

**THE EXERCISE OF THE CIVIL ACTION IN CRIMINAL PROCEEDINGS.
THE MOMENT OF CIVIL PARTY CONSTITUTION**

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ABSTRACT

The domestic procedural provisions regarding the civil action in criminal proceedings are marked by dynamism, undergoing constant evolution — including recent developments — with significant impact on the reparation of damages resulting from an offense within the same procedural framework.

Through this study, we aim to draw the reader's attention to certain current theoretical and practical aspects. We will focus in particular on the types of actions that may be exercised in Romanian criminal proceedings, on the legal basis and the subjects of the civil action, and especially on the initial and final moments concerning the constitution as a civil party upon request in the criminal process. In the course of this endeavor, we will also draw parallels with provisions of civil procedural law, as well as provide an analysis of the current criminal procedural regulation in relation to certain relevant judicial decisions.

KEYWORDS: *civil action, criminal proceedings, damages, procedural law*

J.E.L CLASSIFICATION: K14, K41, K36

1. INTRODUCTION

The exercise of civil action within the framework of Romanian criminal proceedings reflects a dynamic interplay between two distinct yet interconnected branches of law—criminal and civil. Rooted in a **mixed procedural system**, the legal framework enables the pursuit of both criminal liability and civil compensation within a single process, allowing the injured party to seek reparation for the material or moral harm caused by a criminal offense.

This study explores in depth the **legal basis, procedural stages, and structural nuances** surrounding the constitution as a civil party in criminal trials. By analyzing the relevant provisions of the Criminal Procedure Code and their interpretation through judicial practice and constitutional

case law, we aim to clarify the **categories of actions** that may be brought in a criminal context, the **subjects involved** in civil liability, and the **critical procedural moments**—both initial (*a quo*) and final (*ad quem*)—for the valid exercise of civil claims.

Special attention is paid to the **evolving legislative context**, particularly in light of the Constitutional Court's rulings, which have impacted the procedural rights of both civil parties and civilly liable third parties. These developments raise important questions regarding **procedural fairness, timeliness, and the coherence of the mixed system**, especially when civil claims are exercised alongside or within criminal litigation.

In this context, the study also proposes *de lege ferenda* suggestions to ensure greater consistency between criminal and civil procedure, emphasizing the necessity of clarity, predictability, and respect for fundamental rights in the enforcement of civil claims resulting from criminal conduct.

2. CATEGORIES OF ACTIONS THAT MAY BE EXERCISED IN ROMANIAN CRIMINAL PROCEEDINGS

1.1. The Mixed System

The commission of a criminal offense can result, beyond the socially dangerous consequences specific to criminal law, in material and moral damages caused to natural or legal persons (A. Chișu, 2023).

In early judicial systems, compensation resulting from the commission of a criminal offense was not granted separately but was incorporated into the punishment itself, without a clear distinction between civil and criminal liability (A. Chișu, 2023). Nowadays, in certain contemporary legal systems, the reparation of damage caused by a criminal offense can take place exclusively before the civil courts (A. Stoica, 2011), with criminal and civil actions being entirely separate.

In Romanian criminal proceedings, following the commission of an offense which, by its nature, causes material and/or moral damage, two otherwise distinct categories of actions may be exercised in parallel:

- **the criminal action**, which aims to hold criminally liable the individuals who committed the offense [Art. 14 of the Criminal Procedure Code (New Criminal Procedure Code with its current amendments)], through the application of penalties and other measures provided by criminal law, and whose purpose is repression; and
- **the civil action**, which aims to hold the defendant and the civilly liable party accountable for compensating the material and/or moral damage caused to the civil party by the act

forming the object of the criminal action – Art. 19(1) and (2) of the Criminal Procedure Code.

The Romanian legislator, following the French model (S. Guinchard, J. Buisson, 2008), opted for a mixed system, allowing for the separate exercise of these actions within the same procedural framework.

The mixed system is neither rigid nor mandatory. The civil party has the right—but not the obligation—to become a civil party in the criminal proceedings, according to Art. 27 of the Criminal Procedure Code. Thus, the reparation of damage caused by the offense can also take place before the civil courts, as the original and common route of compensation under tort liability. The option between criminal and civil jurisdiction belongs to the entitled persons or their successors.

Regardless of the jurisdiction before which the civil claims are submitted, the **principle of availability** applies, systematically codified under Art. 9 of the Civil Procedure Code.

