

PART 5

JURISDICTION AND VENUE

CHAPTER 3

ALLOCATION OF CASES BASED ON CASE TYPE AND AMOUNT-IN-CONTROVERSY

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1 INTRODUCTION

- 1 This chapter examines how a jurisdiction allocates cases based on case type and amount-in-controversy and the rights protected/threatened by such jurisdictional rules. The chapter will compare the different criteria across the globe in allocating cases according to the case type and financial aspect of the case. These allocation criteria could be called 'objective criteria' because they are related to the claim formulated in the process.
- 2 However, in some legal systems, the assignment of jurisdiction by reason of the subject matter is determined not by the nature of the litigation, but by the particulars subjective conditions of one of the parties to the proceeding; for example, the mere fact of filing a lawsuit against a public entity determines that the knowledge of such proceeding is assigned to a certain judge with a certain specialization. The same would occur if one of the parties is a child or an indigenous person, for example. In these cases, the assignment of jurisdiction by reason of the subject matter is determined according to the particularities of the subject matter.
- 3 The objective criteria may be related to qualitative or quantitative aspects. The qualitative aspects must be related to the legal basis of the claim, and the quantitative aspects must be related to the economic value of the claim.²
- 4 This chapter will identify the common rules that best protect the rights of the parties.

2 THE OBJECTIVE CRITERION AS A BASIS FOR ESTABLISHING THE JURISDICTIONAL ORGANIZATION OF A STATE

- 5 The objective criterion for determining jurisdiction, particularly the nature of the matter (subject matter) is of great importance in the way in which the exercise of power is structured within a State. From this perspective, this criterion of allocation of jurisdiction has an undeniable relationship with the model of State established in the Constitution, which in turn, starts from considering the way in which each State decides to implement the principle of separation of powers.
- 6 It is therefore particularly complex to study at the comparative level the objective criterion for determining jurisdictional competence without taking into consideration the way in which the State, in general, and its justice system are structured. In this regard, it should be borne in mind that: 'the judicial organization of a country and the distribution of competencies among its various organs can only be truly understood as a product, not always logical or coherent, of the history of that country'.³

² M Ortells Ramos, *Derecho procesal civil* (16th edn, Aranzadi 2017) 181.

³ R Beneduzi, *Introducción al proceso civil alemán* (Zela 2020) 55.

- 7 These historical incidences are reflected in the constitutions of the various states, which reflect the consensus reached by each state on how the exercise of power should be distributed and controlled. For this purpose, the subject matter or the nature of the various matters is usually taken as the basis for determining the organization of the State and the exercise of jurisdiction.
- 8 Thus, for example, the decision in certain States as to whether or not to have a Constitutional Court involves defining what is considered *constitutional* in order to allocate powers between the Court and the ordinary judiciary. However, this decision is not uniform in all States either. Indeed, in Germany⁴ and Peru⁵, for example, the Constitutional Court has jurisdiction, essentially, for the abstract control of the constitutionality of laws, the incidental or concrete control of constitutionality, the control of competences between different state organs and the protection of fundamental rights. In Italy, on the other hand,⁶ the Constitutional Court has jurisdiction for the abstract control of the constitutionality of laws and conflicts of powers.
- 9 The assignment of certain matters to the constitutional courts, in the States where they exist, will have a direct implication on those matters that remain to be assigned to the various organs of the judiciary. In some cases, the nature of the matter serves to assign exclusive jurisdiction to an autonomous jurisdiction over that matter; and in other cases, shared jurisdiction is assigned, allocating to one autonomous jurisdiction the review of what the other has decided. This depends on the way in which each State understands the division of jurisdictional power and the control of its exercise.
- 10 On the other hand, the decision to have an autonomous body distinct from the judiciary to resolve administrative disputes also requires defining what is considered 'administrative', in order to assign competences between the two bodies. Thus, if, as is the case in France, the 'administrative jurisdiction' is assigned to those disputes of public law between an administrative body and a public entity,⁷ these matters are excluded from the jurisdiction of the judiciary. Therefore, of the matters that remain to be distributed, those that by mandate of the Constitution are assigned to this special jurisdiction will be excluded.
- 11 Even within these systems, more specific distinctions can be made. In the case of England, for example, which has an Administrative Court, certain matters are identified

⁴ R Beneduzi (n 3) 57 - 58.

