

Civil action - means of restoring the violated subjective rights

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Abstract: *In a democratic society which also has a stabile economy, the judiciary relations of substantial right are usually achieved without the intervention of any organ of the State. In social life the situations of disregard or violation of human rights may appear. In order to restore these situations, along with the non-contentious proceedings, which have gained momentum lately, the intervention of the courts is necessary. Because the attempt to solve disputes of civil nature through non-jurisdictional procedures did not lead to the outcome expected by the parties, the legal conflict is going to find its solution by means of civil trial that will be unleashed by the concerned person. There are situations in which action is required, although there is no breach or a subjective civil right is not contested, such as the case of the action owners, the division of property during marriage, of common property or divorce action. The right to access justice is an aspect of the fundamental right recognized and guaranteed of the individual. When this right is exercised in the civil courts, he takes the form of civil action. Civil action is the manifestation, in a concrete plan, of the procedural prerogative recognized by law to all physical and juridical persons who enjoy the use capacity. The legal nature of civil action should be considered in close connection with the right to action, in the material sense. These two notions, found in an indissoluble connection, formed the object of analysis and doctrinal disputes in the last decades. If the right of action is a complex right, that includes a series of abstract possibilities regulated by procedural rules, it can be transposed into concrete in the action space of the civil trial, through civil action. Without representing the only warranty of the subjective rights, the civil action constitutes, without doubt, its main means of protection and guarantee and, consequently, that of the judicial order.*

Keywords: *civil action; subjective right; the right to action; fundamental right; civil lawsuit.*

Introduction

In the Romanian society, any right that was recognised in accordance with the rules of the legal system, applicable to a person could have practical value only insofar as it could be sanctioned because its use was also made through recourse to sanction. The path followed for the sanctioning of a subjective civil right was the procedure [1].

The Romanian Civil Procedure encompassed the totality of rules regulating the progression of processes relating to freedom, property, inheritance and exploitation of the rights of claim [2].

Starting from these considerations, the civil action was defined in the specialty literature as being the legal means through which a person requires the court to recognize its right or to achieve it, by termination of obstacles put in its exercise by another person or by a suitable compensation or, in a brief speech, taken by the same authors from the roman right, the right to pursue in court what you are owed (*ius persequendi in iudicio quod sibi debetur*) [3].

In a different acception, the civil action has been defined as all the procedural means through which, in a civil trial, the protection of the civil-subjective right is ensured - through its recognition or its achievement, if it is infringed or contested - or of a legal situations protected by law [4].

Because in the previous regulation the notion of civil action was not delimited, the present Code of civil procedure, in order to eliminate the doctrinal controversies on the legal nature of this institution, has not avoided the risk of defining it. Thus, similarly with the latter definition presented above, article 29 of the Code of civil procedure, under the marginal name of "Concept" provides that civil action represents *all procedural means provided by law for the protection of the subjective rights claimed by one of the parties or other legal situations, as well as for ensuring the defence of the parties in the process.*

By legally defining this institution a controversial issue, generated by the concept that the subjective civil right and civil action were considered a unitary whole, was resolved. This article offered a clear distinction between the two notions.

1. The exercise of civil action - fundamental right of free access to justice

The regulation of this institution through article 29 of the Code of civil procedure represents a legislative progress achieved by incorporating the essential elements circumscribed *sui generis* to the fundamental right of free access to justice, as set out in article 21 of the Constitution, art. 5 Code of civil procedure and article 6 of the European Convention for the protection of human rights and fundamental freedoms [5], [6].

The European legal framework is mandatory for all member states of the European Union, the principles contained in the European Convention must steer both legislative activity in procedural matters and practitioners.

Article 6 of the European Convention summarizes the most important principles of the judicial activity, such as access to justice, independence and impartiality of judges, the advertising of debate, the right to a fair trial and the right to defence.

Under the name "Duties relating to the reception and settlement of claims", art. 5 of the Code of civil procedure provides that judges have the obligation to receive and solve any application within their competence according to the law. According to the same article, no judge may refuse to pass judgment on the grounds that the law does not provide, is unclear or incomplete, and if a case cannot be solved neither under the law or any legal provisions on the basis of similar situations, it will be judged based on general principles of law, taking into account all its circumstances and the requirements of equity.

