

Implication of the offense of deception, false and use of false in the civil trial

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Abstract

The objectives of our study consist in showing that the offense of deception in witness testimony during the civil trial by attribution of lying qualities in order to impress the court, grafted on false and use of false used by the one giving the witness testimony in the civil trial, false introduced and used by this one on the date of the criminal case trial which the defendant in the civil trial on moral damages invokes, considering that such defendant was a defendant in a criminal trial where he/she won with the witness proposed thereby in the civil moral damages trial, may lead to an erroneous solution in the civil case, in case the defendant in the civil trial fails to timely notice such things or the courts fail to corroborate the defendant's evidence in the civil trial. The research methods consist in analysis of several court orders. The results of the study lead to the idea that criminal claims addressed in reference to certain offenses claimed during the civil trial should be settled under emergency regime, as the implications of certain offenses, like deception in witness testimony, instigation to deception, false and use of false, on one hand, and failure to corroborate the defendant's evidence in a moral damages trial, for instance, on the other hand, may have serious repercussions on the defendant.

Keywords: *witness testimony, lying qualities, false, use of false, appeal in annulment, false registration.*

JEL Classification: K14, K33.

1. Introduction

In our paper, we have proposed to analyze the implications of the offenses of Deception, incitement to false, deception and use of false in the civil trial. The interference between criminal and civil law is less approached in the literature and for this reason, but also because various offenses occur in civil cases, they have determined us, on the basis of hearings in court rooms of some situations, but also based on the study of court rulings in civil cases with criminal implications, to address this issue. Our paper is structured on a number of aspects of crime, false, and use of False offenses in the civil trial, their implications, and the solutions we have proposed consist in increasing the vigilance of civil panels, to speed up the investigation of these crimes in the civil trial, by the criminal investigation bodies,

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criminal offenses signaled by criminal claim, suspension of civil proceedings on the basis of this claim, even if criminal investigation has not yet begun, forbidding the petitioner to raise the exception of lack of interest when the court shows the existence of these crimes in the civil proceedings and even in appeal in annulment, to be possible to file for forgery and admitting forfeiture when it is discovered that the petition for a lawsuit contains a judgment based on forgery, filed on the day of the trial by the witness proposed by the plaintiff in the trial of moral damages. This could lead to the proof of verity even in an extraordinary way of attack, such as the appeal in annulment, which would lead to a correct solution in the case.

2. Aspects concerning the deception offense and its implications in the civil trial

According to the New Criminal Code³, art. 244 deception is “(1) misleading a person by presenting as true a deceiving deed or as lie of a true deed, for the purpose of obtaining for oneself or for another an unjust patrimonial asset and if a damage had been suffered, it is punished by imprisonment for 6 month to 3 years.

(2) deception committed by the use of names or lying qualities or other fraudulent means is punished by imprisonment of one to five years. If the fraudulent means constitutes an offense itself, the rules on the offense contest shall apply.

(3) settlement removes criminal liability”.

The offense of deception, as evidenced by judicial practice, may be committed by a witness in the civil trial, instigated by the plaintiff / defendant, to declare facts that have not actually occurred, in order for the trial to be won by the party who instigated him/her to the offense of deception.

In many cases, the offense of deception is committed by witnesses in civil trials by attributing false qualities, pretending to have various functions, didactic degrees in higher education, etc., that they had close relationships with an important person who died, etc.

In order for their witness testimony to appear credible, they sometimes even try to deceive the court with their place of residence, if it would put them in difficulty, claiming they live elsewhere and choosing their domicile with a lawyer, even if he/she does not represent them in the trial, taking advantage of the fact that they can declare their domicile anywhere.

However, it is important that according to the Code of Civil Procedure⁴ there is mentioned in art. 315 that, (1) the relatives and affinities up to the third degree cannot be witnesses, including the spouse, the ex-husband, the fiancée or the concubine, those in hostility or interest relationships with one of the parties, persons under judicial interdiction, those condemned for lying testimony. (2) The parties may expressly or tacitly agree to be heard as witnesses and persons referred

³ Dan Lupașcu, *New Criminal Code and New Criminal Procedure Code*, Universul Juridic Bucharest Publisher, 2014, p. 104.

⁴ Civil Procedure Code, updated on 15.1.2016, C.H. Beck, Bucharest Publisher, 2016, p. 91.

to in paragraph “(1) point 1-3.” The Old Civil Procedure Code does not provide that those in hostility or in interest relationships with one of the parties may not testify in court, which has led to a series of erroneous solutions, some witnesses, for example, in trials of moral damages coming for plaintiffs, who sometimes were their former lawyers, where tending to give their chosen domicile, or other witnesses being even hierarchically subordinate and paid by the people for whom they came as witnesses, which led to erroneous solutions in various cases and especially in the cases of moral damages. There is even a case in which one of the applicant's witnesses was in dispute with the defendant for 17 years on the Old Civil Procedure Code, and the second witness of the applicant was secretary of the applicant's lawyer's office, the object of the trial being moral damages, where the applicant managed to earn 100,000 lei under the condition that the statement of the witness in litigation for 17-years with the defendant relied on misleading by awarding liars for 17 years in court, including in the case of non-pecuniary damages and the presentation of unrealistic facts as real, and the second witness's statement was based solely on the applicant's accounts, being the secretary of the applicant and not participating in any court hearing finding that the defendant's honor, dignity and reputation were harmed by the defendant.

