

ACQUITTAL OF THE DEFENDANTS IN THE CRIMINAL TRIAL BASED ON ARTICLE 16(1)(B) OF THE CRIMINAL PROCEDURE CODE - HIGHLIGHTS

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Abstract

Civil claims not settled by the criminal court may be brought before civil courts, one of which is the delivery of a settlement of acquittal based on Article 16(1)(b) of the Criminal Procedure Code. It is therefore essential to know how these civil claims can be obtained, i.e., what kind of civil action is to be or may be filed, what are the specific features of the shading of the application and the admissibility aspects of such an application. As is the case in majority practice, actions brought by civil parties in a criminal case, where civil action has remained unresolved by the criminal court, are requests for criminal liability to be held. One should not overlook, however, that such an action for civil liability must comply, inter alia, with the requirements set out in Article 1357 of the Civil Code, i.e., it must be proved that the four essential conditions of liability are met, namely: the existence of unlawful conduct, the taking of injury, the causal link between the unlawful conduct and injury and, ultimately, the guilt of the perpetrator. Throughout this paper, we intend to analyze all these issues in detail, by reference to concrete cases, court rulings which have supported the solutions adopted on these issues, as well as relevant doctrinal views on these matters. At the same time, the work will finally redraw its own conclusions on all the issues addressed.

Keywords: *civil action, claims, unsolved civil action, criminal court, liability, unlawful conduct.*

1. Introduction

1.1. What matter does the paper cover?

This paper addresses a common theme in judicial practice, namely the particularities of civil actions left unresolved by criminal courts, where the criminal trial is finally settled by acquittal of the defendant(s) sent to trial pursuant to Article 16(1)(b) of the Criminal Procedure Code.

1.2. Why is the studied matter important?

The subject chosen by the authors is of particular importance, given the problems encountered in practice by those against whom civil proceedings are brought after the criminal case have been solved, in which civil claims are made by the alleged victims during criminal proceedings for the civil court to resolve them. In fact, in the case of these claims, the civil action brought during the criminal trial is repeated, which the criminal court left unsolved in view of the settlement of the acquittal based on Article 16(1)(b) of the Criminal Procedure Code against the defendant(s).

In addition, the subject is of relevance, given that these cases also raise questions about whether to pay the judicial stamp duty for the civil court request after the criminal court proceedings have been settled. This issue arose as the Constitutional Court of Romania has decided on this matter that is excessively interpreted by the alleged victims who make the civil claims.

1.3. How do the authors intend to answer to this matter?

This paper was chosen by the authors to highlight a number of practical problems which they have

experienced in disputes in which they have provided legal assistance and representation to some of the parties, through the initial approach of the legal bases on which claims were made in these particular types of disputes, then by highlighting and analyzing the solutions given by the courts on these issues.

At the same time, the authors make a brief incursion into the majority legal doctrine and practice that has held on these subjects, in order to give readers an overview of some of the obstacles they may face in the case of civil actions left unsolved by the criminal court, where the criminal trial is settled by acquittal of the defendant(s) pursuant to Article 16(1)(b) of the Criminal Procedure Code.

Finally, this paper presents – as a case study – the particularities of a complex criminal file, from which several unsolved civil actions have been brought together with the criminal proceedings, so that judicial problems may be assessed not only from a theoretical but also a practical perspective.

1.4. What is the relation between the paper and the already existent specialized literature?

This paper is related to the already existent specialized literature that addressed the proposed topic in its content by highlighting the different views of professionals who have written on the topics subject matter in this paper. The authors then assess how the various issues are resolved by the courts, and ultimately give their own views on all of the above.

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2. Article 16(1)(b) of the Criminal Procedure Code: the unwanted solution from civil parties' point of view

2.1. Preliminary

The Criminal Procedure Code currently applicable in Romania entered into force on 1 February 2014¹. At this time, there has also been much controversy over the ununified application of many of its provisions in court practice.

