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Brief Presentation of the Types of Evidence, Means of Proof and the Evidence Procedures

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Abstract: In order to be able to fully understand what the evidence, means of proof and evidentiary procedures represent, we appreciate that it is necessary to first of all consider the representation of these elements in the criminal trial.

In the activity of finding out a factual situation, it must be researched, because it is not self-evident. So, with regard to the criminal process, the mechanism is paramount, because the judicial bodies are forced, according to the legal provisions, to carry out any necessary steps to establish, discover and prove, beyond any reasonable doubt, the guilt of a person suspected of committing a crime. Thus, in the doctrine, it is appreciated that this activity must be carried out by the judicial bodies only through collecting evidence.

Evidence is considered to be formed of the essential elements that lead to finding out the truth, that determine the existence or non-existence of a criminal act and the identification of person who committed it, the intended purpose being that of solving the case fairly.

These are aleso facts that are assimilated to factual circumstances, that are not part of the criminal process per se, but acquire a procedural character due to the fact that they refer to the object of the trial, and are also researched through the steps taken to administer evidence in the criminal process.

Keywords: *Evidence; means of proof; guilt; factual circumstances.*

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1. Introduction

It should be highlighted that in order to establish the objective of the criminal process, it is necessary to start from the idea that existing relationships within social life and the coexistence of people determine the existence of rules of conduct regulated by the authorities, in order to enforce the legal order, which are indispensable for the functioning of society (Lorincz , 2015, p. 5).

When a deed provided by the criminal legal norms in force is committed, the state, through the competent bodies, has the obligation to identify the person who committed the deed, to determine and demonstrate the circumstances in which the violation of the law occurred, the ultimate goal being to apply a sanction, depending on the outcome of the investigation which is carried out (Crișu, 2018, p. 1).

In order to carry out the criminal prosecution, it is necessary to carry out a series of complex and specific activities that begin with the detection or discovery of a crime, the identification of the person who committed the act, as well as the collection and administration of evidence, the aim being to refer the case to the court and to establish a punishment for the guilty person, who will execute their sentence (Barbu, 2016, pp. 13-14).

From the definition of the term crime, it emerges that it is presented as a deed that must be provided for by any provision of a criminal nature contained in the criminal laws in force, committed with the type of guilt stipulated in the law, which can be held against the person who committed it. The sanctioning of the person who committed a crime is done by the competent bodies in order to re-establish the violated legal order, by carrying out specific activities.

The bodies that carry out the criminal investigation and trial are called judicial bodies, and the activity they carry out is called judicial activity. During the judicial activity, in addition to the specialized bodies of the state, namely the prosecutor, criminal investigation bodies, judges of rights and liberties, judges of the preliminary chamber and courts, the parties, the main procedural subjects, lawyers and other procedural subjects participate in the judicial activity (Boțian, 2016 , p. 7).

Thus, the judicial bodies that have the role of solving a criminal case need certain information or data that determine and prove the existence or non-existence of a non-compliance with the law or the guilt of a suspect, the aim being to complete the case and establish the truth (Vlad, 2019) through evidence (Neagu & Damaschin, 2020, p. 451).

2. Types of evidence and their probative value

The legislator ruled in the provisions of the Code of Criminal Procedure that in the criminal process, the activity that leads to the obtaining of evidence is carried out through the statements of the suspect, the defendant, the injured person, the civil party, the civilly responsible party, the witnesses (Apostu & Petrescu, 2017), as well as with the help of documents, reports of experts, photographs, or any other material means of evidence that are not prohibited by the legal norms in force (Romanian Parliament, 2009; 2010).

At the same time, in the criminal process, there is an obligation of the judicial bodies to prove:

- the facts that are considered to be central to the deed and are represented by the elements (facts/circumstances) that concern the deed, but also the person who committed it;

- evidentiary facts, i.e. those considered to be circumstances/facts that do not directly concern the author of a crime or the criminal act, i.e., like finding some traces of the culprit's DNA on an item of clothing belonging to the injured person;

- the facts aimed at carrying out the criminal trial under normal conditions, a conclusive example in this case being represented by the proposals made for an arrest in absentia (Udroiu, 2022, p. 275).