⁵ Article 202 of the Peruvian Constitution of 1993.

⁶ Article 134 of the Italian Constitution.

⁷ R Perrot, *Institutions judiciaires* (Montchrestien 1989) 203.

whose jurisdiction is assigned to another court: Upper Tribunal Immigration and Asylum Chamber, for all matters relating to immigration.⁸

- 12 Thus, if we wish to compare the assignment of jurisdiction between States that have an autonomous administrative jurisdiction (because the Constitution so provides, as in the case of France or Colombia) with States that, in accordance with the organizational design of the State (as in the case of Spain or Peru), do not have a special administrative jurisdiction, it is necessary to consider that the starting point for the assignment of judicial jurisdiction is absolutely different in one or the other State model.
- 13 Normally, the assignment of jurisdiction to the special courts is determined based on an exhaustive list of matters, while the jurisdiction of the ordinary judiciary is rather residual, ie, it has jurisdiction over everything that has not been assigned to the special courts.
- 14 Another difficulty is to consider whether we are dealing with federal or unitary states. This is because the judicial system of a federal state considers the objective criterion as the basis for assigning federal or state jurisdiction to the courts. Thus, when approaching the study of the rules for the allocation of subject-matter jurisdiction at the comparative level, the form of political organization of the State must also be taken into consideration.
- 15 In the case of Brazil, for example, military, electoral and labour matters fall under federal jurisdiction.⁹ In these cases, a residual rule is usually established according to which, unless there is a provision that expressly assigns subject-matter jurisdiction to federal courts, the jurisdiction is state jurisdiction.¹⁰ This is also the case in Canada, which provides that most state courts have general jurisdiction, while federal courts have rather limited jurisdiction.¹¹
- 16 In Canada, a distinction must also be made for historical reasons between 'limited jurisdiction' and 'inherent jurisdiction'. Courts of 'inherent jurisdiction' are those, such as the Ontario court, that have existed since British rule, so that their jurisdiction extends to everything that is not excluded by law. Limited jurisdiction courts, on the other hand,

⁸ Courts and Tribunals Judiciary (UK), Overview of the Administrative Court, <https://www.judiciary.uk/courts-and-tribunals/high-court/administrative-court/overview-of-the-administrative-court/>, accessed on 15 May 2024.

⁹ F Didier, *Curso di direito processual civil* (Podium 2015) 198.

¹⁰ Ibid.

¹¹ 'Limited Jurisdiction, which means that a court has restrictions on the cases it can decide. Small claims court is a court of limited jurisdiction.' Retrieved from Cornell Law School, Legal Information Institute, https://www.law.cornell.edu/wex/limited_jurisdiction#:~:text=A%20court%20of%20limited%20jurisdiction,the%20requirements%20for%20diversity%20jurisdiction, accessed on 15 May 2024.

are created by law, so that the matters for which they have jurisdiction are expressly assigned by law.¹²

