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Theoretical approaches to delimiting the jurisdiction of commercial, civil and administrative courts

Теоретичні підходи до розмежування юрисдикції господарських, цивільних та адміністративних судів

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Written by:
Serhii Demchenko[90]
https://orcid.org/0000-0002-7095-2352
Anatolii Kostruba[91]
https://orcid.org/0000-0001-9542-0929
Bohdan Melekh[92]
https://orcid.org/0000-0002-3125-0163
Inna Bolokan[93]
https://orcid.org/0000-0003-1868-7552
Olga Melnychuk[94]
https://orcid.org/0000-0002-3557-5934

Abstract

The judiciary is called upon to ensure justice, ensuring human rights and freedoms, and balancing private and public interests. In this aspect, a significant role is played by the correct choice of the court that is authorized to consider a case. This problem is acute in the separation of jurisdiction of commercial, civil and administrative proceedings. In view of this, it is vital to study theoretical approaches to delimiting the jurisdiction of commercial, civil and administrative courts. The aim of the work is to analyze theoretical approaches and problematic issues regarding the delimitation of jurisdiction of commercial, civil and administrative courts. The methodology of the study included such methods as comparison, analogy, generalization, systemic, structural-functional method, method of analysis and synthesis. The study of theoretical approaches to the delimitation of jurisdiction of commercial, civil and administrative courts allowed to analyze the characteristics of each of the jurisdictions. It is also remarked that determining the jurisdiction of the dispute remains a rather difficult problem for the practice of law enforcement, due not only to imperfect legislation, but also to existing dogmas in science and practice.

Анотація

Судові органи покликані забезпечувати справедливість, забезпечуючи права і свободи людини, дотримуючи баланс приватних та публічних інтересів. В даному аспекті значну роль відіграє правильний вибір суду, що уповноважений розглядати ту чи іншу справу. Гостро ця проблема постає при розмежуванні юрисдикції господарського, цивільного та адміністративного судочинства. Зважаючи на це, важливо проаналізувати теоретичні підходи до розмежування юрисдикції господарських, цивільних та адміністративних судів. Метою роботи є аналіз теоретичних підходів та проблемних питань щодо розмежування юрисдикції господарських, цивільних та адміністративних судів. Методологія дослідження включала такі методи, як порівняння, аналогія, узагальнення, системний, структурно-функціональний метод, метод аналізу та синтезу. Дослідження теоретичних підходів до розмежування юрисдикції господарських, цивільних та адміністративних судів дозволило проаналізувати кожну з юрисдикцій. Також зауважено, що визначення юрисдикції спору залишається доволі складною проблемою для

[90] Doctor of Legal Science, Honored Lawyer of Ukraine, Assistant to the President of the National Academy of Sciences of Ukraine.
[91] Doctor of Legal Science, Professor of the Department of Civil Law, Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine.
[92] Ph.D. in Public Administration, Associate Professor of the Department of Law, Lviv National University of Veterinary Medicine and Biotechnology named after S.Z. Gzhytskyj, Ukraine.
[93] Doctor of Legal Science, Professor of Civil Law Department of Zaporizhzhia National University, Ukraine.
[94] Doctor of Legal Science, Professor of Department of General Theory of Law and State, National University "Odesa Law Academy", Ukraine.

Also, the problem arises in determining the criteria for delimitation of jurisdiction.

Keywords: jurisdiction, civil jurisdiction, administrative jurisdiction, economic jurisdiction, court.

практики правозастосування, що зумовлено не лише недосконалим законодавством, а й наявними в науці та практиці догмами. Також проблематика винкає при визначенні критеріїв розмежування юрисдикції.

Ключові слова: юрисдикція, цивільна юрисдикція, адміністративна юрисдикція, господарська юрисдикція, компетенція, підвідомчість, суд.

Introduction

A sugnificant characteristic of a democratic state that guarantees the rule of law is the functioning at the national level of a judicial system that ensures the administration of justice by a court established in accordance with the law.

Given the obligations imposed on the state, we can distinguish two conditions for compliance with the criterion of "rule of law" and "statutory court": organizational (organization of the judiciary should be governed by law) and jurisdictional (the court must act in the manner and in accordance with the powers provided by law, within its competence). In such interaction, the jurisdictional component is closely related to such a procedural institution as the jurisdiction of the courts to hear cases.

