THE RELATION BETWEEN THE CRIMINAL ACTION AND THE CIVIL ACTION

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Abstract
In Romania, the free access to the law is considered a fundamental human right, enriched by the Constitution itself. In practice, the committing of an illegal act may cause prejudice, being described as a civil offense, but at the same time may create a report of criminal law, attracting the criminal liability, in which case it is called offense. This is how we find in the jurisprudence, both civil action and criminal action, so that, in this study we try to present some singularities of these two types of actions, and of the relation between them.

Keywords: *free access to law, legal action, criminal action, civil action, the Criminal Procedure Code*

1.The Legal Action

The Romanian Constitution, in art. 21 enshrines the right of every person to have free access to law for protecting the rights, freedoms and legitimate interests of the persons, such right being qualified by the constitute legislator as a fundamental human right. Internally, the free access to law is not provided only in the Constitution; we also find it in the Law no. 304/2004 on the judicial organization.[1] Law no. 304/2004 contains 4 articles in Chapter II entitled "*the free access to law*", from which contents is revealed the legal frame of the exertion of this right, namely art. 6-9. For example, art. 6 has the following content: "*any person can address to the law for protecting his rights, freedoms and legitimate interests in exerting his right to a fair trial*". Also we note that the access to law is also consecrated internationally, such as the Universal Declaration of Human Rights art. 10: "any person is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, which will decide on his rights and obligations or on any criminal charge against him", European Convention on Human Rights in art. 6, the Charter of the Fundamental Rights in art. 47, paragraph (2). Thus, according to the European regulations, the free access to law requires the fulfillment of there conditions: the validity of law, the independence of law and the impartiality of law.

The procedure whereby any person may defend his harmed rights and interests is the legal action. From the perspective of the civil law, the legal action has been defined as: "the way of law, the ability, the faculty, the legal power, conceded to anyone, of obtaining with the forms and in the conditions required by the law, the recognition and realization of a personal right, thus, it represents his social protection in its most expressive and effective form[2]". According to another opinion, from the perspective of the criminal law, the legal action is "*the mean by which the law conflict is*

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[1] Law no. 304/2004 on the judicial organization, published in the Gazette no. 576/2004, with the latest amendment by the Government Emergency Ordinance no. 23/2012 for the amendment and completion of the Law no. 303/2004 on the status of the judges and the prosecutors and on the extension period provided in art. III from Title XVI of Law no. 274/2005 on the property and justice reform and several additional measures, published in the Gazette no. 383/2012.

[2] Herovanu, E. „*Teoria exeucuțiunei silite" (The Theory of Forced Executive),* R. Cioflec Library Publishing, Bucharest, 1942, p. 18. Ciobanu V. M., „*Tratat teoretic şi practic de procedură civilă*", (Theoretical and practical Treaty of Civil Procedure), Vol. I, „*Teoria generală" (General Theory),* National Publishing, Bucharest, 1996, p. 248.

submitted to be solved by the justice[3]*".* As the quoted author rightly states "*the legal action may also be, as the case, civil action, criminal action or offence action, but it has to be delimitated the harmed right by the illegal perpetration of the legal demand as a mean of exploitation of the right of action".*

The two actions, the civil and the criminal one have been analyzed, both from the perspective of the legislator but also from the perspective of the legal literature, in terms of the common elements, namely the factual and the legal basis or the cause, the parties or the subjects, and the object of the action. In addition, the case of the criminal action is also analyzed as the *"functional ability of the legal action"*[4], which refers to all procedural documents that may be incurred by exerting the action within the legal frame, specific to the branch of law where this action is part of.

2. The Criminal Action

The criminal action has been defined in the doctrine of specialty as *"the legal instrument by which the conflict of criminal law is submitted to be solved by the criminal judicial bodies."*[5]

2.1. The Exerting of the Criminal Action within the Criminal Trial

The exerting of the criminal action in the criminal trial requires the clarification of general procedure issues such as: the object of the criminal action, the subjects of the criminal actions, but also the specific features concerning it performance in due time, such as: the initiation of the criminal action, the exerting of the criminal action, the termination and depletion of the criminal action. According to the doctrine[6], the criminal action is customized according to its specific object and the legal frame in which is performed through the following, is a social action, belongs to the society and is performed through the state bodies invested in this respect; it is obligatory and must be necessarily performed whenever a crime has been committed; is indivisible, and it is extended to all those that have participated in the offense; as a result of the personal criminal liability, the criminal action is individual.