- 17 The situation becomes particularly complex if we must review the combination of the various power-sharing criteria outlined above. That is, it may happen that some federal States decide to have autonomous jurisdictions, such as a constitutional court or an administrative jurisdiction. In such cases, the analysis of subject-matter jurisdiction needs to be much more exhaustive, in order to determine which matter can be heard by a particular court. An example of this is Germany, which, being a federal state, also has a constitutional court.
- 18 Finally, there is a close link between subject-matter jurisdiction and the way in which each State decides to organize its own judiciary. This is of utmost relevance for understanding the system of regulation of subject-matter jurisdiction in the various systems since it is common for many provisions on subject-matter jurisdiction to be found in constitutional norms. The most paradigmatic case is that of Brazil,¹³ which has a series of provisions on the assignment of subject-matter jurisdiction in its Constitution, which means that such provisions are rather scarce in its Code of Civil Procedure.
- 19 Another example is Germany, whose Constitution organizes the Federal Court through different chambers, divided according to subject matter: the Federal Court of Justice, the Federal Administrative Court, the Federal Court of Finance, the Federal Labor Court and the Federal Social Court, and the Federal Patent Court.
- 20 A particular situation is that of the Russian Federation. Its Code of Civil Procedure¹⁴ is the norm that establishes a series of jurisdictional rules of the Supreme Court of the Republic, regarding the control of acts of other public bodies, including jurisdictional ones. For example, the questioning of non-normative acts of the President or the Congress of the Federation; the questioning of normative acts that affect the rights and freedoms of citizens, the questioning of acts that seek the suspension of the activities of political parties. As can be seen, these are norms that, due to the magnitude of the powers assigned, could be constitutional norms, but are contained in the civil procedural code.

¹² Superior Court of Justice (Canada), Jurisdiction of the Court, <https://www.ontariocourts.ca/scj/about/jurisdiction/>, accessed on 15 May 2024.

¹³ C Zufelato, *Comentários ao Código de Processo Civil* (Saravia 2017) vol IV, 128.

¹⁴ Article 26 of the Code of Civil Procedure (Russia) (RCCP).

3 THE CASE TYPE OR 'NATURE OF THE CASE'

- 21 The determination of a judge's venue according to the nature of the case is a political choice that takes into consideration two aspects: the way in which the judiciary is organized in a State and the suitability of the judges to resolve a case.
- 22 The assumption is that anyone who has been appointed as a judge is able to provide legal justification for the decisions he or she makes in a case. However, the division of competence according to the nature of the case implies admitting that not all judges are able to legally justify their decisions on all cases with suitability. Therefore, it is necessary that the cases are assigned to those who are in the best conditions to do so, according to their specialization. To achieve this, the judiciary must organize the work of judges according to the criterion of specialization.
- 23 There are legal systems in which judges are assigned a general competence and exceptionally specialized competence is assigned to some judges. For example, in the United States, courts are largely generalist courts without subject-matter specializations.¹⁵ However, subject-specific courts are widespread, especially in state judicial systems, which often include family courts and other specialized courts. Specialization exists at the federal level as well: bankruptcy courts, tax courts, and the Federal Circuit are prime examples.¹⁶
- 24 There are other legal systems in which the starting point is the specialization of the judges, whereby the case is assigned based on such specialization, with a subsidiary general rule of assignment of competence that applies when it is not possible to assign the specific case to a judge.

3.1 How Is the 'Nature of the Case' Criterion Determined?

- 25 This criterion according to which jurisdiction is assigned is established in two different ways: (i) by making a generic reference to a specific legal discipline, for example, by indicating that matters of 'family law', 'civil law', 'minors', or 'electoral law'; or, (ii) by making a reference to the remedies or generic reference to the claims that may be brought before a specific court.
- 26 There are other formulas that can be used to assign jurisdiction through the criterion under study: referring to a law or set of laws, to chapters or books of certain laws (eg, contracts, obligations), or the designation of a legal institution (rights in rem, patents),

¹⁵ S Dodson, *The Culture of Forum Shopping in the United States*, SSRN paper 24 January 2023: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4332658, accessed on 15 May 2024.

¹⁶ S Dodson, 'Accountability and Transparency in U.S. Courts' in *Accountability and Transparency in Civil Justice* (Thomson Reuters 2019) Sec 2.1.

or to claims relating to a subject or set of subjects, or a combination of all the above criteria. In any case, it is a matter of taking into consideration what is being discussed (the remedy or the claim) and its relation to an area of the legal system.

