EVIDENCES, MEANS OF EVIDENCE AND EVIDENTIARY PROCEDURES IN THE CONCEPT OF THE NEW CRIMINAL PROCEDURE CODE

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Abstract

In this study, the authors critically analyse the matter of evidence, means of evidence and evidentiary procedures in terms of the new Code of Criminal Procedure, stressing their importance in the administration of criminal justice. So, are revealed both strengths of the new regulating criminal procedure against the current regulation and its weaknesses, which, in our opinion, could be removed by amending the corresponding Law for implementing the new Criminal Procedure Code.

In this context, are depicted subjects on the conceptual boundaries between evidences, means of evidence and evidentiary procedures, liberty of evidences and the liberty of means of evidence, determining the institution of evidence etc., some de lege ferenda proposals were made by the authors. In the last section, the authors present the forms of interaction between the rules of criminal procedure and criminalistics in light of the new criminal procedure law.

***Keywords**: evidence, means of evidence, evidentiary procedure, the new Criminal Procedure Code, the current Criminal Procedure Code*

Introduction

Fundamental principles of the criminal law, identically proclaimed by national constitutional courts and the European Court of Human Rights[1)], tend to be guidelines for a sort of European criminal procedure. We will definitely not have a whole common procedure for all member states, which is not desirable, but there should be - and the process is already underway - a match between different national procedures[2)]. The undoubtedly need for

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[1)] These principles are found in the United States Supreme Court, in the amendments of the Constitution or the *Bill of Rights*, and the Supreme Court of Canada in the Charter of Rights and Freedoms in 1982, the similarities are striking E.C.H.R. (J. Pradel, *Droit pénal comparé*, 2e édition, Paris, Dalloz, 2002, p. 220-221).

[2)] See J. Pradel, *Les principes constitutionnels du procès pénal*, Cahiers du Conseil constitutionnel nr. 14 (Dossier: La justice dans la constitution), mai 2003, text accessible on electronic address http://www.conseil-

harmonization arises from the fact that national law procedures can not provide otherwise than the European Union, as it was established by the constituent treaties and acts amending them. This is why, over time there is a process of harmonization of national laws with each other and, especially between them and European Union law[3)], in this context, there is the adoption of a new Criminal Procedure Code in our country.

Although this necessity is real, however national procedural law must reflect essentially the regulatory needs of our society and to express the specifics and particularities of national law. Harmonising these provisions with the European Union is a lasting process, creating a uniform scale criminal procedure legislation of the European community being gradually realized with the process of unifying the relevant law at this level[4)]. Moreover, a general concept of systematic or even a European criminal law does not exist at this moment[5)].

1. Conceptual delimitations between evidence, means of evidence and evidentiary procedures

Evidences and means of evidence represent different procedural institutions[6)], but they are regulated together in Art. 97 of the new Criminal Procedure Code, under the marginal description „Evidence and means of evidence". Also, in doctrinal approaches[7)], the two legal categories are explained in a conjugate way[8].

The evidence is legally defined as any element which serves as support for the establishment of the existence or absence of an infringement of the law, to identify the person who committed it and in the knowledge of necessary circumstances for a fair settlement of the cause and which contribute to finding the truth in criminal process[9)]. In doctrine[10)], it has rightly pointed that in Art. 97 paragraph 1 of the new Criminal Procedure Code were combined provisions of Art. 62 and 63 of the current Criminal Procedure Code. New

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constitutionnel.fr/conseil-constitutionnel/francais/cahiers-du-conseil/cahier-n-14/les-principes-constitutionnels-du-proces-penal.52018.html (consulted on February 12, 2012).

3) See S. Popescu, *Câteva reflecții privind armonizarea legislației naționale cu dreptul european*, in „Penal Law Review" no. 3/2009, p. 25.

4) See G. Antoniu, *Observații la proiectul noului Cod de procedură penală (I)*, in „Penal Law Review" no. 4/2008, p. 15.

5) See U. Sieber, *Die Zukunft des Europäischen Strafrechts: - Ein neuer Ansatz zu den Zielen und Modellen des europäischen Strafrechtssystems*, Zeitschrift für die gesamte Strafrechtswissenschaft 121 (2009), p. 1 apud T. Avrigeanu, *Trăsăturile esențiale ale infracțiunii. Sedes materiae*, in „Penal Law Review" no. 1/2010, p. 28.

