CIVIL SERVANTS. LAWSUITS BROUGHT BY TRADE UNIONS. CONTROVERSIES OVER TERRITORIAL JURISDICTION

Ph.D. student **Costin MOLDOVEANU**[1]

Abstract

This study is focused on the divergences of jurisprudence that appeared following the amendment, as at mid-2018, of the rules of territorial jurisdiction inserted in the content of the Law on Administrative Contentious. The new provisions establish the exclusive territorial jurisdiction of the administrative contentious court of the place of domicile of the natural person or of the place of registered office of the legal person of private law, part of the judicial conflict of administrative law, facilitating the access to justice of the individual by the proximity of the seat of the court, the reduction of paid court charges etc. However, the desiderata taken into account by the initiators of the legislative amendment were not achieved in the case of disputes brought by trade unions having as scope of works the employment relationships of civil servants, trade union members. The different appreciation of the capacity in which the trade union can participate in the lawsuit (plaintiff or simple representative of the civil servant) determines jurisprudential divergences in establishing the competent court from a territorial point of view, successive dismissals and numerous negative conflicts of jurisdiction. Analysing the legislative framework and the relevant jurisprudence, including from the point of view of their evolution, at the end of the study concrete proposals are made to underlie the unification of jurisprudence and even the regulation of special rules of territorial jurisdiction in disputes that call into question the employment relationship of the civil servant.

Keywords: *civil servants, trade unions, administrative contentious court, territorial jurisdiction.*

JEL Classification*:* K23, K40, K41

1. Introduction

By the Law no. 212/2018[2], in force since August 2nd, 2018, a series of amendments to the Law on Administrative Contentious was brought[3], the change of the legislator's vision regarding the territorial jurisdiction of the administrative contentious courts presenting interest for this study.

According to the previous regulation, in administrative (and fiscal) contentious disputes, territorial jurisdiction was alternative, being left to the discretion of the plaintiff, private or public authority, if addressing the materially competent court of their place of domicile or seat or of the place of domicile or seat of the defendant. Consequently, the claims of the public authorities, including those against civil servants, could be addressed to a court located far from the place of domicile of the private person, party in the administrative law conflict. As individuals do not always have the necessary knowledge or financial means, they were at a clear disadvantage against the plaintiff public authority.

The new legal provisions establish the exclusive jurisdiction of the materially competent court of the place of domicile or seat of the private person. Although the new provisions are welcome in the vast majority of cases as they bring the public service of justice closer to private litigants and facilitate their defence, they have generated a non-unitary jurisprudence in cases involving employment relationships of civil servants, brought by trade unions on behalf of their members, which we will try to clarify hereinafter.

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[1] Costin Moldoveanu - Doctoral School of Public Order and National Security, "Alexandru Ioan Cuza" Police Academy; Judge, Vice-President of Sălaj Regional Court, Romania, costin.moldoveanu@just.ro.

[2] Law no. 212 of July 25th, 2018 for the amendment and completion of the Law on Administrative Contentious no. 554/2004 and other normative acts, published in the Official Gazette of Romania, Part I, no. 658 of July 30th, 2018.

[3] Law no. 554 of December 2nd, 2004 - Law on Administrative Contentious, published in the Official Gazette of Romania, Part I, no. 1154 of December 7th, 2004, with subsequent amendments and completions.

2. Analysis of relevant laws and jurisprudence

In virtue of art. 109 of the Law no. 188/1999[4], the cases that have as scope of works the employment relationship of the civil servant were given in the competence of the administrative contentious court, except for the cases regulated by derogating provisions that established a special assignment of the material jurisdiction. The amendments brought by the Law no. 2/2013[5] established the jurisdiction of the regional court, as an administrative contentious court, for solving the lawsuits concerning the employment relationship of the civil servant, unless otherwise expressly stipulated.

The statute of civil servants did not contain regulations regarding the establishment of the territorial jurisdiction of the regional courts vested with solving the lawsuits that had as scope of works the employment relationships of the civil servants, so that the provisions of art. 10 para. (3) of the Law no. 554/2004[6] establishing an alternative territorial jurisdiction between the court of the place of domicile/seat of the plaintiff or of the place of domicile/seat of the defendant became applicable, the choice of the court being the exclusive right of the plaintiff and becoming final with the filing of the statement of claim.

