

General Competence - An Interbranches Legal Institution That Delimits the Powers of Jurisdictional Bodies in Continental Law

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Abstract

In this article, the general competence as an interbranch legal institution is analyzed as a whole, starting from the specific norms of the continental law. The general competence is defined, being a complex notion because it is not regulated in the national legislation in a legislative act specific to this legal institution. It is contained in several normative acts. Thus, the most important features of general jurisdiction are highlighted, starting from the opinion of several authors who have analyzed this legal institution. It is presented that any legal norm implicitly also contains a provision regarding general competence, because in case of non-compliance with it, the sanction is to be applied by a certain jurisdictional body. Initially, its evolution was exposed in Romanian private law, then in French and German law. Clarity was made in the delimitation of the types of general jurisdiction that include certain criteria for delimiting the powers of jurisdictional bodies in the resolution of legal cases. In addition to the exclusive, alternative, conditional general competence, it is demonstrated that there is also the dynamic general competence that delimits the competence of the jurisdictional bodies as a whole with all the regulations of this legal institution.

Keywords: competence, institution, interbranch, jurisdiction, continental.

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1. Introduction

In order for the judicial bodies to function in a state, it is necessary that their competence be delimited by clear criteria set by law. In the absence of these criteria, the judicial bodies would be non-functional. In the legal systems of each state, these criteria are different, but overall they are similar in terms of common criteria. All rules and criteria for the delimitation of jurisdictional bodies are contained in the legal institution of general jurisdiction. Thus, general competence delimits the powers of jurisdictional bodies to examine and resolve legal cases. For example, these bodies are: court of law, administrative bodies, arbitration, constitutional court and others.

However, in the legal systems of different states, in particular in those that are part of the family of continental law, there is no concrete normative act that would provide for all these criteria and rules for delimiting the powers of jurisdictional bodies. These criteria and rules are contained in various normative acts and are difficult to interpret as a whole when delimiting the competence of jurisdictional bodies.

The importance of researching general jurisdiction lies in the fact that in the continental law system, the normative regulations regarding the general jurisdiction of courts and other jurisdictional bodies are rapidly being modified and supplemented. Many of the new laws on general competence entered into force after a short period of time are repealed or other laws are adopted to improve the legal framework in this area. There is a permanent tendency of the legislator to improve this legislative framework, but a failure to achieve this goal is observed. This substantially affects the functionality of judicial bodies, which substantially hinders the development of society.

In this article we have made an overview of the general competence and we expose its types, which contain the basic criteria in the delimitation of the powers of the jurisdictional bodies. We present the general competence only in the continental law systems, because in the Anglo-Saxon law systems it is regulated differently. We also present the general jurisdiction as an intermural legal institution, which contains rules of civil procedural law, criminal procedural law and administrative procedural law.

We made an analysis of the general competence starting from the specific norms of the continental law. Part B provides an overview of general competence from a historical point of view

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as it developed with the emergence of the state and law. We have highlighted certain specific features of Roman, French and German private law. The definition of general competence as a whole as an intermural legal institution is presented in Part C. When defining it, the most important features of general competence were highlighted and it was also presented as a means of delimiting powers in the state. Certain fundamentals of the existence of general accounts are also exposed. Part D presents the types of general jurisdiction that contain the criteria for delimiting the powers of jurisdictional bodies. Since these criteria can be permanently modified, we have additionally formulated a new kind of general competence which we call dynamic general competence. The article's conclusions are set out in Part E.

2. The evolution of regulations regarding general competence in the continental legal system

The first norms that were the basis for the appearance of the general competence of the jurisdictional bodies appeared with the appearance of the state and law. The state once formed sought to capitalize on the practice of substituting arbitration for revenge, and under its auspices this arbitration is subsequently consolidated and stably organized. The state offering, in a certain way, its services to the litigating parties, but it cannot yet in its embryonic phase impose itself on them altogether, force them to bow to its authority. Therefore, the primitive judge was only an arbitrator, proposing a settlement; its decision could be accepted by the parties, but it was not accompanied by coercive forces. Only through a long series of stages, after a laborious historical management, does the state end up establishing itself as a super gentile power, capable of taking over, exclusively, the function of justice and enforcing compliance with sentences. Only then, the process of forming the state was completed, and the manifestations of the legal system are state-type.² In these circumstances, it was necessary that the attributions of this arbitration from other state authorities empowered to resolve disputes between the parties were to be delimited. Norms regarding general competence once existed through the legal investment of the public authority that administered justice or resolved disputes between parties by other alternative means.

In Roman private law, the rules regarding general competence were highlighted once more state authorities appeared invested with the function of resolving disputes. From the beginning, in Roman private law, jurisdiction belonged to the consuls. They settled civil disputes between Roman citizens. From the year 367 BCE, when the position of urban praetor was introduced, the settlement of disputes between citizens was transferred to his competence, and the consuls kept only their *jurisdictio voluntaria*. Disputes between citizens and pilgrims and between pilgrims among themselves were settled by the peregrine praetor, whose position was introduced in 242 BCE. In Rome, commercial disputes were settled by the *aediles curuli*. In the provinces, civil disputes were settled by governors, and commercial disputes by *quaestors*.³ All these jurisdictional bodies had different jurisdictional attributions, and their powers to examine and settle disputes were provided by Roman laws, imperial constitutions, *senatusconsults*. The jurisdictional powers of the consuls, urban praetors, peregrine praetors, *curuli aediles* and *quaestors* were provided for each individual legal problem to be resolved.

