THE CONNECTION AND DELIMITATION BETWEEN THE MATERIAL OBJECT OF THE CRIME AND SOME CRIMINAL TRIAL LAW NOTIONS

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Abstract: Doctrina penală de la începutul secolului identifica obiectul material al infracțiunii cu noțiunea de corp delict. Cu timpul însă, s-a realizat o delimitare clară între cele două entități, existând posibilitatea ca între corpurile delice să se numere și bunul care constituie obiectul material al infracțiunii. Deși, prin definire, obiectul material al infracțiunii este o entitate juridică care apartine dreptului penal, ca drept material, substanțial, acesta poate fi evaluat și ca entitate juridică în cadrul dreptului procesual penal, privind ca ramură de drept formal. După cum rezultă și din conținutul articolului, acest concept îl întâlnim în Codul de Procedură Penală român, acolo unde este reglementată competența unui organ judiciar (art. 27, alin.1, pct. 1, lit. ”a”) ș i totodată se identifică sau, după caz, poate fi confundat cu anumite mijloace de probă sau cu alți termeni procesuali, sens în care am făcut cuvintele precizări pentru ca acești termeni să fie clar delimitați. Pentru o imagine mai clară asupra acestor concepte, am făcut trimitere ș i la câteva Coduri de Procedură Penală din unele țări europene.

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1. As I. Tanoviceanu says „the criminal activity rarely takes place without finding a material object that gathers revealing proofs, either as it is performed, or through its results”¹. From this point of view, the doctrine has established the differences between facti transeuntis crimes, when traces of the crimes disappear, and the facti permanentis crimes, when, on the contrary, the traces of the crime are permanent.

At that time, there were various opinions that identified the term of material object of the crime with the body of the crime (“corpus delicti”). According to Berner, an author of that period, the body of the crime represented the whole material character of the

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crime. Another author, J.J. Haus, said that this term focused on external or physical elements, irrespective of the internal or moral elements.  

2. In time, there has been made a clear delimitation of the two terms. Thus, the doctrine has defined the first term as a legal entity, especially in the criminal law, while the second term, used as legal notion in the criminal trial law, is regulated in the Criminal Procedure Code.  

According to an opinion of the majority, the material object of the crime designates a good (thing, animal, person etc.), on which the criminal acts naturally or accidental, operating physically on the good, exposing it to a danger or causing a material harm to it.  

On the other side, according to article 95 Criminal Procedure Code, the bodies of the crime belong to the category of the assimilated material evidence and are defined as objects that have been used or have been made for being used to commit a crime, as well as the objects that are the product of the crime.  

First of all, the legislator referred to the means made especially to commit a crime. The opinion according to which, a good that has served as a means to commit a crime is evidentiary in a criminal trial, and at the same time, in the situation when it remains with the criminal, it may contribute and serve any time to a new crime, a reason for which it is also regulated in article 118, letter “b” of the Criminal Code, as a safety measure for special confiscation, is unanimously accepted.  

Secondarily, we have taken into consideration the objects representing the product of the crime. In this article, we have taken into consideration the wide sense of the things derived from a crime, as in the provision of article 221 of the Criminal Code (concealment) and not the narrow sense of the things caused through a crime, as provided in article 118, letter “a” of the Criminal Code.  

Those assets that have been created by committing crimes, as false coins or other values, or things made by the illegal practice of a job enter in the category objects that are the products of a crime. The things acquired by committing a crime, that is the things that come into the possession of the criminal or other persons as a result of criminal acts, as for example stolen assets, money or embezzlements are included in the same category.  

Therefore, these objects do not contain or bear the evidence of the crime, but they are connected to this crime or to events that have preceded or followed the crime (e.g. an act preparing the crime) or to various circumstances that may lead to the criminal’s guilt or innocence.  

We also mention that the proper material evidence may be found in article 94 of the Criminal Procedure Code, which defines the objects – material evidence as being the objects that contain or have a trace of the criminal act committed, as well as any other objects that may be used for finding the truth. Thus, the traces are the proper species of the material evidence, as they are in direct connection to the committed act.  

