

BRIEF REMARKS ON THE IMPORTANCE OF THE MATERIAL OBJECT IN A CRIMINAL OFFENCE

Lamya-Diana HĂRĂȚĂU*
Ioan Mircea DAVID**

Abstract:

In preparing this particular research, we aimed to put under scrutiny the concept of the material object by analysing it in special given situations, in connection to the criminal offences that are most frequently encountered in practice, and thus to underscore the importance of this concept as a factor in the evolution of the legal framework. The challenges that appear to be inherent when categorising criminal offences into conduct crimes and result crimes do not constitute a novelty in the works of legal scholars, and even less so in practice, but in order to submit them to a proper analysis, it proves imperative that we possess a good grasp of the material object of the criminal offence, in order to establish the perpetrator's level of criminal intent, as well as the manner in which criminal liability can be triggered.

Keywords: *conduct crime, result crime, blackmail, bribery, abandonment, pre-existing material object.*

1. Theoretical perspectives on the material object of a criminal offence

One of the key elements that need to be analysed when we consider specific provisions of the criminal law is the material object of the criminal offence. Several definitions for this concept have been so far proposed, inevitably affording it an increased level of importance in the process of examining criminal regulations.

The material object of a criminal offence can be defined as the „material entity (either an object or a thing of any sort, an animal, the body of a person) towards which the overt act of criminal conduct is directed, its physical energy, thus menacing to bring material harm to it or effectively causing such harm”¹ or it can be regarded as a „thing, asset or any other social value or commodity (subject to monetary valuation or not) upon which the criminally prohibited action or omission falls directly or it is thus effected and in relation to which the socially harmful effects of the criminal conduct become manifest”².

None the less, the material object needs not be mistaken for the instruments by which the offence was perpetrated or even less so for the fruits of the crime³. A relevant example in this respect is the crime of tampering with official documents, regulated under section 320 of the Romanian Criminal Code. Every time an official document is subject to an act of forgery,

regardless of the manner in which the active subject chooses to perform such forgery, it would be wrong to claim that the resulting document represents the material object of the offence, according to the opinions⁴ of certain scholars. Other writers⁵ fine-tuned this vision in regard to the crime of tampering with official documents, claiming that, in principle, this offence does not involve a material object, but admitting that there can be certain situations – in the case of „counterfeiting”, when the material object is represented by a standard form that will be filled out by a person who lacks the capacity to do so.

Apart from the two aforementioned opinions expressed in regard to the material object pertaining to the offence of tampering with official documents, the hypothesis in which the said violation could involve a material object was analysed in a different variant of perpetration, one where the material element is not „counterfeiting”, but where this offence is committed by means of material alteration, in which case the material object is represented by the official document that pre-existed the act of alteration⁶.

We notice that, notwithstanding the age in which the concept of „material object of an offence” was defined and excluding any social or political influences, the central idea of this concept encompasses a material object that the lawmaker took into consideration when drafting the provisions of the criminal law.

It is easily noticeable that the elements defining the material object of a criminal offence are based on

* PhD, Attorney at Law (Bucharest Bar) and Assistant Professor of Criminal Law at Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: lamya@haratau.ro).

** Attorney at Law, Bucharest Bar (e-mail: mircea.david@haratau.ro).

¹ C. Bulai – Manual de drept penal. Partea generală, Ed. All Educational S.A., 1997, p. 196.

² Aurel Dicu – Drept penal. Partea generală, vol. I, Ed. București, 1975, pp. 116–117.

³ N. Neagu – Drept penal. Partea generală, Ed. Universul Juridic, 2019, București, pp. 80–81.

⁴ Idem, p.81.

⁵ C. Rotaru, A.R. Trandafir, V. Cioclei – Drept penal. Partea specială II. Curs tematic, ed. 4 revizuită și adăugită, Ed. C.H.Beck, București, 2020, pp. 378 – 379.