Some of the state bodies had mixed powers in the examination and settlement of civil cases, which was called *imperium mixtum*. As is known, during the period of the republic there was *ius civilis*, i.e. the right of the Roman citizens, which did not apply to the settlers (peregrins). For this reason, the praetor could, in order to regulate the relations between Roman citizens and foreigners, as well as between the foreigners themselves, issue an administrative order (*edict*), which, being based on his own powers, determined the rights and obligations of the participants of concrete relations that were not regulated by law. These administrative orders were issued at the request of the interested parties and had a conventional character, since their execution depended on

² Giorgio Del Vecchio, *Lecții de filosofie juridică*, Ed. Europa Nova, 1994, p. 306.

³ Victor Volcinski, Daniela Țurcanu, Serghei Cebotari, *Drept privat roman*, State University of Moldova, Chisinau, 2014, p. 97.

whether or not the obliged person would admit that the circumstances indicated in the edict actually occurred. If the obliged person denies and on this basis refuses to execute the edict, the person at whose request this act was issued, had the right to appeal repeatedly to the praetor with the complaint and the latter to submit the dispute to the judge in the general course of the civil process for resolution (in court).⁴ Therefore, we find that the *imperium mixtum* powers of the praetors at that time represented the form of multiple conditional (imperative) general jurisdiction, which imposes, until addressing the court in the civil procedure, compliance with the condition - compliance with the consecutiveness of the settlement of the civil case provided for by law until addressing the court of judgment.

All powers of jurisdictional bodies had specific powers, which had their own delimitation mechanisms. Thus, *imperium* is the commanding power of the magistrate. In a broad sense, *imperium* also includes *iurisdictio*, sometimes the texts denote the right to organize the court through *imperium mixtum*, and the right to command – through *imperium merum*. The praetor exercised only *imperium mixtum*.⁵ In the assembly, the rules regarding the delimitation of these powers constituted the general competence in the Romanian private law system.

In Justinian's Codification, the rules regarding general jurisdiction are laid down in the *Codex* book and the *Digesta*. In particular, these regulations subsequently contributed to the appearance of contentious jurisdiction (*iurisdictio contentiosa*) and non-contentious jurisdiction (*iurisdictio voluntaria*), which also led to the appearance of formal legal acts.⁶ These two kinds of jurisdictions also exist in the current regulations, however, in a more developed form, and the non-contentious one finds its application in several norms of conditional general competence.

After the *Corpus Iuris Civilis*, a new form of regulation of the legal institution addressed appeared with the adoption of the Napoleonic Civil Code of 1804, in which the rules regarding the exclusive general jurisdiction of the courts to resolve various civil cases were moved to express regimentation. This means that each institution of civil law in this codification also contains a rule regarding the jurisdictional body competent to resolve disputes arising in connection with the legal relations regulated by the institution of substantive law. Thus, art. 31 of the French Civil Code,⁷ provides for the exclusive competence of the court in the procedure for the justification of citizenship; Art. 89 of the French Civil Code provides for the exclusive jurisdiction of the court in the case of the procedure regarding the declaration of death; Art. 331 of the French Civil Code provides for the exclusive competence of the court to establish parental authority; Art. 337 of the French Civil Code provides for the exclusive competence of the court to resolve cases regarding relations between parents and children; Art. 352 of the French Civil Code stipulates the exclusive jurisdiction of the court in cases regarding adoption, etc. So, the other civil cases in respect of which the law did not provide for the exclusive jurisdiction of the courts, these could be resolved through arbitration or by another jurisdictional body. Although the French Civil Code is a codification of substantive law, this code contained rules on general jurisdiction, which have been preserved to this day. That is, the rules regarding general jurisdiction should be provided both in the procedural codifications and especially in the substantive law codifications.

In the German Civil Code (BGB) from 1896,⁸ which incorporated a legal system based on *pandicts*, it also includes broader notions regarding general jurisdiction, than the simple exposition of the exclusive jurisdiction of the court to resolve some civil cases. The notion of general competence was expressly used. For example, in art. 176 para. (2) of the German Civil Code, provides for the notion of general jurisdiction in the action regarding the vindication of the letter; Art. 262 para. (1) of the Civil Code provides for the exclusive general competence of the court to amend the declaration that replaces the oath; Art. 432 para. (1) of the German Civil Code provides

⁴ Yurii Osipov, *General jurisdiction of court*. Ed. Gosjurisdatt, 1973, p. 24.

⁵ Victor Volcinschi, Daniela Țurcan, Serghei Cebotari, *op. cit.*, p. 72.

⁶ Serhgei Muromtev, *Civil Law of Ancient Rome*, <https://dspace.lu.lv/dspace/handle/7/1184> (last visited Sept. 20, 2022), p. 149.

⁷ Civil Code, <https://codes.droit.org/PDF/Code%20civil.pdf> (last visited Sept. 20, 2022).

