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**THE ILLEGAL CIRCULATION OF FIREARMS AND AMMUNITION
IN THE CRIMINAL LAW OF THE REPUBLIC OF MOLDOVA: AN ANALYSIS
OF THE MODALITIES OF ACQUISITION, MANUFACTURING, REPAIR,
MODIFICATION, AND ILLEGAL COMMERCIALIZATION PROVIDED
UNDER ARTICLE 290 OF THE CRIMINAL CODE OF THE RM**

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Abstract

The persistence of criminal phenomena associated with the illegal circulation of firearms and ammunition in the Republic of Moldova highlights the need for an in-depth analysis of the factual modalities through which their legal regime is violated.

In this context, the illegal acquisition, manufacture, repair, modification of construction or marking, and commercialization of firearms, ammunition, and their essential components represent distinct forms of manifestation of the illicit arms circuit, capable of generating increased risks to public order and state security. The complexity of these conducts requires the identification of their defining elements and the establishment of clear legal criteria for distinguishing between the normative modalities provided under Art. 290 CC RM, in order to avoid misclassification and ensure a uniform application of criminal law.

At the same time, the latent nature of these modalities necessitates the clarification of their essential features, with a view to strengthening the interpretative framework and enhancing the effectiveness of mechanisms for preventing and combating arms-related criminality in a criminogenic context marked by the diversification of this phenomenon.

Keywords: firearms, ammunition, acquisition, manufacture, commercialization, illicit circulation.

**CIRCUITUL ILEGAL AL ARMELOR ȘI MUNIȚIILOR ÎN DREPTUL PENAL
AL REPUBLICII MOLDOVA: ANALIZA MODALITĂȚILOR DE PROCURARE,
FABRICARE, REPARARE, MODIFICARE ȘI COMERCIALIZARE ILEGALĂ
PREVĂZUTE LA ARTICOLUL 290 CP RM**

Abstract

Persistența fenomenului infracțional asociat circulației ilegale a armelor și munițiilor în Republica Moldova relevă necesitatea unei analize aprofundate a modalităților faptice prin care se realizează încălcarea regimului juridic al acestora.

În acest context, procurarea, fabricarea, repararea, modificarea construcției ori a marcajului și comercializarea ilegală a armelor, munițiilor și componentelor esențiale ale acestora constituie forme distincte de manifestare a circuitului ilegal al armelor, susceptibile de a genera riscuri sporite pentru ordinea publică și securitatea statului, iar complexitatea acestor conduite impune identificarea elementelor definitorii și stabilirea unor criterii clare de delimitare juridico-penală între modalitățile normative prevăzute la art. 290 Cod penal al Republicii Moldova, în vederea evitării confuziilor de încadrare juridică și a asigurării unei aplicări unitare a legii penale.

Astfel, o atenție deosebită revine acestor modalități, caracterizate printr-un grad ridicat de latență, ceea ce impune clarificarea trăsăturilor lor definitorii în vederea consolidării cadrului interpretativ și eficientizării mecanismelor de prevenire și combatere a criminalității asociate armelor, într-un context criminogen marcat

de diversificarea formelor de manifestare a fenomenului infracțional.

Cuvintele-cheie: arme, muniții, procurare, fabricare, comercializare, circuit ilegal.

Introduction. In the context of the growing criminal phenomenon associated with the illegal circulation of firearms and ammunition, the criminal law analysis of the factual modalities through which their legal regime is violated acquires particular importance. The diversification of criminal manifestations in this field, as well as the use of increasingly sophisticated methods for the acquisition, manufacture, modification, or illegal commercialization of firearms, require a reassessment of the existing interpretative framework and its adaptation to current criminogenic realities.

In this regard, the applicable legislation and specialized literature provide multiple approaches concerning the content and delimitation of the normative modalities of offenses related to the illicit arms circuit, highlighting the interpretative difficulties generated by the complexity of such conduct. At the same time, judicial practice reveals the existence of certain inconsistencies in the process of legal classification, mainly determined by the insufficient clarity of the criteria for distinguishing between the different modalities provided by criminal law.