The text stipulates the fundamental principle of free access to justice because it outlines, on one hand, the judge's obligation to receive claims within the competence of the courts of law and, on the other hand, it limits him to lay down mandatory general provisions through the resolutions which he passes.

According to article 21 of the Constitution, any person may address the justice system for the protection of its legitimate rights, freedoms and interests, and no law may restrict the exercise of this right.

In consonance with the provisions of the European Convention, art. 6 of Law no. 304/2004 on judicial organization [7], grants any person the right to freely address justice for defending its legitimate rights, freedoms and interests in the exercise of his right or to a fair trial; access to justice cannot be restricted.

Last but not least, through art. 30 of Law No. 189/2003 on international judicial assistance in civil and commercial matters [8], the Romanian legislator has established equality of treatment for foreign natural persons and legal entities in regard to the referral of the Romanian courts; they can freely and unimpeded address the Romanian judicial authorities, to submit requests, to introduce actions and to support their interests in the same conditions as Romanian natural or legal persons.

In order for a claim to be harnessed through a civil action it is required to start through an application which will be solved by the court whose competence it is.

This specification cannot lead to the conclusion that the judge or person who is in charge of receiving the requests cannot allow the submission of a different kind of applications. As it was judiciously appreciated in the doctrine, all applications must be received and, subsequently, if the Court considers that the application which is being assessed does not lay in the jurisdiction of the courts, will reject it accordingly. Therefore, the judge is obliged to receive and solve all requests, including the ones that do not fall into the competence of courts; the solution, in this case is the rejection of the action. This conclusion also emerges from the provisions of art. 130 Code of Civil procedure that allows the invocation of general lack of jurisdiction of the court in any state of the case. Or, in order for the Court to find itself in such a situation the request must be received [9].

If the civil court was legally invested, the prosecution of the action cannot be refused on the grounds that the law does not provide, is unclear or incomplete, the legal norms forbidding the denial of justice. Article 1 paragraph 2 of the Civil code states that in cases not provided for by law, the judge will apply usages, and, in their absence, legal provisions regarding similar situations, and in the event that even such provisions do not exist he will apply the general principles of law but taking into account the requirements of equity.

This obligation finds its counterpart in art. 3 of the Civil code of 1864. The preservation of this regulation was necessary because the right of access to justice cannot depend on passivity, incompetence and superficiality of the legislator [10].

Last but not least, in order to ensure that the subjective rights of the civil action are achieved, the legislature forbids that, the decision rendered in a dispute could establish general mandatory rules which will influence all cases in which there is the possibly for the matter at hand to arise.

The text does not come in contradiction neither with the fact that the absolution given to the issues by the court of appeal, as well as the necessity of administration of some evidence are binding for the fund's judges nor with the obligation, in the case of retrial with reference after cassation, to comply with the law's solution given to the problem at hand by the Court of appeal.

In the specialized literature of recent date it looks like, in both cases, the superior court judges will concretely show why the problem of law deduced from judgment was given an interpretation or wrong application. The judicial court judges do not impose general application provisions, configured by it, to the fund judges [11].

The judge does not set rules of law - this task belonging to the legislature - but only applies rules of law to concrete cases. For compliance with the principle of separation of powers in state, the judge shall always make decisions in the cases he judges and does not have the right to establish general conditions outside the situation that is in front of him [12].

But, the rules of civil procedure regulate two exceptions to the above mentioned rule: appeal procedure within law and referral of the High Court of Cassation and Justice in order to pronounce a prior fact for solving a law problem. Both aim at the pronouncement of a judgment which after publication in the Official Gazette, becomes generally binding.

2. The right to action - an element of subjective civil right

Civil subjective law has been defined in the specialty literature as being the possibility of the active subject, within the limits of civil legal rules, to have a certain conduct, to claim from the passive subject a proper conduct, and, in case of need, to require the coercive force contest of the State [13].

