

Civil law and process

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THE PROBLEMS AND CONSEQUENCES OF THE WRONG DETERMINATION OF JURISDICTION IN A CIVIL PROCESS

Summary. *This article covers the concepts and types of jurisdiction in civil cases. It has been investigated that to determine jurisdiction means to establish a court which is required by law to administer justice. Jurisdiction rules are of great practical importance. A clear, legally justified delimitation of the powers of each branch of the judicial system, as well as of the same courts of the same court in the consideration and settlement of civil cases, ensures the proper functioning of the entire judicial system, the task assigned to it, is one of the legal guarantees of fair justice. It also examines the implications of breach of jurisdiction.*

Key words: *jurisdiction, court, rule of law, subjectivism, state, judiciary, justice, jurisdiction, civil process, jurisdiction, protection, functional jurisdiction, territorial jurisdiction, tribal jurisdiction, proceedings, subordination.*

Problem. In the legal literature, so far, there is no unified understanding of judicial and, in particular, civil jurisdiction, they do not clearly distinguish these concepts from related concepts, which negatively affects the reform of existing procedural legislation and, as a consequence, the efficiency of the administration of justice. There are no clear criteria for delimiting the jurisdiction of the various

specialized courts in modern procedural science. In addition, scientific studies of jurisdictional problems, as a rule, are carried out in isolation from another important institute of procedural law - jurisdiction, these concepts are often identified or regarded as general and partial, which is not entirely in accordance with their legal nature. This stipulates the need for scientific study of the phenomenon of civil jurisdiction in relation to such a legal category as the jurisdiction of civil cases, which allows to consider these concepts in terms of their organic mutual conditionality, in which the properties, particularities of a particular case determine its attribution to the jurisdiction, clearly defined in the law of specialized jurisdiction, which the court in turn, is given a set of sufficient, necessary and effective powers, allowing in the shortest possible time to properly resolve a legal matter that is considered to be within its competence.

Introduction. The establishment of a rule of law in Ukraine and the formation of civil society have set the primary task of effectively protecting the rights and freedoms of each member of such a society. And whether the creation of a strong and independent judiciary and the empowerment of the courts to exercise justice are the most important means of accomplishing this task.

Presenting main material. Justice in Ukraine is exercised exclusively by the courts. The delegation of the functions of the courts, as well as the assignment of these functions to other bodies or officials is not allowed. Persons who have unlawfully assumed the functions of a court shall be liable under the law. But which particular court should consider a particular civil case depends on the institution of jurisdiction. Therefore, there is a need to differentiate the powers of the various branches of the judiciary, as well as the individual courts of each unit, to administer justice in specific civil cases. This distinction is made by the rules of jurisdiction. To determine jurisdiction means to establish a court which is required by law to administer justice. The court with jurisdiction of the case is competent. One of the essential guarantees that the trial court will be fair and impartial is the inability to arbitrarily change jurisdiction. Jurisdiction should be

clearly regulated by law in order to exclude the subjectivism of officials in deciding which court should refer the case to its merits.

Observance of the rules on jurisdiction contributes to the prompt, comprehensive and complete consideration of a civil case, taking into account its specific features and with the lowest costs, the implementation of the principle of equality of all citizens before the law and the court, increases the educational value of justice, ensures the exercise of the parties' right to a competent court.

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Jurisdiction is an important institution in the civil process because, in accepting a claim and determining that a civil case is subject to the courts of general jurisdiction, the judge must find out which of the courts it is responsible for, but there are often cases where judges admit their proceedings and adjudicate on cases which are not the responsibility of these courts. It is these situations, that is, non-compliance with the rules of jurisdiction, that disprove the rule of law for the protection of rights, freedoms and legitimate interests by an independent and impartial tribunal.

The division of competence between the individual parts of the judicial system and between the courts of one unit in the consideration and resolution of civil cases subordinated to them is called jurisdiction. Unlike jurisdiction, which delimits competence between public authorities, both between themselves, and between intergovernmental bodies and public organizations in civil cases, jurisdiction delineates competence in the same field (in civil cases) but between different courts. Therefore, the jurisdiction is called a range of civil cases, the decision of which is within the jurisdiction of a court.

