

# MATERIAL COMPETENCE OF THE COURTS OF LAW IN THE LIGHT OF THE NEW CIVIL PROCEDURE CODE

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**Abstract :** *For the citizen, one of the first issues to address, in case of a litigation, is that of knowing the public authority where the request is to be submitted. In civil process law, by competence, one should understand the skill, the ability of a court of law to solve certain requests or litigations. The aim of this article is that to present the most important modifications brought by the NEW CIVIL PROCEDURE CODE in material competence of the courts of law.*

**Keywords:** *material competence, modification, criteria.*

## 1. Introduction

After almost 150 years since the present procedure Code entered into force, in Romania, the new civil procedure code has been adopted (NCPC), with the Law 134/2010, republished in the Official Gazette No. 545/3<sup>rd</sup> of August, 2012.

Such a change has a very strong impact on the life of a society, as it directly affects the jurisdictional mechanism and - consequently - the prestige of justice and social security!

The new Code was to enter into force on September 1<sup>st</sup> 2012, but, as not sufficient measures were taken with respect to the implementation of the new regulation (in particular, lack of human and financial resources) – this operation was postponed for the 1<sup>st</sup> of February 2012, according to .GEO. No. 44/2012, published in the Official Gazette No. 606 of August 23<sup>rd</sup>, 2012.

## 2. The modifications brought to the New Civil Code in terms of material competence of the courts of law

Basically, according to art. 126 of the Constitution, *justice is administered by the courts of law*. If exceptionally, through law, special jurisdictions are established in certain fields, they should be optional and free of charge; the special jurisdictions should not impede the access to the courts of law and their decisions cannot be final.

The delimitation of activities of the courts' of law from the attributions of other institutions is established through the *general competence norms*.

The competence of the courts of law between them is established through the *jurisdictional competence rules*. The jurisdictional competence appears under two forms: *material competence (attribution)*: thereby the jurisdictional prerogatives are delimited vertically

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between courts of law of different degrees; *territorial competence*: horizontally, the prerogatives of the courts' of law are delimited, for the same degree, on different territorial circumscriptions.

The material competence may be examined under two aspects: *functional competence (ratione officii)*: the hierarchy of the courts of law is established (the delimitation between those judging the merits of the case and those who perform the legal control is established); *process competence (ratione materiae)*: the attributions of the courts of law are determined according to the object, nature and value of the litigation.

The proof of the importance granted to the question, the competence rules, are established in detail by the New Civil Procedure Code (in Title III: art.94-147), as well as by Law No. 304/2004 regarding the legal organization.

The new Code brings innovation with respect to the material competence of the Courts of Law. First of all, the New code *is no longer dedicated* to the principle of *jurisdictional plenitude* of the judges, for the first instance courts.

Therefore, the Courts judge *the first instance* just *the requests limitedly set forth by art. 94 item 1,2 NCPC*. Analyzing these cases, we notice the attribution criterion of the causes is *reduced difficulty, value or importance* of the causes; nevertheless, the partition claims – that are complex causes – are judged in the first instance, regardless of their value which leads to question the rigour of the legislator in conceiving such regulation.

Art.94 item 2 NCPC also contains an *exception* from item 1, meaning that some of the causes are judged not only in first but also in *last instance*, only the value criterion being important, not the origin or the nature of the claim. The decisions in such litigations *are not susceptible of either appeal or supervisory appeal*.

Art.94 item 3 NCPC is dedicated to *the legal control* that the courts may exercise, following the claims or challenges formulated against the decisions of public administration authorities' with jurisdictional activity and of other entities with the same kind of activity. We are referring for instance, to the claims against the offence registration, claims against Land Registry decisions, etc. Basically, in such cases, the Court decision may only be challenged through an appeal.

For art.94 item 4, that regulates a *different competence* of the Court, we indicate as an example, the following situations that attract the competence of the Court: requests to provide the evidence - art. 360, paragraph 1, NCPC, the claims to correct material errors of their own decisions, as well as the requests to correct, clarify and integrate their own decisions - art.442-444; challenges in annulment of their own decisions - art.505 NCPC; the requests for review of their own decisions art. 510; challenges in execution - art.713; etc.

Then, in interpretation of art.95 NCPC, that establishes the material competence of the **Court**, it appears that it has:

I. *Competence on the merits or in first instance*. Another important modification of NCPC, with respect to the material competences of the instances, is that *The District Court* becomes *the common right instance in civil matter*, having *jurisdictional plenitude* for the first instance causes (instead of the Court – old Code). In other words, the other instances may solve civil causes in first instance only if they are expressly attributed such competence, for certain matters.