⁸ German Civil Code, BGB, Aug. 16, 1896, <https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Alemao-BGB-German-Civil-Code-BGB-english-version.pdf> (last visited Sept. 20, 2022).

for the exclusive general competence of the court to establish the judicial deposit; Art. 588 para. (4) of the German Civil Code provides for the exclusive jurisdiction of the Agricultural Court in disputes regarding usufruct; Art. 655 of the German Civil Code provides for the exclusive general jurisdiction of common law courts to reduce brokerage fees; Art. 1281 of the German Civil Code provides for the general competence of the court to appoint the custodian to keep the thing owed; Art. 1303 para. (2) of the German Civil Code provides for the exclusive general competence of the family court to lower the marriageable age, etc.

Given the fact that most rules regarding general competence are not contained in procedural codifications, subsequently, in art. 1 of the Code of Civil Procedure of Gemrانيا⁹ it was provided that the rules regarding material jurisdiction are provided by the procedural law. In other words, it was correctly directed that in the future the rules regarding the general jurisdiction are provided by the material laws.

An essential role in the modernization of the regulations regarding the general competence of judicial bodies was played by the concept implemented in Austria in 1920 by the constitutionalist Hans Kelsen of the European model of constitutionality control, later applied in several states, according to which constitutional justice is exercised by a body specialized – Constitutional Court. According to this model, the competence of the Constitutional Court has become a kind of exclusive general competence regarding the fulfillment of the control of the constitutionality of normative acts.

In the European model, unlike the American one, the Constitutional Court can only be referred by a public authority, in most states the person does not have direct access to constitutional justice. For this reason, the European model of constitutionality control cannot be effectively exercised without the constitutionality control of the acts applicable in concrete judicial cases, which are before the common law courts. This fact determined the application in the European model of the American model of constitutional control, which, however, is called the exception of unconstitutionality.¹⁰ Being a complex mechanism, the rules on general competence clearly determine the competence of the Constitutional Court and the judicial authorities to carry out the control of constitutionality through the exception of unconstitutionality.

3. Definition of the concept of general competence

The general competence is to be received as a set of rules that delimit the powers of some jurisdictional bodies, but also as a means of delimiting powers in the state. We identify the legal norms inherent in the general competence within each formal source of all branches of law.

From the point of view of the systematization of legal norms regarding general competence, in the specialized literature, we identify general competence to be viewed in two meanings: 1) general competence as a branch legal institution¹¹ and 2) general competence as an inter-branch legal institution.¹² We will also present below the analysis of these meanings in order to establish their plausibility with the actual nature of the general competence, in order to define it.

The word "competence" in the explanatory dictionary has several meanings. This word being explained as someone's ability to pronounce on something, based on a deep knowledge of the issue under discussion; capacity of an authority, an official, etc. to exercise certain powers.¹³ However, regarding the notion of general competence in civil procedural law, it should not be seen in a broad sense as a capacity of an authority or an official to exercise certain powers.

In the civil process, the notion of "general competence" is used in a different way, in a narrow sense, although it seems to be an abstract notion. General competence is used as the

⁹ Zivilprozessordnung, Sept. 12, 1950, <https://www.gesetze-im-internet.de/zpo/BJNR005330950.html> (last visited Sept. 20, 2022).

¹⁰ Mihai Poalelungi, Filincova Svetlana, Sircu Iulia, *Manualul judecatorului pentru cauze civile*, p. 412, <http://drept.usm.md/public/files/Manual-judecator-cauze-civile-2013f2697.pdf> (last visited Sept. 20, 2022).

¹¹ Fodor Maria, *Drept procesual civil*, Ed. Universul Juridic, Bucharest, 2014, p. 210.

¹² Yurii Osipov, *op. cit.*, p. 24.

¹³ Dexonline.ro, <https://dexonline.ro/definitie/competen%C8%9B%C4%83> (last visited Sept. 30, 2022).

competence of one or another state body, not in the general sense, but only in the sense of the competence of a state body to examine and resolve legal disputes and other conflicting legal issues. This derives from the fact that the activity of all state institutions, non-state organizations and citizens takes place within the framework established by various normative acts, and their compliance is mandatory for all. In the process of executing the law and acts subordinate to the law, certain legal disputes may arise, which are resolved not only by the courts, but also by administrative and arbitration bodies, but also by certain non-state organizations.¹⁴ Thus, the word "competence" in the sense of this paper is used only in the sense of an entity's ability to examine and resolve legal disputes and other conflicting legal issues. We also include other conflicting legal issues, because there are certain disputes, which do not refer to legal disputes, for example, factual disputes that do not refer to the violation or challenge of a subjective right, but refer to a contradiction between the factual situation and the right one.

General competence constitutes a legal institution distinct from that of jurisdictional competence and is generic to the latter legal institution and it is not correct to be regulated in the same chapter.

In the literature, general competence is defined as the ability of courts, recognized by law, to examine and resolve a category of civil cases. In the same way, the author also mentions that: the institution of civil procedural law, the general jurisdiction of the courts constitutes a totality of legal norms that regulate the scope of civil cases whose examination and resolution is conferred on the courts, by referring to the attributions of other bodies with activity jurisdictional.¹⁵

Rightly so, the general competence also constitutes the empowerment of the courts, but not only of these public authorities. Thus, it is incomplete to define the general jurisdiction as only an authorization of the courts when this legal institution also delimits the authorizations of other jurisdictional bodies to examine and resolve certain civil cases. However, in the absence of this characteristic, the general competence would be deprived of its essential function of delimiting these powers.

