MOTION TO CHANGE VENUE. CASE STUDY

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Abstract

Change of venue is a remedy offered to a party, which in case of legitimate grounds for suspicion or public safety may require that proceedings belong to another court than the court first seized. But change of venue is not based on a case of material or territorial lack of jurisdiction of the court, taking into account exceptional circumstances or impartiality doubt regarding the case. Thus, article 140 of the Code of Civil Procedure stipulates the possible causes of change of venue, including further issues that will determine jurisdiction to hear by the courts of control.

Keywords: *removal, reason, expertise, enemies, impartiality.*

JEL Classification: K41

1. Introduction

The main causes of change of venue are contained in procedure code and are related with legitimate suspicion and the existence of exceptional circumstances that could lead to public disorder. Thus, regarding doubts about impartiality due to circumstances of the trial, the quality of the parties involved or to local conflicts, jurisdiction will belong to the Court of Appeal, and exceptionally to the High Court of Cassation and Justice (HCCJ) if relocation is required by the Court of Appeal. In the event of extraordinary circumstances that could give rise to public disturbances, resettlement on grounds of public safety can be required only by the Attorney General and is solved only by HCCJ.

Admission of the transfer application means the case goes to a court equal in rank to that from which it was displaced, the decision showing to what extent the court will keep to the acts performed before displacement occurs.

Regarding the possibility of adjourning the judgment in case of removal, the competent court may deal with the request, with or without summoning the parties, but only after paying bail.

Thus, the plaintiff[2] requested HCCJ to change venue from the Court of Appeal, in particular on grounds of legitimate doubt. In this regard, the petitioner stated that the first instance judged the case by direct reproduction of the conclusions of the expert report.

As preliminary issues, the petitioner informs the court that other motions to change venue were filed in its causes, as a result of the monopoly exercised by the payroll experts in the district court of first instance. As evidence it indicated that only two experts took hundreds of cases of labor law, cases in which the petitioner was wronged. This raises the question of a possible enmity between it and the two experts appointed in question.

Legitimate doubt formulated by the petitioner is mainly linked to the impossibility to control the circumstances of the case when only two payroll experts formed the opinion in the district court of first instance. The expert reports in all cases where the petitioner was part were issued by the same experts, the expert reports being identical related with tables for calculating the remuneration. Another reason for change of venue is related to the interpretation by experts of the provisions of collective agreements.

The petitioner also mentions that there are only six labor-wage experts in the country, and the situation could result in a monopoly. The effects of the existence of this monopoly would be related to the settlement of cases solely on the basis of expertise. Thus, in accordance with Article 6 of the European Convention on Human Rights[3] implies the right to a fair trial for any person to be

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[2] Tăbârcă M., *Dreptprocesual civil*, Universul Juridic, Bucharest, 2005, p.76

[3] Chiriţă R, *Convenţia europeană a drepturilor omului*, CH Beck, Bucharest, 2008, p.191;

tried publicly, fairly and within a reasonable time by an independent and impartial Court; the petitioner claims these issues are not to be found in the first court.

In addition, the petitioner requested the Court to suspend the trial at the Court of Appeal.

2. Preliminary issues

In fact, the respondent requested the Court to order the plaintiff to pay the amount in wages due and rights not granted in the period 2009 - 2012, respectively compensation for dismissal[4] and to pay the costs incurred in that dispute.

As a former employee of the plaintiff, during the period 01.09.2009 – 17.04.2012, as entries in the employment record and individual work contract prove, he worked in the warehouse of the above mentioned company.

By Civil Judgment of the Court, the appeal of the plaintiff was allowed and the defendant was ordered to pay the total amount.

Compared to the final solution of the court of first instance, the petitioner has filed for appeal[5], which currently makes the object of the case pending before the Court of Appeal.

