This file corresponds to information relating to the Object of the Process of Criminal Procedural Law in Portugal.

the object of the process general considerations

This is a central problem of the criminal process that is linked to the principle of accusation. This principle presupposes a material separation between those who investigate and accuse and, on the other hand, between those who judge – which means that the court has no initiative to promote proceedings, investigation. The court's activity depends on prior accusation by a distinct entity and person. This accusation is not only the triggering assumption of the adjudicative activity, of the judgment, the accusation is also the thematic guideline of the court's accusation. the accusation defines the object of the case, defines the quid, the question of fact and law on which the adjudicating entity of the court will focus. The importance of correctly defining the object of the process is inspired by the same reasons that justify the enshrinement of the principle of prosecution, that is, it is inspired by ensuring the impartiality of the court and protecting the accused against incriminating surprises. The court has the power to order the production of any evidence and to investigate, but always within the limits ordered in the process, thus maintaining its impartiality. the judge judges in an equidistant manner – as all his investigative activity is limited/shaped by the object of the case, which cannot be exceeded, this protects the defendant against incriminating surprises that could exist if it were lawful. example: someone who is accused of committing the crime of theft and the witness, at the trial hearing, says that he saw him leave the house with a ladder and a crowbar, asked him what he was going to do and he still asked him what he was going to do and he he insulted and attacked her – and so the person who was accused of theft ends up being tried for theft and domestic violence. and this cannot happen. the accusation is not only a presupposition that triggers judgment, it also provides its thematic guideline, protecting the accused against incriminating surprises and guaranteeing the impartiality of the court.

figueiredo dias says that the accusation not only conditions the if but also the how and when of the judicial investigation. the judge can investigate in order to establish the factual bases of his decision himself, that is, he can order the production of evidence that has not been requested by the prosecution or the defense, but the facts that he can know through this evidence are only those who are in the accusation or new instrumental facts of those – cannot know new substantial facts that go beyond the limits of the object of the process. In the example given, it is clear that the new facts that the witness brought about domestic violence go beyond the limits of the object, but if the witness says that the agent used a crowbar and this was not mentioned in the accusation because it was not known, this fact can be known in court.

When we talk about the object of the process we can adopt a differentiated concept or a unitary concept of the project:

For a minority thesis in Germany, represented by Karls Peters, the object of the process has a different extension when considered for the purposes of delimiting the court's powers of cognition and for the purposes of res judicata. note: the object of the case limits the court's powers of cognition, but also limits the effectiveness of the res judicata. the object is then of interest to these two levels. the extent of the object is different in these two dimensions. the dimension of the object is broader when considered for the purposes of powers of cognition and narrower when considered for the purposes of deciding what is consolidated in the res judicata. for this author, the object has a dynamic nature, undergoing successive narrowing throughout the process, in such a way that only what was contained in the court's powers of cognition, but which it was able to effectively know, is precluded by the res judicata. there are things that are contained in the court's powers of cognition but thatwhich the court, in practice, cannot know due to practical obstacles because no evidence was produced, or because such knowledge would violate the rules of distribution of jurisdiction, or because no complaint had been filed. for this author, the concept of object is differential, admitting a more restricted object for the purposes of res judicata, suffering successive narrowings so that only what is consumed by the res judicata remains within the court's powers of cognition and which the court can actually know. The dominant doctrine, both in Germany and in Portugal, has a unitary concept of the process in the sense that the scope of the object of the process is the same for the purposes of delimiting the powers of cognition and effectiveness of the res judicata. everything that the court could know through its powers of cognition is consolidated, even if it did not know it for some factual or legal reason. For this thesis, there is a close overlap between the principles of indivisibility of the object and that of consummation.

The principles of defining the object are three:

the principle of identity – the object must remain the same from the accusation until the trial and final decision.

the principle of indivisibility/unity – the object of the process must be known and judged in its entirety, and the prosecution cannot claim a merely partial assessment of the object. the object must be known completely and exhaustively. the MP, in the accusation, cannot claim a merely partial cognition of the object. everything contained in the accusation must be known. the principle of consummation – everything contained in the accusation must be known, even those facts that form part of the object and have not been expressly mentioned in the accusation, because if they are not known (and here this 3rd principle comes in), it must its knowledge is precluded by virtue of the case res judicata. what should have been known and was not is considered consumed in the case judged. This means that it will no longer be possible to assess it, that is, the issue submitted to the court must be considered unrepeatable, extending the effect of the decision to all issues that the court could have considered, although they were not actually known. . the question submitted to the court must be considered known. the court must resolve the issue exhaustively, but even if it does not do so, it is considered