Given the fact that the most proposed characteristic of an interbranch legal institution is that it must be common to at least two branches of law. It is important to note that when a conflict occurs in the civil circuit, it is necessary to determine who has the competence to resolve the disagreement: the court or another body of jurisdictional activity? The special law sometimes provides that they have the competence to judge other bodies with jurisdictional activity. This means that the judicial authority does not have a monopoly on the function of judging, some cases being entrusted by law to other jurisdictions. This was imposed due to the degree of specialization of some litigations and the need to relieve the courts from the resolution of some cases.¹⁶ From the ones presented, the most special aspect highlighted by us is that the need for the existence of general jurisdiction arose due to the degree of specialization of some public authorities, and the courts do not have the monopoly of judging some civil cases. The specialization of public authorities in the examination of civil cases is also supported by several international bodies. According to the Recommendation of the Parliamentary Assembly of the Council of Europe 1604(2003) regarding the role of the prosecutor's office in a democratic society governed on the basis of the principle of the supremacy of the Law: the powers and responsibilities of prosecutors should be limited to the prosecution of criminal cases, and to the general role in the defense of public interests through the system of criminal justice, and for the exercise of other functions separate, effective and appropriately placed bodies should be formed.¹⁷ So, the specialization of public authorities constitutes a significant opportunity that determines the existence of general competence. However, the specialization of several public authorities in the examination of civil cases or other legal cases and the non-holding of a monopoly by the courts in their resolution, points us again to the fact that the institution of general jurisdiction is not branchal, but interbranch. In

¹⁴ Yurii Osipov, *op. cit.*, p. 25.

¹⁵ Bele Elena, Borș Ana, Chifă Felicia, *Drept procesual civil, partea generală*, Chișinău, 2016, p. 138.

¹⁶ Măgureanu Florea, *Drept procesual civil*, Ed. All Beck, Bucharest, 2002, p. 153.

¹⁷ Leonid Antohi, *Standarde ale Consiliului Europei pentru Justiție*, Ed. Bons Offices, Chisinau, 2010, p. 402.

other words, it does not constitute an institution of civil procedural law, but refers to several branches of law. However, the examination procedure and the settlement of a civil case by a public authority other than the court do not refer to the civil procedure. Therefore, the legal rules delimiting the competence to examine in different dispute resolution procedures cannot only constitute rules of civil procedural law.

The closest to our opinion that we support regarding the place of the institution of general jurisdiction in the legal system is the opinion that the institution of general jurisdiction of judicial cases constitutes an interbranch legal institution. Thus, according to this opinion, in each branch of procedural law there is a common legal institution regarding general jurisdiction. Common branch legal institutions on general jurisdiction have many general features. One of the most important is that each of them regulates the system of procedural relations arising in different judicial cases ordered according to their common object. The existence of this feature of these legal institutions predetermines the existence of the interbranch legal institution of the general competence of legal cases".¹⁸ Rightly so, within each branch of procedural law there are legal norms that determine the competence of the jurisdictional body whose procedural activity is regulated by the norms of this branch of law. For example, art. 4 of the Code of Constitutional Jurisdiction of the Republic of Moldova¹⁹ determines the competence of the Constitutional Court in its matter, and art. 33 of the Civil Procedure Code of the Republic of Moldova determines the competence of the courts to examine civil cases. Including, in the criminal procedural legislation there are rules regarding the exclusive general competence of the courts to examine criminal cases. Thus, also in the specialized criminal procedural literature, the institution of general competence is used in defining the notification act in criminal procedural law,²⁰ as well as in defining the exercise of the right to action in civil procedural law,²¹ where it is well known that the existence of general competence constitutes a premise of exercise of the right to action.

Within each procedural branch of law, these legal norms are united in common legal institutions regarding the general jurisdiction of legal cases (general jurisdiction of civil cases; general jurisdiction of criminal cases; general jurisdiction in contravention cases), because they regulate the system of procedural relations that appear in concrete legal cases in relation to a single element – the object of the legal activity that forms it different material legal problems, which require individual resolution by a body invested with the function of applying the law.²²

In addition to the mentioned branch legal institutions, there is also the interbranch legal institution of general jurisdiction of legal cases, which includes the rules of general jurisdiction that refer to several branches of procedural law in a single distribution mechanism.²³ The latter ensures the clear and appropriate distribution of legal cases between different jurisdictions. However, at many law faculties in Universities located in Eastern Europe, the general competence is studied in the discipline of civil procedural law. This is explained by the fact that civil procedural law is a branch of common law. This character consists in the fact that the civil process includes any activity that involves the examination and resolution of certain differences that do not contain a problem related to a certain special procedure. The object of the civil process is all cases regarding the defense of the rights and legitimate interests of the person that are not to be examined in another procedure expressly provided by law (eg: criminal or contravention proceedings). The determination of the cases that are examined in the order of the civil procedure takes place by excluding the cases to be resolved in other procedures provided by law (e.g.: criminal and contraventional cases). Thus, disputes that are not resolved in a special procedure will be examined and resolved in the civil procedure.²⁴ Therefore, if the problems studied within the discipline of

¹⁸ Yurii Osipov, *op. cit.*, p. 82.

