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LEGAL CONFLICTS OF A CONSTITUTIONAL NATURE BETWEEN PUBLIC AUTHORITIES IN THE RULE OF LAW

– ABSTRACT –

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This thesis is a personal contribution to the study of the way the tense relations between public authorities affect the well-being and the proper functioning of the rule of law, interactions which, with the passing of the time, become more and more frequent through the "legal conflicts of a constitutional nature" which may appear within the rule of law.

The concept of "legal conflict of a constitutional nature" is a relatively new notion for the Romanian legal system and, despite the fact that such hypostases have been outlined over time within the institutional framework of the state, they have acquired a concrete regulation only in 2003 through the constitutional review procedure.

The constitutional review has produced major changes for the provisions of the fundamental law, which demonstrates the fact that it was intended to make some substantive changes to the already existing constitutional regime.

Among the many innovations brought about by the constitutional review, it can be mentioned the establishment express verbis of the principle of the separation of powers in the state; the introducing of some new provisions within Title III regarding the public authorities; the addition of a new title referring to the Euro-Atlantic integration of Romania, as well as the introduction of new attributions for the Constitutional Court, such as the resolution of legal conflicts of a constitutional nature between public authorities.

Of all these changes, the institution of judicial conflicts of a constitutional nature has attracted my attention in a special way due to the special connotations it implies within the state.

First of all, I do consider that this issue is an extremely complex one which has a direct connection with the institutional relations within the state of law regarded from the perspective of the relations between the public authorities, always constituting itself as an obvious violation of the principle of the separation of powers in the state, aspects which only emphasize the importance of these organic disputes for the internal framework of the rule of law and the need to solve them as quickly as possible.

Taking into consideration all of the above mentioned, obviously, the task of settling these constitutional disputes between the public authorities could only be entrusted to the Constitutional Court of Romania, as it is the only authority that carries out the constitutional jurisdiction, which is independent from the

legislative, executive and judicial power, and which is only submitted to the provisions of the fundamental law.

By acquiring this new power to solve organic conflicts, the Constitutional Court began to occupy a special position within the constitutional and political architecture of Romania, this representing the moment when the interest towards the Constitutional Court and the role it plays in society became a legitimate one, taking into account the fact that it is a mechanism for assuring the balance between state powers, a vital mechanism for the rule of law, also becoming the guardian of the Constitution and the mediator of legal conflicts of a constitutional nature.

Another reason for which I have chosen to try to elucidate the complexity of legal conflicts of a constitutional nature is the timeliness of this theme, to which inevitably is also added the interest it has raised over time.

Interesting in this respect is the jurisprudence of the Constitutional Court which has experienced a brilliant evolution in the field of organic disputes.

If at the outset there was a retrial to seize the Constitutional Court in this direction, as the first time that it was introduced before the Court such a request was in 2005, at 2 years distance from the time it was first regulated the issue of organic disputes between public authorities, this reticence has disappeared over time, and nowadays the Constitutional Court has come to settle organic disputes even 5 times a year.

Moreover, it could be observed an obvious increase in the complexity of the conflicting situations brought out before the Constitutional Court in order to be settled, which, to some extent, affected the Court's activity meaning that the pressure put on it was much more pronounced, the Constitutional Court being forced to respect its own path but in the same time to adapt to the new circumstances.

Taking into account all these aspects, but also the fact that at present there is a small number of legal studies in this direction, which have failed to completely elucidate the vast field of legal conflicts of constitutional nature in the rule of law, I decided to try to discover this sector more thoroughly and to give an overview of it, in order to remove as much as possible the controversy which surrounds the concept of organic litigation.

From a structural point of view, the present study is organized in two parts, each of which consists of chapters in which have been inserted sections and subsections, and it is intended to be an attempt to elucidate the notion of "legal conflicts of a constitutional nature" both from the perspective of its procedural and content

aspects, while providing answers to a series of legitimate questions which rise about the nature of these disputes, such as whether these organic disputes between the public authorities are exclusively a matter of constitutional loyalty or whether, in general, legal conflicts of a constitutional nature are eminently political conflicts or do they represent a pure violation of the constitutional loyalty?

The research begins by highlighting the new position of the Constitutional Court of Romania after the constitutional revision in 2003, a position that firstly betrays the assiduous attempt of the Romanian state to rally to the European current in the field of legal conflicts of a constitutional nature.

Inspired by the model of other European countries with experience in the field of organic disputes, the task of solving the legal conflicts of a constitutional nature between public authorities was introduced in the attributions of the Constitutional Court of Romania. Although according to this new assignment the Constitutional Court may be considered to be the mediator of this type of litigations, it should be expressly stated that this is not the equivalent of the power of mediation that the President of Romania has, as there are major differences between these two constitutional assignments both from the point of view of the area of competence and also of the nature of the disputes.

This ability of the Romanian Constitutional Court to solve the organic disputes between the public authorities comes in strengthening its role as the guardian of the Constitution and its position in relation with the public authorities, since each case in respect of which it has been notified has represented and continues to be an opportunity for the Constitutional Court to place the rule of law above all other interests in order to ensure the proper functioning of the rule of law by promoting the constitutional provisions through the procedure of providing them the proper interpretation.

