THE CONCEPT OF MATERIAL OBJECT OF THE CRIME IN THE ROMANIAN CRIMINAL DOCTRINE

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ABSTRACT: *The notion of material object of the crime belongs in the first place to the doctrine and in the second place to the legislator since the adoption and entry into force of the criminal legal procedures have been preceded by many controversies and debates in theory, which led to the crystallization of this concept in the criminal law.*

It has now reached an "artificial fragmentation" due to the fact that there were created whole series of categories regarding the object of the crime, such as general object, (general) social object, generic social object, (common) group object, specific object, direct object (immediate), legal object, material object, etc., There are endless debates on these categories, resulting in a real "war of words", facts otherwise ignored by the legal procedure.

In the present context, computerization of the society and the technical revolution led to the evolution of the human intellect product as entities not perceptible to the senses, but acknowledged by the reason such as: copyrights and other related rights, software, information etc. There are other intangible assets as well, relevant within the material domain that can establish the object of aggression through an act perceived by the criminal law: various forms of energy, phone calls, etc.

Therefore, aiming to meet the requirements within the criminal matter and the needs from the objective reality, the most appropriate concept would be the object of action/ inaction, depending on the type of the crime, either committed or omitted.

KEYWORDS: *material object of crime, material goods, intangible goods, crime, object of action /inaction, legal object of crime, direct object of crime, immediate object of crime, terms of crime.*

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The notion of material object of the crime belongs in the first place to the doctrine and in the second place to the legislator since the adoption and entry into force of the criminal legal procedures have been preceded by many controversies and debates in theory, which led to the crystallization of this concept in the criminal law. It is true that this notion, in order to have legal relevance, should be included by the legal procedure in the

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description of different criminal acts, however, because of the fact that, at least the Romanian legislation does not use such a notion, only that of the object of crime, it is still in charge of the doctrine, along with the jurisprudence, to address and resolve controversies related to this notion.

Unlike the criminal legislation, where the material object of the crime knows an extent and significance according to each offence, in doctrine, this concept determines common characters and fundamental principles independently.

1. An important contribution to clarifying the concept of material object of criminal conduct in contemporary Romanian doctrine was made by Vintilă Dongoroz who developed under the new, modern conditions, institutions of the Romanian criminal law.

The author's vision expressed in the treaty of 1939, is that the crime requires the existence of certain terms, respectively pre-existing factors of the crime, consisting of legal object and material object, the active subject and passive subject, the place and time. To these terms there are added the standard conditions imposed by criminal law provisions for the existence of criminal offense of conviction found in the content of incrimination, conditions which may be intrinsic, as they concern the substance of the incriminated activity as a physical activity (objective side) and as a mental activity manifestation (subjective side), plus the extrinsic conditions regarding states, situations, circumstances, which may be pre-existing, ongoing and subsequent to the crime[1].

Referring to the material object of the crime, he considered it as being one of the terms of crime and not an element of the crime as it is pre-existent to the crime and does not involve in the crime content. The interest protected through the incrimination of the act, very often refers to a material object or a human being (e.g. the protected interest in the offense of false coin concerns the material object which is the currency). Sometimes the protected interest couldn't be achieved only through actions that fall on certain objects (e.g. destruction of a property). In all these cases, the object, the animal or the person to which or to whom there has been committed inconvenient action constitutes the material object of the crime.

So by material object of the crime we understand the material thing (object, money, document, animals, etc.) or individual person upon which, the object falls or is carried out the materiality of the crime[2].

The human body could be a material object of the crime even before birth (abortion) and after death (desecration of corpses). But not all crimes have a material object (e.g. perjury, insults, etc.).

The material object of the crime should not be confused with the material tools (means) that could be used to commit a crime - *instrumentum sceleris* (e.g. poison used to kill a person). But sometimes, the means of committing an action could be in the same time the material object of the crime (e.g. illegal wearing of uniform or decorations). Sometimes, a material object of a crime can become subsequently means to commit another crime (e.g. forged document is a material object in the crime of forgery and may become a tool in a scam). Similarly, the material object of the crime should not be confused with

[1] Vintilă Dongoroz, Drept penal (the republished edition 1939), Ed. Tempus & Asociaţia Română de Ştiinţe Penale, Bucharest, 2000, p. 162,172

[2] Vintilă Dongoroz, op. cit., p. 165 and the following.

the traces left by this crime (e.g. a broken safe is a trace in relation to the crime of theft). But not the least, the material object may be exactly the product of crime (e.g. counterfeit currency).

In some cases, the incriminating order can claim a quality, a certain condition of the material object, a case where the quality or the state of the object and not the object itself constitutes a requirement for the existence of crime (e.g. in theft there is the requirement for this to be a mobile thing belonging to another, these states will be requirements for the existence of crime and they will be conditions in the content of incrimination).

