”BABEȘ-BOLYAI” UNIVERSITY OF CLUJ-NAPOCA
FACULTY OF LAW

DOCTORAL THESIS

CIVIL ACTION IN CRIMINAL PROCEEDINGS

~ SUMMARY ~

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Summary

CIVIL ACTION IN CRIMINAL PROCEEDINGS

- Summary –

I. Actuality and importance of doctoral thesis

The actuality and importance of the scientific undertaking becomes obvious during a period in which as a result of adopting the new Codes (either within the field of criminal or civil sciences) justice in Romania is facing very important legislative modifications which have a major impact upon the literature in the field and judicial practice.

The entry into force of the new Codes (Criminal, Criminal Procedure, Civil, Civil Procedure) represents a stage during which the professionals in the field of law, as well as the society in general, go through an absolutely necessary process of knowledge and adaption to the exigencies and standards imposed by the new legislation.

In the light of the topic of this thesis: „*Civil action in criminal cases*", the two distinct fields meet more than enywhere else in order to illustrate the changes occurred within our law system. The main idea consists of the fact that one finds oneself in the presence of a vast institution with mandatorily interdisciplinary valences which is placed at the center of the changes occurred within the legislative field.

One is witnessing a dynamics placed among the following actions: taking over some old, traditional aspects; enacting certain former doctrinary or jurisprudential opinions more or less controversial; adopting certain new judicial regulations in order to keep up with both the European and international regulations to which Romania is part of and also with the legislative, doctrinary or jurisprudential theories existent within the foreing law systems which are considered to be compatible with the one in our country.

Through this undertaking I have aimed to perform a comparative examination between the former and current legislation, doctrine and jurisprudence in order to discover the actual new elements from the current legislation, to investigate to what extent is the new legislation fair or not, sufficient or perfectible, as well as to identify to what extent can certain previous solutions of jurisprudence be further capitalized on.

At the same time, this scientific undertaking has aimed to confer to the civil action the importance it deserves in criminal proceedings, as a stand-alone action yet linked to the criminal one in order to avoid that this topic be treated especially in jurisprudence as merely an „annex" when one tends to capitalize on the claims in criminal proceedings.

For the purpose of presenting an as complex as possible picture of the multidisciplinary valences of the civil action in criminal proceedings and for the purpose of

its fair settlement, I have reckoned that the main impacts of the civil legislation were also completely necessary to be presented. I have thus attempted to find solutions for the purpose of getting closer and homogenizing the criminal and civil jurisdiction with regard to the remedy of the damages caused by unlawful actions falling under the category of both unlawful criminal and extra criminal actions, the latter having a civil nature.

Throughout this scientific undertaking, the elements I have deemed as interesting or new have been analyzed at the very moment when they were described, with regard to the solutions from the past and present as well as to the potential *de lege ferenda* solutions. The most important of the latter have also been systematized in the final title of this thesis.

II. Content of doctoral thesis

This doctoral thesis has been divided into 9 (nine) titles, which all in their turn comprise: chapters, sections, subsections and within the latter where I have deemed it as necessary in order to explain the issue, one might find points or subpoints. These titles are preceded by an introduction.

The aim of **introduction** was to represent a discussion about the reasons which have led me to write this thesis, as well as an anticipation of the importance of analyzing the topic subjected to the analysis by starting from the former regulations (especially those related to criminal proceedings but also to civil material or civil procedural) and the way they were enforced in order to identify the maintained or improved aspects, to illustrate the really new elements from the current regulation, respectively. Such an approach is also relevant for the purpose of illustrating to what extent are certain judicial practice solutions still valid.

Title I, named "**Actions in criminal proceedings**" deals with the legally consacrated means through which a conflict by law which has occurred as a result of not observing the legal norms - of criminal and civil law - may be brought before the competent criminal judicial bodies for the purpose of holding the guilty person criminally liable and remedying the damage caused by the commission of the unlawful act.

In the first two chapters I have proceeded to define the following concepts: civil legal actions, actions in criminal proceedings, criminal and civil actions, as well as to present the peculiarities of these categories of alone-standing actions which may be exercised together, within the unique framework of criminal proceedings. In this context I have outlined the differences between the civil and criminal actions with regard to their aim, object and nature.

