

DYNAMIC GENERAL COMPETENCE AND THE APPLICATION OF THE CRITERIA FOR DELIMITATION OF ECONOMIC DISPUTES

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Abstract

In this article I have presented the criteria for delimiting economic disputes from common law disputes, starting from the legislation of the Republic of Moldova. In particular, the criterion of the subjective composition of the material-litigious reports was highlighted. The regulations that were the basis of this criterion were analyzed under an evolutionary aspect in the Republic of Moldova.

Another particularity analyzed was the dynamic general competence, which is formulated by us as a new legal concept in delimiting the powers of jurisdictional bodies to resolve civil disputes, in particular economic disputes. This type of general jurisdiction is added by us in addition to the other types of general jurisdiction: exclusive general jurisdiction, alternative general jurisdiction, contractual general jurisdiction, conditional general jurisdiction, general jurisdiction in the case of related claims. Dynamic general jurisdiction is complimentary to other types of general jurisdiction and is largely based on the criterion of the subjective composition of economic disputes. This is because these categories of disputes are the most dynamic in the development of social relations.

Keywords: *jurisdiction; court; economic; dynamic; constituency.*

JEL Classification: K34, K40.

1. GENERAL DYNAMIC COMPETENCE OF COURTS TO RESOLVE ECONOMIC DISPUTES

"Competence" is closely related to the notion of "jurisdiction", because the latter word is included in the meaning of the word competence. The concept of jurisdiction comes from the Latin *jurisdictio* which means to pronounce the right, to say the right (*ius* – right; *dicere* – to say, to pronounce) (Lucaciuc, 2014). Jurisdiction is also defined as the ability of a court to exercise its power to judge at the expense of another (Mekki and Strikler, 2014). This points us towards a broader approach to general competence. Overall, the competence is the object of an institution with a large legal burden and a remarkable practical application (Ionescu, 2021). From what can be seen, the problem of general jurisdiction is not so complicated, but of finding a rational scheme of

jurisdictions that would include both the common competence and the specific competence of the jurisdictional bodies (Borchers, 2001). General jurisdiction delimits the powers of jurisdictional bodies to resolve civil cases. Therefore, the general jurisdiction also delimits the powers of the courts to resolve either common law civil cases or economic disputes.

However, the totality of the legal rules regarding general competence are not only of civil procedural law in which we also include forced execution (Trăilescu and Lungașu, 2021). In the legal doctrine, more criteria have been outlined for the delimitation of the powers of the jurisdictional bodies for the settlement of civil cases. These criteria are encompassed by the types of general jurisdiction, some of these types being: exclusive general jurisdiction, alternative general jurisdiction, contractual general jurisdiction, conditional general jurisdiction, general jurisdiction in the case of related claims. However, the problem is that the criteria for delimiting the powers of jurisdictional bodies when examining and resolving civil cases cannot be listed exhaustively. There are criteria that appear and disappear over a period to configure new kinds of general competence. The legislator can provide them only to realize his policy in the field of justice. In some cases, the specialized literature is also confused regarding the attribution of rules delimiting the powers of jurisdictional bodies to a certain type of general competence. Well, in the case of "Jurisdiction to judge related claims" stipulated in art. 371 of the CPC, there is no unified opinion in the local specialized literature, if it refers to general or jurisdictional competence. According to art. 371 para. (1) CPC "If the summons request contains several related claims, some of which are under the jurisdiction of the common law court, and others under the jurisdiction of a specialized court, all claims will be examined by the court of common law".

Thus, the author A. Băcu, considers these regulations as part of the general competence (Băcu, 2013), but another author does not attribute these regulations to the general competence (Belei *et al.*, 2016), although no argumentation of the position is formulated, probably due to the fact that there is no longer a specialized court, the District Commercial Court, which was liquidated in the Republic of Moldova, a circumstance that excludes raising more problems related to this kind of competence. In the Romanian specialized literature (Deleanu, 2013), as also provided in the Civil Procedure Code of Romania, art. 99, this kind of competence is attributed to jurisdictional competence.

