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THE EXERCISE AND RESOLUTION OF CIVIL ACTION IN CRIMINAL PROCEEDINGS

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Abstract*: Through legal action, a person is held accountable before the courts, in order to be obliged to bear the consequences arising from the violation of certain legal norms.*

Within a criminal trial, depending on the legal norms violated (criminal law and, in certain situations, civil law), the following may be encountered: criminal action, which is joined in certain circumstances by civil action. If criminal action is the means by which the criminal liability and punishment of the person guilty of committing a crime are achieved, civil action exercised within the same trial is the legal instrument by which the defendant and the civilly liable party are held civilly liable, because the crime committed by the defendant also violated the norms of civil law. Given the particularities of a civil action exercised within a criminal trial, its resolution within such a trial involves the analysis of the manner of resolving the criminal action in that trial, an analysis that we propose in this material.

Keywords*: criminal trial, civil action, damage compensation*

Introduction

To begin with, we mention that in order for a civil action to be able to be exercised in a criminal trial, alongside a criminal action that seeks to hold the person guilty of the crime criminally liable, the following conditions must be met (Neagu, & Damaschin, 2015, p. 303):

- The crime committed must have caused damage (material or non-material) (Volonciu, 1996, p. 258). A civil action can only be exercised if the crime committed is a "result" crime, not in the case of a "dangerous" crime. For example, driving a vehicle on public roads without a driver's license is a dangerous crime that excludes the occurrence of any damage.
- There must be a causal link between the crime committed and the damage. Without this link, the person who committed the act could not be required to pay compensation, lacking the basis for holding that person legally liable (Stătescu, 1984, p. 21).
- The damage must be certain, that is, certain both in terms of its existence and in terms of the possibilities of evaluation. Certain damage can be both current and future. A certain and future damage is, for example, that resulting from the loss of a person's working capacity. Possible damage cannot be covered because there is a lack of certainty regarding its occurrence in the future.
- The damage must not have been repaired. In principle, covering the damage will prevent the exercise of the civil action, but it must be taken into account whether the damage was covered in full or only in part, in which case the civil action is exercisable. It is also necessary to establish whether the covering of the damage was made by third parties who contributed to it out of the desire to help the victims of the crime and not to relieve the defendant of this obligation (for example, the case of work colleagues who hand the victim of the crime a sum of money to help her) (Neagu, & Damaschin, 2015, p. 311).
- Reparation of the damage must be claimed by the entitled natural or legal person. In order to obtain the recovery of the damage, the injured person must manifest his will in this regard by becoming a civil party. In the case of persons lacking legal capacity or with limited legal capacity, there is no need for their manifestation of will, the civil action being exercised ex officio by the prosecutor or the legal representative, even if the injured person is not made a civil party.

1. The object of the civil action the features of the civil action

The civil action represents the legal instrument by which the defendant and the civilly liable party are held civilly liable in order to cover the damage suffered by the injured person. In this way, the act committed by the author will attract both his criminal liability and his civil liability. Therefore, the object of the civil action is represented by the tortious civil liability of the defendant (Volonciu, 1996, p. 256) and possibly, of the civilly liable party, according to civil law, for the damage caused by the commission of the act that is the object of the criminal action.

According to the provisions of civil law (Art.1386 of the Civil Code), the reparation of the damage is made in two forms: in kind and, if this is not possible or if the victim is not interested in the reparation in kind, by paying a monetary equivalent.

When in-kind reparation of damage is made (a solution with priority over reparation in monetary equivalent), this can be achieved through one of the following methods:

- *Restitution of the thing;* As the first method of in-kind reparation of damage, restitution of the thing is possible whenever the property belonging to the civil party was seized during the criminal trial, from the defendant. This measure can be ordered by the prosecutor or by the judge, depending on the procedural phase of the case. The restitution of the thing is made only if it does not hinder the discovery of the truth in the criminal trial and always with the obligation for the person who received it to keep it until the final settlement of the case. If the restitution of the thing does not completely cover the damage caused, the defendant will be obliged to pay compensation in addition to achieve a fair reparation of the damage caused (for example, when the stolen goods were damaged).
- *Restoration of the previous situation;* This method of in-kind compensation for damage is used whenever it is possible to return to the situation prior to the commission of the crime (for example, the eviction of the defendant from the building he occupied by committing the crime

of failure to comply with court decisions provided for in art. 287 paragraph 1 letter g of the Criminal Code). This measure can only be ordered by the court during the trial.