Therefore, this study is based on the hypothesis that, under the specific conditions of the Republic of Moldova, clarifying the defining features of the factual modalities regulated by Article 290 RM Criminal Code and establishing rigorous criteria for their legal delimitation may significantly contribute to ensuring a uniform application of criminal law and to enhancing the effectiveness of mechanisms for preventing and combating criminality associated with illicit arms trafficking.

Methods and materials applied. This research is based on a doctrinal and normative analysis of the criminal law regulations governing the illicit circulation of firearms and ammunition, corroborated with the examination of relevant judicial practice in the Republic of Moldova. The study employs comparative, systemic, and interpretative methods in order to highlight the specific features of the factual modalities of the offense provided under Article 290 Criminal Code and to distinguish them from other forms of illicit conduct.

The materials analyzed include specialized doctrinal works, national legal provisions, and relevant judicial decisions concerning the interpretation and application of the applicable legal framework. The research focuses on identifying the defining elements of each normative modality and on establishing clear legal criteria for their delimitation, with a view to ensuring a uniform interpretation of the criminal law provision.

Discussions and results obtained. The analysis of the factual modalities through which the objective side of the offence provided for in Article 290 CC RM is carried out reveals the complex and multifaceted nature of unlawful conduct in the field of the illicit circulation of firearms and ammunition, while the diversity of these modalities, ranging from the acquisition and manufacturing of firearms to their repair, modification of construction or marking, and illegal commercialization, reflects not only the distinct stages of introducing and maintaining firearms in the illicit circuit, but also the varied mechanisms through which this criminal phenomenon manifests itself, thus demonstrating that each normative modality has its own distinct criminal-law content, determined by the specific nature of the material acts, the moment of intervention in the circulation of firearms, and the purpose pursued by the offender.

In this regard, the factual modality of *acquiring firearms* occupies a distinct place within the structure of the objective side of the offence provided for in Art. 290 of the

Criminal Code, as it concerns the initial moment of obtaining control over the material object and, unlike carrying or possession, which presuppose the exercise of an already established control, acquisition marks the entry of the firearm or ammunition into the sphere of the offender's possession.

In the jurisprudential and normative understanding [3], the acquisition of firearms, cold weapons, ammunition, or explosive substances is defined as obtaining them through various means such as purchase, receipt free of charge or as a donation, exchange, debt settlement, pledge, reward, loan, lease, or even finding, while the criminal nature of the act is not determined by the legal form of the transaction, but by the absence of a legal framework authorizing such acquisition, namely the lack of authorization from the competent authorities.

In the same vein, the doctrinaire Brînză S. emphasizes that the acquisition of possession of a firearm or of goods following an illicit transaction, whether onerous or free buy, exchange, receive as a gift, on account of a debt, as a loan, as a reward or as a pledge to guarantee a legal obligation, thus highlights the acquisition of a legal essence. possession over the asset, regardless of the apparent title of acquisition [2, p.632].

A detailed approach to the notion of "procurement" is also found in Russian criminal doctrine, in the context of the interpretation of Art. 222 of the RF Criminal Code, a norm close in structure and purpose to Art. 290 of the RM Criminal Code. Thus, the author Kokin D. shows that by procurement, as an illegal act, we must understand those actions as a result of which firearms, their essential parts or ammunition are transferred into the illegal, temporary or permanent possession or use of the person who meets the characteristics of the subject of the crime [13, p.93].

In this sense, procurement includes purchase in violation of the legal order, receipt as a donation, exchange for goods or values, transmission as a loan, receipt on account of a debt, as payment for work performed or services performed, as well as any other form of transfer of possession. At the same time, it is emphasized that this sphere also includes the illegal procurement and temporary acquisition of weapons for various purposes, including criminal ones, as well as the appropriation of weapons, their component parts or ammunition found.