In our view, the competence in judging related claims has a mixed character, that is, it is at the intersection between the object of regulation of general competence and jurisdictional competence. we accept an interdisciplinary approach not only by the fact that it involves the limitation of state power by legal norms, but also by the fact that it ensures the guarantee of human freedoms and a rationalization of power by state authorities by creating a normative and hierarchical institutional system (Deacon, 2017). All this from the

consideration that this type of competence delimits, on the one hand, the powers of specialized courts, which have their own subsystem within the system of courts, such as the Economic Circuit Court which had as a hierarchically superior court the Economic Court of Appeal, general competence, and on the other hand, it delimits the powers of some courts that do not have their own subsystem within the judicial system, for example, administrative litigation courts, substantive jurisdiction.

Although art. 371 para. (1) CPC provides a long-standing rule applied to the delimitation of the powers of specialized courts in the Republic of Moldova, however, by art. 201 of the Administrative Code of the Republic of Moldova (Parliament of the Republic of Moldova, 2018), a new rule was stipulated, apparently contrary to the one stipulated in art. 371 para. (1) CPC, we consider that these two regulations complement each other. Thus, according to art. 201 para. (1) The Administrative Code of the Republic of Moldova: "if the action in administrative litigation filed in the court contains inseparable claims of administrative law and civil law, they are examined by the competent court for examining the action in administrative litigation". So, being interpreted the provisions of art. 371, para. (1) of the CPC, and the provisions of art. 201 para. (1) Administrative Code of the Republic of Moldova, we can conclude that the provisions of art. 371 para. (1) CPC, are applied to the delimitation of the powers of the common law court from the specialized ones, other than the competent court for examining the action in administrative litigation. However, the provisions of art. 201 para. (1) The Administrative Code of the Republic of Moldova is applied to the delimitation of powers between common law courts and those competent for examining the action in administrative litigation. Thus, the meaning of these rules was left to the discretion of the courts. It did not rely on certain stable criteria for delimiting the competence of jurisdictional bodies. Therefore, the jurisdiction of the courts and the administrative jurisdiction are to be strictly delimited, and the respective diligence rests with the legislator (Cesare, 2019).

We notice that the policy of the legislator is a permanently dynamic one. It can be characterized by judicialization and no judicialization. It is a double opus, this pot evolves differently from where it goes to the height of its release to humanities and coexists in parallel (Cinamonti and Perrier, 2019). We, in this paper, do not rename competences in judging related claims in dynamic competence, we only exemplify that various rules are applied by the legislator that cannot be classified under certain criteria or types of general competence. For this reason, we group some dynamic rules in the way of general dynamic competence.

Not infrequently in the specialized literature, attempts are made to resolve the issue of assigning civil disputes to the competence of one or another jurisdictional body. Thus, the subjective criterion for assessing economic

disputes in the legal doctrine (the category of the subject participating in the civil legal report) is assessed starting from the definition of certain legal notions intrinsic to the economic field, especially professional activity. The authors S. Polici and I. Pushkarev in relation to the disputes arising from the economic evaluation activity mention: "Starting from the criteria of general competence, we can conclude that depending on the status of the subject performing the evaluation activity, the resulting dispute from the evaluation contract, the beneficiary who is a legal person or an individual entrepreneur, can be qualified as a dispute that is included in the competence of the arbitration judgment or the court of common law" (Polici and Pushkarev, 2014). We note that these authors qualify certain disputes as economic disputes based on several legal regulations, without relying on just one criterion. Therefore, to establish some powers of the judicial bodies, it is necessary to refer to certain additional regulations than the simple criterion for delimiting these powers, which has a dynamic character. Other authorities or institutions may have, based on an express legal provision, a special (exceptional) competence – that of resolving requests in certain matters (Spinei, 2017).

Considering the mentioned, the dynamic general competence is defined by us as that competence which delimits the powers of the jurisdictional bodies according to certain variable criteria and in most cases their essence is established following the overall interpretation of several legal norms or according to some general criteria whose application depends on the judgment of the court. This kind of general competence does not exist in the specialized literature, but we add it to all other kinds, because the opportunity for its existence derives from the following (Prisac, 2023): 1) the classic types of general competence up to the present moment do not include all the criteria for delimiting the powers of the jurisdictional bodies; 2) the legislation on general competence is in a permanent change, and the exposure of some types of general competence in the form of a closed and conservative system does not characterize this legal institution; 3) the legislator at each stage of the development of social relations develops new criteria for delimiting the powers of jurisdictional bodies, which may not fit within the classic types of general competence; 4) the criteria for delimiting the powers of jurisdictional bodies are so diverse that they cannot be included in the form of abstract types of general competence.

