

PHILOSOPHIC-JURIDICAL PREMISES OF THE CONCEPT OF “MATERIAL OBJECT OF THE OFFENCE”

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Several points of view about the term “material object of the offence” have been explained in the doctrine, which has led to the birth of a series of categories of this concept as general object, general social object, generic social object, direct object (immediate), juridical object, material object, etcetera. The above mentioned terms are frequently used, by different authors with different meanings.

In an objective approach of offence it was considered that its structure consists primarily of a system of relationships between the subject and the object, between which interdependence arises, interdependence which marks a unity and which materialises into a deed.

From the point of view of subjective law, the individual will of a person who always longs for an object stands out.

A present-day re-evaluation of this concept is necessary under the circumstances in which there are several formal infractions which are void of a material object but which can nevertheless generate material consequences.

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Through the concept of object of the offence, many authors have considered the social value which is defended by the penal code against the detriment that is brought to it through committing an offence. When it comes to stating what this social value consist of, opinions differ. A rich juridical literature has been written on this topic, giving birth to a whole series of categories of the object of the offence: general object, general social object, generic social object, direct object (immediate), juridical object, material object, etcetera. The above mentioned terms are frequently used, from author to author, with different meanings¹.

1. As far as the term *material object of the offence* is concerned, Romanian doctrine has had different approaches, thus recording an evolution.

Professor Traian Popa defined this concept in his 1923 treaty as meaning the physical object which incorporates, externalises, and embodies the property, the right or the interest with penal juridical value, that is, the juridical object. Some of the juridical objects could be incorporated, embodied in physical objects or represented in visible symbols, others could not. Thus, life, health are represented through material objects, the human body; honour, a juridical object, is not represented through a material object².

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¹ G. Râpeanu, *Obiectul Infraçiunii*, Analele Universităţii Bucureşti - Ştiinţe Juridice, 1965, pag. 43.

² T. Pop, *Drept penal comparat, Partea Generală*, Institutul de Arte Grafice „Ardealul”, Cluj, 1923, pag. 277.

Inspired by contemporary French doctrine, the author defined offence starting from the existence of objective and subjective elements. The objective elements are represented by the passive subject, the object of the offence, the exterior action of committing, the result, the active subject and the cause, whereas the subjective elements consisted of the internal (psychical) act of the offence, the will and the intelligence.

In *The Treaty of Law and Penal Procedure*, I. Tanoviceanu noticed the fact that the material object of an offence is the thing or person upon which the direct unjust act is committed. There were, however, situations in which the material object was identified as the passive subject of the offence. At that time, the material object was also considered as offensive body which represented the entire materiality of the offence³.

The author considered that an offence needed an active subject, a material object, a juridical object and action or inaction which generated the punishable result.

In his turn, professor Dongoroz defined the material object of the offence as being a material object or person on whom the offence falls or is intended to, it being considered one of the terms of offence, and not an element of it, because it exists before the offence and it is not a component of it⁴. Offence is conditioned by the existence of some terms, as starting point, which consist of the disposition of incriminating law, juridical object and material object, active and passive subject, the time, place and penal law punishment, in such a way that the structure of the offence is represented by intrinsic conditions – physical manifestation and psychic manifestation, and extrinsic conditions, which in their turn could exist before, be concomitant or subsequent.

Nowadays, the Romanian doctrine oscillates between not considering the object together with the subject as elements of the offence but only the pre-existing conditions of it, because the deed is performed on the subject, whereas according to another opinion the offence is considered to be made up of four elements: object, objective side, subject and subjective side, all of them being necessary for the existence of the offence⁵.

2. Because of the fact that, in time, the controversies and discussions among the constituting elements of the offence have been carried out mainly around the terms of object and subject, I consider that it is vital to take into account the following philosophical-juridical premises of these entities.

In an approach from the point of view of the objective right of the penal law institutions, some authors considered the fact that the structure of the offence consists primarily in the system of the relationship of the subject and the object of the offence⁶. If the offence is, above all, the deed of a person (subject) against a social value, which can or cannot be materialised into an object, a deed which arouses social hazard, that is, it jeopardises the given social value, it means that the subject and the object of the offence are interrelated, one cannot exist without the other one; as a consequence an interdependence forms which marks a unity which materialises into a deed.