- 27 If the rule has assigned jurisdiction by describing the remedy or claim to be raised, the determination of jurisdiction involves establishing whether there is a correspondence between the claim, or claims raised in the process and the one used as a description of the assumption of assignment of the legal rule. If, on the other hand, the rule has assigned jurisdiction by making a generic reference to the legal discipline assigned to a judge, it will be necessary to carry out an interpretation task in order to establish whether the claim falls within said legal discipline, verifying, in addition, that there is no special rule that excludes the judge who, in general, is assigned the jurisdiction to hear the general discipline from hearing said claim.
- 28 If we are facing several claims, the analysis must be made with respect to each one specifically and see if the jurisdiction corresponds or not to the same judge. If it corresponds to the same judge, there is no problem. On the other hand, if it does not correspond to the same judge, the question arises as to whether it is possible to join them or not. In some legal systems,¹⁷ it is established as a requirement to join claims that they fall under the jurisdiction of the same judge, in which case each claim must be brought in a separate proceeding under the judge that is competent for each of them. In other legal systems, the rule is established according to which one of the two judges would have jurisdiction to hear the two claims, normally the higher order judge, as in the case of Peru¹⁸ and Russia¹⁹.
- 29 Thus, the problem of jointly raising claims that fall under the subject-matter jurisdiction of different judges leads legal systems to choose between two possible solutions: either to prefer the specialization of the judge and, therefore, the assignment of subject-matter jurisdiction; or rather, to prefer the joint solution of the conflict, which leads to the application of one of the rules that assigns jurisdiction to one of the judges. Most legal systems opt for this second option.
- 30 The latter solution is even favoured in some federal States, where the preference for joint resolution of disputes results in the assignment of jurisdiction to either a federal or a state court. A good example of this is what happens in Australia:
- 31 Both state and federal courts can exercise an 'accrued jurisdiction', which enables them to hear all legal issues arising from a single set of facts. This enables all courts to deal

¹⁷ As is the case in Peru, which establishes this as a general rule in Article 85 of the Code of Civil Procedure (Peru) (PCCP).

¹⁸ Article 85 PCCP.

¹⁹ Article 23.3. RCCP.

with virtually all issues arising from the facts of a case, provided that the particular court has jurisdiction to hear the principal cause of action.²⁰

- 32 The idea then of 'accrued jurisdiction' is to explain the cases in which, because the jurisdiction corresponds to different judges, according to the nature of the claim, to hear different claims that can be accumulated in the same process, it is preferred that the same judge assumes the jurisdiction to hear the claim for which, in principle, he would not have jurisdiction.

4 THE CRITERIA TO ESTABLISH THE NATURE OF THE CASE AND JUDGE'S SPECIALIZATION

- 33 The 'nature of the case' is defined by the legal justification of the claim and the way in which the legal justification is related with legal system. Likewise, this criterion is because one of the criteria of the judicial organization of a State is the specialization of the judges. This relationship between case type and specialization is recognized expressly in some country's legislation, like Costa Rica²¹ and France²².
- 34 In this way, since there are several judges, and organized according to their specialization, it is up to determine to which judge should be attributed the case in attention to the legal justification of the claim. In this way, if there were not this division of judges based on their specialization, the problem of determining to which judge a case should be assigned would not arise.²³
- 35 Thus, it is necessary to know how each country regulates the specialization of judges to determine the criteria based on which cases will be distributed. The regulation of the various legislations in this matter is highly varied since it depends on several factors. First, on the constitutional allocations of judicial authority; second, the mode of organization of the judiciary; and third, the recurrence of certain types of cases in certain localities, which justifies assigning such cases to specialized judges.

4.1 The Criteria to Establish the Venue According to the Nature of the Case and Subsidiary Rule

- 36 The determination of jurisdiction by reason of the subject matter presents us with the problem of classifying the different controversies that may arise in legal specialties that, in turn, correspond to the way in which the Court System of a given State is organized.