However, the Romanian Criminal Procedure Code contains numerous clear legal provisions, which can only be applied *ad litteram*, as they are non-derivative and imperative. One such legal provision is settled by Article 16(1)(b) of the Criminal Procedure Code, which expressly states the following: “*The criminal proceedings cannot be set in motion, and when set in motion, they cannot be exercised if: (b) the act is not provided for by criminal law or has not been committed to the fault prescribed by law;*”.

Thus, this text provides the legal basis for a criminal court to settle a case by acquitting the defendant(s), according to the provisions of Article 396(1),(5) of the Criminal Procedure Code, stating that “*The court decides on the accusation against the defendant, by pronouncing, as appropriate, the conviction, the renunciation of the penalty, the postponement of the application of the penalty, the acquittal or the termination of the criminal trial.*” “*The acquittal of the defendant shall be decided in the cases provided for in Article 16 (1)(a)-(d).*”.

By interpreting of the above-mentioned law texts, it is obvious that the courts do not have a faculty, an option as to the acquittal of the defendant, if the provisions of Article 16(1)(b) of the Criminal Procedure Code are applicable to a certain case. Therefore, in this respect, the courts are obliged to rule on the acquittal solution.

Thus, one of the key issues that this paper aims to appraise and find solutions to is highlighted: What happens to the civil claims made in criminal files by the alleged victims, if the court acquits the defendant according to the provisions of Article 16(1)(b) of the Code of Criminal procedure?

As provided for in Article 397(1) of the Criminal Procedure Code, the civil action must be solved by the same judgement as the criminal action. Nonetheless, Article 25(5) of the Criminal Procedure Code expressly states, *inter alia*, that if the defendant is acquitted on the basis of Article 16(1)(b), first sentence, “*the court shall leave the civil action unresolved.*”.

As a result, civil parties in criminal proceedings “*may bring proceedings before the civil court if, by final judgment, the criminal court has left the civil action unresolved. Evidence administered during*

criminal proceedings may be used before the civil court”².

Last but not least, a key-provision used by the majority of civil parties that bring their claims before civil courts is provided for in Article 28(1) of the Criminal Procedure Code, setting forth that: “*The final decision of the criminal court shall have the force of res judicata before the civil court which is to judge the civil action, concerning the existence of the criminal offense and the person who committed it. The civil court shall not be bound by a final judgment on the acquittal or cessation of criminal proceedings as regards the existence of damage or guilt of the culprit.*”. In other words, the final judgement of a criminal court is partially mandatory for the civil court that must settle the unsolved civil action, regarding the unlawful act and on the identity of the person who committed it.

2.2. Payment of the judicial stamp duty: to be or not to be?

One of the main issues that this paper addresses is whether the judicial stamp duty has to be paid by the civil party whose civil action remained unsolved during the criminal trial when his/her claims are brought before civil courts.

This problem arose in light of the provisions of Article 29(1)(i) of the Government Emergency Ordinance No. 80/2013 on judicial stamp duties³ (hereinafter referred to as “*G.E.O. No. 80/2013*”). According to this legal text, the following actions and claims, including ordinary and extraordinary appeals are exempted from the payment of the stamp duty, if they “*relate to: [...] i) criminal cases, including civil compensation for material and moral damage resulting therefrom*”.

Despite the fact that the above-mentioned text seems clearly worded, national judicial practice has been ununified in its application to particular cases, so that the Romanian Constitutional Court partially accepted the constitutional challenge of this provision, in the sense that: “*The provisions of Article 29(1)(i) of the Government Emergency Ordinance No. 80/2013 on judicial stamp duties are constitutional in so far as actions and claims relating to civil compensation for material and moral damage resulting from a criminal case are exempted from judicial stamp duties, provided that the causing act at the time the damage was committed, was foreseen as a criminal offense*”⁴.

To put it another way, the Romanian Constitutional Court stated that only in those criminal cases where the deed is provided for as a crime by *verbum regens*, one may file for a civil action for damages that is exempted from the payment of any judicial stamp duty.