In *chapter 3* I have outlined the relationship between the criminal and civil actions in the light of the regulating systems (of confusion, of mandatory separation and the mixed ones). I have illustrated the already traditional option of the Romanian lawmakers for the mixed system providing the separate exercise of actions, yet within the same procedural framework, a system which has not been and is not a rigid or a mandatory one. I have emphasized the new element consisting of the current tendency of domestic lawmakers to get closer to the adversarial systems even though it is still maintained the option for the mixed system.

In this first title I have emphasized the fact that the source of prejudice is not represented by the „criminal offence" but by the civil „unlawful action" which at the same time represents a criminal act but which according to the law may represent a criminal offence.

Title II, named "**Option right and *electa una via non datur recursus ad alteram* principle**" is also divided into *three chapters*.

The first chapter starts from the theory according to which in order for one to talk about the option right over jurisdiction for the purpose of recovering the prejudice, one needs to take into account the situation when the same unlawful act represents both a civil and a criminal act.

Only when the prejudiced person has simultaneously initiated both the criminal and civil proceedings is the right of option over jurisdiction accompanied by the corollary meant to offer stability, consisting of electa una via non datur recursus ad alteram principle.

As a consequence of this principle, once the path has been chosen, the option becomes basically definite, irrevocable, under the sanction of losing the right to legally obtain the cover of the prejudice.

In *chapters 2 and 3* I have proceeded to present the situations in which according to both the former and the current regulation the right of option was limited, as well as the situations in which despite the fact that a certain option has been exercised in favour of one of the jurisdictions, it could be renounced or devoid of effectiveness most often due to reasons beyond the will of the prejudiced person. In the light of the new criminal procedural provisions I reckoned that the provison of Art. 24 represents not only a means to sanction passiveness but also may sometimes represent a form by means of which the successors of the civil party, regardless of the reasons, may renounce the initially opted for path leading thus to the creation of a real exception to the electa una via rule.

With regard to the main conclusions outlined in this title concerning the new criminal procedural regulation:

- I have opined that the main new element meant to offer celerity, to make the option of jurisdiction for the purpose of remedying the prejudice more effective, as well as to contribute to the registration of the legal procedures within a reasonable timeframe is represented by the provisions of Art. 27 Par. 7 of the New Criminal Procedure Code which enable the resumption of the judgement of the civil action by the civil courts after the elapse of a year following the initiation of the criminal action and until the settlement of the criminal action in a court of first instance.

- I have also reckoned that in order to meet the victims' interests the provisions of the new Criminal Procedure Code should be supplemented with a similar case *mirroring* the one from Art. 27 Par. 7 of the new Criminal Procedure Code in the sense of allowing the renouncement of the criminal jurisdiction in the framework of which it was initially opted for the drawing up of the claims when the settlement of the civil action is being delayed by the very criminal action. This way the consequences of the electa una via principle might be mitigated, which would also have the purpose of leading to the acceleration of judicial procedures.

As its very own title suggests**, Title III** thus covers throughout *the 4 chapters* the **relationship between the criminal and civil action in the light of the moment of exercising the two actions and of the case law**.

I have emphasized the fact that the actual issue of the relationship between actions, regardless of the fact that one talks about the current or former criminal procedural regulation, is raised only in the case when the two actions are being exercised simultaneously either in a criminal court or before different jurisdictions (criminal, civil, respectively).

When the criminal action is settled separately and before the civil one or vice versa, the issue of the relationship between actions is not raised since one of them has already been settled yet the issue of case law steps in, which within the current regulation, receives an own existence. Thus, as a new element, under the influence anticipated by the new Civil Code, when the criminal action is settled prior to the civil one, unlike the former criminal procedural regulation, the absolute conviction decision is no longer a case law except for regarding the existence of the act and the person having committed it and not its guilt. Also as a new element, in the case of acquital of cessation of criminal proceedings, the criminal decision is not a case law with regard to the existence of the prejudice or guilt. And when

the civil action is settled prior to the criminal one, the absolute decision of the civil court is not a case law before the judicial criminal bodies with regard to the existence of the criminal act, to the person having committed it and its guilt yet it may hold such a nature regarding the prejudice.