On the other hand, in order to clearly distinguish between licit and illicit conduct, it is necessary to delimit the notion of illegal procurement from that of legal procurement. In this regard, the author Ulianovschi X., analyzing this factual modality, shows that legal procurement is understood as the purchase of firearms and ammunition from specialized stores, duly authorized by the specially authorized body, under the conditions of the existence of the procurement permit issued to the holder [10, p.564].

In the absence of such an authorization title, any form of obtaining the weapon or ammunition, even an apparently benign one, such as accepting them as a gift or appropriating a found asset, is likely to meet the constitutive elements of the crime, to the extent that the person keeps the asset without immediately handing it over to the competent authorities or without initiating the legal authorization procedure.

However, from the perspective of criminal policy, the legislator does not wait for a concrete prejudicial result to occur, but sanctions in advance the moment the weapon is introduced into the unauthorized possession circuit, considering that the very acquisition of such an object without right creates a real and objective state of danger for the social relations that ensure public security in the field of the weapons and ammunition regime.

Another factual modality provided for by Art. 290 Criminal Code of the Republic of Moldova (CC RM) is the manufacture of weapons, essential components and ammunition,

which, although less frequently encountered in judicial practice, this conduct has a particular legal relevance, as it already marks the very initial stage of the appearance of the material object of the crime, namely the moment of creating the technical means capable of functioning as a weapon or ammunition.

From a legal and criminal perspective, manufacturing means the production or realization, by industrial or artisanal means, of weapons, ammunition or their essential components, by making assemblies or subassemblies which, through integration, acquire the ability to fire, produce an explosion or cause injuries, the notion including not only the complete realization of a weapon, but also the elements without which the mechanism could not function according to its technical purpose.

In international law, the concept of „illicit manufacturing” is outlined in the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. According to this instrument, illicit manufacturing involves the production or assembly of firearms or their components without a license or authorization issued by the competent authority of the state in which the activity takes place, as well as without compliance with marking obligations [6].

In the same sense, the Russian doctrine emphasizes that in the framework of industrial production, the manufacture of firearms is carried out exclusively on the basis of permits and licenses issued by state bodies, within specialized enterprises, with the involvement of gunsmiths and qualified personnel. The production process is a technically complex one, assuming compliance with rigorous standards of design, processing and assembly, which is why the state reserves control over this activity.

In this respect, manufacturing is clearly distinguished from acquisition, as while acquisition presupposes obtaining possession of an already existing weapon, manufacturing entails the very creation of the material object, namely the introduction into circulation of a new weapon or ammunition, a distinction which justifies the separate treatment of these modalities within the structure of the objective side of Art. 290 CC RM, with manufacturing representing the original moment of the physical existence of the object that may subsequently be carried, possessed, commercialized, or appropriated.

Manufacturing, like the other factual modalities provided for in Art. 290 Criminal Code (except for theft), has a formal character, the crime being considered consummated from the moment of obtaining the finished product, that is, when the weapon, component part or ammunition acquires the functional ability for which it was made, and since the norm does not condition liability on the production of a subsequent material result, the simple completion of the technical process of creation is sufficient to meet the material element.

From this perspective, the question of delimiting the phase of the attempt arises in the hypothesis in which the direct manufacturing process is interrupted for reasons independent of the perpetrator's will. We consider that, to the extent that the subject has begun the execution of the manufacturing acts and these are directly part of the achievement of the material element of the crime, but the finished product was not obtained for reasons beyond his will (for example, the intervention of law enforcement agencies), we are in the presence of a punishable attempt, within the meaning of the general rules regarding the phases of the crime.

Repairing weapons, essential components and ammunition constitutes one of the normative ways of committing the crime provided for in Art. 290 CC RM, which, compared to other conduct such as illegal carrying or possession, is characterized by a higher level of latency, as technical interventions on weapons are usually carried out in private

spaces or in restricted environments, being difficult to detect in the absence of specialized investigative activities [11, p.35].