In the virtue of this faculty recognized by law, the holder of the subjective right can, first of all, adopt a certain conduct established by him but which will comply with the limits imposed by law. At the same time, he has the opportunity to claim from the passive subject - holder of the correlative obligation or all other subjects of law in the case of opposable *erga omnes* rights - to have a proper conduct: to give, to do or not do something. Last but not least, the subjective civil right also gives the holder the opportunity to use coercive force contest of the state, if the right is disregarded or violated.

The right to action, therefore, represents that component of the subjective civil law that allows individuals and companies to whom the law recognizes the active procedural legitimacy to use, in case of need, State constraint in order to realize their rights.

The practical means through which the right to action is being harnessed is the action. This right may include, as appropriate, the right to notify the court, the right to request samples, to pursue the means of attack, the right to request forced execution of the judgment rendered in the case in question.

The doctrine shows that the subjective civil right includes only the right to action and not the action. It does not identify with the action as the action and the right to action are not similar notions. The connection between the subjective civil right and the action is the right to action [14].

In continuation of the above, it is necessary to specify that the civil action is not limited to the scope of application of summons. Although in common parlance the two notions are often confused. The summon application is only one of the forms of manifestation of civil action, such as re-conventional summon, application of requests for voluntary or forced interventions or becoming a civil part in the criminal proceedings.

In the situation when committing offences has produced, besides the socially dangerous consequences, a touch to the subjective civil rights materialized in a material or moral damage, the deed committed generates civil liability, whose realization can be asked for during the criminal proceedings. In the pertinent doctrine it is shown that committing a crime, first of all, influences the rule of law and the latter can be restored only through the criminal sanction of the offender. The same offence can cause damage to a person and, in this situation the legal tool with which one can obtain reparation for the damage is the civil action [15].

Civil action predates the summon application, this being represented by all procedural means through which we can achieve the legal protection of the subjective rights and judicial instances protected by law. When we ask for action, it individualizes, it becomes a process [16].

This includes the same procedural means - is uniform - regardless of the right which is being harnessed, though, at the time of exercise, the action is influenced by the subjective civil right or by the legal

status protected by law, so that the nature of right demanded will determine a certain qualification of the action: real or personal, movable or immovable, prescriptive or not subject to statute of limitations.

The indissoluble connection between subjective right and civil action has been surprised early on in the previous doctrine of the present Code of civil procedure: "it's not right without action. The law that created rights didn't need to say that a certain right has a certain action. The only fact that he prescribed a certain right, virtually he understood to give to this right a sanction" [17].

3. The elements of civil action

Civil Action involves the existence of three cumulative elements: *parties, object and cause*.

a. The parts of the action are the persons between whom a legal relationship, deduced from judgment, exists: the holder of the subjective right which has been violated or challenged or which aims at harnessing the legal situation and the one about which it is claimed that has hindered or embarrassed it in the normal exercise of its prerogatives. Once the civil action is triggered, they gain the quality of part in the process and will have a specific name: plaintiff and defendant, appellant and appellee, recurrent and respondent, and claimant and respondent depending on the procedural middle of the action that it has been used in.

They can participate in the civil trial personally or through legal or conventional representative, with the exceptions provided by law for certain special procedures (such as divorce). In case the parties have participated in the process through representation, the effects of the decision pronounced in this case will occur to them, and not to their representatives, because what is of interest is their legal quality and not the physical presence during the trial. At the same time, the procedural rules give the parties, which cannot participate in the sessions of the Court, the possibility to request the trial in absentia.

Also, they have the quality of party in the civil trial and the persons or bodies whose active or passive procedural legitimacy were recognized, although they are not parties at the legal relationship which makes the object of the cause, as the prosecutor whose faculty to start any civil action is recognized, whenever it is necessary to protect the rights and interests of minors, of persons under interdiction or of the disappeared, public authorities with attributes in children's protection which can request the guardianship court the parents' decay from their exercise of parental rights when they, through their behavior, threaten the life, health and child development, or village, town or municipality in whose jurisdiction the goods were on the opening of the sequence, which may require the declaration of indignity to inherit, if there are no other successors.

b. The object of the action cumulates, on one hand, the protection of rights or accomplishment of interests or the legal status deduced from the judgment and, on the other hand, ensuring the defence of the parties in the lawsuit, materialized through the right to discuss the merits of the opponent's claims and the right to defend themselves.