¹⁹ Constitutional Jurisdiction Code, https://www.legis.md/cautare/getResults?doc_id=122076&lang=ro (last visited Oct. 19, 2022).

²⁰ Băietu A. Ludmila, *Actul de sesizare în dreptul procesual penal*, p. 29, http://www.cnaa.md/files/theses/2017/51656/alina-ludmila_baetu_abstract.pdf (last visited Oct. 19, 2022).

²¹ Belei Elena, Borș Ana, Chifa Felicia, *op. cit.*, p. 14.

²² Yurii Osipov, *op. cit.*, p. 83.

²³ *Ibid.*

²⁴ Prisac Alexandru, *Drept procesual civil, Partea generală*, Ed. Certier, Chisinau, 2013, p. 19.

civil procedural law include the widest spectrum within the branches of procedural law, it is also correct that this interbranch legal institution be analyzed within the discipline of civil procedural law.

Given the fact that confusion can arise when we talk about "jurisdiction" and "general competence", we are going to make a distinction between these two notions. The term "jurisdiction" comes from the Latin "juris", which signifies the law, and "dicere", which signifies the power to interpret legal norms and to give solutions based on these legal norms, which is granted to the bodies for the protection of the rules of law or the body that is part of the executive power that constitutes the right to formulate official conclusions about the law and the application of the law.²⁵ The notion of "jurisdiction" determines the statutory character of certain categories of state bodies and must be used by the legislator and by those who apply the law only in this sense. But, in turn, the "general competence" is called to direct the legislator's attention to the delimitation of the competence of different jurisdictional and non-jurisdictional bodies.²⁶ When discussing jurisdiction, the solution of individual legal problems is considered.²⁷ However, we specify that in order to understand the meaning of the notion of general competence, it should be mentioned that there are several jurisdictional bodies whose competence is delimited by the institution of general competence. So, general jurisdiction aims to achieve its basic function, which is the delimitation of powers between different jurisdictional bodies. In the legal systems of different states in the family of continental law there are also several jurisdictions, which signify the empowerment of a public authority or a non-state organization to examine and resolve certain cases involving legal problems. Therefore, we have: the powers of the court to examine civil cases, is called civil jurisdiction or, in other words, jurisdictional competence; the powers of the court to examine criminal cases, is called criminal jurisdiction; the powers of the court and the investigating officer to examine and resolve contraventional cases, is called the contraventional jurisdiction; the powers of administrative bodies to examine civil cases, is called administrative jurisdiction;²⁸ the powers of the Constitutional Court to examine the cases assigned to its competence, it is called the constitutional jurisdiction; the powers of non-state bodies to examine and resolve civil cases, represent the alternative jurisdiction for the resolution of disputes;²⁹ the powers of arbitration to examine and resolve certain disputes, is called arbitral jurisdiction.

Therefore, we consider that all these powers listed above of public authorities and non-state organizations are delimited by the inter-branch legal institution - the general competence to resolve legal cases, and do not refer to the delimitation of the competence of non-jurisdictional bodies.

In our view, from the point of view of the logical-legal structure of the legal norm, all sanctions as elements of the legal norm implicitly contain a reference to the general competence of the court or other jurisdictional bodies. This is because in case of violation of the provisions of the legal norm, the coercive force of the state is applied through the authorized bodies of the state to oblige their compliance. Although, from the point of view of the technical-legislative structure, this sanction is not contained within a single article of the law, it can be identified within another legislative provision, in particular, of a procedural nature. Therefore, we are of the opinion that the institution of general competence ensures the indication of the body of application of the sanction provided by the legal norm. Thus, the general jurisdiction constitutes a legal institution that interferes both with the rules of procedural law and with the rules of material law.

We also believe that implicitly the interbranch nature of the institution of general jurisdiction is highlighted by the fact that it also constitutes a legal means of delimiting the judicial power from the executive power. Tangentially, in the autochthonous doctrine of the general theory of law and constitutional law, the terminology used to describe the principle of separation of powers

²⁵ Abolonin Gleb, *US Civil Procedure Law*, Wolters Kluwer, 2010, p. 97.

²⁶ Norchina Elena, *Jurisdiction as a general legal category*, p. 9, <https://viewer.rsl.ru/rsl01003493084?page=1&rotate=0&theme=white> (last visited Sept. 25, 2022).

²⁷ Yurii Osipov, *op. cit.*, p. 83.

²⁸ Yurii Osipov, *General jurisdiction and jurisdiction of court in civil cases*, Ed. Gosjurisdad, 1962, p. 111.

²⁹ Stancu O.-M., *Arbitrajul – jurisdicția alternativă pentru soluționarea litigiilor*, p. 50, https://mfinante.gov.ro/documents/35673/6785068/articolnr1_012022.pdf (last visited Sept. 25, 2022).

in the state, general competence is used to describe this principle.³⁰ The content and limits of the general jurisdiction of the courts derive from the constitutional principle of the separation of powers in the state: the administration of justice is entrusted to the courts, made up of judges who enjoy the guarantees of independence and immovability, in order to obey only the law.³¹ Thus, both guarantees and means of separation of power in the state derive from this principle.