Should it be done otherwise, the Constitutional Court of Romania would turn itself into a political arbitrator, whose purpose would be the promotion of the monopoly of a public authority, thing which would not be possible, taking into account the constitutional provisions and principles and also the values of the rule of law.

The evolution of the Constitutional Court of Romania in this direction was extremely suitable for the situation of the rule of law and for the Romanian institutional system, because in the circumstances of a profoundly conflicting political life, the appeal to the Court's judgment sought, beyond the Constitution, its arbitration in the dispute between political actors.

In the domain of legal conflicts of a constitutional nature, the role of the Constitutional Court acquires considerable values, especially in the context in which the provisions of the fundamental law referring to the organic disputes that can be constituted between the public authorities within the rule of law are incomplete, consisting only in the ones included in the article 146 (e).

For these reasons, in order to accomplish its new acquired position, in order to restore the internal order of the rule of law and in order not to infringe the fundamental provisions, the Constitutional Court has to confine the dispositions of the Constitution its own interpretation, the task of settling in detail the legal conflicts of a constitutional nature being therefore taken almost entirely by the Constitutional Court.

Despite of the risks to which it was exposed over time to transform itself from the mediator of legal conflicts of a constitutional nature into a mere political partisan and despite the pressures exerted upon it when the issue of the existence or non-existence of an organic dispute was present, with few exceptions, the Constitutional Court of Romania has managed to maintain itself within the limits imposed by its own jurisprudence, following the same route each time and every time.

The attitude of the Constitutional Court should be appreciated from this point of view because, beyond ensuring its own position and beyond promoting its own interests, through its permanent actions of supporting and encouraging the spirit of loyalty towards the Constitution, it always acted as a good " mediator "of the relations between the state institutions and, at the same time, managed to ensure and maintain its independence.

Moreover, the Constitutional Court's mission is not limited to the settlement of the actual conflict; on the contrary, it goes beyond these superficial aspects, indicating behaviors that should be followed in the spirit of ensuring the supremacy of the Constitution. Therefore, what is really of a high importance is the guarantee of the supremacy of the Constitution, the restoration of the institutional balance for the proper functioning of the rule of law, and not necessarily the proper settlement of the conflict which it has been notified about.

Also within the first chapter, I have inserted a section dedicated entirely to the concept of "judicial conflict of a constitutional nature", insisting above all on the legal meaning of the terms used, due to the fact that, in the case of Romania, the

institution of legal conflicts of a constitutional nature was not the subject of a separate study but, on the contrary, it has simply been placed, by the provisions of the fundamental law, in the category of the constitutional court's attributions, without ensuring for that particular institution the terminological explanation that it actually deserved.

What was actually pursued through this constitutional settlement was rather the finding of a way of restoring the institutional balance in the case legal conflicts of a constitutional nature would have appeared between the public authorities, and not necessarily the understanding of the phenomenon of legal conflicts of a constitutional nature itself.

On the other hand, the placement of their settlement under the Constitutional Court, increased the role of the Constitutional Court, involuntarily placing in shadow the institution of legal conflicts of this nature, since this is the moment when the Court, one of the most important pillars of the system of constitutional guarantees, reconfigures its position within the governing system, becoming an important factor for the settlement of the constitutional conflicts.

However, I strongly believe that in this new context of the constitutional review, it should have been taken into consideration both the settlement of the institution of legal conflicts of a constitutional nature and also the reconfiguration of the position and role of the Constitutional Court in the state of law.

I, therefore, appreciate that the constitutional provisions in this field should have been more eloquent in the matter of such conflicts, and taking into account the effect their appearance might have upon the rule of law, why not, it would have been necessary paying special attention to this category of disputes, by conferring them a special place on the constitutional level.

Thus, instead of resorting within the fundamental law to the mere mention, in a superficial manner, of the notion of legal conflict of a constitutional nature, and this being comprised in an enumeration of the attributions of the Constitutional Court, first of all, it should have been explained the meaning of the concept of legal conflict of a constitutional nature and, consequently, in the case of Romania, the constitutional provisions in this matter would have become as conclusive as those of other European states.

As an example, in the situation of Germany, Austria, Spain and Italy, even the fundamental law expressly states that these organic disputes consist in conflicts of competence and they exclusively concern the way the competences between the

central government and that of a land, state, region or local community are assigned. Conversely, in the situation of Romania, the constitutional provisions are incomplete in this matter, because within the art. 146 letter (e) there is no reference made to the content of this category of conflicts, but only its procedural aspects are being mentioned:" it settles down the legal conflicts of a constitutional nature between the public authorities at the request of the President of Romania, of one of the presidents of the two Chambers, of the prime minister or of the president of the Superior Council of Magistracy", without even mentioning the legal meaning of the terms of legal conflicts of a constitutional nature and their implications for the rule of law.

Should it have been preceded in such a manner, that of offering a definition, a classification, a cataloging of legal conflicts of a constitutional nature, then this new phenomenon of legal conflicts between the public authorities would no longer be a delicate issue, creating controversy and their settlement would have been implicitly much simplified. But, due to the fact that the Constitutional Court's requests have not been taken into account, and the constitutional review has been maintained even in present in its original form, which is quite lapidary and inadequate, a lot of questions arise regarding this new concept.

