The constitutive contents of the crime of forgery or alteration. Deletion or modification of the markings on lethal weapons. The more favorable Criminal Law

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Abstract: The paper has examined the contents of this crime according to the new provisions established by the adoption of the new Criminal Code, and the application of a more favorable criminal law by comparing the two indictments. The work can be useful to judicial authorities responsible for preventing and combating this type of crime and law students. The innovations consist of comparative examination and the assessment achieved in the application of a more favorable criminal law, taking into account only the criterion of sanctioning limits.

Keywords: more favorable Criminal law; the minimum and maximum sanction; comparative examination.

Introduction

The offense under examination in terms of constituent content is provided in article 344, of Chapter III, Title VII, Chapter named marginally “The non-compliance of the regime of arms, munitions, nuclear and explosive materials” of the Criminal Code in force.

The offense of forgery or alteration. Deleting or modifying the markings on lethal weapons is in fact a physical or legal entity who falsifies, deletes, removes or modifies, without right the markings on lethal weapons.

This incrimination was determined by the fact that by Law no. 116/1997 for the ratification of the European Convention on control of the acquisition and possession of firearms by private individuals adopted in Strasbourg on 28 June 1978, Romania has ratified the European legislative act adopted in order to reduce the use of firearms for criminal purposes, as we know that in most cases the offenders change, falsify or delete the markers from the lethal weapons [1].

These fraudulent schemes often used by perpetrators of serious crimes are meant to hinder the research activity and investigation conducted by the judicial authorities.

The active subject of this crime can be any legal or physical entity who meets the general conditions required by the law to have this quality. The criminal participation is possible in all its forms.

1. The Criminal Code in force in relation to the previous Law

The offense provided for in article 344 of the new Criminal Code is not provided in the Criminal Code of 1969, as it was taken from article 136 of Law no. 295/2004, republished, which has the following title “Forgery or alteration without the right of the markings on firearms”. The offense consisting in the act of forgery or deletion, removal or modification, without right, the markings on firearms, is punished with imprisonment from 1 to 5 years.

Between the two incriminations (the applicable and the previous law) there are some differences, the first of which being that the new law stipulates that the material object of the offense “lethal weapons”, while the previous law there are considered “firearms”.

Likewise, in the doctrine it was held that the second distinction linked to the first, concerns the content of incrimination texts of these acts, which is, to some extent, different; if according to article 344 of the Criminal Code, it constitutes an offense the “forgery or deletion, removal or modification without right of the markings on the lethal weapons”, according to article 136 of Law no. 295/2004, representing an offense the “falsification or deletion, removal or alteration without right of the markings on firearms”. As shown, there are differences only in terms of material object of the incriminated offenses [2].
Also, as stated above, the title of the offense is different, and the punishment limits in the new Criminal Code are reduced being provided with an alternative fine punishment (imprisonment from 1 to 3 years or a fine in the new Criminal Code, to imprisonment from 1 to 5 years in the previous law).

We should note that the original text was amended by article 245 point 33 of Law no. 187/2012 for the implementation of the Law no 286/2009 on the Criminal Code [3].

2. The constitutive content of the offense

In the constitutive content of the offense there will be considered: a) the objective side and b) the subjective side.

a) The objective side comprises the material element, the essential requirements, the immediate consequence and the causal connection.

The material element of the objective side can be achieved by different actions consisting of forgery, deletion, removal or modification of markings on lethal weapons.

According to article 90, paragraph (1) of Law no. 295/2004, republished, called “marking of arms and ammunition”, gunsmiths manufacturing arms and ammunition in Romania of the categories set out in section A-C and category D, points 25-29 of the Annex are required, in their manufacturing process, to apply the arms, ammunition and ammunition packages markings for identification and for tracing them. The ammunition packs, in the legal sense, means the smallest unit of complete ammunition packaging.

In paragraph (2) thereof provides that the markings for the assembled gun must indicate: a) the manufacturer’s name; b) the country or place of manufacture; c) series, where appropriate, and year of manufacture, if it is not part of the serial number.

The marking referred to in paragraph (2) is applied to at least one essential component of the firearm, the destruction of which would render the firearm unusable [paragraph (3), article 90].

Weapons held by the public institutions involved in the domain of defense, public order and national security can be converted into civil circulation only if they are marked according to the law.

Marking the above mentioned arms is performed by the dealers authorized by law to manufacture weapons or by public institutions with responsibility in the defense, public order and national security domain.