6) Evidences are actually extra-processual entities aimed at crime and the offender referred to the criminal, the administration, they acquire procedural character. Evidence is also extra-processual realities, but by regulating their use in criminal proceedings, becomes, in turn, character class legal proceedings.

7) Evidences are those facts (realities, events, circumstances), that information because of their relevance to serve truth and fair resolution of a criminal case. Means can be found those facts that can serve as evidence in criminal proceedings are provided in the Code of Criminal Procedure constitutes evidence. Use of evidence is possible through various methods of proof, which are ways to proceed in the use of evidence. Mean of evidence is the mean to discover evidence, the source of evidence , and the evidence is the result of maintaining a mean of evidence (For details, S. Kahane, *Probele şi mijloacele de probă*, in „Explicații teoretice ale Codului de procedură penală român. Partea generală", by V. Dongoroz, S. Kahane, G. Antoniu, C. Bulai, N. Iliescu, R. M. Stănoiu, vol. I, Academia Română Publishing House, Bucharest, 1975, p. 168).

8) The term evidence is used, in the practitioners' language, also in the sense of evidence and in the mean of evidence, but the two notions represent special legal category. Sometimes, the evidence acquires the meaning of arises from probation (for example, says that there was evidence of guilt), which does not match to a strict scientific criteria (Gr. Theodoru, *Tratat de Drept procesual penal*, 2nd edition, Hamangiu Publishing House, Bucharest, 2008, p. 345).

9) See Art. 97 paragraph 1 of new Criminal Procedure Code.

10) For details, G. Antoniu, *Observații la proiectul noului Cod de procedură penală (II)*, in „Penal Law Review" no. 1/2009, p. 9.

legislative solution is questionable because finding the truth is not direct and immediate result of administration of evidences, but the judiciary authorities, to find the truth, are required to clarify the cause in all aspects, based on evidence. Consequently, *de lege ferenda* would require the repeal phrase „and contribute to the finding of the truth" (Art. 97 paragraph 1 the final).

Means of evidence, named in the Criminal Procedure Code "Carol II" means of probation, are legal means by which the facts are established to serve the finding of the existence or the absence of a infringement of the law, to identify the person who committed it and the knowledge of the necessary circumstances for a fair settlement of the cause[11)].

According to Art. 97 paragraph 2 of the new Criminal Procedure Code, the evidence is obtained in the criminal process by means of evidence. In our opinion, art.64 paragraph 1 of the Criminal Procedure Code uses a more accurate and nuanced formula, which would eliminate any conceptual confusions between evidences and means of evidence. It is known that the means of evidence are that means by which the judicial authorities, using different evidentiary procedures, lay open, reveal those facts (realities, events, circumstances), which because of their informative relevance , serve to find the truth and the fair solution of a criminal cause (Professor Vintilă Dongoroz). Means of evidence are those that can be obtained by the judicial authorities through various probation methods[12]. Facts represent evidences that pre-exist and are only observed, not actually obtained by means of evidence. As you know, persons authorized by law[13)] establish facts and circumstances that may serve to reveal the truth in a criminal cause, and they don't get such facts and circumstances.

2. The liberty of evidence and the liberty of means of evidence

Regarding substantial changes proposed by the new legislator about the means of evidence, we also have some reservations.

The concept of means of evidence is radically changed due to the provisions of Art. 97 paragraph 2 f) of the new Criminal Procedure Code (the sample is obtained by "any other mean of evidence which is not prohibited by law"). Instead of a concept which expresses the completeness of the means of evidence, according to the Criminal Procedure Code, it is suggested a declarative concept of means of evidence, which admits other means of evidence than those specified by law and it is defined by opposition of the exhaustive one[14)]. Consequently, according to the new Criminal Procedure Code, the appearance of means of evidence is only illustrative, the judicial body can add to them others, expressly unforeseen, provided not to be prohibited by law[15)]. Practically, the liberty of means of evidence is not more characterized by the use of any mean of evidence of the legal and completely set in the Criminal Procedure Code, but the judiciary authorities will be the ones to decide to accept other mean of evidence, limited only by the condition that the mean evidence is not prohibited by law.

[11)] See G. Antoniu, C. Bulai, Gh. Chivulescu, *Dicționar juridic penal*, Științifică și Enciclopedică Publishing House, Bucharest, 1976, p.

[12)] See Gr. Theodoru, *op. cit.*, p. 346.

