

THE DISSOLUTION OF THE TESTAMENTARY CLAUSE REFERRING TO THE LIFE INTEREST (USUFRUCT) OF AN ESTATE

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ABSTRACT. To determine the competency of attribution of the courts, a competence of matter following the terms of civil law procedures, the legislature uses several criteria referring to the object, nature or value of the causes. **The objective criterion**, for which the establishment of material competence is the nature of the issue itself to which, at times, other subsidiary criteria are added: the importance of interest for the litigation, meaning the economic value of it or the monetary expression, the role of the parties and the urgency. In accordance to the nature and the object to the exerted right, several types of motions can be distinguished, personal motions, real motions (when the right followed is real), non-patrimonial and patrimonial motions etc. The purpose of the motion is to protect a right or an interest for which the realization of the law is mandatory. The object of the motion takes shape and color through the procedural means used, the object of suing, otherwise being the concrete claim of the plaintiff. Patrimonial motions are those with an economic content, while the non-patrimonial motions match some subjective rights indissolubly tied to their holder, whether an individual or a legal person, rights without economic content, therefore personal and non-patrimonial rights. Because the subjective material law constitutes the fundament of the motion, being the configurative factor of it, it imposes all the consequences which follow: the qualification of the motion, the determination of competency, the composition of the whole, the determination of the strategy. Therefore, it can be stated, without doubt, that subjective rights which are requested to be defended by law “transfers” its patrimonial or non-patrimonial character to the litigation itself and, so, the trial could be evaluated in money every time within the structure of the juridical report of substantial law, submitted to trial, a patrimonial, real or of claim appears.

KEYWORDS: subjective law, patrimonial, non-patrimonial, motion, objective criterion, nature of litigation.

By the civil ruling nr. 15209/2013 given by the Courthouse of Constanta on the date of 17.12.2013 within the civil case nr. 17230/212/2013 – case which has the objective the revoking of the testamentary clause referring to the right of life interest of a property located in the city of Constanta, for ingratitude, the instance lifted the “exception of material incompetence” and has determined that there is no material competence that can be reported to the petition of court summoning.

The courthouse has determined that the trial suit claim could not be framed within any of the limitative cases mentioned by art.94 ltr.a of the NCPC, also mentioning that the ltr.j framing is also invalid due to the fact that the object of the motion cannot be asses in money.

As consequence, the courthouse of Constanta has declined the competency towards the Tribunal of Constanta, according to art. 95 from NCPC – which states that the tribunal judge in first instance all the requests which are not given by law to the competency of another court.

The motivation given by the courthouse does not represent, in our opinion, a correct interpretation of the NPCP provisions due to the fact that the determining criterion for the establishment of material competency of the instance is the nature of the litigation itself to which other subsidiary criteria are sometimes associated.

Doctrinaire, this “allocation” of jurisdiction or this “assignment” of the “jurisdiction part” which is due to each court is made according to double criteria:

a) Objective criterion – regarding the competency of attribution; therefore within courts of different ranks or vertically;

b) A territorial criterion; therefore within courts of same rank – courthouses, tribunals, specialized tribunals or appellate courts – but with different circumscriptions.

The two criteria must be conjugated so that a determination can be reached of which instance – objectively and territorially – has the vocation of solving the request or the trial. Here, in this context, we will examine first the significations and implications of the first criterion, to establish the competency of attribution of courts.

The determining objective criterion for the establishment of material competency of the court is the nature of the litigation to which other subsidiary criteria are associated such as: the importance of litigation interest – represented by the economic value of it or the monetary value, the role of the parties and the urgency [1].

The objective criterion and its subsidiary determinations.

In recent Romanian doctrine the material competency has been considered for be determined under functional aspect, after the type of jurisdictional attributions, while under the procedural aspect, after the object, nature of value of the cause.

Therefore the criteria or the elements after which the determination of the attributionary competence of the courts is made - “competence of matter”, to situate ourselves within the terms of civil law –has been considered to be the following:

- The nature of litigation
- The interest of litigation interest [2]

Other times the “objective” criterion has been considered to be a complex criterion made of several subsidiary criteria such as the nature of the litigation, its economic important or its value, the quality of the parties involved and the urgency [3].