Dealers manufacturing arms and ammunition are required to keep records of the manufactured arms and ammunition in registers established with the notification of the General Directorate of Bucharest Police or county police inspectorates in whose jurisdiction they have their registered office.

By forging markings on lethal weapons it is understood an act by which an authorized person (the dealer) or unauthorized, when building a weapon, imprints on it the data other than those provided by law, the aim being the non-identification of the manufacturer.

In another opinion it is considered that counterfeiting markings on lethal weapons represents the creation or counterfeiting these markings so as to seem authentic [2].

By deleting markings on lethal weapons it is understood an act whereby a person obliterates the markings, an action resulting in total or partial disappearance of the legal markings applied, so that they can no longer be read.

Removing markings on lethal weapons presupposes the action by which a person determines the disappearance of the legal marking applied to a lethal weapon. In the doctrine it has been considered that removing the markings on lethal weapons consists of the action of removing or obliterating markings so that they can no longer be known [2].

Changing markings on lethal weapons means an action that changes or transforms these markings, so that the legal marking applied previously cannot be understood. Similarly, it has been claimed that the markings on lethal weapons means to modify, to change, to transform these markings so that those that initially existed can no longer be deciphered [2].

In order to complete the material element of the objective side, the essential requirement must be fulfilled, which consists in making one of the four actions punishable by law, without right or in breaching the special law.

In a similar opinion, it shows that in order to complete the material element, the incrimination rule requires for the prohibited actions to be performed without right, i.e. under conditions other than those provided for by Law no. 295/2004, with subsequent amendments [4].

The immediate result is to create a state of danger for the activity of registering and tracking the circuit of the lethal weapons.
The causal connection between the incriminated action and the result follows from the materiality of the facts, having no need to be proved.

b) The subjective side includes the subjective element and the essential requirements.

As regards the subjective element, from the examination of the text of incrimination, it results that the form of guilt by which it is acting as the active subject of the offense is the intention of both forms.

There will be direct intent when the active subject of the offense foresees the result of his act, which is to create a state of danger for the activity of registering and tracking the circuit of the lethal weapons, and he seeks this result by committing the act.

There will be indirect intent when a person foresees the result of his act, and although he does not seek it, he accepts the possibility of its occurrence.

In the doctrine it was also appreciated in the same sense, i.e. the form of guilt required by the incrimination rule for the existence of the crime of forgery or alteration of markings on lethal weapons, is the intent, which implies that the offender, at the intellectual level, foresees, seeks or accepts the immediate consequence of his actions, and also to act freely in their implementation [4].

The motive and purpose are not requirements of the subjective side of the examined offense, but establishing them (when available) could be useful as they will be considered in the individualization process of punishment.

3. Identification and application of more favorable Criminal Law for the final judgment of the case

Under the existing transitory situation, under the conditions where the examined offense is committed before 02.01.2014 and it was not finally judged up to this date (date of entry into force of the new Criminal Code), courts will first need to identify and then apply the more favorable criminal law [5].

Considering as the main element only the penalty limits (without being taken into consideration the mitigating or aggravating circumstances or other causes of mitigation or aggravation of criminal liability), we will notice that the most favorable criminal law will be mostly the new law, whose maximum limits are lower, as well as the alternative sentence, the fine.

Thus, if the court is inclined to apply a maximum oriented prison sentence provided by law (3 and 5 years), the more favorable criminal law will also be the new law; if the court is inclined to the imposition of a fine penalty, the more favorable criminal law will also be the new law [5].

If the court is inclined to the imposition of a sentence of imprisonment oriented towards the minimum according to the law, the more favorable criminal law can be any of them, given that they provide the same limit (one year) [5].

We should note that if the court is inclined towards the application of provisions 80 et seq. or 83 et seq. of the Criminal Code, for all cases, the more favorable criminal law will be the new law [5].

Conclusions

The new incrimination of the offense brings a series of significant changes, both in terms of the constitutive content and punishment limits, which are lower.

Among other elements, identifying and applying the more favorable criminal law is an important task of the courts, which in its achievement they must compare both texts of incrimination and all circumstances of the offense, related to criminal liability of the active subject.

References

[3] We should note that the original text was amended by article 245 point 33 of Law no. 187/2012 for the implementation of the Law no 286/2009 on the Criminal Code, published in the Official Monitor of Romania, Part I, no. 757 of 12 November 2012;