

# Delimitation of Jurisdiction of Commercial, Civil and Administrative Courts: IT Challenges

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## Summary

In modern conditions of the development of public relations, there is a continuous development of technologies. This not only reflects the convenience of service users, and new technology but also contributes to the emergence of new disputes to protect the rights of stakeholders. Therefore, it is urgent to study the distinctions between the jurisdiction of commercial, civil and administrative courts in resolving IT disputes. The work aims to study the peculiarities of delimitation of the jurisdiction of commercial, civil, and administrative courts through the prism of IT measurement. The research methodology consists of such methods as a historical, comparative-legal, formal-logical, empirical, method of analogy, method of synthesis, method of analysis, and systematic method. Examining the specifics of delimiting the jurisdiction of commercial, civil, and administrative courts through the IT dimension, it was concluded that there is a problem in determining the jurisdiction of the court. In addition, the judicial practice on this issue is quite variable, which negatively affects the predictability of technology in resolving potential disputes. In this regard, the criterion models for distinguishing between commercial, administrative, and civil proceedings according to the legal classification of the parties, as well as the nature of the claim are identified. This separation will contribute to a more accurate application of legal norms and methods of application of administrative norms and reduce the number of cases of improper proceedings.

## Keywords:

*IT disputes, jurisdiction, judicial system, category of disputes, delimitation of jurisdiction.*

## 1. Introduction

Over the last decade, the IT sector has been quite promising and fast-growing. Internet trends and technologies are becoming more widespread and penetrating all areas of human activity [20]. But as in any field, it is characterized by the emergence of disputes: labor, corporate, tax, criminal and so on. Due to the specifics of IT activities in resolving disputes in this area, there are often difficulties and inconsistencies. This includes issues in delimiting the jurisdiction of commercial, civil and administrative courts. Given these circumstances, it is necessary to analyze through IT the dimension of the delimitation of the jurisdiction of the courts.

In general, the question of the jurisdiction of disputes is caused not only by changes in public relations, but also by the evolution of relations by the state, which determines the priority areas for improving the level of judicial protection of rights and freedoms.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will resolve the dispute over his rights and obligations of a civil nature or establish the validity of any criminal charges against him. Thus, the Consequence of Non-Jurisdiction and Jurisdiction will be, at best, the annulment of a decision by a higher court and, at worst, a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by the Protocols of 11 May 1994) [1].

According to Article 2 of the Civil Procedure Code (CPC), the tasks of civil proceedings include fair, impartial and timely consideration and resolution of civil cases in order to effectively protect violated, unrecognized or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, interests of the state [4].

Article 2 of the Commercial Procedural Code of Ukraine (CPCU) stipulates that the task of commercial litigation is a fair, impartial and timely resolution of disputes related to business activities and consideration of other cases within the jurisdiction of the commercial court, in order to effectively protect violated, unrecognized or disputed rights and legitimate interests of individuals and legal entities, the state [2].

Also, Article 2 of the Code of Administrative Procedure of Ukraine (CAP) stipulates that the task of administrative proceedings is fair, impartial and timely resolution of disputes in the field of public relations in order to effectively protect the rights, freedoms and interests of individuals, rights and interests of legal entities from violations by the subjects of power [3].

At the same time, the rules for determining the jurisdiction of the case are established by procedural laws,

which determine the substantive and subjective jurisdiction of civil and administrative cases, namely Articles 20 of the CPC of Ukraine, 19 CPCU of Ukraine and 19 CAP of Ukraine [4, 2, 3].

Given the regulation of the tasks and jurisdiction of cases in procedural law, at first glance, the issue of delimitation of jurisdiction of the courts should not arise. Unfortunately, such problems exist and need to be considered in detail.

## 2. Literature overview

Domestic and foreign scholars have studied the division of jurisdiction of commercial, civil and administrative courts. The issue of unity of judicial practice in determining the jurisdiction of cases in her work revealed Bakonina [5]. The author notes that although the existence of a clear legal delineation of jurisdiction in courts should not cause problems in the jurisprudence on the jurisdiction of court cases, but the practice of interpretation of these procedural rules has revealed many problems in their proper application. In addition, according to the researcher, the correct definition of jurisdiction is crucial in the practice of courts, because the court decision, which even correctly resolved the dispute on the merits, can not be considered as adopted by law, if the jurisdiction was violated.