From the perspective of the active subject of the civil action in criminal proceedings, the principle of availability—specific to civil procedure—includes: the right to petition, the determination of the object and limits of the action, and the right to renounce, settle, or mediate (Art. 9 CPC, Art. 194 CPC, Art. 406 et seq. CPC, as reflected in Art. 20 and Art. 22 of the Criminal Procedure Code).

Similarly, the passive subject of the civil action exercised in criminal proceedings, as an expression of the principle of availability, has the option to fully or partially agree with the civil claims asserted—an option also specific to civil procedure. Depending on whether the unconditional acknowledgment of the claims by the defendant in the civil action is full or partial, we consider that, under Art. 436 CPC corroborated with Art. 2(2) CPC, the court may issue a ruling “to the extent of the acknowledgment.”

Furthermore, the active subject of the civil action may appeal the criminal judgment only in regard to the solution issued on the civil component. At the same time, they may accept the ruling in relation to this component under the provisions of Art. 463 CPC in conjunction with Art. 2(2) CPC.

These approaches, on the one hand, respect the specific nature of the civil action and give effect to the principle of availability, and on the other hand, facilitate the simplification of the civil action, contributing to the completion of the proceedings within a reasonable timeframe.

The free right to choose between the two jurisdictions for damages arising from a criminal offense (i.e., whether the injured person decides to initiate the civil action separately from the criminal trial or to pursue this legal remedy during the criminal proceedings) corresponds to the principle of the availability of the civil action (Constitutional Court, Decision No. 257/2017), broadly interpreted in the context of the two competent jurisdictions to resolve civil law disputes. The fact

that the civil action in criminal proceedings is **available** fundamentally distinguishes it from the **criminal action** (A. Boroï, G. Negruț, 2022).

1.2. Severance of the Civil Action

Legal doctrine has noted a tendency of the national legislator to deviate from the traditional mixed system by increasing the number of situations in which the civil action is separated from the criminal one (Art. 19 para. 4 and Art. 26 of the Criminal Procedure Code), or through the numerous cases where the civil action remains unresolved in criminal proceedings or is referred to civil jurisdiction (Art. 25 paras. 5 and 6 and Art. 20 para. 4 CPCr).

Among the limitations of the right to choose jurisdiction is the situation in which resolving the civil action would delay the judgment of the criminal case (G.-A. Radu, 2012), specifically the scenario in which resolving the civil claim in the criminal proceedings would lead to exceeding the reasonable duration of the trial. This scenario concerns the severance of the civil action, currently regulated by Art. 19 para. (4) and Art. 26 para. (1) first sentence of the Criminal Procedure Code.

The purpose of these legal provisions is to avoid delays in the resolution of criminal law disputes (I. Borlan, 2016). Priority is given to the public interest that governs criminal law, rather than to private interests related to the reparation of damage through civil action.

Under current law (*de lege lata*), since the legislator has not defined specific minimum conditions that would trigger the exceeding of a reasonable timeframe, the decision to sever the civil action lies entirely within the court's discretion, based on the specific facts and elements of the case under judgment, without this being a mandatory obligation.

Severance becomes genuinely necessary when the delay in resolving the criminal case would be substantial — for example, when, in contrast to the evidence on the criminal side, the civil side requires extensive evidentiary proceedings over many hearings — or when it could render the criminal action ineffective (e.g., the risk of statute of limitations expiring for criminal liability due solely to the time required to administer civil evidence).

Therefore, not every delay in resolving a criminal dispute should justify the severance of the civil action on the grounds of exceeding a reasonable trial duration. Otherwise, the mixed system would be undermined, ignoring the fact that joining both actions in the same procedural framework often entails more complex evidence in one of them. Thus, the **scope of civil evidence** or the **prevention of the criminal action's ineffectiveness** becomes crucial.

In the event of civil action severance, we consider this does **not** amount to an actual limitation of the right to opt for joining both actions in the same criminal trial, because:

- The expression of will has already been made; therefore, the right to choose has been exercised, as the victim previously opted—at the legal procedural moments addressed in this paper—for the joining of the civil claim with the criminal action;
- Upon severance, the civil claim remains under the jurisdiction of the **criminal court**, according to Art. 26 para. (1) second sentence CPCr, without being transferred to the civil courts.