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5 V.Dongoroz, ş.a., *op.cit.*, pag. 232.
But, there are situations when a thing may be any of the above-mentioned terms, at the same time. For this, we exemplify the hypothesis of a vehicle that was stolen, then used for a transportation of illegal weapons, and then abandoned. After the identification of the vehicle, samples of papillary traces were taken, and thus the criminal was identified. In this situation, we may notice that this vehicle had the role of material object of the stealing, product of the same crime, means for the commitment of the crime of not observing the Arms and Ammunition Regulations and at the same time, evidence of the crime.

At the same time, in a case, C.S.J. found out that at the beginning of July 2001, the criminal had passed the frontier illegally in Yugoslavia, where he had repeatedly stolen various things. On the night of 12 August 2001, the criminal stole a motor-boat from the Yugoslavian bank of the Danube, where he stored the stolen goods and passed illegally the Romanian border, being caught by the Frontier Police. In this case, the stolen motor-boat represented the material object and the product of stealing, and at the same time the means for committing the smuggling.

3. From a different approach, the material evidence belong to the evidence means category, which are nothing else than means provided for in the Criminal Procedure Code, according to which the information supplied by the content of an evidence are administered in the criminal trial.

Thus, it results that the evidence may not be taken for the evidence means, as the latter is a legal way by which the evidence is administered in the criminal trial. Indeed, according to article 63 of the Criminal Procedure Code, the evidence is any de facto element that serves to the finding out of the crime, identification of the criminal and knowing the necessary circumstance for the fair solution of the case.

The evidence means admitted in the Romanian criminal trial law are restrictively specified in article 64 of the Criminal Procedure Code and they are the statements of the suspect or defendant, statements of the harmed party, of the civil party and of the party responsible from a civil point of view, statements of witnesses, documents, audio or video registrations, photos, material evidence, technical – scientific findings, forensic findings and expertise.

4. We will analyze certain situations in the Civil Procedure Code when we meet the idea of crime object in the content of the Code and when it is necessary to make the difference between this idea and others with similar names used in criminal trial.

a) Thus, in article 27, paragraph 1, point 1, letter “a” of the Criminal Procedure Code, where the competence of the Tribunal is settled, we find the concept of object, which means the material object of the crime. According to this article, the tribunal decides in the first instance various crimes, among which smuggling, if the object of smuggling is arms, ammunition or explosive or radioactive materials. In this case it is taken into consideration the crime provided for in article 27 of Law no. 86 / 2006, on the Customs Code of Romania.

We will make reference to a few concepts that have a similar form to the material object of the crime. In these cases, we shall make the necessary determinations of a clear delimitation among these concepts.

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b) We will notice that the criminal trial law also operates with the concept of material object, when it is made reference to the criminal trial. The committed crime or the alleged crime makes the material object of the criminal trial, and the criminal law report born from this crime represents the legal object of the criminal trial. The object of the criminal trial, both the material and the legal object, is also called criminal case, criminal litigation or criminal cause, and it is meant to start the criminal trial. The competence, performance rules of the trial activities, the regime of evidence and evidence means, as well as the preventive and assuring trial means are determined according to the object of the criminal trial. The evaluation and legal classification of the crime, as well as the de facto and de jure solution of the criminal case take place according to the finding out of the existence or inexistence of the object of the criminal trial.

Between the material object of the crime and the material object of the criminal trial there is a whole – part relationship, taking into consideration that the act that is the material object of the criminal trial also contains the material object of the crime, alongside the other elements of the crime structure.

c) Article 24, paragraph 1 of the Criminal Procedure Code defines the injured party as a party in the criminal trial, representing the person who has suffered a physical, moral or material harm as a result of the crime, if he / she participates in the criminal trial. Usually, the victim of the crime (material object of crimes against a person) and the injured party are identical. However, there are situations when the victim, who has directly suffered as a result of the committed crime, and the injured party are not identical. In the case of murder, the injured parties are the heirs of the victim. At the same time, the quality of injured party in a criminal trial is determined both by an objective element, independent from the person’s wish, namely the injury of the person as a result of the crime, and also by a subjective element, namely the wish of the injured person to participate in the criminal trial, a wish expressed by exercising the criminal action together with the representatives of the state.

d) The concept of the fact of a case to be proved (factum probandum) is also used in the criminal trial doctrine, in order to solve a certain criminal case, and it shows the limits of legal investigation and evidentiary. At the same time, the object of the evidentiary is the finding out of the existence or non-existence of the crime (of all elements that make the crime), identification of the person who has committed the crime, knowing the circumstances for the fair solution of the case.