In other words, to determine the competency, the law followed the criteria: the importance of the litigation interest, the nature of the litigation and its urgency [4].

In our earlier doctrine [5], the “limitation of competency” has been considered to be realized following several criteria or “signs”: the objective criterion, real, which can be the value of litigation or its nature, the functional criterion, the territorial criterion and other secondary criteria such as connectedness, exclusive competency, objective competency, subjective competency or competency regarding the situation of the parties concerned.

To what concerns us, we will consider the objective criterion to the determining criterion for the establishment of court competency, and by this we will further understand the nature of the litigation. Sometimes, however, as will be shown, to the nature of litigation there are other subsidiary criteria of determination that are associated: the importance or the value of the alleged interest, the quality of the parties and the urgency [6].

It seems therefore that each of these criteria has an independent value and acts as such to determine the competency of the court. Or, at least in our legislature, the importance of litigation interest – the economic value of it or its monetary expression – never determined, exclusively, the competency of the court, but, sometimes, it is associated to the nature of the litigation – prime criterion and omnipresent in the space of court competency.

The nature of the dispute is therefore decisive in the determination of the jurisdiction of the courts' attributes. Also, the civil procedure law itself refers to the “material jurisdiction” where the “material” signifies the nature of the dispute. However, when litigations of the same nature have been distributed to the jurisdiction of instances of different ranks, the objective criterion – the “matter of litigation” – could not have been, by itself, satisfactory for the determination of the jurisdiction. Therefore, other subsidiary criteria have been put in place.

To which concerns this case, the nature of the dispute required to be protected by justice is with certainty a motion of patrimonial type by its subsidiary character, the motion regarding the dissolution of the testamentary clause referring to the real life contingency of a property has patrimonial consequences, with economic content therefore which can be monetized. Furthermore – the right pursued through the motion is pursued through the action of dissolution of the testamentary clause has patrimonial effects, being under the provisions of art. 104 which refer to estate demands, the value of the estate will be determined by the taxable value, established by tax legislation therefore cannot be framed within personal right of non-patrimonial type. It should also be noted that rights of personal nature, with no economic content, therefore non-monetary are those close related to the physical and moral integrity, they refer to freedom, honor, honesty, reputation, the right to a name, etc. therefore subjective rights with no economic value, closely related to the human being and which, as such, are completely incapable of being transferred by legal act of transmitted by inheritance or exercised by representation.

Although the concept of civil penalty, which is practically indispensable operation as reference any social construction, infuses a picture of a natural joint litigants, a closer analysis of this legal institution one can notice that because of its negligible importance, features, characteristics and applications its concrete practice requires a study inspired depth [7].

The concept of revocation defines the theory that a legal act validly concluded is retracted by a party or by both sides, thus lacking all or part of its force [8].

Being tied by testamentary disposition which stipulates that at the death of the testator, one or more legatees are free to acquire the entire patrimony, a fraction of the assets or certain goods individually determined, the latter becoming the owner of property rights.

The ineffectiveness of legacies

1. Revocation voluntary legacy
2. Revocation court bound
3. Lapse legacy

The provision enshrined in art. 1072 of the New Civil Code provides that "legacy is ineffective due to nullity, revocation, lapse or dissolution for failure to fulfill the precedent condition or the resolutive condition and it advantages the succession of heirs whose rights would have been reduced or, where appropriate, removed by existence of legacy or that they had to execute legacy."

Usufruct life contingency clause ends on the duration of the beneficiary's life or its owner. From the point of view of life duration, if the holder is an individual, usufruct can be no more than the life contingency. If the beneficiary right of usufruct is a legal person, it may be closed for a maximum period of 30 years. Therefore, usufruct can be life contingency only if the recipient is an individual.

