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PERSPECTIVES FOR CRIMINALIZATION IN THE FIELD OF EXPLOSIVE MATERIALS REGIME

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Abstract: *All aspects of social life must be regulated, and these norms must be clear and predictable so that the citizen understands them and shapes his behaviour so as not to violate them. In this context, it is essential that the criminal legal norm also meets these standards. The intervention of the legislator is welcome to ensure an up-to-date legal framework. The criminalization rules will be amended and supplemented over time to meet the need to protect social values as a last resort. This is also the case for the criminalization in art. 37 of Law no. 126/1995. The entry into force of these legislative amendments 60 days after their publication in the Official Gazette of Romania is intended to give all citizens the necessary time to know and understand this criminalization rule.*

Keywords: *explosive materials; pyrotechnic articles; incrimination; sanction*

1. Temporal Context

On June 6, 2025, Law no. 92/2025 was promulgated to amend and supplement Law[2] no. 126/1995 on the regime of explosive materials, through which the legislator wishes[3] to harmonize the normative content of the law that it amends and supplements with the

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[2] Republished in the Official Gazette of Romania no 177 of March 12, 2014, with subsequent amendments and additions.

[3]For details, see the Explanatory Memorandum to Law no. 92/2025, available at: https://www.cdep.ro/proiecte/2019/100/50/1/em191.pdf (last accessed: June 6, 2025).

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provisions of two Government decisions[1], which in turn transpose provisions[2] at European level. This law will enter into force on August 9, 2025.

In the art. 37 of Law no. 126/1995, in its current form, before the entry into force[3] of the provisions of Law no. 92/2025, we find a criminal norm with the following content:,,It constitutes a crime and is punishable by imprisonment from 3 months to one year or a fine: a) any operations with pyrotechnic articles carried out without right; b) the offer for sale of pyrotechnic articles in categories 1 and P1 to persons who have not reached the age of 18; c) the offer for sale to the general public of pyrotechnic articles intended for use by pyrotechnicians" .

After the amendment, the content of art. 37 will be as follows:,, (1) The following acts constitute a crime and are punishable by imprisonment from 3 months to one year or a fine: a) the offer for sale of pyrotechnic articles in category F1 to persons under the age of 16; b) the offer for sale by unauthorized natural or legal persons of pyrotechnic articles in category F1; c) the preparation or storage of pyrotechnic articles in category F1 without the authorization provided for in art. 8 or 9; d) exceeding the maximum storage quantity of authorized pyrotechnic article warehouses by more than 25%. (2) The preparation, production, experimentation, possession, transmission in any form, storage, destruction, offer for sale, as well as use of pyrotechnic articles in categories F2, F3, F4, T1, T2, P1 and P2, carried out without right.''

2. Perspectives of Criminalization in the Field of the Explosive Materials Regime

A first aspect that we consider interesting is the one related to the reference in the Explanatory Memorandum to Law no. 92/2025 to the "double criminalization" of the behaviour described in art. 37 of Law no. 126/2025 and in art. 38 of the same law, in the sense of being considered one and the same act and offense and contravention. On the one hand, we mention that the term "criminalization", from a legal perspective, means "the provision in the criminal law of an act as an offense" [4]. Therefore, the term is specific to criminal law and not to contravention

[1] These are Government Decision (G.D.) no. 197/2016 on establishing the conditions for making available on the market and control of explosives for civil use, published in the Official Gazette of Romania no. 250 of April 5, 2016 and G.D. no. 1102/2014 on establishing the conditions for making available on the market pyrotechnic articles. We hereby note a clerical error in the Explanatory Memorandum to Law no. 92/2025, in the sense that it mistakenly refers to G.D. no. 1102/2016 (a normative act that does not exist), not to G. D. no. 1102/2014.

[2] Government Decision no. 197/2016 transposes the provisions of Directive 2014/28/EU of the European Parliament and of the Council of February 26, 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil use, published in the Official Journal of the European Union C 118 of March 29, 2014. Government Decision no. 1102/2014 transposes the provisions of Directive 2013/29/EU of the European Parliament and of the Council of June 12, 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles, published in the Official Journal of the European Union L 178 of June 28, 2013.

[3] Which will take place within 60 days from the date of publication of the law in the Official Gazette of Romania, according to Article II of Law no. 92/2025.

[4] For details, see https://legeaz.net/dictionar-juridic/incriminare (last accessed: June 10, 2025).

law. In essence, it is not about double criminalization, but only about considering a behaviour as both an offense and a contravention.

On the other hand, it is true that we are talking about a double criminalization of a behaviour from the perspective of the existence both the offense of non-compliance with the explosive materials regime, in art. 346 of the Criminal Code[1], and the criminalization in art. 37 of Law no. 126/1995, in the context in which, in accordance with the provisions of art. 1 para. (2) of Law no. 126/1995, the concept of "explosive materials" also includes the notion of "pyrotechnic articles" . The solution in this situation is represented by the application of the provisions of the special law, more precisely those of art. 37 of Law no. 126/1995, the incrimination in the Criminal Code being of a general nature, according to the principle *specialia generalibus derogant*. The existence of this double incrimination was also noted by the Constitutional Court of Romania in point 22 of the considerations of the Decision[2] no. 83/2024.

