to transfer it from one place to another, without using it.

In case the offender keeps it, his intention is focussed on factual possession of the firearm with the possibility of taking and using it if the necessity arises. Transportation cannot take place when the firearm and ammunition is on the offender. In such a situation carrying the firearm and ammunition will be incidental.

In the penal norms we consider that the conclusions reached by A. Serbinov concerning the offences stipulated in art. 290 of the penal norms of the Moldavian Republic are of utmost importance. Therefore, **illegal manufacturing** of firearms and ammunition means manufacturing them from the very beginning, as well as adjusting (for example, a pneumatic arm turned into a firearm.)

Adjusting has as its subject a firearm already manufactured, what is required is its construction to be modified. **Repairing** involves the rehabilitation of the characteristic features of firearms and ammunition by means of exchanging or restoring the worn out parts, replacing the flaws so that the firearms are good to be used. **Trading** means the act of passing the firearms and ammunition to a third person. Trading is performed under the form of a “contract” reached in illegal circumstances (contrary to the legal order established for trading such goods). The offence stipulated in art. 290, CP RM as a way of **stealing** the firearms and ammunition is a special case of offence against the patrimony carried out by theft.

In the judicial practice of the Republic of Moldova we meet cases which prove the competition from the penal norm and the conventional norm in the area of respecting the regime of firearms and ammunition.

5. Conclusions

The analysis of international acts The Communication of the Committee to the European Council and Parliament, Brussels, 21.10.2013, COM (2013) 716, “Firearms and internal security of UE: citizens’ protection and fighting against illegal trafficking”, Norm no. 477/1991, July, 18, 1991, of the Council of the European Union, regarding the control of buying and owning firearms; The protocol against illegal manufacturing of and trafficking in firearms, their parts and their components, as well as ammunition, supplementary to the United Nations Convention against Transnational Organised Crime, adopted in New York, on November, 15, 2000, 31.05.2001, mentions the following:

- Action was taken to classify the firearms, their parts and ammunition which are the basis of determining the regime of firearms and ammunition and which in turn determines the assembly of possible actions to be carried out with these material objects; they stipulate how to obtain the **European firearm licence as a document released**, on demand, on a determined period, by the authorities of a member country to a person who legally becomes owner and utiliser of a firearm;
- The following terms are used at European level: purchasing, owning, manufacturing, assembling, and trafficking in firearms, their parts and components, as well as ammunition; for the marking/markings that must be on the firearms – counterfeiting, removing, obliterating or altering them. The common condition is – illegally committing one of these acts. Furthermore, on the national level the attempt and complicity is to be punished, especially organizing, monitoring,

facilitating, encouraging, as well as facilitating, by helping or advising. It also defines the go between and brokering activity, which in our opinion must be introduced in countries' internal extrapenal legislation, besides being stipulated by the penal norms of Romania and the Moldavian Republic.

- According to provision lit. 1) art. 8 (Marking the firearms) from the protocol against manufacturing of and illegal trafficking in firearms, their parts and components as well as ammunition, supplementary to the United Nations Convention against transnational organised criminality, adopted in New York, on November, 15, 2000, from 31.05.2001, and manufacturing firearms, their parts and components, a unique marking way is imposed, which must include identification data (place, production year, etc).

- The provisions of this Protocol are included in the Penal Romanian Laws, especially in art. 344, the New Romanian Penal Norms (Counterfeiting or altering, removing, obliterating or altering markings on lethal firearms), but unfortunately we realise the absence of such a norm in the Penal Norms of the Moldavian Republic. This step of the legislator is unavoidable if one wants to harmonise the internal legislation with the international one.

6. References

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