



Combating Illegal Trafficking in Firearms: A Legal Analysis Based on the Protocol Against Illegal Manufacturing and Trafficking in Weapons, Parts, Components and Ammunition

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Abstract: The article deals with the subject of combating the illegal trafficking of firearms from a legal perspective, based on 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. The analysis focuses on the ways in which this protocol and empirical data contribute to the prevention and sanctioning of illegal firearms trafficking, examining the legal implications and their effectiveness in reducing the illegal movement of weapons. The scientific originality of this study consists in the analysis of criminal actions and the terms referring to firearms and ammunition, terms that are included in the Protocol and that must be accurately reflected in the national legislation of the states. The study demonstrates that criminals exploit legislative loopholes to avoid criminal liability, thus underscoring the need for rigorous and coherent legislative harmonization at the international level.

Keywords: illegal trafficking; firearms; ammunition; criminal actions

1. Introduction

Offenses related to non-compliance with the arms and ammunition regime are specific offenses aimed at protecting public order and the citizen's safety. Judicial practice shows that, in recent years, the proliferation and availability of illicit

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firearms in EU member states increase the risk of their use in terrorist attacks and organized crime.

In this regard, we consider it necessary to discuss the Protocol against the manufacture and illegal trafficking of firearms, their parts and components, as well as their ammunition, which complements the UN Convention against Transnational Organized Crime¹. Article 5 of the Protocol defines the actions committed intentionally as crimes: the illegal manufacture of firearms, their components and ammunition; illegal circulation of firearms, their components and ammunition; forging, illegally destroying or altering the markings on weapons and ammunition. These provisions underline the transnational character of the document, emphasizing the importance of international cooperation to combat these illegal activities that are not limited to the borders of a single country. Moreover, in the context of the fight against illegal arms trade in the EU, the importance of international protocols and regulations, such as the one mentioned above, is emphasized, especially after the terrorist attacks of recent years, these measures have become even more relevant and stringent (Cuervo Nieto, 2023, pp. 7-32).

The Protocol is interconnected with other relevant international documents and treaties in this field. These connections are essential to ensure a comprehensive and globally coordinated approach in combating arms trafficking and ensuring international security (Grassi, 2021, pp. 58-77).

2. The Main Actions Criminalized in the Protocol

Illicit Manufacture of Firearms: The Protocol regulates the production and movement of firearms and criminalizes three distinct actions as illicit production. These actions are considered illicit and span across various stages of the production process, from handling raw materials to the final assembly of the weapons.

Manufacture or Assembling Firearms from Illegally Trafficked Pieces and Elements: This criminal action is aimed at preventing the evasion of basic import and export requirements. Traffickers may attempt to transfer firearm parts and components across borders to later assemble them into complete weapons. By criminalizing this behavior, it aims to ensure that all parties involved in the illegal manufacture and trafficking of arms are held accountable, including in cases where

¹ See in the sense https://treaties.un.org/doc/source/recenttexts/18-12_c_e.pdf.

the same person may be responsible for both the trafficking of the parts and their illicit assembly.

Manufacture or Assembly of Firearms, Pieces and Elements, or Ammunition in The Absence of a License: This measure is in place to prevent unauthorized or illicit production and to control the movement of firearms and related materials, reducing the risk of illegal trafficking and misuse. This is an essential measure to ensure that the production of firearms is strictly regulated and monitored to prevent their use for illicit purposes.

Manufacturing or Assembling Firearms without Markings: Markings are essential for the traceability of firearms and preventing their use in illegal activities. The Protocol requires all firearms produced or assembled to be properly marked so that their origin can be identified and their use in illegal trafficking prevented. Criminalizing manufacture or assembly without these markings helps combat arms trafficking and enforce international firearms law.

The importance of including these provisions in the internal laws of the states emerged from the fact that crimes were not always adequately punished due to legislative gaps. Although the manufacture of unmarked firearms is common, not all states have defined this offense in legislation, and in countries where this action is criminalized, the offender is most often punished for illegal possession of a firearm, as the legislation is not sufficiently clear enough.