Subsequently, in *The theoretical explanations of Romanian Criminal Code of 1970*, professor Dongoroz redesigned and gave a new structure for the crime. Thus, the legal object and the material object, the active and the passive subject, the place and time of the crime are emphasized separately. These concepts will be reflected in the legal content of the crime, made of the premise situation and constituent content. The premise situation represents the pre-existence of a reality that crime is grafted on and the constituent content is composed of objective side (material element, immediate effect, causal link) and the subjective side, regarding the guilt[3].

Meanwhile, the professor redefines the material object, considering that there were criminal acts under the law whose consummation is directed, naturally or by chance on something (a thing, a pet, a person, etc.), operating physically upon it, exposing it to a danger or harming it; this will set up the material object of the crimes, to which he added that the crimes of action contain the material object (committee), there being occasions when certain crimes of inaction (omission) may have a material object (e.g. non delivery of a found property).

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[3] Vintilă Dongoroz, Explicaţii teoretice ale Codului Penal Român, Partea Specială, ed. a-II-a, vol. III, Ed. Academiei Române & Ed. All Beck, Bucharest, 1970, 2003, p. 3 and the following; the opinions of professor Vintilă Dongoroz and the manner in which the crime was structured, along with the other criminal institutions made the foundation of the design for a modern Romanian criminal law and the way of regulating the material object of the crime has been taken over by many of the authors in the criminal law: 1) Costică Bulai, Manual de drept penal, Partea Generală, Universul Juridic Publishing House, Bucharest, 2007, p. 198; 2) Matei Basarab, Drept Penal, Partea Generală, vol. I, Lumina Lex Publishing House, Bucharest, 1997, p. 150 – the author names this concept a material physical object; 3) Ludovic Biro, Drept Penal, Partea generală, University of Babes- Bolyai, Faculty of Law, Cluj, 1971, p. 56; 4) Vasile Dobrinoiu, Gheorghe Nistoreanu ş.a., Drept Penal, Partea Generală, Ed. Didactică şi Pedagogică, R.A. Bucharest, 1992, p. 92; 5) Maria Zolyneak, Drept penal, partea Generală, vol. II, Ed. Fundaţiei "Chemarea" Iaşi, 1993, p.168; 6) Alexandru Boroi, Gheorghe Nistoreanu, Drept penal, Partea Generală, the fourth edition, All Beck Publishing House, Bucharest, 2004, p. 103; 7) Rodica Mihaela Stănoiu, Drept Penal, Partea Generală, Hyperion Publishing House, XXI, Bucharest, 1992, p. 68; 8) Costică Bulai, Avram Filipaş, Constantin Mitrache, Instituţii de Drept Penal, Curs Selectiv pentru examenul de licenţă, the second edition revised and completed, Bucharest, Trei Publishing House, p. 48; 9) Ilie Pascu, Vasile Drăghici,Drept Penal, Partea Generală, Lumina Lex Publishing House, Bucharest, 2004, p. 129; 10) Narcis Giurgiu, Drept Penal General, Ed. Sunset, Iaşi, 1997, p. 162; 11) Augustin Ungureanu, Drept Penal Român, Partea Generală, Ed. Lumina Lex, Bucureşti, 1995, p. 75; 12) Iancu Tănăsescu, Camil Tănăsescu, Gabriel Tănăsescu, Drept Penal General, the second edition, All Beck Publishing House, Bucharest, 2003, p. 159; 13) Mihai Adrian Hotca, Drept Penal, Partea Generală, C.H.Beck Publishing House, Bucharest, 2007, p.231 şi Codul Penal, Comentarii şi Explicaţii, C.H.Beck Publishing House, Bucharest, 2007, p. 209; 14) Marcel Ioan Rusu, Instituţii de drept penal, Partea Generală, Hamangiu Publishing House, Bucharest, 2007, p. 54; 15) Gheorghe Ivan, Drept Penal, Partea Generală, C.H.Beck Publishing House, Bucharest, 2008, p. 44; 16) Ioan Lascu, Drept penal, Partea Generală, Alma Mater Publishing House, Sibiu, 2002, p. 84; 17) Lidia Barac, Constantele şi variabilele dreptului penal, All Beck Publishing House, Bucharest, 2001, p. 47.

2. In the mid twentieth century, the socialist doctrine and the materialistic theories promoted by the Soviet criminal law would have influence on the Romanian criminal doctrine. The doctrine proceeded from the material notion of the crime, where the character of the damaged object had a decisive role[4].

The crime was considered as having an object and an objective side, along with a subject and a subjective side, being wrong to assert that the object, the objective side, the subject and subjective side are elements of the content of the crime, because such elements of the content of the crime don't even exist, and therefore, the crimes cannot be "composed" of them[5].

In this context, the Romanian criminal doctrine would have to structure the crime into an object represented by the social relations affected by crime, an objective side regarding the actual fact, a subject that represented the individual person that committed the deed and a subjective side which concerned the commission of the deed with guilt.