- *Total or partial destruction of a document;* This method of in-kind compensation for damage is usually used in the case of forgery crimes, when the court must order the destruction of falsified documents.

As previously shown, whenever it is not possible to repair the damage in kind, or if the victim is not interested in this form of repair, the damage is covered by a monetary equivalent, that is, by obliging the defendant and the civilly liable party to pay a sum of money.

According to art. 1386 paragraph 2 of the Civil Code, when determining the compensation, the date of occurrence of the damage will be taken into account, unless otherwise provided by law.

Monetary compensation includes both the actual damage *(damnum emergens)* and the unrealized benefit *(lucrum cessans)* (Volonciu, 1996, p. 264) - for example, the legal interest due from the commission of the act until the payment of the amount, but also the expenses that the party made to avoid or limit the damage (Neagu, & Damaschin, 2015, p. 314).

In judicial practice, this method of recovering damages has been adopted when the goods were stolen or obtained through fraud, breach of trust, etc., when the goods are no longer found, or are destroyed, or when medical expenses were incurred (in crimes against the person) or when the victim (deceased as a result of the crime) contributed to the maintenance of another person.

Compensation may be awarded both for the actual damage caused and for future damage, if its occurrence is beyond doubt. In the case of future damage, the compensation - regardless of the form in which it was awarded - may be increased, reduced or abolished, if, after its establishment, the damage has increased, decreased or ceased (Art. 1386 para. 4 of the Civil Code).

The granting of monetary compensation can be done both by granting a global amount and by granting periodic benefits, if the damage has a continuous character (Art. 1386 paragraph 3 of the Civil Code).

By monetary equivalent, both patrimonial and non-patrimonial damages can be covered. The legal basis for the compensation of non-patrimonial damages is art. 1391 of the Civil Code. Characteristic of these damages is that they do not have an economic value that can be precisely assessed in money, remaining at the discretion of the court, the assessment of its quantum.

In judicial practice, compensation has been granted for non-patrimonial damages consisting of mental suffering caused by the death of a loved one, disfigurement or serious illness, physical pain caused by injuries, blows, bodily harm. In relation to the latter, art. 1391 paragraph 1 of the Civil Code shows that in case of injury to bodily integrity or health, compensation may also be granted for the restriction of family and social life possibilities. The beneficiary of this compensation, in a criminal case involving a crime of negligent bodily harm, can only be the victim of the crime - interpretation given by the High Court of Cassation and Justice through a prior decision published in 2016.[1] However, by Decision of the Constitutional Court no. 342 of July 9, 2024 (published in the Official Gazette no. 1000 of October 7, 2024), the constitutional court admitted the exception of unconstitutionality and found that the provisions of art. 1391 paragraph 1 of the Civil Code are unconstitutional, to the extent that they restrict the possibility of indirect victims to be compensated for the restriction of their life possibilities. family and social as a result of the injury to the bodily integrity or health of the direct victim.

According to art. 1391 paragraph 2 of the Civil Code, the court will also be able to award compensation to the ascendants, descendants, brothers, sisters and spouse, for the pain experienced by the death of the victim, as well as to any other person who, in turn, could prove the existence of such damage.

[1] According to Decision of the High Court of Cassation and Justice no. 12 of May 16, 2016, published in the Official Gazette no. 498 of July 4, 2016.

2. Features of civil action

Unlike criminal action, civil action is initiated and exercised only to the extent that the injured party or his/her successors intend to be compensated for the damage caused (except in cases where the civil action is exercised ex officio by the prosecutor). As such, civil action is in principle available in nature, although in certain cases mentioned above, it is exercised ex officio (Volonciu, 1996, p. 254).