In accordance with art. 9 paragraph (1) of the Criminal Procedure Code, the criminal action has as its object "the criminal liability of the persons that have committed offenses". In one opinion, "the object of the criminal action, namely the liability of the persons that have committed offenses should not be confused with the criminal trial purpose that concerns the trial and the punishment of those who are guilty of violating the criminal law".[7] In the specialty literature has been appreciated that "within the criminal procedural law, the lack of legal norms on the purpose of trial determines the arbitrariness and the uncertainty in the performance and the solution of the criminal trials; the legal rules relating to the purpose of the criminal trial have their own importance: they represent a summary statement of reasons for the need and the purpose of the regulations from the Criminal Procedure Code".[8]

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[3] Ion Neagu, *„Tratat de procedură penală", (Criminal Procedure Treaty),* Pro Publishing, Bucharest, 1997, p. 159.

[4] Neagu Ion, quoted work, p. 160.

[5] Dongoroz, V., Kahane, S., Antoniu, G., Bulai, C., Iliescu, N., Stănoiu, R., "*Explicații teoretice ale Codului penal român. Partea generală"(Theoretical explanations of the Romanian* Criminal Procedure Code. *The General Part".* Vol. I, Academiei Publishing, Bucharest, 1975, p. 61.

[6] Neagu Ion, quoted work, p. 163-164.

[7] Damaschin, M., *„Drept procesual penal"*, (*Criminal Procedure Law*), Wolters Kluwer Publishing, Bucharest, 2010, p. 109.

[8] Dongoroz, V., Kahane, S., Antoniu, G., Bulai, C., Iliescu, N., Stănoiu, R., quoted work, p. 39-40, 1975; Grofu, N., *„Unele reflecții asupra procesului penal"*, (Several Reflections on the criminal trial), the Dreptul Journal 1/2012, p. 264.

Concerning the subjects of the criminal action, we also find in the case of the criminal action the active subject and the passive subject. As rightly stated in the doctrine, "the subjects of the criminal actions are in fact the main subjects of the criminal procedural legal report, namely the state as an active subject of the criminal action and the person of the offender, as a passive subject of this action".[9]

The performance of the criminal action is explained by the doctrine[10] in the sense that it means: "the performance of the procedural document provided by the law whereby the charge of committing an offense is made against a particular person and is triggered the criminal liability of this person." Thus, art. 9, paragraph 1 from the Criminal Procedure Code provides that the criminal action is performed through the act of indictment required by the law. The act of indictment required by the law may be: the decree, the indictment, the oral testimony, the court decision, according to the moment of triggering the criminal trial or to the moment of performance of the criminal action. As stated in the doctrine of specialty, "the criminal prosecution may be commenced *in rem*, it is said only on the offense even if the perpetrator is unknown, while the criminal action can be performed only within the criminal trial and is made *in personam".*[11] "The performance of the criminal action against a person confers this one the status of defendant, this procedural quality having specific resonance on the department of the rights and obligations within the criminal procedural legal report".[12]

In what concerns the exerting of the criminal action, according to art. 9, paragraph (3) the Rule of criminal procedure, this one "can be exerted all through the criminal trial", having the meaning of "*supporting it in order to achieve the criminal liability of the defendant (...) involving the implementation of activities related to the performance of the taking of evidence in the criminal case, taking certain procedural measures, application forms, the raising of exceptions, etc."*[13] Therefore, as shown from the Romanian legislator conception, the exerting of the criminal action in the judgment phase is done only by the prosecutor, and in the cases in which his participation in judgment is not mandatory, the criminal action is exerted by the injured person, in both situations the law allowing such holders, under certain situations and to waiver this right.