The Administrative Code[7], applicable starting with July 5th, 2019, kept the jurisdiction of the division/panels specialised in administrative contentious at the level of regional courts for judging claims regarding the employment relationships of civil servants, in the absence of derogating provisions (art. 536).

Such lawsuits could be brought either by civil servants, personally or through a representative, or by trade unions on behalf of trade union members.

In this last hypothesis, art. 28 of the Law no. 54/2003[8] provided: *"(1) Trade unions shall defend the rights of their members arising from the labour laws, the statutes of civil servants, collective labour agreements and individual employment contracts, as well as from agreements on the employment relationships of civil servants, before the law courts, jurisdiction bodies, other state institutions or authorities, through their own or elected defenders. (2) In the exercise of the duties provided in para. (1), trade unions have the right to take any action provided by law, including taking legal action on behalf of their members, without the need for an express mandate from those concerned. The action may not be brought or continued by the trade union if the concerned party opposes or gives up the trial".*

In the practice of the law courts competent to judge labour disputes (including in the jurisprudence of the Supreme Court), different interpretations of the above legal provisions have intervened. Some law courts considered that the trade union introduced the statement of claim as a representative of the trade union member, while other law courts considered that the trade union has an active procedural capacity in the actions in which it represents the interests of its members. This interpretation, which the High Court of Cassation and Justice considered correct in resolving an appeal in the interest of the law, has become binding upon all law courts[9].

Although the Law no. 54/2003 was repealed by the art. 224 let. a) of the Law no. 62/2011[10],

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[4] Law no. 188 of December 8th, 1999 on the Statute of Civil Servants, republished in the Official Gazette of Romania, Part I, no. 365 of May 29th, 2007.

[5] Law no. 2 of February 1st, 2013 on some measures for the relief of the law courts, as well as for the preparation of the implementation of the Law no. 134/2010 on the Civil Procedure Code, published in the Official Gazette of Romania, Part I, no. 89 of February 12th, 2013.

[6] "The plaintiff may address the court of their place of domicile or of the defendant's place of domicile. If the plaintiff has opted for the court of the defendant's place of domicile, the exception of territorial incompetence cannot be invoked".

[7] Government Emergency Ordinance no. 57 of July 3rd, 2019 on the Administrative Code, published in the Official Gazette of Romania, Part I, no. 555 of July 5th, 2019.

[8] Law no. 54 of January 24th, 2003 - Law on Trade Unions, published in the Official Gazette of Romania, Part I, no. 73 of February 5th, 2003.

[9] Decision no. 1 of January 21st, 2013, High Court of Cassation and Justice (RIL (referral in the interests of the law) Panel), regarding the unitary interpretation and application of the provisions of art. 28 para. (2) of the Trade Union Law no. 54/2003, published in the Official Gazette of Romania, Part I, no. 118 of March 1st, 2013.

[10] Law no. 62 of May 10th, 2011 - Law on Social Dialogue, published in the Official Gazette of Romania, Part I, no. 322 of May 10th, 2011, republished in the Official Gazette of Romania, Part I, no. 625 of August 31st, 2012.

the new regulation has become even clearer in terms of recognizing the active procedural capacity of trade unions in the proceedings they have brought on behalf of trade union members[11].

Therefore, in the case of proceedings brought by the trade union on behalf of its members, it was recognized as a plaintiff on the basis of extraordinary procedural legitimation.

The judgment issued by the Supreme Court took into account the non-unitary jurisprudence found at the level of panels specialised in labour and social insurance disputes, leaving the way open to divergences in the case of statements of claim filed by trade unions on behalf of trade union members who are civil servants.

During the meeting of May 22nd, 2017 of the judges of the Administrative and Fiscal Contentious Division within the Supreme Court, a solution in principle was adopted in order to unify the jurisprudence, validating the orientation that capitalizes on the Decision no. 1/2013 in the sense of recognizing the active procedural capacity of the trade union and determining the territorial jurisdiction in relation to the provisions of art. 10 para. (3) of the Law no. 554/2004, according to the option of the plaintiff trade union[12].

