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„JURISDICTION IN CIVIL COURTS”

- Summary -

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CONTENT

PhD THESIS ABSTRACT

GENERAL CONSIDERATIONS.

The new Civil Procedure Code, although it is not significantly different from the old regulation, has brought significant and unique changes both in terms of some traditional institutions of civil procedure, and, mainly, with regard to the attribution and territorial jurisdiction of the courts of law.

However, the new Civil Procedure Code, perfecting the monistic conception enshrined by the new Civil Code, by unifying civil law with the provisions of commercial law, unifies the statutory provisions governing the laws of the subject-matter jurisdiction of the courts of law, thus, eliminating the differential regulation rules of jurisdiction in civil and commercial matters.

In the light of the new regulations introduced by the new Civil Procedure Code, the paper examines the jurisdiction of the courts of law in civil matters, an analysis also resorting to the old provisions, in order to highlight both the similarities and especially the differences from the regulations imposed by the former Civil Procedure Code.

The paper is structured into chapters and sections, following, generally, the structure of the new Civil Procedure Code in matters of jurisdiction of the courts of law.

The subject-matter competence of the courts of law is analyzed in accordance with the new Civil Procedure Code in two chapters, namely, subject-matter jurisdiction of the courts of law by matter and value and the subject-matter jurisdiction of the courts of law by the value of the writ of summons.

CHAPTER I

GENERAL CONSIDERATIONS ON THE JURISDICTION OF THE COURTS OF LAW

Section 1. OVERVIEW ON JUSTICE**.**

1.1. The Concept of Jurisdiction and Administration of Justice in Romania.

The new Civil Procedure Code, by art. 1, stating the object and purpose of this legislation, highlights the fact that, in the administration of justice, courts that meet a general interest service ensure respecting the rule of law, fundamental freedoms, rights and interests of individuals and legal entities, enforcement of the law and guarantee its supremacy.

From art. 1 of the new Civil Procedure Code, it can be inferred that, the new legislation expressly enshrines the new regulatory function of the jurisdiction exerted by the courts as a public service.

The jurisdiction, as a function or a judicial service, is performed by specialized bodies in modern states. In this respect, provisions of Art. 126 paragraph (1) of the Constitution of Romania

states that “justice is administered by the High Court of Cassation and Justice and other courts established by law". But, at the same time, although the Constitution does not state it explicitly, the activity of jurisdiction may be made by other bodies than the courts. In this regard can be invoked Art. 126 paragraph (5) of the Constitution of Romania according to which, “by organic law there may be established courts specialized in certain matters, with the possibility of participation, where appropriate, of people outside the magistracy".

Also, from the content of the constitutional provisions, which evokes the three classic powers in the state, it results that the Constitutional Court is not part of the judiciary power, it is an autonomous public authority located outside the judiciary, the Public Ministry and the Superior Council of Magistracy.

1.2. The Monistic Character Enshrined in the New Civil Procedure Code.

The new Civil Procedure Code, perfecting the monistic conception enshrined by the new Civil Code, by unifying civil law with the provisions of commercial law, unifies, in its turn, the legal rules governing the subject-matter jurisdiction of the courts, thus eliminating the differential regulation rules of jurisdiction in civil and commercial matters. Unification of laws related to subject-matter jurisdiction of the courts in civil and commercial matters was initiated after the entry into force of Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, where the provisions of the old Code of Civil Procedure governing the subject-matter jurisdiction of the courts in commercial matters were repealed and, at the same time, the commercial sections existing at the time of the entry into force of the new Civil Code in the courts and courts of appeal in civil sections, or where applicable, the commercial sections will be merged with the existing civil divisions, by a decision of the Superior Council of Magistracy, at the proposal of the leading board of the court.

Also, in terms of completion of the monistic conception enshrined by the new Civil Code, art. 1 which determines the object and purpose of the Civil Procedure Code, states that, “the Civil Procedure Code establishes rules of jurisdiction and trial of civil cases, and the execution of court decisions and other writs of execution to the administration of justice in civil matters, the courts performing a service of general interest by ensuring compliance with the rule of law, fundamental freedoms, rights and interests of individuals and legal entities, law enforcement and ensuring its supremacy."

Section 2. DEFINITION OF JURISDICTION

In a synthetic form, which nowadays has become classic, civil jurisdiction has been defined as *the ability recognized by the law to a court or other judicial body or the judicial activity of judging a civil litigation.*

The concept of jurisdiction is widely used in legal language, especially in civil procedural law in the sense that, through jurisdiction we understand the ability of a court, of a State authority or other bodies than the courts, to settle certain claims or litigations. In a similar manner, jurisdiction is defined as a set of powers and duties conferred or imposed on an agent to enable it fulfill its function.

On the other hand, some principles of regulation of jurisdiction have been identified, i.e.: jurisdiction of courts is the same for all; jurisdiction of courts is lawful; the court cannot delegate justice; court shall exert the attributions of judgment only on its territorial jurisdiction; the jurisdiction of the court is subjectified by civil action; courts are endowed with fullness of jurisdiction; the judge of the action is the judge of the exception; the accessory follows the fate of principle; jurisdiction is responsibility of the court in the jurisdiction of the defendant's domicile and the principle according to which conflicts of jurisdiction are resolved within the judiciary system.

Finally, the term "civil jurisdiction" is generic, it reflects the fact that the civil courts solve, by rule, litigations arising from private legal relationships in which individuals are on legal footing. Obviously, most litigations are of civil law. However, both the Code of Civil Procedure, as well as numerous special laws contain provisions for settlement of litigations by the civil courts which do not have the attribute of private law.

Section 3. FORMS AND MODALITIES OF JURISDICTION

3.1. Preliminary Considerations.

From a functional point of view, each court category has specific jurisdictional attributions, and *from a procedural point of view*, in relation to the nature and object of the proceedings or, where applicable, also of the value of litigation interest, each court is entitled to settle certain causes. Due to this dual aspect, the subject-matter competence is functional (*rationae oficii*) and procedural.

The subject-matter jurisdiction, as public policy, is governed by legally binding rules. Consequently, the subject-matter jurisdiction is an absolute power, with all the legal consequences of this qualification.

Combining the two criteria the result is that, taking into account the economy of the provisions of the new Code of Procedure, as well as the old Code of Civil Procedure, regarding the forms and the modalities of jurisdiction of courts, we can distinguish the following: the jurisdiction of “attribution" or subject-matter" that can be examined in terms of jurisdiction of “functional" attribution (ratione oficii) and jurisdiction of “procedural" attribution (ratione materiae).

But, in addition to subject-matter jurisdiction of the courts analyzed in terms of functional

and procedural law, the jurisdiction of courts has to be analyzed from a territorial point of view, through which, after establishing the subject-matter jurisdiction to resolve litigation, the powers of courts of the same grade are delimited.

Therefore, the forms of jurisdiction of courts include subject-matter jurisdiction from a functional and procedural point of view and the territorial jurisdiction, which, in its turn, can be general, alternative, optional, conventional and exclusive.

3.2. Functional Subject-Matter Jurisdiction.

As it has been mentioned in the contents of the thesis, the functional subject-matter jurisdiction (rationae oficii) establishes the functions and role of each category of the courts of law, which are part of the Romanian judicial system (courts of law, tribunals, courts of appeal and the High Court of Cassation and Justice as well as common law courts and special courts of law).

The functional subject-matter jurisdiction determines, *first of all*, the hierarchy of courts of law for the purposes of delimitation of the bodies performing jurisdiction from those exercising ordinary or extraordinary judiciary control. *Secondly*, through the rules of functional subject-matter jurisdicition, it can be determined which courts of law can accumulate the settlement on the merits with the appellate or recourse trial.

Functional subject-matter jurisdiction of the courts of law was governed by the old Civil Procedure Code, and then it was governed by the new Civil Procedure Code and some special laws, some in force after the entry into force of the new Civil Procedure Code. Both the old Civil Procedure Code and the new Civil Procedure Code establish the role and function of the courts of law, tribunals, courts of appeal and the High Court of Cassation and Justice, regarding the determination of their judicial attributions.

3.3. Procedural Subject-Matter Jurisdiction.

Procedural subject-matter jurisdiction determines, depending on the subject, the nature and value of the litigation, the civil cases which can be resolved only by certain categories of court of law.

The new Civil Procedure Code, as compared to the old regulation, establishes the subject-matter jurisdiction of the courts of law, by two distinct sections, namely Section 1 entitled, “jurisdiction as matter and value "and Section 2 entitled, “determining competence by the value of the subject of the writ of summons" thus analysing such doctrinal disputes in the incidence period of the former Civil Procedure Code.

When litigation of the same nature and the same object are distributed within the jurisdiction of the courts of varying degrees, the criterion value is put into practice.

The procedural subject-matter jurisdiction is governed by the Civil Procedure Code and some regulations of special laws.

3.4. Territorial Jurisdiction of the Courts of Law.

As we have mentioned, territorial jurisdiction of the courts of law is a way of delimiting the powers of the courts of law of the same grade, after establishing their subject-matter jurisdiction. Territorial jurisdiction can appear in many forms: jurisdiction of common law, applicable mainly to all requests, unless the law provides otherwise; “alternative" jurisdiction, which gives the plaintiff a choice between two or more instances both competent to resolve that litigation (Article 113 of the Civil Procedure Code); “exclusive” or “exceptional” jurisdiction designating the exclusive, special ability of a particular court of law to solve a litigation; “conventional" or “contractual" jurisdiction, designating the ability of a court to settle a claim following the choice of that particular court of law by the will of the parties and as the law allowed them to do so - art. 126, paragraph 1 of the Civil Procedure Code.

The new Civil Procedure Code maintains rules for determining the general territorial jurisdiction, a rule established by the old regulation, namely, the principle of “forum rei", meaning the court of the home or premises of the defendant, but the new regulation establishes new elements on exceptions to the general rule established by art. 107, exceptions that will be considered in detail in the chapter on the territorial jurisdiction of the courts of law.

Section 4. ANALYSIS OF LEGAL RULES OF JURISDICTION

4.1. General Considerations Regarding the Analysis of Legal Rules of Jurisdiction.

The analysis of legal norms of jurisdiction was made based on the provisions of art. 126, paragraph (2) of the republished Constitution establishing unequivocally that, “the jurisdiction of the courts of law and the judicial procedure are provided only by law."

This constitutional text should be corroborated also by the art. 73, paragraph (3) letter l) of the republished Constitution, stating that the organization and functioning of courts of law, including the jurisdiction and procedure for trial of courts of law, are regulated only by organic law.

Based on the above mentioned constitutional norms, the analysis of legal rules concerning the jurisdiction of the courts of law has been realised both in relation to the constitutional rules and by reference to the principles of regulation of jurisdiction, resulted from a systematic understanding of the rules of civil procedure, and in relation to the nature of the laws governing through legal jurisdiction of the courts of law and the procedure of courts, distinguishing between civil procedural laws of general character and the special laws, as well as between imperative and disposal laws.

Also, in order to analyze legal rules of jurisdiction, it is necessary to realise an analysis of the nature of legal norms stipulated by the laws of civil procedure regarding the powers of the courts of law in relation to which it will be possible to establish the sanctions for non-compliance with the law on the competence and the people who may invoke the lack of jurisdiction of the

courts of law.

4.2. General Provisions on the Interpretation of Legal Rules of Jurisdiction Established by the New Civil Procedure Code.

From the outset, it should be mentioned that the provisions of the new Civil Procedure Code, as stated by art. 2 of the Code, constitute the common law procedure in civil matters, being applied to other matters governed by special laws insofar as they do not contain provisions contrary to the Code and being supplemented with provisions of the new Civil Procedure Code, to the extent that these special laws do not contain provisions established by the new Civil Procedure Code. This statutory provision establishes, in accordance with the general principles of law, the criterion of distinction between general laws of civil procedure and special laws in the matter.

Thus, civil procedural rules of jurisdiction established by the new Civil Procedure Code, as well as in the period of occurrence of the former Civil Procedure Code shall apply to any matters, except those conferred by organic laws specific to courts or which established a new legal proceeding.

4.3. Analysis of the Legal Rules of Jurisdiction in Relation to the Nature of Legal Norms of Competence.

In relation to the nature of the regulations which establish rules regarding the duties of courts of law, it distinguishes between absolute jurisdiction, enshrined by imperative rules from which the parties cannot derogate, and relative jurisdiction that is based on regulations that do not prescribe rules binding on the parties or the court.

Based on the distinction between absolute jurisdiction and relative jurisdiction in relation to the nature of legal rules of jurisdiction, disregard of imperative legal norms of jurisdiction will attract absolute lack of jurisdiction, such lack of jurisdiction is regarded as public and breach of disposal legal norms will attract legal relative lack of jurisdiction of the court, in this case it is a private lack of jurisdiction in the sense of the new Civil Procedure Code.

4.4. Analysis of the Legal Rules of Jurisdiction in Relation to Proceedings of Civil Procedure Laws in Time.

In the analysis of the legal rules of jurisdiction in relation to proceedings for civil procedural laws in time, we start from the observation that any regulatory act produces legal effect within the interval between the date of entry into force until repealed, thus, the procedural law, like any regulatory act, has no retroactive power, civil law principle of non-retroactivity, except the penal law, as it is expressly enshrined in Art. 15, paragraph (2) of the Constitution republished. It enshrines the principle of law known as tempus regit actum, according to which, the legality of any act is analyzed in relation to constitutional and legal norms in force at the time of publishing them.