Ghost Weapons and Semi-Finished Components: Ghost weapons, also known as ghost guns, pose a growing challenge to arms control and public safety in many countries. These firearms are often assembled from semi-finished parts that can be legally purchased in certain regions. Unlike traditional firearms, ghost guns are typically untraceable because they lack serial numbers and are not subject to the same regulations as fully manufactured firearms. This makes it difficult for law enforcement to track their origin and ownership.

The ease of acquiring the components, combined with the minimal regulation in some areas, has led to an increase in the use of ghost weapons in criminal activities, posing significant risks to public safety. Addressing this issue requires strengthening legal frameworks around the sale and assembly of firearm components, as well as increased enforcement efforts to curb the spread of these untraceable weapons.

Additive Manufacturing and 3D Printing: The advancement of additive manufacturing (3D printing) has indeed opened up various applications, but it has also raised concerns due to its potential misuse. The affordability and accessibility

of 3D printers, combined with technological improvements, have made it possible for individuals to manufacture not only everyday items but also complex objects like firearms and firearm components. This phenomenon poses legal and regulatory challenges, particularly in controlling the distribution of such parts and preventing the spread of illicit firearms. 3D printed parts are often combined with factory-produced. However, while the new types of weapons are unusual and fairly new, it can be said that 3D printed firearms and related components and ammunition could be a very real and serious threat. In this sense, for example, EMPACT, in 2023¹ found that weapons made by 3D printing represent a significant threat. In a joint effort by Slovak and Czech authorities and powered by of the FBI and Eurojust, in 2022 they arrested a 22-year-old man and seized a 3D printer. The young man was suspected of involvement in several crimes of terrorism and extremism, sympathizing with and popularizing far-right nationalist movements of a neo-Nazi nature. The suspect is believed to have posted instructions and guidelines online relating to the unauthorized creation of cold steel improvised weapons, the manufacture of semi-automatic weapon conversion devices using 3D printers known as auto switches or auto SEARS, the manufacture of explosives and mines².

Reactivation of Deactivated Firearms: In Europe, the reactivation of previously deactivated firearms began to occur in the late 1990s at the end of the Balkan wars, as many firearms had been deactivated. Awareness of the risk of reactivating firearms rose sharply in 2015 with the terrorist attacks in Paris involving such firearms. According to Europol, in recent years, reactivated weapons represents the fundamental cause of the unauthorized traffic of arms to and within the European Union, as well as a means of supply to organized crime groups and terrorist organizations³. Article 9 of The Protocol places a strong emphasis on preventing the misuse of deactivated firearms, especially in cases where they are excluded from traditional firearms control regimes. This provision is importance in addressing the issue of abusive reactivation of deactivated firearms, a practice that can result in serious security risks by enabling the illegal production of working firearms from previously inactive ones. To illustrate the criminal activity related to the reactivation of deactivated firearms, we refer to “**Operation Portu**” launched by the **Spanish National Police** with the assistance of **Europol** in January 2017, is a significant example of how criminal networks exploit the reactivation of deactivated firearms

¹ <https://www.consilium.europa.eu/media/3ulegcm5/empact-factsheets-2023.pdf>.

² See in the sense <https://www.eurojust.europa.eu/news/slovak-and-czech-authorities-take-action-against-right-wing-terrorism>.

³ https://www.europol.europa.eu/cms/sites/default/files/documents/report_socta2017_1.pdf.

for illegal activities, such as trafficking in weapons. The Operation brought to light the severe dangers posed by reactivated firearms and the role of organized crime networks in their illegal distribution. The operation not only illustrated how such criminal activities can bypass traditional firearms regulations but also underscored the far-reaching implications of reactivated weapons on public safety and security. As part of this operation, five people were arrested and the authorities carried out six house searches in three Spanish provinces: Bilbao, Cantabria and Gerona. As a result of these searches, more than 10,000 firearms and €80,000 in cash were seized.¹

