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DECEPTION OFFENCE. ACQUITTAL SOLUTION. PRESCRIPTION TERM OF THE CRIMINAL LIABILITY.

Calina Andreea GARDIKIOTIS¹

Abstract

The Ploiesti Court of appeal changes the legal classification of the crime of deception, provided by art. 244 paragraph 1 of the Criminal Code with applic. art.5 of the Criminal Code, for which the defendants were sent to trial, in the crime provided by art.84 point 2 of Law no.59 / 1934 and orders the termination of the criminal trial against the defendants for the crime provided by art.84 point 2 of Law no.59 / 1934, as a result of fulfillment of the prescription term of criminal liability. Dismisses as inadmissible the civil action of the civil party SC H. P. SRL.

It has not been proved the existence of certain, decisive malicious maneuvers, with a decisive role in determining the representatives of the civil party in the moment of concluding the sale-purchase contract, but, on the contrary, reveals that the parties had previously, for a period of almost 5 years, a good collaboration, in which they developed the same type of commercial relations.

The representatives of the civil party knew that it was no money available in the debtor's account at the time of issuing the cheques by the defendants, and on the other hand, the payment of the goods was not made exclusively by cheques, as stipulated in the contract.

The Court of Appeal also correctly held that the limitation period for criminal liability for the two defendants had expired.

With regard to the civil action, in relation to the Decision no. 43/2008 of the High Court of Cassation and Justice- the United Sections, the Court of appeal did not solve the civil, rejecting it as inadmissible.

Keywords:

deception offence, acquittal solution, prescription of the criminal liability, inadmissible civil action

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The Defendants P.I. And A.M. have been sent to trial, by virtue of the Indictment from 16 Nov.2017 drawn up by the Prosecutor's Office attached to the Court of Targoviste within the case file no. 2131/P/2011, for the deception offence, as stipulated under art 244 par.1 from the Romanian Criminal Law, consisting of the fact that during the period August 2007 – October 2009, they allegedly deceived the injured person SC H. P. SRL, from whom they purchased goods, and for the payment of their value they issued a number of three Cheques , knowing that there is no coverage in bank accounts.

The Court of first instance has rejected the request of the defendants to change the legal classification given to the facts by art. 244 par. 1 Criminal Code in art. 84 paragraph 1 point 2 of Law no. 59/1934 and has ruled in favor of the acquittal of the defendants for the aforementioned crime, finding that the incidence belongs to the dispositions of art. 16 paragraph 1 letter b of the Criminal Procedure Code– the deed is not provided by the criminal law or was not committed with the guilt provided by law.

The Targoviste Court leaves unsolved the civil action filed by the civil party SC H. P. S.R.L. , represented by judicial liquidator C. S.P.R.L.

Having reviewed the entire evidence duly procured within the case file, the Appeal Court from Ploiesti finds that the Court of first instance has not issued one legal and grounded solution, both in terms of the criminal law and the civil law as well.

Based on art.421 point 2 letter a of the Criminal Procedure Code, the Ploiesti Court of appeal admits the appeal declared by the Prosecutor's Office attached to the Târgoviște Court, against the criminal sentence no. 45 pronounced on February 25, 2019, by the Târgoviște Court, regarding the Defendants P. I. and A. M., which it partially cancels, in criminal and civil field, and pronounces a new decision, as follows: Based on art. 386 par. 1 of the Criminal Procedure Code, changes the legal classification of the crime of deception, provided by art. 244 paragraph 1 of the Criminal Code with applic. art.5 of the Criminal Code, for which the defendants P. I. and A. M. were sent to trial, in the crime provided by art.84 point 2 of Law no.59 / 1934. Based on art.396 par.6 , art.16 paragraph 1 letter f of the Criminal Procedure Code and art.155 paragraph 4, art.154 paragraph 1 letter e of the Criminal Code, orders the termination of the criminal trial against the defendants P.I. and A. M. for the crime provided by art.84 point 2 of Law no.59 / 1934, as a result of fulfillment of the prescription term of criminal liability. Dismisses as inadmissible the civil action of the civil party SC H. P. SRL. Otherwise, it maintains the provisions of the appealed sentence, which do not contradict this decision.