Subsequently, by the Law no. 212/2018, the rules of territorial jurisdiction of the administrative contentious courts established by art. 10 para. (3) of the Law no. 554/2004 and para. (4) were amended, as follows: "*(3) The plaintiff, a natural or legal person of private law, addresses exclusively to the law court of their place of domicile or seat. The plaintiff public authority, public institution or assimilated thereof addresses exclusively to the law court of the place of domicile or seat of the defendant. (4) The territorial jurisdiction for the settlement of the case shall also be observed when the action shall be brought on behalf of the plaintiff by any person of public or private law, regardless of their capacity in the lawsuit*".

Although the legislative proposal contained a different wording of the third paragraph, the amendment of the rules of jurisdiction tended towards the following four desiderata: the elimination of the possibility of bringing the same claim in several law courts depending on their practice, invoking the existence of lawsuits with *"hundreds of plaintiffs"* brought in different law courts that made it impossible to verify them, having as a consequence the issue of different judgments regarding the same scope of works; the correct and clear distribution of cases between law courts at the same level; the correct administration of the evidence due to the connection of the law court with the seats or domiciles of the parties; the reduction of court charges[13].

Although out of the attention of the legislator, the main beneficial effect of the new regulation is produced in terms of facilitating access to justice for natural or legal persons of private law in a legal conflict with a public authority that acted as public power by imposing decision-making will on that natural person.

Thus, under the rule of legal provisions in force, the territorial jurisdiction is exclusive and is determined according to the domicile of the natural person or the seat of the legal person of private law, regardless of whether they appear in the lawsuit as plaintiff or defendant.

However, it seems that the legislator did not take into account the situation of statements of claim filed by trade unions on behalf of trade union members, but only statements of claim filed by civil servants, personally or through a representative, this being the situation encountered in administrative disputes involving *"hundreds of plaintiffs"*.

The new rules of territorial jurisdiction have been interpreted differently both at the level of regional courts, as law courts competent to judge administrative and fiscal disputes concerning the employment relationship of the civil servant, and in the courts of appeal and the Supreme Court in the settlement of conflicts of jurisdiction between regional courts within the jurisdiction of the same

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[11] Art. 28 of the Law no. 62/2011 provides: "*(1)* ***Trade unions shall defend the rights of their members, arising from labour laws, the statutes of civil servants****, collective labour agreements and individual employment contracts, as well as from agreements on employment relationships of civil servants, before law courts, jurisdiction bodies, other state institutions or authorities, through their own or elected defenders. (2) In the exercise of the duties provided in para. (1)****, trade unions have the right to take any action provided by law, including taking legal action on behalf of their members,*** *on the basis of a written power of attorney from them. The action may not be brought or continued by the trade union if the concerned party expressly opposes or gives up the trial. (3) In the exercise of the duties provided in para. (1) and (2),* ***the trade unions have an active procedural capacity***".

[12] https://www.scj.ro/PublicMedia/GetIncludedFile?id=16779, p. no. 69, referred on May 8th, 2020.

[13] http://www.cdep.ro/proiecte/2018/000/70/6/em104.pdf, referred on May 6th, 2020.

court of appeal or different courts of appeal[14].

Thus, in the case of statements of claim filed by trade unions on behalf of trade union members, who seeks to submit to the court issues related to the employment relationship of the civil servant, pursuant to art. 28 of the Law no. 62/2011 (usually invoked expressly), two guidelines were synthesized regarding the establishment of the regional court competent in terms of territorial jurisdiction to solve the case in the first instance.

In an interpretation, dominant at the level of the Administrative and Fiscal Contentious Division of the High Court of Cassation and Justice, it was appreciated that the trade union acts as a representative of the civil servants union members. They have the capacity as plaintiffs and, in relation to their domiciles, it is determined the law court competent in terms of territorial jurisdiction. The verified jurisprudence also shows that some panels, including at the level of the Supreme Court, considered that trade unions are *"persons of public law"*, and regarding the determination of the court competent in terms of territorial jurisdiction, it is important the domicile of the civil servant considered plaintiff, registered as such in the identification document, being irrelevant the establishment of a residence under the law and, therefore, we conclude, nor the fact that he/she lives without legal forms at an address from a county other than the one of domicile, even for a longer period[15].