Theoretical questions about the essence of corporate dispute and the peculiarities of subject jurisdiction in her work revealed Verbitska [6]. As a result, the researcher notes that corporate legal relations is a rather complex legal concept, because with the development of corporate relations in modern market conditions it acquires new significance, and today none of the types of public relations has as many definitions, views and discussions as corporate legal relations and, accordingly, their elements – subjective corporate rights. Also, the author draws attention to the fact that the specifics of corporate disputes are due to the fact that they require qualifications, experience and relevant knowledge in the field of corporate law, as well as in other related areas of law. The correctness of the decision on the jurisdiction of the dispute depends on the correct determination of the sectoral affiliation of the legal norms to which the parties to the dispute refer.

The definition of jurisdiction in the consideration of Internet disputes in her work was considered by Gorban [7]. The author noted the controversial issues of appealing to the court to protect the violated right in the conflict on the Internet. Dyachenko and Gontsovska considered the current problems of judicial practice that arise when delimiting the jurisdiction of courts in resolving disputes arising from the emphyteusis agreement [8].

The subject of Zaitseva's work was the problem of determining the jurisdiction of courts in the field of

protection of intellectual property rights to trademarks for goods and services [9]. In the article the researcher considers the main problems of determining the jurisdiction of courts in the field of protection of intellectual property rights to trademarks for goods and services and proposed criteria for delimitation of judicial jurisdiction in this area.

General theoretical aspects of administrative proceedings and the separation of administrative and other jurisdictions identified Kovaliv, Gavriltsev and Starukha [10].

Kucheryavenko conducted a detailed analysis of the problematic issues of delimitation and reform of jurisdictions in his work [11]. The scientist considered why the reform of the judiciary is based on an illogical, in his opinion, scenario and ways to solve existing problems.

The problems of judicial practice in determining the jurisdiction of the court during the consideration of a labor dispute were considered by Mamai [12]. The article notes that in determining the jurisdiction of the court one must take into account two criteria – specialization and territoriality.

Peculiarities of dispute resolution practice in the IT sphere were considered by Mysnyk [13]. The lawyer notes that the most common IT litigation cases are: NCA disputes (Non-compete agreement); disputes related to software development; disputes related to the protection of intellectual property for software; disputes over tax benefits. The lawyer also draws attention to the fact that the jurisprudence in IT disputes is ambiguous. Judges often lack expertise in technology, so they are guided by a long-outdated legal framework that does not meet the dynamics of the IT market. Therefore, in order to protect their interests, IT business representatives should be especially careful in the design of relationships with contractors, detailed contracts and draft primary documents, which will get a positive result in litigation and minimize their occurrence in the future.

Mudrytska considered the peculiarities of resolving disputes about infringement of intellectual property rights on Internet sites [14]. Lawyers Romashchenko and Tomarov [15] analyzed the top 5 litigation in the field of technology.

Innovations of procedural legislation and features of delimitation of jurisdiction of courts were considered by Sidorenko [16]. The author notes that although the Commercial and Civil Procedural Codes have undergone significant changes in the past, discussions on the application of their individual provisions have not abated to this day. One of the novelties is the introduction of new rules and criteria for delimitation of jurisdiction, which immediately led to a change in case law. In conclusion, the

author notes that since the entry into force of the Commercial Procedure Code, an approach has been introduced to delimit jurisdiction depending on the subject of legal relations, and not only on the subject composition of the parties. Given the provisions of paragraph 1 of Part 1 of Article 20 of the Code of Civil Procedure in cases of performance of accessory obligations, the subjective criterion is not applicable, and the choice of proceedings in this case depends solely on the subjective composition of the parties to the main obligation, which is an absolute novelty and should be taken into account when drafting and filing relevant claims. Some issues related to the resolution of IT disputes were considered by Starodub [17]. The author notes that in most cases disputes are not considered in Ukraine, but referred to another state court or international arbitration under foreign law, and also points out that the practice of IT disputes today is quite small. Ways to resolve domain name disputes arising from trademark infringement were considered by Hodosh [18]. His article, in particular, analyzes the issue of determining the legal nature of domain names, their place in the system of intellectual property rights, current international and national case law, which enshrines fundamental positions on the consideration and resolution of domain disputes, the subject of which is reproduction in the domain name trademarks of another person, as well as mechanisms for out-of-court settlement of such domain disputes (for example, UA-DRP procedure). It also presents current positions, including international and national courts, scholars and legal practitioners, on domain disputes, mechanisms to protect the rights and interests of trademark owners, as well as the evidence base and procedural levers used in such disputes.

Key differences in the jurisdiction of labor disputes and its impact on the theory of labor law in his study considered Shumilo [19].

Pavlova's article is devoted to the topic of delimitation and correlation of civil and administrative methods of justice [21]. The aim of the research was to determine clear criteria for distinguishing between civil and administrative proceedings to increase the effectiveness of civil and administrative law in resolving disputes related to the violation of rights, freedoms and legitimate interests of the individual.