The new code of procedure regulates through Chapter III of the preliminary Title the

enforcement of civil procedure in time and space, i.e. from a territorial point of view.

With regard to the legal rules of jurisdiction in relation to the application of the law of civil procedure in time, the new Code of Civil Procedure, as well as Law no. 76/2012 for the implementation of the new Code of Civil Procedure establishes rules of procedure in case of: the law applicable to the new principles through which the immediate application of the new law is enshrined as well as the principle tempus actum [art. 24 of the Code of Civil Procedure, art. 3, par. (1) and art. 4 of Law no. 76/2012]; the law applicable to pending proceedings, which enshrines the principle of law tempus regit actum [art. 25 of the Civil Procedure Code and art. 3. paragraph (2) of Law no. 76/2012], the law applicable to evidence which establishes a derogation from the principle of immediate application of the new law, in respect of legal evidence, as well as the applicability of the principle of immediate applicability of the new law regarding the administration of evidence (art. 26), the law applicable to decisions that also enshrines the principle of tempus regit actum (art. 27).

From the principle established by art. 25 of the new Code of Civil Procedure, the transitional and final provisions established by art. XXIII of Law no. 2/2013 to relieve the courts of law, as well as the preparation for the implementation of Law no. 134/2010 on the Code of Civil Procedure establishes a derogation from the above mentioned case in the first instance trials, as well as in the ways of redress in administrative and fiscal contentious, on trial, at the date of the change, according to this law, the legal jurisdiction of the courts invested, these trials will be judged by competent courts according to Law no. 2/2013 and not to the law under which these trials have begun, if the invested court is abolished, the files will be sent to the competent court according to the new law office.

A special provision is established by art. 6 of Law no. 76/2012 on the applicable law regarding the procedural limits prescribed by special laws at the date of entry into force of the new Code of Civil Procedure, stating that the periods of time prescribed by special laws, pending at the entry into force of the Code of Civil Procedure, remain subject to the law in force at the time they started to run.

4.5. Analysis of the Legal Rules of Jurisdiction in Relation to Civil Procedure Law Actions in Space.

Enforcement of procedure law in space is governed by the territoriality principle expressly enshrined by the new Civil Procedure Code by art. 28, and art. 7 par. 1 of the new Civil Code and, in case of procedural relations with foreign element, the determination of the law of procedure is made according to the rules contained in the seventh book.

From the principle stated by art. 28 of the new Civil Procedure Code, the new Code of Civil Procedure in matters of private international law relations, establishes a few exceptions regarding:

the ability of parties to proceedings governed by its national law, if stateless, its legal standing is governed by Romanian law (art. 1082); the procedural quality and the qualification of the claim, which shall be determined by the law governing the fund of legal relationship before the Court (art. 189); in matters of evidence, the provisions of art. 190 par. (2) state that, the taking of evidence in international civil proceedings is governed by the Romanian law, which is an application of the principle stated in art. 1087, administration of evidence as a matter of procedure.

Regarding the consequences and effects of the principle of territoriality, one of the consequences of the principle of territoriality is that, although the Romanian court may apply a significantly foreign law, it cannot apply the foreign procedural law and is, therefore, excluded the application of foreign procedural law within the Romanian state.

Also, the action of procedural laws in time, in matters of private international law relations, in accordance with the provisions introduced by the new Code of Civil Procedure, produces consequences as automatic recognition and enforcement of foreign judgments in Romania, under art. 1094 and art. 1.102 of the new Code of Civil Procedure.

4.6. Analysis of the Legal Rules of Jurisdiction in Relation to Civil Procedure Law Action on Individuals.

This issue is analyzed in relation to the constitutional principle of equality of all citizens before the law and public authorities, without any privilege or discrimination, as provided by art. 16, par. (1) of the Constitution.

The new Code of Procedure, by art. 1083, par. (2) makes some applications of the principle of reciprocity regarding the condition of the foreigner, whereby a particular right is granted to a foreigner only if the foreign state gives the citizens the same right (same treatment).

Also, based on reciprocity arrangements, according to art. 1084 of the Code of Civil Procedure, the plaintiff foreign citizen or legal person of foreign nationality cannot be held to apply to any bond or other security required for the reason that he is foreign or has no place of residence in Romania.

If stateless, the provisions of article 1082-1085 are to be properly applied, but without reciprocity being required.

CHAPTER II.

GENERAL JURISDICTION OF THE COURTS OF LAW

Section 1. JURISDICTION OF THE COURTS IN MATTERS OF CONTROL OF CONSTITUTIONALITY

With regard to constitutionality control, the only constitutional authority to exert constitutional jurisdiction as a special jurisdiction, which is particularised as compared to other jurisdictions, is the Constitutional Court.

Therefore, the Constitution of Romania, following the model established in France, by Title V, establishes for this authority a distinct position and independent of the judiciary. In this context, through art. 142-147 of the Constitution republished, the general principles regarding the organization and functioning of the Constitutional Court are regulated, adopted on grounds of constitutional principles Law no. 47/1992 on the organization and functioning of the Constitutional Court.

The Constitutional Court, according to art. 142 par. (1) of the Constitution is the guarantor of the supremacy of the Constitution, rule resumed also by art. 1 par. (1) of its organic law.

At the same time, the independent and autonomous position of the Constitutional Court as the sole authority of constitutional jurisdiction in Romania, against the judiciary and other public authorities is expressly enshrined in Art. 1, par. (2) and. (3) of Law no. 47/1992.

According to the content of the constitutional text, the constitutional justice has a particularised object compared to the usual duties of the courts of law, with the aim to rule only on the constitutionality of laws, on regulations of Parliament, Government ordinances, treaties or other international agreements. So, we understand that, it is not the attribution of the Constitutional Court to find the constitutionality of the decisions taken by the Government as well as other regulations subordinate to the law or to the government ordinances.

Also, the division of the attributions of the Constitutional Court compared to those of the courts of law derives from the fact that the courts are meant to enforce the law in a particular case, ruling on a litigation regarding the rights and obligations which form the content of a report of substantial law, so they do not fall to rule on the constitutionality of laws, while the Constitutional Court may rule on the constitutionality of acts regarding to which it was seised, without the possibility to modify or amend the provisions under review.

Section 2. JURISDICTION OF THE COURTS IN RELATION TO THE ADMINISTRATIVE COURT

2.1. Jurisdiction of the court regarding the settlement of litigations of administrative court at first instance.

The first reason that we should start from, when analyzing court jurisdiction in the settlement of litigations of administrative court, consists of the provisions of art. 73 par. 3 letter k of the revised Constitution, in the sense that administrative law is a constitutional matter, governed by an organic law.

So, in order to regulate administrative court matter, the constitutional text with reference to the law, under art. 126 par. (2) of the Constitution republished, jurisdiction of courts and court procedure in administrative court matters are established according to Law 554/2004 on administrative procedure.

It appears that, after the adoption of Law no. 554/2004 on administrative court, the provisions of art. 1 shall be consistent with the text of art. 52 of the Constitution, republished, meaning that, on the one hand, taking into account the decisions of the Constitutional Court, it has replaced the term "administrative authority" of the old law, Law no. 29/1990, with the notion of "public authority" as administrative documents can also be issued by other public authorities other than the government, and, on the other hand, the scope of the injury has expanded, adding to the area of injury, in addition to the subjective right and legitimate interest.

In applying these constitutional texts, Law no. 304/2004 on judicial organization by the provisions of art. 36 par. (3) has been applied, as the section was amended by Law no. 76/2012 and it states that tribunals are divided into sections or, where appropriate, specialized divisions for various reasons, among which the administrative and fiscal departments can also be found.

In administrative court matters, under the transitional provisions established by art. 30 of Law no. 554/2004, it is stated that, until the establishment of administrative and tax courts, litigations are settled by the administrative section of the courts of law.

Currently, although the provisions of art. 10 par. (1) of Law no. 554/2004 refer to administrative disputes by administrative and tax courts, these disputes are resolved by administrative and fiscal departments operating within county courts and the court of the municipality of Bucharest, the Courts of Appeal and the High Court of Cassation and Justice, and the following step is that, from the date of formation of specialized courts, administrative disputes will exit the jurisdiction of the courts of common law and enter into the jurisdiction of specialized courts.

In this context, Law no. 554/2004 on administrative procedure, through express legal provisions, establishes the jurisdiction of the courts of law in administrative litigation as well as

trial procedure of administrative litigation.

Thus, through the provisions of art. 2 letter g) [art. 2 par. (1). f) before amendment] competent courts in matter of administrative courts, administrative and taxation department of the High Court of Cassation and Justice, administrative and tax courts of courts of appeal and administrative and tax courts are established.

The issue of the jurisdiction of the tribunal to settle at first instance the administrative disputes is required to be analyzed both in the context of general rules established by the Code of Civil Procedure in force and by reference to the provisions of the new Civil Procedure Code and Law no. 304/2004 on judicial organization following amendments in Law 76/2012 on the implementation of Law no. 134/2010 on the Code of Civil Procedure.

A first specification that must be emphasized is that after the adoption of the new Civil Procedure Code, Law no. 76/2012 for its implementation in matters of administrative court, the system of double degree of jurisdiction is maintained, that is, the trial courts that settle administrative disputes, where appropriate, administrative and fiscal sections of the courts or the courts of appeal, being maintained also by the provisions of art. 7 par. (3) of Law no. 76/2012, after the entry into force of the new Code of Civil Procedure, remedy of law against court decisions rendered by the first instance courts.

We must also mention that the new Code of Civil Procedure, art. 95 section 1, referring to the law on the jurisdiction of the tribunal, resolving substantive administrative disputes by the courts derive, as it results from what will be discussed below, the provisions of Law no. 554/2004 on administrative procedure, the specific law in the matter, by virtue of the principle of specialia generalibus derogant.

Regarding the subject-matter jurisdiction of the courts, as reflected in art. 10 par. (1), as amended by Law no. 76/2012 it is divided, in terms of this legal text, between administrative and tax courts and the sections of administrative and fiscal courts of the courts of appeal, if the organic law does not provide otherwise.

But, given the fact that, in addition to the subject-matter jurisdiction of common law established by Law no. 554/2004, through special organic law there can be established a special subject-matter jurisdiction of administrative courts, in derogation of the subject-matter jurisdiction of common law established by Law no. 554/2004, in the thesis there are also reviewed cases provided by law which confer special subject-matter jurisdiction to courts of law, derogating from the provisions of Law no. 554/2004 on administrative procedure.

Following the adoption of Law no. 2/2013 on judicial relief by section 2, there were amended and supplemented some legislations in terms of administrative and tax courts, changes aimed essentially to changing subject-matter and territorial jurisdiction for the resolution of

administrative disputes governed by these regulations in pending trial, followed by establishing in Chapter III (,,transitional and final provisions") the transitional provisions regarding the applicability of normative acts that were amended by Law no. 2/2013 on the powers of the administrative courts, which were analyzed in the thesis.

Special normative acts regulate exclusive territorial jurisdiction of administrative courts in resolving administrative disputes mentioned in the thesis.

The thesis also analyses the competence of the Court of law of Bucharest in solving administrative disputes under certain provisions of special laws, some of which are modified by Law no. 76/2012 for the implementation of the new Code of Civil Procedure.

2.2. Jurisdiction of the Court of Appeal in Administrative Court.

2.2.1. Jurisdiction of the Court of Appeal to Resolve Administrative Disputes in the First Instance.

The current regulation also provides specific, exceptional jurisdiction to the court of appeal in this matter, but, as I have already said, the new rules established by art. 96 section 1 make express mention that the resolution at first instance of disputes of the administrative courts by the courts of appeal is made according to the special law. Regarding the scope of administrative acts subject to administrative dispute resolved at first instance by the courts of appeal, the new provisions do not expressly refer only to the acts of the central authorities and institutions, in conclusion, the new provisions introduced by the Civil Procedure Code are in accordance with the provisions of the Constitution and Law no. 554/2004 on administrative procedure.

In this context, the provisions of art. 96 section 1 of the new Civil Procedure Code, referring to the provisions of the special law, Law no. 554/2004 of the Administrative Court, the competence of the court of appeal in matters of administrative litigation was analyzed by reference to the provisions of art. 10 par. (1) of Law no. 554/2004 on administrative procedure, the content of which shows that, in disputes concerning administrative acts issued by the central authorities and those concerning taxes, contributions, customs debt and their accessories greater than 1,000,000 lei are mainly solved by the administrative and tax departments of the courts of appeal, if the organic law does not provide otherwise.

The content of this legal provision reveals that, if the subject of the contested administrative act is not represented by a tax, fee, contribution or a customs debt, the competent court is determined by the central or local position of the issuing body in the system of public administration, while the amount mentioned in the document is irrelevant, the same rule being applicable in administrative contracts.

An essential change brought on the substantive subject-matter jurisdiction in settling the administrative disputes by courts of appeal is the one established by paragraph. (1^1) of art. 10 newly introduced by Law no. 76/2012, which confers exclusive substantive subject-matter jurisdiction to the administrative and fiscal sections of the courts of appeal in respect to all applications regarding administrative acts issued by central public authorities dealing with amounts representing the grant from the European Union, regardless of value.