In a second, minority opinion, it is appreciated that the court competent in terms of territorial jurisdiction is determined in relation to the seat of the trade union, the latter having the capacity as plaintiff under the provisions of art. 28 para. (3) of the Law no. 62/2011, as established by the Decision of the High Court of Cassation and Justice no. 1/2013[16].

As far as we are concerned, we consider that, in disputes of this kind, jurisdiction should be determined in relation to the seat of the trade union which brought the statement of claim on behalf of the civil servants.

According to our reasoning, we appreciate that it is necessary to start from the provisions of the Law no. 62/2011, which in the first article establishes that the trade union is a *"form of voluntary organization of the employees* (parties to employment contracts or employment relationships under which they are required to perform a certain paid activity), *in order to defend the rights and the promotion of their professional, economic and social interests in relation to the employer"* - natural person or legal person of private or public law.

The employees who carry out the remunerated activity based on the employment relationships are the civil servants - natural persons appointed by an administrative deed in a public position within the central, local or autonomous[17] public administration whose activity encompasses

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[14] According to art. 135 para. (1) of the Law no. 134 of July 1st, 2010 on the Civil Procedure Code, republished in the Official Gazette of Romania, Part I, no. 247 of April 10th, 2015, with subsequent amendments and completions: "*The conflict of jurisdiction arisen between two law courts is resolved by the court immediately superior and common to the courts in conflict.*".

[15] Decision no. 643 of February 6th, 2020, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, available at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=157783, referred on May 7th, 2020; Decision no. 168 of January 15th, 2020, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, available at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=157763, referred on May 7th, 2020; Decision no. 101 of January 10th, 2020, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, available at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=157759, referred on May 7th, 2020; Decision no. 63 of January 9th, 2020, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, available at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=157779, referred on May 7th, 2020; Decision no. 32 of January 9th, 2020, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, available at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=157426, referred on 07.05.2020; Decision no. 4245 of September 26th, 2019, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, unpublished; Decision no. 6203 of December 5th, 2019, High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters, unpublished etc.

[16] Civil Judgment no. 69 of September 26th, 2019, Cluj Court of Appeal - 3rd Division for Administrative and Fiscal Contentious Matters, unpublished; Civil Judgment no. 95 of November 29th, 2019, Cluj Court of Appeal - 3rd Division for Administrative and Fiscal Contentious Matters, unpublished; Civil Judgment no. 202 of March 20th, 2020, Sălaj Regional Court - Division for Civil Matters, unpublished; Civil Judgment no. 136 of February 21st, 2020, Sălaj Regional Court - Division for Civil Matters, unpublished, etc.

[17] Ion Traian Ştefănescu, *Tratat teoretic şi practic de dreptul muncii, Ediția a IV-a, revăzută şi adăugită [Theoretical and Practical Treatise on Labour Law, 4th Edition, revised and enlarged],* Universul Juridic Publishing House, Bucharest, 2017, p. 24.

the satisfaction of the public interest.

Art. 3 of the Law no. 62/2011 proclaims the unrestricted right of civil servants, including those with special status (for example, police), to form or join a trade union.[18]

And, according to the aforementioned provisions of art. 28 of the same normative act, trade unions defend the rights deriving from the statutes of civil servants, including before the law courts, duty based on which they have the right to file statements of claim on behalf of union members, thus their active procedural capacity in such disputes being expressly recognised.

Therefore, including in the proceedings brought by the representative unions of civil servants which are based on the employment relationships in which they are parties, the trade unions, having active procedural capacity to file statements of claim, have recognized the capacity as plaintiffs.

We consider that the releases offered by the Decision no. 1/2013 are applicable, *mutadis mutandis*, also in the case of claims brought by the trade unions of civil servants.

The Supreme Court took into account, within the limits of its office, the disputes taken before the panels specialised in labour law and social insurance, whose jurisdiction extends to claims concerning rights conferred by labour law applicable to individual employment contracts or atypical employment contracts (encountered, for example, in the case of court auxiliaries). However, as can be seen from both the operative part of the decision and the recitals, it was decided to recognize the active procedural capacity of trade unions without distinguishing between them acting on behalf of civil servants or employees on the basis of an individual employment contract.