We consider that the institution of general competence constitutes a legal means of delimiting powers in the state, because each judicial body whose powers are delimited by general competence can be part of either the composition of the judicial power (for example, the courts) or that of the executive power (for example, the civil status body in the case of marriage dissolution under the law). The legal means, respectively, constitute a special and subtle means of delimiting the competences of the said jurisdictional bodies, which together with other means provided by law establish those boundaries of separation of judicial and executive power.

Powers in the state are divided starting from the specific powers (attributions) of each state body. The general competence delimits the judicial power from the executive power only with regard to the power to examine and resolve legal cases (civil cases, criminal cases, contraventional cases). At the same time, this contributes to the achievement of the principle of institutional balance known today as "checks and balances".³²

The mechanism of general competence also contributes to the collaboration of powers in the state. Courts being empowered by law to rule on many issues related to the relationship between the legislative and executive powers. In this sense, it is worth noting what was mentioned in the report of the Secretary General of the Council of Europe from 2014³³: "The function of the judicial system is to adjudicate between members of society and the state, as well as between members of society. Frequently, the judiciary is also called upon to rule on the relationship between two or even all three powers of the state." Therefore, the wide scope of application of the rules regarding the general competence in achieving the balance between the two powers, involves not only civil procedural relations, but also constitutional jurisdiction, which repeatedly marks the interbranch character of this legal institution. However, the legislator or exponents of the executive power must not limit in various forms the judicial powers in relation to certain temporary circumstances. In this sense, in the Opinion no. 18 (2015) of the Consultative Council of European Judges (CCJE) called "The place of the judicial system and its relationship with the other powers of the state in a modern democracy",³⁴ it is plausibly mentioned: "Politicians and others in public positions in the member states do often comments that either call for judicial powers to be limited or show little understanding of the role of an independent judiciary. Such comments are made especially during election campaigns, when decisions have been made on constitutional issues, or on pending cases."

In the order presented by the ideas, the question can be raised as to whether the institution of general jurisdiction consists of a set of procedural rules or of another nature. In our view, this legal institution is composed of the rules of several branches of procedural law, however, its rules are not procedural rules per se, because the rules of competence have a distinct place within each branch of procedural law. Or, in the specialized literature,³⁵ the rules of civil procedural law themselves, depending on the object of the civil procedural rules, are divided into: a) judicial organization rules; b) rules of competence; c) rules of procedure proper.

³⁰ Malyarchuk Olga, *The principle of separation of powers: development and current state*, p. 41, http://www.cnaa.md/files/theses/2022/58406/oxana_malearciuc_abstract_ru.pdf (last visited Sept. 25, 2022).

³¹ Gheorghe-L. Zidaru, *Competența materială*, Ed. Universul Juridic, Bucharest, 2013, p. 255.

³² The decision of the Constitutional Court of the Republic of Moldova on the inadmissibility of referral no. 22 a/2017, https://www.legis.md/cautare/getResults?doc_id=105597&lang=ro (last visited Sept. 26, 2022).

³³ State of Democracy, *Human Rights And The Rule of Law in Europe*, Report by the Secretary General of the Council of Europe 2014, <https://edoc.coe.int/en/fundamental-freedoms/5949-state-of-democracy-human-rights-and-the-rule-of-law-in-europe.html> (last visited Sept. 26, 2022).

³⁴ Notice no. 18 (2015) of the Consultative Council of European Judges (CCJE), *The place of the judiciary and its relationship with the other powers of the state in a modern democracy*, <http://csj.md/images/16international.pdf> (last visited Sept. 26, 2022).

³⁵ Prisac Alexandru, Bănărescu Anatolie, Bănărescu Iulia, *Drept procesual civil, Partea Generală*, University of European Political and Economic Studies "Constantin Stere", Chișinău, 2021, p. 51.

The general competence not only has a constitutional foundation, but also has a dual nature of imperative public order and private order. Due to the "evolving and relative" nature of public policy, an exhaustive definition of this notion is neither possible nor desirable.³⁶ Public order as a whole is defined as the component of national security, represented by the state of legality, balance and social peace, corresponding to a socially acceptable level of respect for the rules of law and civic conduct, which allows the exercise of fundamental human rights and freedoms, as well as the functioning of the structures specific to the rule of law and is characterized by the credibility of institutions, public health and morality, the state of normality in the organization and development of political, social and economic life, in accordance with legal, ethical, moral, religious and other norms, generally accepted by society.³⁷ From this amalgamation of the mentioned particularities of this definition, it follows that the institution of general competence includes both norms that have a nature of imperative public order, as well as norms of a nature of private order that ensure the achievement of the objectives of public order. Analyzing the rules regarding general competence from the legislation of the Republic of Moldova, it turns out that the rules regarding: exclusive general competence have the character of imperative public order; conditional general competence; general jurisdiction over related claims; exclusive territorial jurisdiction as a component of general jurisdiction. Of a public-private nature are the rules regarding: alternative general competence; territorial jurisdiction at the choice of the plaintiff as a component of the general jurisdiction.