The jurisdiction of the various courts of the system is determined depending on the functions performed by them, the type (subject) of the case, the subjects of the dispute to be examined, and the place (territory) to which the activity of a particular court extends. In this regard, jurisdiction is divided into functional (functional competence - *competentia rationis functionate*), generic (subjective, objective competence - *competentia ratione materiale*), territorial (personal, subjective competence - *competentia ratione personae*).

Functional jurisdiction determines the competence of individual units of the judicial system of Ukraine on the basis of their functions. Under this jurisdiction, district, district, city and city courts, garrison military courts, acting as local courts, act as courts of first instance, performing the function of hearing and ruling on the merits of cases under civil law (Article 21 of the Law on the Judiciary of Ukraine 107, Art. 107 of the CPC). Generic is a jurisdiction that determines the jurisdiction of courts of various instances to hear civil cases in the first instance, depending on the type (subject) of the case, the subject matter of the case. Such jurisdiction includes: the jurisdiction of cases in which one of the parties is a court or a judge (Article 108 of the CPC); jurisdiction of cases of disputes between citizens of Ukraine, if both parties reside abroad (Art. 111 of the CPC); the jurisdiction of a case of divorce between a citizen of Ukraine and a foreigner or stateless person residing outside Ukraine. Jurisdiction of cases in which one of the parties is a court or a judge. This type of jurisdiction is directed at the administration of justice by an objective and impartial tribunal.

Jurisdiction is a territorial jurisdiction, according to which the competence to hear subordinate courts of cases between homogeneous courts is differentiated depending on the territory to which their activity extends. It is divided into types: general, alternative, contractual, exclusive, case-by-case. General territorial jurisdiction - the jurisdiction of cases at the place of residence or location of the defendant (Article 109 of the CPC), which can be both natural and legal persons.

In the event of a breach of the rules on jurisdiction, the following consequences may occur. The return of the application on grounds of its lack of jurisdiction takes place at the stage after the application by the Chancery of the court before the decision on the opening of the proceedings in the case (Part C of Article 121 CPC). If it is found that the case is not within the jurisdiction of the court, the court returns the petition to the plaintiff to file it with the proper court, which issues a decision. The decree shall be forwarded with the statement and all annexes thereto to the claimant. Such a decision may be appealed under the order of Mr. C art. 293 CPC. The transfer of the case to another court, if it is found that the application was accepted in violation of the rules on jurisdiction, takes place after the opening of the proceedings in the case and before the trial. The case is referred to another court to which it belongs, subject to the rules of jurisdiction provided for this category of cases (paragraph 2 of Part 1 of Art. 116 CCP). Article 116 of the CPC may be supplemented by another ground for referral to another court. This is a case where both parties seek the adjudication of the overwhelming amount of evidence, the delivery and investigation of which will be difficult or impossible at the venue. However, exclusive and generic jurisdiction cannot be altered.

Jurisdiction of the case is established by the judge when accepting the statement of claim before his proceedings - during the initiation of the case in court. If the case is not the subject of the court, the judge returns it to the plaintiff for submission to the proper court with his reasoned rejection order. Such a decision may be appealed against and may be filed. When submitting the statement of claim to the court by mail, or if its lack of jurisdiction was revealed to the court when it was not accepted, the judge must immediately notify the plaintiff and send the statement together with his reasoned decision to the proper court after the expiration of the term of appeal of this decision, and in case, filing of the submission - after the court of appeal has ruled on leaving the complaint, the submission without satisfaction (Art. 132 of the CPC).

Conclusion. Considering the problem of accessibility of justice in the complex and extensive system of specialized courts, it is concluded that the most optimal way to solve it should be to harmonize a number of procedural legislation on the consequences of violation of jurisdiction. Also It is therefore important to distinguish between the concept of "competence", "jurisdiction" and "jurisdiction". The jurisdiction of a court, like that of another public authority, is the totality of the powers to hear and resolve legal cases determined by regulatory legal acts. It is divided into territorial, functional and subject. The jurisdiction of the courts is the substantive competence of the courts to hear and resolve legal cases. Jurisdiction is a range of legal disputes and other legal issues.

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