The Jurisdiction: Administration of Justice or Application of the Law?

Dr. Angel Ascencio Romero

Autonomous University of the State of Guerrero. Mexico

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Abstract

There are two doctrinal flows with respect to the concept of jurisdiction, both opposed to one another: one that identifies it as a power of the courts to administer justice, and another who says it is the exclusive authority of the State to apply the law to disputes. This article attempts to show why the latter thesis is correct.

Keywords: Jurisdiction, justice, right.

Introduction

The Jurisdiction That we understand is the sovereign powers that has the State to decide, with force vinculativa for parties, a particular dispute. \(^1\)

Etymologically the word jurisdiction is derived from two Latin words: jus that means right, and discere it means to say, or: say the right.

To Becerra Bautista \(^2\), "Even though the commentators discussed until the etymology itself, all definitions are reduced to this basic idea."

Pallares informs us that in the Roman law, the word jurisdiction included at the same time some Powers that today are being granted to the legislative power and those who have the courts. \(^3\)

The same Pallares, quoting Bonjeau, says that \(^4\) The etymology of the word jurisdiction allows giving this expression a broader sense, which includes legislative power is same as the judiciary: in effect, say the law is to regulate the social relations of citizens, either when the rule is applied. “Indeed, is certain that to them Roman not them repugnant that their judges not so only assist the silence of the law, but also with too much frequency amended the law by means of edicts General, to which placed between them laws properly such.”

Based on the concept that we share and that I outlined at the beginning, we are clear that the jurisdictional activity is nourished by the existence of a particular dispute between the parties, which must be resolved in the form vinculativa for both by a third party that has enough power to force them to submit to his determination.

That third party, on the basis of jurisdictional authority, say the law, i.e., apply the general law to the controversial case, in order to fix it or resolve it.

Accordingly, we only understand the jurisdiction based on the existence of a conflict between two parties, same that has to be resolved by the intervention of a third party with the exclusive authority that gives the State for, by applying the law, resolve the aforementioned dispute.

Then, one cannot speak of jurisdiction where there is no conflict or dispute. That is why our approach focuses to deny the existence of the so-called “Voluntary Jurisdiction”

There is no voluntary jurisdiction because if there is jurisdiction, it cannot be "voluntary", i.e. without controversy, because if there is no conflict between the parties nor can we speak of jurisdiction. \(^5\)

It is a contradiction to speak of voluntary jurisdiction, since what is meant by such, i.e. the solution of issues where there is no dispute between parties, nor is jurisdiction, nor is voluntary, because it cannot be both things at the same time: or law applies only to a dispute, in which case it is an act of jurisdiction, or it is a mere formality before a court, in which case we speak of a hypothesis of competence but not an act proper jurisdiction.

Therefore, we fully agree with the point of view of Alcala Zamora and castle, for whom "if any conclusive outcome has been achieved in the field of voluntary jurisdiction is that it is neither the one nor the other" \(^6\)

There is no jurisdiction because it involves the judicial intervention to resolve conflicts between the parties; much less is voluntary because often the judicial intervention is for those interested in promoting it as necessary or more than in the contentious jurisdiction. And yet - the author concludes mentioned - despite their apparent impropriety, the name persists and persists, by the weight of tradition, so strong in the legal field, and perhaps more, because the extreme diversity of the procedures which it is composed and the inadequacy of the theories put into circulation to explain it, hinder the indispensable convergence of views to carry out the change.

\(^1\)See my work: General Theory of the Process, Edit. Sieves, pag. 46
\(^4\)Op. Cit. Pag. 506
\(^5\)It is a total inconsistency that reform of 17 February 1993 in the Title Eighth the Code of Civil Procedure of the state of Guerrero, which regulates the judicial procedures non contentious (article 742 to 784), has been removed the concept of “voluntary jurisdiction”, but that the legislator has been “forgotten”, change the name of that title and continue calling “procedures in voluntary jurisdiction”.

Corresponding Author: Dr. Angel Ascencio Romero
General Coordinator of the postgraduate course in Law, Autonomous University of the State of Guerrero. Mexico

E-mail: angel_ascencio@yahoo.com.mx
On the other hand, not all agree with our idea of the concept of jurisdiction, for a good number of writers as Rafael de Pina, Manresa and Navarro, Escriche and others; the jurisdiction The understood as the faculty, power, authority or power that have been coated judges to administer justice.

This criterion is diametrically different from that to which we have adopted, and means that the jurisdictional bodies, when you say the law in reality are administering justice.

Since then that we do not share this criterion, because where there is a conflict between two parties that believe to have each one of them the right to have the decision is favorable, it is hardly may give you satisfaction to both, accordingly, the ruling will surely be considered fair for the one who was favored and unjust for the that was loser in that case.

The rating of just or unjust of a particular judicial decision proves to be highly subjective, to check, just put a couple of specific examples to confirm our opinion in the sense that the concepts jurisdiction and justice are not self-explanatory neither one is the content of the other:

FIRST case: A worker who is fired in unjustified form of their employment without compensation by the employer, in the hope of being rehired or compensated later, does not present his complaint to the Board of conciliation and arbitration appropriate, or presents out of time, i.e., when their right to sue with the exception of prescription, claiming the pattern already prescribed the labour authority will have to stick its resolution to as instructed by the law. be just the resolution that court-martial to the pattern?. The answer is obvious, will not be a just resolution, and however, the Conciliation Board acted as the sovereign power to apply the law to the controversial case and met it.

Second case: a person to another demand the payment of a debt non-existent founded in a title of credit that never signed the defendant, or did so under pressure or threats; if for any reason the defendant does not defend or does so inadequate and, consequently, receives a conviction will be just that judgement? As in the previous case there is no need for more than a little common sense to conclude that such a judgement is unjust, however, the judge issued a decision on the basis of the elements that had in view, being outside its scope the possibility of resolving differently because, in its condition of Alien and impartial third party to the conflict, its function is only to apply the law to the dispute, to the margin of that their resolution is just or unjust.

Conclusions

First: Is Incorrect the denomination of "voluntary jurisdiction", to the procedures where there is no conflict or dispute. It is proposed to change the name to the title eighth of the Code of Civil Procedure of the state of Guerrero, so that instead of "Procedures in voluntary jurisdiction" is named "non-contentious judicial procedures".

Second: must prevail the concept of jurisdiction as "sovereign powers that has the State, by means of its courts to decide, with force vinculativa for parties, a particular dispute", above the concept that identifies the jurisdiction as a power of the courts to administer justice. By the elements provided in the body of this work.

References

1. See my work: General Theory of the Process, Edit. Sieves, pag. 46