4. Specific types of general competence

In the legal systems of the states from the family of continental law, the rules regarding the delimitation of the powers of the jurisdictional bodies do not find an orderly and non-exhaustive regulation in a normative act. For this reason, the legislator can make certain changes in the general competence only after an overall analysis of the entire legislative system in order to avoid the creation of certain collisions or legislative loopholes. As a result of the research of the provisions of the legislative acts, which are significantly dynamic, and of the doctrine³⁸ relevant to the analyzed legal institution, I noticed that the problem of systematization and definition of the criteria for delimiting the general competence was the sole responsibility of the doctrine, which was considered³⁹ a dynamic one in this field. For this reason, we identify the interaction of the criteria applied by the legislator in the delimitation of the general competence of the various jurisdictional bodies in the specialized literature, in particular in the classification of the types of general competence. Thus, we will present the criteria for delimiting the general competence including through the lens of the types of general competence.

In the legal systems and legal doctrine of different states, the criteria and rules for delimiting general jurisdiction are presented in various forms.

In the Anglo-Saxon legal system, in particular in the USA, general competence and jurisdictional competence are delimited according to special rules, which are mostly an integral part of the rules for delimiting the jurisdiction of the courts known as "jurisdiction". In the US common law system, jurisdiction is divided into the following categories: material jurisdiction, subjective jurisdiction (depending on a certain person or public authority, etc.) and besides these there is also jurisdiction in relation to a certain good.⁴⁰ In the case of material jurisdiction, the legal cause is determined starting from the nature of the material-litigious relations.

In legal systems close to French law, particularly in Romania, the criteria for delimiting general jurisdiction are contained in certain special regulations that are the basis of the jurisdictional

³⁶ Băieșu Aurel, *Conceptia ordinii publice în cadrul controlului jurisdicțiilor statale asupra hotărârilor arbitrale internaționale*, p. 135, https://cercetare.usm.md/wp-content/uploads/Stiinte_Juridice_07_12.pdf (last visited Sept. 27, 2022).

³⁷ Erhan Ianuș, *Ordinea și securitatea publică – noțiune și elemente definitorii*, p. 135, https://ibn.idsi.md/vizualizare_articol/147645 (last visited Sept. 27, 2022).

³⁸ Fodor Maria, *op. cit.*, p. 210.

³⁹ Burova Inna, *Jurisdiction of cases to arbitration courts*, Chisinau, 2005, p. 186.

⁴⁰ Abolonin Gleb, *op. cit.*, p. 98.

body's activity, and the doctrine⁴¹ of these states only develops material general jurisdiction, and does not highlight other types of it limiting itself only to the enumeration of the rules that separate the powers of the jurisdictional bodies to resolve legal cases. Only the types of jurisdictional competence are explicitly stated. In particular, in Romania general material competence is analyzed through the prism of points of contact with other disciplines – constitutional law, administrative law, financial (fiscal) law, civil law, labor law, family law, intellectual property law. Thus, these points of contact exist within the following types of general competence of a material nature: competence in the matter of constitutionality control; competence in electoral matters; competence in the matter of administrative litigation; competence in labor disputes; competence in the matter of labor disputes.⁴² However, in our view, this division cannot include all types of general competence because it is not possible to exhaustively list all the matters in which the rules of this legal institution are applied.

General competence has a multilevel character, which has been divided into international, national, common, special, hierarchical, territorial and functional level.⁴³ At the national level, general competence is to be divided into two types: common general competence and special general competence.⁴⁴ The common general jurisdiction is based on the character of legal relations and also the subjective composition of the parties to the delimitation of the jurisdiction of courts and arbitration. Which means, first of all, that legal disputes arising from civil, work, family relations are the competence of the courts, but those arising from administrative, state, financial and land relations are the competence of the administrative bodies, in secondly, the legal dispute arising from civil relations belongs to the jurisdiction of the courts when at least one of the parties to the dispute is a citizen, and to the jurisdiction of the arbitration is the dispute in which both parties are organizations. The special general competence is that which is expressly stipulated by law and can be of the following types: alternative, exclusive, contractual and conditional.⁴⁵ This method of dividing the types of general competence has persisted for a long time in the legal systems of the states of the continental law family.

It is general alternative jurisdiction not only that which allows only one of two or more jurisdictional bodies empowered to examine the case to be chosen at the discretion of the plaintiff (applicant), as is usual, but also that where the choice is made in certain cases by the judicial body itself. For example, it may be provided in the national law that the administrative bodies or persons with responsibility exercising the right to apply the fine in administrative order, have the right instead of sanctioning with a fine to submit the materials regarding the illegal act to the court.⁴⁶

Exclusive general competence exists when the competence of a body to resolve a certain case is expressly stipulated, being provided in the form of an exception to the general rules of general competence; general contractual competence - is that competence that is determined in the cases provided by law based on the agreement of the parties; conditional general jurisdiction – it is the one that determines that a case will be resolved by a specific judicial body only if the conditions provided by the law are met, for example, compliance with the prior and out-of-court settlement order of individual labor disputes.⁴⁷

There are two essential criteria for classifying the types of general competence. Firstly, how many jurisdictional bodies (one or more) are empowered to resolve certain legal cases, and secondly, the method of electing a jurisdictional body from several empowered to resolve a legal case.⁴⁸ This vision sought to include all kinds of general competence in the realm of these two criteria.