The power of the administrative and fiscal section of the courts of appeal to resolve administrative disputes at first instance is also established by some special normative acts mentioned in the thesis.

2.2.2. Jurisdiction of the Court of Appeal in Dealing with Recourse against Judgements Pronounced by the Courts at First Instance in Contentious Administrative Matters.

In the category of judgments pronounced by the courts at first instance, without right to appeal, which can be appealed with recourse at the administrative and fiscal department of the courts of appeal there are the decisions pronounced by the administrative and fiscal departments of the courts in matters of administrative litigation, according to art. 10 par. (1) of Law no. 554/2004 on administrative procedure and which, according to art. 20 par. 1 of Law no. 554/2004 may be appealed within 15 days of communication.

In conclusion, after the entry into force of the new Code of Civil Procedure, appeal against the judgment of the first instance court shall be exerted in accordance with art. 20 par. (1) of Law no. 554/2004, within 15 days of communication, which is suspensive of enforcement.

The competence of the Court of Appeal to settle, in accordance with Law No. 554/2004 on administrative law, recourses against judgments pronounced by administrative and fiscal departments of courts of the first instance is dedicated to legislative and special laws recently changed by Law no. 76/2012 for the implementation of the new Code of Civil Procedure, also mentioned in the thesis.

Regarding the solutions that can be given by the recourse court, the provisions of art. 496 of the new Code of Civil Procedure does not differ significantly from the Code in force, stating that if the recourse was admissible at the beginning, the court, checking all the reasons and judging the appeal, may admit it, reject it, cancel it or may find its superannuation. In case of admission of the recourse, the judgment under appeal can be quashed, in whole or in part. Accordingly to the solutions given by the recourse court established by art. 496 of the new Code of Civil Procedure, they were amended by Law no. 76/2012 and the provisions of art. 20 par. (3) of Law no. 554/2004.

Also, the thesis analyses the exclusive jurisdiction of the Court of Appeal of Bucharest in solving administrative disputes conferred on the basis of special regulations, some of which being modified with the entry into force of the new Code of Civil Procedure.

At the same time, the thesis analyses the jurisdiction of courts in other matters, thus analysing, in context, the jurisdiction in matters of land dispute resolution trials, by reference to the provisions of the new Code of Civil Procedure and the complaints made against the decisions of county committees of application of Law no. 18/1991 of the land fund, as well as the complaints directed against the order of the prefect or any administrative act of an administrative body which refused allocation of land or proposals of awarding the land, which shall be resolved in the first instance by the court, according to art. 53 par. (2) and art. 54 of Law no. 18/1991 of the land fund, and subject only to recourse.

In this respect, it can be concluded that, after the entry into force of the new Code of Civil Procedure, jurisdiction lies with the courts to resolve such disputes. Regarding remedies of law exerted against sentences imposed by court, as shown in the thesis, the sentences of the courts pronounced in matters of land trials, which according to the new Code of Civil Procedure are under the jurisdiction of the court, shall be subject to appeal and court sentences pronounced in matters of land trials derived from application of the Land Fund Law no. 18/1991 shall be subject to recourse in accordance with the special law.

2.3. Jurisdiction of the High Court of Cassation and Justice in the Settlement of Administrative Litigation.

The decisions which are subject to recourse to the High Court of Cassation and Justice, pursuant to art. 97 section 1 of the new Code of Civil Procedure, are the decisions pronounced by the Court of Appeal at first instance for settlement of litigation in matters of administrative acts on central government (art. 96 par. 1 of the New Code of Civil Procedure).

In this context, provisions of art. 10 par. (2) of Law no. 554/2004, provides that recourse against judgments of the administrative and tax courts shall be judged by administrative and fiscal departments of the courts of appeal, and recourse against sentences pronounced by administrative and fiscal departments of the courts of appeal shall be heard by the administrative and fiscal Division of the High Court of Cassation and Justice, where special organic law does not provide otherwise.

Thus, in terms of solutions that can be delivered by the High Court of Cassation and Justice after the appeal, the rule is quashing by reference, except administrative disputes resolved by the administrative and taxation division of the High Court of Cassation and Justice, when the litigation is retried on the merits.

Also, taking into account the transitional and final provisions of Law no. 2/2013, considering the fact that this law changed the competence to resolve administrative disputes in the Administrative and Fiscal Division of the High Court of Cassation and Justice at the administrative and fiscal departments of the courts of appeal, the recourses under the High Court of Cassation and

Justice - Administrative and Fiscal Division at the date of the entry into force of this law and which, according to this law, enter the competence of the courts of appeal shall be sent to the courts of appeal.

CHAPTER III.
SUBJECT-MATTER JURISDICTION OF THE COURTS IN CIVIL MATTERS BY SUBJECT AND VALUE.

Section 1. PRIOR SPECIFICATIONS REGARDING SUBJECT-MATTER JURISDICTION OF THE COURTS**.**

Given the overwhelming importance of the rules of jurisdiction for optimizing the execution of justice, as we have already mentioned it, according to art. 126 par. (2) of the Constitution, the jurisdiction of the courts and court proceedings are provided by law (s. n.).

In covering the same role, the legislature by the new Code of Civil Procedure regulates in more detail and in a different form the jurisdiction of the courts in civil matters.

Thus, as a general rule, the new Civil Procedure Code regulates the following issues concerning the jurisdiction of the courts: subject-matter jurisdiction determined in terms of matter and value and by the value of the initiating application proceedings (art. 94-106); territorial jurisdiction (art. 107-121); special provisions (art. 122-128); procedural incidents regarding the jurisdiction of the court (art. 129-147).

Starting with this structure of the new Code of Civil Procedure in matters of jurisdiction of the courts, the paper examines the subject-matter jurisdiction of the courts in two separate chapters, namely, subject-matter jurisdiction by subject and value, respectively, by the value of the object of the writ of summons.

Among the substantive changes introduced by the new Code of Civil Procedure in matters of jurisdiction of courts of law, by reference to the Code of Civil Procedure in force, there can be mentioned the particularisation of the categories of disputes within the jurisdiction of various courts and especially the court, through a clearer delineation of responsibilities, and the criteria for determining jurisdiction by subject and value, respectively, after the value of the object of the writ of summons.

Considering the changes brought by the new Code of Civil Procedure in relation to subject-matter jurisdiction of the courts, the paper analyzes the subject-matter jurisdiction of the courts in relation to the provisions laid down by the old regulation, in order to highlight the new regulatory changes.

Based on the new regulations, of general character, on the subject-matter jurisdiction, it is

analyzed the subject-matter competence of courts, tribunals, courts of appeal and the High Court of Cassation and Justice by subject and value, followed by a separate chapter where the jurisdiction of such courts by value of the object of the writ of summons is analyzed.

Section 2. SUBJECT-MATTER JURISDICTION OF THE COURTS

Analysis of subject-matter jurisdiction of the courts was conducted by analyzing the overall subject-matter jurisdiction of the courts in the light of the old Civil Procedure Code and the new Code of Civil Procedure.

Based on the overall analysis of the subject-matter jurisdiction of the courts, there was further analyzed, through a comparative analysis, *the jurisdiction at first instance* of the court by subject and value, in terms of the old Civil Procedure Code and the new Code of Civil Procedure, as well as the jurisdiction at first instance of the court in the light of the new Code of Civil Procedure.

Particular attention was paid to the new provisions in this section, according to which, the court, based on the Decision of the Constitutional Court no. 967 of 20 November 2012, no longer has jurisdiction to decide at first and last instances for claims concerning payment of a sum of money up to 2.000 lei inclusive.

We find that, after the adoption of the new Civil Procedure Code, the provisions of art. 483 par. (2) governing categories of judgment that are not subject to recourse, state but do not list among the categories of judgment that cannot be subject to recourse, claims referred to in art. 94 point 1. j) concerning any monetised requests of a value of up to 200,000 lei inclusive, regardless of the quality of the parties, professional or non-professional. It could be inferred therefore, that such claims will be subject to appeal and, against the judgment on appeal shall be also formulated a recourse.

So, it can be concluded that, under the new Code of Civil Procedure, courts have special jurisdiction, confined to claims exhaustively listed in art. 94 section 1 and this power is extensively analyzed in the thesis.

The competence of courts to settle disputes relating to rights of claims, after the repeal of art. 94 section 2 of the new Code of Civil Procedure, this competence is legislatively enshrined through the provisions of art. 94 point 1. j), targeting monetised claims of a value of up to 200,000 lei inclusive.

It is also analyzed in the thesis the jurisdiction of the courts to resolve low value claims covered by Title X, that is, claims whose value, without taking into account the interest, the trial costs and other income accessories, does not exceed 10,000 lei at the date when the court is notified. It should be mentioned that according to art. 1026 of the new Code of Civil Procedure, the plaintiff has the choice between special procedure covered by this title and common law procedure.

At the same time, taking into account the fact that the court has exclusive jurisdiction to settle claims whose value does not exceed 10,000lei, if the applicant chooses special procedure covered by Title X and the provisions of art. 94 point 1. j) establish court jurisdiction for claims whose value does not exceed 200,000 lei, it can be concluded that the legislature has failed to establish the competent court for claims that have a value between 10.000 lei and 200.000 lei inclusive.

For these reasons, we suggest the legislature, *de lege ferenda*, to reconcile the provisions of art. 94 point 1 letter j) with those of art. 1025 par. (1) of the Civil Procedure Code.

A comprehensive analysis by reporting both to the provisions of the old law and the new provisions introduced by the new Code of Civil Procedure is devoted to the provisions of art. 94 point 3 of the new Code of Civil Procedure, according to which, the courts judge the remedy at law against decisions of public authorities with judicial activity and other bodies with such activity, where permitted by law.

In this regard, based on the doctrine of the specialised literature with reference to the provisions of art. 126 par. (6) of the Constitution republished, we have reached the conclusion that, in agreement with the views expressed by the authors, the provisions of art. 92 point 3 of the new Code of Civil Procedure are unconstitutional.

It is also analyzed, in detail, both in terms of the old Civil Procedure Code and the new Code of Procedure, the jurisdiction of the court in other matters, thus respecting the requirement of foreseeability, as well as the special jurisdiction of such courts established by the provisions of the new Code of Civil Procedure and some special laws which have been amended and supplemented in accordance with the new procedural provisions.

Section 3. SUBJECT-MATTER JURISDICTION OF THE TRIBUNAL**.**

The subject-matter jurisdiction of the tribunal, governed by art. 95 of the new Code of Civil Procedure, is analyzed also in relation to the old rules.

Thus, after the analysis of some aspects regarding the role and place of the court in the Romanian judicial system, as well as of some general issues related to the tribunal, it is analyzed in detail the jurisdiction of this court, as court of common law, as court of appeal and as recourse court, in the cases provided by law.

A first finding is that, regarding the court, as a court of first instance or general court, the legislature provides a general formula that the court judges at first instance all claims that are not provided by law to the jurisdiction of other courts. So, the new Code of Civil Procedure, as compared to the provisions of the old Code of Civil Procedure, does not expressly enumerate the matters in which the Court is the court of first instance.

It is observed that under the new Code of Civil Procedure, in some matters, the court as first instance has a shared competence with the District Court or the Court of Appeal as well as an exclusive jurisdiction in respect of all categories of existing courts in the Romanian judiciary system.

Specifically, after the entry into force of the new Code of Civil Procedure, the tie breaker threshold of competence between courts and tribunals is set to 200.000 lei inclusive, regardless of the quality of parts, professional or non-professional. So, litigations valued in money whose value exceeds the amount of 200.000 are resolved at first instance by the courts. The major novelty brought by the future regulation is given by the fact that the value is the same, regardless of whether it requires the resolution of a civil dispute between professionals or non-professionals.

But, in addition to the disputes valued in money specified above, the contents of special acts unequivocally reveal that the court also judges at first instance the disputes whose object is non-monetary. So, pursuant to art. 95, section 1 of the new Code of Civil Procedure, the court has the power to settle disputes of two categories, namely, those whose object is measured in money and have a higher value of 200.000 lei; the non-monetary ones.

On the other hand, the alternative subject-matter jurisdiction of the tribunal is shared with the Court of Appeal, according to art. 10 par. (1) of Law no. 554/2004 on administrative procedure, and art. 96 section 1 of the new Civil Procedure Code only in case of administrative disputes.

However, in determining the jurisdiction of the Court at first instance, we must take into account the provisions of art. 483 par. (2) of the new Code of Civil Procedure, as now the statutory text was amended by art. XVIII of Law. 2/2013 on certain measures for relieving the courts, as well as the implementation of Law no. 134/2010 on the Code of Civil Procedure.

As a conclusion, through the pooled analysis of art. 94 point 1 letter j), with art. 95 point 1 and art. 483 par. (2) of the new Code of Civil Procedure, by reference to the provisions of art. XVIII of Law no. 2/2013, we can conclude that the jurisdiction of the tribunal at first instance shall be determined by reference to the threshold set by art. 483 par. (2) of the Code of Civil Procedure of up to 500.000 lei, for claims valued in money for trials started from 1st January 2016, and respectively, in relation to the threshold value of up to 1.000.000 lei, inclusive, applicable to the claims valued in money for trials started from the entry into force of Law no. 2/2013 and until 31st December 2015.