[13)] Such as criminal investigators and prosecutors, court, finding bodies listed in Art. 214 and 215 of the Criminal Procedure Code (finding some bodies, respectively commanders of ships and aircraft and border guards), undercover investigators, staff of state bodies with responsibilities in national security.

[14)] See *Vocabulaire juridique*, sous la direction de G. Cornu, 8e édition, Presses Universitaires de France, 2009, Paris, p. 359.

[15)] See N. Grofu, *Unele considerații în legătură cu sistemul mijloacelor de probă în concepția noului Cod de procedură penală*, in „Law Review" no. 1/2011, p. 128 – 133.

If in the principle of liberty of the evidences, characteristic is the use of any evidence that is not prohibited by law – fact unreservedly accepted in criminal procedural law and in the legislation of other states[16] – we can not agree that the same feature also to be given to the principle of liberty of the means of evidence, as it were to be used any mean of evidence that is not prohibited by law. We appreciate that there is a significant difference between *the use of any mean of evidence of those stipulated in criminal procedural law*, as it is regulated the liberty of means of evidence in the current Criminal Procedure Code, and *the use of any mean of evidence that is not prohibited by criminal procedure law*, in the concept of the new Criminal Procedure Code[17].

We believe that this vision that broadens the concept of evidence is not safe from criticism and may be generating abuses.

First of all , the wording "any other evidence which is not prohibited by law " contains a contradiction in terms, because the evidence was lawful means by which evidence is brought to light , revealed in the criminal process[18], would not be possible as evidence(essentially as a legal tender) to be though prohibited particularly by the law.

Second of all, the list of means of evidence, existing in Art. 64 of the Criminal Procedure Code, is neither exhaustive nor illustrative, but complete[19]. In this stated system, are included all possible evidence which may reveal the existence of evidence in criminal proceedings. Consequently, we can not conceive another evidence, which is forbidden by law, as formulated in Art. 97 paragraph 2 of the new Criminal Procedure Code. The evidence is limited and not likely to exclude other evidence, for the simple reason that such other evidence does not exist. Revealing the informative elements in samples can be designed to take place only through the categories of evidence, which are oral resources, written resources, material resources and technical means[20]. Moreover, whenever they added other evidence - as photos, audio or video of Law no. 141/1996 amending and supplementing the Criminal Procedure Code[21] – has distorted the concept of mean of evidence, by introducing evidentiary procedures among means of evidence[22].

Thirdly, in order to establish the declarative system, it would be necessary to give other definitions to the means of evidence and to the evidentiary procedures, and also to combat with scientific arguments the completeness of enumeration of the means of evidence in Art 64 paragraph 1 of the current Criminal Procedure Code[23].

3. The determination of the content of the procedural institution of means of evidence

According the Criminal Procedure Code, the means of evidence are: the statements of the accused or the defendant, the statements of the injured part, of the civil part and civil liable part, the witness statements, documents, audio or video recordings, photographs, material mean of evidence, the technical-scientific findings, the forensic findings and the

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[16] See Art. 427 of the French Criminal Procedure Code.

[17] For details, N. Grofu, *Libertatea probelor vs. libertatea mijloacelor de probă în concepţia noului Cod de procedură penală*, in „New Codes of Romania", Universul Juridic Publishing House, 2011, p. 721 – 726.

[18] See N. Volonciu, A. Barbu, *Codul de procedură penală comentat. Art. 62-135. Probele şi mijloacele de probă*, Hamangiu Publishing House, Bucharest, 2007, p. 11

[19] See S. Kahane, *op. cit*., p. 170.

[20] See G. Antoniu, *op. cit*., p. 9.

[21] Published in Romanian Official Gazette no. 289 of November 14, 1996.

[22] See G. Antoniu, *op. cit*., p. 9.

[23] *Ibidem*, p. 10.

expertizes[24]. The Means of evidence, listed in Art. 64 paragraph 1 of the Criminal Procedure Code, are separately regulated, except photos[25], in Title III ("Evidences and means of evidence") of the general part of Criminal Procedure Code[26].

The frame of means of evidence provided in the new Criminal Procedure Code includes: the statements of the suspect or defendant, the statements of injured person, the statements of the civil part or civil liable part, the witness statements, documents, expert reports, officials reports, photographs, material means of evidence, any mean of evidence that is not prohibited by law[27].

The formulation of the content of means of evidence, listed in the new Criminal Procedure Code, is different from the one of the current Criminal Procedure Code.