The object of the crime in its turn, was formed in the beginning by the social relations protected by the criminal law aimed at by the actual deed which was considered a crime. Gradually, it came to a diversification of the object of the crime, in such a way that they could speak about a general object of the crime, a particular object and an immediate one.

The general object was considered at that time as being represented by the state or social order or by the law order, stated as a matter of fact in Article 1, paragraph 2 of the Criminal Code. The social relations affected directly by various crimes were the direct object of those crimes (e.g. murder affected the social relations that ensured human life). Eventually, by the meaning particular object of the crime we should understand certain groups of social relations that are harmed by many crimes (e.g. crimes against the person affect the social relations that ensure rights and interests of any person recognized by law).

It was also stressed that it was necessary that all three types of object should not be confused with the material object of the crime. In other words the asset or being affected by the materiality of the infringing activity of the subject (e.g. the crime of destruction – the property damaged, in murder - the victim's body). The legal object, as a necessary element of any crime under all three aspects mentioned above, consisted of relations and not of goods or people, in fact, there were some offenses, such as swearing that had no material object[6].

[4] B. Nikiforov, Locul obiectului în definiţia infracţiunii, Law Issues, no. 2/1958, p. 102.

[5] A. N. Trainin, Teoria generală a conţinutului infracţiunii, Ed. Ştiinţifică, Bucharest, 1959, p. 112 and the following; the paper has been translated from the Russian language into Romanian after the third edition of the monograph completed and published by the author in U.R.S.S., 1957.

[6] Vasile Papadopol, Principii de drept, Ed. Ştiinţifică, Bucharest, 1958, p. 538; a similar approach was made by other authors as it follows: 1) A. A. Piontkovski, Drept penal sovietic, the third edition, Iurizdat, Moscova, 1943, translation Ministry of Justice, p. 56 and the following – the author distinguishes a general object of the crime, which concerns the social relations, an immediate object represented by the public or individual interests of a person, a legal object made of certain juridical provisions and a common object belonging to a certain group of crimes; 2) T. L. Sergheeva, Apărarea proprietăţii socialiste în U.R.S.S. prin mijloace de drept penal, Ed. de Stat pentru literatură economică şi juridică, Bucharest, 1956, p. 18, 22 - thefts of socialist wealth presented as a material object property relations, while the material object was represented by state-owned assets and in case of qualified crimes by the civic public offenses; 3) I. Fodor, Aspecte cu privire la obiectul infracţiunilor contra avutului obştesc, Justiţia Nouă, no. 4/1956, Bucharest, p. 613 - the generic object of this kind of crimes was the public wealth and the material object that was represented by the assets within the public wealth, whose material existence determined the existence of certain social reports regarding the assets;

In this context, dealing with the relationship between the material object and the legal object, Matei Basarab specified that besides the features of being a thing or a being upon which the delinquent acts, the material object should fulfill the condition of being related to the legal object. The lack of the legal object leads to the inexistence of material object[7].

In another opinion, A.N. Trainin appreciated that the material object would be in the same time legal object, motivating that the material object cannot have an independent existence, since in this way there would be a duality of objects of the crime. Moreover, the author has considered erroneously that unlike the legal object of the crime, its material object isn't harmed by the crime and that it is wrong the statement that in the material object of the crime, the legal subject finds its practical and direct expression an that it is wrong the statement that the material object of the crime is a voluntary element of the content that characterizes the objective side of the crime[8].

Regarding the material object, the Russian author T. L. Sergheeva stressed upon the fact that economic crimes are characterized by a material object that is harmed. It is questionable the view based on which the material object is considered part of the objective

4) Berthold Braunstein, Drept Penal al R.P.R., Partea Specială, Iaşi, 1959, p. 78 and the following;5) Stoica Augustin Ovidiu, Drept Penal, Partea Specială, vol. I, Cluj, 1958, p. 302 considered the material object as being the object affected by the action/inaction incriminated and which bears its consequences. 6) Constantin Stegăroiu, Curs Drept Penal, Partea Generală, vol. II, Univ. „V. Babeş", Fac. de Ştiinţe Juridice Cluj, 1957/1958 distinguishes the following categories of crimes, the common object of all types of crimes – the public interests, generic object of the crime, common object of a certain group of crimes, immediate object (material object) – the interest, value, the harmed property; 7) Doru Pavel, Infracţiunea de delapidare, Ed. Ştiinţifică, Bucureşti, 1959, p. 40 – the juridical object of the crime lies in the social relations that concerns the public wealth, and the material object appoints the specific and determined assets, with a patrimonial value upon which it was directed the criminal activity; 8) Aron Mureşan, Matei Basarab, Consideraţii privind obiectul infracţiunilor contra proprietăţii socialiste, Studia Universitatis „Babes Bolyai", Oeconomia et Jurisprudentia, Cluj, 1961, p.1- the object of the crime against the public wealth is formed by the social relations regarding the protection of the public wealth, and in this category of crimes there are included the ones that have as a material object, the assets belonging to this wealth. 9) Justin Grigoraş, Apărararea proprietăţii socialiste prin mijloace de drept penal, Ed. Ştiinţifică, Bucharest, 1962, p. 21- regarding the object of crime there are made the following distinctions: generic object refers to all the social relations defended by the provisions of the criminal law, the group object refers to a part of the social relations defended by the criminal law having as a common object (crimes against the state security) the immediate object- the social relation directly harmed(eg. the external trade as a state monopoly), the material object (the assets brought across the border or to the country in illegal conditions); 10) Maria Cozma, Delimitarea obiectului infracţiunilor economice, The Annals of the Bucharest University, Seria Ştiinţe Sociale - Ştiinţe Juridice, Bucharest, 1967, p.98 - the object of the economic crimes is constituted by the social economic relations that ensures the achievement of the production process, distribution, exchange and consumption of goods, while each economic crime has a specific object.