⁶ M. Udroui – Sinteze de drept penal. Partea generală, Ed. C.H. Beck, 2020, București, p. 101.

the distinction between conduct crimes and result crimes. Thus, the material object (also named immediate object⁷) is easily identified in the case of result crimes, and it consists in a movable asset, a written record or even in the body of a person, as opposed to conduct crimes, where legal scholars assessed in their works that the material object is of „an organisational, political or moral nature⁸“.

Moreover, we estimate that a thorough analysis on the topic of the material object pertaining to a criminal offence does not only contribute to identifying the underlying differences between conduct crimes and result crimes, but also contribute to a higher level of understanding of the criminal law and its provisions – such as they are prescribed in the Special Part of the Romanian Criminal Code, as well as in other pieces of legislation.

While the existence of an individual or public interest that requires protection is an essential prerequisite for our being in the presence of a criminal provision under the law, the material object is not regarded, nor is it regulated, at the same tier of importance, so long as some offences can exist and are repressed even in the absence a material object, and this detail will be taken into closer consideration within the pages of this research.

In such a situation, however, we can ascertain that the endangerment or substantial harm afflicted on the material object brings injury to the safeguarded social relations contemplated by the law, and we can also retain that the absence of the material object (in the case of conduct crimes) negates the existence of the criminal offence⁹.

Notwithstanding these, one opinion¹⁰ among scholars points out to the existence of a material object even in the case of conduct crimes. It is also true that this opinion is founded on the existence of criminal provisions that are no longer prescribed under the current arrangements, and they refer to the offence of criminal insult aimed at a person. According to this theory, should the active subject bring insults to the passive subject, thus perpetrating a conduct crime, there could arise the possibility that a material object may exist and that harm may be caused to it when the offensive act of insulting is committed through the destruction of a piece of property representing the victim's dignity – for example, a representative work thereof.

Under the current arrangements, we consider that such an act from the part of the active subject cannot be consistent with the elements of a conduct crime, but instead it will be materialised as a result crime. Through the destruction of a work product that belongs

to the passive subject, apart from the state of discontent that it could instil in the latter, we conclude that we would be in the presence of a genuine case of aggravated criminal destruction of property – thus entering the realm of offences whose existence is dependent on the presence of a material object.

Equally, we cannot neglect the role of the material object in the process of accurately classifying an offence, of assessing the degree of threat that such prohibited conduct may generate, and of circumstantiating the moral factor of criminal intent¹¹. One relevant example is represented by, say, a series of low-intensity physical aggressions effected by the active subject on a new-born baby¹², thus causing the infant to suffer traumatic damage that is incompatible with life, albeit the same trauma would have not endangered the life of an adult.

The assessment of such acts of battery, with consideration to the age of the passive subject, brings a considerable contribution to the process of ascertaining the level of criminal intent under which the offence was committed. In a situation similar to the one aforementioned, we could not assent to the claim that the active subject lacked full representation of their actions and that they could not foresee the possibility of inflicting traumatic lesions incompatible with life upon the passive subject.

2. The material object in conduct crimes and in result crimes

In examining the material object, we consider it is useful to make a clear distinction between what constitutes a conduct crime and what represents a result crime. One such expert opinion¹³ has been expressed in regard to the practical importance of a good grasp of the material object – because the accurate classification of the criminal act consists in precisely this, and by so doing we acquire a good grasp of the safeguarded individual or public interest and of the safeguarded social relations – that constitute the subject matter of the criminal offence.

Even more so, a good grasp of the material object significantly contributes to the process of circumstantiating the level of criminal intent that the subject reaches at the time when the offence is committed. Another theory¹⁴, under which the material object is instrumental in the correct assessment of the material damage incurred by the perpetration of an act covered by criminal law, is definitely not without importance.

⁷ Aurel Dicu – Drept penal. Partea generală, vol. I, Ed. București, 1975, pp. 117-118.

⁸ Idem.

⁹ C. Bulai – Drept penal român. Partea generală, vol. I, Casa de Editură și Presă „Șansa” S.R.L., București, 1992, pp. 144–145.