Thus, in the new Criminal Procedure Code – unlike the code in force –among the means of evidence were provided the statements of the suspect and the statements of the injured person instead of statements of the accused, respectively of the injured part. Such substitutions are criticisable because the notion of the suspect involves a consistent dose of subjectivity, it is difficult to quantify, which is impermissible in criminal procedure, where prevail the objective criteria for determining; also the statements of injured person do not have the same relevance, since it does not have the status of a part in the criminal process – trial position excluded in the concept of the new Criminal Procedure Code[28].

On the other hand, the new Criminal Procedure Code does not list as means of evidence the audio or video recordings, the technical-scientific findings, the forensic findings and the expertizes, as required by the Code in force; this means that new formulation of the content of means of evidence is, in our opinion , more accurate and correct.

The fact that audio and video are not on the list of evidence (recognizing that they are not evidence but evidence procedures, as, indeed, was reported in the doctrine[29]), the new Criminal Procedure Code is a step forward in this matter.

But note that the regulation of Art. 139 paragraph 3 of the new Criminal Procedure Code (which took the same text article 91^6 of the Criminal Procedure Code), the legislator demonstrates inconsistency, in that it ignores the record that summarizes the technical supervision, properly no longer considerate evidence but those made by the parties or by others when looking at their own conversations or communications that they have had with third parties, constitute evidence. Similar reasoning applies for any other records, which, if not prohibited by law, can constitute evidence.

Legislative solution that technical, scientific, forensic findings and expertise are not listed among the means of evidence, which are, in fact, evidentiary procedures (procedures that operate on different means of evidence), is welcome, since the report of the technical-scientific and forensic expert report as are documents which relate the existence of evidence, gaining them the character of means of evidence as any written. In addition, the specialized literature[30] emphasizes that it is customary to list the evidence among themselves processes which led to

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[24] Art. 64 paragraph 1 of Criminal Procedure Code.

[25] Photos are suitable to be forged by assembling mix, retouching (software is dedicated for this purpose), they may be subjected to technical expertise, aiming to confirm or reject the reality of the image (see Gr. Theodoru, *op. cit.*, p. 402).

[26] See N. Volonciu, A. Barbu, *op. cit.*, p. 11.

[27] Art. 97 paragraph 2 a)-f) of new Criminal Procedure Code.

[28] G. Antoniu, *op. cit.*, p. 10.

[29] For details, M. Udroiu, R. Slăvoiu, O. Predescu, *Tehnici speciale de investigare în justiția penală*, C. H. Beck Publishing House, Bucharest, 2009.

[30] S. Kahane, *op. cit.*, p. 170-171.

the reports , that is technical , scientific , forensic and expert finding , substitution of this type are often used in legal terminology. In this context, however we believe that exclusion, the concept of the new Criminal Procedure Code, even among processes of technical, scientific evidence is a questionable solution. In an attempt to remedy this shortcoming, the will of the legislator (Art. 172 paragraph 4 last sentence of the new Criminal Procedure Code), professionals working in judicial bodies are treated as official experts, but the examinations conducted by these specialists do not fully respond to the quality standards required by the actual training of a person who has obtained the status of an expert (practical experience, professional knowledge, credibility and objectivity in the eyes of litigants).

In the specialized literature, qualification nature photos are subject of controversy. In an opinion, photos are evidence included in Art. 64 of the Criminal Procedure Code, but has no detailed regulatory code, as all other evidence[31]; from another opinion , it is considered that in the previous Law no. 141/1996, photos were included in the activities of the criminal investigation and subsequently were considered evidence[32].

On the other hand, in doctrine[33] was shown correctly, that pictures are only methods of proof, and no evidence, however, the new Criminal Procedure Code , rather than correct the mistake in Art. 64 of the current Criminal Procedure Code, it is repeated in Art. 97 paragraph 2 e). We agree with the latter opinion, with a reservation in that photos are procedures whenever evidence is not simple illustrations of the other evidentiary procedures. In the latter case, we believe that photographs are means of auxiliary forensic technical and tactical criminal activities (such as lifting objects and documents, searches, crime scene investigation, reconstruction, finding flagrant crime).

Moreover, this distinction is necessary as the need of audio and video (evidentiary procedures) on the one hand, and sound or image (forensic auxiliary technical means), on the other hand, although both involve itself, the partial action of printing technical means, sound or light phenomena[34].

The text Article 97 paragraph 2 e) of the new Criminal Procedure Code regarding expert reports and minutes , the view that is superfluous , since they are in themselves, documents[35], prepared by the judiciary, by experts or specialists assimilated to them.