According to para. (3) of article 28 of the Law on Social Dialogue, which makes express reference to the provisions of para. (1) and (2) of the same article, the active procedural capacity is recognized to the trade unions, even if they bring legal actions on behalf of civil servants, trade union members, to defend their rights and interests deriving from employment relationships.

Compared to the express will of the legislator to assign active procedural capacity to trade unions under the conditions set out above, a contrary interpretation cannot be accepted, the purpose of which is to deprive them of the right to participate in the respective lawsuits as plaintiffs, position from which they are able to achieve a more effective defence of the rights of their members.

As the Supreme Court acknowledged in the recitals of the Decision no. 1/2013, "*the establishment of the right of trade unions to take legal action on behalf of their members... has configured the elements of the extraordinary procedural legitimation of these organizations, thus exceeding the limits of a simple right of legal representation".*

Similarly, in the legal literature it was fundamentally appreciated that the union does not act in representing the union members, but in substituting them.[19]

The new rules of territorial jurisdiction inserted in the Law on Administrative Contentious do not make inapplicable the provisions of art. 28 in the case of disputes brought by trade unions on behalf of the represented civil servants.

Thus, according to art. 10 para. (3) thesis I of the Law no. 554/2004, the territorial jurisdiction in the administrative contentious is determined according to the place of domicile or seat of the plaintiff, as the latter is a natural person or a legal person of private law. Or, in the case of the actions brought by trade unions - legal persons of private law[20], the territorial jurisdiction is

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[18] Alexandru Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență-, Ediția a X-a, actualizată [Treatise on labour law – Legislation. Doctrine. jurisprudence-, 10th Edition, updated]*, Universul Juridic Publishing House, Bucharest, 2016, p. 162.

[19] Ion Deleanu, *Tratat de procedură civilă, Volumul I, Ediție revăzută, completată și actualizată [Civil Procedure Treatise, Volume I, revised edition, completed and updated]*, Universul Juridic Publishing House, 2013, p. 314, *apud.* Jacques Héron, *Droit Judiciaire privé, 2e edition*, par Thierry Le Bars, Montchrestien, 2002, no. 90.

[20] We distance ourselves from the opinion circulating in the jurisprudence of the Supreme Court, according to which the trade unions would be legal persons of public law. In this sense, according to art. 190 of the Law no. 287 of July 17th, 2009 on the Civil Code, republished in the Official Gazette of Romania, Part I, no. 505 of July 15th, 2011, "*legal persons of private law may be freely established, in one of the forms provided by law*", and according to art. 191 "*(1) The legal persons of public law are established by law. (2) By exception from the provisions of para. (1), in the specific cases provided by law, the legal persons of public law may be established by acts of the central or local public administration authorities or by other means provided by law*". As shown in this study, trade unions are legal entities organised voluntarily by employees to represent their interests before the employers, the interest of establishing or joining a trade union being eminently private. In the scholarly literature (Gheorghe Piperea, in Flavius-Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei, *Noul Cod Civil. Comentariu pe articole. [The New Civil Code.*

assessed in relation to their registered office, being irrelevant the place of domicile of the represented civil servant.

The interpretation of the provisions of para. (4), according to which "*the territorial jurisdiction to settle the case will be observed even when the action is brought* ***on behalf of the plaintiff*** *by any person of public or private law, irrespective of their capacity in the proceedings*", cannot lead to another conclusion.

This text is applicable in the situation where the plaintiff does not personally exercise the action in administrative contentious, but through a legal, conventional or judicial representative, according to art. 80 et seq. of the Civil Procedure Code, so that the hypothesis concerns the action brought on behalf of the plaintiff by a person of private law. The phrase *"on behalf of the plaintiff"* highlights the existence of a person holding the active procedural capacity, on the basis of which they are being offered the legitimacy to file a lawsuit for the capitalization on some own rights and interests, but who do not exercise their procedural rights personally, but through a representative acting on their behalf.