¹⁰ N. Giurgiu – Legea penală și infracțiunea. Doctrina, legislație și practică judiciară, Ed. Gama, pp. 162–163.

¹¹ F. Stretanu, D. Nițu – Drept penal. Partea generală Vol. I, Ed. Universul Juridic, București, 2014, pp.271–272.

¹² Idem.

¹³ C. Bulai – Manual de drept penal. Partea generală, Ed. All, 1997, p. 197.

¹⁴ F. Stretanu, D. Nițu – Drept penal. Partea generală vol. I, Ed. Universul Juridic, București, 2014, p. 271.

It becomes manifest, in a situation such as this, that the most eloquent example we are able provide is one in which we would examine the material object in the case of a theft, where it is easy to identify the material object taken by the active subject from the possession or control of the passive subject.

However, we consider that in the case of offences against property, the role of the material object can be regarded, and it can also be approached, in a manner that differs from the aforementioned academic opinion. For instance, in the case of a robbery, we are compelled to consider two distinct material objects: on the one hand, the material object represented by the movable asset belonging to the passive subject, and, on the other hand, the body of the passive subject upon which violence was exerted.

If we are to examine the provisions of section 233 of the Romanian Criminal Code and thus to analyse the material object from the perspective of the offence's material element, we also arrive at the conclusion that the active subject of a robbery offence can bring manifest harm to one single material object, notwithstanding that we are in the presence of a complex criminal offence.

Thus, should the crime of robbery be committed by means of threats under which the passive subject yields and surrenders to the active subject all of the movable assets found in their possession, we notice that the immediate consequence is harm perpetrated against the property of the passive subject and, inherently, against the psyche thereof, but the harm caused to the psyche by the use of threats does not in itself constitute a result crime - on the contrary, it is a conduct crime.

Apart from the intrinsic examination of the section that incriminates robbery, we consider that such an interpretation does in no way influence the type and extent of penalties prescribed by the lawmaker in the provisions of section 233 of the Criminal Code.

A summary analysis of the criminal provisions allows us to conclude that the presence of the material object leads, on the one hand, to the classification of certain offences in the category pertaining to result crimes, while the absence thereof will classify offences in the category of conduct crimes, and on the other hand the same reasoning leads to the differentiation of criminal offences into two other categories: material crimes and formal crimes.

A material crime is defined as the „act characterised by the existence of a material object, upon which the action or omission is directed”¹⁵, as opposed to a formal crime, that does „not provide for

the prerequisite condition of a material object to exist [...] not being closely connected to a certain thing”¹⁶.

One first criminal offence that can be the object of this research is the crime of blackmail, regulated under section 207 of the Romanian Criminal Code and pertaining to the category of crimes against a person's individual freedom. The crime of blackmail is recognised as a genuine result crime, albeit it lacks a material object¹⁷, and its immediate consequence is the menace exerted against the mental freedom of the passive subject. In another opinion¹⁸, it was also found to be true that the property of another that is obtained as a consequence of this offence being committed does not represent the material object, but the fruit of the crime.

We express our support for this classification, but we think it's useful to point out several details leading to the conclusion that the crime of blackmail can have a material object, and that the said object can be represented by the body of the passive subject, without the need to consequently qualify this offence as a conduct crime.

The conclusion that we reached involves, as a preliminary phase, the examination of the material element regulated by the lawmaker under section 207 par. (1) of the Romanian Criminal Code, namely the act of „coercion” by the active subject exerted against the passive subject, aimed at compelling the latter to give, to perform, to refrain from or to suffer something. This coercion has been interpreted¹⁹ as designating both moral and physical duress. Determining a person to perform a certain act by physical constraint implicitly requests the presence of a secondary material object, this being the body of the person upon which the violence is being effected.