When “the deception, which is the subject of a criminal complaint, is not promptly investigated by the Police and the Prosecutor's Office or the civil case is not suspended in the case of this crime even if the prosecution has not yet been initiated, the solution in the civil trial will be erroneous, and there are chances that even when the dossier of the appeal in annulment reaches the criminal the investigation to be not completed. Then how could the wrong solution be corrected? Of course, it could be said by a request to the European Court of Human Rights, only that if the referral is made when the decision on the appeal has not yet been drafted, the application is rejected for inadmissibility and the file is destroyed, and if another further request is subsequently submitted, there is no guarantee, especially when the appeal, the ruling on the appeal respectively, was given 6 months after the hearing of the case, that the ECHR on the same file will be taken into account.

3. Aspects concerning the offense of deception and use of false

Of course, when the forgery and use of false offense in the civil process is added to the crime of deception, things get even more complicated. Thus, for example, according to the analysis of several court decisions, we have found that in civil cases there are often falsified the writs under Private Signatures, incriminated by art. 322 of the Criminal Code. By forgery in documents under private signature, according to art. 322 in the Criminal Code⁵ it is understood: “(1) Falsification of a document under private signature in any of the ways provided under art. 320 or 321 if the perpetrator uses the falsified document or entrusts it to another person for use

⁵ Dan Lupaşcu, *op. cit.*, pp. 128, 129.

in order to produce a legal consequence, shall be punished by imprisonment from 6 months to 3 years or by a fine. (2) The attempt is punished.”

By using forgery incriminated by art. 323 of the New Criminal Code⁶ means “the use of an official document or under private signature, knowing that it is false, in order to produce a legal consequence, shall be punished by imprisonment from 3 months to 3 years or by fine when the document is official, and with imprisonment from 3 months to 2 years or by fine when the document is under private signature”.

Thus, sometimes appear writs with falsified writing and falsified signatures of deceased persons used in civil proceedings and usually filed by defendants. Writing, even if the applicant justifies whom it belongs to, sometimes there are even two writers, the defendant claims that both are deceased and the courts no longer hold the applicant’s registration in forgery. It seems normal for us, registration in forgery to be retained in this case, and by comparing scripts of the deceased whose signature was also falsified, the court to even rule on the forgery and use of forgery and to order forensic expertise or to take into account the expert report made by an expert party in the case and thus provide a fair solution in the case. Otherwise, the same counterfeits may be used by the same party in other civil proceedings where that party will win, and the court costs will be its enrichment without a fair cause.

In the case of the civil trial, we propose that the court should cut itself for false and use of forgery, if the writing and signature belong to a deceased person, based on scripture and signature specimens, if the true writers have died, but for this to be done, minimum inspections by courts through addresses to INEP (Individuals Evidence National Institute) and to the city hall those who falsified the document belong to. Moreover, the court may also order forensic expertise, and the person who used the forgery should, under these circumstances, be sanctioned by the civil court with a fine of 5000 lei, given by the conclusion of the session, communicated to the other party to the proceedings, so that they can use it in case the same forgery is again used by the same party in another trial.

Of course, in a case of moral damages where the plaintiff uses a judgment in which he/she has won in crime based on forgery, a witness who was also accused in the same criminal proceedings and who filed forgery on the day of the trial and another hierarchically subordinated witness, this claimant should never earn moral damages, but should be held accountable by the court for civil deception, incitement to forgery and use of forgery. In terms of the method of enforcement of punishment, the deferred enforcement of punishment⁷, a new institution in the new criminal code, may be currently applied by the courts.

⁶ Ibidem, p. 129.

⁷ Cristina Cojocaru, Dumitru Cojocaru, *Punishment deferred enforcement – a new institution in the future criminal code*, in Lazar Carjan (coord.), “Novelty and continuity in law”, Sitech Publisher, Craiova, 2013, pp. 10-15.

4. Conclusions

Given the implications of offenses of deception, forgery, and use of forgery in the civil trial, police and the Prosecutor's Office need to be more operative in resolving criminal complaints, courts should suspend the case when these offenses are reported in civil proceedings even if criminal prosecution had not yet started, the courts should cut themselves when it comes to a forgery on a document from a deceased person, the writers being also deceased, by analyzing the specimens of the writing and signature of the deceased whose writing was counterfeit, to order a forensic expertise or to take into account a Specialist Opinion that comes from a forensic expert, and if a person in the civil trial is guilty of deception, forgery and use of forgery, should be fined 5,000 lei on the basis of a conclusion of session also communicated to the opposing party, to be able to use it if necessary in another trial.

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