From the administered evidence it results that commercial relations took place between the companies since 2005, until the beginning of 2010. According to the statements of the witnesses heard, the commercial relations between the two companies went well until the beginning of 2009, when P.I. he began to ask for deferrals in the payment of goods. At that time many companies had financial problems, even the civil party having difficulty recovering money and relationships with other customers.

Given the appellant's critics, the two defendants misled the civil party at the conclusion of the contract, and after purchasing the goods they kept the supplier in error, in order to obtain sums of money.

From the requirement to commit an act of misleading or maintaining error, it results that the non-execution of the obligations deriving from a concluded contract does not constitute the crime of deception if it has not been established that willful maneuvers were used against the creditor of the obligation at the conclusion of the contract.

The Court of Appeal considers that the evidence did not show the existence of certain, decisive malicious maneuvers, with a decisive role in determining the representatives of the civil party in the moment of concluding the sale-purchase contract, but, on the contrary, reveals that the parties had previously, for a period of almost 5 years, a good collaboration, in which they developed the same type of commercial relations.

It results that the representatives of the two companies concluded the contract in full knowledge of the facts, regarding the contractual clauses and also regarding the effective execution of the contractual obligations, including the payment of the goods, there being no elements to support an misleading action from the defendants.

With regard to the execution of the contract, apart from the incident regarding the refusal to pay the three cheques, neither the appellant nor the representatives of the civil party talked about another element to support a certain act of maintenance in error, necessary for the existence of the deception offence.

The method of issuing the cheques, as well as the one of introducing for payment and capitalizing them was not only known, but also agreed and put into practice by the representatives of the civil party.

During all this time, both parties searched and identified different ways to pay the debt, respectively invoices were issued for the return of goods for certain amounts, it was given for use by the representatives of the civil party a Mercedes Benz, and after concluding the novation contract, another payment was made.

All these elements prove, on one hand, that the representatives of the civil party knew that it was no money available in the debtor's account at

the time of issuing the cheques by the defendants, and on the other hand, that the payment of the goods was not made exclusively by cheques, as stipulated in the contract.

Or, in such circumstances, the Court of Appeal correctly considered that the acts as described in the indictment drawn up by the Prosecutor's Office attached to the Targoviste Court, committed in the retained circumstances, do not represent acts of misleading, but only specific elements of non-execution or improper execution of a contractual obligation.

Moreover, as it turned out, these acts were permanently known by the representatives of the civil party, so it cannot be argued that they had a decisive role upon the execution of the contract under the stipulated conditions

In other words, the existence of the deception crime is excluded only on the basis of withholding as a fact situation the issuing of the three cheques without having the necessary provision.

The Decision no.XI/2005 of the High Court of Cassation and Justice- the United Sections, established that "... if the beneficiary of the cheque is aware at the time of issuance that there is no availability necessary to cover it, the deed is the crime incriminated in art.84, par.1 from Law no. 59/1934. " This decision maintains its obligation and applicability even today, so that the change of legal framework is in full accordance with what has been decided.

The Court of Appeal correctly held that the limitation period for criminal liability for the two defendants had expired, considering that more than 6 years had elapsed from the date of committing the facts, respectively 9 years and 8 months.

With regard to the civil action, the Court of Appeal correctly found that it is inadmissible in relation to the Decision no. 43/2008 of the High Court of Cassation and Justice- the United Sections, which established that the Court, when crimes incriminated by the Law no. 59/1934 on the cheques are committed, will not solve the civil action next to the criminal action.

References

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3. The Decision no. 43/2008 of the High Court of Cassation and Justice- the United Sections