In the opinion well established at the level of the Supreme Court, it is appreciated that the civil servants have the capacity as plaintiffs and the trade unions act as representatives. We consider that since the trade union expressly takes advantage of the provisions of art. 28 of the Law no. 62/2011 and assumes the position of plaintiff, the active procedural capacity can be analysed only in relation to the trade union, whom are held responsible for. The court cannot change the procedural framework established by the plaintiff through the statement of claim. Such an approach seriously affects the principle of availability of the civil lawsuit and disregards the active procedural capacity recognized to the trade union acting on behalf of civil servants. Moreover, art. 28 para. (2) of the Law no. 62/2011 refers to the members of the trade union as *"those concerned"*, on whose procedural position depends the bringing or continuation of the action by the trade union (thus by the plaintiff).

From a grammatical point of view, the phrase "*irrespective of* ***their*** *capacity in the proceedings*" certainly refers to the plaintiff (the agreement being made according to the masculine gender), not to the person of public or private law who brings the action on behalf of the plaintiff. Thus, the expression used by the legislator cannot constitute the basis for the transfer by the court of the active procedural capacity from the trade union to the civil servant - member of the plaintiff trade union. Also, in the presented situation, the possibility of transmitting the active procedural capacity under the conditions of art. 38 of the Civil Procedure Code is excluded[21].

The irrelevance of the capacity as plaintiff in the proceedings under the aspect of establishing the territorial jurisdiction also concerns the situation in which the lawsuit is brought by a person of public law, by virtue of the duties conferred by law. In this sense, the provisions of art. 1 para. (3) and (4) of the Law no. 554/2004 provide for the possibility of intimation of the administrative contentious court by the People's Advocate or by the Public Ministry, only in these conditions the person in whose favour the rights submitted for trial are to be established acquires as of right the capacity as plaintiff and will be summoned in court in this capacity. However, the establishment of the territorial jurisdiction in relation to the domicile or seat of this natural or legal person is justified in terms of facilitating access to justice and giving the possibility to sustain in optimal conditions their rights and interests both to the defendant authority and to the person of public law that brought the dispute in court.

Therefore, we consider that the amendment of the rules of territorial jurisdiction does not deprive the trade unions of the active procedural legitimation conferred by art. 28 para. (3) of the Law no. 62/2011.

In fact, the active procedural capacity of trade unions is also confirmed by other provisions

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Commentary by Articles], C.H. Beck Publishing House, Bucharest, 2012, p. 173) it was fundamentally appreciated that the union is a legal person of private law – "*collective entity of associative type*", established on the basis of the right to free association, provided by art. 40 para. (1) of the Romanian Constitution, republished in the Official Gazette of Romania no. 767 of October 31st, 2003, according to which: "*Citizens may freely associate in… trade unions…*".

[21] "*The capacity as party may be legally or conventionally transferred, as a result of the transmission, under the law, of the rights or legal situations submitted for trial.*"

of the Law on Administrative Contentious.

In this sense, the provisions of art. 1 para. (1) and of art. 8 para. (1) of the Law no. 554/2004 stipulate that the intimation of the administrative contentious court is made by an "*aggrieved person*", defined according to art. 2 para. (1) let. a) of the same normative act as "*any person holding a legitimate right or interest, damaged by a public authority by an administrative act or by not resolving a request within the legal term;* ***for the purposes of this law, the aggrieved party is also assimilated to... social bodies*** *that invoke the grievance by the contested administrative act either of a legitimate public interest, or of the legitimate rights and interests of certain natural persons*".

And in relation to art. 2 para. (1) let. s) of the Law no. 554/2004, the content of the phrase "*interested social bodies*" includes: "*non-governmental structures,* ***trade unions****, associations, foundations and the like,* ***whose object of activity is the protection of the rights of different categories of citizens*** *or, as the case may be, the proper functioning of public administrative services*".

We deduce from these legal provisions that in administrative contentious disputes in which issues concerning the employment relationships of civil servants are debated, the capacity as aggrieved person entitled to bring the action and acquire the position of plaintiff may belong to either the civil servant or the trade union, as interested social body acting, according to its object of activity, for the protection of the legitimate rights and interests belonging to the allegedly aggrieved civil servant, member of the plaintiff trade union[22].