I have also emphasized the situation according to which should the criminal and civil actions be exercised simultaneously before the criminal jurisdiction, the criminal court shall be obliged to rule the same decision in the civil action as well, except for the hypothesis of the civil action splitting when the competence is also attributed to the criminal court, which causes the lack of the incidence of the provisions of Art. 28 of the new Criminal Procedure Code.

When the criminal and civil actions are exercised simultaneously, yet before different jurisdictions, the Romanian lawmaker opted for maintaining the traditional principle: criminal cases take precedence over civil cases, yet they are subjected to a mitigation within the current criminal procedural regulation in relation to the provisions of Art. 27 Par. 7 of the new Criminal Procedure Code.

In the light of this title one needs to mention two *essential* aspects representing the very expression of the multidisciplinary character of the subject of this doctoral thesis:

- on one hand I have emphasized the necessity of modifying the provisions of Art. 412 and 413 of the new Civil Procedure Code with regard to the cases of suspending the judgement of the civil action in order to effectively meet the demands and not to allow the elusion of the provisions of Art. 27 of the new Criminal Procedure Code;

- on the other hand it is about the need to regulate either within the criminal procedure code or within the civil procedure one a case of revision of civil decision when in comprises provisions irreconcilable with the criminal one regardless of the date when the pronunciation of such diametrically opposed decisions occurs.

Title IV, named "**Conditions for exercising civil action in criminal proceedings**", has been approached as a continuation of the above mentioned aspects on the assumption that the context in which the criminal jurisdiction was opted for to recover the prejudice is exclusively targeted, that the criminal jurisdiction was invested with the request for civil claims, respectively. Thus the need to analyze in the light of the former legislation but especially in the light of the current one the very conditions that make it possible for civil action to be exercised in criminal proceedings since only when such conditions have been cumulatively met can civil action lead to remedy before this jurisdiction.

Throughout the *6 chapters* of this title I have distinctively discussed, both theoretically and practically, each condition for exercising civil action in criminal proceedings. The topic has been approached from a deeply multidisciplinary perspective without which, not only the essence or clarity would be affected, but also even objectionable doctrinary or jurisprudential solutions might be reached.

The first condition for exercising civil action in criminal proceedings is that *an unlawful act is the object of criminal action.* It is about the same unlawful act representing an act provided by the criminal law and which under the law could be a criminal offence as a material and legal entity.

In point of admissibility of civil action in criminal proceedings, I found interesting the doctrinary and jurisprudential difference between the criminal offences which do not cause a material effect and those which do. I have emphasized that despite the fact that basically it is only the criminal offences causing a material effect which can lead to remedy of prejudice in criminal proceedings, there are strong reasons not to exclude de plano the admissibility of civil action in the case of criminal offences deemed as not causing a material effect.

The second condition for exercising civil action in criminal proceedings is that *the unlawful act which is the object of criminal action has necessarily caused a prejudice.* This condition represents the "G clef" for every civil action, being it crucial that this topic be fathomed in the case of exercising civil action in criminal proceedings. It is precisely why I have approached this topic not only in the light of our domestic law but also in relation to the one from other states.

I have proceeded to define the concept of prejudice, to present the mandatory and indispensable nature of this condition, to review the classifications of prejudice, its characteristics in order to be remediable, as well as the task of proving it.

With regard to the classifications of prejudice, I have discussed its classic and modern ones, stating our option for the traditional, bipartite classification.

Concerning the material prejudice I have discussed among others the matter of costs incurred by the victim in order to limit or avoid the prejudice, an issue placed at the confluence of right and obligation.

Regarding the moral or subjective prejudice, I have also outlined the development from a historical perspective of the concepts concerning the admissibility of its pecuniary compensation, as well as the non-pecuniary remedy means.

When analyzing prejudice in general, I have proceeded to review it both from a theoretical and jurisprudential perspective, especially the criminal jurisprudence. I have also tried to outline the differences between temporary and permanent prejudice based on the moment of consolidation of the victim's health condition for the situations when through the criminal offence the health and corporal integrity have been damaged.

Also, taking into consideration the numerous doctrinary disputes or divergent jurisprudential solutions, an important topic, from a theoretical and practical perspective, was in the case of both material and moral prejudice, the approach of the issue concerning the moment in relation to which the prejudice has been established and the need for proving it. For the same reason, an ample approach has been dedicated to the matter concerning the ancillaries of principal debit: interest, penalties and update.