[7] Matei Basarab, Consideraţii cu privire la obiectul infracţiunii, Studia Universitatis „Babes-Bolyai", Series Iurisprudentia, Întreprinderea Poligrafică Cluj, 1962. In one of his articles, „Opinii cu privire la obiect ca element al infracţiunii şi conţinutul acestuia, published in Studia Universitatis Babes-Bolyai, Jurisprudentia, XXVII, 1/1982, p. 58, he mentions about the two concepts of that period regarding the place and the role of the object of crime: the object and the subject weren't considered elements of the crime but only conditions of this kind and being pre-existent; another opinion was that the crime has four elements: object, objective side, subject and subjective side, all of them compulsory for its existence; among arguments, the author refers to the one of dialectic relation of action/inaction, as a sub element of the objective side with the object of the crime. They cannot be separated within the crime.

[8] A. Trainin, op. cit., p.165 and the following.

side of the crimes or if the physical object perfect the problem to be considered part of the objective side of the crime, or if it is more proper to say that the issue of the material object should be considered a part of the direct object of the crime but there is no reason to eliminate this notion from the Soviet Criminal Law science, unless of course we will deny the indisputable thesis that crimes are directed against social relations and not against any assets.[9]"

An entirely different opinion regarding the structure of the crime at that time had C. Bulai, who considered that we won't find any object nor subject, neither objective nor subjective side, but only features that characterize these elements according to the criminal law so that the act which would present these features to be considered as a crime and its elements to be considered in their turn as constituent components of the crime. In other words, the elements relate to the actual fact, to the act of conduct, to the legal fact and remains outside the content of the crime as long as they don't present all the characteristic features provided by a certain law[10].

The same author, referring to the subject of the crime, considered that this object, along with the subject of the crime, don't belong in the separate chapters within the theory of crime, as they are absolutely necessary conditions for the existence of crime (along with other conditions such as place and time), but not constituent parts of it.

3. A critical position regarding the way of structuring the crime and of crime classification was also adopted by D. Marinescu, who highlighted several negative consequences for the diversification of the object of the crime consequences whose implications highlights the inexorable, urgent nature of the necessity to clarify the raised issue.

According to the author's view, it would be illogical to speak in a chapter about the object of the crime and on the other side to demonstrate that the crime has more objects - under the heading "Classification of the objects of crime" there are presented and defined various objects without specifying the need, importance and classification criteria; - in many crimes, the material object and passive subject are identified as the same person; - in the legal papers it is mentioned that the direct, immediate material object, etc. of the crime consists of either assets either in social relations - it is also considered that the object of the crime is either a constituent of the crime either it is not a constituent, but a "notion", "condition", "aspect" etc.

For these reasons, the author believes that in order to avoid the negative consequences of the distinction made between legal object and material object of a crime, it should be proposed the removal of the term *material object of the crime* from the criminal legal language. Referring directly to the crime of speculation, the author mentioned that by giving up the use of the term material object of the speculation crime does not mean that the legal object is taken for the material object of the crime; because of this it was rejected an inappropriate name given to a part of the content that characterizes the objective side, but that may be discussed in connection with the object of the crime[11].

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[9] T. L. Sergheeva, Cu privire la problema obiectului infracţiunilor economice, The Romanian Soviet Annals, no. 3/ 1961, Bucharest, p. 59.

[10] Costică Bulai, The Annals of the University "C. I. Parhon", nr. 6/1956, Bucharest, p. 147.

[11] D. Marinescu, Despre obiectul infracţiunii de speculă, The Annals of the University of Bucharest, Seria Ştiinţe Sociale-Juridice, no. 27/1963, p. 103 and the following.

The same author subscribes to the position taken by C. Bulai regarding the content of the crime, considering necessary the replacing of the notion "constituent elements of crime" by the notion "features of the crime" this being otherwise an objective necessity. The mere fact of the elimination of these legal terms "elements of crime", "object", "subject", "objective side", "subjective side" will represent a step forward for both criminal law and the science of criminal law, because by excluding what constitutes a perpetual source of controversy it is being created the possibility of achieving the mentioned purpose[12].