⁴¹ Fodor Maria, *op. cit.*, p. 212.

⁴² Ciobanu Viorel Mihai, *Tratat teoretic și practic de procedură civilă*, Ed. National, Bucharest, 1996, p. 372.

⁴³ Norchina Elena, *op. cit.*, p. 9.

⁴⁴ Druzhkov Pavel, *Judicial jurisdiction of disputes about law and other legal issues considered in civil proceedings*, Chisinau, 1966, p. 22.

⁴⁵ *Ibid.*

⁴⁶ Yurii Osipov, *op. cit.* (1973), p. 33.

⁴⁷ *Ibid.*, p. 34.

⁴⁸ *Ibid.*, p. 38.

The first criterion allows to delimit special general competence in two categories: single general competence and multiple general competence. The unique one is that special general competence that provides for the possibility of examining certain categories of cases by certain jurisdictional bodies expressly stipulated by law (court, administrative bodies, public organizations, etc.). It has an exclusive character because it excludes the possibility of examining the case by other jurisdictional bodies.⁴⁹ For example, according to art. 68, para. (1) of the Family Code of Republic of Moldova, provides: forfeiture of parental rights takes place only by judicial means. So, in the provisions of art. 68 para. (1) of the Family Code, the law provides the exclusive power of the court to examine and resolve cases regarding the forfeiture of parental rights.

The single general jurisdiction, in the view of this author, is opposed to the multiple general jurisdiction, which provides for the possibility of solving certain categories of cases not only by a single body, but by several jurisdictional bodies.⁵⁰ As an example of multiple general competence, the provisions of art. 29 para. (6) from the Law of the Republic of Moldova no. 1245 of 18-07-2002 regarding the preparation of citizens for the defense of the Fatherland,⁵¹ "Citizens can challenge the decision of the recruitment-incorporation commission in the State Commission for Incorporation or challenge it in court, in the manner established by law, within of 10 days from the date of its communication."

The second criterion, which characterizes the alternative general competence, is the method of choosing from several jurisdictional bodies empowered to examine the case, that particular body that must resolve it. Characteristic for this method is that the choice of this jurisdictional body takes place at the discretion of the plaintiff or another subject of law requesting the filing of the lawsuit.⁵² Thus, from the analysis of this author's opinions, we find that in the case of alternative general competence, the two criteria are applied simultaneously, which are also conditions for the existence of this kind of general competence: 1) there must be jurisdictional bodies (one or more) empowered to solve certain legal cases; 2) possibility to choose a judicial body from several authorized to resolve a legal case.

Overall, the types of general competence are divided into two large categories: I common general competence; II special general competence. The special one is composed of two types of general competence: 1) the unique (exclusive) general competence; 2) multiple general competence. In turn, multiple general competence includes the following categories: a) alternative general competence; b) general imperative or conditional competence; c) general contractual competence.⁵³

5. Conclusion

However, this classic division of the types of general competence in our view is to be completed by us with another type of it called dynamic general competence. That is, at the level of single and multiple general competence, we also include the third type of dynamic general competence, which is defined by us as that competence that delimits the powers of jurisdictional bodies according to certain variable criteria and in most cases their essence is established following the overall interpretation of several legal norms. This type of general competence does not exist in the specialized literature, but we add it to all other types because the opportunity for its existence derives from the following: 1) the classic types of general competence up to the present moment do not include all the criteria for delimiting the powers of 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

⁴⁹ Ibid, p. 38.

⁵⁰ Ibid, p. 39.

⁵¹ Law on the preparation of citizens for the defense of the Motherland, https://www.legis.md/cautare/getResults?doc_id=121249&lang=ro (last visited Sept. 30, 2022).

⁵² Yurii Osipov, *op. cit.* (1973), p. 42.

⁵³ Ibid, p. 39.

criteria for delimiting the powers of jurisdictional bodies, which may not fit within the classical 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.

Starting from all that we mentioned regarding the analyzed legal institution, we highlight the following features of the general competence:

- constitutes an interbranch legal institution;
- delimits the powers of some judicial bodies and certain non-state organizations to examine and resolve legal cases;
- delimits the jurisdiction of common law courts from specialized courts;
- it is provided by law and in certain cases by the agreement of the parties;
- appeared due to the degree of specialization of some public authorities;
- relates to jurisdictional activity;
- the general jurisdiction is the main mechanism for the distribution of legal cases;
- the general competence has a dual nature of imperative public order and private order;
- constitutes the main legal mechanism for delimiting the judicial power from the executive power.

Taking into account all the amalgam of the particularities exposed, we define the general competence as that interbranch legal institution with a character of imperative public and private order that delimits the powers of some jurisdictional bodies and certain non-state organizations, as well as the courts of common law from those specialized to examine and resolve legal cases arising by virtue of the degree of specialization of some public authorities as the main legal mechanism for distributing these cases and delimiting the judicial power from the executive power.

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