resolved that which falls within its powers of cognition.
These last two principles are strongly intertwined. Castanheira Neves says they are the face and reverse of the same coin. the principle of indivisibility refers to the object of the perspective of knowledge to be realized (what can the court know? prescribes that this knowledge be indivisible and total, exhaustive that the court knows everything), while the principle of consummation looks for the object of the process from the perspective of knowledge already achieved (what the court should have known and is therefore precluded by the res judicata. knowledge must be considered as undivided and total, even if it were not). The great difficulty is not with these two principles, but with the principle of identity: what does it mean for the object to be the same? What is needed for the object to be the same? During the trial, facts come to light that are not specifically described in the indictment –

it is in the nature of things. the accusation is a more or less lean procedural piece, but, even so, it is a schematic description of a set of facts that does not reflect the fullness of the richness of life and, therefore, it is natural that witnesses at the trial hearing bring this vivacity, bring factual elements that are not described in the indictment and that is not an anomaly, it is the nature of things. The difficulty arises in knowing which modifications/additional factual elements can be introduced into the judgment without violating the object of the process, and which are those that cannot bebe introduced because they go beyond the object of the process. for this, there are several criteria: subjective criterion – the object is only the same as long as the identity of the agent is maintained. If the crime is attributed to a person other than the accused or to another person in co-participation with the accused, the identity of the object is lost. for example, a is accused of the crime of theft. It is discovered during the trial that, after all, the van in which the agent fled the scene of the crime, taking the stolen objects with him, was driven by another person. According to this criterion, the responsibility of the truck driver in that process cannot be known because this would lead to the loss of the subjective identity of the object. in the same way, if a were accused of committing a crime of theft and it was discovered that, after all, the crime had been committed by b, b could not be called to the trial. In essence, these situations would amount to a violation of the principle of prosecution. Disrespect for the criterion of the subjective identity of the object would mean judging someone who had not previously been accused. objective criterion – for the object to be the same, the crime must be the same. What does it mean to be the same crime? The pure legal qualification is not important, it is not enough for it to be the same for it to be understood that the crime is the same. the legal qualification may be the same and the crime be different (example 1), and it may be the case that the legal qualification is different and the crime is the same (example 2). example 1: the legal qualification is the same and the crime is different –

he is accused of committing the crime of theft in the summer, in Albufeira, where he went on vacation. At the trial hearing it is discovered that he didn't do it, but he is not completely innocent because on Christmas Day he went to the woodwork and stole a watch there. Here it's the same legal type, but it's not the same crime. example 2: the legal type is different and the crime is the same – he is accused of, on a certain day, while he was on the street, he saw a lady with an expensive wallet and as he thought his wife wanted one, he took it away the wallet to the lady and took it. is accused of theft. At the trial hearing, the judge, looking more closely at the facts, understands that it is not a case of theft, but robbery. It is not the legal qualification that provides the criterion for the objective identity of the object. there must be another criterion.
To decide what this criterion is (a criterion determined when the crime is the same), there are several doctrinal currents defended in different countries:
i. thesis defended by Cavaleiro Ferreira and Beling, predominant in Germany, which is the naturalist thesis;
ii. normativist thesis by eduardo correia;
iii. figueiredo dias piece of life thesis.
note: these theses, in general, find some parallels with those that are accepted regarding the problem of the unity and plurality of infractions, that is, regarding the concurrence of crimes. naturalistic thesis for naturalists, just as it was the action that gave the criterion for the unity and plurality of crimes (there were as many crimes as there were naturalistic actions), it is also the naturalistic facts that give the criterion for the identity of the object (facts of its historical existence). Cavaleiro de Ferreira says that what is investigated in the process is the historical fact, that is what is capable of proof. the object would be a set of facts and a naturalistic connection that did not meet any normative configurations or legal valuations. the object's identity criterion was a historical event. criticism: what gives unity to the facts? What is the criterion for deciding whether this fact still belongs to a certain naturalistic action or already goes beyond it? for some authors, the criterion would be the agent's conduct, that is, if the conduct is still part of that action/omission, the object would be the same. for others, it would be the spatio-temporal location, that is, if things happened in that spatio-temporal context the object is stillthe same. for others it would be the identity of the object (being the same physical object). but the basic idea was: someone goes out into the street, grabs someone by the coat, pushing them, the person falls and takes away the object (all of this would be part of the same object). the conclusion was reached that, depending on the criterion used, there were different solutions – there was no

naturalistic current, but there were several different naturalistic currents depending on a criterion of a factual nature that was chosen by several authors to function as a unifying pole for the historical event. fall into an inevitable casuistry. the criterion of unity of the historical event will depend, in the specific case, depending on what “works best” unfriendly to legal security

critique by eduardo correia: a factual criterion cannot, under any circumstances, give unity to real knowledge. All events in the world, just like human actions, do not have a criterion within them that gives them unity. What gives unity to the historical event, to a human action, is a point of view that interests the subject, it is always the subject's perspective. Outside of this point of view that interests the subject and that the subject selects as a relevant criterion, there are as many objectives as one wants. If we do not select a point of view there is no unity, it is impossible to find or there are as many objects as we want. This is where Eduardo Correia's thesis comes in, according to which every criterion of unity is normative, it is always referring to the subject who chooses it. In the nature of things, there is no unity.