4. Professor Gregory Râpeanu also manifested critical attitude towards this "artificial fragmentation" of the object of crime, as many authors are absorbed by the appearance of complexity of the problem, they themselves have come to the point where they complicated things. Indeed, it was written in this area an abundant legal literature, reaching unfortunately to a creation of a whole series of categories for the object of crime: general purpose, general social object, generic social object, object of a group (common), specific object, direct object (immediate), legal object, material object, etc. On these categories there are endless debates, resulting in a true "war of words", issues otherwise ignored by the legal practice.

Referring to the subject and object, the author considers that they are within the notion of crime, and they cannot be considered pre-existent to the crime unless they are separated from it, unless they are given an independent existence, and unless they are overrated.

Equally critical is also the opinion of the author regarding the material object of the crime, the author considering that is not rigorous scientifically to speak of a material object in terms of an object, such as for theft - the stolen object. The crime is not directed against the object, only the crimes of destruction leave this appearance. The material object represents the object of the relation; the object of the law affected by the crime. In theft, and as well as in destruction, the object is the subject of the ownership right. In murder, life is the subject of the right to life etc. The crime is directed against that law, which is also harmed by the theft. It is noted that a so called "material object" is likely to produce only confusion when it comes to the part of the special system of the criminal code, which is based on the criterion of the object of the crime.

According to the author, to admit that the concept of *material object of the crime*, is to refute the meaning given above to the general concept of object of the crime and to admit that the object of the crime may not be only a social relation, but an object, independent from any social relationship. Or it would be incomprehensible how such a thing as a material object of the crime, could proceed dialectically into "subject" of repression[13].

5. A particular interest for the concept of material object of the crime was shown by the professor George Antoniu, who has devoted this concept a special attention in his

[12] D. Marinescu, Examen critic al teoriei infracţiunii, Revista Română de Drept, no. 10/1981, p. 23 and the following.
[13] Grigore Râpeanu, Legi obiective în dreptul penal, PhD thesis asserted at the Faculty of Law, University of Bucharest, 1970, p. 34,157; by the same author, Obiectul Infracţiunii, The Annals of the University of Bucharest, Seria Ştiinţe Juridice, 1965, p. 43 and the following and Legi obiective în dreptul penal, The Annals of the University of Bucharest, Seria Ştiinţe Juridice, no. 2/1971, p. 36.

work. In accordance with the doctrine of time, the professor has designed the object of the crime structured in juridical object of the crime formed of social relations protected by criminal law against the dangerous action/inaction and the material object of the crime, which, just like most authors, he considers that it signifies the material asset, physical thing harmed directly by the act of the criminal. The author also considers that social relations are based on material objects, as the objects, the bodies, the substances from the nature form a necessary part of the social life, participating in the social movements. Acting on these values, material assets, there is brought implicit prejudice to the social relations that regard these values as being related to the interests of the members of society, of the social relations arising in connection with these interests.

The professor considered that there's no finality in the doctrine debates with the disregard of the existence of the material object of crime, as no treatment of this together with the social relation is pointed out, without noting the qualitative differences which separate them. The material object does not form a different object along with the others (which include only social relations), but it is an actual reality, an object of social reality which must be analyzed separately, highlighting the features and limits of that notion[14].

This concept has advanced in the professor's thought, because in a later paper, this concept is redefined as the *direct object* of the incriminated act, representing the object towards which is directed the active subject. The object of crime can be material (human being, animal, thing), but may also be intangible (public order), the direct object is also called *object of the action*. The legal subject is an ideal value of the legal system; it relates to the direct object, usually as the idea relate to its concrete manifestation; whatever is harmed or endangered is the *object of the action* as a real entity and not the legal asset[15].

This point of view is embraced also by the German doctrine, where the material object is designed as an object of the action or inaction, object that can be both material and immaterial, objects that can be affected by the material or immaterial consequences of action[16].

Regarding the place of the material object in the content of the crime, the professor initially stated that although we speak about the content of the crime, we should have in view the content of the incrimination (normative content), where its elements are formed upon a common scheme of all types of crimes, where there is also present the object to which the action is directed.[17] Subsequently, he will use the term generic content of incrimination (instead of the original content of incrimination), for the existence of which it is necessary that all these known elements to participate in the description of the content of incrimination, justifying their inclusion through a process of abstraction among the component realities of this content[18].