On the other hand, as long as the subject acts upon the object, which in its turn defends itself, it means that there is a contradiction between the two of them, a struggle. In fact, here too there is a manifestation specific for our general legal domain of the unity and contradictory struggle, specificity which could be explained as follows: there is no subject without the object of the offence (unity); the deed of the subject produces social hazard, jeopardises the object of the offence (struggle). That is why, it is considered that this is an objective law of the offence and consequently of the penal law as well.

Reporting the two entities to the basic structures of the offence (deed, criminal, punishment) it can be noticed that the subject of the offence will change into object of the repression, in the same way as the object of the offence must be regarded in its transformation in the subject of the repression. Once the offence is committed and the social hazard is created the contraries shift places: the subject will take the place of the object and the object will take the place of the subject, thus the struggle continuing. From this struggle the punishment representing the novelty will arise, which wins thus attaining the goal.

Philosophically speaking, the subject is understood as a being with conscience and will. The subject is the opposite of the object, as an external factor, as the object of knowledge and

³ I. Tanoviceanu, *Tratat de Drept și Procedură Penală*, Tipografia Curierul Judiciar, București, 1924, pag.390.

⁴ V. Dongoroz, *Drept Penal(reeditarea ediției din 1939)*, Editura Tempus, București, pag.166

⁵ M. Basarab, *Studia Universitatis Babes-Bolyai, Jurisprudentia, XXVII*, Cluj Napoca, 1982, pag.58.

⁶ G. Râpeanu, *Legi obiective în dreptul penal*, Analele Universității București, Științe Juridice, nr.2/1971, pag.36.

activity of the subject. Idealist philosophy states that “there is no object without a subject”, that is the external world does not exist apart from consciousness and independently from it, whereas materialist philosophy states that the object does exist independently from the subject, and that without material existence there is not and there cannot be any kind of consciousness⁷.

Filtering everything through our knowledge, the result is a continuous establishing of relationships between subject and object. It seems that between the object and the subject there is a struggle because each tends to take for itself a part from the domain of the other one⁸. That is why, consciously, we either reduce the entire object of knowledge to the subject, to our ego, and then through this process of subjectivising the objects become realities dependent on the subject, or we only reduce some of its functions, or we become part of the vast universe, in the infinite object, regarding our consciousness as a reflex of the exterior phenomena and then the objectivising philosophical concept is born.

The psychical processes of thinking and will (which transposed in the field of penal law regards the subjective side of the criminal), from the point of view of the two entities, object-subject, can be expressed as follows: “when I think about an object, I transform it in my mind and I take from it what is sensitive; I transform it into something that is essential and that is entirely mine, because only through thinking I am myself, only conceiving is the penetration of the object, which is not in my sight anymore and from which I took what was its own, what, as opposed to me, it had for itself⁹. From this point of view, it can be inferred that the subject, through its internal system, acts upon an exterior object.

The rapport between the subject and the object also has a social character because the materialising subject confers some value to those objects, activities or creations which, through their objective features, prove to be able to satisfy needs, human ambitions, and these needs and ambitions are historically and socially conditioned by practice¹⁰. There is an inalienable correspondence between the characteristics of a valuable fact and needs and human ambitions. Value comes in implying a relationship between “something” worthy of being valued and “somebody” who can value, a relationship between the valued object and the valuing subject.

Analysing the values according to the relationship with the external world and not with consciousness, which I approached in a few words above, we have to pay attention to what can be the basis of values¹¹. Tudor Vianu draws attention to the fact that “not any value can be linked to any concrete basis”. For example, if we speak about the value of charity, it is clear that its basis can only be the feature of a person or their deed, so it is a personal value. Edibility, on the other hand, as economic value, can only be connected to things, representing a real value. Generally speaking, the basis of values can be real, personal, but also material and spiritual. In connection with its basis, value can be in an adherent relationship with it (for instance there are values that can only be connected to one thing, just as aesthetic values) or in a free relationship (for example, theoretical values which can be linked to different bases).

Focusing on the entire subject matter of the law, taken as a whole and examining its essential and permanent components, we can notice that it is made up of four elements: subject, object, relationship between subject and object, also called *vinculum juris* and the punishment, or guaranteeing the juridical relationship through protection and constraint¹². Examining the object as element of law it seems that it can only be material (material goods). It also needs to be noted that, except for concrete objects, the goods that are connected to our physical senses and on which man exerts his most energetic right, namely the right to ownership, man has other rights over a number of other goods which are overlooked by this physical institution (the right over the product of his mind, over his ideas, the circumstances that ideas are expressed in a written form do not change the nature of the idea which remains a phenomenon, real goods, but psychic and not concrete).