Specialized literature has suggested that the current regulation of civil action severance is not objectionable (I. Borlan, 2016). However, *de lege ferenda*, we consider it would be useful to define minimum conditions under which the resolution of the civil action would significantly and effectively delay the resolution of the criminal case, thereby seriously and genuinely harming the public interest. This is important because:

- It would help avoid creating a **customary practice** — potentially even considered an abuse of rights — that would bypass the mixed system of resolving both actions in the same criminal proceeding, a system which the Romanian legislator has clearly chosen;
- Often, the **criminal penalty is influenced** by the degree of danger and the consequences of the offense (Art. 74 para. 1 lit. b and c of the Criminal Code, regarding general criteria for sentencing), so the implications of the civil component in the criminal one should not be overlooked;
- For many victims, obtaining **compensation** for damages caused by the offense is a **primary goal**, which they perceive as **inseparable** from the imposition of a criminal sanction — even though legally we are dealing with two distinct actions.

2. The legal basis and subjects of the civil action

The civil action in criminal proceedings is exercised, according to Article 19(2) of the Criminal Procedure Code, by the injured party or by their successors. They may request to become a civil party in the criminal trial (Art. 19 corroborated with Art. 20 CPCr), thus exercising their right of option to join the civil action with the criminal one within the same proceedings, a right governed by the principle *electa una via non datur recursus ad alteram*, with the exceptions provided by law (B. Micu, B. Slăvoiu, A. Zarafiu, 20026). There is also the so-called *civil action ex officio*, which currently operates similarly to the civil party's voluntary constitution upon request but is not the subject of this study.

The **factual basis** of the civil action in criminal proceedings is the act that constitutes the object of the criminal action, according to Art. 19(1) of the Criminal Procedure Code. This refers to the offense which, by its nature, causes material or moral damage (Supreme Court, Criminal Section,

Decision no. 1264/1983), since the granting of compensation in the criminal trial cannot be based on an extrapenal illicit act (Supreme Court, Criminal Section, Decision no. 616/1976).

The **legal basis** of the civil action lies in the violation of legal provisions that give rise to the right to compensation for damages (M. Udroi, 2012).

When reparation for the damage caused by an offense is sought within the criminal proceedings, by means of the civil action initiated through the constitution as a civil party, the injured person acquires the status of **civil party** in the criminal trial – Art. 32(1) and (2) CPCr.

Constitution as a civil party in criminal proceedings is a **prerogative of the passive subject** of the act provided by criminal law (the injured person or their successors), who thus becomes the **active subject** of the civil action exercised in the criminal trial (Art. 84 CPCr; A. Crișu, A. Boro, G. Negru).

To acquire this status, it is necessary to **express the will** to join the civil action to the criminal one, through a declaration of constitution as a civil party (Art. 19(2) CPCr). This declaration may be made in writing or orally and must be formally recorded by the judicial body before which it is submitted.

In other words, the "plaintiff" in a civil action before a civil court acquires, in the civil action within the criminal trial, a specific designation—namely, that of **civil party**.

The **passive subject** of the civil action in criminal proceedings is the **defendant**, and, where applicable, the **civilly liable party** (Art. 19(2) CPCr). These correspond to the "defendants" in the civil jurisdiction, whether they are direct defendants or those brought in as guarantors (Art. 55 CPC, Art. 72 et seq. CPC).

Furthermore, since the **civilly liable party** has the **optional right** to intervene in the criminal trial until the end of the judicial investigation at first instance (Art. 21(3) CPCr), this constitutes a procedural transposition of the civil procedural provisions under Art. 61 et seq. CPC regarding voluntary intervention in one's own interest or in the interest of another person. However, even in this case, the civilly liable party remains a passive subject of the civil action exercised in criminal proceedings.

Not by accident—and rightly so—the legislator in criminal proceedings uses the term **"intervention"**, a notion typical to civil procedure when the procedural framework is modified after the action has been initiated.

As for the term **"introduction"** into the case of the civilly liable party, we believe this terminology is inadequate and deficient. It was likely chosen to emphasize that the respective person is a third party to the criminal action.

We argue, however, that the expression of will to **hold the civilly liable party accountable** represents in itself a form of will to join the two actions, effectively amounting to a constitution as a civil party **against that third party**. The “introduction” of this third party does not alter the nature or effects of this procedural choice.

