

THE DISJUNCTION IN THE CIVIL PROCEEDINGS

Cristina DINU¹

Abstract: *Often found in civil cases, but not exclusively, the institution of disjunction appears as a mechanism for simplifying the trial of cases by separating the trial of cases or certain petitions from the same action, in cases regulated by law. This article aims to analyze the possibility of disjoining a subsidiary petition from a complex action, in the situations where, for the trial of this petition it is necessary to administer evidence that requires a longer period of time.*

Key words: *civil proceedings, disjunction, subsidiary petition.*

1. Introduction

The disjunction in civil proceedings is a measure that can be ordered by the court, mainly when it is necessary to judge separately at least 2 reunited actions/cases (if either the actions were reunited by connection or were introduced in this form, initially, before the court).

Analyzing this measure, we can say that the disjunction measure represents the opposite of the measure of connecting two or more causes between which there is a close connection of object and legal cause.

Thus, the question arises whether in the case of those reunited cases between which there is a close connection and / or which have the same legal cause, the disjunction may be ordered in the situation where the evidence administered for one of the cases or for a single petition holds back the whole process.

By looking at the current regulation from the new Code of Civil Procedure, and the fact that, as a rule, disjunction is provided by the legislator as an exceptional measure in certain expressly regulated situations, we appreciate that the institution of disjunction is an exceptional measure, not having a general regulation.

2. The situations of disjunction regulated by the Code of Civil Procedure

2.1. Article 66 from the Code of Civil Procedure

According to article 66 align. 2 from the Code of Civil Procedure, *when the trial of the main petition has been delayed by the application for leave to intervene, the court may*

¹ *Transilvania* University of Braşov, cristina.dinu@unitbv.ro, corresponding author

order its disjunction to be tried separately, unless the intervener claims for himself, in whole or in part, the very right deduced from the trial. In case of disjunction, the court remains in all cases competent to resolve the request for intervention.

This however represents an exception, the rule being that the two cases / petitions should undergo trial together. Analysing the content of the entire article 66 from the Code of Civil Procedure, we can conclude that the rule on this matter is that the court will judge together both actions, and that the disjunction of the two should be the exception that can operate only on certain terms, such as:

- When the person who intervenes doesn't require for himself the right that represents the centre of the main action,
- When judging, the intervention petition will be stalled by the main petition (V. M. Ciobanu, M. Nicolae, 2013, p.198 a.o.)

Usually, the disjunction is rejected by the court because sometimes cases that have a strong bond should be judged together to avoid contradictory court decisions.

2.2. Article 210 from the Code of Civil Procedure

According to article 210 align. 2 from the Code of civil Procedure, if only the main claim is available for being tried, the court may order a separate trial of the counterclaim. However, the disjunction cannot be ordered in the specific cases provided by law or if the judgment of both requests is required for the unitary settlement of the process.

The text of art. 210 align. 1 establishes the rule of judgment together (of the main claim and of the counterclaim), the foundation being given by the connection that exists between the claims. The second sentence contains an exception of strict interpretation, hence the consequence: if only the counterclaim is in a state of trial, it cannot be disjointed.

The text of art. 210 align. 2 establishes only the possibility of disjointing the counterclaim that prevents the settlement of the main one, the text of the law not providing, in the case of 139 align. 5, the possibility of separate disjunction and settlement without taking into account which of the connected processes is not in a state of trial.

We find yet again, the same point of view that, when there is a strong bond between the two actions, the disjunction cannot be operated by the court, because their trial must be together, in order to provide a unitary decision on them.

The disjunction is and must be an exceptional situation. The second paragraph of art. 210 expressly mentions this. The measure of disjunction must always be analyzed carefully, so as not to negatively influence the way the process unfolds, the pronouncing of a unitary solution and the way in which a complex cause is solved, as a whole (I. Les, 2013, p.351ff.).

2.3. Article 139 from the Code of Civil Procedure

According to article 139 from the Code of Civil Procedure, in order to ensure a better trial, in the first court, it is possible to connect together several cases that have the same

parties, or even together with other parties, whose object and cause are connected through a strong bond (align. 1). However, *in any stage of the trial, these joined cases can be disjointed and trialed separately, if only one case is in the state of being judged and the others are not* (align. 5).

Analyzing the content of article 139 from the Code of civil Procedure, we come to the same conclusion, that is, that the disjunction always represents the exception and the connection of some cases in order to be trialed together, represents the rule that has mainly the objective of a unitary trial and a unitary court decision.

The authors (I. Les, 2013, p. 234) that shared their opinions on this subject mainly sustain the idea that the disjunction in this case represents an exception and also a remedy for the situation in which one of the cases is in the state of being trialed and the other one isn't. Thus, some authors refer to disjunction as a procedural *remedy* for the situation in which one of the cases can go to trial and the others are still in the phase of administration of evidence or even suspended.

2.3. Article 139 from the Code of Civil Procedure

- According to article 99 from the Code of Civil Procedure,
- (1) *when the plaintiff has referred to the court several main points of claim based on different facts or causes, the competence is established in relation to the value or, as the case may be, to the nature or object of each claim. If one of the claims is within the jurisdiction of another court, the court to which the case had been referred shall order the disjunction and decline its jurisdiction accordingly.*
 - (2) *If several principal claims based on a common title or having the same cause or even different but closely related causes have been brought to trial by a single summons, the competent court to resolve them is determined by taking into account that claim which demands the jurisdiction of a higher court.*

Although this legal text aims to clarify aspects regarding the material competence of the court, we find a reference to the disjunction of the main demands made in the same action, although each of them is capable of being the object of a main case. In this case, the main demands are independent one from another but the plaintiff opts to group them in the same action / case in order to have one and not several court decisions.