Consequently, according to the rules in force, in the case of disputes brought by trade unions on behalf of their members having the capacity as civil servants, relating to employment relationships, they have further recognised the active procedural capacity and are party in proceedings as plaintiffs, the territorial jurisdiction having to be determined exclusively according to the seat of the plaintiff trade union.

To the same effect, a distinguished author, following the analysis of the new rules of territorial jurisdiction provided in the Law on Administrative Contentious, concluded that "*some distinctions are necessary depending on how the action is brought forward, because the concerned social body may itself hold the capacity as plaintiff with relevance in determining the territorial jurisdiction*".[23]

Such a conclusion is of particular importance in practice as it allows the reunification of several statements of claim in which the defendants are usually the same, and the scopes of works and causes of those claims are closely related, usually involving the administration of the same evidence and the application of the same rules of law. Therefore, the filing of a single claim by the trade union on behalf of several trade union members in similar legal situations allows a better representation of their interests, facilitates the administration of evidence and prevents different judgments form being issued in similar matters.

The qualification of the plaintiff trade union as a mere representative of the civil servants and the establishment of territorial jurisdiction exclusively according to their place of domicile, in addition to the fact that it does not comply with legal provisions, it clearly affects the administration of justice in those cases. As the initiators of the draft Law no. 212/2018 correctly acknowledged, such lawsuits may involve hundreds of civil servants in similar legal situations, who may be members of a union with regional or even national representation. In the practice of the panels at the

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[22] Also, the provisions of art. 37 of the Civil Procedure Code provide that "*In the cases and conditions provided exclusively by law, claims may also be brought or defences may also be filed by persons, organizations, institutions or authorities, who, without justifying a personal interest, act to defend the legitimate rights or interests of persons in special situations or, as the case may be, for the purpose of protecting a group or general interest.*" See Mihaela Tăbârcă, *Drept procesual civil. Ediția a II-a, Vol. I, Teoria generală [Civil procedural law. 2nd Edition, Vol. I, General Theory]*, Solomon Publishing House, Bucharest, 2017, p. 217-220; Gabriel Boroi, Mirela Stancu, *Drept procesual civil [Civil procedural law]*, Hamangiu Publishing House, Bucharest, 2015, p. 44-47.

[23] Gabriela Bogasiu, *Legea contenciosului administrativ. Comentată şi adnotată, Ediția a IV-a, revăzută şi adăugită [The Law on Administrative Contentious. Commented and Annotated, 4th Edition, revised and enlarged]*, Universul Juridic Publishing House, Bucharest, 2018, p. 354, with reference to the Decision of the High Court of Cassation and Justice - Division for Administrative and Fiscal Contentious Matters no. 3601 of December 14th, 2016 (p. 346-348), by which it was recognized the active procedural capacity of the trade union in the disputes brought in administrative contentious court on behalf of civil servants.

level of the county courts, the qualification of civil servants as plaintiffs was followed by the establishment of the jurisdiction exclusively according to their place of domicile, proceeding to the disjunction of the case, the setting up of several case files in which the exception of territorial incompetence was admitted, being sent to regional courts located in the counties where civil servants have established their domiciles[24].

Thus, from a single claim that requires a unitary approach to all identical or similar legal relations subject to trial, the situation where a significant number of case files are filed and distributed to different regional courts is attained, making it substantially more difficult the tracking of the progress of lawsuits, the travel of union representatives before courts, the administration of evidence, the concrete and efficient defence of the rights of civil servants. Also, the court charges increase, determined by the multiplication of documents, the transfer of files, the increase in the number of summonses and other procedural documents served, the travel of lawyers and legal advisers to several courts, often at considerable distances, etc.