In this context, for claims valued in money targeting trials started as of 1st January 2016, the court will resolve at first instance, disputes valued in cash with a value between 200.001 lei and 500.000 lei, inclusive, consequently, the court of appeal may resolve disputes between the threshold mentioned above, only as an appellate court, if this remedy at law is made against the judgment at first instance by the court. For the claims valued in money targeting trials started from the entry into force of Law no. 2/2013 and until 31st December 2015, the tribunal will settle at first instance,

disputes valued in cash with a value between 200.001 lei and 1.000.000 lei inclusive, consequently, the court of appeal may resolve disputes covered between the threshold mentioned above, only as a court of appeal, if the remedy at law is made against the judgment at first instance by the court.

As an appellate court, the tribunal decides on appeals filed against judgements of the court at first instance, in accordance with art. 95 point 2 and art. 466 par. (1) of the new Civil Procedure Code.

As a recourse court, the tribunal hears appeals against the decisions of the courts, which, by law, are not subject to or cannot be appealed in accordance with art. 95 section 3 and art. 483 par. (1) of the new Code of Civil Procedure.

As it has already been mentioned and as it can be inferred from the content of the above mentioned legal provisions on civil disputes valued in money, the court has a shared subject-matter jurisdiction with the court, the latter having the jurisdiction to settle, according to art. 94 point 1 letter j) of the new Code of Civil Procedure only monetised requests of a value of up to 200.000 lei inclusive. So, in disputes valued in cash with a value below 200.000 lei, the court may resolve such disputes only as a court of appeal, if this remedy at law is made against the judgment at first instance by the district court.

However, in determining the jurisdiction of the Court in the first instance, we must take into account the provisions of art. 483 par. (2) of the new Code of Civil Procedure, so now this statutory text was amended by art. XVIII of Law no. 2/2013 on certain measures for relieving the courts, as well as the implementation of Law no. 134/2010 on the Code of Civil Procedure.

So, from the pooled analysis of art. 94 point 1etter j), with art. 95 section 1 and art. 483 par. (2) of the new Code of Civil Procedure, by reference to the provisions of art. XVIII of Law no. 2/2013, we can conclude that the jurisdiction of the tribunal of first instance shall be determined by reference to the threshold set by art. 483 par. (2) of the Code of Civil Procedure of up to 500.000 lei, applicable to requests valued in money for trials started as of 1st January 2016, and respectively, in relation to the threshold value up to 1.000.000 lei inclusive applicable to requests valued in money for trials started from the entry into force of Law no. 2/2013 and until 31st December 2015.

In this context, for claims valued in money targeting trials started as of 1st January 2016, the court will resolve at first instance, disputes valued in cash with a value between 200.001 lei and 500.000 lei inclusive, consequently, the court of appeal may resolve disputes between the threshold mentioned above, only as an appellate court, if this appeal is made against the judgment at first instance by the court. For claims valued in money targeting trials starting from the date of entry into force of Law no. 2/2013 and until 31st December 2015, the tribunal will settle in the first instance, disputes valued in cash with a value between 200.001 lei and 1.000.000 lei inclusive, consequently, the court of appeal may resolve disputes covered between the threshold mentioned above, only as

an appellate court, if the appeal is made against the judgment at first instance by the court.

Also, as I have mentioned in the thesis, by interpretation, per a contrario, of art. 483 par. (2) of the new Code of Civil Procedure, regarding the provisions of art. XVIII of Law 2/2013, it is revealed that, compared to the periods of application of provisions of art. 483 par. (2) of the Code of Civil Procedure, decisions in disputes valued in cash with a value of 500.000 lei inclusive and 1.000.000 lei inclusive, may be subject to appeal. So, it can be concluded that, disputes valued in cash with a value of 500.000 lei and those with a value of 1.000.000 lei inclusive, may be resolved by following the three levels of jurisdiction, namely, they will be addressed in the first instance by the courts, on appeal by the Court of Appeal and in recourse by the High Court of Cassation and Justice.

Also, after the entry into force of the new Code of Civil Procedure, it cannot be said that the tribunal is determined only by the pecuniary nature of the dispute before the Court, but also by various matters governed by special laws, under which the jurisdiction of the court as a court of common law is determined.

After the entry into force of the new Civil Procedure Code, jurisdiction of the tribunal is determined by subject and by value, as well as by the value of the object of the writ of summons.

Regarding the jurisdiction of the tribunal to resolve non-monetary claims, such jurisdiction follows from the provisions of the new Code of Civil Procedure and the content of special regulations set forth in the paper.

In the context of the provisions of the new Code of Civil Procedure which do not enumerate matters in which the tribunal is competent, there have been analyzed some specific areas where special laws confer competence on the tribunal and are analyzed in context: court jurisdiction on settlement of labour disputes, under the new amendments to the Labour Code and Law no. 62/2011, social dialogue by Law no.76/2012 for the implementation of the new Code of Civil Procedure; jurisdiction of the court of first instance in matters of intellectual creation and in matters of expropriation and adoption.

Regarding jurisdiction at first instance of the court for settling claims regarding damage caused by judicial errors, such jurisdiction of the tribunal is not expressly enshrined in the provisions of the new Code of Civil Procedure.

Speaking about a patrimonial liability of the state, it is revealed that the injured through judicial errors committed in civil or criminal proceedings may seek compensation for both subject-matter damage and moral damages.

Consequently, the resolution of these claims will occur in relation to the damage caused by these judicial errors, namely, in the case of requests valued in money, a context in which the power to resolve such claims shall be the duty of the courts, if the damage is up to 200.000 lei, or the

tribunal, if the damage caused by these miscarriages of justice is higher than 200.000 lei.

It is also considered the jurisdiction in the first instance of the court in matters of declaration of recognition or enforcement of judgments in foreign countries, an analysis made by reporting to the provisions of the new Code of Procedure governing this matter and in relation to incidents in Community acts.

In matters related to the jurisdiction of the appellate court, the analysis was based on the provisions of art. 476 of the Code of Civil Procedure which lays the devolution effect of the appeal, the appeal becoming a common law remedy, since the vast majority of decisions, after the entry into force of the new Code of Civil Procedure, may be appealed, and after this remedy at law those decisions are to become “permanent".

However, as we have shown in the thesis, the court, in cases provided by law, also resolves recourses from judgments of the courts at first instance, given without the right to appeal. Namely, we are talking about the decisions declared by law as final, according to art. 634 par. (1) section 1 of the new Code of Civil Procedure, which expressly establishes that final decisions are decisions that are not subject to appeal or recourse, the decisions which, by law, cannot be appealed, and those which, as the law provides it, if necessary, can be appealed only by recourse or that are not subject to appeal or that are not subject to any remedy at law.

Regarding the jurisdiction of the tribunal as a recourse court, it should be noted that, following the adoption of the new Code of Civil Procedure, the recourse truly becomes an extraordinary remedy, thus disappearing together with the entry into force of the new Civil Procedure Code the institution of the contested amendment, which, by art. 488, regulates eight reasons for quashing. So, in order to identify the decisions subject to recourse to the tribunal, the corroboration of provisions of art. 95 section 3 with those of art. 483 of the new Code of Civil Procedure is necessary.

To conclude, it can be stated that, court decisions delivered at first instance, those declared by law not subject to appeal, as well as those for which the law expressly provides that they may be subject only to recourse are subject to appeal to the tribunal.

Cases expressly governed by law, through which court decisions are given without right to appeal, as well as cases where court decisions are subject only to recourse, are examined separately in the thesis.

At the end of the analysis of the subject-matter competence of the court, there is a comparative analysis of the subject-matter jurisdiction of the court in other matters, in terms of the old Civil Procedure Code and the new Code of Civil Procedure and the cases provided by special acts conferring to the court unlimited jurisdiction to resolve disputes. There are also analyzed cases provided by law conferring exclusive subject-matter jurisdiction to the Court of Bucharest in

resolving disputes.

Section 4. SUBJECT-MATTER JURISDICTION OF THE COURTS OF APPEAL**.**

The subject-matter jurisdiction of the courts of appeal is considered in the light of the new Code of Civil Procedure, by a comparative analysis with the old Code of Civil Procedure.

In the thesis, in line with new regulations introduced by the Civil Procedure Code, it is concluded that, this court, like the tribunal, is presented in a civil trial, under a triple aspect, namely: as first instance, as appellate court and as recourse court. With respect to the jurisdiction of the courts of appeal as appellate court, it has been concluded that in the context when the recourse truly becomes an extraordinary remedy, the Courts of Appeal acquire unlimited jurisdiction in the resolution of appeals.

The new Code of Civil Procedure, similarly to the old regulation, expressly establishes the jurisdiction in the first instance of the courts of appeal in matters of administrative litigation, but under special law, namely under Law no. 554/2004 on administrative procedure.

Regarding the subject-matter jurisdiction of the courts of appeal, as appellate courts, taking into account that this court has unlimited jurisdiction within the resolution of appeals it has been concluded that, for claims valued in money targeting trials started as of 1st January 2016, the court will settle in the first instance, disputes valued in money with a value between 2.001 lei and 5.00.000 lei inclusive, consequently, the court of appeal may resolve disputes within the threshold mentioned above, only as appellate court, if this remedy at law is established against the judgment at first instance by the court. For claims valued in money targeting trials started from the entry into force of Law no. 2/2013 and until 31st December 2015, the tribunal will settle in the first instance, the disputes valued in cash with a value between 2.001 lei and 1.000.000 lei inclusive, consequently, the court of appeal may resolve disputes covered within the threshold mentioned above, only as an appellate court, if there shall be made a remedy at law against the judgment at first instance by the court.

It follows that, for claims valued in money within the threshold value of 200.001 lei to 500,000 lei inclusive, for trials started from 1st January 2016 and, respectively, for claims valued in money between the threshold of 200.001 lei to 1.000.000 for trials started from the entry into force of Law no. 2/2013 to 31st December 2015 the Court of Appeal shall resolve these disputes only as an appellate court.

With respect to non-monetary claims, the analysis of provisions of art. 483 par. (2) of the Civil Procedure Code, it results that there will be subject only to appeal judgments mentioned in this article and which enter the jurisdiction of the Court at first instance and which were analyzed in the section on the tribunal in the first instance.

There are also analyzed in the thesis, through a comparative analysis with the provisions established by the old regulation, other matters than administrative law, which give subject-matter competence to the Court of Appeal to resolve some disputes in the first instance, cases where the Court of Appeal decides on appeals against the decisions of the tribunals at first instance, as well as cases where the court of appeal settles appeals against the decisions of the tribunal on appeal. At the same time, through a comparative analysis with the old rules, there are also analysed the cases where the court of appeal has jurisdiction to decide recourses against decisions of the court of first instance without right to appeal, cases where the Court of Appeal has jurisdiction to resolve appeals, as well as cases under the Civil Procedure Code and some special laws conferring subject-matter jurisdiction to the courts of appeal in other matters.

At the end of the analysis of the subject-matter competence of the courts of appeal, there are reviewed the cases established by special laws, some of which are modified by Law no. 76/2012, which establishes the subject-matter jurisdiction of the Court of Appeal of Bucharest in resolving disputes.

Section 5. SUBJECT-MATTER JURISDICTION OF THE HIGH COURT OF CASSATION AND JUSTICE**.**

Regarding the subject-matter jurisdiction of the High Court of Cassation and Justice at the head of the hierarchy of courts, whose role is conferred by art. 126 par. 3 of the Constitution, the new Code of Civil Procedure, by art. 97, repeats some of the powers of the High Court of Cassation and Justice, established by art. 4 of the former Code of Civil Procedure, which adds, however, as a novelty, applications for a ruling prior to unravelling some legal issues.

Also, the analysis of the subject-matter jurisdiction of the High Court of Cassation and Justice has been analyzed by collating art. 97 of the new Code of Procedure to the Law no. 304/2004 on judicial organization, amended by Law no.76/2012 and Law no. 2/2013 on judicial relief, as well as on the preparation for the implementation of Law no. 134/2010 on the Code of Civil Procedure.

In order to realise these powers by the High Court of Cassation and Justice, the new Code of Civil Procedure, Title III of the Code establishes provisions for ensuring a unitary judicial practice, aiming recourse on points of law (art. 514-518) and notification of the High Court of Cassation and Justice for a ruling prior to unravelling some issues of law (art. 519-521).

Also, another specification that must be emphasized is that, in the sense of the new Code of Civil Procedure, recourse on points of law is not qualified as an extraordinary remedy, so, it does not cause retraction of the judgment under appeal or its cancellation and the effect of the appeal on points of law is to determine a unitary jurisprudence of law courts.

Also on recourse on points of law, the new Code of Civil Procedure, as compared to the old regulation, brings some notable distinguishing features on the procedural quality of the parties entitled to recourse on points of law, acting through art. 514 that, in order to ensure consistent interpretation and application of the law by all courts, the General Prosecutor of the High Court of Cassation and Justice, ex officio or at the request of the Minister of Justice, the College Board of the High Court of Cassation and Justice, the leading boards of courts of appeal and the Ombudsman have the duty to ask the High Court of Cassation and Justice to rule on questions of law which were resolved differently by the courts.