Nonetheless, if the criminal court settles the case by acquitting the defendant(s) on the basis of Article

¹ Published in the Official Journal of Romania, Part I No. 486 of 15 July 2010, as amended and supplemented thereafter.

² According to Article 27(2) of the Criminal Procedure Code.

³ Published in the Official Journal of Romania, Part I No. 392 of 29 June 2013, as amended and supplemented thereafter.

⁴ The Romanian Constitutional Court, Decision No. 387/2015, published in the Official Journal of Romania, Part I No. 555 of 27 July 2015.

16(1)(b) first sentence of the Criminal Procedure Code (*i.e.* the deed is not provided for by the criminal law) the following legitimate question arises: for the possible damages suffered by civil party/parties as a result of the deed (regardless of the fact that the deed shall not be considered crime) the judicial stamp duty must be paid for the action for damages filed for before the civil court?

To answer this question, one has to carefully assess both the provisions of Article 29(1)(i) of the G.E.O. No. 80/2013 and the Decision No. 387/2015 of the Romanian Constitutional Court. Thus, a clear distinction must be drawn between the rule and the exception, in the sense that the rule is the obligation to pay the stamp duty for money-valuable civil actions⁵, whereas the provisions of Article 29(1) of the G.E.O. No. 80/2013 are the exception. Consequently, the exceptions are of strict interpretation and application and cannot be extended to situations expressly foreseen by law.

In addition, in relation to the specificities of the civil action left unsolved by the criminal court, the mandatory interpretation of the Romanian Constitutional Court must be considered, so that the following conclusion can be stated: civil actions arising from criminal proceedings **shall not be exempt from the required judicial stamp duty** if the act allegedly giving rise to such damages was not foreseen as a criminal offense at the time it was committed. Among other things, one shall note that failure to comply with the procedural obligation laid down in Article 197 of the Civil Procedure Code⁶, *i.e.* payment of the judicial stamp fee related to a certain claim, leads to **the annulment of the writ of summons**.

The same conclusion was drawn by the 3rd District Court of Bucharest in its recent judicial practice regarding the case study subject to this paper. Thus, in two similar cases⁷, concerning the settlement of the civil claims which remained unsolved by the criminal court, which acquitted the defendants according to Article 16(1)(b) of the Criminal Procedure Code, the 3rd District Court of Bucharest established the obligation to pay the judicial stamp duty on the plaintiffs, as calculated by reference to the amount claimed, as provided for in Article 3(1) of the G.E.O. No. 80/2013.

2.3. Admissibility of the civil action left unsolved by the criminal court: conditions and practical issues

Foremost, it should be reiterated that, in accordance with the provisions of Article 28(1) of the Criminal Procedure Code, it is unequivocally

established that the final judgment of the criminal court has the force of *res judicata* before the civil court which settles the civil action, in respect of the existence of the deed and of the person who committed it. In relation to the subject matter of this paper, namely the resolution of the civil action where it remains unresolved by the criminal court because acquittal of the defendant(s) has been ordered pursuant to Article 16(1)(b) first sentence of the Criminal Procedure Code, several issues need to be highlighted:

1) The provision of the deed within the criminal law means “*in principle the identity between the conduct itself and all the conditions of the rule (the «typical» characteristic of the offense)*”, whereas the absence of any content of the offense, whether „*objective or subjective, makes the offense not provided for by criminal law*”, as indicated in the legal literature⁸.

2) The conditions for the filing for civil action in criminal proceedings are those developed in the specialized literature on tort civil liability⁹. Specifically, one shall prove that the four conditions resulting from the text of Article 1357 (1) of the Civil Code¹⁰ governing tort civil liability are cumulatively fulfilled, namely: the perpetration of an unlawful conduct, the occurrence of damages as a result of the unlawful conduct, the existence of a causal link between the conduct and damages and the guilt with which the unlawful conduct was committed. Failure to prove that all of these conditions are fulfilled shall result in the impossibility of triggering tort civil liability.