In what concerns the termination of the criminal action, the Romanian legislator has provided in detail the two points in time, namely before and after the performance of the criminal action. In what concerns the causes that prevent the performance of the criminal action or that terminate the criminal action, art. 10 the Criminal Procedure Code specifically details 11 cases, classified as impediments arising from the lack of cause of the criminal action (art. 10 letters a-e) and impediments arising from the lack of purpose of the criminal action (art. 10 letters f-j). The cases where the criminal action is unfounded are the following: the offense does not exist, the offense does not present the degree of social danger of an offense, the offense was not committed by the accused or the defendant, the offense lacks of one of the constitutive elements of the contravention and there is one of the causes that eliminates the criminal nature of the offense. The second group of cases, those relating to situations in which the criminal action may be exerting only in certain conditions or lacks of object, includes: the prior complaint of the injured person is missing, the authorization or notification of the competent body, or other condition required by the law, necessary for the performance of the criminal action; there have interfered the amnesty, the prescription or the death of the perpetrator or, if the case, the removal of the legal entity when it has the capacity of perpetrator; the complaint has been withdrawn or the parties have reconciled, in the case of the offenses for

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[9] Neagu Ion, quoted work, p. 163.

[10] Theodoru, G.G, „*Drept procesual penal. Partea generală",(Procedural Criminal Law. The General Part),* Cugetarea Publishing, Iasi, 1996, p. 177; Damaschin M., *quoted work, p. 113.*

[11] Neagu Ion, quoted work, p. 165; Damaschin M, quoted work, p.114.

[12] Volonciu, N. ,*Tratat de procedură penală, Partea Specială", (Criminal Procedure Treat, The Special Part),* Vol II, Paideia Publishing, Bucharest 1999, p. 235.

[13] Neagu Ion, *quoted work,* p. 168.

which the withdrawn of the complaint or the reconciliation of the parties abolishes the criminal liability; it was disposed the replacement of the criminal liability with the liability which attracts a penalty with an administrative nature, there is a case of non punishment provided by the law; there is a judgment authority.

3. Civil Action

The civil action was defined in the literature of specialty as "all procedural means by which within the civil trial, is added the protection of the civil subject right – through its recognition or realization, if it is violated or challenged, or of legal situations protected by law".[14]

3.1. The Exerting of the Civil Action within the Civil Trial

The Romanian legal scenery is richer, in the sense that, since October 2011 it has new Criminal Procedure Code, which represents a new conception of the legislator on the institutions of law. Thus, the new Civil Code regulates a range of new institutions, such as for example the unification of the legislation on civil liability that includes both the civil tort liability (art. 1349) and the contractual liability (art. 1350), the defining of guilt, the introduction of new liability form, new forms of prejudice, such as prejudices by rebound (art. 1390-1393), prejudice for the loss of chance (art. 1385) etc.

If previous to the occurrence of the new Civil Code, the legal basis of the civil action was considered art. 998-999, nowadays we can talk about art. 1349. In what concerns the cumulative conditions of the civil tort liability, they are referred to in art. 1357 the new Civil Code which provides: the prejudice, the illegal offense, the causal and the guilt report of the perpetrator who has created the prejudice. We have also noted that the new Civil Code, for the determination of the subject that can be liable, in case of civil liability for the prejudice caused by animals (art. 1375) or things (art. 1376) has been defined the concept of legal security in art. 1377 the new Civil Code, which has the following content: "in accordance with the provisions of art. 1375 and 1376, *has the custody of the animal or the thing the owner or the person who, according to a legal provision or an agreement or even only in fact, exerts independently the control and the supervision of the animal and thing and use it for its own.*"

According to art. 19 the Criminal Procedure Code, the injured person who has not been constituted as a civil party within the criminal party, may introduce in the civil court an action to redress the prejudice caused by offense, and according to art. 20, paragraph (1) Criminal Procedure Code, the injured party constituted as civil party in the criminal trial may proceed an action before the civil court, if the criminal court, through a final judgment, has left unresolved the civil action. Also, the legislator expressly regulates the auxiliary exerting of the civil action in case that the claimant is a person without exerting capacity or with a limited exerting capacity, the court being obliged to auxiliary decide on the correction of the prejudice and of the moral prejudice, even if the offended party is not a civil party, according to art. 17, paragraph (3) Criminal Procedure Code.