The following may constitute procedural elements that can be found in the content of the plaintiff's object: the plaintiff's protection materialized through the request of termination of a contract or rendition of a good, invoking the exceptions of fond or procedure, requiring the establishment of precautionary measures, the exercise of a legal attack instrument, direct or indirect forced execution.

c. The cause of the action expresses the aim of a person who, through this procedural means, claims or defends itself in a civil trial.

This should not be confused with the purpose or cause pursued through the application of summons. The distinction has a major importance for invoking the judged working authority which means, according to the article 431 Code of Civil procedure the identity of the application, and not the terms of the action's cause, which is the same in a certain type of action.

For example, in a recovery action, the purpose followed by the holder of the action is to regain the possession of the asset which is kept without right by another person. The cause or the legal basis of such a summoning request is the property title of the plaintiff, which may be a contract, succession, adverse possession, or another way of obtaining a property provided by law. If the first application which follows the claim of property, based on the contract is rejected, the applicant may not introduce a new application of summon against the same defendant founded on the same contract because there are the triple identity - the parties, object and cause; this application would be rejected on the ground of *res judicata*. He will be able to request the claim of the same good, from the same person by invoking as the cause of the new summon application an adverse possession, a succession or another contract.

4. The conditions for the exercise of civil action

Any summon application may be formulated and held in front of the Court only if its author has the procedural capacity recognized by law, has procedural quality, formulates a claim and justifies an interest. These conditions must also be met in the case of formulating a claim through a counterclaim, an application for main intervention, a summon application of for other people or call into warranty. Article 32 paragraph 2 Code of Civil Procedure provides compliance with them, in an appropriate manner.

The four requirements mentioned above must be fulfilled throughout the civil trial, until the final settlement of the dispute, they are necessary for the formulation and support of any requests.

4.1. The procedural capacity

The procedural capacity represents the application in the procedural plan of the civil capacity which has two forms: *use procedural capacity* and *practice procedural capacity*.

a. Use procedural capacity expresses the potential status of a person to have rights and obligations throughout the trial. With reference to this aspect, in the doctrine it was appreciated that they (potential rights) are not to be confused with rights, but only express the abstract and general ability to achieve them [18].

According to article 56 Code of Civil Procedure, any person who has the use of civil rights can be a part in court. With the title of exception, the associations, societies or other entities without legal personality, if they are set up according to law, can sit judgment.

The use capacity of individuals begins with birth and ends with death. The law recognizes, however, an exception to this rule, the rights of the child are recognized from the moment of conception, provided that he is born alive - *infans conceptus pro nato habetur quotiens de commodis eius agitur*, whenever it is in his interest.

Legal persons who are subject to registration acquire use capacity from the date of their registration. Legal entities which are not held to fulfil the conditions of registration can have civil procedural rights and obligations from the date any other requirements validly stipulated are fulfilled. Even in this case the rules institute the exception of an early use capacity for legal persons subject to registration, they can have rights and assume obligations since the date of their establishment, but only to the extent necessary for them to become valid. At the same time, associations, companies or other entities without legal personality can be sued if they were established according to the requirements of the law.

The procedural use capacity of a legal person shall end with their termination by means of one of the ways provided for by law.

Use capacity is recognized to all persons. They may not have this legal prerogative but they may be restricted, with a sanctioning or protective character, in the cases and conditions expressly provided by law, such as, for example, the situation of the parent decayed from his parental rights which cannot represent the child or juvenile in a trial, the legal person that may not exercise actions in justice in order to make use of certain rights which, according to their nature or according to the law, may belong only to the natural person or legal entity without profit-making with regard to the implementation of civil rights that are not necessary to achieve the aim envisioned by law, act of incorporation or bylaws.

Lack of procedural use capacity can be invoked in any stage of the process. It can be, if necessary, a diriment and absolute exception or cause for appeal or recourse.

