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OFFENCES UNDER LAW NO. 206/2025 ON AQUACULTURE. LEGISLATIVE TECHNICAL ASPECTS

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Abstract: *Law no. 206/2025 on aquaculture, which entered into force on December 7, 2025, is an extremely useful legal instrument in the reference field because it establishes the legal framework for the development of this economic sector in our country, while ensuring the possibility of sustainable development in the rural environment. Like any other normative act regulating a specific field, this law also contains the chapter on liability and sanctions, which also includes the part of incrimination norms. These incrimination norms are part, according to art. 173 of the Criminal Code, of the scope of the concept of "criminal law". In this context, it is necessary to analyse the legal content of the offenses in this law, emphasizing the norms of legislative technique.*

Keywords: *aquaculture; offense; sanction; legislative technique; criminal law.*

1. Introduction

Through Law no. 206/2025 on aquaculture (published in the Official Gazette of Romania no. 1120 of 4 December 2025), which entered into force on 7 December 2025, a distinct legal framework was created for the performance of aquaculture activities. From this point onwards, the fishing sector, which remains regulated by the Government Emergency Ordinance no. 23/2008 on fishing (published in the Official Gazette of Romania no. 180 of 10 March 2008, with subsequent amendments and completions), is separated from the aquaculture sector, an aspect also highlighted by the final provisions of Law no. 206/2025, in art. 77 para. (1) of this law being stipulated which provisions are repealed from the emergency ordinance mentioned above.

In art. 2 point 2 of Law no. 206/2025, aquaculture is defined as "the activity of raising or cultivating aquatic organisms, using techniques designed to increase the production of the organisms in question, through population, ensuring food resources, protection from pests, in a framework in which the respective organisms remain the property of a natural or legal person throughout the entire period of raising/cultivation and harvesting".

In art. 1 para. (1) of G.E.O. no. 23/2008 it is provided that "this emergency ordinance regulates the protection, conservation, management and exploitation of living aquatic resources, aquaculture activity, processing and marketing of products obtained from fishing and aquaculture (…)". In the context in which the very title of the emergency ordinance was modified by the entry into force of the provisions of Law no. 206/2025, in the sense of referring only to fishing, and considering that in art. 77 para. (2) of Law no. 206/2025 it is provided that the phrase "fishing and aquaculture" in the emergency ordinance is replaced by the phrase "fishing", we consider it an omission by the legislator to continue referring to aquaculture in

the ordinance and we propose *de lege ferenda* the elimination of the term "aquaculture" from that normative act. Furthermore, we specify that it will not be possible to replace the phrase "fishery and aquaculture" everywhere in G.E.O. no. 23/2008 because the name of the state institution that manages "the definition and implementation of the policy regarding the conservation and management of living aquatic resources, existing in maritime and continental waters, aquaculture, processing and organization of the market for fishery products, fishing and aquaculture structures" (for details, see: https://www.anpa.ro/?page_id=372, last accessed: December 4, 2025) is still the National Agency for Fisheries and Aquaculture.

In art. 2 point 18 of G.E.O. no. 23/2008, "fishing" is defined as "the activity of extracting living aquatic resources from natural fish habitats, in compliance with the measures for the protection, conservation and regeneration of living aquatic resources". Therefore, fishing is carried out only in natural habitats. Moreover, in art. 2 point 18^1 of G.E.O. no. 23/2008, "fishing for scientific purposes" is defined as "the extraction of living aquatic resources from natural fish habitats and from fish facilities, according to the approved annual plan, at any time of the year, including during periods of prohibition, in any area, for any aquatic species, at any age and size, with the use of any methods, tools, devices and fishing nets, both during the day and at night, based on the special authorization for fishing for scientific purposes". We note that scientific fishing is also carried out in fish farms. This situation seems interesting to us, in the context in which both Law no. 206/2025 and G.E.O. no. 23/2008 use the same terms, for example, "recreational fishing", respectively "fishery" and "fishing", but only some benefit from a definition and this is identical, in both normative acts, or the definitions are different, respectively they are not defined. We take into account that the phrase "recreational fishing" is defined identically in both normative acts, the term "fishery" has a different meaning in each of the two normative acts. Thus, in art. 2 point 22 of Law no. 206/2025, "fishery" is defined as "the set of activities relating to fishing, aquaculture, processing and marketing of fish. This term can also define a segment of this set for a species or a group of species". In art. 2 point 17 of G.E.O. no. 23/2008, "fishery" is defined as "the set of activities concerning fishing, processing and marketing of fish. This term can also define a segment of this set for a species or a group of species". The difference is given by the lack of reference to aquaculture.