It is also necessary to prove, from the criminal point of view, the facts or circumstances related to the typicality of the act, which can be objective or subjective, the conditions of liability, the participating persons, the causes that can aggravate or mitigate the liability.

In addition, it is imperative to take into account the facts/circumstances that may have consequences on the type of punishment, on the way in which the trial or the procedure is carried out, for example, in a certain situation that establishes the incompatibility of the judge or the prosecutor (Florea et al., 2019), the inadequate state of health of the suspect, that can lead to the impossibility of him participating in the trial, an aspect that, subsequently, can lead to the suspension of the criminal prosecution or trial.

Regarding the civil action of the case, the facts or circumstances that make the civilly responsible party or the defendant liable are determined (Udroiu, 2022, p. 275). Also, during the criminal trial, there are facts or factual circumstances that are not required to be proven, namely:

- those facts or circumstances that do not directly concern the person who committed a crime, but can contribute to establishing the

relevance of some evidence or their admissibility, which are named auxiliary facts;

- those facts that are similar to the main crime, can be the subject of evidence only if they represent material acts of the crime or the first term of recidivism, which are named similar facts;

- those facts determined as positive or negative, i.e., when the suspect was in another place different from the one where the crime was committed (Udroiu, 2022, pp. 275-276).

Another category of facts or circumstances is specific, in that they do not need to be proven. Thus, we must consider:

- the relative legal presumptions that do not have to be proven, but counter-evidence can be administered to dismiss them; for example, it can be proven through an expert opinion that a minor had discernment when he committed a crime;

- the facts that are obvious or notorious; in this case the court is the one that must realize the dispensation of evidence by means of general public knowledge;

- the facts that are not disputed by all the participants, so that the criminal investigation bodies can resort to the administration of evidence to establish the reality of the case when the participants in the criminal trial do not dispute the respective facts or factual circumstances that are decisive for solving the case;

- the facts decided as having the authority of *res judicata*.

A last category is characterized by facts or circumstances that cannot be proven, respectively: legal presumptions that are absolute, facts that do not correspond to the conception of reality about the world (Sandu & Damian, 2018) and indeterminate facts, that can be negative or positive (Udroiu, 2022, pp. 276-277).

3. The object of probation and how to prove it

The generic object of probation includes aspects that refer to the proof of an act that affirms the guilt or innocence of the accused (Huidu, 2019), the elements that favored and determined the commission of the act, personal information about the accused and the other parties, the aftermath of the criminal act committed and the circumstances that could have influenced the degree of responsibility of the person concerned.

In order to determine the concrete object of the probation, it is necessary to analyze the case in particular, taking into account the admissibility of the evidence, the way in which a fact from a concrete case contributes to the activity of proving that case, the existence of impediments

in proving the facts or circumstances and establishing aspects that no longer need to be proven (Boroi & Neguţ, 2020, p. 187).

As for the means of proof, they are clearly stated in the provisions of art. 97 para. (2) of the Criminal Procedure Code. Moreover, depending on the specifics, each means of evidence has a specific administration procedure. In art. 97 para. (3) of the Criminal Procedure Code, the evidentiary procedure that represents the legal form by which evidence is administered is established and characterized (Boroi & Neguţ, 2020, p. 198).

Moreover, it should also be remembered that through the provisions of art. 138, the legislator grouped the evidentiary procedures into two categories. Thus, a first category is represented by special technical supervision methods and the second by special research methods (Barbu, 2016, pp. 189-190).

Also, another category of procedures is represented by the search, the collection of objects and documents, the on-site investigation and reconstruction, these elements making up the evidentiary procedures for the discovery and collection of material evidence and documents (Barbu, 2016, p. 203). Through the ideas and notions presented above, we appreciate the fact that the evidence, the means of proof and the evidentiary procedures represent the central elements of a criminal trial.