Also, as it has been mentioned, the High Court of Cassation and Justice does not decide on appeals, only on recourses, resolving the recourses against the judgements of the Court of Appeal at first instance or on appeal, in cases expressly provided by law, the conclusion is drawn from art. 97 section 1 of the new procedure code, which does not distinguish on the judgments pronounced by the Court of Appeal as they are delivered at first instance or on appeal.

However, it must be emphasized that, according to art. 21 of Law no. 304/2004, as that section was amended by Law no. 76/2012, Civil Section I, Civil Section II, and the administrative and fiscal Division of the High Court of Cassation and Justice judges appeals against judgements by the courts of appeal and other judgements in the cases provided by law, and recourses against final decisions or judicial acts of any kind, which cannot be challenged in any other way, and the trial was discontinued before the courts of appeal. Obviously, in this case, the resolution of recourses by the High Court of Cassation and Justice can only be done under a statutory provision expressly provided for in the new Civil Procedure Code or special laws, so that, as I have mentioned, determining the competence of courts and establishing remedies are the excluded attributions of the legislature, not of the judge.

In the context where, the High Court of Cassation and Justice has jurisdiction to deal with recourses, the innovations introduced by the provisions of the new Code of Civil Procedure, analyzed in the thesis, concern the procedure of filtering recourses that are within the competence of the High Court of Cassation and Justice as well as the institution of incidental recourse and the caused recourse, which is exerted in the cases provided for in art. 472 and 473 of the new Code of Civil Procedure.

Taking into account the substantial changes in the Law no. 304/2004 on judicial organization, by Law no. 76/2012 for the implementation of the new Code of Civil Procedure, particular importance is given in the thesis to the Sections of the High Court of Cassation and Justice and to the competence of these sections in solving the recourse on points of law and dispensation of some law issues that will be made by the tribunal provided for in art. 514 and, respectively, 520 of the new Code of Civil Procedure. It is also revealed that an appeal on points of

law and dispensation of law issues are not resolved by the Joint Sections of the High Court of Cassation and Justice, whose duties are expressly established by art. 25 of Law no. 304/2004, in the tribunal formed in the United Sections for the realization of the competences which are exerted by this department.

There are also analyzed in the thesis, through a comparative analysis with the old regulations, the cases provided by the new Code of Civil Procedure and the former Code of Civil Procedure and the cases provided by special laws conferring subject-matter jurisdiction of the Supreme Court in resolving disputes.

CHAPTER IV
SUBJECT-MATTER JURISDICTION OF THE COURTS BY VALUE OF THE OBJECT OF THE WRIT OF SUMMONS.

As stated, the new Code of Civil Procedure regulates, through two distinct sections, the subject-matter jurisdiction of the courts by matter and value as well as the subject-matter jurisdiction of the courts by the value of the object of the writ of summons. The reason for which the legislator has regulated the determination of the subject-matter competence of the courts by the value of the object of the writ of summons was that, in case litigations of the same kind have been distributed within the jurisdiction of courts of different levels, the “objective" criterion for the determination of the jurisdiction by matter is not sufficient for determining jurisdiction, that is why the legislature has used subsidiary criteria, such as those established by art. 98-106 of the new Code of Civil Procedure, in relation to the value of the object of the writ of summons.

A specification that must be emphasized is that the value of the claim is determined by the applicant in the writ of summons, depending on the computing elements taken into account by him, without having to take into account the accessories of the main claim, such as interest, penalties, fruits or similar, regardless of the maturity date or the periodic benefits due in the judgment. However, as mentioned in the thesis, it is possible that these elements or criteria for fixing the amount to be specified by law (such as art. 103 of the Code of Civil Procedure regarding the requests for a right to successive benefits or provisions of art. 104 par. (1) on the claim for ownership or other real rights).

In this context, the thesis analyzed all cases established by the legal provisions mentioned above, through which the jurisdiction of courts is determined by the value of the object of the writ of summons.

CHAPTER V.

TERRITORIAL JURISDICTION OF THE COURTS.

Section 1. GENERAL CONSIDERATIONS. REGULATION**.**

With regard to territorial jurisdiction, it requires a separation of power courts of the same grade, knowing that Romanian law system, with the exception of the High Court of Cassation and Justice, consists of horizontal multiple instances of the same grade. In this context, in order to know the court we have to address in order to resolve a dispute is not sufficient just to determine the jurisdiction of attribution (subject-matter jurisdiction), but, after determining the subject-matter authority to settle a dispute, we also have to establish, in territorial terms, which of the courts of the same degree has the power to settle the case.

The new Code of Civil Procedure establishes territorial jurisdiction in Title III, Chapter II, (art.107-121), as well as some special provisions in Chapter III, keeping the rules for determining the territorial jurisdiction of the former Code of Civil Procedure and dedicating the art. 107 general rule, or the principle of "Actor sequitur forum rei", meaning that the writ of summons is lodged with the court in whose jurisdiction the defendant resides or has his seat, unless the law provides otherwise. But the new procedure code, in addition to the common law rule settled through art. 107, contains provisions relating to the choice of jurisdiction, as well as some provisions derogating from the common law rule.

Section 2. GENERAL TERRITORIAL JURISDICTION **(rule "forum rei").**

General territorial jurisdiction (rule "forum rei") is the form of territorial jurisdiction where the applicant lodges the request to the court of common law, that is, the court of the defendant's domicile or premises.

As it can be seen from the pooled analysis of the provisions of par. (1) and par. (2), art. 107 of the new Code of Civil Procedure, the rule "forum rei" stated in art. 107 covers the situation where the defendant's domicile or premises is known, whereas through par. (2), art. 107, the legislature governs the general territorial jurisdiction if the domicile or, where appropriate, the premises of the defendant is unknown, in this case, the application is lodged with the court in whose district the residence or its representative is, and if it has no known residence or representative, it has to be lodged to the court in whose jurisdiction the applicant has his domicile, premises, residence or representative, as appropriate.

But, by art. 108 of the new Code of Civil Procedure, similarly to the former regulation, it is set as a subsidiary benchmark of the territorial jurisdiction the residence or the representative of the defendant, or, where appropriate, the house, office, residence or representative of the plaintiff.

Another finding that requires to be emphasized is that, in the pooled analysis of the

provisions of par. (1) and par. (2) of art. 107 of the new Code of Civil Procedure, according to which, in determining the general territorial jurisdiction, it is considered the defendant's domicile or seat at the time of the writ of summons, a conclusion derived from the contents of par. (2), art. 107, which states that the court remains competent to judge even if, after the complaint, the defendant moves house or office. As the pooled analysis of the two paragraphs of art. 107 shows, the originally established territorial jurisdiction, i.e. by reference to the defendant's home or premises at the time of the writ of summons, remains unchanged even if, after the date of referral to the court, the defendant moves house or office.

It can be concluded that general jurisdiction rules set by the new Code of Civil Procedure establish cases of alternative territorial jurisdiction, but these cases of territorial jurisdiction are governed by the legislature in relation to general jurisdiction of the courts.

Section 3. TERRITORIAL JURISDICTION IN CASE OF NON CONTENTIOUS JUDICIAL PROCEEDING**.**

Non-contentious legal proceedings are governed by Book III of the new Civil Procedure Code, entitled "Non-contentious Judicial Procedure".

In this context, on the scope of judicial non-contentious procedure, the provisions of art. 527 of the new Code of Civil Procedure, it is stated that the applications which require court intervention, without the aim of establishing a right hostile to another person, as well as those concerning grant of judicial authorizations or taking legal action for supervision, protection and insurance are subject to the provisions of this book.

The new Code of Civil Procedure brings new elements on determining territorial competence of judicial non-contentious claims, as compared to the provisions of art. 332 of the former Code of Civil Procedure, stating through art. 528 par. (3) that if the local jurisdiction cannot be determined under the provisions of par. (2), art. 528, the non-contentious claims will go to the court in whose jurisdiction the applicant has his domicile, residence, office or representative, and if none of them are in Romania, claims will go, following the rules of subject-matter jurisdiction, to the Court of District 1 of the municipality of Bucharest or, where appropriate, to the Bucharest Tribunal.

In this regard, we note that the provisions of art. 528 par. (3) consist of an extended regulatory of the general rules for determining territorial jurisdiction established by art. 107 of the new Code of Civil Procedure.

Section 4. ALTERNATIVE TERRITORIAL JURISDICTION**.**

Alternative territorial jurisdiction is the form of jurisdiction conferring to the plaintiff a choice between two or more competent courts alike.

The new Civil Procedure Code contains rules regarding alternative territorial jurisdiction among several disparate articles, without reaching a clear and concise regulatory of the assumptions where the applicant has the opportunity to request for summons and choose between two or more competent courts.

Thus the new Code of Civil Procedure contains a single provision regarding alternative territorial jurisdiction through art. 113, according to which, apart from instances provided in art. 107-112, the courts mentioned in the legal texts and which have been analyzed in the thesis also have jurisdiction.

As a novelty, among the cases covered by art. 113 of the new Code of Civil Procedure, we can highlight: the jurisdiction of the applicant's home court, in claims concerning the establishment of parentage, in case of the court of the place of payment, in the claims relating to obligations arising from a bill of exchange, check, promissory note or another form of value, we find that the new Code of Civil Procedure, as compared to the old one, extends the applicability of the regulation of alternative territorial jurisdiction specific to bills of exchange, promissory notes and checks and the obligations arising from any other “forms of value", the applicant having the possibility to choose between the court in which the defendant is domiciled or registered in accordance with art. 107 or the premises of the courthouses of the place of payment;

Through par. (2) of art. 113 it is set, in terms of alternative territorial jurisdiction, a particular norm of the provisions of art. 107 of the new Code of Civil Procedure, which provides that when the defendant exerts constantly, outside his home, a business activity or an agricultural, commercial, industrial or other similar activities, the summons can enter the court in whose jurisdiction the place of that activity is, for the financial obligations arising or which are to be performed there.

In addition to cases expressly covered by art. 113 of the new Code of Civil Procedure alternative territorial jurisdiction is regulated by the new Code of Civil Procedure in other cases, all these cases being thoroughly analyzed in the thesis. In this context, as a novelty brought by the new Code of Civil Procedure, are to be highlighted: the provisions of article 109, which establish rules of general territorial jurisdiction in the case of legal entities that have dismemberments and the provisions of art. 110 establish rules of territorial jurisdiction for claims against entities without legal personality. Thus, in the sense of this legal text, the application for summons against an association, business or other entity without legal personality and constituted according to the law may be brought before the competent court for the person who, according to the agreement between the members, is entrusted with the management or administration. In the case of such a person, the

claim will be lodged with the competent court for any member of the entity; the provisions of art. 111 of the new Code of Civil Procedure, according to which the claims against the state or local authorities and institutions and other legal persons governed by public law may be brought to court in the place or premises of the complainant or at the court of the defendant's premises.

As a novelty, in case of alternative territorial jurisdiction provisions enshrined by the provisions of art. 115 by the new Code of Civil Procedure in matters of insurance as compared to the provisions of the old Code of Civil Procedure, in case of compulsory insurance of civil liability, the new Code of Civil Procedure gives the third party injured the opportunity to directly demand compensation also to the court of his domicile or, where appropriate, his premises.

Another case of alternative territorial jurisdiction is established by art. 114 par. (2) of the new Code of Civil Procedure in matters relating to guardianship and family demands.

It must also be mentioned that art. 114 of the new Code of Civil Procedure sets, by par. (1), in addition to one of the cases of alternative territorial jurisdiction, another case of exclusive territorial jurisdiction, which is discussed in the section on exclusive territorial jurisdiction.

Section 5. OPTIONAL TERRITORIAL JURISDICTION **.**

The new Code of Civil Procedure brings a new element in art. 127 with marginal title, "Optional Jurisdiction", referring to situations where the role of a plaintiff or defendant fulfilled by a judge, prosecutor, judicial assistant or clerk working at the court competent to hear the case, according to the law.

In this context, the new Code of Civil Procedure governs through art. 127 two cases, namely:

a) If a judge is the plaintiff in a summons in the jurisdiction of the court where he is operating, he shall notify one of the courts of the same grade in any of the district courts neighbouring to the court of appeal having jurisdiction over the court in which they operate [par. (1)];

b) in case the request is made against a judge who works at the court competent to hear the case, the applicant may refer to one of the courts of the same grade in the jurisdiction of any of the neighbouring courts to the court of appeal in whose district the court that would have had jurisdiction is, according to the law [par. (2)].

Section 6. CONVENTIONAL TERRITORIAL JURISDICTION **.**

Conventional or contractual territorial jurisdiction gives the parties an opportunity to determine, by their agreement, before the emergence of a dispute, at the time of concluding the legal documents of substantial rights (agreements), the power of a particular court to resolve a

specific issue.

The new Code of Civil Procedure, in a similar manner, incorporates the provisions of art. 19 of the former Code of Civil Procedure by art. 126 with marginal title “the choice of jurisdiction", stating that, “the parties may agree in writing or, in the case disputes arise, also by oral evidence before the court that the trials relating to property and other rights they may have to be tried by courts other than those which, by law, would have territorial jurisdiction to prosecute, except for the case when that jurisdiction is exclusive [par. (1)]; in disputes related to the protection of consumer rights, as well as in other cases provided by law, the parties may agree to choose the competent court, as provided in par. (1), only as of the right to compensation. Any agreement to the contrary shall be deemed unwritten [par. (2)]".