In essence, although the explanatory memorandum to Law no. 92/2025 speaks both of the "offences under art. 37" [3] and the "offence under art. 37" [4], we consider that in the content of art. 37 we find a single crime, having a basic variant, in para. (1), with four alternative modalities, and an aggravated variant, in para. (2). With the exception of letter d) of art. 37 para. (1), the difference between the basic and the aggravated variant is given by the material object of the crime, being, in the first case, pyrotechnic articles in category F1, respectively pyrotechnic articles in categories F2, F3, F4, T1, T2, P1 and P2, in the second case. By "pyrotechnic articles" we mean, according to art. 4 let. a) of G.D. no. 1102/2014[5], "any article containing explosive substances or an explosive mixture of substances intended to produce heat, light, sound, gas or smoke or a combination of these effects by means of self-sustained exothermic chemical reactions". The categories of pyrotechnic articles referred to by the legislator in art. 37 of Law no. 126/1995, as amended starting from August 9, 2025, represent subdivisions of three large categories of pyrotechnic articles, namely: entertainment, stage and other pyrotechnic articles. The first category, that of entertainment pyrotechnic articles, includes categories F1, F2, F3 and F4[6]. Categories T1 and T2 are included in stage pyrotechnic articles[7]. The category of other pyrotechnic articles includes categories P1 and P2[8].

In the case of the first alternative modality of the basic variant of the crime provided for in art. 37 of Law no. 126/1995, the sale of pyrotechnic articles in category F1 to persons under the age of 16 will be criminalized. As in the case of the other alternative modality and in that of the

[1] This is Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, with subsequent amendments and additions.
[2] Published in the Official Gazette of Romania no. 418 of May 8, 2024.
[3] For details, see the Explanatory Memorandum to Law no. 92/2025, available at: https://www.cdep.ro/proiecte/2019/100/50/1/em191.pdf (last accessed: June 11, 2025).
[4] Ibid.
[5] Published in the Official Gazette of Romania no. 931 of December 19, 2014, with subsequent amendments and additions.
[6] For details, see Art. 12 of G. D. no. 1102/2014.
[7] For details, see Art. 13 of G. D. no. 1102/2014.
[8] For details, see Art. 14 of G. D. no. 1102/2014.

aggravated variant, the passive subject in the case of this crime is the state, as guarantor of the protected social value, a value represented, in our opinion, by public safety which presupposes compliance with the regime of pyrotechnic articles, i.e. the carrying out of all activities involving pyrotechnic articles in accordance with the applicable legal provisions in the matter. We consider that the rules that must be respected, in order not to incur the criminalization provisions in art. 37 of Law no. 126/1995, are, in addition to those in the respective normative act, also those in the content of G.D. no. 1102/2014, in the context in which in art. 1 of G.D. no. 1102/2014 states that this latter normative act establishes "rules that aim to achieve the free movement of pyrotechnic articles on the territory of Romania and the other Member States of the European Union (...)".

The perpetrator in the case of the offense under art. 37 of Law no. 126/1995 is not qualified, in the basic version, in the first three alternative normative modalities, respectively in the aggravated variant, and can be any person who meets the general conditions of criminal liability. A legal person can also be the perpetrator of this offense. In the fourth normative modality of the basic variant, the perpetrator can only be the natural or legal person authorized to store pyrotechnic articles in authorized warehouses. Criminal participation is possible in any of the forms.

In the case of the first alternative normative modality of the basic variant of the offense provided for in art. 37 para.(1) of Law no. 126/1995 it can be the perpetrator of the crime both a natural or legal person authorized to offer for sale pyrotechnic products in category F1, and an unauthorized natural or legal person, provided that this person knew or had the representation that he was selling the respective pyrotechnic articles to a person who was under 16 years of age.

In the case of the second alternative normative method of the basic version of the offense provided for in art. 37 para. (1) of Law no. 126/1995, only an unauthorized natural or legal person who sells pyrotechnic articles in category F1 may be the perpetrator of the offense. An unauthorized natural or legal person is the one who has not previously obtained authorization to produce, possess, transfer, sell pyrotechnic articles or use pyrotechnic objects for technical purposes from the territorial labour inspectorate and the General Police Directorate of the Municipality of Bucharest or the county police inspectorate within which they carry out their activity, as the case may be, in accordance with the provisions of art. 8 para. (3) of Law no. 126/1995.