From a legal-criminal perspective, repair is understood as the activity aimed at restoring a weapon or ammunition that has technical defects, wear or alterations to its initial parameters to a functional state, and in a technical-legal sense, it involves intervention on the mechanisms, parts or component assemblies, in order to eliminate defects and restore lost functional qualities, which involves the restoration, replacement or adjustment of damaged elements, so that the object regains its suitability for use according to its technical purpose, without leading to the emergence of a new object, but to the regaining of the useful properties of the existing one.

In this regard, we highlight the findings of the author Chirița V., who, analyzing the objective side of the norm of Art. 290 CC RM, mentions that repair involves a set of operations performed on defective weapons to restore them to a condition that ensures their safe operation according to their intended purpose, without modifying their construction [2, p.141].

In a similar view, Russian criminal doctrine emphasizes that repair consists, on the one hand, in eliminating defects in firearms, their essential parts and related devices, including those intended to change the firing mode, and on the other hand, in actions that restore the striking properties of the weapon or the ability to use its components within certain weapons systems. Also, being qualified as repair and adaptation of the weapon or its components to the individual needs of the owner, when such interventions influence the technical or functional parameters of the object [17, p.48].

Special legislation [4] stipulates that the repair of weapons is permitted exclusively in authorized workshops, regardless of their form of ownership, which have a license and authorization issued by the competent authorities. Outside this legal framework, any intervention aimed at restoring the functionality of a weapon or ammunition constitutes a form of illegal repair, likely to meet the elements of the objective side provided for in Art. 290 Criminal Code of the Republic of Moldova.

In this logic, repair is conceptually distinguished from other technical interventions on weapons, as it does not aim to create a new object, but to restore the existing one to its functional parameters, an essential aspect for the correct delimitation of this factual modality within the framework of the analyzed criminal norm.

Next, we will analyze separately another way of achieving the objective side provided for in Art. 290 of the Criminal Code, namely, modifying the construction or marking of weapons, methods that will be examined separately.

Regarding the modification of the construction, this involves changing or transforming, without the appropriate authorization or in violation of the procedure established by law, the essential parts or components of the weapon, in such a way as to create the possibility of using it for purposes other than those provided by the manufacturer or under conditions other than those permitted by the applicable legal regime.

This category includes, for example:

- Cutting the barrels of long weapons to a length below the legally permitted limit, an intervention that modifies both the ballistic parameters and the legal category of the weapon;
- Adapting weapons to mount devices to reduce the noise produced when firing, which influences the technical characteristics and the way of use;
- Modifying the firing mechanism in order to carry out serial firing, by transforming a semi-automatic weapon into one capable of automatic fire;
- Modifying the construction of weapons with a folding stock, so that firing is also

possible in the folded position, which alters the operating conditions provided by the manufacturer;

- Replacing or modifying the firing pin, the extractor claw or the front wall of the bolt, interventions that affect the functioning of the firing mechanism;
- Replacing the barrel or modifying its channel, including changing the caliber or internal structure, with a direct impact on ballistic performance.

Thus, in a detailed analysis, it is observed that all these actions have in common the fact that they affect the technical structure of the weapon at the level of essential elements, determining the modification of the functional parameters or the applicable legal regime.

In this continuity, what is essential is not only the material act of the intervention, but the fact that it is carried out without the necessary authorization or in violation of the procedures established by law.

However, it should also be noted that not every intervention on a weapon constitutes modification in the criminal sense. Activities such as lubricating or cleaning the weapon, adjusting or replacing the handle, the front or rear sight, the handle plates, the groove, the stock, the safety spring, or other similar actions performed on a functional weapon do not constitute violations of the law, to the extent that they do not alter the essential technical structure and do not change the purpose or legal regime of the weapon, given that these interventions fall within the scope of permitted maintenance or customization, without affecting the fundamental constructive characteristics.