2. THE ESSENTIAL CRITERIA FOR DELIMITATION OF ECONOMIC DISPUTES

The delimitation of economic disputes is based on two criteria (Druzdkov, 1966), which, from those established by us, have been the basis of the delimitation of the powers of the jurisdictional bodies for a long time in the legal system of the Republic of Moldova:

- 1) the nature of the legal relations from which the dispute arose;
- 2) the subjective composition of the parties to the delimitation of the jurisdiction of the courts and other jurisdictional bodies.

In French doctrine, these criteria are identified in the form of rules delimiting the powers of administrative bodies from those of courts of law when resolving legal cases (Cadiet and Jeluand, 2020). The respective criteria were applied to the delimitation of the powers of common law courts and economic courts in the initial drafting of the Civil Procedure Code of the Republic of Moldova (Civil Procedure Code, 2003). Thus, the provisions of art. 29 para. (1) lit. a) The Civil Procedure Code of the Republic of Moldova, in the version of June 12, 2003, stipulated the following: "economic courts judge economic disputes arising from civil, financial, land legal relations, from other relations between legal entities, natural persons practicing entrepreneurial activity, without establishing a legal entity, having the status of an individual entrepreneur, acquired in the manner established by law". The Moldovan legislator used, in this case, both the objective criterion and the subjective criterion.

However, these two criteria caused controversial interpretations regarding the attribution of a civil case to the common law court or the economic courts, because they established an abstract delimitation of all these civil cases. The most question marks raised the words "economic disputes arising from civil legal relations", which were also highlighted in civil procedural law courses (Belei *et al.*, 2005). Partially, these criteria are still incorporated today in the legislation of the Republic of Moldova when delimiting the powers of public authorities. Thus, according to art. 54 para. (2) The Administrative Code of the Republic of Moldova, "if the law does not regulate material competence, the public authority whose activity is closest to the nature of legal relations is competent". However, in the actual delimitation of the powers of the jurisdictional bodies to resolve legal cases, these criteria are not cumulatively found in the legislation of the Republic of Moldova.

We believe that these two criteria that are the basis of the common general competence can constitute some configuration factors of the special criteria for establishing the competence of these entities. For example, when setting up a special rule of general competence resulting from the criterion "the nature of the legal relations from which the dispute arose" we identify it in art. 3 paragraph (2) from the Law on Arbitration no. 23 of 22.02.2008, which provides: "Claims related to family law, claims arising from lease contracts (rent) of residential premises, including disputes regarding the conclusion, validity, termination and qualification of such contracts, claims and patrimonial rights regarding homes cannot be the subject of an arbitration agreement". Thus, in our opinion, the criteria of the common general competence can find both direct and indirect materialization through the special rules of the special general competence.

The above-cited author put the following two criteria (Druzhkov, 1966) as the basis of the common general competence, which, from those established by us, were the basis of the delimitation of the powers of the jurisdictional bodies for a long time in the legal system of the Republic of Moldova:

- 1) the nature of the legal relations from which the dispute arose;
- 2) the subjective composition of the parties to the delimitation of the jurisdiction of the courts and other jurisdictional bodies.

The respective criteria were applied to the delimitation of the powers of common law courts and economic courts in the initial drafting of the Civil Procedure Code of the Republic of Moldova. Thus, the provisions of art. 29 para. (1) lit. a) The Civil Procedure Code of the Republic of Moldova, in the version of June 12, 2003, stipulated the following: "economic courts judge economic disputes arising from civil, financial, land legal relations, from other relations between legal entities, natural persons practicing entrepreneurial activity, without establishing a legal entity, having the status of an individual entrepreneur, acquired in the manner established by law". The Moldovan legislator used, in this case, both the objective criterion and the subjective criterion.

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As far as we are concerned, we do not recommend the re-incorporation of these criteria into the procedural legislation of the Republic of Moldova. We see their introduction into the national regulations of these criteria only through their materialization in the special rules delimiting the powers of the jurisdictional bodies, which would allow an accurate determination of the competence starting from the specific nature of the activity of the jurisdictional bodies. Thus, we consider that these two criteria that are the basis of the common general competence can constitute some configuration factors of the special criteria for establishing the competence of these entities. For example, when setting up a special rule of general competence resulting from the criterion "the nature of the

legal relations from which the dispute arose" we identify it in art. 3 paragraph (2) from the Law on Arbitration no. 23 of 22.02.2008, which provides: "Claims related to family law, claims arising from lease contracts (rent) of residential premises, including disputes regarding the conclusion, validity, termination and qualification of such contracts, claims and patrimonial rights regarding homes cannot be the subject of an arbitration agreement". Thus, in our opinion, the criteria of the common general competence can find both direct and indirect materialization through the special rules of the special general competence.

