



ORIGINAL PAPER

Court charges in the civil trial requested through a separate action

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Abstract:

Starting a civil lawsuit involves the parties incurring expenses that they must bear, expenses that consist of paying stamp duties where required by law, attorney's fees, expert's fees, travel expenses, accommodation, etc. In addition to the role of a procedural sanction of the person who loses the lawsuit, the court costs also have the role of compensating the party who won the lawsuit and who is not guilty of initiating judicial activity.

Court costs are granted at the request of the interested party and will be borne by the losing party. The basis for their award by the court being the procedural fault and the full coverage of the damage caused to the winning party.

The failure of the party to claim the costs does not lead to the extinction of the right or to cover the damage caused by initiating legal proceedings. The interested party, being entitled to exercise his right by way of a separate action based on tortious civil liability.

Keywords: *court charges, procedural fault, coverage of the damage.*

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An important principle underlying the granting of court charges in a civil trial is that they are granted only at the request of the interested party. If there is no such express request of the party, the court cannot order *ex officio* the obligation to pay court charges. The plaintiff is the one who formulates the summons request and he will also request, if he wishes, the granting of court charges, and the defendant can, in turn, request court charges through the counterstatement submitted to the summons request. The court charges can be requested later, throughout the trial of the first instance, but their proof must be made by the date of closing the debates on the merits.

In what follows, we will analyse the situation in which, within a summons pending before a court, or through the counterstatement filed by the defendant, court charges were also requested but, for various reasons, at the last court trial date, the parties decide that they will recover the court charges through an independent action formulated separately. The promotion of such a separate action for the recovery of court charges involves some important procedural consequences, among which we mention, first of all, the material and territorial competence to judge such a request will be determined according to the rules of common law provided by the Code of civil procedure, secondly, such an action can be exercised within the general limitation period of three years, the solution being the same also regarding the limitation of the right to demand enforcement.

Regarding the conditions under which court charges can be granted, judicial doctrine and practice (Ciobanu, 1996: 262-263) were consistent in meaning that they are granted – if the conditions of tortious civil liability are met – and if they were not requested during the trial or if they were requested and the court failed to rule, to the extent that the party did not waive the right to claim them. Therefore, the legal basis for awarding court charges is represented by the procedural fault of the party that lost the trial or that, even if strictly formally it did not lose it, is still at fault, since its imputable conduct generated the litigation. Thus, we can talk about a special type of tortious civil liability, because, although access to justice is free, if the procedural position of the party proves to be unfounded or due to its fault, a substantive solution is not reached, this is procedural fault and is responsible for the damage caused to the opponent who was determined to incur charges (Zidaru, Pop, 2020: 342)

According to article 453 paragraph 1 of the Code of Civil Procedure, the losing party will be obliged, at the request of the winning party, to pay the court charges incurred. Thus, at the basis of the obligation to cover court charges is exclusively the idea of *procedural fault*, the fault being proven by the very solution delivered by the court. At the same time, the court charges are also a procedural sanction for the unjustified exercise of appeals or other procedural prerogatives. That is why the doctrine considers that the obligation to pay court charges is the result of a culpable attitude of the party, from which the conclusion is drawn that they also represent genuine procedural sanctions (Les, 2020: 561).

According to the provisions of article 451 paragraph 1 of the Code of Civil Procedure, court charges consist of court stamp fees, the fees of lawyers, experts and specialists appointed in strictly specialized fields, in which there are no authorized experts, the sums due to witnesses for travelling and the losses caused by the need to be present at the trial, the transportation and, if applicable, accommodation charges, as well as any other charges necessary for the proper conduct of the trial.

In doctrine (Ciobanu, Briciu, Dinu, 2018: 411) it was shown that the scope of court charges and costs with pre-trial notice, designed to delay the debtor, the future

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defendant, and avoid the costs of a trial. At the same time, judicial fines or compensation to which one of the parties was obliged for delaying the trial are not included in the scope of court charges and cannot be imputed to the opponent. The proof of the existence and extent of court charges usually consists of the receipts issued following the collection of the lawyer's fee, the expert's fee, the payment of the court fee, the travel to reach the court's headquarters, etc. In order to be taken into account by the court, this evidence must be submitted to the case file at the latest on the date of closing the debates on the merits of the case according to the provisions of article 452 of the Code of Civil Procedure. There is an interpretation in judicial practice, according to which the legislator gave the possibility of separate recovery of court charges only to the extent that the analysis of the new action is based on the evidence already in the merits file, the basis of the new request. Through this interpretation, the situation is avoided in which the winning party is given the opportunity to arbitrarily set court charges, already knowing the solution, just out of a desire to burden the opposing party.