The phrase "fishery development" is used in the Emergency Ordinance no. 23/2008 but without being defined, but the definition of this phrase is found in art. 2 point 8 of Law no. 206/2025, as follows: "the basic unit of aquaculture, represented by a production capacity formed by the set of a land or a marine or freshwater area and the fishing assets located on it".

Fish farming developments are: bayou, pond, floating fishpond, reservoir in which aquaculture is practiced, recirculating aquaculture system and submerged aquaculture facilities.

On the other hand, the term "fishery" is not defined in Law no. 206/2025 although it is used. In this context, we consider that in the notion of "recreational fishing" in Law no. 206/2025, fishing, which is not defined, has the meaning in everyday speech (for details, see: https://dexonline.ro/definitie/pescui/definitii , last accessed: December 4, 2025), according to the norms of legislative technique (we have in mind the provisions of art. 36 paragraph (4) of Law no. 24/2000 on the norms of legislative technique for the elaboration of normative acts,

republished in the Official Gazette of Romania no. 260 of April 21, 2010, with subsequent amendments and additions), and thus, no distinction is made between the activity carried out in the natural environment or in fishing facilities. However, we cannot overlook the provisions of art. 37 para. (1) and (2) of Law no. 24/2000, in the sense that "in the normative language the same notions are expressed only by the same terms" [art. 37 para. (1) of Law no. 24/2000] and "if a notion or term is not established or may have different meanings, its meaning in the context is established by the normative act that establishes them, within the general provisions or in an annex intended for the respective lexicon, and becomes mandatory for the normative acts on the same subject" [art. 37 para. (2) of Law no. 24/2000]. However, we consider that both Law no. 206/2025 and G.E.O. no. 23/2008 are normative acts on the same subject, given that both activities, aquaculture and fishing, are managed by the same structure, namely the National Agency for Fisheries and Aquaculture, which is why we believe, on the one hand, that the terms used in these normative acts can only have the same meaning, and, consequently, the same legal definition, and, on the other hand, there was no need to define the terms in both normative acts, having the same meaning.

We consider all these aspects important in the context in which we find, in both normative acts, identical incriminations, as we will show below. The only difference between them lies in the field in which they apply, namely some in the field of aquaculture, others in the field of fishing. Thus, if the identical incriminated activity is carried out in the natural environment, the provisions of the Emergency Ordinance no. 23/2008 will apply, and if it is carried out in fishing facilities, the provisions of Law no. 206/2025 will apply.

2. Offences under Law No. 206/2025

We would like to address, first of all, the issue of incrimination containing the reference: "the following acts constitute contraventions (…) if they do not constitute a crime according to the criminal law". As we have shown on other occasions (M. Rotaru, *The Offence of Disturbing Public Order and Peace. Theoretical and Practical Aspects* in the volume of the scientific conference with international participation "Challenges and Strategies in Public Order and Public Safety", 11th edition, University Publishing House, Bucharest, 2025, ISSN 3119 – 9550 ISSN-L 3119 – 9550, pp. 20-25), the delimitation between contravention and crime can no longer be made by referring to the difference in social danger of the prohibited behaviours, given that social danger is no longer an element in the definition of crime. At this point, the differentiation between contravention and crime will be made through a comparative analysis of the norms in which they are described, in order to identify the elements of differentiation that can be ascertained in practice, elements of differentiation that can be located, for example, at the level of the material element or the immediate consequence.

In art. 72 of Law no. 206/2025, five behaviours are described that constitute contravention if they do not constitute a crime, as follows:

,,a) the destruction or degradation through negligence of dams, dams and canals, of slopes and banks, of hydro technical installations related to fishing arrangements, if it does not constitute a crime according to criminal law;

b) the reduction through negligence of the water flow on natural or managed watercourses, if this endangers the existence of living aquatic resources within fishing arrangements, if it does not constitute a crime according to criminal law;

c) the destruction, degradation or negligent reduction of the perimeter protection areas of fish facilities, if it does not constitute a crime under criminal law; (…)
f) the failure to install or the destruction of devices that prevent fish from entering water supply systems, irrigation, as well as hydropower installations that have fish facilities as a water source, if it does not constitute a crime under criminal law;
g) the failure to install or the destruction of devices that prevent fish from entering water supply systems, irrigation, as well as hydropower installations, if it does not constitute a crime under criminal law".