Legal Characteristics of usufruct:

- is a right on the property of another, born of separation of the ownership right on the same property. Thus, a person – the usufructuary - shall possess and use property, picking fruit, the other owner will remain only person with the right to dispose of property (you can sell, donate, etc.);
- is a real right, which means that the usufructuary may exercise his rights or attributes recognized of the property subject to this law, directly and immediately, without the intervention of another person. Of example, the usufructuary may lease the property or use it for himself;
- is a temporary right, it can be beneficial maximum lifetime when it is physical person (usufruct life contingency) and not more than 30 years in the legal entity. If not provided during usufruct, the set up for an individual is presumed to be the life contingency, and one that is beneficiary a legal person is presumed to be established on 30 years.
- can the right of usufruct be sold? Under the new Civil Code, unlike the former Code, the usufructuary can yield both Paid and free his right without the bare owner, but with respect provisions for real estate property advertising and notification obligation of assignment to the nude owner.

Usufruct shall cease:

- Death of the usufructuary or if the owner is a legal entity, at the termination of legal personality. And therefore, usufruct right is not inherited by the heirs of the usufructuary because this right shall end upon death;
- Period fixed in the contract for the duration of the usufruct;
- Consolidation, when the person has the quality of the usufructuary and the naked owner. For example, if following the succession debate, the bare property is inherited by the usufructuary;
- Dropping the usufruct by notarial declaration which is only made by authentic when it is a immobile property to be registered in the land.
- When it has been unused for 10 years or, where applicable, for 2 years for usufruct of a claim;
- At the decision of the court, at the request of the bare owner when the usufructuary abuses of property, brings damage to it or lets it deteriorate. The court can decide either the cease of use or the taking by the bare owner with the obligation to pay rent to the usufructuary during the usufruct;

- When the property has been completely destroyed in a event which could not be foreseen or prevented (fortuitous case).

To conclude on those which have been presented, we can firmly sustain that the ceasing of the life interest (usufruct) from the case analyzed has, without doubt, a personal and patrimonial character and the only criterion which leads to the establishment of the court's jurisdiction is the economic value of the estate.

Therefore, in the case of an annulment, when we are referring to the disbandment of an act which is the base of patrimonial rights, it is clear that the deprivation of the legal effects of such judicial rights also has patrimonial consequences and, as such, the motion through which such a right is exploited is patrimonial as well [9].

References

- [1] RIL 1 Appeal on points of law / Decision HCCJ Decision no. 32 of 9 June 2008 on the nature monetized civil and commercial litigation seeking a declaration whether or not a property right, nullity, annulment, resolution, termination of legal documents on property rights, in order to establish jurisdiction material. Publicata in Official Gazette no. 830/2008 Gazette. no. 830/10 DEC. 2008 File no. 75/2007
- [2] Solus H., R. Perrot, op. cit., t. II, no. 13, p. 20.
- [3] Fettweis its precise droit judiciaire, t. II, Brussels, 1971, p. 1 et seq.
- [4] J. Vincent, S. Guinchard, civil, 21e Ed, Dalloz, 1987, p. 154, no. 109.
- [5] P. Vasilescu, theoretical and practical Treaty of Civil Procedure, vol. III, Iasi, 1941, p. 388 389, no. 320.
- [6] Before modifying the Code of Civil Procedure, on 12 February 1948 pivot attribute competence is the value of the dispute, but under the conditions of the district courts, which disputes the symbolic value. In our view, we believe that the determination court in relation to the value of choice is at least questionable claims. Setting the plaintiff the amount of such claims, with 10 bani below or above the threshold value required by law, may result in discretionary choice of court and thus lodging appeals. Criterion value of competence - for "appreciation" applicant - is undoubtedly a subjective and thus from the beginning is tolerated inequality parties in the lawsuit. (See also infra, pt. 20 of the contents of this paragraph.)
- [7] Civil penalties on liberality – doctorat Universitatea thesis "Lucian Blaga"
- [8] See D. Cosma, general theory of civil legal act, Ed. Scientific, Bucharest, 1969, p. 425.
- [9] As was previously mentioned by the author from the beginning of the article, the case was eventually declined to the Courthouse of Constanta for settlement, due to the creation of a negative conflict of jurisdiction, by the decision of the Court of Appeal of Constanta.