In order to be able to file an action for the recovery of court charges separately, it is necessary that, during the debates that take place in the file in which the charges were requested, the lawyer should mention that he will request court charges separately. This mention will be recorded in the conclusion of the meeting or in the content of the ruling.

With reference to the mention of requesting charges separately, the practice of the courts is different. Some courts record this request in the final part of the ruling, in its operative part, while other courts refer to this request only in the considerations of the ruling. These aspects complicate the party that won the trial and wants to recover the court charges separately, since it must prove that it mentioned that it will recover the court charges separately.

Therefore, the situation is simple when the judge records the mention of the request for charges separately in the operative part of the ruling, because then it is clear that the court has ruled on this aspect and the interested party will have grounds on the basis of which he will be able to form a new file, separately, by which to ask for the court charges due to him in case the solution is favourable to him.

The problem occurs when the mention of the request for court charges separately is not recorded in the operative part of the decision, but only in its considerations.

Thus, it can be considered that the court did not rule on what was requested by the party, especially regarding the charges, and it risks not being able to recover them separately.

In this situation, before trying to recover the charges separately, the interested party can make a request to supplement a ruling, based on the provisions of article 444 of the Code of Civil Procedure, by which to request the supplement of the ruling pronounced by the court with respect to the mention regarding the request for charges separately, reasoning that although at the last court term it was specified that the court charges will be requested separately and it was correctly retained by the court in the considerations of the decision, however, this was not retained also in the content of the ruling.

It is possible that the court, judging the request to supplement the decision, rejects this request, reasoning that it cannot rule, by means of the device, distinctly, on the accessory request regarding court charges, because in the initial request a small accessory was formulated of the request for court charges and, subsequently, at the last

court term, the party waives the initial request for court charges and decides that it will request them separately. Thus, the procedural position of the party will be mentioned in the considerations of the decision, so that it cannot be pronounced through the device.

Regardless of whether the court admits or rejects the request to supplement the judgment, so regardless of whether or not the provision of the judgment expressly mentions the request for charges separately, it will be possible to proceed to the formulation of the request for the recovery of charges separately, without the need to exist a mention even in the operative part of the decision that gives the right to the recovery of court charges, the mention being sufficient in the introductory part or the considerations of the decision.

Also, another condition that must be met in order for the request for separate court charges to be admitted, is that they be requested within the 3-year limitation period, which, according to the provisions of art. 2528 paragraph 1 of the Civil Code will run from the date of the definitive stay of the decision in the first trial, considering that only from this moment it is known with certainty who lost the trial, and the compensation claim becomes certain.

At the same time according to the interpretation of judicial practice in Bucharest Court of Appeal, fourth civil section, decision no. 395/R/15.05.2019 “with regard to the limitation period of the material right to demand the obligation of the party at fault procedurally to return the advanced court charges, it does not begin to run until the date on which the one who requests them was not in a position to know that he is entitled to request them, that is, until the date of the court’s decision. Only with the resolution of the case is the party in a position to know that the damage consisting of the advanced court charges results from the adversary’s fault; the request can be made earlier, i.e., in the case that caused the charges, but the limitation period does not start to run until the moment when the person responsible for the prejudice caused is confirmed.”

From a procedural point of view, depending on their amount, court charges can be requested in the main way through the common law procedure or through the simplified special procedure for low value claims provided by the provisions of article 1025-1031 of the Code of Civil Procedure, in the situation where the amount of charges does not exceed the amount of 10,000 lei. We believe that in this matter the simplified procedure for small claims can be used, since the law does not distinguish with regard to the nature of the right that can be evaluated in money that can be the subject of the procedure regarding small claims, in the sense that only the correlative claims of an obligation consisting in the payment of a sum of money or any right assessable in money (Boroi, Stancu, 2020:1052). Therefore, in the absence of such a distinction, with the exception of the matters referred to article 1026 paragraph 2 and 3 of the Code of Civil Procedure, through the special procedure regarding claims of low value, any rights that can be evaluated in money with a value of up to 10.000 lei on the date of notification to the court can be capitalized, thus the basis of the payment obligation is not strictly related to the matter that concerned the object of the respective file, but the separate application having a distinct character, thus having no relevance to the object of the file in which these court charges were generated. (Dinu, 2011:71, Tăbârcă, 2017:577)

The benefits in choosing the way of formulating the request with a low value would be several: the applicant will pay a stamp duty of 50 lei if the value of the request does not exceed 2,000 lei, and 200 lei for requests whose value exceeds 2,000 lei (according to article 6 of G.E.O. 80/2013 regarding judicial stamp duties), instead, if the

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plaintiff chooses the common law procedure, the stamp duty will be calculated according to the value of the request.