In this respect, some authors²⁰ analysed the notion of „coercion” included by the lawmaker in the provisions of section 207 of the Romanian Criminal Code, and they concluded that the exertion of acts of physical violence, that fully attain the constitutive elements specific to the crime of battery, will end up being absorbed in the constitutive elements that characterise the crime of blackmail. Starting from this analysis, we conclude that an act of physical duress exerted by the active subject upon the passive subject, in an unwarranted manner, in order to obtain a gain of no monetary valuation, that would cause the latter a severe and permanent mutilation or disfigurement, would be classified as a genuine crime of mayhem, regulated under the provisions of section 194 par. (1) subpar. c) of the Romanian Criminal Code, as a

¹⁵ Idem.

¹⁶ Idem, p. 272.

¹⁷ V. Cioclei – Drept penal. Partea specială I. Infrațiuni contra persoanei și infrațiuni contra patrimoniului, Ed. C.H.Beck, București, 2016, p. 139.

¹⁸ L. M. Stănilă – Caiet de seminar. Drept penal. Partea specială, ed. a III-a revizuită și adăugită, Ed. Universul Juridic, 2020, p. 134.

¹⁹ S. Bogdan, D.A. Șerban – Drept penal. Partea specială. Infrațiuni contra persoanei și contra înfăptuirii justiției, ed. a II-a revizuită și adăugită, Ed. Universul Juridic, 2020, pp. 256–257.

²⁰ Idem, p. 257.

concurrent offence to be prosecuted along with the crime of blackmail²¹.

However, in the event of a perpetrator attempting, by the use of physical constraint, to subdue the passive subject into performing a certain act, followed by the latter's refusal to comply to the coercion, the result is not the same as the one prescribed in the provisions of the incriminating norm found in section 207 of the Romanian Criminal Code. In such a situation, what is the violation for which the active subject will be held liable? The answer is that the active subject will be held criminally liable for the offence of blackmail, since the consummation of this crime intervened at the time when the threat towards the passive subject's mental freedom was thus created²².

Indeed, the lawmaker prescribed that one of the constitutive elements that condition the existence of blackmail is that the obtaining of the contemplated gain must be achieved in an unwarranted manner, a provision that rules out the *per a contrario* interpretation according to which the perpetrator who aims to unwarrantedly obtain a legitimate gain will not be committing the crime of blackmail, because in such a situation we would be validating the enforcement of a right by means of unwarranted violence²³.

Another relevant example, one pertaining to the category of crimes that involve the trafficking and the misuse of vulnerable persons, is the exploitation of beggary – a crime regulated under section 214 of the Romanian Criminal Code. We construed this offence to be another conduct crime, but, contrary to the initial distinction between the two classifications, in certain situations this one involves a material object.

„The act of an individual who causes [...] repeatedly”, which constitutes the material element of this offence, exacts some debate, since it is susceptible of being effected by means of physical duress, thus compelling the passive subject (the underage person or the physically/mentally disabled person) to resort to the pity of the general public. Therefore, we draw attention to the fact that, when examining the exploitation of beggary, we find that there is no material object, since the safeguarded social value that is protected by law is the person's liberty and dignity, but when the body of the passive subject is involved, by submitting a person to physical constraint, we can discuss of a conduct crime whose material object is fully manifest.

Also pertaining to the category of crimes against property, and distinct from the initial example, where we tried to examine the material object of robbery, we analysed the offence of diversion of public tenders,

regulated under section 246 of the Romanian Criminal Code. In this case, too, many authors²⁴ have expressed an opinion supporting the non-existence of a material object, but even so, this offence is a result crime.

At a first glance of the section indicated above, we conclude that the active subject in the diversion of public tenders aims to distort the final sale price in a public procurement procedure, which is correct, but we must not overlook the fact that this initiative is never manifest in the form of a material object. In the case of this particular regulation, too, some of the doctrine²⁵ considers that when the diversion is achieved by means of physical duress, we are in the presence of a result crime, one that involves a secondary material object – represented by the body of the person upon which the coercion is being effected.

There are also situations, in the case of crimes relating to the administration of justice, where the absence of a material object causes confusion in regard to the correct classification of an offence in either the category of result crimes or in that of conduct crimes. Such a situation can be encountered in the case of the criminal failure to report, an offence regulated under section 266 of the Romanian Criminal Code.