As long as the passive subjects of the civil action are those indicated in Art. 19(2) CPCr, one cannot claim that constitution as a civil party applies only against the defendant and not also against the civilly liable party. We do not believe that the introduction into the trial of the civilly liable party constitutes anything other than **a form of civil party constitution**. Moreover, Art. 20(3) CPCr makes no distinction in the content of the civil party’s constitution based on the passive subject.

Thus, constitution as a civil party applies **against all passive subjects** in the same manner, similar to a **statement of claim** in civil proceedings, including in terms of **passive procedural co-participation** derived from the provisions of Art. 59 CPC. In civil procedure, the notion of “introduction” into the case refers to the modification and extension of the procedural framework after the first hearing, for various reasons (e.g., the death of a party and the introduction of heirs, forced intervention, etc.). In contrast, **in criminal proceedings, the option regarding the passive subjects of the civil action must exist *ab initio*, forming the original framework of the civil action within the criminal trial.**

Until the moment the criminal action is initiated, one **cannot speak of a civil action** in criminal proceedings (as we will address when discussing the initial moment of civil party constitution). Only after the indictment is officially issued can the **option to join the civil action to the criminal trial** be expressed. Only by expressing this intention can the active subject (plaintiff) formulate claims **against the passive subjects** (the defendant and/or civilly liable party – defendants). Hence, only from the moment of exercising the civil action by constituting as a civil party do we have **parties to this action**: civil party (plaintiff), defendant and/or civilly liable party (defendants). This marks the **original framework** of the civil action in criminal proceedings.

The civil action thus retains a **distinct character** from the criminal action, a distinction that should not be disregarded. Therefore, regardless of the jurisdiction before which civil claims are brought, these particularities must be respected. The fact that the civilly liable person or party is external to the criminal action **does not mean** that the **unity of the civil action** should be disregarded, depending on the jurisdiction chosen.

In light of these considerations, we believe that *de lege ferenda* it would be appropriate to abandon the contested terminology.

3. THE MOMENTS OF CIVIL PARTY CONSTITUTION UPON REQUEST IN CRIMINAL PROCEEDINGS

3.1. General Notions Regarding the Constitution as a Civil Party

Constitution as a civil party can be defined as the expression of will by a natural person with full legal capacity or by a legal entity (through its legal representatives) harmed by an act that is the object of the criminal action, to be compensated for the material and/or moral damage suffered, by joining the civil action with the criminal action within the criminal proceedings, with the aim of holding the persons responsible under civil law accountable for the harm caused by the offense.

We use the term "harmed" because the terminology employed by the legislator (as outlined in Articles 19 and following of the Criminal Procedure Code) is permissive and non-exhaustive, leaving it to doctrinal and jurisprudential evolution to define and interpret the notion of "injured party" in national criminal proceedings. The French model is noteworthy in this regard, as the concept of "criminal victim" tends to overlap with that of "civil victim" from civil proceedings, without any justification for distinctions between the two types of litigation (I. Delean, in *Dreptul*, no. 5/2009).

In order for a person harmed by the act that is the object of the criminal action to be able to constitute as a civil party in the criminal proceedings, both **formal** and **substantive** conditions must be met (B. Micu, B. Slăvoiu, A. Zărafiu, 2020): formally, the will or option to seek compensation before the criminal jurisdiction must be expressed; substantively, the following must exist: an illicit act capable of producing material or moral damage; the damage must be certain both in terms of its existence and its extent, and must not have already been compensated.

In terms of content, the constitution as a civil party in criminal proceedings must meet the requirements laid down in Art. 20(2) of the Criminal Procedure Code: the **nature and amount of claims**, the **reasons** for them, and the **evidence** supporting them must be indicated. This echoes the summary provisions of Art. 194 of the Civil Procedure Code regarding statements of claim before the civil courts.

We believe that provisions such as Art. 20(2) and (4) of the CPCr could have been avoided through a more comprehensive formulation of Art. 19(5) CPCr. We propose wording such as: *"The reparation of damage and the civil action are governed by the rules of substantive and procedural civil law, unless otherwise provided"*, or: *"Reparation of material and moral damages is subject to the provisions of civil law. The rules of civil procedural law apply to the extent they are not incompatible with the criminal procedural rules."* This approach is also supported by the provisions of Art. 2(2) CPC, which functions as a general rule of judgment, stating that civil procedure applies in other legal matters unless otherwise regulated.