In such a context, once again, if it was even necessary, the assumption that law generally does not have an exhaustive language was confirmed, this meaning that the terms used in this sector are "borrowed" from other areas without, however, being ensured their legal sense.

For these reasons, I appreciate that, in general, it would be necessary to legalize the concepts used in law, this being a method which seeks to elucidate the specificity of the legal language precisely in order to ensure its transparency and consistency; and even more, this procedure of legalizing the concepts becomes essential in the case of legal conflicts of a constitutional nature, precisely due to the devastating effects that they are capable of producing within the rule of law.

The second section of the first chapter from the first part of the study was meant to be an attempt to determine the legal meaning of the new notion introduced within the Romanian constitutional framework, namely the legal conflicts of a constitutional nature which appear between the public authorities.

In achieving this goal, I started from the original meaning of the term "conflict" or the Latin "conflictus" which means "mutual strike with force" and generally involves disagreements and frictions among members of a social group, interaction

in speech, emotions and affectivity; and I have been able to give this term the legal sense so as to highlight the characteristics of the organic disputes and their importance in the rule of law.

Under such circumstances, starting from the original meaning, the conflict could be defined as a mismatch of opinions, attitudes or misunderstanding between two or more parties (people, social groups, states) that should be resolved in a manner which it may be regulated or not.

However, the concept of "conflict" is a general notion that necessarily requires its own categories specific to each type of science, namely: sociology, military art, law, religious doctrine.

If in the other sciences the notion of "conflict" is presented only in one form - that of the original meaning of conflict - in law the term "conflict" embraces three aspects, namely: a dispute - a misunderstanding between two or more persons regarding how to achieve the content of certain legal relationships; process - with its two meanings: the activity performed by the court, parties, the enforcement body and other bodies or persons in order to achieve or establish the civil rights or interests and the enforcement of the court decisions or other executory titles, according to the procedure established by law; the activity regulated by the law, with the participation of the parties and other persons in order to discover in time the facts constituting crimes, so that any person who committed an offense is punished according to his guilt and no innocent person may be convicted; or simply conflict, as a natural consequence of the diversity of legal institutions and mechanisms and of the relationships that can arise between them. In the latter sense, there can be mentioned: the conflicts of interest, the temporal conflicts of laws, the conflicts of jurisdiction and legal conflicts of a constitutional nature.

Of all the above mentioned, the fundamental law of Romania regulates only two categories of conflicts, namely the temporal conflict of laws - according to art. 154 paragraph (1), and the legal conflict of a constitutional nature according to the provisions of art. 146 lit. e) from the Constitution.

By configuring the course of this procedure of legalization of concepts, and by following closely every stage of it (that is - legal concepts are formal - meaning that they do not have value in themselves, legal concepts are opaque, not substantive - hence they are configured by opposition by another concept and not by the determination of the essential constituent elements, the legal concepts are neutral - consequently they must be configured in such a way as to indicate the

same purpose for distinct but similar values, legal concepts are operational - which means that the lack of operational efficiency does not make the concept a judicial one, legal concepts are procedural and evolutionary), I have tried to create a proper definition for the syntax which arises around the concept of conflict, namely "legal conflict of a constitutional nature".

The legal definition of the term "constitutional legal conflict" starts from the idea of its formalization - which implies the passing of the concept from the sphere of knowledge into the sphere of action, and in order to demonstrate the formal character of this concept I started from the definition granted to it by the Constitutional Court of Romania in the Decision no. 53/2005 according to which:

"The legal conflict of a constitutional nature between public authorities involves concrete acts or actions through which one or more authorities claim powers, attributions or competences which, according to the Constitution, they belong to other public authorities, or the omission of some public authorities consisting of declining their jurisdiction or refusing to perform certain acts which are part of their obligations."

According to this definition, the Court recognizes only positive and negative conflicts of jurisdiction as legal conflicts of a constitutional nature which may appear between public authorities within the rule of law, and therefore it considers that any other categories of disputes may not appear as constitutional conflicts besides these one mentioned.

And, since any other category of conflict between the public authorities is from the outset excluded from the sphere of legal conflicts of a constitutional nature, I can certainly assert the hypothesis according to which this first definition granted by the Constitutional Court of Romania is restrictive one.

According to this vision embraced by the Court, the legal conflict of a constitutional nature as a conflict of competence is generated by the way of action of the public authorities, and it is capable of causing an imbalance thus infringing the principle of separation of powers in the state.

Being a way of action, he strictly refers to the relations between public authorities as subjects of law and, in this sense, it has no value, becoming therefore a formal concept.

Consequently, the first formal definition conferred to the legal conflicts of a constitutional nature, besides being a restrictive one, reducing the sphere of such conflicts to the maximum in order to avoid increasing the activism of the Court,

also proved to be inefficient over time, which is why it became necessary to adapt this category of conflicts, with all that they implies, to the new changes that have occurred.

The evolutionary character of this concept is evidenced by the entire activity of the Constitutional Court, carried out in the exercise of the attribution conferred by the art. 146 letter e); the Court succeeding to enrich the content of the notion of legal conflict of a constitutional nature through its own jurisprudence.