In the case of the behaviour under art. 72 letter a) of Law no. 206/2025, it is easy to differentiate the misdemeanour from the crime because, considering the provisions of art. 255 of the Criminal Code, which criminalizes the act of negligent destruction, dams, canals, embankments, banks and hydro technical installations are goods, in the sense of the material object of the crime of negligent destruction, but their destruction or negligent degradation is a crime, in the basic version, if it is committed by arson, explosion or by any other such means and if it is likely to endanger other persons or property, respectively, in the aggravated version, if the acts resulted in a disaster [according to art. 254 para. (2) of the Criminal Code, "disaster consists of the destruction or degradation of immovable property or of works, equipment, installations or components thereof and which resulted in the death or bodily injury of two or more persons"]. In the absence of the means shown above or of the specific immediate consequence, the act described in art. 72 letter a) of Law no. 206/2025 can only be a contravention.
We consider the reference, in the introductory part of this approach, to fish farming arrangements important in the context in which the behaviour described in art. 72 letter a) of Law no. 206/2025 is identically specified in art. 63 letter a) of G.E.O. no. 23/2008, both being contraventions if they are not crimes. Since the norm in art. 63 letter a) of G.E.O. no. 23/2008 refers to fish farming arrangements, these being specific to the field of aquaculture, not fishing, we propose *de lege ferenda* its repeal.

In the case of the behaviour described in art. 72 letter b) of Law no. 206/2025, different from the situation in letter a), the negligent reduction of the watercourse, thereby endangering the existence of living aquatic resources within aquatic facilities, could constitute a crime only if we also consider the crime of negligent destruction, living aquatic resources being goods, the act being committed by means of the nature of those described in the norm in art. 255 paragraph (1) or if the consequence in art. 255 paragraph (2) of the Criminal Code occurs.

The behaviour described in art. 72 letter b) of Law no. 206/2025 is identically specified in art. 63 letter c) of G.E.O. no. 23/2008, both being contraventions if they are not crimes. We consider that the norm in art. 63 letter b) of G.E.O. no. 23/2008 should not also refer to managed watercourses because these are specific to aquaculture. We thus propose, *de lege ferenda*, to repeal the reference in the norm to these.
In the case of the behaviour in art. 72 letter c) of Law no. 206/2025, the reduction has the value of rendering the goods provided by the legislator unusable. The arguments presented in the analysis of the norm in letter a) remain valid for the differentiation between a contravention and a crime, in the case of this behaviour.

The behaviour described in art. 72 letter c) of Law no. 206/2025 is identically specified in art. 63 letter d) of G.E.O. no. 23/2008, both being contraventions if they are not crimes. We consider that the norm in art. 63 letter d) of G.E.O. no. 23/2008 should *de lege ferenda* be repealed because fish facilities are specific to aquaculture.

In the case of the behaviour described in art. 72 letter f) of Law no. 206/2025, we note that the form of guilt with which it is committed is intention. Therefore, we consider that the act could be classified as the crime of destruction, according to art. 253 of the Criminal Code. From this perspective, we consider it difficult to differentiate between the contravention in question and the crime of destruction, as long as the act is not committed intentionally by arson, explosion or any other such means and if it is likely to endanger other persons or property, in which case it would be the crime of destruction, in one of the aggravated variants, more precisely the one in art. 253 para. (4) of the Criminal Code. Otherwise, we consider that the act described as a contravention would always fall within the content of the crime of destruction, as we cannot imagine any situation in which the act specifically committed would not be a crime.

The behaviour described in art. 72 letter f) of Law no. 206/2025 is also described as a contravention in art. 63 letter e) of G.E.O. no. 23/2008, with the mention that in this latter article, the reference is no longer made that the water source is from the fish farming facilities. However, since the legislator does not distinguish, in the above-mentioned article of the Emergency Ordinance no. 23/2008, between the water sources considered, we must not distinguish either. We will therefore consider both natural sources and fish farming facilities. However, this cannot constitute the will of the legislator, as there is now a distinct normative act for the regulation of aquaculture. We propose *de lege ferenda* the introduction into the content of the norm from art. 63 letter e) of the Emergency Ordinance no. 23/2008 of the natural source of water, that of natural fish habitats.