Compared to the reasons provided by the petitioner in the application for change of venue, we appreciate the following:

- The petitioner did not use the procedural means to change venue during the trial on merits of the case, although it had the opportunity to do it even in that procedural stage. We consider that the petitioner stated in the motion to change venue the existence of enmity between him and experts appointed by Prahova County, which dated before the start of the trial, in this sense making reference to cases pending at this time, in course of appeal or already judged;
- Petitioner makes no reference to any "bias of judges", essential for analyzing the change of venue in the case pending before the Court. Thus, while the petitioner analyzes exclusively the legitimate suspicion regarding the two experts, one unrelated to the case before court, we can interpret this request as unfounded at least as an object of change of venue;
- The first court was not required the expertise by an expert appointed from another city, if there were legitimate doubts in this respect. The petitioner mentioned that in some cases, exceptionally, experts from other counties were appointed, but this procedural means was not used in first instance;
- The main reason for appealing against the sentence handed down in civil court is bound by substantive contradictory, on the grounds of art. 304 section 7 of Code of Civil Procedure, namely on the finding that "judgment does not contain the reasons which support it or contains contradictory reasons or foreign to the nature of the case"; subsidiarity, references were made to the evidence provided in the case;
- The petitioner does not request restoration of expertise on appeal, although the main reason for change of venue is linked precisely to the conclusions of the expert report, and the relative position of enmity with experts. In the first court the petitioner does not rise objections to the expert report and the petitioner's expert adviser rises its dissenting opinion to only one of the expertise's objectives, related to the emoluments to dismiss and calculating modality on this amount; however it does not have a dissenting opinion to the other objectives.

[4] Ţiclea A., *Tratat de dreptul muncii*, Universul Juridic, Bucharest, 2007, p.568.
[5] Theohari D.N., Ilie C.M., Bîrlog M.A., Cristea B., *Acţiunile civile şi taxele judiciare de timbru*, Hamangiu, Bucharest, 2012.

3. Reasons for change of venue

Regarding the first reason[6] for the motion to change venue, respectively the modalities for the implementation of the Social Plan, as well as employing the contesting applicant with the provisions of Petrom's Collective Labor Agreement, regulation that allowed him to obtain allowances for difficult working conditions, the petitioner criticizes the first court's judgment. The petitioner criticizes the way the first court applied as evidence the judicial accounting expert report, legally disposed in the case. Accounting expertise was arranged at the request of the appellant because of the need to clarify the circumstances of the case.

The need for expertise, and the Court's discretion over those specified in the submitted report stemmed from the facts, given that the appellant at the express request of the court could not submit the job description of the position occupied by the appellant, later acknowledging through a representative that in this particular case it was not even drafted. How could the court determine the existence of harsh or dangerous conditions on the job if they did not take into account the conclusions of the judicial expert appointed in question? Moreover, the appellant has called in an expert adviser who did not have a dissenting opinion regarding the employment of the appellant on a position with harsh working conditions.

Thus, according to the considerations of the court sentence under appeal, the Court extracted from the expertise that the compensation awarded to the contestant was established by Convention but judges, on its own analysis, that it was natural to pay compensation to date for 2012. The court took into account not only the expert's opinion but motivated its sentence on all the evidence provided in the case, including the regulations contained in the Social Plan, the Convention and the provisions applicable to the Collective Labor Agreement.

Therefore, the trial court analyzes and interprets both the provisions of the Social Plan and the conventions as well as the provisions of the CLA, clarifying legal issues through collating all the evidence in the case. The fact that the designated expert's opinion is similar does not constitute reasonable grounds for the de facto exclusion of the role of the court. Even the appellant acknowledges that it is at least fair that "those fired during the same year receive the same compensation for dismissal," but noting that the tie be done given their positions, a situation totally unfair and unlawful.

The appellant's opinion that the first instance's solution is not based on its own analysis is flawed to the extent that, the appealed sentence states inclusively that the court documented files in conjunction with the conclusions of the expert report. The court itself stated that "analyzing documents and materials in relation to the evidence adduced and the legal provisions at issue" lead to the judgment under appeal.

Another reason to change venue was based on the existence of other change of venues, referring to the court decision in other cases; with respect to the solution of the first instance, even the petitioner informs HCCJ that in this particular case the expert Payroll report was disposed for retrial, aspect not retained in the case.

We note that the petitioner has not requested the restoration of the expert report in the appeal filed to the Court of Appeal. Moreover, the petitioner does not raise substantive objections to the expert report, and its expert advisor has a dissenting opinion only to one objective of the expert report, respectively to the severance pay and its amount, and not on the other objectives.