With regard to the conditions of prejudice (certain, direct, personal, to result from the violation or invasion of legitimate rights or interests), these have been each analyzed in *section 4 of chapter 2*, especially in the light of the theoretical and practical impact of these characteristics upon civil action in criminal proceedings.

Concerning the *third condition* for exercising civil action in criminal proceedings, namely that *the prejudice has not been remedied* I found it necessary to develop this topic in relation to third parties making a payment and the title by means of which they do it. I have concluded that the circle of people exercising civil action before criminal jurisdiction through certain civil actions in regress (such as the case of various insurers or Street Victims Protection Fund) should not be enlarged.

The existence of a cause-effect relationship between criminal offence and prejudice also represents *an essential condition* for exercising civil action in criminal proceedings.

I have emphasized that this condition must be taken into consideration closely related to the condition concerning the direct nature of prejudice. Basically, I have concluded that the remedy of prejudice in criminal proceedings can take place only when there is a direct or indirect cause-effect relationship between the unlawful act and prejudice (the indirect nature of cause-effect relationship not being equivalent to an indirect prejudice).

I have also proceeded to review the theories concerning the cause-effect relationship which have been adopted over the years in order to illustrate that in our opinion the system of objective imputation is the most adequate to lead to a correct establishment of criminal, even civil, liability.

Also, in the light of the topic dedicated to the cause-effect relationship, I have outlined the way in which civil liability occurs in the case of the commiter of the unlawful act but also of the others participating in the commission of the act, including the situation of concealers and of those favouring it.

The existence of *guilt* as a distinct *condition* for exercising civil action in criminal proceedings, represents the fifth condition of delictual civil liability, even though it is rarely or briefly the object of reviewing by doctrinary authors.

We wanted to emphasize that guilt is an independent characteristic, distinct from unlawful act and the cause-effect relationship between act and prejudice, despite some contrary opinions of French doctrine, which includes into the terminology of acts: unlawful act and guilt.

What is important is the fact that in the civil field, unlike the criminal one, the liability may also exist in the case of the lightest guilt. Also, what is essential is that the commiter's delictual civil liability, regardless of the jurisdiction that has been opted for in order to remedy the damage, is reduced as an effect of the incidence of mutual guilt, of plurality of causes and provocation.

Two other conditions for exercising civil action in criminal proceedings, which have only been reffered to in *chapter 6*, are represented by the fact that it is necessary that *through the settlement of civil action the reasonable duration of proceedings not be exceeded*, as well as the fact that *it is necessary that a new request for bringing a civil action exist*. Due to the fact that the analysis of these conditions has raised ample valences, they have actually been developed in Titles 5 and 6 of this scientific undertaking.

Title V is named „**Bringing a civil action in criminal proceedings and ex officio exercise of civil action**". *The seven chapters* of this title focus on the rule according to which bringing a civil action is necessary as a condition for exercising civil action in criminal proceedings, as well as on the one concerning the ex officio exercise by the prosecutor of civil action in the case of physical persons lacking exercise capacity or having a limited exercise capacity.

Chapter 3 represents the core of this title.

Throughout this chapter I have first proceeded to present the reason and definition of bringing a civil action. Afterwards, taking into consideration the fact that the advantages of bringing a civil action in criminal proceedings have been intensely outlined in our domestic and foreign specialized literature, without denying them I have attempted to

prove that such advantages have become increasingly faint, there being strong reasons for which the drawing up of claims should be made before civil jurisdiction.

With regard to the initial and final moment concerning bringing a civil action, I have emphasized that the lawmaker has moved away from the former criminal procedural regulation. Regarding the initial moment, an opportune moving away from the former provisions has thus been accomplished, since bringing a civil action can be currently made only as of initiating the criminal action, as of indictment moment, respectively. With regard to the final moment of bringing a civil action, as a novelty in the new regulation, the latter no longer includes the reading of writ of summons during the inquiry stage, yet concerning this aspect I have opined that there should be a come-back.