In the case of the behaviour in art. 72 letter g) of Law no. 206/2025, we note that the form of guilt with which it is committed is intention, as in letter f). The difference between the content of letter f) and letter g) is the failure to specify, in the case of the latter norm, the water source. Considering the arguments presented in the previous paragraph, the norm in letter g) also includes that in letter f). From this perspective, the norm in letter f) should be repealed, being redundant.

The other aspects specified in the discussion regarding the possibility or not of retaining a crime in the situation in question remain valid.

The behaviour described in art. 72 letter g) of Law no. 206/2025 is also described as a contravention in art. 63 letter e) of G.E.O. no. 23/2008. The aspects presented above regarding the need to supplement this latter norm remain valid.

In art. 73 para. (1) of Law no. 206/2025 we find the criminalization of the act of theft, as follows: "extracting fish, as well as water from fish farms without the consent of the fish farm administrator constitutes the crime of theft, provided for in art. 228 of Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented".

Fish and water from fish farms constitute movable property and may be the material object of the crime of theft. From the perspective of the direct active subject, in the case of this crime, the author can be any person who meets the general conditions of criminal liability. Criminal participation is possible in any of the forms.

The passive subject is the owner or holder of the fish farm, this being the one to whom the fish and water from the fish farm belong.

From the perspective of the material element, part of the *actus reus* of the crime, it is represented by the action of "extraction". This term is synonymous with "taking" (for details, see: https://www.dictionardesinonime.ro/?c=extrage , last accessed: December 5, 2025), which is the one that designates the material element in the case of the crime of theft, according to art. 228 para. (1) of the Criminal Code. For the act to be a crime, the condition that the extraction action be committed without the consent of the fish farm administrator must also be met.

From the perspective of the immediate consequence, we consider the change in the state of affairs of the respective movable assets, namely the fish and water coming from the fish facilities. The causal link does not have to be demonstrated, resulting from the materiality of the act. From the perspective of the *mens rea*, the form of guilt with which the act can be committed is intention, both direct and indirect. We affirm this in consideration of the provisions of art. 16 para. (6) of the Criminal Code. The motive is not an element on which the legal classification of the act in the crime of theft depends, but if it is specifically found, it will be taken into account when judicially individualizing the punishment.

Regarding the purpose, in the crime of theft, in accordance with the provisions of art. 228 paragraph (1) of the Criminal Code, for the existence of the crime, the purpose of unjustly appropriating the movable property of another must at least be pursued, if not achieved. However, in the case of the crime described in art. 73 para. (1) of Law no. 206/2025, the legislator does not make any clarification regarding the purpose. Under these conditions, in the absence of the purpose of unjust appropriation, the act cannot be theft. A solution for this aspect would be for the legislator to intervene to also introduce the purpose of unjust appropriation into the content of the norm in art. 73 para. (1) of Law no. 206/2025 or another solution would be to specify: "the extraction of fish, as well as water from fish farms without the consent of the fish farm administrator under the conditions of art. 228 of the Criminal Code". In a specific case, a person extracts fish from the fish farm but not to appropriate it, but to leave it on the shore to die. In this case, the act of that person cannot be classified as theft, but as destruction, leaving the criminalization provision in the above-mentioned article inapplicable. Being an intentional crime, in which the material element is represented by an action, the crime is susceptible to preparatory acts but these are not punished. The attempt is punished, according to the provision of art. 73 para. (2) of Law no. 206/2025. The crime is consummated when the immediate consequence has occurred.

We have a clarification to make, in the sense that for the punishment of the attempt, it was sufficient that in the content of art. 73 para. (2) to be specified that the attempt is punished. The reference that the punishment is carried out according to art. 232 of Law no. 286/2009, with subsequent amendments and completions was not necessary because it is not a specific formulation for the criminal law. Moreover, for example, in the content of art. 65 para. (2) of G.E.O. no. 23/2008, when the legislator wanted to criminalize the attempt expressly provided for this, in a concise manner.

The phrase "with subsequent amendments and additions" is not specific to criminal law either because it is redundant. The criminal law in force at the time of the commission of the

act will always apply, with the exception of the more favourable criminal law which will be extraactive.

Moreover, analysing the content of art. 74 para. (1) of Law no. 206/2025, we note that the legislator speaks about the application of the provisions of art. 112 of Law no. 286/2009, in their entirety, in order to subject to special confiscation "tools, fishing boats with their engines and tanks, means of transport, firearms and any other goods used to commit the offenses provided for in art. 228 and 229 of Law no. 286/2009, with subsequent amendments and additions".