normativist thesis

the major criticism that eduardo correia makes of the naturalistic thesis is the fact that it ignores that facts do not contain in themselves a criterion of unity. What gives unity to the facts are the valuations, it is the subject's perspective on the facts. we know that the set of parts can form a car, but we are the ones who provide the criterion of unity (it is always the subject's perspective). We can look at a historical event as a linguistic, fashion, criminal event, so what always gives unity to the facts is the subject's perspective, that is, a normative plan/valuations. When a crime is at stake, and because crime is the denial of values, what gives unity to the criminal historical event are the values

denied by criminal conduct. So, once the legal-criminal values

are condensed into a legal type, it is the legal types that provide the criteria for the identity of the object, which is actually the same answer that this author gives to another question: the question of unity /plurality of infractions – there are as many crimes as there are legal types violated. it is also the legal type that provides the criterion for object identity – there are as many objects as there are violated legal types. as long as the facts correspond to the violation of the same legal type, the judge is situated within the scope of the same object. It is not the coincidence of the naturalistic facts of the accusation and the decision that provides a criterion for the identity of the object, but the coincidence of the concrete judges of value denied by the conduct and which rush into legal types. Eduardo Correio uses an expression: the criterion for the identity of the object is the concrete and hypothetical legal-criminal violation accused, which means that when a set of facts described in the accusation are not proven, but at trial other facts are proven that still correspond to that legal-criminal violation, the court can recognize and convict for these facts even though they were not described in the indictment. If the same legal-criminal violation is caused by a set of facts different from those described in the accusation, there is nothing to prevent the court from assessing them. These facts, although different, are still a projection of the same legal-criminal violation. the criterion that eduardo correia uses is the same one he uses for the unity and plurality of infractions and he goes a little further in the parallelism and, in a work, he delves deeperI give the criterion of legal type, equating the criterion of the unity and plurality of infractions with that of the identity of the object.

In this work of his, the result of his doctorate, Eduardo Correia says that, as with the problem of the combination of crimes, a certain conduct can be subsumed under several legal types without this meaning that there are several crimes – this can also happen in the Regarding the problem of the identity of the object, it is enough that between the legal types there is a hierarchical relationship that can be of specialty or consummation. For Eduardo Correia, the fact that a conduct potentially violates several legal types does not mean that several crimes are committed. if a kills his father b, his conduct also violates not only the legal type that enshrines homicide, but also violates the legal type that enshrines qualified homicide. the same conduct violates two legal types, but this does not mean that there are two crimes because there is a hierarchical relationship between the two abstractly violated legal types, which in the specific case is specialized. Alongside this, there are consummation relationships. The fact that a conduct prima facie violates several legal types does not mean that there are several crimes. There will not be several crimes if there is a hierarchical relationship between them. the same can be said regarding the problem of the identity of the object - if the facts described in the accusation are subsumed under the violation of a certain legal type and the facts that are established during the trial hearing are subsumed under a different legal type, even so we can be in the same object, it is sufficient for this purpose that the legal type summoned by the facts of the accusation and the legal type summoned by the facts discovered at the trial hearing are in a hierarchical relationship with each other.

In addition to these situations, there are certain situations of plurality of crimes (concurrence of crimes) that are legally dealt with within the scope of a unit – cases of continuous crime, which is based on a plurality of crimes. Given the external circumstances that lessen his guilt, the legislator treats this situation communally in the form of a continued crime. This means, for Eduardo Correia, that when the indictment describes certain conducts that are in a relationship of criminal continuation and other conducts are discovered in the trial