However, the problem for both Ukrainian and foreign litigation is the delimitation of court jurisdiction.

Jurisdiction is understood to mean (Latin – jurisdictio, from jus (juris) – law, dico – proclaim) the competence of judicial bodies to consider civil, criminal and other cases; the range of cases that the court has the right to consider and decide. Judicial jurisdiction usually defines the competence of specially authorized judicial authorities to administer justice in the form of a statutory type of proceedings and in relation to a certain range of legal relations. In the objective sense, as a set of rules, judicial jurisdiction is an institution of law designed to differentiate the competence of different parts of the judicial system (general, commercial and administrative courts) and different types of proceedings (Bobkova, & Novoshitska, 2017).

Jurisdiction is determined depending on the type and nature of the case under consideration, its territorial affiliation, and the persons involved in the case.

Not only plaintiffs but also courts are often mistaken in determining their jurisdiction to hear and decide cases. Such an error may result in a violation of a person's right to a speedy and fair trial. Moreover, it is not uncommon for the reason for revoking a court decision that has entered into force to be a violation of the rules of jurisdiction. The parties in the case suffer from this, first of all, because they are forced to start all over again. This is inconsistent with the constitutional principles of the judiciary, reduces the efficiency of justice, and undermines its authority in the eyes of the people. The court as a holder of public power is aimed at ensuring justice, upholding the rights and freedoms of man and citizen, and adhering to the balance of private and public interests.

The problem of defining the concept and content of the category "jurisdiction" in the theory of Ukrainian law became relevant against the background of the scientific discussion on the content and structure of civil, economic, and administrative processes. Analysis of the legal literature has shown that in modern conditions, the problems of jurisdiction remain insufficiently developed. Thus, there is no single approach of legal scholars to the definition and delimitation of jurisdiction, which is quite simply identified with the jurisdiction that seems controversial. From a practical point of view, the study of jurisdiction is due to the ambiguous resolution of the question of whether a dispute or other legal issue belongs to a particular court, which ultimately leads to violations. The above determines the relevance of this study.

Theoretical Framework or Literature Review

Researchers have used the work of theoretical approaches to delimiting the jurisdiction of commercial, civil, and administrative courts. The peculiarities of the separation of civil, economic, and administrative jurisdiction were analyzed by: Sidey (2018), Kataeva (2015), Udod, and Pirogov (2017), Ryzhenko, and Korolyova (2020), Bobkova, and Novoshitska (2017), Bryntsev (2007), Reznikov (2014), Obrizko (2011), Kravchuk (2012), Negoda (2017), Sambir (2012), Malolitneva (2019), Kolomoiets,

and Lyutikov (2009), Zhushman (2016), Golubeva (2022), Yurynets (2012), Mykolenko (2018), Karayanide (2016), and Michaels (2006).

The issue of delimitation of administrative jurisdiction with other types of jurisdiction in the field of jurisdiction was the subject of a study by Sidey (2018). The author revealed the problematic aspects of the separation of administrative jurisdiction with other types of jurisdiction in the field of judicial competence.

Besides, Kataeva (2015) considered theoretical and practical problems of distinguishing between administrative jurisdiction and civil jurisdiction. The author notes that the subjective criterion of delimitation of jurisdictions should be taken into account only as a separate manifestation of the sectoral criterion, namely the nature of the disputed legal relationship.

Udod and Pirogov (2017) studied the issue of determining the criteria of the jurisdiction of administrative courts. The authors note that the problem of determining the jurisdiction of land disputes with the participation of public authorities and local governments is caused primarily by the fact that the legislative level does not establish clear criteria for classifying the dispute under the jurisdiction of the administrative court.

Moreover, Ryzhenko and Korolyova (2020) considered general provisions on civil jurisdiction in their work. Examining the above, the authors came to the following conclusions: instance jurisdiction determines the scope of jurisdiction of each court of Ukraine, and territorial (jurisdiction) determines the limits of jurisdiction between courts within one court to hear cases in the first instance; territorial jurisdiction is defined in the civil procedural legislation of Ukraine as jurisdiction; the difficulty of establishing the jurisdiction of the court at this stage of updating the judicial system of Ukraine is due to significant changes in procedural legislation; the process of harmonization of procedural legislation has contributed to the consolidation of a single conceptual apparatus, which has so far been used mostly at the theoretical level; at the legislative level, the competence of the courts of Ukraine is determined exclusively through the jurisdiction, which is divided into substantive and subjective, instance, territorial.