Approaching to the method where the material object, along with other elements of the crime, is included in the definition of the crime, George Antoniu pointed out that

[14] George Antoniu, Raportul de cauzalitate în dreptul penal, Ed. Ştiinţifică, Bucharest, 1968, p. 71 and the following.
[15] George Antoniu, Vinovăţia Penală, Ed. Academiei Române, Bucharest, 2002, p. 77.
[16] H. H. Jescheck, Lehrbuch des Strafrechts, Allgemeiner Teil, Berlin, 1988, p. 234 cit. de George Antoniu, Urmarea imediată. Contribuţii, Revista de Drept Penal, R. A. The Official Journal, Bucureşti, no. 1/1999, p. 26.
[17] George Antoniu, Din nou despre conţinutul infracţiunii, Revista Română de Drept, no. 5/1982, p. 31 and the following.
[18] George Antoniu, Structura normei de incriminare, Penal law Review, no. 3/1998, R. A. Official Journal, Bucharest, p. 19.

some elements (including the material object) are not even described explicitly, if they could be assumed easily, based on the other elements. For example, to describe the act of taking a life of a person (murder), which the legislature seeks to incriminate, he points out only the action and the passive subject ("the murdering of a person"). The other elements of the crime are implicit, as, for example, in terms of the material object, the killing can concern only the body of a person. Sometimes, the legislature points out the material object in an explicit way (eg in embezzlement - money, values or assets) in addition to the action/inaction incriminated, along with other elements of the crime.[19]

6. There were Romanian authors who preferred another concept instead of the *material object of the crime*, naming it *direct object, immediate*, which represents also the real social value, protected by the criminal law, with consequences like the action-omission that falls upon it, socially dangerous, and the criminal outcome that occurs upon it.[20]

In this form, the immediate object can be present in all crimes, as it is both of material and immaterial nature. Thus, taking into account the content of the social value directly harmed we can distinguish several classes of direct objects. Characteristic to the result crimes is the direct object of material nature (Article 208 Criminal Code - mobile asset in case of theft) but specific to the crimes of danger there are several categories of the direct object: the object of organizational nature (Article 273 Criminal Code - traffic safety of railway vehicles), moral purpose (Article 205, 206 Criminal Code, insult, slander), political purpose (Article 167 Criminal Code - plot).

7. Florin Streteanu has treated broadly the material object in his treatise, with numerous references to comparative criminal law. In his sense, the material object of the crime is defined as property affected by the immediate action or inaction and which can be harmed or endangered in its integrity by this action[21].

The author pointed out that between the material object and legal object appeared three approaches: in one view it is considered a materialization of the legal object (F. von Liszt, Traian Pop), but in another point of view, it is considered necessary the elimination of the relationship between legal object and material object (F. Gianniti); according to interim opinions, one thing becomes an object of the crime when the projection of the action upon it and its damage causes the harm or endangers the social value protected (C. Bulai, B. Bulai, I. Pascu, M. Cobo del Rosal, ST Vives Anton).

It was also noted that the material object is interposed between the author and the protected social value, as it cannot be injured or endangered only with the price of harming or jeopardizing the material object, reason why it is sometimes called object of action (G Stratenwerth, HH Jescheck T. Weigend).

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[19] George Antoniu, Din nou despre conţinutul infracţiunii, Revista Română de Drept, no. 5/1982, p. 31.

[20] Ion Oancea, Drept Penal, Partea Generală, Ed. Didactică şi Pedagogică, Bucharest, 1971, p. 168; Ion Mircea, Temeiul răspunderii penale în România, Ed. Ştiinţifică şi Enciclopedică, Bucharest, 1987, p. 40; Aurel Dincu, Drept Penal, Parte Generală, vol. I, course of the University of Bucharest, Faculty of Law, 1977, p. 117; Constantin Mitrache, Drept penal român, Partea Generală, the fifth edition revised and completed, Universul Juridic Publishing House, Bucharest, 2006, p. 117; Vasile Pătulea, Structura obiectivă şi subiectivă a pluralităţii de infracţiuni, Revista Română de Drept no. 11/1979, p.29- this author states that the immediate, material object contributes to the lingering with precision in a certain domain of social relations not for the use of qualifying the crime and neither for the characterization of the criminal act representing a unique crime or a plurality of crime.

[21] Florin Streteanu, Tratat de drept penal, Partea Generală, vol. I, C.H.Beck Publishing House, Bucharest, 2008, p. 351.

8. Tamara Manea, in her work on "Tentativa Improprie", also uses the concept of the object of action. Thus, dealing with the issue of criteria settled by the formal theories and the objective theories of conspiracy in order to distinguish preparatory acts from the execution acts enforcement provisions, the author, citing two authors of the Romanian criminal doctrine concludes that they must be considered as acts of execution not only those falling under typical action, but also those who are against the *object of action*.[22]

9. Regarding the place and role of the material object within the content of crime is important to note the opinion of Dragoş Bărcănescu, who approached this concept as part of the crime, along with other components, considering the distinction between *the elements of crime*, *the factors of crime* and *the terms of crime*[23]. Thus, *the elements of crime* were considered by the author as components of each crime, which followed a development in the Romanian doctrine, from Ioan Tanoviceanu, who appreciated that these elements consisted in the material and immaterial element or moral element, and continuing with Vintilă Dongoroz, who considered that the elements of crime were represented by those conditions provided by the incriminating text for the existence of crime.