that are not described in the indictment, but would be part of that criminal continuation if the MP had foreseen them. , then the court can learn about these new behaviors. there is a plurality of crimes substantially, but as the legislator treats this reality unitarily, the object is also the same. For Eduardo Correia, the interpreter, the law enforcer/judge, must not only look at the concrete and hypothetical criminal legal violation accused, but rather cast his eyes on all potentially applicable legal types – that is, not just the accused legal type , but all legal types that are in a relationship of normative legal unity with the accused, or also for those facts that are in this legal-normative unity characteristic of the continued crime. This leads to results that Eduardo Correia might not have fully anticipated. In the case of complex crimes, such as the crime of robbery, it includes theft and violence or the threat of violence. For Eduardo Correia, if the MP charges for theft and during the hearing it is discovered that there was violence, the court can charge for theft because there is a normative relationship between theft and robbery. in theft, the threat is added to the theft. There is a specialty relationship between theft and theft. between offenses and theft is a relationship of consummation. In any case, there is a normative relationship that unites theft, offenses and robbery and that is why the judge can know. so: eduardo correia's solution leads to this undesirable result – someone can be accused of theft, and discover at the trial hearing that it was not like that at all, beingwho hit the passenger on the side but did not arrive or want to steal the wallet and the theft is a normative solution, this thesis would allow the judge who receives an accusation for theft to be able to sentence for offenses to physical integrity (despite being accused of theft) because the offense, theft and theft are in the same normative unit and the judge must look at all potentially applicable legal types. Here, the court should acquit the acquittal of the crime of theft, a new investigation should be opened to investigate the offenses, but Eduardo Correia's thesis, when applied, would not result in that solution.
as for eduardo correia the criterion is normative and he wanted to escape the naturalistic conception that placed everything on the level of facts, he falls into the opposite deeply normative place, placing everything on the level of valuations, on the level of legal types. Eduardo Correia did not anticipate this result in complex crimes. eduardo correia's criterion is this, but it still allows in certain cases the extension of the court's powers of cognition beyond the limits of the object for reasons of procedural economy and the use of evidentiary material in incriminations that are not in a relationship of normative unity with the accused, but who are in an ideal competitive relationship. For Eduardo Correia, ideal competition situations are effective or true competition situations, just like real competition situations. he did not accept the German theses according to which in the ideal competition there should be special treatment –

if the action is one, there is only one crime. For Eduardo Correia, in the ideal contest there is a single action that results in the violation of several legal rights, and in this case there are several crimes. If this is so, and if someone with one shot kills two people, that is, if a is going to be accused of killing b, but it is later discovered, at trial, that c also died as a result of that same shot, this conduct in principle it will be outside the limits of the object as it corresponds to an incrimination that is not in an apparent competitive relationship with the accused – it is in an effective or true competitive relationship, there are several crimes. Even though the object is not the same, Eduardo Correia allows the court to hear about this second crime, for reasons of procedural economy. If the conduct that gives rise to the commission of the two crimes is the same, there are advantages from an evidentiary point of view in carrying out a joint trial. the task of the evidentiary decision has already been done. These new facts are no longer part of the same object, but even so, Eduardo Correia says that the court can learn about them – as the action is the same, the investigation that serves to prove one of the crimes also serves the other, it is the same conduct.
In the words of Eduardo Correia, the court's cognition of legal violations that are not accused and that do not find themselves in a hierarchical relationship or normative utility with those that were the subject of accusation, can take place exceptionally whenever the execution of these (the accused) takes place in whole or in part the production of those if two crimes are committed with the same action, the second crime that is discovered at the trial hearing does not form part of the object formed by the accusation for the first crime, but as the action is the same there are advantages of reasons of procedural economy in which everything is judged in the same process – the advantages result from the evidentiary activity that serves to prove the conduct that generated the first crime, and also serves to prove the second conduct. This thesis is also susceptible to criticism: criticism on a methodological level – the radical cut between the world of being (of facts) and the world of ought-to-be (of norms) is criticized. naturalists overvalue the world of facts, eduardo correia ignores facts and only considers norms, in essence, he transmutes reality into categories and from that moment on everything is paid for in the game between categories. facts become a fungible factor in the classificatory categorical game – castanheira neves. fungible because those facts can be thatles or any others, for eduardo correia it doesn't matter. material criticism – eduardo correia's thesis can give rise to unreasonable solutions from the point of view of protecting the defendant's defense rights, because it allows, for example, in cases of complex crimes, for the defendant to be judged on factual grounds that are not are minimally reflected in the accusation and which he could not count on/anticipate (someone accused of theft is not waiting to be convicted of offenses against physical integrity). criticism about self-openness – eduardo correia uses the criterion of the legal type and the relationship between legal types and it is this criterion that provides the criterion for the identity of the object and which, being the

object different, cannot be known by the court, but then in self-openness with its thesis allows the extension of the court's powers of cognition to facts not included in the object of the process for reasons of procedural economy. We saw this in relation to the ideal contest. if someone with the same action commits two crimes, that is, someone who wants to break a window, does not notice that the store employee is inside and hits the employee with the stone he threw to break the glass – we have an ideal competition situation (heterogeneous – with the same action two crimes are committed that violate different legal types). If the MP accuses of damage and it is discovered at the trial hearing that the store employee was also injured, Eduardo Correia recognizes that the object was enlarged, but allows the court to know the other facts for a simple reason of procedural economy because the facts in that the violations are based are the same and the proof has already been done.