Bobkova and Novoshytska (2017) investigated the jurisdiction of commercial courts. Researchers point out that in practice, jurisdictional issues in these disputes have always been and remain problematic, which often leads to the adoption of courts of different jurisdictions in their proceedings and the adoption of different decisions in disputes that are similar, or to the refusal to accept individual claims for consideration. In addition, the problem that remains relevant is the separation of economic and administrative jurisdiction over land disputes, when the parties to the dispute are the business entity and the subject of power.

Also, theoretical and practical features of the separation of the jurisdiction of administrative and commercial courts have become the subject of research by Bryntsev (2007).

Problems of the theory and practice of jurisdiction of commercial courts of Ukraine became the subject of Reznikov's (2014) research. The author agrees with other scholars who believe that it is necessary not to narrow, but to expand the scope of commercial courts. In modern conditions, this is due to many factors, such as the complexity of the economic life of the country, which is based on the diversity of organizational and legal forms of management and the number of economic entities of different forms of ownership.

Obrizko (2011) regarded the principle of specialization in the judicial system and the problem of the jurisdiction of administrative courts. According to the author, the current legislation of Ukraine on this range contains numerous contradictions and lacks a single unified approach to the method of consolidating the jurisdiction of courts of different jurisdictions, which causes an "intersection" of jurisdiction and inconsistency of legislation compared with in constructing the optimal model of competence of the system of administrative courts of Ukraine, subjectivity in legislative approaches to solving this problem, as evidenced by the practice of consideration of relevant cases by the Constitutional Court of Ukraine over the past few years. In Ukraine, according to the author, no institution would take care of the problem of resolving conflicts in different jurisdictions and, accordingly, would resolve such conflicts.

Also, Kravchuk (2012) investigated theoretical and practical aspects of the delimitation of the jurisdiction of courts of Ukraine. The author summed up that the procedural legislation of Ukraine, which determines the jurisdiction of specialized courts, is inconsistent with each other and does not contain a system of clear criteria for

its delimitation. This system should be based on the consistent application of subject and subject criteria. According to the subject criterion, jurisdiction is divided into constitutional, civil (including economic and administrative), and criminal. According to the subjective criterion, civil, commercial, and administrative jurisdiction are distinguished. In addition, there is a significant part of the legal relationship that arises from public law and criminal law.

Viktorchuk (2016) regarded theoretical approaches to delimiting the jurisdiction of administrative and commercial courts. Knyazev (2020) revealed the practical issues of delimitation of judicial jurisdiction and the criteria for such delimitation. The researcher emphasizes that in theory there is a key rule according to which most cases are considered in civil jurisdiction and there is an approach to determining jurisdiction by subject, subject, and direct reference in law.

What is more, Romanyuk and Maistrenko (2017) studied the problems of delimitation of administrative and civil jurisdiction on the example of land disputes. The authors conclude that in disputes over such legal relations, the main requirement is not necessarily the requirement to eliminate any violation that has occurred. And the one that is directly aimed at protecting the right that exists as of the time of filing a lawsuit (for example, extortion of land from someone else's illegal possession of an individual). Other requirements for decisions, actions of subjects of power, on the basis of which there was a violation of law, on the basis of which it arose in another entity (for example, the requirement to cancel the decision of public authorities to transfer land to private ownership) are additional and should be considered together with the main in civil proceedings, despite the fact that the plaintiff connects the violation of his right with the decision of a public authority, and the additional requirement depends on the decision of the main.

Practical aspects of resolving jurisdictional disputes were considered by Sereda (2020). The lawyer draws attention to the fact that taking into account the principles of the Supreme Court in delimiting jurisdiction, as well as systematic monitoring of relevant practice of the Supreme Court is the key to effective and timely protection of the rights and legitimate interests of the plaintiff.

The delimitation of judicial jurisdictions in cases of protection of the rights and legitimate interests of the child was considered by Negoda (2017).

According to Sambir (2012), courts should not refuse to initiate proceedings or close proceedings since the case is not subject to thinking in a particular type of proceedings, and with the consent of the plaintiff immediately transfer the case to a competent court.