By analyzing the content of article 99, we can draw the conclusion that in this case, the rule is that all these main demands can be easily separated and judged in a separate manner (if at least one attracts the material competence of a higher court), thus disjointed.

The exception in this case is represented by the fact that the disjunction cannot be operated by the court (as a matter of exception) if the main demands are strongly connected, are established on the same title or have the same cause. In this latter case, the main demands will be judged together, by the higher court that is materially competent to judge one or more of the main demands.

We opted to present this legal text – article 99 from the Code of Civil Procedure lastly, because we believe it will bring light and a potential answer to this article's question:

Is it possible to disjoin a secondary demand from a complex action if for this secondary demand the court has to administer evidence that holds back the entire case?

3. Case Study

After presenting the main regulations regarding the disjunction of cases or of main demands that form the body of the same case, our aim is to analyse a case pending in Court at this moment.

The plaintiff filed an action to the Court requesting:

Mainly,

- To ascertain the validity of a lease agreement between him and the other party
- To ascertain the non-validity of the notification of dissolution of the lease agreement, made by the other party, and

Secondly,

- To oblige the other party to pay the amount of money that was spent in order to renovate the location of the lease agreement, if the main demands are not met
- To recognize a retention right on behalf of the plaintiff until the money for the investments is paid by the other party.

Judging by the demands of the action, we believe that there are 2 types of actions reunited in one case, actions that have a strong bond and are grounded on the same lease agreement, and have common evidence that sustain both.

During the trial, the other party (defendant) made a request to disjoin one of the above petitions, and judge that petition in a different case, because in order to establish the amount of money that was spent in order to renovate the location of the lease agreement, the court had to perform an accounting expertise that was completed in the course of 1 year.

Thus, the defendant believed that, while 3 of the demands were in a state that could permit judgement, the fourth one (the demand regarding the amount of money that was spent in order to renovate the location of the lease agreement) held back the entire case. Under the regulation of article 6 of the Code of Civil Procedure, *everyone is entitled in full equality to a fair and public hearing by an independent and impartial court, in the determination of his rights and obligations and with regard to any criminal charge brought against him. To this end, the court is obliged to order all the measures permitted by law and to ensure the speedy discharge of the trial.*

However, connecting some demands in the same case and judging them together, is not always a matter of discussion left at the free will of the parties in that case. In some cases, as article 99 from the Code of Civil Procedure clearly shows, judging them together is necessary and beneficial in order to have an honest solution from the court, a solution that takes into consideration all aspects of the matter, and not only a part of it. In the study case, the request to disjoin one demand from all others assumes the fact that the secondary case regarding the request to establish the amount of money that was spent for renovating the space and obliging the other party to pay this amount to the plaintiff and establishing a retention right on behalf of the plaintiff until he has paid that amount of money would be divided in two parts, although between the two not

only that there is a strong bond, but they are strongly related because the retention right cannot be recognised unless the court acknowledges the fact that the plaintiff has the right to receive money for all his investments and has a right to hold the space in his possession until he is paid.

Thus, the secondary action, made up by 2 demands, is actually an action in which both demands can and should be judged together, because you cannot assert the right of retention upon a good if you haven't claimed the right to be compensated for the investments made on the same good.

4. Conclusions

In conclusion, we appreciate that art. 99 paragraph 2 of the Code of Civil Procedure, mentions that in the situation provided by paragraph 1, the main petitions based on the same case (which have a common title) will not be separated even if one would entail judgement competence by another court, they will be judged together by the more senior competent court.

For a fair and correct settlement of the case, we appreciate that all petitions for action (we refer here to both main and secondary actions) must be tried together; there is no legal basis to separate the petition to oblige the defendant to pay sums of money to the applicant and his trial separately.

According to the texts of the law analyzed in this article, we appreciate that the legislator understood that it was necessary to provide the possibility for the court to disjoin only certain parts of a complex action, as is the case of disjoining the request for intervention, the counterclaim, or of a petition of main action if it falls within the material competence of a higher court.

Thus, the disjunction can only be applied by the court only in the cases that were specially regulated by the Code of Civil Procedure, and those cases represent the exception from the rule. Being considered an exception from the rule, we believe that it cannot be applied by analogy to similar cases, such as the study case from the present article.

We consider that none of the above mentioned legal texts can be applied by analogy to the case studied in the article, considering that the petition whose disjunction is requested is a petition subsidiary to the main ones, which is closely related to the petition regarding the finding / establishment of a right of retention on the space until the moment when the defendant settles the value of the investments made by the plaintiff in the respective space.

For these reasons, our opinion is that the petition whose disjunction is requested must be resolved together with the petition regarding the right of retention. Even so, the disjunction of the subsidiary petitions cannot be separated and trialed separately from the primary petitions (those regarding the validity of the lease agreement and the non validity of the dissolution of the lease agreement) because they have a common cause, a common judicial civil act, and between them there is a strong bond. Separating the primary and the secondary demands (actions) can cause uneven judicial practice.

References

- Ciobanu, V. M, Nicolae M. (2013). *Noul Cod de Procedură Civilă comentat și adnotat, [The new Code of Civil Procedure commented and annotated]* Vol I – art. 1 – 526, Bucharest: Universul Juridic Publishing House.
- Les, I. (2013). *Noul Cod de Procedura Civila. Comentariu pe articole art. 1 – 1133 [The new Code of Civil Procedure. Comment on articles]*. Bucharest: Universul Juridic Publishing House.
- Tabarca, M. (2013). *Drept Procesual Civil, Vol. I – Teoria generala conform noului Cod de procedura civila [Civil Procedural Law, Vol. I - General theory according to the new Code of Civil Procedure]*. Bucharest: Universul Juridic Publishing House.