the slice of life thesis sought to escape each of these gaps and, in the same way that it does not forget the factual moment and configures the object of the process as a set of facts in natural connection, the slice of life, the slice of socio-existential reality concrete, it also does not forget the normative moment and says that this piece of life gains meaning by appealing to pertinent legal-social valuations. For Figueiredo Dias, the object of the process is constituted by a set of facts in natural connection to which legal and social valuations give unity. If the outline of the concrete socio-existential reality, the slice of life, changes, if the history of the facts changes radically, the object of the process is not the same. Even if the focus does not change completely, the object will not be the same when the legal and social valuations called for change. How do you measure social legal valuations? figueiredo dias, from the point of view of legal valuation, gives importance to the bj, and if the offended bj is another, we are no longer situated in the same object. but it is not enough that the bj is the same, it is also necessary that the social valuation of the conduct is not radically different. e.g.: if it is said that on January 2nd he entered a house and stole from it a necklace thought to be made of jewelry, and then it turns out that what he stole in those circumstances (the social profile of concrete socio-reality does not change, What changes is the circumstance that the necklace is not made of jewelry but is made of diamonds) it was indeed a diamond necklace. In this case, the piece of life is the same, there is no major change, the legal valuations are the same because the bj in question is the same (property), but there is a big difference in social valuation. We value the subtraction of a jewelry necklace differently than a diamond necklace.

dr. almeida costa used a puzzle metaphor: basically, the accusation is a kind of puzzle, there are missing pieces that will only be brought up at the trial hearing and it is important that these pieces still fit into the puzzle and will fit into the puzzle if the factual picture does not radically change and the legal-social valuations do not change radically. the accusation is the sketch that is not yet finished – but we can still understand something. some modification is permitted, but the essential must remain: a set of facts that appeals to a contogether with relevant legal-social assessments. figueiredo dias did not write anything about its theoretical construction.

Now it’s important to look at the law. the law does not solve the problem definitively, but it seeks to solve at least part of the problem. the object of the process is relevant: to determine the court's powers of cognition, that is, what the court can know that is not described in the indictment. to define what is covered by the case res judicata, that is, if a decision is made in the case, what is precluded and cannot be known in another case. the law only solves the problem of knowing what the court's powers of cognition are, but it does not clarify whether what the court could have known and did not know is precluded, consumed by the case res judicata. we accept a unitary thesis of the object and, therefore, doctrinally it has been understood that what could and should have been known is precluded and cannot be assessed in a new action but the law does not say so.

the law solves the problem of the court's powers of cognition by appealing to a relational-binding criterion, which is the criterion of substantial alteration of the facts. It is a relational criterion because it forces us to compare a set of facts described in the indictment with what is later established at trial. It is binding because the law establishes mandatory rules whose violation results in the nullity of the sentence. that criterion is that of a substantial change in the facts. in fact, the legislator defines what should be understood as a substantial change of facts in article 1/al. f): the principle that says that a substantial change in the facts is one that has the effect of imputing the defendant of a different crime or increasing the maximum limits of applicable sanctions. we have a double criterion to know if there is a substantial change in facts: i. is that there has been an increase in the maximum limits of applicable sanctions: if the facts change and, due to a change in the facts, the crime charged to the defendant is punishable with a prison sentence whose maximum limit is higher, there is a change in the circumstances of the facts. e.g.: someone is accused of simple homicide (punishable up to 16 years) and it is discovered that the crime was motivated by racial hatred, and then this conduct becomes subsumable under the legal type of qualified homicide (punishable by a prison sentence whose maximum limit is 25 years). This is an objective and simple criterion. ii. but it may happen that the maximum limits of applicable sanctions are not raised and, in that case, we may still have a substantial change in the facts if the crime charged is different. It is not enough to change the legal classification, the facts must have changed and due to this change in the facts it must be understood that the crime is different. it could even be another legal type and not understand that the crime is different. It depends on the criteria we use and the criteria we will use are the criteria of the doctrines already given, namely the normativist and the piece of life thesis. The criteria we will use are those we saw in the doctrinal theses - naturalist, normativist and piece of life. In a practical case, when a question arises and there is no change in the maximum sentence, we have to apply the theories and see what result it leads to. this concept of substantial change of facts appears in articles 358 and 359 and these articles deal with the problem of the object of the process because they provide for what the court can know that was not

described in the indictment, but this expression also appears In other words, the code did not solve the problem and, in view of the omission of the code, the stj came to interpret it, and later the tc declared the code's norms unconstitutional when interpreted in accordance with the stj's opinion, insofar as it allowed the court changed the legal qualification even to a more serious penalty without granting the defendant time to prepare for his defense. Basically, the tc seemed to point to the old code solution. and the legislator, in 1998, changed the codeigo, introducing a solution for changing the legal classification, which is set out in article 358.º/3: the provisions of no. 1 are correspondingly applicable when the court changes the legal classification of the facts described in the indictment or in the ruling - it is a remissive rule that refers to the solution provided for by the parties of the code regarding problems that are in no way related to the subject matter of the proceedings.