However, despite the large number of scientific papers on the delimitation of jurisdiction of commercial, civil and administrative courts, the issue of delimitation of this jurisdiction in IT disputes and taking into account the IT dimension has not been studied, although it has aroused considerable interest. This circumstance determines the relevance of the research topic and the need for more detailed consideration.

### 3. Methodology

Methods of historical, comparative law, formal-logical, empirical, method of analogy, method of synthesis, method of analysis, method of analysis, system method were used in the study of delimitation of jurisdiction of commercial, civil and administrative courts through the prism of IT measurement.

Using the historical method of research, the peculiarities of delimitation of court jurisdiction were analyzed and the origin and evolution of the research topic became clear, as well as knowledge of the concept of "jurisdiction" was deepened given the passage of time and existing points of view. In addition, this method made it possible to understand how paradigms have changed that have affected the division of jurisdiction of civil, commercial and administrative courts.

The application of the comparative law method allowed to analyze the features of each type of jurisdiction when considering cases with IT elements. The comparative legal analysis resulted in the identification of differences and the elucidation of common features of each of the jurisdictions. Moreover, this method contributed to the formation of criteria for the relation of certain category of cases to the jurisdiction of a particular court.

The formal-logical method was used in the process of defining the concept of jurisdiction. Based on the principles of the formal-logical method, it was possible to formulate a definition of the main legal concepts of the study. The analysis of judicial practice, normative legal acts, scientific doctrine, the order of systematization of normative material, rules of legal technique is a manifestation of this use of the method. Also, using this method, the definition of the term «jurisdiction» was given and the problematic aspects of the formation of this concept in the context of reforming the judiciary and procedural law were considered.

The problem of delimiting the jurisdiction of administrative, commercial and civil courts through the IT dimension has helped to clarify such a method of scientific research as empirical one. In view of the provisions governing the use of this method, the specifics of the delimitation of cases from different jurisdictions have been clarified, as well as the guiding principles used by judges in the delimitation of such cases.

The method of analogy helped to formulate proposals for improving the legislation on delimitation of jurisdictions of courts taking into account the IT aspect. In addition, this method helped to understand the causal links between the issues under study and to understand the next steps to change existing approaches to the division of jurisdictions.

The use of methods of analysis and synthesis allowed a comprehensive analysis of the research topic. Thus, the method of analysis helped to identify patterns of delimitation of court jurisdiction. The method of synthesis made it possible to scale the existing case law on the delimitation of the jurisdiction of the courts and to consider the possibility of forming a unified approach and avoiding inconsistencies.

Thanks to the system method, which consists in studying the object of study as a whole set of elements in the set of relations and connections between them, the distinction between jurisdiction of commercial, civil and administrative courts through IT dimension as a system model was analyzed. Given the methodological specifics of the system method, which is that the purpose of the study is to study the patterns and mechanisms of formation of a complex object from certain components, special attention was paid to the diversity of internal and external relations, the procedure for combining basic concepts into a single theoretical picture that made it possible to reveal the essence of the integrity of the system of jurisdiction of the courts. Therefore, this method allowed to preserve the integrity of the study, structure the available information and master all the features of the system.

## 4. Results

### 4.1. General principles of determining jurisdiction

Before analyzing the peculiarities of the delimitation of jurisdiction of commercial, civil and administrative courts, we consider the general provisions on jurisdiction. In general, in order to determine the «court established by law» provided for by the Convention, including the establishment of a court of competent jurisdiction, in the procedural legislation of Ukraine, the approach of referring to the jurisdiction of general courts all cases arising from civil, land, labor, family, housing and other legal relations, except for cases which are considered by way of other proceedings. That is, if the case is not within the jurisdiction of other (for example, commercial or administrative) courts, it is subject to consideration by a general court. As for the jurisdiction of economic and administrative cases, commercial courts should resolve disputes related to economic activities, and administrative courts should resolve public law disputes with the participation of subjects of power.

Despite the fact that the legislator has defined the system of courts and their jurisdiction, the practice of applying legal norms needs clear regulation. The role of the body that actually determines the rules of jurisdiction and eliminates inconsistencies in judicial practice is performed by the Supreme Court. For example, the Supreme Court

issues many decisions, which provide legal opinions on the grounds and conditions for determining the jurisdiction of cases. At the same time, the rapid development of public relations presupposes the preconditions for the Grand Chamber of the Supreme Court to deviate from the already formed conclusions on the jurisdiction of disputes.