As it follows even from their definition, established in art. 97 of the Criminal Code (Romanian Parliament, 2010) - "evidence is any element or fact that serves to establish the existence or non-existence of a crime, to identify the person who committed it and to know the circumstances necessary for the fair resolution of the case and which contribute to finding out the truth in the criminal trial" -, without the evidence and the means of proof, it would not be possible to know the ways and circumstances in which certain facts took place, whether a crime was committed (Barbu, 2016) or not, the person who committed it, as well as the most important element representing the truth.

4. Conclusions

From the moment of the initiation of the criminal trial until the final resolution of the case brought to trial, all the issues of the substance of the case are resolved with the help of evidence and, as a result of this fact, the entire criminal trial is dominated by the issue of evidence.

The justification of the importance of the evidence in the criminal trial consists in the fact that, once the criminal trial has been initiated and until its final resolution, all the problems that are of substance for the case

are solved with the help of the evidence. The administration of criminal justice depends mainly on the evidence system.

References

Apostu, I., & Petrescu, C. (2017). *Bărbatul și femeia: imaginea unei polemici cu privire la echitatea de gen* [The man and the woman: the image of a polemic regarding gender equity]. Lumen Publishing House.

Barbu, D. (2015). *Principiile procesului penal* [Principles of the criminal process]. Lumen Publishing House.

Barbu, D. (2016). *Drept procesual penal. Partea generală* [Criminal Procedural Law. The general part]. Lumen Publishing House.

Boroi, A., & Neguţ, G. (2020). *Drept procesual penal* [Criminal Procedural Law]. Hamangiu Publishing House.

Boţian, E. (2016). *Drept procesual penal. Note de Curs* [Criminal Procedural Law. Course notes]. Burg Publishing House.

Crişu, A. (2018). *Drept procesual penal. Partea generală* [Criminal Procedural Law. The general part]. Hamangiu Publishing House.

Florea, D., Galeş, N., & Terec-Vlad, L. (2019). The premise of the Establishment of the International Criminal Court. *European Journal of Law and Public Administration, 6*(2), 213-222. https://doi.org/10.18662/eljpa/98

Huidu, A. (2019). The Psychopathology of Serial Killers. *Eastern-European Journal of Medical Humanities and Bioethics, 3*(1), 38-54. https://doi.org/10.18662/eejmhb.19

Lorincz, A-L. (2015). *Drept procesual penal* [Criminal Procedural Law], Vol. I. Universul Juridic Publishing House.

Neagu, I, & Damaschin, M. (2020). *Tratat de procedură penală, Partea generală* (Ediţia a III-a) [Treatise on Criminal Procedure, General Part (3rd Edition)]. Universul Juridic Publishing House.

Romanian Parliament. (2009). Codul penal din 17 iulie 2009 (Legea nr. 286/2009) [Criminal Code of July 17, 2009 (Law no. 286/2009)]. *Monitorul Oficial al României* [Official Gazette of Romania], *510*, 2009, iulie 24. https://legislatie.just.ro/Public/DetaliiDocument/120611

Romanian Parliament. (2010). *Codul de procedura penala din 1 iulie 2010* (Legea nr. 135/2010) [Criminal Procedure Code of July 1, 2010 (Law no. 135/2010)]. *Monitorul Oficial al României* [Official Gazette of Romania], *486*, 2010, iulie 15. https://legislatie.just.ro/Public/DetaliiDocument/120611

Sandu, A., & Damian, S-I. (2018). Perceived quality of life and responsibility for own health condition. Micro-research. *Archiv Euromedica, 8*(2), 18-23.

Udroiu, M. (2022). *Procedură penală. Partea generală* (Ediţia 3) [Criminal procedure. General Part (3rd Edition)], Vol 1. C.H. Beck Publishing House.

Vlad, L. (2019). *Umanism, transumanism, postumanism. Perspective filosofice* [Humanism, transhumanism, posthumanism. Philosophical perspectives]. Lumen Publishing House.