The procedure acts fulfilled by the one who has no use capacity are hit by absolute nullity. This nullity is not conditioned by personal injury but the one that suffered a prejudice as a result of the conditions for the exercise of civil action may request to be indemnified according to the common law.

b. Practice procedural capacity is the ability of a person to exercise and perform his duties and procedural obligations in order to capitalize the conflicting duty proceeding before the Court.

This is achieved through a close connection with the use capacity since, in the absence of a law, neither it's exercise is conceived in Justice.

The physical person acquires full capacity of exercise at the age of 18 years, as well as in the case of conclusion of marriage of a minor. At the same time, the law gives the Guardianship Court the opportunity to recognize a minor who has reached the age of 16 years as having full exercise capacity for serious reasons.

In the case of a physical person, exercise procedural capacity ceases by death, interdiction or annulment of marriage, before the minor with bad-faith to be 18 years of age.

The legal person acquires his procedural practice capacity from the moment of establishment. His procedural rights and obligations will be fulfilled through its management bodies on the basis of the rules applicable to the mandate, if the law or any act of incorporation has not stipulated otherwise.

The moment of conclusion of the exercise capacity of the legal person coincides with that of the usage capacity, respectively, the moment of its termination through one of the ways provided for by law.

For the people lacking the exercise capacity - minors aged under 14 years and the Court's forbidders, the rules of civil procedure provide for them to act in Court through their legal representatives - parents or, in their absence, tutor, the one who represents the child given in foster care or curator.

In the case of minors aged between 14 and 18 years old, who enjoy limited exercise capacity the rules concerning their legal assistance shall apply, so that the minor will be quoted and will personally be present during the trial. Parents or, in their absence, the tutor will assist them throughout the judgment and they are required to sign alongside the minor all the applications addressed to the Court to fulfil their capacity.

If during the trial the minor turns 14 years of age, the representation will turn into assistance, with the obligation of the courts to cite the minor personally with his parents or guardian.

By way of exception, in the disputes concerning work, the artistic, sports or professional occupations of the minor who has reached the age of 15, his full exercise capacity is being recognized; he is personally cited and can exclusively meet the acts of procedure.

The lack of capacity to exercise procedural rights can be invoked in any stage of the process. This may be a fund exception, peremptory and absolute or, where appropriate, the grounds for appeal or recourse. It can be used by the person whose interests are protected by the establishment of inability as well as by a prosecutor or an ex officio court.

Those procedures fulfilled by the one who does not have procedural exercise rights are annulable to the extent that the legal representative or guardian of the person lacking capacity would not confirm, in whole or in part.

In accordance with the rule of material law according to which the relative nullity can be covered, the Court has the obligation to grant a period of judgment for the legal representative to confirm the procedural acts performed by the one who does not exercise these rights or with restricted capacity.

If the Act is not confirmed, the court will order its annulment. At the same time, the one who has suffered a prejudice as a result of the non-observance of the conditions for the exercise of civil action regarding the exercise ability may also apply for compensation under the common law.

4.2. The procedural quality

Under article 36 of the Code of Civil procedure, the procedural quality results from the identity of the parties and the subjects of the conflicting legal relationship, as it is deduced from judgment. As a matter of fact, it is necessary to prove that the applicant is the rightful holder of the right and the respondent is obliged in the same legal report. These issues are to be determined in the course of legal research and after completing the stage of the substantive debates.

In the case of the juridical situations for whose implementation the justice path is mandatory, the one who can claim the interest of their achievement has active procedural quality and the one who can manifest the respective interest has passive procedural quality [19].

However, there are situations in which, for the purpose of defending the rights or legitimate interests of persons in special situations or, if necessary, to safeguard the interests of a group or of a general interest, the legislature recognized the procedural legitimacy of persons, groups or organizations that do not justify a personal interest. This form of procedural legitimacy is regulated by imperative rules and is becoming effective in terms of both active and passive, in the cases and conditions strictly regulated by law.

In this situation, for the exercise of the civil action all four required conditions need to be fulfilled, with the particularity that the one that acts should not justify any personal interest and the practical benefit chased by exerting the action is going to be assessed in relation to that for which it was activated.

