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CONDITIONAL GENERAL COMPETENCE – IMPOSITION OF A CONSEQUENCE OR CONDITION OF COMPLIANCE WITH THE PRELIMINARY PROCEDURE IN THE LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Abstract*: In this article, the general conditional jurisdiction is analyzed starting from the legislation of the Republic of Moldova, regarding which there are two opinions in the specialized literature: 1) it imposes a sequence of actions until the address in court; 2) it imposes the condition of complying with the prior procedure. We have argued that this type of general jurisdiction represents a sequence of actions that must be completed before being addressed in court. From this point of view, I argued why in the initial drafting of the Administrative Code of the Republic of Moldova, the preliminary procedure was excluded in most cases of administrative litigation.*

Keywords: **competence, jurisdictional body, court, conditional, prior.**

JEL: K

1. Introduction. In the specialized literature of the Russian Federation, where pioneering research was done on the subject of conditional general competence, there are two fundamental opinions regarding the definition of this kind of general competence.

According to the first opinion, this presupposes the legal capacity of the court to settle a certain civil case only upon fulfillment of the condition[23] - compliance with the procedure for the preliminary settlement of the case by extrajudicial means. Rightly so, the preliminary procedure obliges the plaintiff by law to address beforehand to the opposing party or to certain authorities, otherwise, the summons request will not be accepted for examination by the competent court. The true example is the provisions of art. 208, para. (1) of the

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[23] ЖУЙКОВ М. В. *Судебная защита прав гражданин и юридических лиц*. Москва: Городец, 1997, 320 с. с. 7.

Administrative Code of the Republic of Moldova[24], which stipulates: „Until the submission of the action in administrative litigation, the preliminary procedure shall be followed, with the exceptions provided by law." If this condition was not respected when the court was notified, the summons request will be returned. The obligation to comply with the procedure for the preliminary settlement of the case by extrajudicial means may result from the law or from the agreement of the parties which stipulates as a clause the prior addressing of a claim to the other party[25]. This condition does not contravene the principle of free access to justice, because this principle does not necessarily imply the absence of procedures prior to the referral to the court. Therefore, the situations in which the legislator establishes that in order to notify the court it is necessary to go through a preliminary procedure are not contrary to the stated principle[26]. However, the litigant will not be able to enjoy being referred to the competent court to examine his case, if the mentioned condition is not respected, which defines the specifics of the general conditional jurisdiction.

In another opinion, the conditional general competence is seen as an imperative general competence - which provides for the possibility of the civil cause being examined by several jurisdictional bodies in the consecutiveness provided by the law. The examination of the case by a certain jurisdictional body constitutes a mandatory condition for it to be examined by the following jurisdictional body[27]. For example[28], in the case of appeals in electoral matters, according to art. 71, para. (1) of the Electoral Code[29]: „The filing of the request in the court must be preceded by the prior appeal in the electoral body hierarchically superior to the body whose act is challenged, with the exception of appeals regarding the actions/inactions of the electoral contestants, filed directly in the court, and of appeals that refer to the exercise of the right to vote or the administration of elections submitted to the electoral office on the day of the elections." So, in the case of the first opinion, the emphasis in defining this type

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[24] Codul administrativ al Republicii Moldova: nr. 116 din 19 iulie 2018. În: *Monitorul Oficial al Republicii Moldova*, 2018, nr. 309-320, art. 466. [citat 11.01.2023]. Disponibil: https://www.legis.md/cautare/getResults?doc_id=16072&lang=ro.

[25] PRISAC, A., BĂNĂRESCU, A., BĂNĂRESCU, I. *Drept procesual civil. Partea Generală.* Chișinău: S.n., 2021, 392 p. ISBN 978-9975-157-54-4. p. 139.

[26] BÎCU, Ig. *Garanțiile constituționale ale realizării dreptului la un proces echitabil.* tz. de doct. în drept. Chișinău, 2020, 184 p. p. 59.

[27] ОСИПОВ, Ю. К. *Подведомственность юридических дел.* Учебное Пособие. Свердловск, 1973. 123 c. c. 46-51.

[28] PRISAC, A., BĂNĂRESCU, A., BĂNĂRESCU, I. *Drept procesual civil. Partea Generală.* Chișinău: S.n., 2021, 392 p. ISBN 978-9975-157-54-4. p. 139.