A beneficial and new element of the current regulation, which gets the civil action exercised in criminal proceedings and the actual civil action together, is represented by the provisions of Art. 20 Par. 2 of the new Criminal Procedure Code which provides the compulsoriness of *ab initio* stating of nature and amount of compensation, as well as of proof and evidence requested, until *ad quem* moment for bringing a civil action.

Exceeding the final moment with regard to bringing a civil action, including failure to observe the content concerning bringing a civil action, is expressly sanctioned within the new regulation in Art. 20 Par. 4 of the new Criminal Procedure Code, which provides the impossibility, as sanction, of capitalizing upon claims before criminal jurisdiction, one still having open the option of appeal before civil jurisdiction. With regard to this piece of legislation, I have opined that it needs supplementing for the purpose of ensuring the celerity of act of justice, through conferring the court the right to ascertain and immediately enforce these provisions through a hearing report.

I have concluded that in our opinion, the parties with contrary interests cannot acquiesce the violation of Art. 20 Par. 1 and 2 of the new Criminal Procedure Code, being a belated bringing of a civil action or, as the case may be, incompliant, therefore null, invalid, without the possibility of producing effects in criminal proceedings. Moreover, a criminal court does not have the material competence to judge a civil action which has been vitiated in this way.

With regard to amending claims, I have emphasized the situation that the current criminal procedural regulation has aimed to solve the previous doctrinary and jurisprudential disputes. The possibility of increasing and decreasing claims until the completion of judicial inquiry has thus been provided. I have criticized these provisions in my thesis as generating new controversies. I have stated that the decrease of claims should

be possible even during the appeal, using the model of provisions of waiving claims, while increasing the latter should not be possible in criminal proceedings after the judicial inquiry has started since Art. 27 Par. 6 of the new Criminal Procedure Code states that the civil jurisdiction has the competence to settle the prejudice created and discovered after bringing a civil action, whose *ad quem* moment is expressly stipulated in Art. 20 Par. 1 of the new Criminal Procedure Code.

Throughout *chapters 4 and 5* I have discussed certain aspects related to bringing a civil action such as: waiving claims, mending clerical errors and the rule concerning the remedy in kind of prejudice.

With regard to waiving claims, I found desirable the establishment as a new element of certain express provisions in the new regulation, especially concerning the final moment of making use of such a possibility: completion of the hearings in appeal.

Concerning the matter of final moment for the possibility of mending mere clerical errors, I have opined that this possibility should not be circumscribed exclusively to the moment of completion of judicial inquiry.

An issue which has raised debates refers to the way in which the victim can request the remedy of prejudice. I found it absolutely necessary that the supremacy of the principle of remedying in kind of prejudice be restated in the current Criminal Procedure Code and that in order to meet this necessity, regardless of the jurisdiction, the civil legislation be amended in the first place (Art. 1386 of the new Civil Procedure Code) but also Art. 19 and 20 Par. 5 Letter c of the new Criminal Procedure Code.

Concerning the ex officio exercise of civil action which is the object of *chapter 6*, I have emphasized that currently the court no longer has the duties to exercise and rule ex officio upon the civil action in the case of the natural persons protected by the law due to their lack of exercise capacity or its limited character.

Regarding the emancipation of minors, I have shown that it is necessary that the lawmaker step in in order to regulate the situation of civil action in criminal proceedings when the minor becomes again incapacitated as a result of annulling the marriage on the grounds of its malintention when it was concluded.

At the same time, in relation to the provisions of Art. 19 Par. 3 of the new Criminal Procedure Code, I have considered that through them one has apparently aimed to limit the possibility of the prosecutor to exercise the civil action, strictly in the case when the legal representatives of the protected people should stay passive. However, for the purpose of

defending the protected people I have considered that the prosecutor should be able to exercise the action at all times, to double the one of the legal representatives, respectively.

An important benefit of the regulation currently in force consists of the fact that the sanction for failing to observe the time frame and content with regard to bringing a civil action, provided by Art. 20 Par. 4 of the new Criminal Procedure Code is also incident in the case of the civil action exercised by the prosecutor or the one exercised by the legal representatives of the people protected by the law, which thus creates a just equalization of treatment among all the victims.