4. Forms of manifestations of the interaction between Criminalistics and Criminal Procedure

The new criminal procedure takes over certain methods and criminal techniques and gives it the character of legal rules.

a) The transformation of some tactical rules to achieve criminal methods in provisions of criminal procedure

As a first form of expression of the close relations existing between criminal and criminal procedure law, mention many rules developed by forensic institutions designer to contribute to building trial.

Convincing example is the new Criminal Procedure Code, which, in the general part, Title IV, with marginal “Evidences, means of evidence and evidentiary procedures” took over

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[31] See N. Volonciu, A. Barbu, *op. cit.*, p. 11, footnote 2.

[32] See Gr. Theodoru, *op. cit.*, p.

[33] G. Antoniu, *op. cit*., p. 9-10.

[34] For details, N. Grofu, *Înregistrările audio sau video şi înregistrările de sunet sau imagine – distincţii în cazul constatării infracţiunii flagrante,* in „Law Review” no. 9/2009, p. 210-218.

[35] The minutes are documents that expire during the trial to find recording the facts and circumstances directly to their senses, by persons authorized by l aw (Gr. Theodoru, op. cit., p. 398).

massive rules of criminalistics manuals that describe how to perform procedural institutions, it has turned into law , such as explaining how to perform special surveillance or research techniques , making and fixing search results domiciliary, the procedure of making expertise, the kinds of expertise and methods of making them. For that is taking the form of expression not only of criminal operations, but also the content of some of them. For example, some special techniques have been added or research monitoring (when finding a corruption or the conclusion of an agreement, subscriber identification, the owner or user of a telecommunications system or a computer access point).

b) *Creating new criminal procedural institutions*

The second manifestation of interaction is to introduce the law of criminal procedure trial of new institutions, which until then belonged to forensic issues.

For example, this is the case identifying persons and objects, which was established in the new Criminal Procedure Code[36)]. In fact, by introducing text Article 132-137 in the new Criminal Procedure Code, a method of Criminalistics Tactics – known as *presentation for recognition* and without self-regulation in the current Criminal Procedure Code – becomes a Criminal Procedure institution under the name of *identification of persons and objects.*

In the Criminal Procedure Code, the presentation for recognition is not regulated, as a trial institution, and is not listed among the evidence or probative process. However, the presentation addresses the doctrine of criminal activity for recognition as a criminal tactic – unreservedly accepted in the practice of the judiciary – was carried out to identify the persons , bodies, things or animals, with the person charged has previously held , in a greater or lesser description , exterior features or characteristics of persons and animals[37)].

When presented for recognition , we can talk about an own method of criminal tactics on which the witnesses or the injured person , accused or defendants[38)] are asked to identify people, bodies , objects or animals in connection with the case.

Central issue of criminal investigations[39)], identification is to determine, by scientific and technical means, the identity of a person or object that is related to the offense investigated, in order to obtain evidence to prove the crime and guilt. Forensic identification should not be reduced to specific art forensic laboratory activities identifying a person or object can be made by criminal activities is the subject if tactics.

As such, the submission for recognition is a way of listening to people. In creating the presentation for recognition method, we started from the premise that recognition is a psychological process simply because updating previously collected information does not require a great effort, as opposed to reproduction that meets people where the usual obedience. A person normally developed physically and mentally can collect, retain and play - the recognition or description - events that were present, if not objective or subjective occurred which may, in part or in whole, the whole process recognition. Because the result of psychological mechanisms that observation, storage and playback, recognition may be more or less accurate.

The presentation for recognition of objects and persons, however, is customized during the listening activity by a defined scope and purpose: identification of persons, bodies, things

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[36)] See Chapter III, Title IV of the general part of the new Criminal Procedure Code.

[37)] See C. Aioniţoaie, Em. Stancu, *Prezentarea pentru recunoaştere*, in „Tratat de tactică criminalistică" by C. Aioniţoaie, I-E. Sandu, V. Berchesan and others, Carpaţi Publishing House, Craiova, 1992, p. 178.

[38)] See A. Ciopraga, *Criminalistica, Tratat de tactică*, Gama Publishing House, Iaşi, 1996, p. 341.

[39)] See P. L. Kirk, *Crime lnvestigation, Physical Evidence and the Police Laboratory*, Interscience Publishers, New York. 1960, p. 12.

or animals that are important for truth and fair settlement of criminal cases[40]. Purpose of submission for recognition is to determine if the object, person, body, animal, person who is given recognition, is identical to that previously noticed in circumstances that are important for that cause[41].