The legal criminal evidence is essentially an activity of knowing certain determining human acts, performed previously in space and time, a finding that is performed in a legal frame, in order to find out the truth and to establish the legal relevance of the facts. This assumes the use of methods and means specific to the logic thinking, and the utterance of value judgments meant to emphasize the truth of the act and information elements administered as evidence, as well as their structure in a

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connected evidence system, which will be at the basis of convincing the legal bodies called to apply, the laws.\textsuperscript{11}

The material object of the crime may be evidence in a concrete criminal case, besides the other elements of the crime.

e) Title I, chapter II of the Criminal Procedure Code regulates the criminal action and the civil action. Each object has its own object, which makes the criminal responsible, in a criminal or civil matter, according to the legal grounds of the act.

While article 9, paragraph 1 of the Criminal Procedure Code provides that the object of the criminal case is the criminal prosecution of the criminals, article 14, paragraph 1 of the Criminal Procedure Code stipulates that the object of the civil case is civil prosecution of the criminal, as well as of the party responsible from a civil point of view.

At the same time, in a substantial sense, regarded in its complexity, the object of the criminal case is also the object of the criminal trial, therefore its support. The name criminal case given to the criminal trial, regarded according to its object, derives from this.\textsuperscript{12} For this reason, we make reference to the explanations given to the concept of material object of the criminal trial.

f) The term of object also names the study content and matter, pertaining to the specific categories of criminal trial, reported in the trial phase and in the existing evidence, of which we mention:

- the object of the case (article 70, paragraph 2; article 72, paragraph 1; article 86, paragraph 1 of the Criminal Procedure Code) and the object of the investigation (article 91-2, paragraph 4; article 91-3, paragraph 1) together designate the criminal act that is prosecuted or sent to trial;

- objects and documents – article 96 of the Criminal Procedure Code, mean the relevant evidence in the criminal trial, and for this reason we make reference to the explanations given for evidence means;

- object of the technical – scientific finding – article 113 Criminal Procedure Code, object of the examination – article 120, paragraph 2 Criminal Procedure Code, mention the questions for the specialists, to which they answer in their reports;

- object of criminal prosecution – article 200, Criminal Procedure Code, means the gathering of necessary evidence related to the crime, identification of the criminals and settlement of their responsibility, in order to find out if it is necessary to start the prosecution;

- object of accusation – article 137, Criminal Procedure Code, represents the act for which the accused is investigated;

- object of the trial – article 317, Criminal Procedure Code, is limited to the act and person shown in the notification to the court, and in the case of extension of the criminal trial, to the act and person to whom the extension refers.

We may conclude that although the term material object of the crime belongs substantially to the criminal law, it also has relevance in the criminal trial plan, as it related to the other concepts with which it is necessary to harmonize and fill out.


\textsuperscript{12} V. Dongoroz, ş.a., \textit{op.cit.}, pag. 61.
5. In order to have an overview of the way these entities are used in the criminal trial, it is necessary to relate to other regulations of compared law.

Thus, the German Criminal Procedure Code, the first book, section eight, regulates confiscation. According to this section, “the objects that could be important for investigation, as evidence means, will be held in trust or safety according to another method. If the goods are in the possession of a person, who does not willingly deliver them, it is necessary to confiscate these goods. The above paragraphs also apply for driver’s licenses, which are subject to confiscation (§ 94).