Initially, the Constitutional Court has been reserved towards this new attribution conferred by the constitutional revision in 2003, meaning that, within the constitutional control over the proposed revision, it was recommended that the constitutional text should firmly specify the nature of a positive or negative conflict of competence for the legal conflicts of a constitutional nature. The attitude of the Court is justified by the nature of the Romanian system of government, which is a of the semi-presidential one, which by itself represents a source of potential conflict between public authorities, and which becomes visible in certain political contexts.

In such circumstances, in order not to take too much responsibility and not to be involved in the complexity of the political disputes between the powers - because ultimately any legal conflict of a constitutional nature is actually based on a pure political conflict - the Constitutional Court, by its jurisprudence, determined the content of legal conflicts of a constitutional nature, considering that the conflicts of competence were the only ones of this nature.

Nevertheless, due to the social evolution and the diversity of the relations within the constitutional and political architecture of the state, the Constitutional Court failed to maintain for a long period of time the framework which itself had set, being forced to intervene in the relations between the state authorities also in other situations, in order to strengthen its role as a mechanism for achieving the balance between state powers.

Thus, by pronouncing the Decision no. 98/2008, the Constitutional Court exceeds its original framework drawn through the Decision no. 53/2005, according to which legal conflicts of a constitutional nature were only the conflicts of competence irrespective of their nature (positive or negative), and implicitly acknowledges the role of mediator also in other situations, establishing that it is competent to solve other divergences arising between two or several public authorities, even if they do not actually consist in litigation of competence, as long

as they refer to attributions provided to the subjects involved by Constitutional provisions themselves.

In this respect, the Court considers that there is a legal conflict of a constitutional nature capable of generating an institutional blockage if public authorities with similar competences in the achievement of the same constitutional objective repeatedly do not cooperate and fail to agree. Consequently, the conflict does not arise from the extension or reduction of the powers of a public authority, but from the lack of collaboration between the authorities - generated by a repeated refusal.

Also, within the procedure of legalizing the concepts, it can be included the oppositional character of the notion of "legal conflict of a constitutional nature", which reveals itself through the comparative study of the definitions that derive from two completely distinct visions: the perspective of the Fundamental Law and the perspective of the guardian of the Constitution and the mediator of organic conflicts.

Thus, according to art. 146 letter e) the Constitution makes reference to the notion of " legal conflict of a constitutional nature" as an attribution of the Constitutional Court of Romania by placing it inside the enumeration of those competences: it solves the legal conflicts of a constitutional nature between the public authorities at the request of the President of Romania, of one of the Presidents of the two Chambers of Parliament, of the Prime Minister or of the President of the CSM, while the Constitutional Court of Romania defines the "legal conflict of a constitutional nature" as concrete acts or actions by which one or more authorities claim powers, attributions or competences, which, according to the Constitution, belong to other public authorities or the omission of public authorities consisting of declining their own jurisdiction or refusing to perform certain acts which are part of their obligations. "

As it can be noticed, the two definitions confer two different approaches to the concept:

On the one hand, the Constitution makes reference to the procedural aspects of the notion - that is, the authorities competent to seize the Court in the event of such a conflict. It is a limitative enumeration provided in the fundamental law which implies the process of a literary interpretation (the number of authorities cannot be extended or restricted by means of the interpretation). So, the Constitution does not determine the content of the notion of "legal conflict of a constitutional nature", but instead it establishes the competence of the Constitutional Court to settle down any

legal conflict between the public authorities and not only the conflicts of competence which have arisen between them.

On the other hand, the Constitutional Court offers another perspective upon the concept of "legal conflict of a constitutional nature" and it refers to the aspects of content of this notion - only legal conflicts of competence are considered to be legal conflicts of a constitutional nature.

Taken separately, none of these definitions is complete taking into consideration that the definition granted by the Constitution only deals with procedural aspects and that the Constitutional Court only deals with issues of content.

Although two distinct visions are outlined, yet, the definitions have a common aspect, namely the circumscribed subjects of a legal conflict of a constitutional nature - since they both state that only public authorities may be subjects of such a conflict.

However, this approach is neither a sufficient one, because the procedure of legalizing the concept of "conflict" is not achieved by strictly determining its essential constituent elements.

For these reasons, the concept of "legal conflict of a constitutional nature" needs to be analyzed from a double perspective (that of the Fundamental Law and that of the Constitutional Court) in order to obtain its legal valences; because a non judicial concept configured in an essentialist manner must be transformed into a concept determined by opposition in order to become a judicial one.

By going through all the procedures which the process of legalization involve, the legal conflict of a constitutional nature could be defined as a situation determined by the way of action of the public authorities inside the relations between them, regarding the attributions conferred to them by the Constitution, a situation capable of causing an institutional blockage which in turn generates an imbalance which affects the principle of separation of powers in the state and implies the intervention of the Constitutional Court as a mediator for its settlement in order to restore the constitutional harmony and loyalty between the powers by ensuring the supremacy of the Constitution.

Once the enigma of the new role of the Constitutional Court of Romania and that of the notion of "legal conflict of a constitutional nature" have been elucidated, the next stage of my study is represented by the identification and research of the normative coordinates of the legal conflicts of a constitutional nature.