Therefore, modification of the construction of weapons, within the meaning of Art. 290 CC RM, must be understood as an unauthorized intervention on essential structural elements, capable of changing the technical parameters or functional purpose of the weapon, thus distinguishing itself from simple maintenance or adjustment operations that do not affect the essence of the mechanism.

This normative method was retained in the following case from judicial practice: R.C. *during the period from May 20 to June 18, 2015 in the village of Misovca, Ialoveni county, manufactured from the smooth-bore hunting weapon, with the series and no. "Y00848", into the atypical sawn-off weapon, by modification, by cutting the barrel to 295 mm and the stock, a fact confirmed in the Ballistic Expertise Report, later in the village of Fundul Galbenei, Hincesti county, the same indicated weapon was carried, kept and its ammunition in the amount of three 20-caliber hunting cartridges with centerfire "with machine guns" diameter of 4 mm, without the appropriate authorization. Through his intentional actions, Rusu Cristian committed the carrying, keeping, manufacturing of the firearm and ammunition without the appropriate authorization, a crime provided for by art. 290 paragraph (1) Criminal Code [8].*

Thus, those analyzed in the case at hand confirm the relevance of the delimitation between permitted technical interventions and those that constitute modifications in a criminal sense, highlighting that any unauthorized intervention on the essential structural elements of the weapon, capable of altering its technical parameters or destination, attracts the incidence of criminal liability, even in the absence of a subsequent use of the weapon for criminal purposes.

Next, in order to establish the specifics of the modification of the marking considered as an illicit act, it is necessary to specify that this term is to be understood as the set of identification elements such as the series, code, industrial symbol or other distinctive signs that are applied to the metal surface of the weapon by mechanical, laser or electrochemical engraving or printing, at a technical depth sufficient to ensure their durability, namely at a minimum level of approximately 0.076 mm.

Therefore, in order to ensure the identification and traceability of each firearm, the UN Firearms Protocol imposes on states the obligation to ensure the unique marking of each firearm at three essential moments: at the time of manufacture, at import, and at the transfer from state stocks to the civilian circuit.

For this reason, the specialized doctrine emphasized that the applied marking must meet certain fundamental technical requirements, namely, according to the opinion expressed by N.S. Kudinova, the marking must allow for the verification and identification of the object, have a long term of existence, be easily detectable, demonstrate resistance to aggressive environments and abrasive actions, as well as ensure the possibility of forensic identification, thus demonstrating that the marking is designed to be durable, legible and susceptible to expertise, precisely to prevent the integration of the weapon into an anonymous illicit circuit [15, p.46].

In this context, marking modification involves intentional intervention on these identification elements, with the aim of altering or suppressing the possibility of individualizing the weapon. In practice, this conduct can take various forms, such as: erasing or erasing the serial number, partial alteration of numbers or letters, re-engraving or overwriting with other data, applying a false marking, replacing the plate or the element on which the number is printed, as well as the deliberate destruction of the identification area.

Therefore, the modification of the marking of weapons within the meaning of Art. 290 RM Criminal Code, must be understood as any intentional and unauthorized intervention on the identification elements, capable of compromising the traceability and individualization of the weapon, this conduct being likely to facilitate its integration into the illegal circuit and to hinder the activity of criminal prosecution bodies.

Continuing the analysis of the normative modalities provided for in Art. 290 CC RM, it is necessary to examine separately the illegal trade in weapons or ammunition, as well as their essential components.

Commercialization means the introduction into the civilian circuit of weapons, ammunition or essential parts through acts of alienation for a fee or free of charge, carried out systematically or occasionally, regardless of whether they aim to obtain a material benefit or not.

Although, at first glance, the notion of trade would essentially imply the operation of sale-purchase or procurement of goods or services [5], within the meaning of the norm provided for in art. 290 RM Criminal Code, it has a broader scope, covering other equivalent legal forms through which the good is transmitted to another person, such as exchange, gift or other ways of transmitting possession or detention of the respective object.