Some authors²⁶ claim that a material object is non-existent in this case, since the safeguarded social value thereby protected bears an abstract nature, which leads to the conclusion that failure to report, regulated under section 266 of the Romanian Criminal Code, is a conduct crime, but a contrary opinion²⁷ has also been expressed, supporting the conclusion that the material object of the crime that went unreported also constitutes, in reality, the material object of the criminal failure to report.

The controversial debate over the existence of a material object in the case of result crimes and the absence thereof in the case of conduct crimes seems to re-emerge when discussing crimes that pertain to the category of corruption and offences in public positions – more precisely, in the case of taking a bribe, an offence regulated under the provisions of section 289 of the Romanian Criminal Code.

Following an analysis of the judicial practice both before and after the enactment of the New Criminal Code, the doctrine reached a unanimous conclusion over the fact that the offence of taking a bribe is a conduct crime, while the same level of certainty was not expressed in regard to the existence or the non-existence of the material object²⁸.

²¹ Gh. Ivan, M.C. Ivan – Drept penal. Partea specială, ed. 4 revizuită și adăugită, Ed. C.H.Beck, București, 2019, p.118.

²² V. Cioclei – Drept penal. Partea specială I. Infrațiuni contra persoanei și infrațiuni contra patrimoniului, Ed. C.H. Beck, București, 2016, pp. 140 – 141.

²³ Idem, p. 141.

²⁴ V. Dobrinoiu, N.Neagu – Drept penal. Partea specială, Ed. Universul Juridic, 2014, București, pp. 289–290.

²⁵ V. Cioclei – Drept penal. Partea specială I. Infrațiuni contra persoanei și infrațiuni contra patrimoniului, Ed. C.H. Beck, 2016, București, pp. 360–361.

²⁶ C. Rotaru, A.R. Trandafir, V.Cioclei – Drept penal. Partea specială II. Curs tematic, Ed. C.H. Beck, 2016, p. 42.

²⁷ V. Dobrinoiu, N.Neagu – Drept penal. Partea specială, Ed. Universul Juridic, 2014, București, p. 346.

²⁸ Idem, pp. 468–469.

3. The material object in special circumstances

Apart from the theoretical and practical importance afforded to the material object of criminal offences, from the perspective of their classification, we consider that the material object also represents an element of utmost importance in those situations where the presence or the absence thereof leads to an amendment of indictment and implicitly triggers a distinct criminal liability.

For example, in the case of harassment, regulated under the provisions of section 208 of the Romanian Criminal Code, some authors²⁹ reached the conclusion that this is a conduct crime which does not involve a material object. This being a crime that brings harm to a person's mental freedom, harassment has often been considered similar in certain situations with an „insidious form of threats”³⁰, which requires certain comments, once it is encountered in the practice of courts.

Pursuant to this regulation, the material element of harassment consists in the unwarranted pursuit or surveillance of a person, an act whose immediate consequence is represented by the state of fear that is instilled in the victim. However, the body of the person in which fear is insinuated can represent the material object of an offence that derives from the crime of harassment.

If the unlawful surveillance perpetrated constantly and persistently will determine the passive subject to commit suicide, for fear of worse consequences that they may have to endure from the part of the active subject, we will find ourselves in the presence of another offence – a result crime, one whose material object undoubtedly exists.

Should a direct connection be established between the offence of harassment and the suicidal act of the passive subject, we can be contemplating the case of a murder committed knowingly, so long as the perpetrator *foresees the result of their actions and, although they do not pursue it, they accept the possibility that it may occur.*

In such an event, a conduct crime (lacking a material object) that harms the mental freedom of the passive subject converts into a result crime whose material object is constituted by the very body of the passive subject.

Another example is the crime of abandonment – regulated under the provisions of section 378 of the Romanian Criminal Code, one also considered by the literature as an offence that does not involve a material object³¹, albeit in some practical situations that view is susceptible to change.