Also, the low-value claim has advantages from the point of view of the duration of its resolution, the entire procedure being carried out in the council room and in writing (except in cases where the court deems the presence of the parties necessary, in which case it can order their appearance).

Another important aspect of requesting charges separately is whether other court charges can be requested in the newly started trial. The answer is an affirmative one, the defendants can be charged including the court charges caused by the current trial subject to compliance with the requirements of art. 453 paragraph 1 Code of Civil Procedure, the circumstance that the object of the claim in this case is represented by the obligation of the defendants to pay the court charges generated by another trial. The judicial practice ruled that whatever the procedure chosen to recover court charges from a file, the court charges caused by this new file can also be requested, as decided by the High Court of Cassation and Justice in Decision no. 59/2017 according to which “the provisions of article 453 of the Code of Civil Procedure apply regardless of the subject of the litigation, the party that lost the case being obliged to pay the court charges related to this second trial which involves, in the overwhelming majority of cases, the resolution of some defences related to the establishment of procedural fault from the first trial, resolved definitively. Therefore, the fact that the object of the claims is the obligation of the defendant to pay court charges generated by another process has no relevance on the way of applying the provisions of article 453 of the Code of Civil Procedure in the second litigation”.

“Paragraph 80. The plaintiff in such actions cannot be criticized for the option of separately recovering court charges from a previous litigation, as he cannot be considered culpable for capitalizing on this legal possibility, nor can it be presumed that he is exercising an abuse procedurally manifesting in this sense.

Paragraph 88. As it was shown, the plaintiff cannot be at fault when he exercises his right, and the defendant, who loses the case and does not manifest himself within the limits of article 454 of the Code of Civil Procedure, cannot be considered innocent in relation to the litigation having as its object the payment of court charges related to a previous litigation.

Paragraph 89. As a consequence, he cannot be exempted from paying court charges once the plaintiff's action has been admitted. Bearing court charges does not have the meaning of double sanctioning him for the culpa in the first trial, but for that arising from his procedural manifestation in the second litigation.

Paragraph 92. This being so, the legal conclusion can only be that the provisions of article 453 of the Code of Civil Procedure apply regardless of the subject of the litigation, the party that lost the trial being obliged to pay the court charges related to this second trial which involves, in most cases the overwhelming majority of cases, the resolution of some defences related to the establishment of procedural fault in the first trial, resolved definitively. Therefore, the fact that the object of the claims is the obligation of the defendant to pay the court charges generated by another trial has no relevance on the way of applying the provisions of article 453 of the Code of Civil Procedure in the second litigation”.

If the interested party decides to request court charges separately, basing its action on the provisions of common law, both the pre-procedural provisions provided for in the Code of Civil Procedure in the matter of court charges and the provisions of

article 1349 of the Civil Code will be applicable refers to tortious civil liability and respectively those of article 1357 of the Civil Code which refer to the conditions of tortious civil liability.

According to judicial practices in the matter such as civil decision no. 4340/2015 pronounced by the Bucharest Court, the party in whose favour a case was resolved can separately request the court charges based on tortious civil liability, in the particular form regulated by article 453 paragraph 1 of the Code of Civil Procedure.