This nature gives the possibility that the civil party can waive, in whole or in part, the civil claims formulated, however, until the end of the appeal debates. Upon this waiver, the civil party cannot return and does not have the right to file a separate action in the civil court for the same claims.

A second feature of civil action is that it is accessory to criminal action (Volonciu, 1996, p. 255). This means that it can be exercised during the criminal trial only when the criminal action is initiated (Udroiu, 2015, p. 128). Therefore, no other legal relationships than those arising from the damage caused by the crime can be inferred through a civil action.

A civil action is initiated by the injured party being established as a civil party against the defendant or the civilly liable party. The establishment of a civil party is made by a written or oral declaration before the criminal investigation body (during the entire criminal investigation) or the court (but only until the start of the judicial investigation). When the declaration of establishment as a civil party is made orally, the judicial body is obliged to record it in a report or in the conclusion, as the case may be (Art. 20 para. 3 of the Code of Criminal Procedure). Along with the declaration of establishment as a civil party, the injured party must indicate the nature and extent of the claims, the reasons and evidence on which the establishment of the civil party is based (Art. 20 para. 2 of the Code of Criminal Procedure). Until the end of the judicial investigation, the civil party may correct the material errors in the application for the establishment of a civil party, may increase the scope of the claims or may reduce the scope of the claims or

may request the reparation of the material damage by paying a monetary compensation, if the reparation in kind is not possible (Art. 20 para. 5 of the Code of Criminal Procedure). Breach in the criminal proceedings of these rules regarding the moment of establishment as a civil party and the content of the declaration will entail the impossibility of the injured person or his successors to establish themselves as a civil party in the criminal proceedings, however, they retain the right to address a separate action to the civil court (Art. 20 para. 4 of the Code of Criminal Procedure).

3. Resolving the civil action in the criminal trial

Resolving the civil action in the criminal trial involves analyzing the way in which the criminal action is resolved, of which the civil action is an accessory. Therefore, once the criminal side of the case is resolved, the court will also rule on the civil side, having the following three possibilities (According to art. 25 of the Code of Criminal Procedure):

- *to dismiss the civil action*; This way of resolving the civil action is adopted by the court, if the criminal side of the case orders the acquittal of the defendant pursuant to art. 16 paragraph 1 letter a) or pursuant to art. 16 paragraph 1 letter c) of the Code of Criminal Procedure.[1] The explanations for such a way of resolving the case are: either the legal basis for the action is missing, or there is no civil fault, or there is no damage or there is no causal link between the crime for which the defendant was brought to trial and the damage caused.
- *to admit the civil action in whole or in part;* This way of resolving the civil action is adopted by the court when it is found that a criminal act has been committed and, as a result of this act, material or moral damage has occurred, regardless of whether or not the defendant is convicted.

[1] The court orders the acquittal pursuant to art. 16 letter a) of the Code of Criminal Procedure, when it finds that the act does not exist, and pursuant to art. 16 letter c of the Code of Criminal Procedure when there is no evidence that a person committed the crime.

Also, in cases of acquittal of the defendant based on art. 16 paragraph 1 letter b) sentence II or letter d) of the Code of Criminal Procedure[1] , or in the case of termination of the criminal proceedings based on art. 16 paragraph 1 letter h) of the Code of Criminal Procedure[2] , if the committed act caused damage, the court will admit the civil action and will grant civil compensation to the injured party.

- *to leave the civil action unresolved*; This option is adopted by the criminal court when pronouncing the acquittal of the defendant based on art. 16 letter b) sentence I and letter e) of the Code of Criminal Procedure, as well as when ordering the termination of the criminal proceedings pursuant to art. 16 letter f) (except for the statute of limitations), letter i) and letter j) of the Code of Criminal Procedure, as well as in the case of termination of the criminal proceedings as a result of the withdrawal of the preliminary complaint or when the court accepts the plea agreement and no settlement or mediation agreement has been concluded between the parties regarding the civil action. In these cases, the interested party may file an action with the civil court.