By analyzing in detail all the regulatory sources of this institution, as well as the relevant doctrine in this direction, I have discovered a series of eight defining normative coordinates, which can be classified according to two criteria, respectively from the point of view of the regulation form and from the perspective of the issues they make reference to.

According to the first criterion, I identified two distinct categories, namely normative coordinates explicitly regulated by the Constitution, which include the organ which has the task of solving this type of conflicts - the Constitutional Court of Romania, which are the public authorities that may seize the Constitutional Court in the occurrence of such conflicts, namely the President of Romania, one of the presidents of the two Chambers of Parliament, the prime minister or the president of the Supreme Council of Magistracy and the normative coordinate of the circumstantial subjects between which the legal conflicts of a constitutional nature can appear, respectively the public authorities; as well as the normative coordinates regulated through the constitutional jurisprudence in the category of which can be mentioned the trigger point of an organic dispute, the actual content of the conflicts of this nature and the devastating effect generated by them in the rule of law, which must always take the form of an institutional blockage. It is also possible to include within this category two other elements which come exclusively from the first mentioned coordinate, namely the Constitutional Court's obligation to settle the constitutional disputes between the public authorities and to pronounce a decision, a final decision which obviously must contain a solution capable of execution by even indicating the behavior to be followed, in order to avoid the occurrence of a similar situation in the future.

Regarding the other classification criterion, along the research carried out I came to the conclusion that according to the aspect to which the normative coordinates of organic conflicts make reference to, can be mentioned the procedural normative coordinates of the organic conflicts and the material coordinates or the ones referring exclusively to the content of legal conflicts of a constitutional nature.

At this moment, I do consider that all the normative coordinates that are mentioned within the constitutional provisions should be considered as procedural aspects, while the other categories may include those highlighted through the jurisprudence of the Constitutional Court of Romania.

Due to the fact that the element which offers the constitutional character of the disputes between the public authorities is the cumulative fulfillment of the above-

mentioned normative coordinates, they have been presented in detail throughout an entire chapter - Chapter II suggestively entitled "Normative Coordinates of Legal Conflicts of a Constitutional nature" - within which I tried to highlight the particularities of each one of it, but also the controversies that they are capable of raising both individually and together.

Regarding the normative coordinate of the persons to whom the Constitution has attributed the competence to seize the Constitutional Court of Romania in the matter of legal conflicts of a constitutional nature, although some specifications are required, this does not raise any big controversy since it presents itself as a procedural element with a purely constitutional regulation that is sufficiently precise so as not to leave room for subjective interpretations.

In essence, the remarks are resumed to the following aspect: the persons who have the duty to inform the Constitutional Court of the appearance of an organic dispute between the public authorities are designated through an express and restrictive enumeration that is limited to a small number of individuals, namely the President of Romania, one of the presidents of the two Chambers of Parliament, the prime minister or the president of the Supreme Council of Magistracy.

According to this point of view, the constitutional provisions regarding this aspect must therefore be interpreted in a restrictive manner, so that the interpretation may lead to the idea that in the matter of legal conflicts of a constitutional nature, the Constitutional Court cannot seize itself ex officio and neither it may detect such conflicts in the event of accomplishing another task.

For purely logical reasons, I consider that the constitutional provisions referring strictly to the manner in which the Constitutional Court is seized in the event of a legal conflict of a constitutional nature, are clear and do not excessively promote the Court within the Romanian institutional system, as it does not leave the Constitutional Court the opportunity to regulate this issue of legal conflicts of a constitutional nature, but submit it to a condition - the seizing of the Constitutional Court by certain competent institutions, which, in most cases, have an interest in the cause for which they are making the complaint.

Regarding this interest, a remarkable distinction must be observed between the institution of judicial conflicts of a constitutional nature as it is regulated in the Romanian law system as well as in other systems in the European space, aspect which has been unraveled within the research.

In order for the interest to be even more pronounced in this direction, I mention that within the section designated to the procedure of seizing the Constitutional Court in such conflicting situations, there was highlighted another distinction between the case of Romania and that of the other European states, which is the term in which this kind of applications (those in which the Constitutional Courts are entrusted with the resolution of the constitutional divergences within the state) can be introduced, these two procedures being completely distinct.

Referring to the sphere of the public authorities that might be involved in an organic dispute, a category that is in fact another procedural normative coordinate of the institution of constitutional conflicts, it can be asserted the following: in the category of the circumstantial subjects of this type of litigation are included the Parliament, composed of the Chamber of Deputies and the Senate, the head of the state as an unipersonal public authority, the Government together with the central public administration and local public administration bodies, the Supreme Council of National Defense and the bodies of the judiciary system- through the High Court of Cassation and Justice, and the Supreme Council of Magistracy.