Regarding the criteria for delimitation of court jurisdictions, the criteria for distinguishing cases of civil jurisdiction from others are:

- 1) they have a dispute over civil law;
- 2) the subjective composition of such a dispute (one of the parties to the dispute is, as a rule, an individual), and;
- 3) direct reference to the law on dispute resolution in the order of certain proceedings [12].

However, the analysis of case law shows that most of the issues are the separation of civil and commercial jurisdiction over the resolution of «property» labor disputes.

In accordance with the provisions of paragraph 8 part 1 of Article 20 of the Commercial Procedural Code of Ukraine, commercial courts consider bankruptcy cases and cases in disputes with property claims against the debtor in respect of which bankruptcy proceedings have been opened, in particular cases in invalidity disputes any transactions (agreements) concluded by the debtor; recovery of wages; resumption of work of officials and officials of the debtor, except for disputes over the determination and payment (recovery) of monetary obligations (tax debt), determined in accordance with the Tax Code of Ukraine, as well as disputes over the invalidation of transactions on the claim supervisory body to perform its powers under the Tax Code of Ukraine [2].

In addition to the issues of delimitation of economic and civil jurisdictions during the dispute, there is a difference between civil and administrative jurisdictions.

Paragraph 2 of Part 1 of Article 20 of the Code of Administrative Procedure of Ukraine stipulates that the jurisdiction of administrative courts extends to cases in public law disputes, including disputes concerning the admission of citizens to public service, its passage, dismissal from public service [3].

Regarding the criterion of territoriality, compared to the criterion of specialization of disputes, less happens, because Art. Art. 28, 27 of the CPC of Ukraine clearly defined the principles of selection of a court on this criterion. However, there are practical gaps in this regard.

#### 4.1. Features of delimitation of jurisdiction of civil, commercial and administrative courts through the IT dimension

Let's analyze the features of delimitation of jurisdiction of commercial, civil and administrative courts when considering IT disputes.

The most common categories of IT cases are:

Categories of disputes:

1. NCA, or non-compete agreement;
2. Disputes related to software development;
3. Disputes related to the protection of intellectual property on software, and;
4. Disputes related to taxation [17].

Disputes over NCA (non-compete) appeals belong to civil jurisdiction. In general, the essence of this agreement is that the employee after dismissal undertakes not to disclose information obtained during work, not to engage in activities similar to the company, or to participate in projects similar to the company's projects, both individually and jointly with others. On the one hand, the NCA is an effective way to protect the interests of the owner of the company from unscrupulous employees and Ukrainian law does not contain rules on non-competition, and therefore NCAs are often not enforced and cause litigation.

Disputes related to software development belong to the jurisdiction of commercial courts (party – company).

Disputes related to the protection of intellectual property on software. This is one of the most common categories of IT cases. Cases are subject to the commercial court.

Disputes related to taxation fall under the jurisdiction of administrative courts. In particular, there are widespread disputes over the taxation of transactions for the supply of software components and the taxation of transactions with the results of computer programming [13].

According to the above practice, the jurisprudence in IT disputes is ambiguous. Judges often lack expertise in technology, so they are guided by a long-outdated legal framework that does not meet the dynamics of the IT market. Therefore, in order to protect their interests, representatives of the IT business must be especially careful in the design of relationships with contractors, detailed contracts and draft primary documents. This approach will allow you to get a positive result in lawsuits and minimize their occurrence in the future.

## 5. Conclusions

As a result of the study of the peculiarities of the delimitation of jurisdiction of commercial, civil and administrative courts through the IT dimension, the following conclusions were made.

- 1) The correct definition of jurisdiction is of paramount importance in the practice of courts, because a court decision, which even correctly resolved the dispute on the merits, can not be considered as adopted by law, if its adoption was a violation of jurisdiction.
- 2) By distinguishing between IT disputes by jurisdiction, the courts of cassation have an obligation to avoid differences in case law when applying the same substantive law. The point is that the question of jurisdiction lies in the plane of procedural support for resolving a dispute. Therefore, approaches to understanding legal norms, their interpretation and application should be the same and not contradict each other, because the lack of a common vision of the courts of cassation in the application of legal norms undermines the authority of the court decision. Such contradiction may lead to differences in the interpretation in judicial practice of the same legal norms by jurisdictions (civil, administrative and commercial) in different ways, which is unacceptable and can not be allowed.
- 3) Determining jurisdiction when going to court to resolve IT disputes has its own characteristics, which is determined by the category of disputes.

With regard to further research, there is a need to consider in more detail the definition of jurisdiction in IT disputes with a foreign element.

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