We also note that, while the former Code of Civil Procedure expressly lists where the parties cannot have the choice of jurisdiction, the new Code of Civil Procedure refers only to cases in which the local jurisdiction is exclusive.

In view of the fact that conventional territorial jurisdiction is not absolute, in par. (2), art. 126 it establishes a limitation of conventional territorial jurisdiction, under the sanction of considering as unwritten any agreement to the contrary, in case of disputes related to the protection of consumer rights.

Section 7. EXCEPTIONAL TERRITORIAL JURISDICTION

Exclusive jurisdiction rules are expressly enshrined in the new Code of Civil Procedure, as follows: [art. 114 par. (1)] on claims relating to guardianship and family; art. 117 in relation to claims relating to premises; art. 118 in matters relating to legacy claims; art. 119 in relation to claims relating to companies; art. 120 Application of the insolvency matter preventively agreed upon; art. 121 in relation to claims against a consumer) as well as by special normative acts.

In this context, there are analyzed through a comparative analysis of the provisions of the old Code of Civil Procedure and the new Code of Civil Procedure, all these cases where the legislature confers exclusive territorial jurisdiction to certain courts categories.

In this regard, there are analyzed in the thesis the innovations brought by the new Code of Civil Procedure, as compared to the provisions established by the former Code of Civil Procedure on: making more explicit the scope of activities covered by procedural rules established by art. 117 regarding claims relating to property; applications in matters relating to inheritance, covered by art. 118, which regulates more explicitly the exclusive territorial jurisdiction in this matter, exclusive territorial jurisdiction in relation to claims relating to companies regulated by art. 119 of the new Code of Civil Procedure, exclusive territorial jurisdiction, regulated by art. 121 in relation to claims against a consumer. This case of territorial incompetence concerns only the case when the consumer

has a passive quality of a party in a lawsuit, unlike the situation governed by art. 113 section 8, which regulates the court of the consumer's domicile as an alternative territorial jurisdiction, but in the case when the consumer has an active quality of a party in a lawsuit, the action of the consumer, for the assumptions mentioned, is directed against the professional.

We also analyzed, within the exclusive territorial jurisdiction and by reference to the provisions of the new Civil Code, some cases which are covered by the new Code of Civil Procedure, but not within the rules on territorial jurisdiction of the courts, such as: exclusive territorial jurisdiction in matters of applications for release under judicial interdiction of a person, regulated by art. 935 of the new Code of Civil Procedure; the territorial jurisdiction in the matters of applications for the declaration of death of a person, expressly governed by art. 943 of the new Code of Civil Procedure; exclusive territorial jurisdiction regulated by art. 114 par. (1) of the new Code of Civil Procedure, in relation to individual requests for data protection in the Civil Code in the court of guardianship and family, which states that, "unless the law provides otherwise, individual requests for data protection given by the Civil Code in the court of guardianship and family is settled by the court in whose jurisdiction the protected person resides or stays".

Section 8. TERRITORIAL JURISDICTION IN OTHER CASES UNDER THE CODE OF CIVIL PROCEDURE**.**

The territorial jurisdiction of the courts in other cases under the new Code of Civil Procedure is analyzed separately in this study and this analysis was carried out with reference to the provisions of the new Civil Code, as well as with reference to the old rules.

In this context, it is considered the territorial jurisdiction of the courts in matters of divorce, judicial separation and territorial jurisdiction in case of domestic and international arbitration governed by the new Civil Procedure Code.

Also, in territorial terms, the new Civil Procedure Code adds by paragraph. (2), art. 914, both a case of conventional territorial jurisdiction under the assumption that neither the applicant nor the respondent reside in the country, situation in which the parties may agree that the divorce petition shall be brought to any court in the country, and a case of exclusive territorial jurisdiction, for the same assumptions provided by thesis I of art. 914 par. (2) when there is no agreement of the parties to the divorce application to be brought to any court of Romania, in which the application for divorce is the sole responsibility of the 5th District Court of Bucharest.

Regarding the territorial jurisdiction in case of judicial partition, regulated by art. 979-995 of the new Code of Civil Procedure, the territorial jurisdiction is different as we are dealing with a succession partition, partition of common property or partition of assets acquired by co-acquisition,

co-possession etc. Thus, in case of succession division, the territorial jurisdiction is determined under rules of art. 118 of the new Code of Civil Procedure, and in the case of joint property of the spouses, if the application is enclosed to the application for divorce, the provisions of art. 914 in conjunction with art. 918 par. (1) letter f) of the new Civil Procedure Code are to be applied, the provisions of the new Code of Procedure, as compared to the old regulation, states expressly by art. 918 par. (1) letter f) that the divorce court shall decide whether a request is made to the main action for divorce and on the termination of the matrimonial regime and, where appropriate, liquidation and division of their property community.

Regarding the territorial jurisdiction in domestic and international arbitration, regulated in a manner different from the old regulation, the new Code of Civil Procedure, by art. 547, as compared to the old regulation established by art. 342, states that, in order to remove obstacles that may arise in organizing and conducting the arbitration, and to fulfil other duties which the arbitration court, the party concerned may notify the court in the jurisdiction of which the arbitration takes place, which will hear the case as an emergency and in particular, in the panel provided by the law for the judgment at first instance, through the procedure of presidential ordinance, the decision not being subject to appeal.

Also, in matters of arbitration, the new Code of Civil Procedure, similarly to the old regulation, sets a unique form of judicial review of arbitral award only the form of action for annulment, and through art. 610, eliminating uneven practice found in the field and controversies, establishes exclusive territorial jurisdiction of the court of appeal in the jurisdiction of which the arbitration to settle the claim for annulment of the arbitration award was held. So, the action for annulment of the arbitration award may not be brought to the arbitral tribunal which delivered the judgment under appeal even if the parties have agreed to resort to institutionalized arbitration.

CHAPTER VI.
PROCEDURAL INCIDENTS REGARDING THE JURISDICTION OF THE COURT SEISED WITH PRIVATE LAW DISPUTES.

Section 1. PRIOR SPECIFICATIONS FOR PROCEDURAL INCIDENTS REGARDING THE JURISDICTION OF THE COURT SEISED WITH PRIVATE LAW DISPUTES

It is beyond any doubt that one of the most important matters of civil procedure is the jurisdiction of law courts, and the procedural incidents relating to jurisdiction of law courts, regarding non-compliance of competence rules is an abnormal situation in legal proceedings which entail and which attract lack of jurisdiction of these courts.

Based on these goals of great importance in the proper administration of justice, after the entry into force of the new Code of Civil Procedure, the procedural incidents relating to the

jurisdiction of the courts seised with private law disputes are governed by Chapter IV of Title III, legal provisions that are differently structured and in a more systematic manner as compared to the provisions of the old Code of Civil Procedure, as follows:

- Section 1, with marginal title “lack of jurisdiction and conflicts of jurisdiction" (art. 129-137);

- Section 2, with marginal title “lis pendens and related actions" (art. 138-139). The old Code of Civil Procedure governed the lis pendens and related actions, as an exception to the procedure by art. 163 and art. 164, in the section on procedural exceptions and the exception of the power of res judicata.

- Section 3, with marginal title “Relocation of trials. Court delegation" (art. 140-147). The old Code of Civil Procedure governed the two institutions disparately and not within the procedural steps regarding the jurisdiction of the courts. Thus, relocation of trials was studied in Title VII “Relocation of triales", while the delegation of the court was governed by art. 23 of Title IV “Conflicts of Jurisdiction."

In these provisions of the new regulations introduced by the new Code of Civil Procedure, we find that, as compared to the old regulation, the institution of lis pendens and the institution of related actions claims as well as the way of resolving the exception of lis pendens and the exception of related actions are regulated as a procedural incidents regarding the jurisdiction of courts, not exceptions of procedure as in the previous regulation.

Also, the analysis of procedural incidents regarding the jurisdiction of the courts was analyzed by reference to specific provisions established by art. 123 and art. 124 of the new Code of Civil Procedure, which governs cases of extension of jurisdiction of the courts, as the extension of the jurisdiction questions the extent of the notified jurisdiction, which, in case of non-compliance with the legal provisions concerning the extension of jurisdiction may lead to lack of jurisdiction to resolve such disputes . However, although the lis pendens and related actions are integrated in the chapter on procedural incidents relating to the law courts, the analysis of the provisions of this chapter reveals that the two institutions are regulated separately by section 2 of this chapter, and not in Section 1 on lack of jurisdiction and conflicts of competence, connectedness can be treated as a case of statutory extension of jurisdiction and lis pendens, which, according to opinions over how it does not lead to an extension of jurisdiction, it shall be considered as a conflict of competence, but resolved according to art. 138 par. (2) and. (3) of the Code of Civil Procedure.

Based on these considerations, the procedural incidents were analyzed in a logical and systematic order, analysing also the steps to be taken, starting from checking the competence of the court to resolve the case and continuing with the extension of jurisdiction in cases provided for by Article 123 and Article 124, raising the exception of lack of jurisdiction and resolving it, the

conflict of jurisdiction and the settlement thereof.

Section 2. CHECKING THE JURISDICTION**.**

Referring to checking jurisdiction, we notice the incidence of two provisions that govern, almost identically, the requirement of checking the notified jurisdiction, namely, the provisions of art. 131 par. (1) and the provisions of art. 132 par. (1) of the new Code of Civil Procedure.

A comparative analysis of the two texts, contrary to the norms of legislative technique introduced by Law no. 24/2000 republished, shows that the provisions of art. 131 par. (1) require that the judge should check the jurisdiction of the court ex officio, and only in exceptional circumstances, where for establishing jurisdiction clarification or additional evidence is required, the judge will issue a debate between the parties relating this matter, while the provisions of article . 132 par. (1) establish the obligation of the judge to check the jurisdiction of the court, both ex officio and at the request of the parties, regardless of the necessity of clarifications or additional evidence in order to establish the competence. Moreover, the provisions of art. 132 par. (1) add to the regulation established by art. 131 par. (1) the obligation of the judge to check not only whether the court has jurisdiction, but also if another body with jurisdictional activity is competent.

However, the analysis of the text of art. 131 par. (1) shows that the judge is obliged to check the power ex officio and regarding the territorial jurisdiction, which may be private in the case when the parties have the opportunity to choose the competent court in terms of territory. However, according to art. 130 par. (3) lack of private competence may be invoked only by the defendant by contestation or if the contestation is not required, no later than the first hearing at which the parties are legally summoned before the First Instance.

Section 3. PROROGATION OF JURISDICTION**.**

3.1. Regulation. Forms of Jurisdiction Prorogation of Courts.

Assuming that the court is seised apart from the main claim, with certain accessory, additional, incidental applications, with defenses or exceptions, after checking the competence at the end of its main application, the judge will also have to proceed to the check of the jurisdiction for the settlement of such applications, main end application accessories.

In order to verify and establish the competent court for settling claims for the consequential main claim, the judge will invoke the provisions of art. 123 and art. 124 of the new Code of Civil Procedure. Prorogation of jurisdiction may be judicial when it is held under conventional judgments or it may be conventional, when it is held by will of the parties.

3.2. Legal Prorogation of Jurisdiction of Courts Governed by Art. 123 of the New Code of Civil Procedure.

As stated, the provisions of art. 123 of the Code of Civil Procedure establish the legal extension of courts in three cases strictly determined by this legal text, namely in case of accessory, additional and incidental applications.

Regarding additional applications referred to by the text of art. 123 of the new Code of Civil Procedure, these applications are made by the plaintiff, as the defendant in a lawsuit triggered by the applicant is able to formulate the counterclaim, within the main proceedings brought by the plaintiff, which signifies an additional request. Legal prorogation of jurisdiction operates under art. 123 also in case of incidental applications, which may include in addition to the counterclaim, the forms of participation of third parties in civil proceedings, governed by Section 3 of Title II of the new Code of Civil Procedure: voluntary intervention, forced intervention (sue of another person, calling as a warranty, showing the rightholder, forced introduction, ex officio, of other people).

In its turn, art. 1073 of the Code of Civil Procedure, with the marginal name “incidental application" provides that “the court which has the jurisdiction to judge the original application is also competent to judge: a.) claims for assistance, except where such requests would have been made to circumvent the intervening only at normal competent jurisdiction b.) the counterclaim.

It also has to be mentioned that, according to art. 123 par. (1) of the new Code of Civil Procedure, the jurisdiction of the court hearing the main application is also extended on accessory applications, ancillaries or incidental applications, even if these requests made separately, would fall into the attribute jurisdiction of another court. It can be concluded in this context that the jurisdiction of the courts which resolve the main application is an exclusive jurisdiction.

Paragraph (2) of art. 123, establishes the legal extension of jurisdiction of the court which resolves the main application, also if the jurisdiction to hear the main claim is established by law in favour of a specialized section or a specialized panel. The last paragraph of art. 123 governs a case of applying the principle of indivisibility of civil proceedings, stating that when the court has exclusive jurisdiction for any party, it will have exclusive jurisdiction for all parties.

3.3. Legal Prorogation of Jurisdiction of Courts Governed by Art. 124 of the New Code of Civil Procedure.

***3.3.1. Regulation. Sphere of Incidence*.**

The legal prorogation of jurisdiction is established by the new law Civil Procedure Code and the provisions of art. 124, with the marginal name “defenses and procedural incidents", which provides that “the competent court to judge the main claim will also decide upon the defenses and exceptions, except those which are prejudicial matters which, by law, are of exclusive jurisdiction of another court [par. (1)]; procedural incidents are resolved by the court in which it relies, except

where the law expressly provides otherwise [par. (2)].