Controversial issues regarding the separation of economic and administrative jurisdictions in public procurement cases were analyzed by Malolitneva (2019). Kolomoiets and Lyutikov (2009) studied the preconditions for the emergence of inconsistencies in the separation of administrative and economic jurisdiction, noting that discussions on the outlined problem continue to unfold both at the level of doctrinal research, their results, and in the rule-making process, which finds external manifestation in the somewhat contradictory provisions of draft regulations. Also, according to the authors, it is seen that the separation of criteria should be accompanied by normative consolidation of the principles of separation of administrative and economic jurisdiction.

The issue of delimitation of court jurisdiction to appeal the decisions of state registrars was considered by Zhushman (2016). Moreover, Golubeva (2022) analyzed the issue of jurisdiction in commercial litigation. Besides, Yurynets (2012) studied the problems of distinguishing between public and private components of litigation in the field of protection of the cultural rights of citizens. Approaches to the definition of criminal jurisdiction were considered by Mykolenko (2018). Additionally, Karayanide (2016) analyzed the features of judicial jurisdiction in civil and commercial matters in Russia. Ralf Michaels (2006), in his work, studied the views of Americans and Europeans on jurisdiction.

Although the issue of delimitation of the jurisdiction in commercial, civil, and administrative matters has been addressed by many scholars and lawyers, judges, theoretical approaches to such a distinction are still poorly understood, although they play an essential role in scientific doctrine. Therefore, there is a need to investigate this issue more closely.

Methodology

The following methods were utilized in the study of theoretical approaches to the delimitation of

jurisdiction: method of comparison, method of abstraction, method of analogy, method of generalization, the system method, structural-functional method, method of analysis, and synthesis.

Using the method of comparison, the criteria for assigning cases to a particular jurisdiction and the specifics of approaches to the separation of administrative, civil, and commercial jurisdiction were studied. The use of this method for this study is important because it allows us to understand the significant differences between different types of jurisdiction.

Thanks to the method of analogy, the relationship of equivalence between the jurisdictions under consideration was established on some grounds. A system of criteria for distinguishing between such types of proceedings was used to study jurisdiction in the light of the features of civil, commercial and administrative proceedings.

Signs, properties of a particular class of objects of study were recorded using the method of generalization, and the transition was made from single to general, from less general to more general.

Systematic method made it possible to analyze the judicial system comprehensively, taking into account the division of competencies and the peculiarities of determining jurisdiction. This method is a direction of research methodology, which consists in the study of the object as a whole set of elements in the set of relations and connections between them, ie the consideration of the object as a model of the system. The basis of this method is the consideration of objects, the identification of various links and information in a single picture of ideas about phenomena, objects, which helped to comprehensively explore theoretical approaches to the delimitation of competence.

Through the help of the structural-functional method, the process of determining jurisdiction was analyzed. In general, this method is a systematic study of social phenomena and processes as a structurally dismembered integrity, where each element of the structure has a specific functional purpose. Thus, the consideration of each type of proceedings separately, allowed to understand the role of each element of the structure in ensuring the rule of law.

The joint use of methods of analysis and synthesis has made it possible to understand the peculiarities of the division of jurisdiction of commercial, civil and administrative courts. Analysis as a method by which one can decompose a whole complex phenomenon into components, simpler elementary parts and highlight individual aspects, properties, connections, allowed to identify internal trends and opportunities for delimitation of jurisdiction. Analytical method – a tool for careful study of the features and specifics of intra-system interaction, and it certainly contains the results of abstraction, simplification, formalization. Synthesis, on the other hand, has combined components of such a complex phenomenon as the judiciary and jurisdiction.

Results and Discussion

Approaches to delimiting the jurisdiction of commercial, civil and administrative courts differ from country to country. For example, the differences between US and European jurisdictions are a puzzle for scholars.

Researchers have found European equivalents to the American practice of granting jurisdiction based on doing business and American equivalents to non-traditional European bases of jurisdiction. However, Europeans rarely use these American theories, due to the following.

1) Different approaches. Comparatives from the United States often ignore the importance of practical aspects of law enforcement, rather than focusing on theory.
2) Impossibility of theoretical explanation of current European legislation (Ralf Michaels, 2006).

Therefore, it can be argued that foreign approaches to the delimitation of jurisdictions are based on the legal traditions and practices of the respective state.

