

**The Constitutive Content of the Offense of not Complying
with the Regime of Explosive Materials
in the Romanian Criminal Law**

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Abstract: In the present work we examined the constitutive content of the offense of not complying with the regime of explosive materials, according to the new provisions of the new Criminal Code. The paper can be helpful both to theorists and those who carry their activity in preventing and combating crime of this kind. The innovations consist of the objective and subjective side examination of the crime, focusing on the changes in its legal content.

Keywords: offense; objective side; the subjective side; the essential requirements

1. Introduction

The offense of not complying with the regime of explosive materials is provided for in the Criminal Code of 1969 article 280. By the compared examination of the two texts, one can find some elements of similarity and distinction. Thus the text content of paragraph (1) of article 346 of the new Criminal Code and paragraph (1) of article 280 of the Criminal Code of 1969 is identical.

At paragraph (2) of article 346 of the new Criminal Code and article 280 paragraph (2) of the Criminal Code of 1969, the content of circumvention offenses are identical, the differences consisting in only of the minimum and maximum penalties, which are lower in the new law (imprisonment from 3 to 10 years, to imprisonment compared to 5 to 15 years).

The offense of paragraph (3), article 280 of the Criminal Code of 1969, which is an aggravated way of the offenses of paragraph (1) and (2) of the same article, which consists in the quantity greater than 1 kg TNT equivalent or when the quantity of explosive materials is accompanied by the initiation materials, it has as correspondence in the offense in paragraph (3), article no 346 of the Criminal Code in force, the only difference being the limits of punishment (imprisonment from 5

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to 12 years in the new law, compared to imprisonment from 5-20 years of the applicable law).

The aggravated manner provided in paragraph (4), article 280 of the Criminal Code of 1969, has no correspondence in the new law.

The differences regarding the limits of punishment appear also in the contents of the aggravated ways provided for in paragraph (5), the article 280 of the Criminal Code of 1969 and paragraph (4), the article 346 of the Criminal Code in force.

Another element of differentiation regards the renunciation of the legislator of the New Criminal to the incrimination of the act of threat, addressed to a foreign state, an international organization or a physical or legal entity, with the use of explosives in order to cause injury or death to persons or damages to property and the aggravated way of this offense, both incriminated to the contents of paragraph (6) and (7) of article 280 of the Criminal Code of 1969. As elements of similarity between the two indictments we retain the identical marginal name and the punishment of the attempt.

2. The Objective Side

As other offenses, the objective side includes the material element, the essential requirements, the immediate result and causality connection.

In the case of the offense referred to in paragraph (1), the **material element** of the objective side consists in performing one of the actions punishable by the law, namely: producing, testing, processing, possession, transportation or use of explosives or any other operations on their movements (Boroi, 2006, p. 464). Using the phrase “*any other operations on their movements*”, the legislator has established the punishment of any other transactions that is not expressly mentioned in the law, but it is not permitted by the law.

To producing means “*to create, to build explosives; to experiment involves a check, to test the quality of the explosive material, and processing presupposes technological operations in order to obtain finite products.*” (Pascu & Gorunescu, 2009, p. 514)

Possession of explosives means receiving them and their retention by a physical or legal entity, regardless the title (storage, loan, purchase, donation, etc.), for a period of time and in what quantity (Pascu in Dobrinou et al., 2012, p. 838).

Transporting explosives involves moving them from the manufacturing place or storage to another place, involving a different building, city, country etc. **The use of** explosive materials involves their use regardless of the way or purpose in which it is achieved (for production, manufacturing ammunition for experimentation or for making fun objects etc.). (Pascu in Dobrinou et al., 2014, p. 781)

Any other operations on the movement of explosives means performing other direct activities relating to explosive materials, activities regulated in Chapter III of the special law entitled “*Operations with explosives and their record.*” These operations included: handling the actual explosives, initiating and ignition means (activities that are carried out under the direct supervision of fireworks authorized only with special trained personnel for such operations), loading, transferring, unloading, storage, destruction, sale and so on.

For the existence of the material element it is sufficient for the active subject of the offense (legal or physical entity) to perform a single action of those provided by the law.

In the judicial practice can find situations where there were executed several such actions (production, possession and transport), in which case the liability of the author will be retained for the commission of a single offense (not a series of offenses). Evidence of such actions is important in determining the individualization of the penalty. In the case of incrimination provided in article 346, paragraph (2) the material element by which it is achieved the objective side consists of the action of evasion (theft).

To complete the objective side of the offense, it is necessary to be fulfilled more **essential requirements**. Thus, in the case of the offense referred to in paragraph (1) the essential requirement consists of performing an action expressly provided by the legislator or other operations on the movement of explosives, **without right**. By the phrase “without right” it is meant the performance of any action of those incriminated by law or the performing of other operations on the movement of explosives, in violation of the provisions laid down by law, such as those established in Chapters II and III of the regulatory framework act.