²⁰ A Marinac, C Hart, R Chisholm, J Nielsen, A Wood, E Evans and S McKibbin, *Learning Law* (Cambridge University Press 2021) 81.

²¹ Article 8.1 of Code of Civil Procedure (Costa Rica) (CCP-Costa); S Artavia and C Picardo, *Curso del proceso civil* (2nd edn, Editorial Jurídica Faro 2018) vol 1, 145.

²² Article 34 of the Code of Civil Procedure (France) (FRCCP).

²³ C Mandrioli, *Diritto processuale civile* (Giappicheli 2009) vol I, 248.

The downside of this way of determining jurisdiction is that certain matters are not easy to classify or that for other matters there is no jurisdictional body to which jurisdiction has been precisely attributed. The risk is that this lack of definition or difficulty in defining a matter in accordance with the specialties established for the jurisdictional organs of a State may make access to justice impossible. That is why the various legal systems address this risk by establishing a subsidiary rule that assigns jurisdiction to a particular court in the absence of a special provision assigning jurisdiction to another. This technique ensures access to justice for the parties.

- 37 In some legal systems, the rule is that if there is not a law that establishes which judge is competent it is the civil judge. It happens in Costa Rica²⁴, France²⁵, Peru²⁶, Spain²⁷. In other jurisdictions, residual jurisdiction is assigned to other jurisdictional bodies, such as the district courts in the case of Russia.²⁸
- 38 A formula to be highlighted is the one used in the English Code of Civil Procedure, which states that ‘Judges, Masters and District Judges may exercise any function of the court except where an enactment, rule or practice direction provides otherwise’,²⁹ from which it is inferred that the courts have jurisdiction to hear the proposed matter, unless a law has expressly excluded it. This is a different way of stating the residual rule, which guarantees that the citizen has a judge to turn to.

4.2 The Relations Between the Nature of the Case and Access to Justice

- 39 Unlike what might happen with other criteria for determining jurisdiction, subject-matter jurisdiction may not appear to be directly related to access to justice. As it has been pointed out throughout this chapter, the attribution of subject-matter jurisdiction responds to the Court System’s organization, or to the way in which the exercise of power is divided in each State.
- 40 Undeniably, as has been argued throughout this chapter, that the assignment of subject-matter jurisdiction is directly related to the way in which the judiciary or the State is organized. However, this in no way means that it is unrelated to the right of access to justice.

²⁴ S Artavia and C Picardo (n 21) 145.

²⁵ R Perrot (n 7) 90.

²⁶ Article 5 PCCP.

²⁷ Article 45 of the Civil Procedure Law (Spain) (SCCP).

²⁸ Article 24 RCCP.

²⁹ Retrieved from Ministry of Justice (UK), Practice Direction 2B – Allocation of Cases to Levels of Judiciary, https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part02/pd_part02b#l, accessed on 15 May 2024.

- 41 Precisely, the way in which the competencies of the jurisdictional organs of a State are organized and the specialization of the jurisdictional organs may be based on the assurance of certain constitutional principles, such as the independence of the jurisdictional organs, the suitability of the judges who resolve the processes, as well as efficiency criteria that favour access to justice.

4.3 The Consequences of Filing a Lawsuit Before a Judge Who Lacks Subject Matter Jurisdiction

- 42 The general rule is that the judge may ex officio determine his own lack of jurisdiction. This is what happens in Germany³⁰, Brazil³¹, Spain³², Italy³³, Japan³⁴, Peru³⁵ and Russia³⁶. What varies in each State is the consequence of this declaration of the judge. In some countries the declaration of incompetence determines the conclusion of the process; while in other jurisdictions, the declaration of lack of jurisdiction by the matter of the case leads to the referral to the incompetent judge.
- 43 The latter offers two possibilities: The first is that the judge to whom the case is referred to may reject the case, disagreeing with the decision of the first judge, as is the case in Brazil³⁷ and Peru³⁸. The second possibility is that the judge to whom the case comes is obliged to abide by the decision of the first judge even if he does not agree with it, as is the case in Germany³⁹, Russia⁴⁰ and Japan⁴¹. Moreover, the Code of Civil Procedure of the Russian Federation has a very emphatic provision in the sense that cases related to the jurisdiction of the courts of the Federation are inadmissible.