[29] Codul electoral: nr. 1381 din 21 noiembrie 1997. În: *Monitorul Oficial al Republicii Moldova*, 1997, nr. 81, art. 667. [citat 11.01.2023]. Disponibil: https://www.legis.md/cautare/getResults?doc_id=18271&lang=ro#.

of general competence is placed on compliance with the condition of compliance with the prior procedure, and according to the one of the second opinion highlights the respect for a consecutiveness of the addressing to the competent jurisdictional bodies. In what follows, we will present our own opinion related to these two opinions, especially starting from the legislation of the Republic of Moldova.

2. Regulation of general jurisdiction in the Republic of Moldova

In the local specialized literature, the author Munteanu Alexandru defines the exclusive general competence, especially of the courts, starting from the first opinion of the Russian authors mentioned above. Thus, the author mentions: „According to the rules of conditional general jurisdiction, the courts are competent to examine certain categories of civil cases only on the condition that the plaintiff complies with the prior procedure for resolving them extrajudicially. Such prior procedure is mandatory only in the cases expressly provided by law or contract[30]." In the same way, the author Bâcu Adelina mentions that general conditional jurisdiction means that, for some categories of reasons, compliance with a prior extrajudicial procedure is mandatory[31]. We believe that such definition of exclusive general competence is insufficient because it does not reflect the obligation to respect the consecutiveness of addressing the jurisdictional bodies and is not specific to this kind of general competence.

This definition of general conditional competences from the domestic specialized literature entails certain negative repercussions in the legislation of the Republic of Moldova and in judicial practice. It is wrong to consider that there is general conditional competence every time the law requires to comply with the prior procedure. We base our opinion on those mentioned by the Russian author Osipov Iu. K. promoter of the second opinion on conditional general competence which defines this kind of general competence as an imperative competence. According to him, the imperative general competence provides for the possibility of the civil cause being examined by several jurisdictional bodies in the consecutiveness expressly regulated by law. In particular, the judicial body, which according to the law is to examine the case first, is the basic and mandatory body, and the one that can examine to examine it after the examination by the basic judicial body, is complimentary and non-binding. For example, the cases concerning the finding of inaccuracy of the entries in the civil status registers are the jurisdiction of the courts only on the condition that there is a refusal by the civil status body to correct or modify the entries and other documents that refer to this issue (art. 332 para. (2) from the Civil Procedure Code of the Republic of Moldova). In the absence of prior examination of the request for correction of the

[30] BELEI, E., BORȘ A., FELICIA, C. [et al.]; red. șt.: Alexandru Cojuhari. *Drept procesual civil. Partea generală.* Chișnău: S.n. 2016. 464 p. ISBN 978-9975-4072-9-8. p. 141-142.

[31] BÂCU, Adelina. Drept procesual civil. Partea generală. Chişinău, 2013, 344 p. ISBN 978-9975-56-094-8. p. 99.

inaccuracy of the entries in the civil status registers by the civil status body (which in that case represents the basic and mandatory jurisdictional body) the examination of the civil case by the court (as a complementary jurisdictional body) is impossible. Moreover, the court, in this case, constitutes the non-mandatory body, because the need to address it can fully expire as a result of the preliminary examination and the satisfaction of the request for the correction of the inaccuracy of the entries in the civil status registers[32]. Thus, the existence of a mandatory body and a complimentary body to achieve the criteria of the imperative general competence is due to the non-moral character of the studied legal institution. This is because, as a rule, the activity and competence of the mandatory body is regulated by one branch of law, and the activity and competence of the complementary body is regulated by the rules of another branch of law. In the example mentioned above, in the cases regarding the finding of the inaccuracy of the entries in the civil status registers, the address according to the competence to the civil status body for correction or modification of the entries is regulated by the rules of family law, and those regarding the address in the court in the special procedure is regulated by the rules of civil procedural law.

Structurally rightly, the general conditional jurisdiction is essentially so, which requires a consecutive address to the jurisdictional bodies and cannot be confused with a simple out-of-court settlement of the claims in order to settle the dispute in the absence of the court. Such a mistake also exists in the local specialized literature, which I highlighted above, when it catalogs the condition of compliance with the prior procedure for resolving the case extrajudicially as an indicator of the existence of general conditional jurisdiction. So, not in every case when the condition of compliance with the procedure for the preliminary settlement of the case by extrajudicial means is imposed, we are in the presence of the general imperative (conditional) jurisdiction.