Another essential requirement refers to the nature of the explosives, which must be one of those categories expressly provided by law in article 1 paragraph (2).

In the case of the offense referred to in paragraph (3) in addition to the mentioned essential requirement it is necessary to be fulfilled also the one referring to the volume, which must be less than 1 kg TNT equivalent or regardless of the explosive amount quantity, which is accompanied by the initiation materials.

The **immediate result** in the standard modality consists of creating a state of danger for the social values protected by the rule of incrimination. In the case of the modality provided for in paragraph (2) of article 346, the immediate result is the production of an injury to a physical or legal entity, to which the explosive materials were stolen.

For the aggravated manner at paragraph (4) of article 346 the immediate result is the death of one or more persons.

The causality link between the action that constitutes the material element of the objective side and the immediate consequence, it results implicitly, without being necessary to be established in the case of paragraph (1), (2) and (3). For the offense of (4) which represents an aggravated way, the immediate result must be proved.

3. The Subjective Side

The form of guilt, with which the active subject acts, is direct or indirect intent. There will direct intent whenever the active subject of the offense, foresees the result of his act and he seeks its production by the commission of the action prohibited by the law. The indirect intention will be retained when the active subject of the offense foresees the result of his act, and although he does not seek it, he accepts the possibility of its production. In the case of the aggravated manner provided for in paragraph (4) the form of guilt is exceeded intention (*praeter intentionem*).

4. Conclusions

In Romania the explosive regime is regulated by Law no. 126/1995 on the regime of explosive materials republished.¹

The mentioned legislative act governs the preparation, production, processing, testing, storing, transiting on the territory of the country, transmitting in any form, transfer, transportation, marketing, storage, loading, shackling, development, destruction, handling, sale and use by the authorized legal or physical entities of explosive materials.

Under the provisions of article 1 paragraph (3), the text of the normative act does not affect the legal regime of the explosives for civil uses, as regulated by the Government Decision no. 207/2005 on establishing the essential safety requirements of explosives for civil uses and conditions for placing them on the market, as amended and supplemented, and the Government Decision no. 612/2010 on establishing the essential security requirements of pyrotechnic articles and the conditions for the placing them on the market.

Production and processing explosive materials are allowed only to legal entities which have authorization from the Labour Territorial Inspectorate of their jurisdiction.

In accordance with the provisions of article 5, placing on the market the explosives for civil use and pyrotechnic articles shall be allowed only under the conditions in which there are respected the essential requirements applied to them, established by

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the current legislation which aims at ensuring a high level of protection of human health and safety, consumer protection and safety and the environmental protection.

For the placing on the market of explosives for civil use and pyrotechnic articles there must be respected the provisions of Regulation (EC) no. 1.907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), for establishing a European Agency for Chemicals, amending Directive 1999/45/EC and repealing Council Regulation (EEC) no. 739/93 and Commission Regulation (EC) no. 1.488/94 and Council Directive 76/769/EEC and Directives 91/155/EC, 93/67/EEC, 93/105/EC and 2000/21/EC of the Commission, as amended subsequently, published in the Official Journal of the European Union no. L 396 of 30 December 2006, and the Regulation (EC) no. 1.272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labeling and packaging substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No. 1.907/2006, published in the Official Journal of the European Union no. L 353 of 31 December 2008.

For the purposes of the law (article 6), *the holder of explosive materials* means any physical or legal entity with unlawfully possession or detention of such materials.

Regarding the physical entities (article 7 of the Law), they have no right to own, use, transport, store, or experience to handle explosives for civil use or pyrotechnic articles unless they prove the quality of the firework, the licensed pyro-technician and it does not represent an authorized legal entity and it is not registered according to the legal provisions.

In Chapters II and III of the Act there are regulated the licensing and registration of the holders of explosives, explosive materials operations and their record, and in Chapter IV in article 37¹ there are provided the offenses.

After examining the legislative act framework, it results that the incrimination of the act of non-complying the regime of explosives in the Romanian law, it was determined on the one hand, by the evolution of international crime in the area, with direct effects on the Romanian territory, and on the other hand the need to respect the obligations imposed by the norms of the international legal documents to which Romania is a party.

The offense provided for in article 346 paragraph (1) it consists of the production, testing, processing, possession, transportation or use of explosives or any other operations on their movements, without right. The execution of these actions incriminated by the law, no right, it means their performance breaching the

¹ Article 37 of Law no 126/1995, republished, it was modified by article 52 of Law no 187/2012.

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

At paragraph (2) of article 346 of the new Criminal Code it is provided the offense of evasion of explosives. Paragraph (3), article 346 provides the first aggravated way, which would be incident under the conditions in which the acts provided for in paragraph (1) and (2) relate to an amount of less than 1 kg TNT equivalent or when the explosive amount is accompanied by the initiation materials. At paragraph (4) is provided another aggravated way which will be retained when the acts described in paragraphs (1)-(3) resulted in the death of one or more persons.

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