5 THE ECONOMIC ASPECT OF THE CLAIM

5.1 The Criteria to Establish the Venue According to the Financial Aspect of the Case

- 44 The other component of the objective aspect of determining jurisdiction is the amount of the claim or the economic value of the matter in dispute. In this case the assignment

³⁰ R Beneduzi (n 3) 71.

³¹ F Didier (n 9) 206.

³² Article 48 SSCP.

³³ E Merlin, *Elementi di diritto processuale civile* (Pacini Giuridica 2021) 149.

³⁴ Article 16 of the Code of Civil Procedure (Japan) (JCCP).

³⁵ Article 35 PCCP.

³⁶ Article 33 RCCP.

³⁷ F Didier (n 9) 240.

³⁸ Article 36 PCCP.

³⁹ R Beneduzi (n 3) 71.

⁴⁰ Article 33 RCCP.

⁴¹ Article 22 JCCP. This Code specifies that this occurs if the decision is final.

of jurisdiction to a court is established by considering the economic value of the subject matter of the dispute.

- 45 Unlike the other jurisdiction allocation criteria, there is criticism that the economic value of what is discussed is a criterion for jurisdiction allocation. I think it all depends on the perspective from which it is viewed. If the criterion of determining the amount is used to assign jurisdiction to a judge or a proceeding that does not offer the same guarantee as judges and proceedings in which claims for larger amounts are raised, I can even share the criticism. If, on the other hand, the distinction implies access to a judge that offers the same guarantees and may even be easier to access and to a process that meets the needs of protection of rights whose value is economically low, the criterion not only finds constitutional justification, but is even presented as necessary for effective judicial protection.
- 46 This criterion is established considering the economic value of the object of the claim. This economic value is established considering if the object of the claim is an amount of money or not. If it does not have an amount of money as its object, it is necessary to establish the mechanisms for valuing the claim.⁴²

5.1.1 Allocation for Cases of Determinate Value

- 47 When the object of the claim is expressed in an amount of money, there are two ways to determine the venue: (i) with an amount of money indicated in the law⁴³ or (ii) with a reference criterion from which the value is determined.⁴⁴
- 48 How to determine the value of the claim? There is a general rule that establishes that the value of the claim is determinate based on what was declared by the plaintiff.⁴⁵
- 49 In the case where more than one claim is formulated within the same complaint, the amount is determined according to the value of the sum of all the claim,⁴⁶ provided that they have been formulated in such a way that the success of one does not affect the success of the other. The French Code of Civil Procedure⁴⁷ makes an important distinction on this point, since it allows the accumulation of claims even if they are not related to each other if they are directed against the same defendant. Therefore, it states that if the claims are not related, jurisdiction is determined according to the individual

⁴² C Mandrioli (n 23) 252.

⁴³ Like Italy. See E Merlin, *Elementi di diritto processuale civile*, (Pacini Giuridica 2021) 143. The same is true in Japan (see Articles 26 and 33 JCCP) and in Russia (Article 23 RCCP).

⁴⁴ Like Peru.

⁴⁵ Italy (C Mandrioli (n 23) 257); Peru (Article 10 PCCP), Japan (Article 8 JCCP), Russia (Article 91.1 RCCP).

⁴⁶ As in the case of Italy: F Luiso, *Diritto processuale civile* (Giappichelli 2011) vol I, 95. The same occurs in Peru (Article 11 PCCP) and in Japan (Article 9 JCCP).

⁴⁷ Article 35 FRCCP.

value of each claim. On the other hand, if the claims are related, the amount is determined by adding the value of all of them.