We consider that not all the provisions of art. 112 para. (1) of the Criminal Code are applicable in this context, but only those in letters b) and c).

In art. 112 para. (1) letters b) and c) of the Criminal Code it is stipulated that: "the following are subject to special confiscation: (…) b) goods that have been used, in any way, or intended to be used in the commission of an act provided for by criminal law, if they belong to the perpetrator or if, belonging to another person, the latter knew the purpose of their use; c) goods used, immediately after the commission of the act, to ensure the escape of the perpetrator or the preservation of the benefit or product obtained, if they belong to the perpetrator or if, belonging to another person, the latter knew the purpose of their use; (…)".

Also in the content of art. 74 para. (1) of Law no. 206/2025, there is a mention about "the offenses provided for in art. 228 and 229 of Law no. 286/2009. If the legislator specifies in art. 73 of Law no. 206/2025 what theft consists of, in the context of the normative act in question, the same thing does not happen with regard to the offense of aggravated theft, an act incriminated by the provisions of art. 229 of the Criminal Code. More precisely, if the act described in art. 73 para. (1) of Law no. 206/2025 is committed, for the purpose of unjust appropriation, during the night, the offense of aggravated theft will be deemed to have been committed, according to art. 229 para. (1) letter b) of the Criminal Code.

Thus, we propose to supplement the provisions of art. 73 with a new paragraph, which provides that if the act from paragraph (1) if committed under the conditions of art. 229 of the Criminal Code, it will represent aggravated theft.

Another aspect is that related to the content of art. 74 para. (2) of Law no. 206/2025. The legislator speaks about the confiscation of aquaculture products resulting from the commission of crimes, consisting of fish, eggs, other living creatures and aquatic products, however, instead of talking about the application of the provisions of art. 112 of the Criminal Code, as it would have been the case, the latter being provisions of substantive law in the field, the legislator refers to the provisions of art. 249 of Law no. 135/2010 on the Code of Criminal Procedure (published in the Official Gazette of Romania no. 486 of 15 July 2010, with subsequent amendments and completions), article in which we find the general conditions for taking precautionary measures. We propose *de lege ferenda* that reference to be made to the provisions of art. 112 of the Criminal Code.

Another aspect is that of the content of art. 74 para. (3) of Law no. 206/2025. The legislator specifies that, "in the situation where the owner is the author or, as the case may be, an accomplice in the commission of the offenses provided for in this law, the aquaculture products provided for in para. (2) shall be used in accordance with the law". We consider it pertinent to specify that aquaculture products shall not be returned to the author or participant in the offense for which he/she is accused, but *de lege lata* the legislator has lost sight of the

instigator status that the owner of the fishing facility may have. From the logical interpretation of the norm currently in force, using the *per a contrario* reasoning, it follows that aquaculture products provided for in art. 74 para. (2) of Law no. 206/2025 shall not be used in accordance with the law when the owner is the instigator in the commission of any of the offenses provided for by the analysed law. However, this aspect cannot be accepted. We propose *de lege ferenda* to supplement the provision in art. 74 para. (3) of Law no. 206/2025 as follows „(…) author or, as the case may be, instigator or accomplice (…)".

We also return to the analysis of the provisions of the Emergency Ordinance no. 23/2008, in the sense that in art. 2 point 42 we find the definition of "fish theft" as "the criminal activity that consists of the theft of fish stock in whole or in part, by any means or methods, from fishing facilities". In the context in which the defined phrase is not found anywhere in the emergency ordinance, taking into account that "fishery development" is exclusively related to aquaculture, a field that is no longer regulated by the emergency ordinance in question, and given that the incrimination norm is currently found in art. 73 of Law no. 206/2025, we consider it appropriate *de lege ferenda* to repeal the provision in art. 2 point 42 of G.E.O. no. 23/2008.

3. Conclusions

We consider it appropriate to make legislative amendments and additions in each field of social life in order to regulate each activity as best as possible, so as to ensure the progress of society in general. We note that increased attention should be paid to the activity of drafting legal norms, with an emphasis on respecting the specific nature of the incrimination norms, taking into account the predictable nature that they must have. A solution should be found to avoid using the phrase "if it does not constitute a crime" because this would no longer leave it up to law enforcement agencies to establish the line of demarcation between a misdemeanour and a crime.

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