Tortious civil liability implies an obligatory legal relationship arising from an illegal act causing damages, a relationship in which the author of the illegal act has the obligation to repair the causal damage, and according to article 1349 paragraphs 1 and 2 of the Civil Code *“Every person has the duty to respects the rules of conduct imposed by the law or the custom of the place and not to harm, through his actions or inactions, the rights or legitimate interests of other people. (2) Whoever, having discernment, violates this duty is responsible for all the damages caused, being obliged to repair them in full.”*

Also, according to article 1357 of the Civil Code, *“He who causes prejudice to another through an illegal act, committed with guilt, is obliged to repair it. The perpetrator of the injury is liable for the slightest fault.”*

The two legal texts cited above enshrine the elements that must be met cumulatively to operate tortious civil liability, namely the existence of a damage; the existence of an illegal act; the existence of a causal relationship between the illegal act and the existing damage to the guilt of the one who caused the prejudice, consisting of the intention, negligence or imprudence with which he acted. Thus, the essence of tortious civil liability is the causing of damage by violating the subjective rights or legitimate interests of a person, objective conditions in the absence of which the obligation of reparation cannot be established on the responsible person. Guilt, defined as the subjective side of tort liability, has the role of delimiting the conduct that can be imputed to the person responsible for causing the damage in order to sanction it, by engaging the obligation to compensate the person who suffers that damage.

As a social and legal fact, tort liability represents society’s reaction to the actions or inactions by which the subjective rights and legitimate interests of other people were affected, by placing the obligation to repair the prejudice on the one who is guilty or who, by law, is obliged to answer (Boilă, 2008a:26-29). In the absence of a legal definition, the specific elements summarized in our doctrine can be derived from all the provisions as that *“relationship of obligations under which a person is obliged to repair the prejudice caused to another by his act or, in the cases provided by law, the prejudice for which is responsible”* (Albu, Ursa, 1979:23).

We note the general nature of the obligation that has been established for any person, referring to the observance of both the legal provisions, respectively the rules of the objective law, as well as certain rules of conduct that the custom of the place establishes, rules that have acquired, over time, legal value, being unanimously accepted and respected within society due to the moral valences they represent and their general, notorious and constant character.

It was expressly mentioned that tortious civil liability can be engaged, mainly, as a result of the violation of a person’s subjective rights, but it was recognized as a reparable damage and the harm caused only to the legitimate interests of the person, which represents a considerable expansion of the scope of compensable damages, on the basis of tortious liability (Boilă, 2008b:64-67).

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Our traditional doctrine has defined this hypothesis of civil liability as “the obligation of the one who caused damage to another, through an illegal extra-contractual act, which is imputable to him, to repair the damage thus caused”.

The prejudice represents the “cornerstone” of the entire legal construction, representing “not only the condition of liability, but also its measure, in the sense that the author is liable only within the limit of the prejudice caused” (Pop, 2000a:199).

The Civil Code does not contain an actual definition of prejudice, but the definition formulated in our traditional doctrine was adopted according to which the prejudice, damage or loss represent those “negative patrimonial (...) and moral effects that a person experiences as a result either of the illegal conduct of another person, or of a human act, an animal, a thing or an event that removes the tortious liability of the agent”. In order for the injured person to be able to obtain compensation from the person responsible, the prejudice must be certain, both from the point of view of its existence, current or future, as well as the concrete possibilities of evaluation, and must not yet be repaired.

Relating these notions to the basis of the award of court charges by the court that resolves this request, the first condition is considered to be met when the existence of the prejudice is certain, unquestionable, even if it occurs later, and its extent is not known, because the total removal of the effects of the illegal act by repairing the damage is the purpose of engaging in tort liability.

The damage caused is represented in the case most of the time by the value of the fee paid to the lawyer in the file, the payment of stamp duties and the payment of the fees of legal experts, the causal relationship between the act and the damage as well as the culpa being obvious.

Regarding the amount of the lawyer’s fee, it must be proven that the lawyer’s fee charged was proportional to the work performed, it has a reasonable amount, proportional to the value of the object and the complexity of the case, and the extent of the prejudice consisting in the lawyer’s fee paid is proven by the documents that are the proof of payment. And as it results from the provisions of art. 453 paragraph 1 of the Code of Civil Procedure, the legal nature of the court charges is that of “compensation” granted to the party that won the trial, for the damage caused by the procedural fault of the other party.

The act of the party that “loses the trial” triggers a tortious civil liability, the content of which is the civil obligation to repair the prejudice caused, i.e., to return the sums that the party that won the trial had to pay.

Therefore, the legal basis for awarding court charges is represented by the procedural fault of the party “who loses the trial” and represents a procedural sanction for the party that will be guilty of starting the trial and a way of compensating the other party.

The payment obligation is based on the two cumulative requirements that emerge from the content of the procedural rules, respectively: the criterion of procedural fault, met in the person of that party in the trial that lost the litigation: the criterion of the final settlement of the process for which court charges are requested.