If the feature of abstract or immaterial of the object, in the subjective personal rights is more easily recognisable and accepted without difficulty, it seems that when a real right is under discussion, for instance the right to ownership, the object of this right seems not to be abstract but

⁷ M. Rozental, P. Iudin, *Mic dicționar filozofic*, Editura de Stat pentru Literatură Politică, București, 1954, pag. 633.

⁸ P. Andrei, *Filosofia Valorii*, Polirom, Fundația Academică „Petre Andrei”, Iași, 1997, pag.17.

⁹ G.W.F. Hegel, *Principiile filozofiei dreptului* (traducere V. Bogdan, C. Floru), Editura IRI, București, 1996, pag.29.

¹⁰ I. Craiovan, *Introducere în filozofia dreptului*, Editura All Beck, București, 1998, pag. 247.

¹¹ I. Biriș, *Valorile dreptului și logica internațională*, Editura Servo Sat, Arad, 1996, pag.107.

¹² N. Buzea, *Introducere în Știința Penală și Noțiuni de Criminologie*, pag.34-39.

concrete being taken for the good on which, materially, the subject exerts their faculties which derive from the right to ownership. The materiality of a good possessed by somebody is nothing but the appearance of the object of the right, because in reality, the object of law, in the cases we are considering, consists of the capacity of that corporal good to be useful, a feature which cannot be sensed by our physical senses.

As for the connection between the subject of the right, that is the material psychic element and its object, namely the utility the owned goods have, it is immaterial through its own nature. This connection is always a concept of our mind, something invisible, because it does not have to be mistaken for its relationship with the proof of that connection.

3. As opposed to the approach achieved through the prism of objective penal law, offence has also been analysed as an institution of subjective penal law. Thus, Filippo Gramatica in his reference volume *Principles of subjective law*, 1934, considered offence as being a product of its author, representing the rebellion against the objective precept comprised in penal norm, being able to be evaluated only in the light of the psychic of its criminal, it being the criminal's state of mind from which their intention and will can be inferred¹³.

After analysing the offence from a subjective point of view the following composing elements can be noticed:

- subjects (active and passive)
- result (the effect) which follows the deed (motif)
- object, which is represented by the good or the interest juridical protected, damaged by the action or the omission of man,
- general and special elements. The general elements consist of the subjective or moral element, comprising the psychic contribution of the criminal and the objective or material element which includes the exteriorisation of the offence. The special or constitutive elements are in fact the means without which the offence could not exist according to the delinquent forms recorded by law.
- the circumstances which add to the elements.

Other authors have noticed that law, under its subjective form, is the acknowledgement of the individual will, because it longs for an object of any kind¹⁴. The object of the will constitutes a good, or for the subject that wants it, an interest. We cannot only just want, we always have to want something: this content of will would be the essential element of the law. That is why, another author, Jhering noted in his work "*The aim in law*" the fact that subjective law represents an interest protected by law. The term *interest* has a broad meaning for the author, it can be applied to any thing, even if its value cannot be measured in terms of money, it only has to be a good for the subject.

4. Coming back to contemporary penal law and observing its evolution, it is necessary to keep up with present-day reality in order to provide the necessary means of real protection of social values. However, new incriminations have emerged which question the institution of *the material object of the offence*, such as offences in the field of information technology, those in the field of copyright or those of intellectual property, as well as some infractions already included in the Penal Code as the theft of certain forms of energy or offences through which "significant disturbance" to certain institutions are brought about or "damage" to some legal interest of a person, etcetera.

From this perspective, a re-evaluation of this entity is necessary. One of the solutions would be adapting an adequate terminology, as it is used in some legislation, such as immaterial, immediate object, object of the action, etc. It would also be possible to use an older method, that of "juridical fiction", according to the antique principle "*art (the law) is a false truth*" which is able both to imitate natural things and to create. Through this latter procedure the contemporary structure of offence would be "conserved", remaining loyal to present-day doctrine.

This is a matter that encourages further reflections and appreciations through the angle of the arguments mentioned in the article and to which we will come back.

¹³ F. Gramatica, *Principii de drept penal subiectiv* (traducere Jean Moruzi), Tipografia Ziarului "Universul", București, 1934, pag. 161.

¹⁴ Giorgio del Vecchio, *Lecții de filozofie juridică*, (traducere de J. Constantin Drăgan), Editura Europa Nova, București, pag. 249