In support of the opinion that not every time the preliminary procedure is required when addressing the court, we would be in the presence of a general imperative (conditional) competence are those mentioned in point. 84 of the Decision of the Constitutional Court of the Republic of Moldova no. 14 of 15-11-2012 for the control of the constitutionality of some provisions of the Code of Civil Procedure of the Republic of Moldova no. 225-XV of May 30, 2003 (Report no. 21a/20120) [33] in which the following were ruled: „The Court notes that the preliminary complaint procedure cannot be considered as a jurisdiction within the

[32] ОСИПОВ, Ю. К. *Подведомственность юридических дел.* Учебное Пособие. Свердловск, 1973. 123 с. с. 46.

[33] Hotărîrea Curții Constituționale pentru controlul constiuționalității unor prevederi din Codul de procedură civilă al Republicii Moldova nr. 225-XV din 30 mai 2003 (Sesizarea nr. 21a/20120): nr. 14 din 15 noiembrie 2012. În: *Monitorul Oficial al Republicii Moldova,* 2012, nr. 248-251, art. 24.

meaning of the provisions contained in art. 114-116 of Constitution nor in the sense of art. 6 point 1 of the European Convention. However, following the compliance with the preliminary procedure and the failure to resolve the conflict, it can be inferred by the litigant before the court. Also, according to art. 115 paragraph (3) of the Constitution, the establishment of extraordinary courts is prohibited." Starting from those mentioned by the Constitutional Court, it follows that the preliminary procedure is not based on the rules regarding general competence because the preliminary procedure does not constitute a jurisdiction. However, the rules of general jurisdiction are applied when there is a jurisdiction, which is to be delimited by another jurisdiction.

To identify the imperative general competence, the author Osipov Iu. K. mentions two criteria:

1. The law provides for the consecutive resolution of the case by two or more jurisdictional bodies;

2. This consecutiveness of case resolution is provided by law as mandatory[34].

The first criterion allows to delimit the general imperative competence from the cases when the law provides, before addressing to the competent jurisdictional bodies, the advance submission of the claims to the debtor in order to resolve the disputes amicably by the parties to the litigation without the intervention of the bodies empowered to apply the law. In this case, there can be no question of the resolution of a dispute through decision-making power, because the ulitima in itself represents an autonomous activity of law enforcement carried out by special jurisdictional bodies. The formulation of claims and their settlement cannot be regarded as law enforcement activity, because this is done by the subjects of the litigious material report themselves, but not by jurisdictional bodies. For this reason, such activity of the parties does not constitute a resolution of the dispute by jurisdictional bodies and we will not be in the presence of the general imperative (conditional) jurisdiction[35]. Thus, starting from this criterion mentioned by Osipov Iu. K. we add that there are two kinds of preliminary procedures:

a) preliminary procedures based on the general imperative (conditional) competence carried out in order to have the claim settled by the mandatory jurisdictional body until it is addressed to the complementary jurisdictional body, which in most cases this jurisdictional body is the court, for example , art. 332 para. (2) from the Civil Procedure Code of the Republic of Moldova in the

[34] ОСИПОВ, Ю. К. *Подведомственность юридических дел.* Учебное Пособие. Свердловск, 1973. 123 с. с. 49.
[35] ОСИПОВ, Ю. К. *Подведомственность юридических дел.* Учебное Пособие. Свердловск, 1973. 123 с. с. 50.

procedure regarding the correction of the inaccuracy of entries in civil status registers;

b) preliminary procedures that are not based on the general imperative (conditional) jurisdiction, being only a formulation of the claims to the adverse party of the contentious material relationship, for example in the administrative litigation procedure, the prior request addressed to the administrative body issuing the illegal administrative act is not based on general imperative (conditional) competence. Although this preliminary procedure is not optional[36], it is mandatory. In most cases, in the administrative litigation of the Republic of Moldova, the imposition of the preliminary procedure is not based on the general imperative (conditional) jurisdiction. We present the arguments of this opinion below in the second criterion mentioned by Osipov Iu. K. In art. 7 para. (1) from the Administrative Litigation Law of Romania no. 554 of 02-12-2004[37] there are the same regulations that do not substantiate the imposition of the prior procedure on the concept of the imperative (conditional) general competence.

The second quarter mentioned by Osipov Iu. K. that this consecutiveness of resolution of the case should be stipulated by law as mandatory, allows to delimit the general imperative (conditional) jurisdiction from situations when the case can be resolved in advance by a judicial body, but which, does not constitute a prescribed mandatory addressing by law[38]. For example, according to art. 164 para. (3) of the Administrative Code of the Republic of Moldova, if the prior application is submitted to the hierarchically superior public authority, it shall without delay transmit to the issuing authority the prior application and any application for suspension of the execution of the individual administrative act. So, starting from the aforementioned, the preliminary procedure is more appropriate when the law requires addressing to a mandatory jurisdictional body, which is not part of the material-litigious relations, until the addressing in court.