mentions of the concept “substantial change of facts” in the code:

the legislator mentions this concept for the first time in the code regarding the accusation by the assistant in public and semi-public crimes (article 284) and accusation by the public prosecutor in private crimes in the strict sense (article 285). see articles. in no. 1 of article 284 it is established that the assistant may bring charges for the facts accused by the public prosecutor, for part of them or for others that do not involve a substantial change in those. Article 285, paragraph 3, states that, in the case of private crimes in the strict sense, the person who accuses is the assistant, but the public prosecutor may charge for the same acts as the assistant, for some of them or for others that do not involve a substantial change in those acts. Although the concept of “substantial change in the facts” is the same, the problem does not relate to the subject matter of the proceedings. What we are comparing is the public accusation with the accusation of the assistant (Article 284) and the private accusation with the accusation of the public prosecutor (Article 285) – we have not yet reached the trial stage and therefore we do not yet have a problem with the subject matter of the proceedings. The problem of the subject matter arises in the comparison between what is accused and what the court can hear. The legislator establishes this limit to ensure the rules that he himself indicated on the distribution of jurisdiction to charge. If the legislator intended that in public and semi-public crimes the person who accuses is the public prosecutor, then he cannot allow the assistant to substantially alter the public prosecutor's accusation – that would be to pervert the rules that the legislator intended to establish regarding the distribution of jurisdiction to accuse. The same applies to article 285. If the rules are not respected and the public prosecutor, in private crimes in the strict sense, accuses for more facts than those described in the private accusation, or the assistant in public and semi-public crimes goes beyond the scope of the public accusation, in that which exceeds and violates the law, the trial judge may reject the accusation (article 311.º/2, subparagraph b)). This concept appears with regard to the investigation in articles 303 and 309. These rules state that the jic cannot rule on facts that substantially alter those described in the accusation or in the request to open an investigation, under penalty of nullity. The indictment order must be compared with two procedural documents: the indictment and the request for the opening of an investigation. The JIC cannot exceed what is contained in these two procedural documents. The legislator wanted this solution to emphasize that the investigation phase is not a phase of complementary investigation, but rather a phase of control and investigation of the activity carried out by the MP in the inquiry phase, and therefore, the JIC is not free to investigate at its own discretion all the facts that are part of that life story. It can only investigate the facts described in the indictment and those that the indictment does not describe, but that from the perspective of the person requesting the investigation should be described and therefore brings to the attention of the judge. Ex: someone is charged with theft and physical assault; the MP investigates and concludes that there is sufficient evidence regarding the theft, but not regarding the offenses, and charges the theft and archives the offenses. The assistant may request the opening of an investigation regarding the offenses. In this case, the JIC will be able to know that the object of the investigation that was carried out in the inquiry is not being expanded; the decision of the MP, who investigated that and came to the conclusion that there was no evidence, is being monitored. The facts are being taken into account.to the judge's knowledge by the assistant or whoever requests the opening of an investigation, the jic can know about them, but what is not included in the order of indictment and the request for opening of an investigation, he cannot know. therefore, it is linked to the public accusation in the part in which there was no accusation because the MP considered that there was not sufficient evidence as to what was stated in the request for opening an investigation. It may happen that small factual changes arise during the instruction phase. the law distinguishes between substantial changes cannot be known. If the judge rules on facts that substantially alter those contained in the accusation and the request for the opening of the investigation, the investigative decision is null in that part (articles 303.º/3 and 4 and article 309.º/1). If the change in the facts is non-substantial, the jic may take cognizance of it, as long as it allows the accused a period of time to prepare for his or her defense (article 303/1 – if the acts of investigation or the investigative debate result in a non-substantial change in the facts described in the indictment by the public prosecutor or the assistant, or in the request to open the investigation, the judge, ex officio or upon request, communicates the change to the defender, interrogates the accused about it whenever possible and grants him, upon request, a period of time to preparation of the defense no longer than eight days, with the consequent postponement of the debate, if necessary). although the change is not substantial, it may harm the defendant's defense strategy, which is why it is essential to give him time to exercise the adversary proceeding.

the third moment in which this concept is mentioned is the moment of judgment in articles 358.º, 359.º and 379.º/1, al. B). this last rule states that a sentence that convicts for facts other than those described in the indictment or in the order of indictment is null and void.