Another problem that we have identified from the jurisprudence is the one questioning the relation between two types of liability; it refers to the situation where the liability is attracted by a traffic accident. Thus, in a case, the Huedin Court has decided that: "from the analysis of the legal provisions and of the law principles regulated by the Civil Code, the Criminal Procedure Code and the special Law no. 136/1995, issues that, in case of a traffic accident, that have resulted in a prejudice causation, for which it has been concluded a compulsory insurance contract of civil liability, coexists the civil tort liability, based on art. 998 from the Civil Code, of the person who, by

[14] V.M., Ciobanu, "*Consideraţii privind acţiunea civilă şi dreptul la acţiune*" (Considerations on the civil action an don the right of action), in S.C.J. no. 4/1985, p. 330; V.M. Ciobanu, 1996, *quoted work*, p. 250.

his offense, has caused harmful effects, with contractual liability of the insurer, based on the insurance contract, concluded under the conditions regulated by the Law no. 136/1995."[15]

As it has been revealed in the study of the jurisprudence, in case of the civil liability, the court allows the correction of the prejudice, both concerning the material side and the moral side, recognizing both forms of the prejudice, namely the *damnum emergens* and the *lucrum cesans*, of course, under the condition of proving them. Consequently, the applicable legislation of the civil action within the civil trial is the civil one.

3.2. The Exerting of the Civil Action within the Criminal Trial

The Romanian law allows that, within a criminal trial, the civil action may be joined to the criminal action, by way of constitution the offended person as a civil party. The Criminal Procedure Code details in art. 14 the object and the exerting of the civil action and in art. 15 the constitution of the civil party. Thus, the object of the civil action is the civil liability of the defendant, and of the responsible party from the civil point of view; the constitution of civil party can be done during the criminal prosecution but also during the court examination, until de reading of the act of referral. In this situation the civil action is exempt from the stamp duty. Another provision of the Criminal Procedure Code applicable to the subject in question is the one that regulates the situation in which the court has the obligation to call to be answered, the person who suffered an offense through a criminal action, and the responsible person from the civil point of view. "The offended person is put in mind that (...) Whether a material or moral offense has suffered, the person may be constituted as a civil party." As has been shown in the doctrine, for the exerting of the civil action within the civil trial, are required to be *cumulative* fulfilled the following conditions: "the offense needs to produce a material or a moral prejudice; between the committed offense and the claimed offense has to be a casualty relation; the prejudice has to be certain; the prejudice has not been corrected; it has to be a manifestation of will from the offended person in relation to his indemnity."[16]

The exerting of the civil action within the criminal object has been the object of the European Court of Human Rights jurisprudence. Thus, we note that, the optics of the Court concerning the applicability in art. 6, paragraph (1) when it constitutes as a civil party within the criminal trial, in case Perez versus France (Decision on 12.02.2004), for example, is in the sense that: "while the constitution as civil party equates a civil call in a lawsuit, it does not matter that there is not a formal request of correction of the caused prejudice. Even if the criminal procedure concerns the decision of criminal culpability of a person, through the constitution as civil part, the procedure has also a civil element. Consequently, although the Convention does not guarantee the right of any person of starting a criminal procedure, an area where art. 6 is not applicable, art. 6 becomes applicable if it has been started a criminal procedure and the victim of the offense has been constituted as civil party." Previous to the European Court f Human Rights, in the case Matthies Lenzen versus Luxembourg (Decision on 14/06/2001), has stated that: "once the constitution as a civil party within a criminal trial, the victim of an offense becomes party of a civil dispute." Also, on the same occasion, the court has concluded that: "once the constitution as a civil party within a criminal trial, the victim of an offense becomes party of a civil dispute. So that art. 6 is applicable, irrespective of the value of civil indemnities that the party requires. Therefore, the court considers, in this case art. 6 is applicable, even if the claimant has been constituted as civil party with a token amount of 1 franc."

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[15] The Criminal Decision no. 66/R/03.02.2010
[16] Damaschin M, *quoted work,* p. 131.

4. The Relation between the Criminal Action and the Civil Action

The Civil Procedure Code in Chapter II, entitled "*the criminal and the civil action",* analyses the two types of actions, also observing the correlations between them. As we have previously mentioned, concerning the civil action which arises as a consequence of committing an offense that may be qualified both as crime and offense that produces civil prejudices, the two areas, the civil and the criminal are intertwined. It should be noted that, according to the legal provisions, the offended person has the right to opt, for the value of his civil claims, of the civil or the criminal way. In the following, we shall present several types of situations that may arise concerning the relation between the two actions.