In the absence of eloquent data, we express our reservations about the presented hypothesis, by stating the reasons justifying the new rules of territorial jurisdiction, according to which the old regulation caused the repeated introduction of claims with the same scope of works in different law courts, receiving different judgments in the case of the same civil servants. Of course, it is possible the civil servants who have already lost a lawsuit to introduce a similar claim(s). But in the case of the existence of the authority of res judicata, either by the identity of the parties, scope of works and case, or in the absence of triple identity by opposing the previous releases in the new dispute, the hiring defendant institution/authority is best able to draw the attention of the subsequently intimated court to these aspects which, unmistakably, they must know. If the employer does not notice during the process the identicality/similarity of the two cases, they have at their disposal the alternative of review based on the provisions of art. 509 para. (1) point 8 of the Civil Procedure Code and based on the existence of adverse final judgments violating the authority of res judicata of the first judgment.

3. Conclusions

Based on the arguments presented, we can conclude that, in the case of lawsuits brought by trade unions representing civil servants, the effects produced in practice are contrary to those forecasted by the initiators of the project that led to the adoption of the Law no. 212/2018 by which the rules regulating the territorial jurisdiction of the administrative contentious courts were amended.

The different interpretation of the provisions of art. 10 para. (3) and (4) of the Law no. 554/2004 in the case of actions brought by trade unions leads to the delay of the trial and often to different judgments issued both by the courts of first instance but also in the negative conflicts of jurisdiction with which the courts of appeal and the Supreme Court were vested.

The disjunction of cases and the formation of several case files, depending on the place of domicile of civil servants represented by trade unions, seriously affect the implementation of justice in optimal conditions and gives rise to the possibility of issuing different judgments in similar cases.

Excluding the above situations, we must appreciate the positive effect created by the new rules of exclusive territorial jurisdiction regarding most administrative contentious disputes, which consists in facilitating access to justice for private, natural or legal persons, especially in terms of the possibility of appearing before the court, the administration of evidence favourable to the individual and the achievement of an effective defence.

We consider that two measures can be taken to remove the non-unitary jurisprudence

[24] For example, pending before Iaşi Regional Court - 2nd Division for Civil Matters, Administrative and Fiscal Contentious, the Case File no. 6874/99/2018 was established as a result of its vesting by the National Trade Union of Border Police through a statement of claim, drafted according to art. 28 of the Law no. 62/2011, on behalf of 156 civil servants, members of the plaintiff trade union. The court, by the resolution of March 14th, 2019, unpublished, disjoined the case according to the places of domicile of the civil servants, formed 13 cases, of which one was kept for trial and in the others the court declared being territorially incompetent and sent them to other 12 regional courts located in the counties where the respective civil servants resided.

determined by the different interpretation of the new rules of territorial jurisdiction in the matter of the proceedings brought by the trade unions of civil servants, as well as to diminish the negative effects of intimating different courts with similar claims, while maintaining the benefit of the respective rules in the case of the other actions brought before the administrative contentious courts.

The first solution consists in the intimation of the High Court of Cassation and Justice by the Prosecutor General within the Prosecutor's Office attached to the High Court of Cassation and Justice, ex officio or at the request of the Minister of Justice, by the governing boards of the Supreme Court or courts of appeal or the People's Advocate with an appeal in the interest of the law (art. 514-518 of the Civil Procedure Code) aiming at a unitary and final interpretation of the provisions of art. 10 para. (3) and (4) of the Law no. 554/2004 in relation to the provisions of art. 28 of the Law no. 62/2011. However, given the opinion adopted at the level of the Administrative and Fiscal Contentious Division and the criterion of composition of the panel competent to resolve the appeal in the interest of the law, mainly from the judges of this division, the solution can be anticipated and the negative effects experienced from the distribution of similar cases to different regional courts, according to the places of domicile of civil servants, will be preserved.

For these reasons, we consider that the appropriate solution is to supplement art. 536 of the Administrative Code with three new paragraphs, numbered from (2) to (4), as follows: *(2) The civil servant shall address exclusively the regional court from his/her place of domicile. (3) In the case of a plurality of plaintiff civil servants, the action may be brought in the court of the place of domicile of any of them. (4) If the plaintiff is a trade union, the action shall be brought in the court of the place of its registered office.*

The proposed regulation observes the principle of favouring the access to justice for individuals (civil servants or trade unions) in conflict with a public authority or institution, facilitates the defence of the legitimate rights and interests of civil servants, whether or not they are trade union members, ensures the settlement of similar claims through a unitary judgment, reduces the length of proceedings and court charges.

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