For the moment, although it would seem that, the controversy that could be raised out by this procedural aspect of the legal conflicts of a constitutional nature are removed, yet, I do consider this is only a trivial illusion, since, if a detailed analysis of the constitutional jurisprudence and also that of the factual situations that led to the seizing of the Constitutional Court as a result of conflicts between the public authorities are made, it is inevitable not to be raised certain questions regarding this coordinate namely: why absolutely all legal conflicts that have been brought before the Constitutional Court in order to be settled down have involved either the President of Romania and the Government, the President and the High Court of Cassation and Justice, either the Government and the CSAT, either the Parliament and the President, Parliament and the Government, either the Public Ministry through the Prosecutor's Office attached to the High Court of Cassation and Justice and the Senate, etc., but never the local public administration bodies, although they also had, according to the fundamental law, the capacity to be constituted as circumstantial subjects of this kind of conflicts; or why, according to the Constitutional Court of Romania, only the High Court of Cassation and Justice has the capacity to be an active subject of the organic conflicts, and not other courts, although in Title III of the Constitution, Chapter VI entitled "The judicial authority" section 1 (courts) it is stipulated that justice is done by the High Court of

Cassation and Justice and by the other courts established by the law without being made any other distinction between them according to the hierarchy criterion.

Regarding the first hypothesis launched, I do appreciate that the reason why the local public administration has not become, over time, part of a legal conflict of a constitutional nature that would lead to the seizing of the Romanian Constitutional Court in order to solve it, is not due the fact that it did not have recognized this prerogative at a constitutional level, because it is undoubtedly part of the category of public authorities as those perceived like this from the point of view of Title III of the fundamental law, or that it was actually impossible to have such conflicting situations with any other public institution, but rather due to the fact that there was no one to bring these possible conflicts to the attention of the Constitutional Court due to the lack of that legitimate interest I have mentioned before, which in the case of Romania, although not a mandatory condition for the introduction of such an application, here it proves itself to be an important element.

The constitutional jurisprudence also proves that most of the legal conflicts of a constitutional nature that have been brought before the Court, were those which have appeared between the public authorities which, according to the Constitution, had the power to seize the matter to the Court, or who had at least an interest in being settled such organic disputes.

Such a situation regarding the local public administration bodies has never existed and it does not appear to emerge too soon, since the category of those who can expose it is restricted to the President of Romania, to one of the presidents of the two Chambers of Parliament, to the Prime Minister or to the President of the Superior Council of Magistracy.

For all these reasons, it can be claimed, without being considered an exaggeration, that the local public administration in Romania has never constituted a real, active subject of a legal conflict of a constitutional nature, because its position has been summed up and continues to be summed up to a simple appearance.

The second question mark, besides highlighting a lack of vision on the circumscribed subjects of legal conflicts of a constitutional nature, also it highlights the negative consequences that the inconsistencies between the provisions of the fundamental law and the jurisprudence of the Constitutional Court are capable of creating, as a result of the impossibility of harmonizing them.

Therefore, the matter of the judicial authority as a circumstantial subject of legal conflicts of a constitutional nature, from the point of view of the organs that can

represent it in a cause brought before the Constitutional Court regarding the appearance of such conflicts, is due to the fact that, on one hand, the provisions of the Title III of the Romanian Constitution establish concretely the idea that within the category of public authorities that may be part of organic conflicts is also included the judicial authority that carries out its activity through the High Court of Cassation and Justice and through the other courts established by law, point of view from which results the idea that there is no delimitation made between the High Court and the other courts, and therefore it can be concluded that the latter can also be constituted, as well as the supreme court, in subjects of the organic disputes; while, on the other hand, the Constitutional Court had to solve conflicting situations in which the judicial authority was represented, in most cases, before the Constitutional Court by the High Court of Cassation and Justice, and in the only case in which some ordinary courts were actual parties of a legal conflict of a constitutional nature, the Constitutional Court refused to accept the occurrence of an organic dispute, establishing that the only court capable of representing the judicial authority in the domain of legal conflicts of a constitutional nature is the High Court of Cassation and Justice.

Concluding all the issues mentioned so far concerning the procedure of representing the judicial authority as a circumstantial subject of a legal conflict of a constitutional nature, I definitely can state that the only court accepted and recognized by the Constitutional Court as being capable of performing before it as part of an organic dispute is the Supreme Court of Cassation and Justice, and I base my resolution both on the relevant jurisprudence of the Constitutional Court referring to such conflicts and on the assumption according to which ordinary courts do not have the capacity to form themselves as active parties of organic disputes even in the situation in which they are, from the point of view of the fundamental law, part of the sphere of public authorities that legally have the capacity to become parties of such divergences, given that through their own decisions, the ordinary courts cannot have too much influence over the rule of law as well as on its good functioning, so as to affect other public authorities' execution of their constitutional powers, to violate the principle of the separation of powers in the state and to trigger institutional blockages within the state.

Once the controversies surrounding the circumscribed subjects of legal conflicts of a constitutional nature were elucidated, the research regarding the procedural normative coordinates which are exclusively regulated by the fundamental law can

be considered completed. If until now, things have been relatively simplistic, regarding the second category of normative coordinates, respectively those referring to issues of content, we are witnessing an overturning of the situation.

Some questions that this category of normative coordinates is capable of raising, which I personally consider them extremely interesting, are those relating to the concrete object of a constitutional dispute: whether it may be confused with other elements of content or whether it is summed up strictly to the category of conflicts of competence or its sphere may be also extended to other situations whose occurrence arises exclusively from the Constitution.

The answers to these questions were revealed in the section dedicated to the normative coordinate of the content of legal conflicts of a constitutional nature, located within the second chapter of the first part of this study.