Here we have the problem of the object of the process because we are led to compare between what is described in the indictment and the order of indictment if there has been an instructional phase, procedural documents that fix and delimit the object of the process and what is discovered at the trial hearing and which the court may or may not be aware of. The law also, for the purpose of judgment, distinguishes between substantial (prohibited) changes and non-substantial changes. If non-substantial changes to the facts occur, whether by addition or substitution of facts, the court informs the accused of this change and grants him a period of time to prepare his defense (article 358/1). It is a solution similar to that adopted for the instruction phase – a notable parallelism between articles 303.º/1 and 358.º/1. substantial change is prohibited. the legislator establishes more detailed discipline in this regard in article 359. If new facts arise that substantially alter those described in the indictment or in the statement and these new facts are autonomous in relation to those described, the court cannot take cognizance of these new facts, but the news of them is communicated to the MP so that, if desired, in In relation to these new facts, open an investigation (article 359/2 – communicating a substantial change in the facts to the public prosecutor counts as a complaint so that he can act on the new facts, if these are independent in relation to the object of the case). The question is knowing when the facts are autonomous in relation to the object of the process. Being autonomous means being capable of autonomous legal-criminal valuation, that is, these facts being in themselves and disconnected from the others that already appear in the criminal accusation. If new facts in themselves are crimes, they are autonomous in relation to the object of the process. example: someone who has been accused of committing the crime of theft and testifies at the trial hearing that she saw him leave the house, with a ladder and a crowbar and asked him what he was going to do and he insulted her and attacked her. these new facts are facts that substantially alter the accusation because he was carrested for theft and facts are discovered that could substantiate the commission of a crime of domestic violence. the judge will not be able to sentence this person for theft and domestic violence. But can anything be done about domestic violence? yes, the communication of these new facts to the MP counts as a complaint so that the MP, which is bound by the principle of legality, opens an investigation into them. In the case of domestic violence, the MP didn't even need anything else, as it is a public crime. If new facts substantiated private crimes in the strict sense or semi-public crimes, the MP was dependent on the victim's complaint being filed. These facts are autonomous because they are in themselves an autonomous crime. but sometimes facts are not autonomous. e.g.: someone is accused of murder and it turns out that they are driven by racial hatred. this is not autonomizable. These new facts that are discovered are not autonomous, they are not susceptible to autonomous legal-criminal valuation, they have no legal-criminal meaning disconnected from the others described in the indictment. In these situations, facts cannot be sent to the MP so that they can open an investigation into the new facts, as this investigation would have no purpose.

solution for these situations in which new facts cannot be autonomous:

until 2007, although the solution was not expressly included in the law, the doctrine understood that there was a gap that should be integrated by a subsidiary application of the rule of civil procedure, where there is the figure of the order suspending the instance or terminating the instance, which are orders of mere form and that do not preclude knowledge of the matter at an opportune moment. the route most followed in forensic practice was to issue an order suspending the instance - the instance was suspended in judgment, the case was sent in full to the investigation phase so that the MP could investigate new facts linked to those that had already been investigated and described in the indictment and then issued a new indictment if necessary, which essentially was the reconfiguration of the original indictment. This solution was opposed by part of the doctrine, namely Paulo Sousa Mendes, who understood that this solution adopted in practice and defended by part of the doctrine unfairly disadvantaged the defendant, who could not be harmed due to a lack of diligence on the part of the persecution authorities. that they were not very diligent in investigating and prosecuting and the issuing of an order suspending proceedings with remittance of all the facts for investigation harmed the defendant to the extent that it would lengthen the duration of the process, with a consequent restriction of his freedom in case of application coercive measures, and damage to honor and good name even if coercive measures were not applied. understanding that the defendant could not be harmed, the author suggested the solution that was accepted by the legislator in the 2007 review: any substantial change in facts cannot be known at all, neither in that case through suspension of proceedings, nor in another separately that would be implemented later. the facts could not be assessed by the court, they could at most be considered within the abstract criminal framework provided for the crime included in the accusation. example: if someone is accused of simple homicide and it is discovered that the conduct was motivated by racial hatred, the court may consider racial hatred, but to grade the sentence within the framework of simple homicide, but no longer to find punishment within the criminal framework of qualified homicide.