4.1. The Exerting in Different Moments in Time of the Two Legal Actions

We distinguish two situations in which can be examined whether there is a relation between the two actions, as follows: the criminal action is resolved separately before the civil action, in which case, according to the doctrine[17] (there is no question about the relation between the two actions owing to the fact that the criminal action has been solved). On the contrary, there arises the question of existence of a relation between the two actions in case that the civil action is resolved separately and before the criminal action, according to the afore quoted author. The solving of the relation between the two actions is done according to art. 22 of the Criminal Procedure Code, in the sense that the final decision of the criminal court has authority before the criminal prosecution bodies and of the criminal court, concerning the existence of the offense, of the person who has committed it and of the guilty of this person.[18] The legislator also foresees the conversely situation, in the sense that the final decision of the civil court through which the civil action has been solved, does not have authority before the criminal proceeding body and of the criminal court, concerning the existence of the offense, of the person who has committed it and of the guilty of this person. In other words, the doctrine states: "even if the civil court has finally decided that the offense has not been committed by the defendant, this one may be sent by the prosecutor to the criminal court, a court that may convict him, bearing in mind that he has committed the offense incriminated as criminal offense if this thing arises from the evidence gathered in the criminal case."[19] Consequently, continues the quoted author, "as long as the offended party has appealed in the civil court and there is no criminal trial in which the offense that has caused the prejudiced is incriminated as criminal offense, the civil action has not any particularity; (…) it is addressed to the civil court, according to the civil procedural provisions and it is judged under the conditions of the same procedure." In what concerns the topic we are presenting, another author has stated that: "the authority of the fact judged in the criminal procedure on the civil, represents only the application of the positive effect of the criminal decision regarding the offenses discussed: the existence of the offense, the person who has committed the offense and the guilty of that person. In other words, according to the idea we have shared, in this case, it is also valid the imputability of the verification and jurisdictional debate on the common denominator between the two types of litigation."[20]

If, however, after the party has appealed the civil court, the criminal action is being started and the offended person, exerting his right of option provided in art. 14, paragraph (2), Criminal Procedure Code, understands that it has to follow the civil way for correction of the prejudice

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[17] Neagu Ion, *quoted work,* p. 203.

[18] Damaschin M, *quoted work*, p. 139.

[19] Verdeş, E. C., „*Răspunderea juridică. Relaţia dintre răspunderea civilă şi răspunderea penală*", (*The legal liability. The relation between the legal and the criminal liability),* Universul Juridic Publishing, 2011, p. 448.

[20] Deleanu, I., "*Tratat de procedură civilă*", (*Civil Procedure Treaty),* vol. II, All Beck Publishing Bucharest, 2005, p. 93, Verdeş E.C., *quoted work,* p. 447.

suffered by criminal offense, and not to join the civil action to the criminal action within the criminal trial, the provisions of art. 19, paragraph (2), become conflicting and the trial in civil court is suspended.[21] The quoted author also states that: "after the criminal court has decided through a final judgment in the criminal trial, at the request at the parties the civil trial is resumed and the civil action is solved, within the limits of the compliance with the principle inserted into the text of art. 22, paragraph (1) Criminal Procedure Code". Moreover, through these provisions, the civil court is practically required to solve the case so that the solution is not in contradiction with the criminal judgment, concerning the existence of the offense, of the person who has committed the offense and of the guilty[22] of that person.

4.2. The Simultaneous Exerting of the Criminal Action and of the Civil Action:
4.2.1. Within the Same Procedural Frame

In this case, the incident texts from the Criminal Code are: art. 346, 347 and they refer to the situation in which the two actions are concurrently performed before the same courts or in two different courts. Thus, according to art. 346, entitled "*the solving of the civil action*", which concerns the situation in which the two actions are performed within the criminal trial, the court is required to decide also on the civil action, the cases expressly provided by the legislator refer to: conviction, exoneration, termination of the criminal trial. The legislator specifies when the court may call upon the correction of material and moral damage, namely: when the exoneration has been pronounced for the case provided in art. 10, paragraph (1), letter b^1, or because the court has observed the existence of a case that eliminates the criminal nature of the offense because one of the constitutive elements of the offense is missing. Civil indemnifies can not be awarded in the case that the exoneration has been pronounced owing to the fact that the alleged offense does not exist or has not been committed by the defendant. There can also be the case in which the court does not solve the civil action, case regulated by art. 346 paragraph (4), namely: when the court pronounces the exoneration for the case provided in art. 10, paragraph (1), letter b) or when the court pronounces the termination of the criminal trial for any of the cases provided in art. 10, paragraph (1), letter f) and j), but also in case of withdrawal of the prior complaint.

