



## The Character of the Material-Legal Relationships and their Subjective Composition - Appropriate Criteria for the Common General Competence in the Republic of Moldova

Alexandru PRISAC<sup>1</sup>

**Abstract:** For a long time in the legal system of the Republic of Moldova, two criteria were the basis for delimiting the powers of jurisdictional bodies: 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. We do not recommend the re-incorporation of these criteria into the procedural legislation of the Republic of Moldova. We see their introduction in 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.

**Keywords:** court; legislator; constitutional; law; jurisdiction

In the specialized literature, more recently than in the fundamental works on the studied topic, it was mentioned that the research of the types of general competence has become a theoretical concept, as well as that the correct choice of its type requires the specialization of the courts. Depending on the subsequent will of the legislator,

<sup>1</sup> Postdoctoral Student, Associate Professor, PhD, University of European Studies of Moldova, Address: Strada Ghenadie Iablocikin 2/1, Chisinau 2069, Republic of Moldova, Corresponding author: [alexandruprisac@yahoo.com](mailto:alexandruprisac@yahoo.com).



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in the matter of judicial system specialization this concept can be the foundation for the differentiation of civil jurisdiction (Tymchenko, 2000).

We, however, synthesizing the notion given by this author, have defined common general competence as that kind of competence which is based on some general criteria for delimiting the powers of jurisdictional bodies. This kind of general competence identifies a wide group of cases that fall within the competence of one or another judicial body.

The author cited above based the common general competence on the following two criteria, which, from those established by us, were the basis for 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, as amended on 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.

The lack of them in the legislation of the Republic of Moldova presents the advantage that it would exclude any factor of corruption in the application of

general rules, which could generate contradictory solutions in establishing the competence of the jurisdictional body. This is in line with what is stipulated in point 25 of Annex no. 5 of the "Methodology for carrying out the anti-corruption expertise of draft normative acts" of October 20, 2017 of the College of the National Anticorruption Center<sup>1</sup>, which provides for a corruption factor called "Attributions that admit derogations and abusive interpretations", which are those attributions of public entities formulated in an ambiguous manner, determining the possibility of interpreting them differently in several situations, including interpreting them in the version preferred or to deviate from them. The unclear formulation of the attributions of the public entity generates the possibility for the public agent to choose the most convenient interpretation of his attributions, without taking into account other legitimate interests and the spirit of the law, the execution of which he is to ensure through his activity".

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.

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<sup>1</sup> Decision of the Board of the National Anticorruption Center on the approval of the Methodology for conducting anti-corruption expertise of draft normative acts and the Methodology for conducting anti-corruption expertise of draft departmental normative acts: no. 6 of October 20, 2017 (Annex no. 1). [cited 02.02.2023]. Available at: [https://www.cna.md/public/files/2017\\_metodol\\_rea/Hot.Colegiul\\_CNA\\_nr.6\\_din\\_20.10.2017.pdf](https://www.cna.md/public/files/2017_metodol_rea/Hot.Colegiul_CNA_nr.6_din_20.10.2017.pdf).

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