If the procedural civil law norms were not expressly mentioned, and only substantive law were invoked (as currently occurs in Art. 19(5) CPCr), we might encounter profoundly inequitable outcomes in resolving the same civil action depending on the jurisdiction chosen—essentially leading to inequality before the law. For example, in the civil component of the criminal case, individuals prohibited under Art. 315 CPC (e.g., certain relatives, interested parties, etc.) could be heard, due to the absence of such restrictions on witness eligibility in criminal procedure—suggesting an unintended derogation from civil procedural rules.

Thus, **in defending private interests within the civil action**, there should be no differentiation based on the jurisdiction in which claims are heard, nor should inequality, controversy, or inconsistent judicial practice be generated. There is no justification for the criminal trial to create, indirectly, a more favorable or less favorable situation for parties compared to what they would have encountered in civil proceedings.

A key procedural aspect of criminal law lies in the obligation of judicial bodies to **summon, inform, question, and record whether the injured party wishes to constitute as a civil party** (Art. 20 para. 1, 1¹, and 3 CPCr; Art. 111 para. 2 lit. d CPCr). Such an obligation does not exist in civil proceedings, where the plaintiff acts freely and independently in submitting their claim, without any official prompting. Therefore, criminal procedural provisions serve not only to give effect to the **principle of availability**, but above all, to **make the mixed system of combining criminal and civil actions accessible and functional for litigants**.

With respect to the **moment of constitution as a civil party**, which marks the start of exercising the civil action in criminal proceedings, a distinction must be made between two key temporal points: the **initial moment (a quo)** and the **final moment (ad quem)**—terms that apply regardless of whether the civil action is initiated upon request or ex officio (Art. 19(3) CPCr).

3.2. The Initial Moment (*a quo*) of Civil Party Constitution in Criminal Proceedings

The current legislation does not expressly specify the **initial moment** of civil party constitution in criminal proceedings in relation to the passive subjects of the civil action. The provisions of Art. 20(1) CPC, even those recently introduced by Art. 201(1¹) CPC, refer only to the **final moment** of exercising the option for the mixed system. Despite this omission, the initial moment under current regulation can be deduced by interpreting Art. 19(2) CPC, which states that the civil action is exercised against the defendant and, where applicable, the civilly liable party. The use of the term "defendant" and the provisions of Art. 82 CPCr lead to the conclusion that a valid and effective constitution as a civil party can occur **only after the initiation of criminal proceedings**. The same view is supported by legal doctrine (C.S. Paraschiv).

Doctrine has further argued that the exercise of the right of option presupposes the **simultaneous existence of the legal conditions** for both paths of asserting civil claims: that the criminal trial has

been initiated through the commencement of criminal proceedings, and that the injured person or their successors meet all the requirements for bringing a civil action (A. Crișu). In this way, the conditions required by both jurisdictions are harmonized to make possible the **very existence of the mixed system**, where both actions are joined within a single procedural framework.

Because the exercise of the civil action in the criminal trial is **conditioned by the initiation of the criminal action**, the civil action has an **accessory character** to the criminal one (B. Micu, B. Slăvoiu, A. Zarafiu).

Therefore, **civil party constitution** in current criminal procedure may validly occur either:

- during the **prosecutorial phase** (but only after the initiation of criminal proceedings, when the accused acquires the status of defendant), or
- during the **trial phase** (an option only partially preserved by the legislator).

This is clearly supported by the phrase *"until"* used in Art. 20(1) CPCr, and by the provisions of Art. 27(4) CPCr.

Nevertheless, we argue that **constitution as a civil party**, even if in a technically improper sense, may also be effectuated **through the criminal complaint itself** or at **any other moment prior to the initiation of criminal proceedings**.

We do not believe this constitutes prematurity or inadmissibility, since in tort law, the debtor is **automatically in default** from the moment of committing the wrongful act (Art. 1523 of the Civil Code, correlated with Art. 19(1) and (5) CPCr). Thus, we can consider that, in such cases, the assertion of civil claims is made under a **suspensive condition**, so that once the condition is fulfilled — namely, the criminal action is initiated — the **effects of the earlier civil party constitution are validated**.

Such an interpretation would be more beneficial than problematic, as it would enhance procedural efficiency, expedite proceedings, and support the right to a fair trial, including with respect to **prescription rules in civil matters**. We therefore believe it would be optimal to insert an **express legal provision** to this effect, further aligning Romanian criminal procedure with the **French legal system**.