In **Title VI, "Settlement of civil action in criminal proceedings: compatibility of procedure with the principle of reasonable duration of criminal proceedings"**, I have approached a current topic in relation to the fact that the observation of the reasonable duration of procedures represents not only a mere desiteratum but a real obligation to achieve a specific result wich needs to be provided in the legislation. In this regard, the requirement that civil action in criminal proceedings be circumscribed to this principle represents a condition for the very exercise of civil action along with the criminal one, which has caused the enacting of numerous regulations meant to either independently or corroborated with others to shape an own feature of such a civil action. Therefore, due to its importance and amplitude, this topic is the object of the *three chapters* of Title IV of this thesis.

Chapter 2 marks a review of this principle in the light of the European Convention, dealing with aspects such as: concept, regulation, judicial nature, evaluation criteria, compatibility of reasonable duration of procedures with the principle of celerity, rapidity and efficiency.

Chapter 3 entitled "Remedies for exceeding reasonable duration of procedures" represents an examination of regulations from various law systems, which subsequently covers certain former or current provisions from our domestic legislation.

From the point of view of our domestic legislation, I have attempted to emphasize the fact that through various provisions, one has tried to meet the obligation of the Romanian state to achieve a specific result with regard to the circumscription of judicial procedures to a reasonable time frame. In this regard, I have devoted a special importance especially to certain regulations containing new elements from criminal and civil procedure which provide remedies during the judicial procedures.

With regard to the provisions of the current Criminal Procedure Code, I have reviewed them in the light of the attempts on the part of the Romanian lawmaker to meet

this obligation of the Romanian state (appeal regarding the reasonable duration of proceedings, civil action splitting, judgement in simplified procedure and its impact upon civil action, bringing a civil action in criminal proceedings by observing the time frame and conditions expressely stipulated by the law, exercise of civil action by or against successors, appointment of a mutual representative, ex officio civil action and its compatibility with the reasonable duration of judicial procedures, impact of transaction, mediation and acknowledgement of civil claims etc).

On one hand I have remarked the benefit of some of the new criminal procedural provisions, as well as the way they should be applied but also the necessity of the *de lege ferenda* supplementation of the legislation.

For example, I have considered that with regard to the civil action splitting, the latter does not automatically need to take place when the criminal action is ready to be settled but only when one ascertains the situation that through the settlement of the civil action along with the criminal one an unreasonable delay of the latter might occur. At the same time, while analyzing the projects on the new Criminal Procedure Code, I have remarked that at a certain moment a relief of criminal courts from settling civil actions split from criminal proceedings was attented.

I have also remarked that the remedies for failing to observe the reasonable duration during judicial proceedings are not very satisfactory due to the fact that no actual control has been regulated upon the way the judicial bodies perform their duties after the moment an appeal has been filed with regard to the reasonable duration and on the other hand no *a posteriori* control has been regulated with regard to this aspect.

I have also emphasized that from our perspective, the final moment regarding the enforcement of criminal decision also settling the civil aspect of criminal proceedings must be circumscribed to the reasonable duration and moreover the period during which civil action is suspended due to the existence of criminal proceedings already initiated must also be included in the reasonable duration of procedure. Therefore, regardless of the context, the reasonable duration of a civil action, irrespective of the jurisdiction settling it, must be looked at considering its entire duration by including all the phases and stages.

At the end I have concluded that *de lege ferenda,* in order for one to effectively circumscribe civil action to a reasonable duration of judicial procedures, one should be preoccupied to establish the possibility to leave the criminal proceedings in which the capitalization upon civil claims was opted for when the settlement of civil aspect would be unreasonably prolonged only due the prolongation of the settlement of criminal action.

Title VII, "**Elements of civil action**" has emphasized over *seven chapters:* the reason for civil action, its object, principles of remedying prejudice, elaboration of certain systems meant to lead to the remedy of prejudice, subjects of civil action and its functional capacity.

From the point of view of the principle of total remedy of prejudice, I have remarked that it is currently expressly regulated within civil law under the influence of adopting this principle in our country and especially at international level. I have emphasized that this principle can really be achieved in the case of remedying material prejudice, while in the case of the moral one this is just a desideratum under the impact of a deep subjectivism.