This text legally enshrines the principle that the judge of the action is the judge of the exception, as the judge of the action is able to know all the relationships between the parties and resolve all defenses, exceptions and procedural incidents occurred in front of him.

A particularity in the application of the principle the judge of the action is the judge of the exception, in contentious administrative matters until the amendment of Law no. 554/2004 by Law no. 76/2012 was that, when resolving the objection of illegality of an administrative act, it was not made by the court in which the plea of illegality was raised if it was not the department of the administrative court or court of appeal, but by the competent administrative court authorities.

The amendments to the Law no. 554/2004 on administrative courts by Law. 76/2012, have brought essential changes in matters of exception of illegality, but, at the same time, some old regulatory provisions have been kept and which have created and continue to create doctrinal and jurisprudential controversy.

Thus, in order to ensure compatibility of Law no. 554/2004 on administrative courts with the procedural rules established by the new Code of Civil Procedure, the provisions of art. 4 of Law no. 554/2004 have been modified and adapted to the provisions of art. 124 of the new Code of Civil Procedure which, as we have noted, enshrines the principle that the judge of the action is the judge of the exception. Thus, according to article 4 par. (2) of Law no. 554/2004, amended by Law no. 76/2012, the court invested with the substance of the dispute and before which the plea of illegality was raised, noting that resolving the substance of the dispute depends on the individual administrative act, is competent to rule on the exception, either by an interlocutory judgement, or by the decision that will decide the question. If the court decides the interlocutory judgment, it may be appealed together with the merits.

3.3.2. Exceptions to the Applicability of the Principle the Judge of the Action is the Judge of the Exception.

3.3.2.1. Exceptions to the Applicability of the Principle the Judge of the Action is the Judge of the Exception in Internal Civil Proceedings.

As is clear from the content of art. 124 of the new Code of Civil Procedure, the rule the judge of the action is the judge of the exception has exceptions, the legislature expressly referring to interlocutory matters which, according to the law, are settled by courts other than those who deal with the main claim and which become res judicata for the court hearing the main proceedings. Since these prejudicial issues on whose solution depends the outcome of the merits of the case are covered by other courts than those which deal with main requests, often comprising sources of delay of the trial, the judge is obliged to suspend the judgement of the main claim until the irrevocable resolution of the prejudicial issues.

In the thesis there have been analyzed in detail the prejudicial issues: in case of criminal proceedings [art. 27 par. (7) of the Criminal Procedure Code]; the case of insolvency; the case of referral to the Supreme Court to issue a preliminary ruling, regulated by art. 519 of the new Code of Civil Procedure; suspending the judgment [art. 413 par. (1) of the Code of Civil Procedure]; pronouncement of a prior judgement by the Court of Justice of the European Union. Such prejudicial issue that concerns the relationship between national law and European Union law, is governed by art. 412 point 7 of the new Code of Civil Procedure, according to which, judgment is suspended by law in cases where the court makes a request for references for a preliminary ruling to the Court of Justice of the European Union, according to the Treaties on which the Union is founded. This provision is according to the Treaty on the Functioning of the European Union, consolidated version, which by art. 263 sets the task of the Court of Justice of the European Union to give preliminary rulings concerning the interpretation of treaties, validity and interpretation of acts of the institutions, bodies, offices or agencies.

3.3.2.2. Exceptions to the Applicability of the Principle the Judge of the Action is the Judge of the Exception within International Civil Trial.

As part of the International Civil Trial, even though art. 1072 is marginally called “preliminary issues", in relation to the provisions of art. 124 par. (1) it is regulated basically a prejudicial matter, the provisions of this article, stating that “the Romanian court judges on incidental matters the issues that are not within its competence, but the solution of which is required in order to decide on the main demand". It follows that the provisions of Art. 1072 of the new Code of Civil Procedure devotes the extension of Romanian jurisdiction also on preliminary issues on the solution of which depends the outcome of the merits of the case.

So, the logical conclusion would be that for the Romanian court to resolve such a matter that is not within its jurisdiction, it is necessary to have a lawsuit pending foreign court in which to be raised a prejudicial question which is not within the competence of the foreign court, but of the Romanian court, a context in which the foreign court will stay the proceedings and send the prejudicial issue to the Romanian court for settlement.

3.4. Legal Prorogation of Jurisdiction of the Courts in Case of Connected Claims.

3.4.1. Regulation. Differentiation from Lis Pendens.

In this context, considering connected claims as a case of legal prorogation of the jurisdiction of the courts, which characterizes connectedness, if compared to lis pendens, in the case of connected claims we deal with different actions that through connection do not merge into a single trial, but every action retains its own individuality, and having operated the prorogation of jurisdiction, and the condition of triple identities of parties, object and cause between the two actions are not required as in the case of lis pendens.

Starting from this distinction between the legal status of connected claims and of lis pendens, connectedness is analysed within the section on legal prorogation of jurisdiction, while lis pendens is analyzed separately as a procedural incident relating to the jurisdiction of the court.

In the thesis we have analyzed the conditions to be met to operate connected claims.

3.4.2. Operation of Prorogation of Jurisdiction in Case of Connected Claims.

Regarding this issue, the content of par. (3), art. 139, we can conclude that in case of admission of the connection exception, divestment of the court subsequently seised which declines jurisdiction by the court first seized takes place. From this rule, by the provisions of art. 139 par. (3) there is established an exception in the sense that, following the admission of the exception of connected claims, if the plaintiff and the defendant claim sending the file to one of the other courts, the court will send the case to the court chosen by the parties, and not to the court first seised.

3.4.3. The Right to Control of the Higher Court.

Regarding the right to control of the higher court, it is enshrined in art. 139 par. (2) of the Code of Civil Procedure, which provides that the conclusion given on the exception of connected claims raised by the parties or ex officio may be appealed only together with the merits and not separately. Regarding the scope of the right to control of the higher court, it consists of the control by the judicial control court whether the outcome pronounced by the court hearing the exception of the connection, the conditions imposed by art. 139 par. (1) have been respected, namely, whether the exception was invoked in the first instance, whether those causes are closely related, and whether at least one of the parties is common in the two actions.

3.5. Prorogation of Jurisdiction for International Connected Claims.

International connected claims are regulated in internal law by art. 1076 of the new Code of Civil Procedure, in the sense that “when the Romanian court is seised with the hearing of a claim, it shall have jurisdiction to judge the request that is linked so closely to the former that there is an interest in their investigation and prosecution at the same time, in order to avoid solutions that cannot be reconciled if they had been heard together".

The content of this legal provision reveals that this institution is governed by proceedings in the same terms as in internal, common law. Thus, in the case of international connected claims, this entails an extension of the power, does not involve a threefold identity of the parties, object and cause, but, as the quoted text states it, only the existence of a report “so close that there is an interest for investigating and judging them (the requests, ed. n. N. G) at the same time.

Another finding that must be emphasized, is that, unlike the connected claims in internal law, when the court subsequently seised, in case it admits the exception of connected claims, sends the file to the court first seised, in case of international connected claims the jurisdiction to deal with related cases belongs to the subsequently notified court, that is, to the Romanian court.

There are also analyzed in the thesis the European requirements of international connected claims respectively The Regulation of the European Council nr.44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the provisions of the Regulation no. 4 of 18 December 2009 on jurisdiction, applicable law, recognition and enforcement of decisions relating to maintenance obligations.

3.6. Judicial Prorogation of the Jurisdiction of Courts.

Judicial prorogation, as a variety of legal prorogation, is that form of prorogation of jurisdiction, which may operate under and by virtue of a judgment, by which a court is vested with the performance of procedural acts or even a civil settlement that would enter under the jurisdiction of other courts. Judicial prorogation of jurisdiction can operate only in cases determined by law, such as under delegation of another court, under the conditions determined by art. 147 of the new Code of Civil Procedure; in case of displacement of civil proceedings (Art. 140 of the New Code of Civil Procedure); in case of administering evidence through rogatory letters (art. 261 New Code of Civil Procedure); in case of sending the case back from the appellate court to another court of the same level [art. 498 par. (2)].

3.7. Conventional Prorogation of the Jurisdiction of the Courts.

Conventional prorogation is the form of prorogation of jurisdiction which is achieved by agreement of the disputing parties. It is legally stated in art. 126 of the new Code of Civil Procedure, which provides that "the parties may agree in writing or, in the case of disputes arising, also in oral statement before the court that the trials relating to goods and rights may be tried in courts other than those which, by law, would have territorial jurisdiction to prosecute, unless that jurisdiction is exclusive".

The analysis of this legal text shows that, it only gives the parties the choice of court in territorial terms, a context where conventional extension in this case is called conventional territorial jurisdiction. The law explicitly excludes the choice of another court only in cases of exclusive jurisdiction, as they are regulated by art. 118-121.

Section 4. LIS PENDENS – PROCEDURAL INCIDENT REGARDING THE JURISDICTION OF THE COURT**.**

4.1. Regulation of Lis Pendens in the Internal and International Civil Trial.

In the thesis, lis pendens is analyzed both in the internal civil law in relation to the provisions of the new Code of Civil Procedure, and by reference to the international civil law in the context of the new Code of Civil Procedure and international regulations.

For the purposes of art.138 of the new Code of Civil Procedure, lis pendens is classified as a procedural incident regarding the jurisdiction of the court, and it is governed by Chapter IV of Title

III, on the competence of the courts.

The contents of this legislation shows that the exception of lis pendens requires a triple condition on the identity of the parties, object and cause, unlike connected claims, which do not impose such a threefold condition, this condition imposed by the legislature leading to the conclusion that in case of lis pendens we deal with a single litigation and not with different claims to which the court has to extend its jurisdiction, a context in which, in the case of lis pendens, we are not dealing with a true prorogation of jurisdiction. Invoking the exception of lis pendens involves meeting cumulative conditions analyzed separately in the thesis.

Regarding international civil trial, the new Code of Civil Procedure, among international laws that allow international lis pendens, regulates the process institution of international lis pendens by art. 1075, and, in terms of international regulations in the matter, given the fact that the European Union member countries have the imperative of harmonization of internal legislation, thus requiring the adoption of Community legislation, which, on the basis of priority of binding Community acts, is directly applicable to the right of Member States and the Commission adopted Regulation (EC) no. 44/2001 of the European Council on jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

4.2. Competent Courts in Resolving the Exception of Lis Pendens in Internal Civil Law and the Solutions Courts Can Give.

Regarding courts and solutions that courts can decide in case of admission of exception of lis pendens, the new Code of Civil Procedure, by art. 138, regulates three hypotheses: the first hypothesis is that when requests are made to the courts of the same grade, case in which the exception is raised before the court subsequently seised and, if the exception is allowed, the file will be sent as soon as possible to the first court invested; the second hypothesis is when two courts of different grades have been seised with the same case, in which hypothesis, the exception is raised before the court of lower grade, and if the exception is allowed, the file will be sent as soon as possible to the higher court in rank; the third hypothesis, bringing new elements to the old regulation, is where the lis pendens operates on the assumption that one of the trials is judged on recourse, and the other in courts of first instance. In such a case, the trial court shall stay the proceedings pending until the resolution of the recourse, without the suspension of the trial removing the state of lis pendens.

Regarding the instrument by which the courts resolve the exception of lis pendens, the new Code of Civil Procedure, by art. 138 par. (5) brings a new element, that is the fact that the exception of lis pendens shall be settled by the competent courts by closing both in case of admission of the exception and in case of its rejection, a conclusion which is drawn from the finding that the legal text does not distinguish on the form of the act when the exception is admitted or it is rejected.

Section 5. ADDRESSING SITUATIONS OF LACK OF JURISDICTION**.**

5.1. General Considerations.

New Code of Civil Procedure governs the procedural incidents relating to jurisdiction of courts, lack of jurisdiction and conflict of jurisdiction, procedural institutions of higher applicability. But, the provisions on lack of jurisdiction and conflict of jurisdiction covered by Chapter IV of Title III of the new Code of Civil Procedure must be read in conjunction with the provisions on procedural exceptions regulated by art. 245-248 of the new Code of Civil Procedure, and depending on them will the exceptions of lack of jurisdiction of the courts be considered, as well as the classification criterion for the exceptions of lack of jurisdiction of the courts.

In this context, the analysis of the issue related to solving the lack of competence is assessed starting from the analysis of exceptions of lack of courts and of the situations that cause lack of jurisdiction of courts.

5.2. The Exception of Lack of Jurisdiction.

The exception of lack of jurisdiction is governed by art. 129 of the new Code of Civil Procedure, with the marginal name “exception of lack of jurisdiction". Similarly, the provisions of art. 245 of the new Code of Civil Procedure define the procedural exceptions as “the means by which, under the law, the interested party, the prosecutor or the court invokes, without questioning the background of the right, procedural irregularities regarding the composition of the tribunal or court setting, the jurisdiction of the court or the trial proceedings or omissions relating to the right of action, seeking, where appropriate, the decline of jurisdiction, deferring of judgment, restoration of acts or cancelling them, rejection or obsolence of request". It follows from this legal text that distinguishes between procedural exceptions and substantive exceptions that the exception of lack of jurisdiction falls in the category of procedural exceptions, which are different from substantive exceptions.