Given the fact that in the Republic of Moldova the rules of general imperative (conditional) jurisdiction raise many question marks in the administrative litigation procedure, greater attention should be paid to general jurisdiction, when submitting the action in the administrative litigation. In this sense, it is necessary to report what was presented by the author of BELEI Elena on the subject of the admissibility of the action in administrative litigation: „Of course, the judge is obliged to first verify his general, jurisdictional competence

[36] ZUBCO, Valeriu. Instituția contenciosului administrativ într-o formă conceptuală nouă – element important pentru Integrarea Europeană a Republicii Moldova. În: *Revista Națională de Drept*. 2014, nr. 2 (160), pp. 44-49. ISSN 1811-0770. p. 48.

[37] Legea contenciosului administrativ a României: nr. 554 din 02 decembrie 2004. În: *Monitorul Oficial al României, 2004, nr. 1154.*

[38] ОСИПОВ, Ю. К. *Подведомственность юридических дел.* Учебное Пособие. Свердловск, 1973. 123 с. с. 50.

by subject and territory and to undertake the necessary procedural action. […] the logical order of verifying the correctness of the address in the administrative litigation is: jurisdiction, including the general one, the content elements of the summons request, the limitation period, compliance with the prior procedure[39]." Also, the local author IACUB Irina, tangentially related to the same problem, mentions: The new conception of administrative justice has raised a series of questions and problems in the practice of its realization, especially regarding the way of interpretation and application of the provisions of the Administrative Code. The biggest challenge, still felt today, is (as in the period before the adoption of the code) the issue of the preliminary procedure or, in other words, of the administrative appeal. Obviously, compared to the previous legislation, the Administrative Code intervened with important regulations in this chapter, managing to clarify and simplify various relevant aspects. Regrettably, however, the preliminary procedure remains a subject of discussion and an acute problem of the judicial act, seen, interpreted and solved differently by its actors (especially, in terms of its status as a right or obligation) [40]. Because in the local specialized literature the general imperative (conditional) jurisdiction is defined by stating the necessity of the existence of the prior procedure, we will address this topic related to the administrative litigation procedure.

In our view, as we mentioned above, the general imperative (conditional) competence is not found in the imposition of the preliminary procedure in the administrative litigation procedure of the Republic of Moldova and does not refer to the graceful administrative appeal, the hierarchical administrative appeal and the guardianship administrative appeal, because they do not assume the possibility of the civil cause being examined by several jurisdictional bodies in the consecutiveness provided by law. The author ZUBCO Valeriu defines these three legal categories as follows: a) the graceful appeal is exercised by the same authority that issued the administrative act subject to the appeal, and the one who exercises it can request that an administrative act be issued, revised, modified or annulled; b) the hierarchical appeal is exercised by the hierarchical body superior to the body that adopted the illegal administrative act and can only be applied in the case when it concerns administrative acts issued by administrative bodies that have hierarchically superior bodies; c) the administrative appeal of guardianship is in case the issuing authority enjoys autonomy, having no hierarchical

[39] BELEI, Elena. Admisibilitatea acțiunii în contenciosul administrativ. În: *Integrare prin cercetare și inovare. Științe juridice și economice.* SJE, 10-11 nov. 2021. Chișinău: Centrul Editorial-Poligrafic al USM, 2021. pp. 331-333. ISBN 978-9975-152-48-8. p. 331-333.

[40] IACUB, Irina. Cererea prealabilă și procedura prealabilă: aspecte de interpretare normativă. În: *Studii şi cercetări juridice. Partea 5, 22 nov. 2021, Chişinău.* Chișinău: Institutul de Cercetări Juridice, Politice şi Sociologice, 2023, pp. 98-114. ISBN N 978-9975-3430-3-9. p. 99.

superior[41]. From the analysis of these types of administrative appeals, we notice that none of them is exercised by another judicial body than the one that issued the contested administrative act. Therefore, they do not belong to the general imperative (conditional) competence.