It is not reasonable to render a prematurely expressed will ineffective, especially when it was clearly expressed and could help **avoid legal disputes**, particularly regarding the **statute of limitations for civil liability**, depending on the outcome of the criminal case.

This perspective is also supported by the French system, which serves as the model for Romanian procedural law. In French law, civil party constitution could occur in **two ways** (J.-C. Soyer, 1997):

- **Principal constitution** (before the initiation of criminal proceedings, via the victim's complaint), and
- **Accessory constitution** (after the initiation of public action), both of which are relevant in determining the **initial moment** of civil party constitution.

Similarly, according to French doctrine and jurisprudence (J. Laguier, Ph. Conte), a person who constituted as a civil party during the prosecutorial phase **retains this status during the trial phase** (except in cases of express withdrawal), and therefore **is not required to renew the declaration** of will.

3.3. The Final Moment (*ad quem*) of Civil Party Constitution in Criminal Proceedings

Under the former criminal procedural regulation, the *final moment (ad quem)* for constituting as a civil party in criminal proceedings was marked by the phrase "*until the reading of the indictment*", which signaled the beginning of the judicial investigation (Art. 322 of the former Criminal Procedure Code) (Gh. Mateuț, 2006).

The current legislation no longer uses that expression, specifying instead that such constitution can take place "*until the beginning of the judicial investigation*" (Art. 20(1) CPCr and Art. 353(3) CPCr). The start of the judicial investigation is no longer determined by the reading of the indictment but occurs at a later moment, associated with the **actual administration of evidence** before the trial court (Constitutional Court, Decision no. 257/2017).

One may question whether the provisions of Art. 20(1) or Art. 353(3) CPCr remain relevant or whether it would be appropriate to reconsider the final moment for civil party constitution in light of the Constitutional Court's decisions (e.g., Decision no. 641/2014) and their recent legislative reception (Art. 20¹ and Art. 21(1), Law no. 201/2023).

If the **only person held liable for compensating the damage** (material and/or moral) is the **defendant**, and there is no civil liability on the part of another person, then there are no strong arguments to revise the *ad quem* moment. Similarly, if the injured party or their successors, in full awareness, choose to **constitute as a civil party only against the defendant**, and not also against the civilly liable party, this falls within the **principle of availability** and the **non-compulsory nature** of passive procedural co-participation, typical of civil law (based on Art. 1349 and following of the Civil Code).

However, when **civil liability of a third party** is involved and considering the Constitutional Court's decisions regarding the preliminary chamber, the issue becomes more pressing.

By Decision no. 257/2017, the Court **declared unconstitutional** the provisions of Art. 21(1) CPCr, which stipulated that the introduction of the civilly liable party could be done at the civil party's

request **before the start of the judicial investigation**. The Court argued that the provision did not ensure a balance between fundamental rights and failed to guarantee the civilly liable party's right to submit requests and objections regarding the legality of the indictment and evidence during the preliminary chamber phase. Thus, the Court emphasized **access to justice** and **the right to defense**—both for the injured party and for the civilly liable party.

As a result, **introduction of the civilly liable party** had to occur **in the preliminary chamber**, effectively making this phase **mandatory** under the sanction of **forfeiture**—a concept imported from civil procedure (Art. 185 CPC, reflected in Art. 268 CPCr). This limited the civil party's **right of option**, rendering Art. 20(1) CPCr partially inoperative.

To avoid forfeiture, civil party constitution against **all passive subjects** of the civil action had to occur **prior to the judicial investigation**, given the importance of involving the civilly liable party. In practice, it is unlikely that a claimant would choose to act in a fragmented and delayed manner against different passive parties, as this would only complicate their procedural position.

To accommodate the Court's rulings, **Law no. 201/2023** introduced two significant changes:

- A revised **Art. 21(1) CPCr**, and
- A new **Art. 20(1')** CPCr, though **Art. 20(1) CPCr** itself was **not amended**.

Thus, **constitution as a civil party against a civilly liable third party** (which effectively constitutes the **exercise of the civil action**) can **no longer occur before the judicial investigation**, nor even during the **preliminary chamber**, but **strictly before the case is resolved by the prosecutor**.