Article 359/1 provides that a substantial change in the facts described in the indictment or in the statement cannot be taken into account by the court for the purpose of sentencing in the ongoing case, nor does it imply the termination of the case. the extinction of the instance was the other solution that the doctrine defended that was not followed by the courts, but where it was possible to have an order ofand instance in which the instance, the process was terminated (merely formal decision) but this did not preclude the opening of a new investigation to find out all the facts. the legislator does not want this solution. Therefore, the legislator seems to accept Paulo Sousa Mendes' position. At most, new facts, if they are not autonomous, may be taken into account within the abstract criminal framework established in light of the crime charged in the accusation. exceptionally, they can be known because the legislator

establishes a consensus res judicata solution: if either the MP, the accused, or the assistant (if any) agree on the continuation of the trial based on the new facts, they can be known in the process, whether Autonomizable or not autonomizable, the defender will never agree if facts are not autonomizable because he knows that in this way they cannot be known in court, nor in that process nor do they imply extinction of the instance. in fact, only if the defender is poorly prepared and ignorant will he consent to the continuation of the trial and in the case judged by consensus, the facts being non-autonomizable (article 359.º/3: the provisions of the previous paragraphs are subject to the exception of cases in which the public prosecutor, the defendant and the assistant are in agreement with the continuation of the trial based on the new facts, if these do not determine the court's incompetence). The reservation made by Teresa Bizarre Beauty is established, which says that this consensus res judicata solution is not valid in cases where the story that is introduced in the trial is radically different –

the facts may be new and substantially alter those described in the indictment, but substantially altering the charge cannot create a radically different factual story. e.g.: if at the trial hearing for the crime of theft it is discovered that the previous year he had been punished for another theft, in this case this case judged as consensus is not admissible because there is not the slightest factual relevance between what is described in the accusation and what is introduced again. It would be a solution that would disgust us, it would be the same as a person being tried without charge. Article 303 also talks about facts that can be autonomized and those that cannot be autonomized and the solutions given are verified. the case judged by consensus is simply not accepted.

The last time this concept is mentioned is in article 424/3 regarding appeals. can also happen, the court must make it known to the defendant and grant the request time to prepare for defense. Here, too, the issue of the object of the process is not at stake; it is about highlighting the function of the appeal, which is a mechanism for controlling the first instance decision.

The problem of changing the legal qualification is a question related to that of changing the facts, but does not address the problem of the object of the process. the problem of the identity of the object is not to be confused with the problem of the identity of the legal qualification. can the legal qualification change and the object be the same and can the legal qualification be the same and the object change – these are problems that cannot be confused. We study these problems together because they are solved using the same standards and with the same solutions. In relation to legal qualification, it is usually said that the judge is not in principle bound by the legal sub-solution operated in the accusation. although the MP in the indictment order must indicate the legal type of crime committed and which criminal norms were violated by the agent's conduct, it has been understood that the judge is, in principle, free to modify the legal classification of the facts made in the accusatory order. , fulfilling the Latin aphorism iura novit curia (court knows the law). What is certain is that the defendant can consider the legal imputation made in the indictment to be correct, as this is made by a technically prepared judicial authority based on a thorough investigation of the facts and based on legal knowledge that the MP is presumed to have. and therefore the defendant canBuild your entire defense strategy based on the assumption that the legal classification of the facts made in the accusation is correct and may, as a result, have mobilized different means of proof than you would have mobilized, and have used different legal arguments than you would have used, and may even have mandated a less qualified lawyer than the one you would have mandated if you knew that the legal classification would be different. You cannot fail to protect the defendant against changes in legal qualification. The 1929 Code dealt with this matter in Article 447 and spoke of conversion, and the court was free to convert (change the legal qualification). However, the doctrine, already at that time, represented by Eduardo Correia and Figueiredo Dias, sought to reconcile the court's freedom to modify the legal qualification with the adequate protection of the defendant's defense rights. It was said that under the terms of the law the court is free to convert, but it must inform the defendant of this change, granting him, at his request, a period of time to prepare his defense. In 1987, the original version did not resolve this issue of the change in legal qualification, and the question arose as to whether the rules on the substantial change of facts also applied when what occurred was a mere change in legal qualification. The STJ issued ruling 2/93, which interpreted the rules of Article 1, paragraph f) and the remaining rules of the CPP that mention the concept of substantial change of facts, as meaning that a mere change in the respective legal qualification (or conversion) does not constitute a substantial change in the facts described in the indictment or indictment, even if it results in the submission of such facts to a more serious criminal offense. The ruling states that the rules on the substantial change of facts do not apply when the mere change in legal qualification is at stake, even if this change in legal qualification is for a more serious crime. This judgment gave rise to an appeal to the TC, which was called upon to assess the constitutionality of the rules of the Code as interpreted by the ruling. The TC decided in ruling no. 445/97 to declare the set of rules of the Code unconstitutional with general binding force, as interpreted by the ruling of the STJ, in the sense that the simple change in their legal qualification does not constitute a substantial change in the facts described in the indictment or indictment, but only to the extent that, if the different legal qualification of the facts leads to the conviction of the defendant to a more severe sentence, it is not expected that he will be warned of the new qualification and will not be given the opportunity to defend himself in this regard.