The representative of the minor, or of the forbidden enjoy active procedural legitimacy for annulment of the act for inability resulted from minority, actions on establishment of parentage to the mother, action in establishing paternity outside of marriage or paternity denial actions.

It is also recognized the active procedural legitimacy of some organizations, institutions or authorities such as non-governmental organizations aimed at protecting human rights and combating discrimination for cases in which discrimination is their field of activity and aims at a community or a group of people.

Also, in consideration of the same special situations, in the law it is established even the passive procedural quality, through express indication of the persons who are to be summoned in the case of promoting certain actions, such as promoting alleged heirs of the father against whom action may be instituted in establishing paternity, or of the mother, or the heirs of the deceased child if his paternity is being denied by the mother's husband or State, represented by the Public Ministry of Finance, in the actions that require finding the political character of the condemnation in the period 6 March 1945 - 22 December 1989.

During the trial, the rights, legal situations and procedural obligations can be submitted legally or conventionally, to other parties or third persons in the trial.

The legal transmission of the procedural qualities operates in the case of natural individuals through succession, the heirs, taking over the rights and obligations, including the procedural ones of their author. They will take up his procedural position of *de cujus* except for the rights and actions of a strictly personal character or in relation to which the law provides another solution in case of death.

However, there are situations in which, although the action is strictly personal, if it was started by the rightful holder it can be continued by his successors, such as the case of divorce action through which the dissolution of marriage is requested due to the defendant's exclusive fault and the plaintiff dies in the process. His heirs may continue the action that will be admissible in case of finding out that the parried husband has the exclusive fault.

For the legal entities, the transmission of the legal procedural quality takes place through reorganization or transformation of legal person who is a part in the process.

The conventional transmission of procedural quality takes place via legal means of changing the active or passive subject of the legal report substantially deduced to judgment, as well as the assignment of claims, assumption of debt, selling or donating the conflicting object.

If, in the course of the trial, the conflicting right is conveyed through acts between the living, regardless if they are onerous or free of charge, the trial will continue between the initial parties. But if the transfer is made through an act with particular title for a cause of death, the judgment will continue with the successor which has the particular title or universal title or universal of the author.

Whether the transfer of the conflicting right took place through *inter vivos* or *mortis causa* acts, the successor with private title is obliged to intervene in the cause, if he has knowledge of the existence of the process, or he can be inserted into the cause, upon request or ex officio, with the same procedural quality as the one who alienated it. Its procedural position cannot be assimilated to accessories intervention or forced because this behaviour is imposed by law.

After the introduction of the successor with particular title, it remains at the discretion of the Court to decide whether the one who alienated it or the universal successor or the one with the universal title will remain or, where appropriate, will be taken out of the process [20].

Regardless of the decision of the court, the private successor takes over the procedure in the state it is the moment he becomes a party to the lawsuit, and the decision rendered against the one who alienated it or universal successor or universal title will be opposable, except in the case he acquired the right in good-faith and can no longer be defeated, under the law.

Lack of procedural quality can be invoked during the entire process, being considered a substantive, diriment and absolute exception or, where appropriate, the reason for the appeal request or recourse.

This is punished with dismissal of formulated action as being made by a person without quality or against a person without quality. The one who has suffered prejudice through infringement of this condition of exercise of civil action may apply for compensation under the common law.

4.3. Formulating a claim

For the performance of civil action it is necessary for a person to claim a subjective civil right or to avail himself of a legal situation for whose achievement the legal path is required.

In order to be able to be deduced from judgement, the conflicting right must be recognized by law, must be exercised within the materials and legal limits set by the legal norms and must be current.

This last requirement is not necessary to be met if through the action it is requested the finding of the existence of the right and not his achievement.

In order to be current, the right must be corresponding to a payable bond. By way of exception, the law however allows the exercise of some actions concerning rights affected by the suspension term, before reaching it. It is the case of the application that may require a good rendition at the fulfilment of the contractual term made before reaching that deadline or of the action that is required, before the term, execution on time of maintenance or other services on a regular basis. The action that requires, before reaching the deadline, the execution on term of obligations is also permitted. This is if the court will find that they can prevent a significant loss.