With regard to the remedy in kind of prejudice, I have considered that the compulsoriness of the remedy in kind of damage, when possible, should regain a compulsory force, which in the first time would call for an amendment of civil legislation but also for a supplementation of the new Criminal Procedure Code.

Concerning the ways of remedy in kind of prejudice, I have performed a comparative presentation of the provisions formerly in force but also of those currently in force in order to illustrate the modifications brought about by the current criminal procedural regulation.

Concerning the case of establishing certain financial compensations, I have examined the requirement of the necessity to prove the material and moral prejudice. As for the latter I have reviewed the criteria provided by doctrine and jurisprudence for compensating this type of prejudice. Due to its often use especially in the internal and international jurisprudence, a special place was devoted to the equity principle or criterion, yet I have emphasized its highly relative, subjective and random character.

With regard to the option between the forms of civil liability (delictual and contractual) in order to obtain the remedy in criminal proceedings, I have opined that for the purpose of homogenizing jurisdictions, it would be beneficial that the victim's option for contractual liability in criminal proceedings not be excluded in the future, despite the fact that *de lege lata* such incidence is excluded.

Concerning the subjects of civil action, I have specifically discussed throughout *chapter 6* with reference to legal provisions, judicial doctrine and case law both its active and passive subjects.

From the point of view of active subjects, I have emphasized the necessity of certain conditions concerning their capacity and interest to act in the light of both

Romanian and French legislation. I have remarked the existence of a permanent evolution in the sense of admissibility of certain civil actions in criminal proceedings formulated by increasingly wider ranges of people (for example civil action of the relatives of the direct victim in the case of the latter's survival). I have emphasized that the intervention of the Romanian lawmaker in the Criminal Procedure Code itself is absolutely necessary for the purpose of admissibility of the actions exercised by the collective bodies for defending their interests, which is why I have proposed the stipulation of some provisions similar to those from the French criminal procedural regulation. Also, another topic with important practical valences was represented by the concurrency of compensations by the successors of the direct victim.

I have approached the topic of active and passive subjects by starting from the distinction between the originary passive subjects and those by deviation. I have also illustrated the main new aspects brought about by the current regulation:

- In the event of the death of defendant - natural person or the deregistration of defendant - legal entity, civil action is no longer settled in criminal proceedings;

- Introduction in the case of the successors of the civil party (inheritors, rightful successors or liquidators) and as the case may be of the civilly liable party is no longer performed ex officio but it is required an active conduct of the civil party. In this sense, we hold that it would be desirable that the defendant as well be obliged to an active attitude with regard to introducing in the case of the successors of the civilly liable party.

In the two chapters of **Title VIII**, "**Settlement of civil action in criminal proceedings**", I have performed a comparison between the former and current legislation by analyzing the solutions of admission, dismissal and those concerning the failure to settle the civil action remarking at the same time the new elements which mark a change in the view of the Romanian current lawmaker with regard to this topic.

Concerning the solutions of dismissing the civil action, I have opined that in the case of Art. 20 Par. 4 of the new Criminal Procedure Code there should not be a solution itself of dismissing the civil action.

With regard to the failure to settle the civil action, I have remarked the increasingly high number of the cases when such a solution is pronounced. I have also emphasized that the preventive measures should be maintained in civil proceedings for more than 30 days, a period which is currently in force.

The strongest critic aims the current regulation with regard to the settlement of civil action by the prosecutor in the case the latter decides to drop the criminal prosecution.

Through the offered arguments we have aimed to prove that there are solid reasons pleading in favour of repealing and amending, respectively, of certain provisions from Art. 318 of the new Criminal Procedure Code. I have also remarked that there are stronger reasons for settling civil action in a criminal court by splitting it, in the case of the settlement of a case through the special procedure of the agreement of acknowledging the guilt.

In "**Conclusions**" which are the object of **Title IX** of this thesis I have aimed to emphasize the fact that the legislation currently in force is not free from potential critics, being perfectible, which is why I have reiterated some of the *de lege ferenda* proposals which are also to be found in this thesis. However, upon drawing conclusions I have proceeded to state these proposals in the order in which the pieces of legislation are to be found in the new Criminal Procedure Code.

The conclusions confirm both our vision upon the topic which is the object of this scientific undertaking and the importance and actuality of this doctoral thesis, as well as the possibility of legislative evolution.