- 50 However, if the claims have been formulated in such a way that one of them depends on what is decided on the other (in the case, for example, of accessory, alternative or conditional claims), the generalized solution seems to be rather that:
- 51 If, due to the relationship between the proposed claims, it is not possible to accept both claims, the determination of jurisdiction is made taking into consideration one of them, for example in the case of alternative claims.⁴⁸ In the Peruvian case it is established that the claim to be considered is the one with the highest value.⁴⁹
- 52 However, if the relationship between the proposed claims is such that it is possible that the two or more proposed claims may be accepted, jurisdiction is determined by the value resulting from the sum of all of them.⁵⁰

5.1.2 Allocation for Cases of Indeterminate Value

- 53 We are faced with cases of undetermined value, when the claim, having a clear economic content, does not have the precision of the economic amount demanded, but it is determinable; and, in those cases in which, due to the nature of the claim, it is not possible to establish an economic value.
- 54 In cases where the economic value is not determined, but is determinable during the proceeding, in some jurisdictions,⁵¹ there is a rule according to which it is understood that the judge before whom the claim was filed has the jurisdiction to hear the claim. This is because it is understood that the value of what he will decide is within the range of his jurisdiction. In other jurisdictions, such as the Japanese one, it is established that 'if it is impossible or extremely difficult to calculate the value',⁵² the controversy is of a higher amount and therefore it is assigned to the judge who would be competent to hear such matters.
- 55 A particular case arises when the dispute concerns movable or immovable property. In cases where movable property is in dispute, the amount is relevant to determine jurisdiction and is established according to what is declared by the plaintiff. In cases involving real property, some jurisdictions assign jurisdiction to a specific judge, without the value of the property being relevant, in other cases the value is determined with

⁴⁸ This is the case in Italy, for example F Luiso (n 46) 97.

⁴⁹ Article 11 PCCP.

⁵⁰ This is the case in Italy, for example F Luiso (n 46) 90. This is also the case in Peru (Article 11PCCP).

⁵¹ F Luiso (n 46) 104.

⁵² Article 8 JCCP.

reference to rates that serve as the basis for taxes,⁵³ and in other cases the market value at the date of filing of the lawsuit.⁵⁴

- 56 In cases where the economic value is indeterminable, legal systems usually provide a residual rule according to which, in such cases, jurisdiction is assigned to the court of general jurisdiction. This is the case, for example, in Italy.⁵⁵

5.2 The Critics of Allocation Based on the Financial Aspect to the Case

- 57 Why the financial aspect to the case is a criterion to establish venue? Behind this criterion, there is no assessment of the importance of the case, but rather a reason of efficiency. Consequently, there must be a proportion between the economic value of the case and the expenditure of energy to resolve it.⁵⁶
- 58 However, several criticisms have been expressed on the reasonableness of establishing the amount as a criterion for assigning jurisdiction. One of them is that, unlike the criterion of the subject matter, which can indeed serve as a basis for determining the suitability of the court, the amount does not seem to be an adequate basis for determining which judge should hear a case.⁵⁷ Added to this is the fact that, as already explained, in many jurisdictions the criterion of the subject matter is preponderant over the criterion of the amount.

5.3 The Agreement on Jurisdiction by Reason of the Amount

- 59 Most legal systems establish that it is not possible to agree on jurisdiction by reason of the amount. However, in the case of Brazil, for example, Article 63 of the Code of Civil Procedure expressly establishes that the parties may modify jurisdiction by reason of value.

6 THE RELATIONSHIP BETWEEN NATURE OF THE CASE AND ECONOMIC CRITERIA

- 60 These two criteria are different from each other, but they operate in a coordinate way. In fact, the economic aspect of the case operates when there are not rules about the nature of the case criterion. When there is nature of the case criteria rules, these rules prevail over those of the economic criteria.⁵⁸ This is what happens for example in Italy⁵⁹.