Another hypothesis regulated by the legislator concerns the civil action dissociating and the postponement of its judgment in another session, in case that the solving of the civil claims would cause the delay of the criminal action solving, according to art. 347 and under art 348^1, unless the constitution of the civil party, the court decides on the correction of the material and moral damage in the cases provided by art. 17 (the auxiliary exerting of the civil action) and in other cases only considering the reversion, the eradication of a register and the restoration of the situation previous to the offense. Consequently, in the doctrine, the legal action has been defined in terms of the two actions, the criminal and the civil one, as follows: "the legal mean by which the law conflict arisen from committing an offense is submitted before the judicial bodies, in order to determine the criminal and the civil liability of the guilty person and to apply the state coercion on that person, and the person's obligation to correct the prejudice committed by criminal offense, when the case".[23]

According to the High Court of Cassation and Justice, "the civil tort liability is governed by the principle of the full correction of the material and moral prejudice, caused by the offense committed, and therefore, the value of the indemnities can not be limited according to the payment possibilities of the defendant".[24] On the other hand, in the layout of the new Criminal Procedure

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[21] Verdeş E.C., *quoted work,* p. 449.

[22] The same.

[23] Mateuţ, Gh., „*Tratat de procedură penală. Parte generală"*, *(Criminal Procedure Treaty. The General Part)*. C.H.. Beck Publishing, Bucharest 2007, p. 536.

[24] The High Court of Cassation and Justice, The Criminal Department, Decision no. 2617/July 9th 2009.

Code[25] is expressly provided that: "the civil action is solved within the criminal trial, if it is not overdrawn the reasonable duration of the trial, art. 19, paragraph (4)", therefore observing the tendency of the Romanian legislator to join the European legislator conception. Another novelty element in the new Criminal Procedure Code refers to: the waiver of the civil claims, the transaction, mediation and recognition of the civil claims by the defendant, these representing only some of the institutions regulated by this act.

4.2.2. Within Different Procedural Frame

Another situation existing in practice which may question the relation between the two actions refer to the situation in which the two actions are simultaneously, separately and in different courts regulated. In this sense, art. 19, paragraph (2) shows that the judgment before the civil court is suspended until the final resolution of the criminal case, this rule being known as: "the criminal action holds back the civil action".[26] The reason of this rule is to grant to the criminal court a complete independence in solving the problems submitted for judgment, in investigating and deciding without being influenced by what has been established before in the Civil.[27] In the Civil art. 244, paragraph (1), point 2, Criminal Procedure Code, provides a case of legal optional adjournment: when there appear the clues of a criminal offense, which determination would have a decisive effect on the decision to be given.

In what concerns the aforementioned articles, from the Civil Procedure Code and the Criminal Procedure Code, the Constitutional Court has noted in a decision (Decision no. 262/2002) that between the two texts, there is no identity from the point of view of the norm nature. Therefore, the court estimates that while the text from the criminal procedure art. 19, paragraph (2) includes a mandatory norm that requires the suspension of the civil case until definitely solving the criminal action, the text from the civil procedure – art. 244, paragraph (1) point 2 contains an optional provision, the court may suspend the solving of the civil action until the date of a final judgment in the criminal trial.