Also, the author appreciated that the distinction between the *terms of crime* and the *elements of crime* as a logical one that facilitated the understanding of the concept *content of crime*. Concerning the terms of the crime, the author took over the model of professor Dongoroz, thus giving significance for the incriminating disposition, the legal object and the material object, the active subject and passive subject, the place and time of the crime and the criminal sanction, with a reference to the material object which may be found as a term of crime only in the crimes where the protected social value is often expressed through a physical entity, these crimes failing to be designed without pre-existence of this entity. These debated realities called terms, are indisputable distinct from crimes - which basically represent an act of the human being, and thus cannot enter into its composition as component elements, being exterior and pre-existent.

10. There are authors who have replaced the words *terms of crime*, originally used in doctrine, with *the crime factors*, category which includes the object, the subjects, location and time of committing the crime - Constantine Mitrache while Ion Oancea considered the *terms of crime* only the object and the subjects.

Although the distinction between the *terms* or *factors of crime* and the elements of crime was not contested, some authors still confuse the two notions, exemplifying the opinion that the crime would have four elements, namely: object, subjects, objective and subjective side. But this view is criticized by other authors as the object and the subjects are indispensable for the existence of crime that cannot take part in its composition and objective and subjective side represent the two sides of any crime, corresponding to the material activity respectively to the mental attitude.

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[22] Vasile Papadopol, Codul Penal al Republicii Socialiste România comentat şi adnotat, Partea Generală, Ed. Ştiinţifică, Bucharest, 1972, p. 113 and Maria Zolyneak, Drept Penal, partea generală, note de curs, vol. II, Universitatea „Al. I. Cuza" Iaşi, Faculty of Law, 1976, p. 135 cit. de Tamara Manea, Tentativa Improprie- legislaţie, doctrină, jurisprudenţă, drept comparat, Lumina Lex Publishing House, 2003, p. 20.

[23] Dragoş Bărcănescu, Conţinutul infracţiunii şi principiul legalităţii, All Beck Publishing House, Bucharest, 2005, p. 15.

11. Therefore, we want to draw the necessary conclusions in order to achieve a conceptual platform, that would allow us to make an analysis of the way this concept is perceived and regulated by the legislature and also for a review of the judicial practice, just for the idea that through all these, there may be ensured a real protection of social values and implicitly the material or immaterial entities where they are realized.

Of those listed, we can draw out as a first conclusion, the unanimity of opinions in relation to the fact that, the offense is always directed against an entity that is either injured or endangered. This entity can be presented in a physical form, tangible, palpable, in case of material crimes, of result (crimes against property) or in another immaterial, intangible state (crimes against the dignity of a person).

In all these entities must be included the legal interests and juridical values protected by the criminal law, summarized also in Article 1 of the Criminal Code, whose defense is the purpose of criminal law and which are guaranteed and enshrined through the constitutional order.

Regarding the concepts by which should be defined these material - immaterial entities there were held many debates and were developed many theories, which, contrary to the original goals of the authors, who intended to clarify and clear up these concepts, they have created that *artificial fragmentation* of these concepts, producing confusion and perplexities, even distorting the objective reality.

Regarding the material entities against which the crime is directed, the Romanian criminologists had similar views, considering that these entities are presented as a thing, asset, body, person, etc. The disagreements occurred over the concept that corresponds to the external reality with this entity (material object, direct object, immediate object, tangible object, etc.) and also correspond to objective truth and where to be transposed *mutatis mutandis* in the criminal juridical doctrine.

A source of contradictions and differences was represented by the searching of another concept, which this time was to define those immaterial entities (immaterial object, indirect object, immediate object, abstract object, etc.) that were harmed by the crime (individual honor, safety and State authority, etc.). Characteristic for this type of crime is the fact that by the crime committed, in most cases, that conduct prohibited by law is consumed, without producing material damage, specifically, creating that state of danger, which does not require an external injury. Or in this case, the Romanian doctrine is consistent also with the use of the concept of material object, that we believe it is not the best choice, since, it defines a reality of another nature than the material, tangible one.

Even the adjective *material* placed besides the noun *object* seems to describe an external reality, extrinsic to the crime, while normally and logically takes part of the objective structure of the crime.

However, this concept must define, in case of a crime against a person, that the human being that the crime is directed to, considering that the concept *material object* is a vague, inadequate expression when talking about people.

Faced with this dilemma, it is required a review of this entity, considering that in order to clarify the problem it is necessary to adopt one of the two solutions of principle.

One of the solutions would be to adapt an appropriate terminology, as it is used in other legislations, precisely to cover all the categories of crime and to leave behind this

doctrinal gap, where the material object characterizes only the material crimes. One might speak in this respect of certain derivatives for the concept of material object, respectively *inadequate material object* or *material object through assimilation*, or about the searching of a whole new concept as the *object of action*, *object of conduct*, *object of attack*, etc.