3) Before the civil court, the plaintiff (*i.e.* the former civil party before the criminal court) must prove the fulfillment of the aforementioned conditions. Practically, the plaintiff needs to prove that the former culprit actually perpetrated an unlawful conduct (although such conduct is not provided as a crime by the applicable criminal law) which lead to damages, as well as the link between the unlawful conduct and damages and his/her guilt.

4) As set forth in Article 28(1) of the Criminal Procedure Code, the Romanian legislator has determined the force of *res judicata* on the existence of the deed and of the person who committed it. In other words, if the criminal court does not establish that a particular deed has been committed by a specific person, we consider that the force of *res judicata* of the final decision of the criminal court before the civil court cannot be called into question.

In light of the above, we deem that unless the criminal court assesses that a particular unlawful conduct has been perpetrated by the culprit(s) although

⁵ According to the provisions of Article 3(1) of the G.E.O. No. 80/2013.

⁶ In the version of the second re-publication, in the Official Journal of Romania, Part I No. 247 of 10 April 2015.

⁷ See case No. 27951/301/2019 (*i.e.* 3rd District Court of Bucharest, Minutes of the proceedings of 11 June 2020) and case No. 6070/205/2019 (3rd District Court of Bucharest, Minutes of the proceedings of 23 March 2021).

⁸ I. Kuglay, comment in M. Udroui (Coord.), *The Criminal Procedure Code. Comments on Articles* (Bucharest: C.H. Beck Publishing House, 2015), 111.

⁹ C. Ghigheci, comment in N. Volonciu, A.S. Uzlău (Coord.), *The New Criminal Procedure Code Commented* (Bucharest: Hamangiu Publishing House, 2014), 60.

¹⁰ In the version of the first re-publication, in the Official Journal of Romania, Part I No. 505 of 15 July 2011.

it does not fall under the criminal law the civil party/civil parties cannot legitimately exercise their right to file an action for damages before the civil court, as a result of the alleged unlawful conduct. Moreover, one may consider that, in the above-mentioned case, the question arises as to **the inadmissibility of civil action** brought before the civil court which has been left unsolved by the criminal court that issued the acquittal pursuant to Article 16(1) of the Criminal Procedure Code. In this respect, the relevant national courts have ruled within their recent judicial practice, as follows in the section below.

Secondly, we acknowledge that it is necessary to clearly set forth what kind of civil action may be brought before the civil court if the claims requested thereof have originated in a criminal dispute. In principle, it is reasonable that any damage, whether material or moral, should be sought in the course of a tort civil liability action, as mentioned before.

As for any contractual liability claim, we consider that such a civil action could not, as a matter of principle, seek compensation for damage resulting from a criminal act, given that a valid contract concluded cannot provide as purpose the non-observance of the law.

However, depending on the specificities and complexity of the case, we believe that contract liability may not be set aside regardless of circumstances. As a result, the *ipso facto* exclusion of a contract liability claim cannot be justified even if it originates from a criminal trial.

Thirdly, civil parties must note that if they are willing to file for an action for damages before the civil court they must pay attention to the way in which the arguments are made. We stress this precisely because, in practice, there is a tendency to keep the same grounds as in criminal proceedings, omitting proof of the four requirements for the admissibility of claims for civil liability laid down in the provisions of Article 1357(1) of the Civil Code. This may even be the case for the rejection of such claims by the civil court.

3. Case study

For the purpose of a better understanding of the practical part of the issues detailed in this paper, we propose a short analysis of two civil cases arising from the same criminal proceedings, on which the competent courts have recently ruled.

Thus, civil courts empowered to settle these civil proceedings were addressed by several former civil parties in the same criminal trial, claiming material and moral damages that allegedly resulted from the deeds described in the indictment.