As stated in the doctrine, "in the content of art. 244, paragraph (1), point 2, Civil Procedure Code, there are three possible hypotheses: the civil and the criminal court have been notified at the same time with the solving of the civil action, respectively of the criminal action; before the performance of the civil action, the offended person has appealed to the civil court, prior to this, the criminal action has started; in what concerns the civil side, the person has chosen to promote a separate action after it has started the performance of the criminal action or has given up the capacity of civil party in the criminal trial and has formulated a separate action before the civil court, as enable the provisions of art. 19 Criminal Procedure Code or it has been decided the disjunction of the civil action by the criminal action, observing that the solving together the two actions would determine the delay of the judgment in the criminal case".[28] The practice of the Supreme Court is in the sense that, according to art. 224, paragraph (1), point 2, Civil Procedure Code, the court may suspend the judgment of the case if it is proved that the notification of the criminal proceeding body has been made for an offense that would have a direct effect on the solving of the pendent civil action, and not when simple assumptions are presented, without having been ordered the prosecution.[29] Given that, from the material point of view, for both actions the justification is the offense, it is natural that the criminal action to take precedence over the civil action, and the final judgment of the criminal court

[25] *The New Criminal Procedure Code*, *published in the Gazette no. 486/2010.*

[26] Neagu Ion, *quoted work,* 1997, p. 204.

[27] Anghel, I.M., Deak, F., Popa, M.F., „*Răspunderea civilă*", *(The Civil Liability),* Ştiinţifică Publishing, Bucharest, 1970, Verdeş E.C., *quoted work*, p. 435.

[28] Verdeş E.C., *quoted work,* p. 438-439.

[29] The Supreme Court, The Administrative Disputed Claims Office, decision no. 392/1996.

to have authority before the civil court.[30] In the same sense, there is also another opinion, according to which, "the criminal action takes precedence over the civil action, the unique material cause of the two actions is the commitment of the offense, and on the other hand, the solving of the civil action is subject to the solving of the criminal case in what concerns the existence of the offense, of the person who has committed the offense an of the person's guilty."[31]

As stated in the doctrine, "if the civil trial continues and there is pronounced a final irrevocable judgment which is in contradiction with the decision pronounced in the civil action, it has to be submitted the solution of promoting a new civil action under the findings made in the criminal judgment."[32]

Conclusions

A very current problem discussed both in the doctrine and in the jurisprudence refers to the applicability of the rule "the criminal action holds back the civil action", situation regulated by the provisions of art. 22 Criminal Procedure Code namely, what happens when there is not possible to proceed the criminal trial from different reasons and when subsequently there will be performed a criminal trial, the civil court invested with authority concerning the civil tort liability for the same illegal act, to have irrevocably solved the civil action. The doctrine has also identified the answer to the question: "does the civil judgment have any effect on the criminal trial; the answer is being given by the limits of art. 22, paragraph (2) Civil Procedure Code."[33] Also in the specialty literature of law has been identified another situation concerning the following: what happens when the criminal court pronounces a judgment that is in contradiction with the civil judgment pronounced in what concerns the existence of the offense, the person who has committed the offense and the guilty of that person, owing to the fact that the criminal court is not entitled to cancel the judgment pronounced by the civil court. In this respect, the literature of specialty states that: "the contradictory of the two judgments can be solved at the request of the interested party, by promoting before the civil court an extraordinary way of appeal through a revision based on the provisions of art. 323 point 7, the Civil Procedure Code".[34]

Consequently, in this study we have tried to present the subtleties of both action, civil and criminal, promoted separately or together, both within the criminal trial, but also within the different procedural frame. The jurisprudence is the one that has observed the difficulties encountered in each concrete case, so that, at this point, we observe the significant efforts of the national legislator for updating the Codes, Civil, Criminal and Criminal Procedure. Not least, we note the excellent contribution of the European Court of Human Rights jurisprudence, in what concerns the topic, in fact, being the one that, in the recent years, has established itself as an active presence, likely to inspire the national judge.

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[30] Damaschin M, *quoted work,* p. 140.

[31] Neagu Ion, *quoted work,* 1997, p. 204.

[32] Boroi, G., Rădescu, D., „*Codul de procedură civilă comentat şi adnotat*", (The Civil Procedure Code Commented and Annotated"), All Publishing, Bucharest, 1994, p. 330.

[33] Dongoroz et all, *quoted work,*2003, p. 81-82.

[34] Deleanu, I. „*Fundamentul revizuirii pentru motivul prevăzut de art. 323 pct. 7 Cod procedură civilă* (The Basis of the Revision for the Reason Provided in Art. 323, poin 7, Civil Procedure Code), Curierul Judiciar Journal, no. 3/2007, p. 57.

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