These actions are preventive, the defendant never being in any of the three situations in procedural fault.

Another exception from the rule according to which the interest must be born and current, is the application created in order to prevent the violation of a subjective right seriously threatened or to prevent an imminent damage that could not be fixed.

Unlike the preventive actions shown in the rows above, in this case the respondent is the guilty procedural party and can be required to pay the cost of the judgment. The decision through which such a request is admitted is put into immediate execution, even if the right whose protection is aimed is affected by a standstill unfulfilled period.

If the right is not current, the lack of such conditions may constitute a substantive, peremptory and absolute exception, or a reason for request of appeal or recourse, if necessary. The exception may be invoked by either party, the Prosecutor or the Court, *ex officio*, in any stage of the trial. The admission of the exception leads to the dismissal of the action as being premature. However, after the fulfilment of the term or the precedent condition, a new summoning application can be formulated, without the authority of *res judicata* being able to oppose.

If after court's research and after completing the stage of the substantive debate the Court finds that the claimed right does not exist or it does not meet the conditions required by law in order to be exercised (except for those concerning the current character), the request will be rejected as unfounded or ungrounded.

In this case, the person who suffered a prejudice through the exercise of the civil action with the violation of the conditions required by law has the right to be compensated, by means of a separate action, according to the common law.

4.4. The justification of an interest

The one that has put in motion the civil action or has exercised any of the procedural forms which enter into its content must follow a practical use.

The fallowed interest can be both material and moral. Article 33 of the Code of Civil Procedure expressly indicates the requirements of the interest, which must be cumulatively fulfilled in order for the Court to be notified: *to be determined, legal, personal, born and current*.

Found in correlation with the request to indicate the object through summons, the determination of the interest requires that he who starts an action in court to obtain a practical, concrete use, not abstract, as a result of an eventual favourable ruling in the case in question.

In order to be legitimate, the interest must meet the procedural and material requirements, as well as the rules of social coexistence. With respect to this requirement, the doctrine has shown that the exercise of a subjective right without a vested interest, so against the purpose or recognised by law, constitute an abuse of right which should be sanctioned [21]. However, as a result of careful analysis, the Court is going to draw, depending on the specific data of each case, the boundary between the abusive exercise of a right and the error or mistake of thinking, ensuring free access to justice of the parties.

The interest is personal when the pursued practical use targets the one which resorts to action or defends itself in a civil trial. In the cases the extraordinary procedural legitimacy is permitted - for the protection of rights and legitimate interests of persons in special situations or, as appropriate, in order to protect a group or general interest - the use must be assessed in relation to the holder of the right and not with the bodies or persons whose exceptional procedural legitimacy is recognized.

In order to respect the latter requirement, the interest must exist when one of the procedural means that go into the content of the action is exercised. If the right, whose development requires the justice system is

affected by a term or a suspensive condition that have not been fulfilled, the application will be rejected as being devoid of interest, except for the actions that aim at preventing any breach of a threatened subjective right and those concerning prevention of an imminent damage that no one could fix.

Lack of interest or fulfilment of one of the requirements of these exercise condition of civil action may constitute a substantive, peremptory and absolute exception, or a reason of application for appeal or recourse, depending on the case. If the Court finds out about this aspect, the demand or the formulated defences will be rejected as being devoid of interest, and he who has suffered a prejudice as a result of the breach of the conditions of exercise of civil action shall be entitled to claim compensation under the common law.

Conclusions

The Civil Action still represents the primary means of achieving private interests. As a manifestation of the right of free access to justice, this represents a guarantee of the subjective civil right and in general of the judicial order.

The path of the civil action between the summon application and the judgement or forced execution includes a series of legal transactions which recognize the facilities for the participants to the judicial activity and imposes strictly determined obligations, which are indispensable for preventing abusive exercise of rights.

The special importance of knowing this institution is given by the central position it occupies in the civil clause activity, and by the fact that all procedural activities of the court and the parties depend on it.

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