This last method adopted on the civil side of the case is also applied by the criminal court if the heirs or, as the case may be, the legal successors or liquidators of the civil party do not express their option to continue the civil action or, as the case may be, the civil party does not indicate the heirs, legal successors or liquidators of the civilly liable party within a maximum period of two months from the date of death or reorganization, dissolution or dissolution (Art. 24 of the Code of Criminal Procedure).

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[1] The court orders the acquittal according to art. 16 paragraph 1 letter b sentence II of the Code of Criminal Procedure when the act was not committed with the guilt provided for by law and according to art. 16 paragraph 1 letter d of the Code of Criminal Procedure when there is a justifiable cause or non-imputability.

[2] The court orders the termination of the criminal proceedings based on art. 16 paragraph 1 letter h) of the Code of Criminal Procedure when there is a cause of non-punishment provided for by law.

4. Cases of settling civil action in civil court

If they have not been established as a civil party in the criminal proceedings, the injured person or his/her successors may file an action in civil court for the compensation of the damage caused by the crime.

If they have been established as a civil party in the criminal proceedings, the injured person or his/her successors may file an action in civil court if, by a final decision, the criminal court has left the civil action unresolved (in which case the evidence administered during the criminal proceedings may be used before the civil court) or if the criminal proceedings have been suspended. In the event of resumption of the criminal proceedings, the action filed in civil court is suspended after the criminal action is initiated and until the criminal case is resolved in first instance, but not more than one year. An action may also be filed in civil court for the compensation of the damage arising or discovered after the establishment as a civil party.

The injured party or his/her successors, who initiated the action before the civil court, may leave the civil court and address the criminal investigation body, the judge or the criminal court, if the initiation of the criminal action took place after the initiation of the civil action in the civil court or when the criminal trial was resumed after suspension - in which case the civil action is suspended, but not for more than one year.

Leaving the civil court cannot take place if it has issued a decision, even a non-final one according to the principle of *"electa una via".*

If the civil action was exercised by the prosecutor, if it is established from new evidence that the damage was not fully covered by the final decision of the criminal court, the difference may be requested through a new action in the civil court (the basis for this action is art. 27 paragraph 6 of the Code of Criminal Procedure - Udroiu, 2015, p. 139).

5. The relationship between civil and criminal proceedings in criminal proceedings

As we have previously shown, criminal proceedings and civil

proceedings are brought together in criminal proceedings because they originate from the same act. When the two proceedings are brought together in criminal proceedings, the solution adopted on the criminal side of the case will also determine the solution adopted on the civil side.

However, if the civil action is brought separately, the law prohibits the simultaneous carrying out of the two proceedings, respectively both before a criminal court and before a civil court. In such cases, after the criminal action is initiated, the settlement of the civil proceedings is suspended until the settlement of the criminal proceedings, according to the principle *"the criminal case takes the place of the civil case"*, but not more than one year. When the prosecutor has ordered a decision not to prosecute, the party may address the civil court with a civil action in order to recover the damage.

On the other hand, if the two actions (criminal and civil) are resolved separately, the final decision of the criminal court has the authority of res judicata before the court that judges the civil action with regard to the existence of the act and the identity of the person who committed it (Art. 28 para. 1 of the Code of Criminal Procedure). But the civil court is not obliged to take into account the final decision of acquittal or termination of the criminal trial with regard to the existence of the damage and the guilt of the author of the unlawful act. The final decision of the civil court by which the civil action was resolved does not have the authority of res judicata before the criminal judicial bodies with regard to the existence of the criminal act, the identity of the person who committed it and the form of his guilt (Art. 28 para. 2 of the Code of Criminal Procedure).

The application of these rules will avoid the issuance of two judgments (one civil and the other criminal) that may be contrary against the same person, regarding the repair of a single damage.

Conclusions

The Code of Criminal Procedure in force provides a series of rules that offer various solutions for resolving civil actions, either by the

criminal court (when the civil action is joined to the criminal action), or, separately, by the civil court. Through this analysis, we wanted to analyze these possibilities available to the victim of a crime

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