With this in mind, let us consider the scientific positions on the delimitation of jurisdiction of economic, civil and administrative matters in Ukraine.

As already mentioned, judicial jurisdiction is the competence of specially authorized bodies of judicial power to administer justice in the form of a statutory type of proceedings in respect of a certain range of legal relations.

The following criteria for determining jurisdiction are distinguished in the literature (Table 1):

Table 1.
The criteria for determining jurisdiction. Data provided by Kravchuk (2012).

Criteria for determining jurisdiction	
The nature of the relationship	public law, civil, land, family affairs, etc.
The subject of the appeal	natural person, business entity, subject of power
The existence of a dispute over the right	available or absent

Knyazev (2020) assessed the priority of approaches to delimitation of jurisdiction. In particular, he noted that in the practice of the Supreme Court, the main approach in resolving jurisdiction is the matter of the dispute, and only then the subject is determined. The central strategy to determining jurisdiction is a direct indication in the law. That is, if the law specifies within which jurisdiction the dispute should be considered, it is applied first, and only then - all other criteria. The next approach is to determine the type of relationship: public or private law relations. Simultaneously, there are often cases when it is difficult to determine the distribution, because the issues are complex. And, of course, there are requirements that are not subject to litigation.

Sereda (2020) emphasizes that a literal interpretation of the relevant articles of the procedural codes cannot always provide a quick, clear and unambiguous answer to the question of which jurisdiction the dispute should be heard in. In addition, the subject of claims may be complex, for example:

- relate to property rights that depend on the decision of the subject of power;
- concern the labor rights of an employee who is in public service or is a director of a company in respect of which the members of the company have decided to dismiss, and;
- to concern the recognition of illegal procedures for the purchase of goods by the subject of power, when such procurement is carried out not to perform the functions of the state, but to ensure the performance of economic functions of the entity, etc.

The author notes that in determining the substantive jurisdiction of cases, courts must assess the following criteria:

- the essence of the right and / or interest for the protection of which the person applied; - the content of the stated requirements;
- the nature of the disputed legal relationship, and;
- the content and legal nature of the circumstances of the case.

It is worth noting that in the legal literature there are positions on the definition of each type of jurisdiction. For example, there are three main trends in the understanding of administrative justice, which is considered as:

1) a special procedure for resolving administrative and legal disputes by courts and authorized state bodies;
2) an independent branch of justice, the purpose of which is to resolve disputes by courts between citizens and governing bodies (administration) or between the governing bodies themselves, i.e. administrative proceedings, and;
3) not only a special type of proceedings, but also a system of specialized courts or special judicial units that carry out administrative proceedings.

These approaches to the interpretation of the term "administrative justice" meet three criteria used by administrative scholars to reveal the essence of this legal institution:

1) material, related to the nature of the dispute (such a criterion allows to identify the public law nature of disputes in the field of public administration and separate them from private law relations governed by civil law);
2) organizational, due to the presence of bodies that review disputes;
3) formal, which corresponds to a special procedure for dispute resolution (Sidey, 2018).

There are also questions about the definition of economic jurisdiction. In particular, there are problems with the separation of economic and administrative jurisdiction over land disputes, when the parties to the dispute are a business entity and a power entity. other disputes arising from land relations of a private law nature (Golubeva, 2022).

The issue of delimitation of jurisdictions is relevant in the science of administrative law. The main problem with the separation of economic, civil and administrative jurisdiction is the weak development of theoretical categories, such as

"administrative-legal relations" and "public-law relations", which, in turn, is due to neglect of the theory of private and public law.

Conclusions

There are three approaches to the delimitation of jurisdiction: the nature of the relationship; the subject of the appeal; the existence of a dispute over the right.

The subject of the dispute is the most essential in determining the jurisdiction and only after that the subject is determined. The main approach to determining jurisdiction is a direct indication in the law.

In determining and delimiting the jurisdiction of cases, it is necessary to assess: the essence of the right and / or interest for the protection of which the person sought; the content of the stated requirements; the nature of the disputed legal relationship; the content and legal nature of the circumstances of the case.

With regard to further research, it is required to study the problematic issues of judicial practice regarding the delimitation of jurisdiction of commercial, civil and administrative courts and ways to resolve them taking into account the international achievements.

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