In the case of the third alternative normative method of the basic version of the offense provided for in art. 37 para. (1) of Law no. 126/1995 it may be the perpetrator of the offense a natural or legal person who prepares or stores pyrotechnic articles in category F1 without the authorization provided for in art. 8 and 9 of Law no. 126/1995. The authorization to carry out the respective activities must be obtained in advance from the territorial labour inspectorate and from the General Police Directorate of the Municipality of Bucharest or the county police inspectorate within whose jurisdiction the activity is carried out, as the case may be.

In the case of the fourth alternative normative method of the basic version of the offense provided for in art. 37 para. (1) of Law no. 126/1995, only the natural or legal person authorized to store pyrotechnic articles in authorized warehouses may be the perpetrator of the offense, taking into account the material element of the offense, namely exceeding the maximum storage quantity of pyrotechnic articles by more than 25%. Specifically, we consider that the act, in this manner, can be committed, for example, by the economic operator using, based on a custody contract, the authorized warehouse, or by the manager of the authorized warehouse or his substitute, both the economic operator and the manager having the obligation to keep records of the items in the warehouse. If the act were committed by any other unauthorized natural or legal person, we consider that the aggravated version of the offense, provided for in art. 37 para. (2) of Law no. 126/1995, in the manner of unauthorized storage, would be retained.

In the case of the aggravated variant of the crime provided for in art. 37 para. (2) of Law no. 126/1995, the aspects specified above are maintained, regarding the perpetrator, when analysing the first three alternative normative modalities of committing the crime.

The material element is represented by alternative actions, both in the basic and the aggravated variant. The meaning of the terms used to describe the material element is that of everyday speech.

For the act to be a crime in the fourth alternative normative modality of the basic variant of the crime, it must be established that the maximum storage quantity of authorized pyrotechnic articles has been exceeded by more than 25%. If the percentage is lower than or equal to 25% of the maximum storage quantity, the act does not constitute a crime.

In the aggravated variant, regardless of the alternative normative method of achieving the material element, it must be established, in order to retain the offense, that the act was committed "without right", that is, by disregarding the legal provisions contained in Law no. 126/1995 and G.D. no. 1102/2014. This aggravated variant represents, in essence, a legislative application of the solution established by the Constitutional Court of Romania by decision no. 83/2024, being a reformulation of the provisions of the current art. 37 let. a) of Law no. 126/1995. More precisely, "(...) the provisions of art. 37 letter a) of Law no. 126/1995 regarding the regime of explosive materials are constitutional to the extent that they concern the operations provided for in art. 346 paragraphs (1) and (2) of Criminal Code, operations involving pyrotechnic articles" [1]. Analysing the alternative normative modalities contained in art. 37 para. (2) of Law no. 126/1995 compared to those in art. 346 paragraphs (1) and (2) of the Criminal Code, we find that the legislator did not take over the alternative normative modalities represented by "processing", "transport" and "stealing", from the provisions of the Criminal Code. We consider that, in the situation where the act consists of any of these actions that affect pyrotechnic articles, the act should be considered as non-compliance with

[1] For details, see the Decision of the Constitutional Court of Romania no. 83/2024, available at: https://www.ccr.ro/wp-content/uploads/2024/05/Decizie_83_2024.pdf (last accessed: June 11, 2025).

the regime of explosive materials, the provisions of art. 346 of the Criminal Code being applied.

The immediate consequence is represented by a state of abstract danger for the protected social value. The causal link must exist but it does not have to be demonstrated, resulting from the materiality of the act. The form of guilt with which the act is committed is the intention, in both its modalities. The motive and the purpose are not elements on which the legal classification of the act depends, but, if they exist in practice, they can be considered by the court to individualize the punishment. Acts of preparation and attempt are possible but they are not punished. The offense is consummated when the material element is achieved and the immediate consequence occurs. It can be a continuing offense. In the manner of possession and storage, the offense is a continuous one. In these last two hypotheses, there is also a moment of exhaustion of the offense.

The punishment provided by law for the offense in art. 37 of Law no. 126/1995 will be imprisonment from 3 months to one year or a fine, in the basic version, respectively imprisonment from one year to 5 years, in the aggravated version. The limits of these penalties are lower than in the case of the penalty provided for the offense of failure to comply with the regime of explosive materials, in art. 346 of the Criminal Code.

3. Conclusions

The legislative amendment made regarding the provisions of art. 37 of Law no. 126/1995 is appropriate because the constitutional provisions must be respected. The clarity and predictability of the incrimination norm lead to a better understanding of it and to an increase in the chances of citizens adopting a behaviour that does not violate it.

4. References

Law no. 126/1995 on the regime of explosive materials

Law no. 286/2009 on the Criminal Code

Government Decision no. 1102/2014 on establishing the conditions for making pyrotechnic articles available on the market

Government Decision no. 197/2016 on establishing the conditions for making explosives for civilian use available on the market and their control

Decision of the Romanian Constitutional Court no. 83/2024 on the exception of unconstitutionality of the provisions of art. 37 letters a) and c) of Law no. 126/1995 on the regime of explosive materials

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