Firearms Conversion: The term “firearm conversion” refers to actions that transform an imitation firearm or any other object that resembles a firearm, but is incapable of expelling a projectile, into a lethal weapon that eliminates a shot, bullet or projectile by the action of an explosive, in accordance with the definition of firearms in the Protocol” (Florquin & King, 2018, p. 16). The lack of legislative harmonization across the European Union has created opportunities for criminal groups to exploit lax firearms regulations. Without common regulation, this phenomenon will continue to pose a major threat to public safety and law enforcement. The European Union must address this issue through clear legislative measures and closer international cooperation. To exemplify relevant actions of law enforcement agencies in the EU, we refer to Operation “Conversus”², regarding illegal arms trafficking. The operation conducted by the Romanian National Police in 2021, which resulted in the confiscation of 1,534 gas and alarm pistols and over 17,000 ammunition cartridges, is a significant example of how law enforcement agencies in Europe are actively combating the trafficking of non-lethal firearms that can be illegally modified into fully functional weapons.

Modification of Firearms: Illegal firearm modification refers to changing the behavior of a functional firearm, while illegal manufacturing involves creating an actual firearm. The conversion of semi-automatic weapons into fully automatic ones is a significant threat to public safety, and it has become a common technique among criminals and those involved in illicit firearms trafficking. In many countries, including the United States, the possession and use of these devices are strictly regulated and classified as illegal machine guns under the National Firearms Act (NFA)³. The case of *United States of America v. Michael Paul Dahlager* from 2022

¹ See in the sense <https://www.europol.europa.eu/media-press/newsroom/news/10-000-firearms-seized-in-spain-support-of-europol>.

² See in the sense <https://www.mai.gov.ro/operatiunea-conversus/>.

³ See in the sense <https://www.atf.gov/rules-and-regulations/national-firearms-act>.

exemplifies the strict legal prohibition on the possession and sale of devices such as auto sears that can convert semi-automatic firearms into fully automatic weapons, or “machine guns,” without the proper authorization or license. This case also underscores the severe consequences faced by individuals who engage in the illegal trafficking or possession of such devices, particularly when tied to broader criminal or extremist activities.

Illicit Manufacture of Ammunition: According to Article 3(d) of the Firearms Protocol, the illicit manufacture of ammunition is defined as the manufacture or assembly of ammunition either from illicitly trafficked components or without a license or authorization from a competent authority of the State in which it has place of manufacture or assembly. For example, “in Operation Bosphorus, several member states of the European Union have cooperated in combating the trafficking of firearms with blind bullets. Of the nearly 34,000 pieces of ammunition recovered during the operation, 8,000 were converted cartridges” (Jongleux & Florquin, 2020, p. 8).

Constituent Elements of the Offenses Criminalized in the Protocol

An act presents social danger only in relation to something external, more precisely, in relation to a social relationship, with a certain social value which can be, among others, a right of a natural or legal person. In short, an act is dangerous in relation to an object. Moreover, “any crime constitutes in one form or another a danger, a threat or a violation of a social relationship that concerns a social value protected by legal norms” (Pasat, 2014, pp. 61-66). The social value harmed in the context of crimes criminalized in the UN Protocol refers to multiple aspects of security and public order, human rights and socio-economic stability, such as national and international security, public security and safety, the erosion of the rule of law and institutions public relations, the right to life and security of individuals, the destabilization of economies, especially in conflict-affected regions, or relations between states, especially when illegal weapons end up in the hands of groups that destabilize regimes or commit acts of terrorism.

“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” (Pasat, 2019, pp. 34-46).

In criminal law, the material object is essential to correctly define and frame the crime. The material object of the crimes criminalized by this protocol includes: firearms, parts and components of firearms, ammunition.

In Romanian legislation (Arms and Ammunition Law, no. 295/2004¹), a firearm is defined as any portable weapon with a barrel that can launch, is designed to launch or can be transformed to launch a projectile by the action of a propulsion fuel. In addition, the law states that an object can be considered a firearm if it has the appearance of a firearm and, because of its construction or the material from which it is made, can be transformed to launch a projectile by the action of a propellant. Part means any element or replacement element specially designed for a firearm that is essential to its operation, including a barrel, frame or gas receiver, movable sleeve or barrel, firing pin or bolt and any device designed or adapted to reduce the noise caused by the firing of a firearm, and by the essential component - the closing mechanism, the chamber of the cartridge and/or the barrel of firearms, which, as separate objects and to the extent that they are functional, are included in the category of firearms on which they are mounted or for which they are designed to be mounted;