According to § 97, the followings cannot be confiscated:
1. written information between an accused and the persons who have the right to refuse to give evidence, according to § 52 or § 53 of paragraph 1, thesis 1 no. 1 – 3b;
2. the registrations made by the persons shown in § 53, paragraph 1, thesis 1 no. 1 – 3b about the information given to them by the accused or related to other situations on which the right to refuse to give evidence is extended;
3. other objects, including the medical chart on which the right to refuse to give evidence of the persons shown in § 53, paragraph 1, thesis 1 no. 1 – 3b is extended.

These limitations are applied only if the objects are in the possession of the person who has the right to refuse to give evidence, except for the case when the medical chart, in the sense of § 291 of the fifth book of the social code, is concerned. The objects on which the right of physicians, dentists, psychologists, psychotherapists, therapists for children and young people, pharmacists and midwives to refuse to give evidence is extended, may not be confiscated, if these objects are in the possession of a sanitary unit or of a service provider that processes or uses the personal data for the above-mentioned people. The goods on which the right of the persons shown in § 53, paragraph 1, thesis 1, no. 3a and 3b, to refuse to give evidence is extended, if they are in the possession of the counseling institutions shown in these provisions, may not be confiscated.

The judge has the right to order the confiscation. In the case the delay is risky; the prosecution also has this right. The confiscation ordered by the prosecution is not valid, although its result has not been a delivery, if a judge does not confirm it within three days – Criminal Procedure Code § 100.

If in the criminal trial should be decided related to the confiscation of an object and it is credible that the said object belongs to a different person than the accused, or if another person has another right on the object, whose solution could be ordered in the case of confiscation (§ 74e, paragraph 2, thesis 2 and 3 of the Criminal Code), the court orders that the other persons should participate in the trial, as far as this concerns the confiscation (participant in the confiscation process). The court may renounce this provision if, as a result of other facts, there is the presumption that the persons cannot participate - § 431 Criminal Procedure Code.

According to the Dutch Criminal Procedure Code, the legal evidence means recognized are the judge’s own perception, the statements of the accused, witness, experts, written documents. The general acts and situations are not evidence.

By “the judge’s own perception” it is understood the judge’s perception obtained as a result of investigation, in the trial meeting.

In the Belgian Criminal Procedure Code, according to article 39, the injured party is the person who declares to have suffered an injury as a result of a crime. The statement is made personally or through lawyer, by registered mail addressed to the
King’s prosecutor or through statement received by the addressee at the King’s Secretarial Office.

Subsection three regulates the procedure of the investigation of traces and material evidence of a crime. According to this subsection and to the legal provisions that govern these materials, without prejudice related to the special law provisions, the King’s prosecutor and the judicial police may:

- proceed to all acts whose purpose is to gather material evidence of the crime, circumstances, to obtain and keep the evidence;
- go to the place of the crime;
- to start the judicial investigation of the persons who are arrested, and of the persons against whom there is an evidence that they would have proof or proof elements of a crime or offense;
- to start the investigation of a vehicle or other means of transportation;
- to apply the police techniques, observing the principles specified in article 1 and the special legal provisions that govern these techniques;
- to order an autopsy;
- to request the presentation required by the investigation and the findings of the crimes through publicity, telecommunication means and television.

The Italian Criminal Procedure Code uses the concept of evidence object, in article 187, third book, which regulates the proofs. According to this article, the evidence objects are the facts that refer to prosecution (articles 404, 554), impeachable character (articles 45 and the following articles, 85 and the following articles, 308 and the following articles, 384, 387, 398, 463, 599 and 649 Criminal Code) and to sentencing and safety measure (articles 133. 200 and the following articles, Criminal Code).

The facts on which the application of the trial standards depends are also considered evidence object. If a civil action is brought in the criminal proceedings (article 76), the facts related to the civil liability derived from the crime are also considered evidence object (article 185 Criminal Code).

In the sense of the Italian Criminal Procedure Code, the same section establishes and regulates the evidence means, namely the statement, investigation of the parties, confrontation, confession, judicial experiment, expertise and documents. The Italian legislator also operates with means of proof investigation, made of inspections, search, sequesters and conversations or communications interceptions.