5.3. Invoking the Exception of Lack of Jurisdiction.

Procedural rules through which is governed the invocation of the exception of lack of jurisdiction are provided by art. 130 of the new Code of Civil Procedure, which also establishes the legal status of the exception through which lack of jurisdiction can be invoked.

From the analysis of the text quoted results that it regulates the different establishment of the two hypotheses invoking lack of jurisdiction of public policy, by distinguishing two degrees of severity of violating public jurisdiction, or general incompetence and lack of public material and territorial jurisdiction. Such a legislative solution is objectionable and questionable, being artificial at the same time and even incomprehensible, since the establishment of special severity is unimaginable and absolute and the breach of norms of absolute jurisdiction, whether general or territorial or material is particularly damaging to law.

5.4. Addressing the Exception of Lack of Jurisdiction and the Solutions the Court Hearing the Exception of Lack of Jurisdiction Can Give.

In resolving the objection of lack of jurisdiction and solutions delivered by the courts before which those exceptions were invoked, the new Code of Civil Procedure, by art. 132, regulating these matters in a manner different to the old regulation. Thus, in the sense of Art. 132 of the new Code of Civil Procedure "when its jurisdiction is questioned before the court, ex officio or at request of the parties, it is required to determine the competent court or, where appropriate, another organ with competent jurisdictional activity [par. (1)]; if the court is declared as competent, it will proceed to solving the case. The ruling can be appealed only together with the judgment [par. (2)], if the court is declared as having no jurisdiction, the judgment is not subject to appeal, the case being sent immediately to the competent court or, where appropriate, to other body with competent judicial activity [par. (3)]; if the court is declared as having no jurisdiction and rejects the request as inadmissible as it is under the jurisdiction of a body without jurisdictional activity or is not under the jurisdiction of Romanian courts, the decision is subject only to appeal to the superior court [par. (4)]".

The contents of these legal provisions distinguishes categories of decisions which the court may impose, respectively, terminating when the court accepted jurisdiction and can only be appealed with the judgment in question, so with the judgment on the merits, and judgment in case the court declares lack of jurisdiction under art. 132 par. (3) and par. (4) which, if applicable, is not subject to appeal, or is subject to recourse to the next higher court.

Regarding the effects of the judgment of the court which resolves the exception of lack of jurisdiction, the decision of declining the jurisdiction by the seised court towards the judicial court or the body with jurisdictional activity produces a double effect: divesting the appellate court and investing another court or body with jurisdictional activity. It can be concluded that, regarding the court which has been declined jurisdiction, the decision of disinvestment is not imposed by res judicata, before the court or other body which has been sent the case, with the possibility of having to deal with a negative conflict of competence in case the court which has been declined jurisdiction declares in its turn as lacking jurisdiction to hear the case.

5.5. Conflict of Jurisdiction.

5.5.1. Regulation. Cases.

In cases where conflicts of jurisdiction are governed by art. 132 of the new Code of Civil Procedure, from the content of the same law there can be also outlined the conflicting situations, that allow a classification of conflicts of jurisdiction.

Thus, the situation governed by art. 132, section 1 generates a positive conflict of jurisdiction, meaning that two or more instances are declared both to address the same question,

refusing to decline jurisdiction in favour of another court or body with jurisdictional activity. The hypothesis regulated by art. 132, section 2 generates a negative conflict of competence, meaning that two or more instances shall be declared incompetent to solve the same process and decline jurisdiction to each other.

The provisions of art. 134 of the new Code of Civil Procedure establish the obligation of the court before which the dispute arose on its own power to suspend proceedings and to refer the dossier to the competent court to resolve the conflict.

5.5.2. Settlement of Conflict of Jurisdiction and the Applicable Procedure.

The provisions of art. 135 of the new Code of Civil Procedure, with the marginal name "Settlement of conflict of jurisdiction" determines both the competent court to resolve the conflict of jurisdiction and the applicable procedure for settlement of conflict of jurisdiction.

As it can be seen, the first paragraph determines the jurisdiction to hear disputes arising between two courts, and the competent court in this case is determined on grounds of the principle according to which it belongs to the next higher court and is common to the courts in conflict.

The second paragraph regulates a problem unresolved with the old regulation, which created the doctrinal and jurisprudential discussion, namely, the conflict of jurisdiction between a court and the High Court of Cassation and Justice.

The hypothesis governed by par. (3), art. 135, concerns the conflict of jurisdiction arising between a court and a body with jurisdictional activity, and the legislative solution in this case is that through which priority is given to the courts in resolving such a conflict, which is consistent with the reality that only the courts benefit from full jurisdiction in the business of administering justice.

The last paragraph of art. 135 establishes the procedure for trial of the settlement of the demand regarding the conflict of jurisdiction, after which, the court seised of the dispute pronounces a judgment which traditionally is known as a regulator of competence. In this context, par. (4), art. 135 provides that the claim shall be settled by the competent court to hear disputes in the council chamber, and without summoning the parties, as an emergency, since, by such a decision the dispute on the merits brought before the Court is not settled.

Also, the judgment by which the court resolves the conflict of jurisdiction is final and binding on the court designated, which no longer has the opportunity to confirm its own jurisdiction, because we are facing a judgment which has held definitively on the competence.

5.5.3. Special Regulations Established by the new Code of Civil Procedure in Matters of Settlement of Conflicts of Jurisdiction.

The new Procedure Code regulates, as compared to the old regulation, for the first time through art. 136 the procedure for resolving conflicts of jurisdiction between two specialized

sections or panels of the same court. Thus, the new Code of Civil Procedure, in accordance with Law no. 304/2004 on judicial organization, provides by art. 136 that the provisions relating to the settlement of conflicts of jurisdiction applies to conflicts of jurisdiction arising between specialized sections or panels of the same court. Such a conflict is resolved by the court section established by art. 135 corresponding to the section before which the conflict has arisen.

In the event that the conflict arises between the two divisions of the High Court of Cassation and Justice, the conflict is resolved by the Panel of 5 judges.

5.5.4. The evidence given in the court without jurisdiction.

According to art. 137 of the Code of Civil Procedure, if declared as lacking jurisdiction, the evidence given before the court without jurisdiction shall remain won to the judgment and the competent court hearing the case shall not order their recovery only for compelling reasons.

The legislative solution enshrined in art. 137 of the Code of Civil Procedure is a consequence of the principle that the evidence already put before the court without jurisdiction belong to the case, and their recovery, even before the court without jurisdiction is intended to contribute to a better administration of justice, by saving time and expenses that would involve the restoration of evidence before the court which has been declined jurisdiction.

Section 6. TRANSFER OF CASES**.**

6.1. Regulation.

The new code of procedure, in the same manner as the old regulation, regulates in detail by art. 140 the cases which require the transfer of cases, considering the gravity of the circumstances giving rise to doubts about the jurisdiction of courts. But, as will be seen from the comparative analysis of the two regulations, the new Code of Civil Procedure brings some new elements to the old regulation, as well as the elimination of the old regulatory situations which were considered as causes which attracted the transfer of cases.

The contents of this legal provision suggests that the transfer of cases may be required for certain reasons or reasons of public security or legitimate doubt, so, as compared to the old regulation established by art. 37, the reason based on kinship or affinity was dropped, as this is a reason for incompatibility, referred to by par. (2), art. 140.

6.2. The request for Transfer.

New Code of Procedure, as well as the old regulation established by art. 38, regulates in detail, by art. 142-146, the procedure for solving the transfer request. But, the new Code of Civil Procedure brings some substantial changes to the old regulation on the procedure for solving the transfer request and the procedural legitimacy for the elaboration of the request.

Thus, according to art. 141 of the new Code of Civil Procedure, “transfer on the grounds of

legitimate doubt or public security may be required at any stage of the trial [par. (1)]; transfer for reason of legitimate doubt may be requested by the interested party, and the reason of public safety, only by the Attorney General of the Prosecutor's Office attached to the High Court of Cassation and Justice [par. (2)].

Regarding the legal standing of the parties to the request for transfer, it appears that, with regard to the reason of public safety, as compared to the old regulation, which gave legitimacy to the prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the new code Civil Procedure confers standing only to the general prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice.

6.3. Competent Court and Request Judgement.

In terms of the competent court for the settlement of the transfer, the new Code of Civil Procedure, considering the court fro where the transfer is required, distinguishes between the court competent to hear the request for transfer on grounds of legitimate doubt and the court competent to resolve request for transfer settled on grounds of public safety. Thus, unlike the previous regulation, the new Code of Civil Procedure provides that, "transfer requests on grounds of legitimate doubt enter the jurisdiction of the court of appeal, if the court from which is required the transfer is a district court or tribunal. If the transfer is required by the Court of Appeal, the High Court of Cassation and Justice has the jurisdiction to hear it. The request for transfer shall be submitted to the competent court, which will immediately inform the court from which the transfer has been requested about the request for transfer [par. (1)]; transfer requests on grounds of public safety is the responsibility of the High Court of Cassation and Justice, which shall notify, without delay, on the request to the court from which the transfer is required [par. (2)]; at the receipt of the transfer request, the competent court to resolve the case may require the file of the case [par. (3)]".

From the analysis of this legal text, it can be concluded that the Court of Appeal shall have jurisdiction only for requests to transfer on grounds of legitimate doubt, if the court where transfer is required is a court or tribunal of its jurisdiction, while the High Court of Cassation and Justice shall have jurisdiction in both requests of transfer on grounds of legitimate doubt, if the request for transfer is required from the court of appeal and the exclusive jurisdiction to resolve requests for transfer on grounds of public safety.

In terms of procedure for the solution of the request, the provisions of art. 144 par. (1) of the new Code of Civil Procedure, as well as the rules established by art. 40 of the old regulation, establish that the judgement of the request is made in the council chamber.

Also, the new Code of Civil Procedure, by art. 143, gives the interested party the opportunity to ask the panel to order, where appropriate, suspension of the trial, giving a bond in the sum of 1,000 lei. Regarding the judgment that the court pronounces regarding the suspension of the

trial, this is a conclusion that is not justified and not subject to appeal.

6.4. The Judgment of the Court which Resolves Transfer Requests and Appeals against such Decisions.

The new code of procedure governs by art. 144 par. (2) and. (3) the judgment of the court which resolves the request for transfer, appeal against this decision, as well as the obligation of the court which has resolved the request for transfer to notify, without delay, the court which called the transfer, about the acceptance or rejection of the transfer request.

Thus, the new Code of Civil Procedure, by art. 144 par. (2) establishes that "the judgment of the transfer is given without reasoning and is final". Thus, under the new Code of Civil Procedure, against this judgment there can be exercised extraordinary appeals for withdrawal.

6.5. The Effects of the Judgment by the Court which Resolves the Request for Transfer.

As to the consequences of the judgment by the court which resolves the request for transfer, the new Code of Civil Procedure governs by the art. 145 the categories of courts to which is transmitted by the court which has solved the request for transfer the jurisdiction to settle on the merits the cases which were the subject of the request for transfer.

Also, by art. 145 par. (3) there are established the remedies and the modality to set them against the judgment exercised by the court which settles the case after the transfer, respectively, this legal text sets rule on the appeal or, if necessary, the recourse against the judgment given by the court to which the trial had been transferred have the jurisdiction of the superior courts. In cases provided by law when, after admission of the appeal or the recourse, the courts which solve these remedies, they send the case back to the authorities, it will be referred back to the court in the district of that which has resolved the appeal.

6.6. Formulating a New Transfer Request.

The new Code of Civil Procedure sets by art. 146, in order to avoid transfer requests for the same reasons, with unjustified effect, the inadmissibility of a new transfer request based on the same ground as the one that made the subject of the first application for transfer.

The rule established by paragraph. (1), art. 146, establishes two exceptions when it becomes admissible the formulation of a new transfer request. Thus, in the sense of this text, a new request for transfer is permissible if the new request is based on circumstances unknown at the date of settlement of the previous request or if the new request for transfer is based on the new circumstances arising after the resolution of the first request of transfer.

Par. (2) of art. 146 of the new Code of Civil Procedure also sets the penalty for the introduction of a new request for transfer in violation of par. (1), the penalty in this case is the declaration as inadmissible of the second transfer request by the court hearing the subsequent request for transfer, regardless of the procedural stage in which the case is, that is, in the stage of

appeal or recourse.

Section 7. THE DELEGATION THE COURT**.**

The delegation of the court, due to exceptional circumstances which generate a situation where the competent court to hear the case to be prevented from function for a long period of time, was regulated both by the provisions of art. 23 of the old regulation, and is also regulated by the provisions of art. 147 of the new Code of Civil Procedure, which adopts the same legal solution as in the old regulatory laws.

Thus, according to art. 23 of the old regulation and art. 147 of the new Code of Civil Procedure, "when due to exceptional circumstances, the competent court is prevented from function for a long period of time, the High Court of Cassation and Justice, at the request of the interested party, shall designate another court of the same grade to judge the trial".

As to the competent court to resolve the request for the delegation of another court, the provisions of art. 147 establish the exclusive jurisdiction of the High Court of Cassation and Justice, which will consider the request at the request of the interested party and in case of admission of the request, will designate another court of the same degree to judge the trial.