“Ammunition should be understood as cartridges, projectiles and charges of any kind” (Pasat, 2016, p. 98). In another sense, “Melnyk M.I. & Havroniuk M.I. (2019), define munitions as cartridges for firearms, grenades, explosive parts of rockets, shells, bombs, mines, and other means equipped with an explosive substance, intended to be fired or to cause an explosion. In a broad sense, munitions are considered explosive devices that have industrial production in special organizations, where there is a technological process strictly established by technical documentation. The purpose of such munitions is to cause various degrees of damage to the enemy’s manpower, to various objects due to the impressive factors of the explosion” (Melnyk & Havroniuk, 2019; apud Yusupov & Filipov, 2023, pp. 63-73).

“It is known that the subject of criminal offences is essential for the correct qualification of the act. Due to the establishment of the subject of the criminal offence, criminal-legal separation of crimes of one classification group from each other takes place.” (Yusupov & Filipov, 2023, pp. 63-73). The active subject of a crime is the natural person who committed the act directly and indirectly as the author or participated in its commission as an instigator or accomplice. In order to

¹ Published in Official Monitor no. 425 of June 2014.

be an active subject of the crime, the natural person must meet certain general and special conditions. “The general conditions take into account age, responsibility, freedom of will and action. The special ones refer to certain personal circumstances provided by law for certain crimes, such as: citizen, foreigner, civil servant, manager, military etc.” (Pasat, 2014, pp. 111-118). “In accordance with the Romanian Criminal Code establishes the quality of the active subject of the crime, as being the natural person who must meet certain conditions: to be over 16 years old (according to art. 113 of the Criminal Code, the minor who has not reached the age of 14 is not the subject of the crime and the minor who is aged between 14-16 years has the quality of the subject of the crime, only if it is proven that he committed the act with discretion); to be responsible and decide freely on the commission of the crime” (Pasat, 2023, pp. 41-49).

The active subject of the offenses criminalized by the Protocol can be any natural or legal person who participates in any of the aforementioned activities without complying with the legal requirements. This may include producers, traffickers, intermediaries, buyers or even authorities involved in the regulation of these activities, if their actions are contrary to legal provisions.

“The subjective side represents the mental attitude of the person towards the socially dangerous act committed by him, provided by the criminal law, which includes the form of guilt, the motive and the purpose of the crime” (Pasat, 2013, pp. 80-84). “Forming the psychological content of a dangerous social act, the subjective side of the crime is its internal side (in relation to the objective one). The signs of the subjective side of a crime in the science of criminal law are recognized mainly as guilt, motive and purpose” (Pasat, 2023, pp. 41-49). “The purpose and reason for committing the analyzed crime do not count as optional signs of the subjective side for establishing the existence of the crime” (Pasat, 2023, pp. 209-228).

In most cases, the crimes related to non-compliance with the weapons regime are committed with intent, directly or indirectly, whether the subject directly wants to commit the act, or accepts the possibility that the act will occur. The objective or purpose has no relevance to the existence of the crime, but when it exists, it is important in the process of individualizing the punishment carried out by the court.

3. Conclusion

Following the study of the United Nations Protocol, it was found that the states parties to the protocol have not fully implemented the international traceability standards imposed by it, which require unique and detailed markings for each firearm, in order to facilitate identification and tracking at the international level. While illegal manufacturing is criminalized in all legislation, it may be considered less comprehensive in preventing and combating illegal manufacturing activities compared to the requirements of the Protocol. For example, regulations on the supervision and control of materials and equipment that can be used to manufacture firearms need to be tightened. State laws focus primarily on firearms as a whole, and regulations regarding their components and parts may be less detailed. Thus, there is a risk that traffickers will exploit these loopholes to smuggle in parts and components, which can then be assembled to build functional firearms. These gaps highlight the need for closer alignment of national legislation with international requirements, so that the phenomenon of illegal manufacture and trafficking of firearms can be combated more effectively. These gaps highlight the importance of a robust national approach, complemented by international cooperation, to effectively combat the phenomenon of illegal firearms trafficking and manufacturing.

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