3. CONCLUSIONS

As far as we are concerned, we do not recommend the re-incorporation of these criteria into the procedural legislation of the Republic of Moldova. We see their introduction into the national regulations of these criteria only through their materialization in the special rules delimiting the powers of the jurisdictional bodies, which would allow an accurate determination of the competence starting from the specific nature of the activity of the jurisdictional bodies. The criteria of the common general competence can find both direct and indirect materialization through the special rules of the special general competence. However, these two criteria caused controversial interpretations regarding the attribution of a civil case to the common law court or the economic courts, because they established an abstract delimitation of all these civil cases.

The dynamic general competence is defined by us as that competence which delimits the powers of the jurisdictional bodies according to certain variable criteria and in most cases their essence is established following the overall interpretation of several legal norms or according to some general criteria whose application depends on the judgment of the court.

On the other hand, general criteria for delimiting the powers of jurisdictional bodies contribute to covering the gap of general competence in the settlement of civil cases, because not in all cases there are special provisions to delimit these powers.

References

- 1) Parliament of the Republic of Moldova (2018). *Administrative code of the Republic of Moldova: no. 116 of July 19, 2018*. [online] Available at: https://www.legis.md/cautare/getResults?doc_id=16072&lang=ro [Accessed 22.08.2024].
- 2) Băcu, A. (2013). *Civil procedural law. The general part*. Chisinau: ASEM, pp. 344-348.
- 3) Belei, E. et al. (2005). *Legal situations in civil procedure*. Chisinau: USM, pp. 296.
- 4) Belei, E. (2016). *Civil procedural law. General Part*. Chisinau: Lexon-Plus, pp. 452-464.

- 5) Borchers, P. (2001). The Problem with General Jurisdiction. *University of Chicago Legal Forum*, 5. p. 119.
- 6) Cadiet, L. and Jeluand, E. (2020). *Private judicial law*. Paris: Lexis Nexis SA. pp. 122-123.
- 7) Cesare, T. (2019). *Manual de proces civil. XXIX. Ediție*. Napoli: Simone, p. 110-863.
- 8) Cinamonti, S. and Perrier, J.B. (2019). *The challenges of diversion. Lextenso éditions*. Paris: LGDJ.
- 9) Parliament of the Republic of Moldova (2003). *Civil Procedure Code of the Republic of Moldova: no. 225 of May 30, 2003*. [online] Available at: https://www.legis.md/cautare/getResults?doc_id=110220&lang=ro [Accessed 22.08.2024].
- 10) Deacon, Ș. (2017). *Political institutions*. Bucharest: C.H. Beck, pp.103-104.
- 11) Deleanu, I. (2013). *The new Code of Civil Procedure: comments on articles. Vol. 1*. Bucharest: Universul Juridic, pp. 838-840.
- 12) Druzhkov, P.S. (1966). *Judicial jurisdiction of disputes about law and other first-party issues, considered in the order of civil court proceedings*. Sverdlovsk: Legal published.
- 13) Ionescu, S. (2021). *Civil procedural law: The general part*. Bucharest: Ed. Pro Universitaria, pp. 98-263.
- 14) Lucaciuc, Ș. (2012). *Civil procedural law*. Cluj-Napoca: Ed. Cordial Lex, pp. 5-490.
- 15) Mekki, S.A. and Strikler, Y. (2014). *Civil procedure*. Paris : Thémis law, pp. 187-907.
- 16) Polici, S. ant Pushkarev, I. (2014). *Problems of determining the jurisdiction of disputes related to the implementation of other economic activities*. Moscow: Law. pp.102-107.
- 17) Prisac, A. (2023). Types of general competence. *European Vector*, 2, pp. 28-31.
- 18) Săraru, C.S. (2017). Competence determined strictly by the law and the discretionary power of public administration. *Tribuna Juridica*, 7(1), pp. 247-251.
- 19) Spinei, S. (2017). *Civil procedural law*. Bucharest: Ed. Universul Juridic, pp. 101-200.
- 20) Trăilescu, A. and Lungașu, C. (2021). *Civil procedural law – Enforcement*. Bucharest: Ed. C.H. Beck.