Thus, the research had to start, and so it actually did, from the fact that the fundamental law of Romania did not even make any statement about the elements of content of organic disputes, reason for which, it was absolutely necessary to be found a proper solution in this direction, in order for these coordinates to acquire in one way or another a regulation, precisely to ensure transparency of the phenomenon of legal conflicts of a constitutional nature.

Obviously, in the virtue of its role of mediator of this type of disputes, the Constitutional Court of Romania was perceived as being the only organ that could or should have intervened in this domain, having to establish, above all, especially the content of legal disputes of a constitutional nature precisely in order to be able to settle any legal conflict of a constitutional nature and to restore the institutional balance within the state of law.

Therefore, the Constitutional Court has stated that, firstly there must be a triggering situation, so that the conflict can then be constituted. Then, it is necessary to analyze the actual content of a legal conflict of a constitutional nature - basically the elements in which it actually consists (actions, inactions, lack of cooperation between powers, different interpretation of the law) - and ultimately the effect generated by such legal disputes, respectively the institutional blockages.

Only in the situation where these three elements cumulatively occur - triggering situation, conflict itself and institutional blockage – it can be noticed the occurrence and the existence of a legal conflict of a constitutional nature.

So, the first aspect of content that emerges in the domain of legal conflicts of a constitutional nature is the objectively triggering situation of such a phenomenon, which exclusively derives from the jurisprudence of the Constitutional Court.

Although it does not seem to raise any kind of controversy, however, during the research I succeeded to identify two hypotheses that betray the particularly complex nature of this element, namely: that there is a constant tendency to merge the normative coordinate of the triggering situation of an organic dispute with its proper content, consisting in a detailed study over the content of constitutional conflicts and skipping the procedure of discovering the triggering point, the latter being inevitably integrated within the other - a tendency that is found in the attitude of the Constitutional Court of Romania, but which I totally disapprove – thing demonstrated in the present study - and the second identified reasoning consists in the variety of forms that these triggering situations can embrace, which, on one hand, can be easily demonstrated by the multitude of complaints made before the Constitutional Court regarding the emergence of a legal conflict of a constitutional nature and which, on the other hand, make almost impossible to form a precise classification of the triggering factors.

Based on these theories, referring to the triggering situation of an organic dispute can be drawn the following conclusions: the controversial nature of this normative coordinate depends exclusively on the course of the organic dispute phenomenon within the state of law, in the sense that if over time there is no fluctuation in the actual appearance of constitutional disputes within the state nor major controversies may arise in the matter of their triggering factors, thus being made even a concrete delimitation between them.

Moreover, although there is a tendency to merge the normative coordinate of the sources of organic disputes with their own content, it has nevertheless been demonstrated by concrete circumstances that this hypothesis is not an appropriate one, and therefore it can be stated with certainty that the triggering situation of legal conflicts of a constitutional nature anticipates their object and is in close connection with the content of such disputes even to the limit of confusion, however, the hypothesis according to which the two normative coordinates overlap is not accepted, because regardless of the complexity of the case in which the Constitutional Court is engaged in the settlement of an organic dispute, always the triggering situation will have its own existence as an essential normative coordinate in the structure of disputes of a constitutional nature.

The content of the legal conflict of a constitutional nature is by far the most complex and controversial normative coordinate of this institution since it, together with the circumscribed subjects of organic disputes, are the ones that confer to these disputes their constitutional character that makes them so special for the institutional framework of the state.

The main problems regarding the object of constitutional divergences between public authorities are whether, in the case of Romania- as in other European countries-, can be accepted the idea that the conflicts of competence - irrespective of their positive or negative nature - and legal conflicts of a constitutional nature are the same thing.

Initially, in order to restrict its sphere of activity, the Constitutional Court opted for such an approach, although, proceeding in such a manner, it lost from sight other aspects of particular importance for the proper functioning of the institutional relations within the state such as judicial situations of any kind constituted between public authorities whose occurrence resides directly from the Constitution and which are capable of generating institutional blockages within the state.

It is the case of those disputes which, despite the fact that they appear between authorities that may constitute circumstantial subjects of an organic dispute, which arise regarding the duties established by the fundamental law in charge of these authorities, and which have as a result the occurrence of an institutional blockage, which actually fulfill all the conditions to be considered organic litigations (the conditions relating to the subjects involved, the manner of seizing the court competent to solve them, their content and effects) are not, however, included in the category of legal conflicts of a nature constitutional for the single reason that they are not essentially positive or negative conflicts of competence.

For a short time, this approach has not raised controversy because the manner in which the mediator of legal conflicts of organic nature has clarified the nature of this normative coordinate has proven to be relevant and satisfactory for the settling of the limited number of cases presented before the Court as litigation of a constitutional nature.

However, as their occurrence has intensified and the complexity of the tense relations between public authorities has obtained new valences, it was imposed a new approach on the concrete content of organic disputes, precisely in order to further promote the purpose for which it was first introduced within the Constitutional Court of Romania's attributions.