⁵³ This is the case of Italy: F Luiso (n 46) 90.

⁵⁴ This is the case in Peru, as the first rule for determining jurisdiction by reason of the amount in respect of immovable property (Article 12 PCCP) and Russia (Article 91 RCCP).

⁵⁵ F Luiso (n 46) 91.

⁵⁶ C Mandrioli (n 23) 252.

⁵⁷ F Luiso (n 46) 90.

⁵⁸ C Mandrioli (n 23) 253.

⁵⁹ Ibid.

Along the same lines, for example, the determination of jurisdiction to hear claims relating to the civil liability of judges does not take into consideration the amount of the claim in Germany⁶⁰ and in Peru⁶¹, following the rule according to which the rules of jurisdiction by reason of the subject matter prevail over the rules of jurisdiction by reason of the amount.

- 61 Some of the rules that regulate the nature of the case criteria, can then establish a subsequent distribution based on the value and vice versa.⁶²

⁶⁰ R Beneduzi (n 3) 62.

⁶¹ Articles 509 and following of PCCP.

⁶² C Mandrioli (n 23) 253.

ABBREVIATIONS AND ACRONYMS

ACHPR	African Court on Human and Peoples' Rights
ALI	American Law Institute
Art	Article/Articles
BGH	<i>Bundesgerichtshof</i> (Federal Court of Justice) [Germany]
BID	<i>Banco Interamericano de Desarrollo</i> (Inter-American Development Bank)
CCP-Costa	Code of Civil Procedure (Costa Rica)
CEPEJ	<i>Conseil de l'Europe Commission européenne pour l'efficacité de la justice</i> (Council of Europe European Commission for the efficiency of justice)
cf	<i>confer</i> (compare)
ch	chapter
CIDH	<i>Corte Interamericana de Derechos Humanos</i> (Interamerican Court of Human Rights)
CJEU	Court of Justice of the European Union
EBRD	European Bank for Reconstruction and Development
ECLI	European Case Law Identifier
ECtHR	European Court of Human Rights
ed	editor/editors
edn	edition/editions
eg	<i>exempli gratia</i> (for example)
ELI	European Law Institute
etc	et cetera
EU	European Union
EUR	Euro
ff	following
fn	footnote (external, ie, in other chapters or in citations)
FRCCP	Code of Civil Procedure (France)
GCCP	Code of Civil Procedure (Germany)
GDPR	General Data Protection Regulation (EU)
ibid	<i>ibidem</i> (in the same place)
ICPR	Civil Procedure Regulations (Israel)
ICT	Information and Communication Technologies
ie	<i>id est</i> (that is)
IIDP	<i>Instituto Iberoamericano de Derecho Procesal</i> (Iberoamerican Institute of Procedural Law)
JCCP	Code of Civil Procedure (Japan)
JPY	Japanese Yen
n	footnote (internal, ie, within the same chapter)
no	number/numbers
para	paragraph/paragraphs
PCCP	Code of Civil Procedure (Peru)

PD	Practice Direction
pt	part
RCCP	Code of Civil Procedure (Russia)
RSC Order	Rules of the Supreme Court (UK)
SCC	Supreme Court Canada
SCCP	Civil Procedure Act (Spain)
Sec	Section/Sections
supp	supplement/supplements
trans/tr	translated, translation/translator
UK	United Kingdom
UKCPR	Civil Procedure Rules (UK)
UNIDROIT	<i>Institut international pour l'unification du droit privé</i> (International Institute for the Unification of Private Law)
US / USA	United States of America
USD	United States Dollar
v	versus
vol	volume/volumes

LEGISLATION

Basic Laws and Constitutions

Code of Civil Procedure of Costa Rica

French Code of Civil Procedure

Italian Constitution.

Japanese Code of Civil Procedure

Peruvian Code of Civil Procedure

Peruvian Constitution of 1993.

Russian Code of Civil Procedure

Spanish Civil Procedure Law

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