In this sense, it can be observed that marketing represents the opposite side of the previously analyzed factual modality, namely procurement, the two conducts being, in essence, components of the same legal relationship of transmission of the good, one aiming at its acquisition, and the other at its alienation.

In confirmation of the above, we find relevant opinions in Russian criminal doctrine, where unanimously, several scholars understand by illegal trading of firearms, their main parts and ammunition the action of definitive alienation of these goods into the ownership of other persons as a result of an illicit transaction, whether onerous or free, such as sale, gift, exchange, etc., thus emphasizing that such alienation must be irreversible, unlike situations in which the object is only temporarily transmitted to another person for use or storage [13, p.93; 12, p.103; 14, p.59].

However, we cannot fail to note the position expressed in the national doctrine by the authors S. Brînza and V. Statii, which highlights an important delimitation regard-

ing the legal qualification of such conduct. According to them, viewed as a distinct way of trading weapons, equipping a criminal organization with weapons for the purpose of committing crimes does not attract liability under Art. 290 RM Criminal Code, but is to be qualified according to Art. 284 para. (1) RM Criminal Code [1, p.263], which incriminates the creation or management of a criminal organization.

In such situations, such a purpose is due to the existence of a competition between the general norm and the special norm, since the provision of Art. 284 CC RM expressly includes among the manifestations of criminal activity the provision of the criminal organization with weapons and instruments for committing crimes, which is why, as a consequence, according to the rule enshrined in Art. 116 CC RM, in the event of competition between the general norm and the special norm, the latter applies with priority, since it is in a relationship of logical subordination to the general norm [9, p.193].

Therefore, as a conclusion to what has been said, we also mention the fact that although the illegal trade in weapons, ammunition or their essential components, by its very nature, represents an activity that is difficult to investigate and, in many situations, difficult to demonstrate in terms of evidence, national judicial practice nevertheless knows cases in which such conduct has been found and sanctioned by the courts.

In this regard, by way of example, we mention the following case from judicial practice: *D.I., in circumstances unknown to the criminal investigation body, came into possession of a "TT" model pistol, industrial caliber 7.62x25mm, and an "RPG-18" model anti-tank grenade, which he kept without proper authorization until May 14 and 15, 2014, respectively.*

Subsequently, with the aim of alienating this weapon and ammunition without proper authorization, in order to obtain profit, namely monetary means in the amount of 1,000 euros, which according to the official exchange rate of the National Bank of Moldova is equivalent to the amount of 18,717 lei, on May 14, 2014, in the municipality of Chisinau, he sent a "TT" model pistol to citizen M.M., a journalist within the Organized Crime and Corruption Reporting Program cal.7,62x25mm.

By the actions the Court decides to find D.I. guilty of committing the offense provided for in art. 290 par. (2) letter b) of the Criminal Code of the Republic of Moldova [7].

The analyzed case illustrates the typical mechanism of illegal trafficking, in which unauthorized possession is followed by the introduction of the weapon into the illicit circuit through an act of transmission to a third party, highlighting the staged nature of the conduct and the role of trafficking as an essential link in the dissemination of weapons outside the legal framework.

Conclusions. The findings of the research demonstrate that the current regulation of acts concerning the illicit circulation of firearms and ammunition, although providing a general framework of criminalization, does not in all cases ensure a sufficiently clear delimitation of unlawful conduct, which may lead to divergent interpretations in the process of legal classification. In particular, it has been established that the absence of explicit normative criteria regarding the nature of the intervention on the material object and the moment of its integration into the illicit circuit generates practical difficulties in the uniform application of criminal law.

In this context, the need for a reformulation of the legal provision in a more precise manner, better aligned with current criminogenic realities, is emphasized through the use of clearer legal concepts and by extending the scope of regulation to certain forms of conduct which, although presenting an evident social danger, are not sufficiently explicitly reflected in the legal text. Such a legislative intervention would contribute not only to increasing the predictability of the criminal norm, but also to enhancing its effectiveness

in preventing and combating the analyzed criminal phenomenon.

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