In other words, under the new rules, civil party constitution for the purpose of involving the civilly liable party is **limited to the prosecutorial phase**, before the file is closed or sent to court. Only the prosecutor has the authority to resolve the case at this stage—such power does **not** exist during the preliminary chamber or trial phase.

In this light, we believe the provisions of **Art. 20(1) and (4) CPCr**, along with **Art. 111(1)(d)** and **Art. 353(3) CPCr**, should be reconsidered, as they are now outdated or inconsistent.

To comply with the new **deadline set in Art. 21(1) CPCr**, in line with **Art. 20(1')** CPCr, the **prosecutor is now required** to ask the injured party whether they wish to constitute as a civil party and request the introduction of the civilly liable party. This obligation conflicts with the unmodified provisions of Art. 20(1), Art. 111(1)(d), and Art. 353(3) CPCr.

There is **no reasonable legal basis** for establishing different deadlines to initiate the civil action against the defendant versus the civilly liable party, especially since:

- both are passive subjects of the same civil action;

- the civil action must remain **unitary**;
- litigants are **equal before the law**;
- the law must be **clear, foreseeable, and consistent**.

Therefore, if it was rightly decided that the civilly liable party must be involved during the **prosecution phase**, the **same rule should apply to the defendant**. Thus, **civil party constitution** should, *de lege ferenda*, be submitted **against all passive parties before the end of the prosecutorial phase**. This would require changes to **Art. 20(1)**, **Art. 111(1)(d)**, and **Art. 353(3) CPCr**. If the **prosecutor fails** to fulfill their obligations regarding civil party constitution, this failure should be grounds for **returning the case** during the preliminary chamber phase.

Moreover, such constitution during the prosecution phase must be **notified to all passive parties**, allowing them to be informed—similar to the **regularization procedure** in civil trials—thereby **guaranteeing the right to defense**.

If the civil party asserts claims only against the defendant (especially during the prosecutorial phase) and **not** against the civilly liable party, it is worth considering whether the **defendant could request the introduction of the civilly liable party** (similar to a third-party notice under Art. 72 CPC et seq.). We believe the answer is **yes**—the defendant, like the civil party, has an interest in this.

The civil party seeks to **maximize recovery** from multiple sources and minimize the risk of total or partial insolvency. Likewise, the defendant would prefer that any compensation paid be **recovered from the guarantor** or jointly liable party.

Therefore, *de lege ferenda*, the Criminal Procedure Code should also include an **express provision** allowing the **defendant to file a third-party notice** before the case is resolved by the prosecutor.

In such a situation, we could **justifiably refer to the 'introduction' of the civilly liable party** into the case, as this would be the result of a new procedural act by the defendant, modifying the original structure of the civil action. This **would truly represent the introduction of a new party** to the proceedings—again, in the role of **passive subject (defendant)**.

4. CONCLUSION

The integration of civil action into Romanian criminal proceedings exemplifies the **pragmatic logic** of the mixed procedural system: facilitating both the prosecution of crime and the compensation of victims in a unified legal framework. However, the effectiveness of this system relies heavily on **well-defined procedural rules** and a **balanced relationship** between the involved parties—injured individuals, defendants, and civilly liable third parties.

As the analysis has shown, the **legal basis and procedural rights** for constituting as a civil party require a careful balance between **flexibility** and **legal certainty**. While the legislator grants the injured party the **right—not the obligation—to seek civil redress in the criminal trial**, the procedural moments within which this choice must be exercised (from the initiation of criminal proceedings to the final admissible point before judicial investigation) must be clearly and coherently defined.

Moreover, the recent amendments introduced through **Law no. 201/2023**, as well as the jurisprudence of the **Constitutional Court**, underscore a pressing need for further legislative **harmonization**. In particular, discrepancies between procedural deadlines for claims against the defendant versus the civilly liable party undermine the **unity and equality of the civil action** and risk compromising procedural fairness and efficiency.

Consequently, this study advocates for a **reconsideration of the current procedural architecture**. Clear legislative provisions should regulate both the civil party's rights and the obligations of judicial bodies, especially the **prosecutor**, in identifying and notifying all potentially liable parties. Additionally, the **recognition of the defendant's right to file a third-party notice** would ensure a more comprehensive approach to liability and facilitate equitable outcomes.

Ultimately, preserving the **unitary character of civil action** within the criminal process is essential for upholding the rights of victims, ensuring effective judicial protection, and enhancing the overall **legitimacy of the justice system**.

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