On the generalized practice of criminal investigation, forensics has developed its own tactical rules on the preparation, execution and realization of this activity, compliance with which ensures the purpose for which recognition is organized presentation[42].

The presentation for recognition is materialized in a report, which is mean of evidence in question. The result presented for recognition in isolation, constitute a basis for developing sound and appropriate conclusions to be administered in conjunction with other relevant evidence[43] confirming the participation of the person recognize the crime.

In the new regulation, identification of evidence is a process that can be ordered by ordinance by the prosecutor or prosecutors in the prosecution or by the end of the court during the trial[44], and that is to appear for the be identified or photo, together with other 4-6 persons unknown or their photographs, which have features similar to those described by the following to identify, which is heard for this purpose before taking action[45]. Identification of the person making should not be seen by those present[46]. If necessary, during the criminal pursuit, the activity of identifying persons is recorded broadcasts. Statements about activities and identify the person who makes a report concludes.

Objects identification evidence is a process that can be ordered by the prosecutor or the prosecutors in the prosecution or the court during the trial, which is to present objects that are assumed to contribute to finding truth about a crime, to identify them by the person he described it previously[47]. Identifying objects is at the body that ordered it or the location of objects, if they can not be made[48]. If necessary, during prosecution, efforts to identify objects are recorded broadcasts. Statements about activities and identify the person who makes a report concludes.

If more people are required to identify the same person or the same object, which is taken to avoid communication between those who did identify those who are to perform[49]. If the same person to be presented several times, it must be located between the different people who have participated in previous proceedings, and if the same object is to undergo multiple identification measures must be taken that it be placed among objects other than those used previously[50].

If people identified from photographs, voices, sounds and other elements which make subject to sensory perception, the same shall identify individual persons[51].

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[40] See C. Aionițoaie, Em. Stancu, *op. cit.*, p. 179.

[41] See C. Suciu, *Criminalistica,* Didactică şi Pedagogică Publishing House, Bucharest, 1972, p. 172.

[42] See, for details, N. Grofu, *Reflecții asupra identificării persoanelor şi a obiectelor în concepția noului Cod de procedură penală*, in „Justiție, stat de drept şi cultură juridică", Universul Juridic Publishing House, Bucharest, 2011, p. 914-924.

[43] The fact that a person suspected of committing the offense was recognized by a witness and it does not mean that the offence.

[44] Art. 132 of the new Criminal Procedure Code.

[45] A se vedea G. Antoniu, C. Bulai, *op. cit.*, p. 419.

[46] Art. 134 paragraph 3 of the new Criminal Procedure Code.

[47] See G. Antoniu, C. Bulai, *op. cit.*, p. 420.

[48] Art. 135 paragraph 1 of the new Criminal Procedure Code.

[49] *Ibidem,* Art. 137 paragraph 1.

[50] *Ibidem,* Art. 137 paragraph 2.

[51] *Ibidem,* Art. 136.

The text of Articles 132-137 were introduced in the new Criminal Procedure Code, is taken, the synthetic tactical rules of forensic literature. Regulation to identify people and objects in the new Criminal Procedure Code was not required nor doctrine, nor judicial practice, but were imported models of foreign law. Consequently would require regulations to remove this artificial material increases[52)].

Conclusions and proposals *of lege ferenda*

In our opinion, criticized the texts could be removed and reported shortcomings could be corrected in future legislation, the legislature can interfere with even the law implementing of the new Criminal Procedure Code[53)].

However, misunderstanding the relationship between criminal and criminal procedural law has led to some questionable solutions. Criminal Procedure Law, objectively, could not resolve any problems encountered in legal practice, but the existing legal texts create the possibility, via their interpretation, to find solutions that can cover many practical situations. Procedural provisions fail to keep the rhythm with the dynamics of real life, by simply inserting provisions for the crime bill, whose place is in fact in forensic textbooks, and not in the Criminal Procedure Code. This method is a pseudo-connection to objective reality of the procedure, so the prosecution is dense, complicated and becomes impractical and not useful.

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[52)] See G. Antoniu, *op. cit*., p. 14.

[53)] The law implementing the new Criminal Procedure Code for the amendment of some laws which would be criminal procedure is posted on the website of the Ministry of Justice and Civil Liberties, subject to public debate (see www.just. ro).

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