The prerequisite situation from whence to begin examining the crime of abandonment is represented by the existence of a legal obligation of maintenance, one that the perpetrator can also breach in the variants of the material element prescribed under section 378 par. (1) subpar. a) of the Criminal Code: „forsaking, banishment or leaving in distress”, thus exposing the victim to physical and moral suffering.

In the context of a family, where the perpetrator is one of the parents, and the passive subject is an underage child, let us suppose that the parent repeatedly imposes physical correction on the child by exposing the minor to cold, every time the minor miscalculates one of the arithmetical operation they have to solve as homework. After repeated exposure to low temperatures, the child suffers a mild stroke and requires medical attention, without having their life endangered. In this case, too, we consider that the crime of abandonment, that has no material object, converts into another violation that does have a material object, one likely to also cause an amendment of indictment from abandonment to ill-treatment of a child, an offence regulated under the provisions of section 197 of the Romanian Criminal Code.

To conclude, the consequences generated by the perpetration of a criminal offence do not stop at the amendment of the indictment, but they also involve the examination of the existence or of the non-existence of a material object that has been subject to injury or harm.

4. Conclusions

As a consequence of the theoretical and of the practical correlations that we exposed in detail throughout the present research, we consider that the material object of the crime represents one of the most important elements when the examination of an incrimination norm is needed.

Its presence, the way in which it is characterised in dependence of the material element, but also in dependence of the level of criminal intent that is specific to each criminal offence, all constitute aspects that could lead to an amendment of indictment, thus generating legal consequences in the area of criminal liability, which sometimes can even be excluded.

Last, but not least, the analysis performed on the material object of the criminal offence also bears relevance in relation to the assessment of the level of intent under which the crime was committed. The actions or the omissions from the part of the active subject, effected on a certain material object, can prove instrumental in ascertaining the basic intent, the intent or the oblique intent of the perpetrator.

²⁹ Idem, p. 109.

³⁰ V. Cioclei – Drept penal. Partea specială I. Infrațiuni contra persoanei și infrațiuni contra patrimoniului, Ed. C.H. Beck, 2016, București, pp. 143–144.

³¹ C. Rotaru, A.R. Trandafir, V. Cioclei – Drept penal. Partea specială II. Curs tematic, Ed. C.H. Beck, 2016, București, p. 454.

References

- Bogdan S., Șerban D.A., Drept penal. Partea specială. Infrațiuni contra persoanei și contra înfăptuirii justiției, ed. a II-a revizuită și adăugită, Ed. Universul Juridic, 2020;
- Bulai C., Manual de drept penal. Partea generală, Ed. All Educational S.A., 1997;
- Bulai C., Drept penal român. Partea generală, vol. I, Casa de Editură și Presă „Șansa” S.R.L., 1992;
- Cioclei V., Drept penal. Partea specială I. Infrațiuni contra persoanei și infrațiuni contra patrimoniului, Ed. C.H. Beck, 2016;
- Dicu A., Drept penal. Partea generală, vol. I, Ed. București, 1975;
- Dobrinioiu V., Neagu N., Drept penal. Partea specială, Ed. Universul Juridic, 2014;
- Giurgiu N., Legea penală și infracțiunea. Doctrina, legislație și practică judiciară, Ed. Gama, 1996;
- Ivan Gh., Ivan M.C., Drept penal. Partea specială, ed. 4 revizuită și adăugită, Ed. C.H.Beck, 2019;
- Neagu N., Drept penal. Partea generală, Ed. Universul Juridic, 2019;
- Rotaru C., Trandafir A.R., Cioclei V., Drept penal. Partea specială II. Curs tematic, ed. 4 revizuită și adăugită, Ed. C.H. Beck, 2020;
- Stănilă L. M., Caiet de seminar. Drept penal. Partea specială, ed. a III-a revizuită și adăugită, Ed. Universul Juridic, 2020;
- Streteanu F., Nițu D., Drept penal. Partea generală Vol. I, Ed. Universul Juridic, 2014;
- Udroi M., Sinteze de drept penal. Partea generală, Ed. C.H. Beck, 2020.