Or just as possible as the use of older methods would be, that of "legal fiction" according to the ancient principle "the art (the right) is a false truth", which is able both to imitate natural things and also to create. By this process and by adopting this concept the actual structure of the crime would be "preserved", remaining consistent to the actual doctrine[24].

To make relevant arguments aiming to choose an optimal solution for overcoming these mentioned shortcomings, it must also be stated that the meaning of the term *material object* of the crime, from its emergence in the doctrine does no longer correspond to what it would designate the term now, because both the legislature and the external reality have brought into discussion many aspects that question the meaning of this term.

Thus, the Criminal Code through Article 208 paragraph 2 adds to a movable asset, which represents the material object of to the crime of theft, any energy that has an economic value. Or in this case the legislature is given the right of having the attributions of the physicist and similar, to say that this asset is material, though physically, this is not a material asset. The legislature may introduce some similarities, but that does not mean that it changes the reality.

Also, the computerization of society and the technical revolution that characterizes the contemporary period have led to the evolution of the product of human intellect, as imperceptible entities with senses but known to the thought: copyright, adjacent rights, information, computer software, etc. As well there are other intangible assets, relevant in a material program that can make the object of an aggression through an act provided by the criminal law: various forms of energy, telephone pulses, etc.

It is also important to note the fact that the Romanian criminal doctrine was born in the early twentieth century, amid the rise of positivism, which promoted the subjectivity in the detriment of objectivity. From that moment, there is a continuous process of subjectivization and spiritualization both of the crime and of the material object of the crime, standing out the necessity of changing this concept, as long as it has manifested tendencies of assigning *personalization* features instead of *material* characteristics. This is also due to the continuous expansion of human action and intervention in the external reality and on the material.

These are some of the considerations which lead us to opt for the usefulness of a systemic reconstruction of an objective element of the crime, which cannot be doubted even by the one that insists on the necessity of a criminal law subjectively oriented. This reconstruction should aim an approach first of all real beyond a doctrinal creation and juridical fiction.

For these reasons and for the reasons mentioned above, we believe that in order to meet the requirements in the criminal matter and the needs from the objective reality, the

[24] Popa Nelu Dorinel, Premise filosofico - juridice ale conceptului de obiect material al infracţiunii, The Journal „Juridical Current", no. 2/2009, Ed. Universităţii „Petru Maior" din Tîrgu-Mureş, p. 120.

most appropriate concept is the object of *action/inaction*, depending on the type of crime, crime of commission or crime of omission.

This concept is not novelty for the Romanian criminal doctrine, as it turned out, there are authors who, with relevant arguments, have opted for this concept (Nicholas Buzea, George Anthoniu, Florin Streteanu, Tamara Manea). In fact, there are other national legal systems where this concept is reinforced and used as a fundamental concept within the theory of crime (see German doctrine)[25].

Starting from the definition and etymological sense of the word *crime*, we'll see that the word is formed of two components: *infr*- particle, derived from Latin *infrangere* - to ignore, violate a law, added to the word *action*, derived from the Latin *actio* – the course of an action aiming to achieve a goal.[26] Even from the semantic analysis of the word *crime*, it comes out that the action is defining criminal action and, more implicitly, it comes out that this action is directed towards a goal that in the authors' view would be a merely external object[27].

[25] Hans Heinrich Jescheck, Lehrbuch des Strafrechts, Allgemeiner Teil, Berlin, 1988, p. 234; Johannes Wessels, Strafrecht, Allgemeiner Teil, Heidelberg, 1995, p. 43-44; dr. Reinhart Maurach, Deutsches Strafrecht, Allgemeiner Teil, Verlag C.F. Muller Karlsruhe, 1965, p. 182; dr. Gunter Stratenwerth, Strafrecht Allgemeiner Teil I, Die Straftat,Carl Heymanns Verlag KG, p. 101, 102; dr. Hermann Blei, Strafrecht I, Allgemeiner Teil, C.H.Beck'sche Verlagsbuchhanlung, Munchen, 1983, p. 89; dr. Johannes Wessels, dr. Werner Beulke, Strafrecht Allgemeiner Teil, C.F. Muller Verlag, Heidelberg, p. 8; Gunter Jakobs, Strafrecht Allgemeiner Teil, Walter de Gruyter, Berlin, New York, 1991, p. 37

[26] www.dexonline.ro

[27] Horst Reimann, Bernard Giesen, Dieter Goetze, Michael Schmid, Basale Soziologie: Theoretische Modelle, 4.neuberarbeitete und erweiterte Auflage, Westdeutscher Verlag, p. 148- the authors conclude that the actions cannot be perceived usefully without reference to the objects of action, reason why these concepts should be discussed together. This means that the action is always intentional, that it directs towards an object of action where the action reports only a part of its meaning. Action can not be understood unless one knows what will get from it, an action can be described well only when we know the direction of the purpose or intentionality to which objects are heading to. The notions of action, intention and object of action define each other, when one of these concepts is used implicitly the other two are used.