Criminal proceedings have been finally settled by the Bucharest Court of Appeals by Decision No. 1165/2019 in which the court ordered the acquittal of all culprits in accordance with the provisions of Article 16(1)(b) of the Criminal Procedure Code for the alleged unlawful deed that led to the claimed damages.

Nonetheless, as stated previously, former civil parties had the right to file for an action for damages before a competent civil court, which they actually did. Both claims were filed with the 3rd District Court of Bucharest, given that this is the court with substantive, territorial and operational jurisdiction in accordance with the provisions of the Civil Procedure Code.

The content of the aforementioned claims is particularly similar, as they reiterate exactly the same grounds as those upheld before the criminal court. Moreover, plaintiffs failed to substantiate and prove the cumulative fulfillment of the four conditions for the admissibility of claims for civil liability provided for in Article 1357(1) of the Civil Code.

Both actions for damages were based on three different legal texts of the Civil Code, namely: Articles 1347, 1349 and Article 1638. In relation to the legal provisions plaintiffs have invoked in the justification for their civil actions, it may be held an obvious contradiction between these grounds of law, given that the institutions governed by them are mutually exclusive and, being excluded from the grounds for the same application for legal action.

In other words, in such dispute, the plaintiffs could have either brought an action for tort civil liability based on the provisions of Article 1349 of the Civil Code; or prevail over the existence of an alleged legal act such as unjust enrichment (of course, if they would have proven the impact of the assumption contained in Article 1345 of the Civil Code), in which sense the application of Article 1347 of the Civil Code may be called into question.

With regard to the last legal provision (*i.e.* Article 1638 of the Civil Code), it alleges a civil liability under contract, resulting from an unlawful cause for the contract(s), in which sense it would be necessary to examine the conditions essential to the validity of the contract(s) as governed by Article 1179(1) of the Civil Code.

Therefore, it may be held that inadmissibility of these civil actions, as they have been filed, is quite clear.

The same opinion has been expressed by the 3rd District Court of Bucharest itself, by Civil judgment No. 6838 of 6 August 2020. In this regard, the court has stated the following:

“It should be specified that the legality of contracts (whether or not they were concluded in compliance with the applicable legal provisions) was not subject to court review, both in criminal proceedings No. [...], or by civil action. As a consequence of this, the court considers that at this point in time contracts enjoy a presumption of legality. In such circumstances, compared with the presumption of legality enjoyed by the contracts, the action filed by the plaintiff appears to be inadmissible as it aims to establish the alleged unlawful nature of the

acts committed by the defendant natural persons [...]”¹¹.

Accordingly, one may acknowledge that filing for an action for damages before the civil court must comply with the rules thereof, regardless of the fact that the same claims were brought before a criminal court. In relation to the practical cases brought forward, the plaintiffs had to substantiate their claims in accordance with the provisions of Article 1357(1) of the Civil Code in order for their actions to have been accepted by the court.

4. Conclusions

Particularities of civil actions left unsolved by criminal courts present, in judicial practice, a number of issues which we have tried to understand and explain throughout this paper. Thus, a mistake made by the majority of those who bring civil actions left unsolved

by the criminal court before civil courts is to omit the justification for meeting the four conditions necessary to attract tort civil liability, namely those laid down in Article 1357 of the Civil Code. As stated above, in accordance with the relevant jurisprudence on the matter, failure to prove the application of article 1357 of the Civil Code shall be sanctioned with the inadmissibility of the civil action.

Moreover, one should note that civil actions resulting from criminal proceedings, which are left unsolved during the criminal trial shall be subject to the legal rules governing the payment of judicial stamp duties if the alleged criminal offence was not provided for by the law at the moment of its perpetration.

Conclusively, the final decision of the criminal court shall benefit from the force of *res judicata* before the civil court to the extent that claims are derived from an act the existence of which has been established by the criminal court and the person who committed it is similarly determined by that court.

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¹¹ The Judgement of the 3rd District Court of Bucharest has been confirmed also by the Bucharest Tribunal, in its capacity as superior court.