Starting from the specificity of the general imperative competence as a possibility to examine the civil cause by several jurisdictional bodies in the consecutiveness provided by law and from the two criteria mentioned by the author Osipov Iu. K., we consider that in most cases in the administrative litigation procedure it is not appropriate to impose the preliminary procedure when addressing the court. However, in most cases of administrative litigation, the law does not require the prior application to be made to a judicial body that is not part of the material-litigious relations, as is the specific nature of the general imperative jurisdiction. It is well known[42] that the prior request is addressed, in most cases, to the public authority issuing the disputed administrative act, which is the subject of the material-legal relationship and will have the procedural quality of a defendant in the administrative litigation procedure, but not to a judicial body that does not is a party to the material-litigious report. For this reason, we believe that the Administrative Code of the Republic of Moldova, in the initial version, excluded the rule that required in most cases the observance of the preliminary procedure in administrative litigation and it was only stipulated that this is mandatory only in the cases provided by law (art. 208 of the Code administrative office of the Republic of Moldova). Which, in our view, was correct, because only in some cases provided by law, the legislator could impose to respect the prior procedure when for the public authority whose administrative act is the object of judicial control, the legislator promoted a certain specific administrative policy. This policy could consist in raising the quality level of administrative acts in a certain field until they are subject to judicial control. Thus, what was mentioned by the author ORLOV Maria regarding the need to impose in all cases the preliminary procedure in administrative litigation, could only be valid for some cases. The author mentions: „I insisted on maintaining the preliminary procedure for several reasons. We will present only a few of the arguments brought forward: a) the public administration in our country is going through a period of modernization in order to align it with democratic principles,

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[41] ZUBCO, Valeriu. Cererea prealabilă – condiție obligatorie de exercitare a dreptului la acțiune în contenciosul administrativ. În: *Teoria și practica administrării publice: Conferinţă ştiinţifico-practică internaţională,* 17 mai 2018. Chișinău: Academia de Administrare Publică, 2018, pp. 300-304. ISBN 978-9975-3019-7-8. p. 300-301.

[42] CRUGLIȚCHI, Tatiana. *Rațiunea noilor reglementări ale procedurii contenciosului administrativ în Republica Moldova.* În: Știința în Nordul Republicii Moldova: realizări, probleme, perspective. Ediția 5, Bălți: „Tipografia-Centrală", 2021. pp. 411-417. ISBN 978-9975-62-432-9. p. 412.

in which mistakes are inevitable; b) the body of civil servants is insufficiently trained from a professional point of view, being completed, for the most part, with graduates of the Soviet school, and a national school of administrative sciences has not yet been formed, in the sense of the modern state; c) civil servants are not motivated either to work or to improve themselves. Not to mention the quality of the legislative acts [...] which even the most efficient officials in the public administration could not execute without mistakes."[43] The feasible request being an institution that offers an amicable solution to administrative disputes[44], from what was mentioned by the author ORLOV Maria, it follows that the prior procedure is imposed in favor of the public authorities to eliminate unprofessionalism and quickly restore the violations violated by them. This nephroprofessionalism still persists in the activity of public authorities, in judicial practice there have been cases when the response of the public authority did not even specifically mention whether the prior request was rejected or admitted[45]. However, in our view, the preservation of this concept of the preliminary procedure indicates a stagnation in the development of regulations concerning administrative litigation. It is necessary to keep the prior procedure only for some cases provided by law, such as those that constitute a new field for the public administration, for example the documents issued by the National Integrity Authority that constitute a relatively new field for the Republic of Moldova that would impose a certain period for learning certain skills for civil servants within this public authority. Although, we express our regret, that there were also provisions that excluded the preliminary procedure for contesting in court the findings of the National Integrity Authority. By Law no. 244 of 16-12-2020 for the amendment of some normative acts[46] in art. 36 para. (1) from Law no. 132 of 17-06-2016 regarding the National Integrity Authority[47], it was stipulated that the finding can be challenged directly in the competent court for the examination of the action in administrative litigation. However, this provision was not in force for long, as it was declared unconstitutional by Constitutional Court Decision no.

[43] ORLOV, Maria. *Curs de contencios administrativ.* Chișinău: Elena-VI SRL, 2009. 158 p. ISBN 978-9975-106-32-0. p. 131.

[44] MACOVEȚCHI, Carolina. Particularitățile respectării procedurii prealabile în acțiunile de contencios administrativ. În: *Modernizarea guvernării din Republica Moldova: aspecte teoretico-aplicative, Conferință, 27 mai 2022.* Chișinău: CEP USM, 2022. pp. 204-213. e-ISBN 978-9975-62-500-5. p. 205.