The illegal act represents the fact generating liability, which in the matter of awarding court charges can be one’s own act, that of being guilty of starting a litigation. In order to obtain full, fair and equitable compensation, the interested party must prove that the damage suffered is the consequence of the culpable commission of an illegal act

by the responsible person. Under these conditions, the “illegal act” triggers the mechanism of incurring the obligation to compensate the responsible person.

The provisions of article 1357 of the Civil Code refer to the “illegal act” without detailing the content of this phrase. Under these conditions, the main coordinates of the “illegality” of the act of the responsible person, as established by doctrine and jurisprudence, should be taken into account. Objective element of tort liability, the illegal act represents that action or inaction by which the subjective rights of other people or their legitimate interests were affected, likely to cause them harm.

The illegal act can be an action consisting of doing what should not be done according to moral and legal norms, for example to sue a person and oblige him to carry out certain charges in order to support his defence which are proven in an end to be useful considering that he will win the civil trial. The illegality of the conduct of the person who loses the trial is assessed in relation to the general rules of behaviour established in society through legal provisions and moral norms. Basically, they establish the imperative duty of citizens “not to harm or prejudice another person” by taking legal action with a case that will later be rejected. Violation of this general obligation is contrary to the norms of the objective civil procedural law, being an illegal act of such a nature as to engage in tortious civil liability. This represents the way of externalizing the attitude of conscience and will of the person who lost the trial regarding the deed and its harmful consequences.

The illegal act was committed by the party that lost the trial, since due to its action civil proceedings were triggered that were the subject of the file when the legal suit of the plaintiff is put on, that is, it opposed the introductory court action when we are talking about a defendant.

The causal link between the illegal act and the damage is an essential condition, of an objective nature, for the engagement of tort liability, contributing to the identification of the responsible person who “causes” another prejudice. The requirement of this condition requires that there be a link from cause to effect between the damage produced and the generating fact, so that, from the multitude of causal circumstances and conditions that contributed to a certain extent, those previous actions or inactions that have directly and necessarily determined the occurrence of the prejudice. The absence of the causal link eliminates the assumption of the engagement of a tortious liability regarding the damage caused. The theory that constructively synthesizes the positive values of these guidelines and removes the shortcomings found is the one regarding the indivisible unity between cause and condition, according to which, in the hypothesis where the cause of the prejudice cannot be precisely established, equal causal value is attributed to all the facts or circumstances that preceded it (Pop, 2000b:220-222). Our jurisprudence has the same orientation, which takes into account the premise of the coexistence of cause and conditions, including in the causal complex not only the facts that constitute “the necessary cause”, but also the “causal conditions”, i.e., the illicit facts that made possible the occurrence of the prejudice

Guilt is a distinct and essential condition of tortious civil liability, with an independent and precisely determined character. Thus, liability can only be committed to the person who is guilty of committing the prejudicial act (Boilă, 2008c:51-60). From a terminological point of view, we note that in the Civil Code in article 16 paragraphs (2) and (3) the notion of guilt is used, which, in a generic formulation, includes the two forms, intention and culpa. The legal literature in our country defines culpa as: “The

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mental attitude of the author of the illegal and harmful deed towards the respective deed and towards the consequences of this deed, at the time of its commission” (Pop, 2000c:225). The structural elements of guilt are the intellectual factor of conscience – which consists of an intimate psychological process of knowing the objective laws that act in nature and in society, the analysis of the possible consequences of an act, determined by certain goals, for which the appropriate means are prefigured for their achievement – followed by the action of a volitional factor, of will, embodied in the psychological process of deliberation and decision-making regarding the behaviour that will be adopted, which materializes in criminal conduct.

Conclusions

In the context of the recognition at the legal, doctrinal, and jurisprudential level of the possibility of separate recovery of court charges and the autonomous nature of such litigations, recognition that constitutes nothing but a right, the one that puts into practice a legal possibility or that exercises a right – as is the case of the plaintiff who requests the recovery through a separate action of the court charges determined by the support of a definitively won trial – cannot be considered in culpa.

The primary role of subjective liability will continue to be its sanctioning function, being directed only against the one who is guilty of committing a harmful illegal act. To the extent that his guilt cannot be proven, there is a danger that the person concerned will be unable to obtain reparation, which is an unfair solution.

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