By a comparison-analysis of art.94 item 1 and art.95 item 1, considering as well, texts of special laws (Law No. 554/2004, Labour Code, Law No. 263/2010 regarding the unified system of public pensions, etc) we may conclude that the District Court

judges in first instance: claims assessable in cash, amounting to over 200.000 lei, regardless of the quality of the parties, professionals or non-professionals; labour litigations and social insurance; contentious administrative matters; according to art.10 of Law No. 554/2004 „(1) The litigations on administrative deeds issued or concluded by the public authorities either local or districtual, as well as those related to taxes and fees, contributions, duane debts, as well as accessories up to 500.000 lei are solved in merit, by the fiscal administrative district courts ... ”; the claims related to intellectual property; the claims for acknowledgement and execution of the foreign legal decision execution (art.1098 NCPC), etc.

II. *Competence as legal control instance*  
1. *in appeal* - The district courts do judge the appeals stated against the decisions issued by the first instance judges. 2. *in supervisory appeal* - The courts exceptionally judge appeals and the area of decisions issued by the Courts challengeable with appeal is restricted. Therefore, the decisions issued for the requests set forth in art. 94 item 1 letter a)-i) are not subject to appeal, as well as other requests assessable in cash amounting to 500.000 lei . (art.483 par. 2 NCPC)

III. *Different competence*. In this respect, we exemplify: the competence conflicts between two courts in the same territorial area - art.135 NCPC; the requests to correct material errors from their own decisions, as well as the requests to correct, clarify and integrate their own decisions – art.442-444; the challenge in annulment and the review of their own decisions - art.505, 510 NCPC; various requests in election matters, according to Law No. 373/2004 for electing the Deputy Chamber and the Senate; various requests regarding the recordings of the Registry of Commerce – Law No. 26/1990; etc.

According to art.96 NCPC, **The Court of Appeal** has:

I. *Merit competence or first instance competence* – we are referring to an exceptional competence, limited to certain litigations: claims in matter of *administrative and fiscal contentious*. The special law in question is Law No. 554/2004, and according to art. 10 of this law: „(1) The litigations related to administrative deeds issued or concluded by the local and county public authorities, as well as those related to taxes and fees, contributions, duane debts, as well as accessories of up to 500.000 lei are solved on merit, by the fiscal-administrative district courts, and those concerning *the administrative deeds issued by the central public authorities, as well as those regarding taxes and fees, contributions, duane debts, as well as accessories of over 500.000 lei* are solved on merit by the fiscal administrative contentious departments of the *courts of appeal*, if the special organic law does not regulate differently.”

II. The competence as instance of legal control , in appeal or in supervisory appeal. We emphasize that the Courts of appeal do not have full jurisdiction and they judge the supervisory appeals only in the cases expressly indicated by the law. For instance, the Court of Appeal judges the supervisory appeal against the sentences issued by the fiscal - administrative courts, according to art.10 par.2 of Law No. 554/2004.

III. *Different competence*. In this respect, we exemplify: the conflicts of competence between two courts of the same territorial area, but belonging to circumscriptions of different district courts, the conflicts of competence between two district courts of their territorial area - art.135 NCPC; the change of venue requests based on grounds of legitimate suspicions whether the instance to which the change of venue

request is submitted is a court or a district court of their circumscription – art.142 NCPC; the requests to correct the material errors of their own decisions, as well as the requests to correct, clarify and integrate their own decisions –art.442-444; the challenge in annulment and the review regarding their own decisions – art.505, 510 NCPC; etc.

According to art.97 NCPC, *the High Court of Cassation and Justice* has:

I. *Full competence in the matter of supervisory appeal.* Art.21 of L.304/2004 sets forth: „Section I civil, Section II civil, Criminal Section and fiscal and administrative-contentious section of the High Court of Cassation and Justice judges *the supervisory appeals against the decisions issued by the appeal courts and other decisions, in the cases indicated by the law.*”

II. *Full jurisdiction for the supervisory appeal in the interest of law and the requests for the issuance of a preliminary decision for solving some right related matters.* NCPC contains special provisions in order to ensure a common practice at the level of all courts of law, throughout the supervisory appeal in the interest of the law. By the supervisory appeal, also referred to as „doctrine supervisory appeal”, the interpretation and common application of the law in Romania is ensured. (art.329 civil procedure code).

III. *Different competence.* In this respect, we exemplify: the change of venue request based on grounds of legitimate suspicion if the court to which the change of venue is requested is a court of appeal – art.142 NCPC ; conflicts of competence - art.135 NCPC; the requests to correct the material errors of their own decisions, as well as the requests to correct, clarify and integrate their own decisions –art.442-444; the challenge in annulment and the reverse of their own decisions (the ways of attack in order to reverse their own decisions) –

art.505, 510; the challenges regarding the ways of setting up and the composition of the Central Election Bureau – see L.No. 373/2004; etc.