[45] Decizia Colegiului civil, comercial și de contencios administrativ al Curții Supreme de Justiție: nr. dosar 3ra-1344/13 din 23 octombrie 2013. [citat 24.04.2023]. Disponibil: http://jurisprudenta.csj.md/search_col_civil.php?id=4437.

[46] Legea pentru modificarea unor acte normative: nr. 244 din 16 decembrie 2020. *În: Monitorul Oficial al Republicii Moldova,* 2020, nr. 353-357, art. 282.

[47] Legea cu privire la Autoritatea Națională de Integritate: nr. 132 din 17 iunie 2016. În: *Monitorul Oficial al Republicii Moldova*, 2016, nr. 245-246, art. 511.

29 of 21-09-2021 regarding the control of the constitutionality of Law no. 244 of December 16, 2020 for the amendment of some normative acts (competences of the National Integrity Authority) (referral no. 209a/2020). So, in the end, the Moldovan legislator accepted the necessity of existence when contesting in court the finding of the National Integrity Authority of the preliminary procedure, because it constitutes a relatively new public authority for the Republic of Moldova.

In the Republic of Moldova, the inertia of the imposition of prior procedures is still preserved, for which it is necessary to make some clarifications including through the Constitutional Court, which, for example, very explicitly expressed itself through the Decision of June 15, 2021 on the inadmissibility of notifications no. 137g/2021 and no. 138g/2021 regarding the exception of unconstitutionality of some provisions from articles 72 para. (3), 73 par. (7) and 74 para. (1) of the Electoral Code (prior procedure and appeals in the electoral field) [48], in which it was stated that compliance with the prior procedure is not necessary when contesting the decisions of the Central Electoral Commission regarding the opening of some polling stations, because they are of a normative nature. We consider it rational, from the point of view of the specifics of the general imperative jurisdiction, that the preliminary procedure for contesting the normative acts of the public authorities in the county court should not be imposed by law, because there cannot even be a jurisdictional body, other than the issuer of the contested normative act to replace the latter body to adopt an administrative act with a normative character. All this because the adoption of normative regulations are essentially the attributions of the body empowered by law to regulate a certain field of social relations. The only legitimate jurisdictional body to cancel the normative administrative act, through the action in normative control, but not to regulate instead of the issuing administrative body, is the court, because it is mandated to fulfill the normative control.

Since the preliminary procedure is vehemently imposed by virtue of a true consecutiveness of the general imperative (conditional) competence, we propose by law ferenda to return to the initial version of the regulations art. 208 para. (1) of the Administrative Code, which constituted a modern and well-founded version of the obligation of prior procedure only in the cases provided for by law. Thus, we propose to modify the provisions of art. 208 para. (1) of the Administrative Code and to stipulate the following: „In the cases provided for by law, prior to the submission of the action in administrative litigation, the preliminary procedure shall be followed."

[48] Decizia Curții Constituționale de inadmisibilitate a sesizărilor nr. 137g/2021 și nr. 138g/2021 privind excepția de neconstituționalitate a unor prevederi din articolele 72 alin. (3), 73 alin. (7) și 74 alin. (1) din Codul electoral (procedura prealabilă și contestațiile în domeniul electoral): nr. 94 din 15 iunie 2021. În: *Monitorul Oficial al Republicii Moldova,* 2021, nr. 168-174, art. 129.

3. Conclusion. In the administrative procedure of the Republic of Moldova, from the point of view of legal consciences unfavorable for achieving access to justice, compliance with the general imperative (conditional) jurisdiction is more important when addressing the complimentary body, i.e. the court, but not when addressing the mandatory jurisdictional body which is an administrative body. This is because according to art. 73 para. (1) of the Administrative Code of the Republic of Moldova, the public authority does not have the right to refuse to receive petitions just because it does not consider itself competent or because it considers the petition to be inadmissible or unfounded. Also, art. 74 of the Administrative Code of the Republic of Moldova stipulates: „If the petition falls within the competence of another public authority, the original of the petition is sent to the competent public authority within 5 working days from the date of registration of the petition, a fact about which the petitioner is informed." Therefore, addressing the administrative body in violation of competence does not produce an unfavorable consequence for the realization of the principle of free access to justice, since the public authority itself is to correct this error ex officio by sending the request to the competent public authority.

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Decizia Colegiului civil, comercial și de contencios administrativ al Curții Supreme de Justiție: nr. dosar 3ra-1344/13 din 23 octombrie 2013. [citat 24.04.2023]. Disponibil: http://jurisprudenta.csj.md/search_col_civil.php?id=4437.

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