4. On the merits

It appears that the conditions necessary to changing venue[7] of the case before the Court of Appeal are not fulfilled, as were interpreted extensively by the petitioner. In this regard, the

[6] Ciobanu V., Boroi G., *Drept procesual civil*, C.H.Beck, Bucharest, 2009, p.159.
[7] Spineanu O., Moglan R., Ivanovici L., Barna M., Matei I., Eftimie M., *Cartea de cereri şi acţiuni*, C.H.Beck, Bucharest, 2008, p.45.

petitioner refers to constitutional provisions requiring impartiality and equal justice, adding their own findings and interpretations about the monopoly of evidence.

Thus, the petitioner refers to the monopoly of the two experts from the first court, given that they are performing an activity prescribed by law as authorized experts on the list of legal experts appointed by the Ministry of Justice. In terms of monopoly, the petitioner itself does not understand the meaning of this term, because monopoly is defined as "an exclusive right of a person to dispose or perform anything." Not only does the petitioner refer to two experts and not a sole individual, but it informs the court that, even at national level there is a monopolization of expertise in these areas as "only 6 experts" on Labor/ payroll may be appointed. We assume that in these conditions any expert report achieved nationally, regardless of the court where the case is pending, constitutes grounds for a motion to change venue, on the grounds that all these experts are in a monopoly situation. Moreover, all these experts may be, in the petitioner's view, in a situation of enmity with it, as was the case with those appointed in Prahova County.

Regarding the situation of enmity, as a determinant element of the concept of "legitimate doubt" the petitioner is again seriously misinterpreting the provisions of art.37 par.2 of the Code of Civil Procedure. In this regard, the provisions in the Article above are very clear and specific: "legitimate doubt is counted as often as it can be assumed that the impartiality of judges may be impaired due to the circumstance of the case, the quality of parties or local enmities." In this regard we find that the petitioner's entire motion to change venue is based on the enmity between it and the experts appointed to the case; this enmity is only stated but unsubstantiated enough. It is absolutely legal that if county wide there are only two experts legally registered in this specialization, they are appointed for expert reports in the field and become the only option of the court.

5. Conclusion

The analysis of the situation hereby exposed may reveal that the first instance correctly administered the evidence assented, ruling in accordance with them. In addition, the petitioner makes no reference to any "unbiased judges" essential to analyze the motion to change venue in the case before the court. Thus, while the petitioner only analyzes the legitimate suspicion to two experts, one unrelated with the case before the court then we can interpret this request as unfounded at least as an object of motion to change venue.

As a result, we note that, procedurally, if the petitioner is dissatisfied with the explanations contained in an audit report they have the option to raise objections and not appeal for change of venue. But the petitioner, in the first instance of the case they want changed to a different venue did not raise any objections to the expert reports of the appointed expert. Moreover, the petitioner requested and was admitted appointing an expert adviser who has a dissenting opinion only to one objective of the expert report.

Regarding the improper method to calculate payroll and labor rights by the experts, as referred to in the motion to change venue, we cannot accept the petition of the petitioner as the expert report itself presupposes clarification of circumstances by resorting to specialists and specialized technical means not related to the parties' power of analysis. But we find that the petitioner, at the same point of the motion to change venue, mentions that "where, exceptionally, in some cases, an expert (from another county) is appointed...”; this makes us ask why, if this possibility was known, it did not ask for the appointment of another expert from a different county in the case before the Court? Shall we understand that the petitioner actually waited for the delivery of a solution and only subsequently proved dissatisfied with it?

Regarding the situation relating to the unlawfulness of the monopoly of experts specializing in Labour Organisation / payroll, then again we cannot rule in this question, as it is strictly the attribute of the Ministry of Justice, where these experts have been authorized. In addition, this shall not constitute legal grounds for motion to change venue, because it is not included in the provisions of Article 37 of the Code of Civil Procedure.

Also, the reasoning regarding the administration of the evidence by the trial courts in cases in which the respondent was not a party cannot be analyzed. According to the petitioner, conditions under which the first instance examined the cause involved collating all the evidence, including evidence that covered the conclusions of the expert report contested by the petitioner.

Moreover exception[8] of first instance lacked territorial jurisdiction raised by the complainant was rejected.

In conclusion, all these aspects allow the court hearing to dismiss as unfounded the motion to change venue submitted by the petitioner.

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[8] Vasile A., *Excepţiile procesuale*, Hamangiu, Bucharest, 2013, p.56.