We mention that HCCJ is divided into: 4 divisions (Section I civil, Section II civil, Criminal Division and the Fiscal and Contentious-Administrative division); The panels consist of 5 judges; United departments. *The HCCJ divisions* deal with the litigations, according to the competence they have. *A panels of 5 judges*, according to art. 24 of L.304/2004: deals with the supervisory appeals and the claims in the causes heard in first instance by the Criminal Division of the High Court of Cassation and Justice; they also hear other causes within their competence ; they act as a disciplinary court. *The united divisions* are set up according to art. 25, for: dealing with, the notices regarding the change of case law of the High Court of Cassation and Justice; at the notice to the Constitutional Court for the control of the constitutionality of law before promulgation.

### **3. Determining the competence based on the value of the claim for summons**

The value criterion is one of the most important criteria used by the legislator in determining the material competence of the courts of law. In judicial practice there have arisen extremely varied and complex situations, which gave birth to many interpretations of courts and law theorists.

In such context, NCPC dedicated an entire section (art.98-106 NCPC) to determining the competence based on the value of the introductory object of claim in order to clarify and facilitate the operation of determining the material competence in various situations.

Therefore, NCPC sets up the following *general rules*:

**I.** The competence is determined according to the *value* of the object of claim *indicated in the main introductory part* not taking into account the accessories of the main claim (interests, penalties, benefits, expenses or other similar aspects, regardless of the due date) and neither the periodical services due during the trial. Should , the value be challenged by the other party, it will be established according to the documents submitted and the explanations provided by the parties. – art.98 NCPC;

**II.** If several *main claims* have been formulated within the request, we must distinguish according to their grounds:

- a) on *facts or different causes* – the competence is established in relationship with the *value or, depending on the case, the nature or object of each single claim*. Should one of the claims be of the competence of another court, the court the notice has been submitted to shall rule the severance of the cause and shall accordingly decline the competence (in such a situation, obviously, we are not having an unitary process, but a series of actions that can be separately judged);
- b) on *a common title or one having the same cause or even different causes, but strongly connected* - the competent court is determined considering the particular claim that implies the competence of a higher court.

**III.** Should *several claimants*, through the same trial request, formulate their own claims against the same defendant or against more defendants, invoking *different legal relationships and not being in a bond that might require judging them together*, the *competent court* is determined *according to the value or, as the case might be, according to the nature or object of each of such claims*. – art.100 NCPC;

**IV.** *The legally invested court*, according to the provisions related to the competence, in consideration of the value of the claim of the object *remains competent* for judging *even though, after investiture including the ways of appeal), modifications occur* in terms of the amount of the same object value. – art.106 NCPC.

NCPC also sets up rules for the most important and frequent *particular cases* (art.101-105 NCPC):

- For the requests related to *the execution of an agreement or any other legal deed, in case of absolute invalidity, annulment, resolution or rescission of the legal deed*, in the requests related to *ascertaining the existence or the non existence of a right* –when establishing the court competence, *the object value or the part of the object of the trial* shall be considered, even though there has not been requested that the parties return to the previous situation;
- In the requests of the same nature, related to *location agreements or leasing*, as well as for those related to handing over or returning the rented good – the value of the request is calculated *based on the yearly rent or lease fee* [7].
- For the request of *partial payment of a debt* - the value of the request is calculated according to *the part claimed* by the claimant, and which is *payable*.
- In the requests related to *subsequent services*, should the duration of the right existence be undetermined, their value is calculated according to *the value of the yearly services due*.
- In *real estate matters* (requests having as object real estate rights): – the value is determined according to *the taxable value*, established according to the fiscal legislation. Should the taxable value be not established, the provisions of art. 98 are applicable

- In *inheritance matters*: the competence according to the value is determined *without deducting the duties or debts of the inheritance*.

#### 4. Conclusions

In the last 20 years, against the background of the deep changes undergone by Romania, *the Justice has been criticized for major failures* translated in violations – flagrant and frequent – of the Convention of human rights and fundamental freedom, such as: *difficult, formal, expensive procedures, lack of celerity in solving the causes, lack of predictability due to the excessive duration of the trials and inconsequence of the national jurisprudence, lack of prompt and effective execution of the executing titles, a non unitary practice due, among others to lack of coherence and instability of legislation*.

As reflected in Explanatory Memorandum of the NCPC Project, the resettlement of the material competence aims to position the justice closer to the citizen, and to a predictable justice through the unity of the solutions of jurisprudence so that the High Court of Cassation and Justice is capable to play its constitutional role in ensuring the interpretation and the unitary application of the law at a national level. In the same way, dispositions meant to ensure a unitary evaluation of the object of request have been introduced, so that establishing the competence according to value should benefit from a rational

solution and the rights and interests of the litigants to be acknowledged and clarified within an optimum and reasonable time.

Another few decades are still necessary - in our assessment - to see if the application of the new law will achieve the goals proposed and eliminate current deficiencies of providing justice!

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