In fact, even the Constitutional Court through its own jurisprudence has gradually expanded the sphere of these constitutional conflicts, including in their category, besides the positive and negative conflicts of competence, other conflicting situations whose occurrence derives directly from the Constitution, which could not be delimited with precision due to the diversity of the forms under which they can be constituted, but which have subsequently been individualized and settled according to the moment of their occurrence.

Although the normative coordinate of the content of legal conflicts of a constitutional nature will always remain complex and controversial, however, a series of pertinent conclusions could be outlined: the itinerary of the object of organic disputes starts from the general idea according to which the content of a constitutional dispute is in fact represented by the conflicts of competence irrespective of their positive or negative nature, which arise among certain public actors that can constitute themselves into circumstantial subjects of legal conflicts of a constitutional nature, so that later, this vision can be extended also on other conflicting situations, as a result of the evolution of society and the diversity of situations that can create such a typology of conflicts.

Although ab initio, it was established a sign of equality between the notion of conflict of competence and that of an organic conflict on the grounds of avoiding the involvement of the Constitutional Court in the settling of political conflicts – as there was always the fear of transforming the Court into a political partisan taking into account that any organic dispute between public authorities is based on a political divergence - this hypothesis has become outdated as, at present moment, legal conflicts of a constitutional nature mean any organic divergence between two or more public authorities as long as it is related to the constitutional attributions of the parties involved and generates an institutional blockage within the state; thus, it can be drawn a general conclusion: that the relationship between the conflicts of competence (positive or negative) between authorities public and legal conflicts of a constitutional nature is currently a simple link of the type part-to-whole link.

For all these reasons, the normative coordinate of the content of organic disputes has been, is and will continue to be, for a long time now on, a particular aspect of great importance for the institution of legal conflicts of a constitutional nature outlined within the state, being capable to permanently generate debates among the scholars.

The last normative coordinate from the category of the material elements of organic disputes are the effects generated by these conflicts within the rule of law, which always have the form of an institutional blockage. Although it is placed at the end of the research on the constituent elements of organic disputes, this coordinate of content is in fact an essential condition for placing an institutional divergence in the sphere of legal conflicts of a constitutional nature, since even if all the other conditions are fulfilled meaning that the dispute arises between circumstantial subjects, that it is a legal one and it is constituted regarding the attributions established by the fundamental law, yet, if it is not capable of affecting the proper functioning of state through the effect it produces, then it cannot be considered an organic dispute, and therefore it is not justified to seize the Constitutional Court with this case in order to intervene and settle it.

Taking into consideration all mentioned above, the normative coordinate of the effects of legal conflicts of a constitutional nature is a vital element in the process of identifying organic disputes, as it violates the constitutional order, the good functioning of the state, the way of executing the constitutional attributions belonging to the authorities as well as the institutional relations within the state, and justifies the intervention and involvement of the Constitutional Court in their resolution, in order to overcome the institutional blockage and to restore the institutional balance of the state.

The normative coordinates that consist in the obligation of the Constitutional Court to solve any legal conflict of a constitutional nature regarding to which it has been seize about by pronouncing a final, binding and enforceable decision and which should also indicate the behavior to be followed in order to avoid the occurrence in the future of similar conflict situations, only deals with the specific procedure of the new attribution introduced in the Constitutional Court's competences, and, from this perspective, does not generate much debates.

Eventually, precisely in the virtue of its role as guardian of the supremacy of the Constitution, the Constitutional Court has an obligation established through the provisions of art. 146 letter e) from the fundamental law to settle the legal conflicts of a constitutional nature between the public authorities, from which it cannot be derogated in case it is notified in this respect. Moreover, the Constitutional Court has no right to permit such a situation that blocks the activity of a constitutional public authority to be perpetuated by adopting a passive position on the grounds that the provisions of the fundamental law do not provide a modality to solve the

variety of conflicts that may arise between state authorities. On the contrary, the Court has the constitutional obligation to solve the disputes and to remove, through its decision, the institutional blockage.

In this respect, the Constitutional Court pronounces a decision whenever it is seized about a legal conflict of a constitutional nature between two or more public authorities, decision through which each conflicting situation is settled, depending on the circumstances of each case.

In conclusion, as it is obvious, depending on the circumstances of each cause, the Court's decisions have a different character (either decisions on admission, rejection or the inadmissibility of a request), but in order to be ensured the fundamental purpose of the proper functioning of the state and restored the institutional balance of the powers within the state, these decisions will always have a definitive, binding, enforceable character and will produce erga omnes effects, irrespective of the adopted solution.

Once the procedure of elucidating the eight normative coordinates which characterize the institution of legal conflicts of a constitutional nature has been completed, two other hypotheses which have represented the subject of another direction of research are outlined, fact which confirms that the organic disputes between public authorities are an inexhaustible source of study.

Therefore, in the second part of the research, I attempted to formulate, in general terms, valid answers to other two legitimate questions surrounding the concept of organic disputes, namely whether legal conflicts of a constitutional nature are in essence a problem of constitutional loyalty and, of course, how should a legal conflict of a constitutional nature be described as a political conflict or a mere violation of the constitutional loyalty?

Providing suitable answers to these questions implied an overall approach to these phenomena, and this necessarily required the introduction into the discussion the state and the principle of separation of powers in the state as a point of balance between the fascinating triad: constitutional loyalty, political conflict and legal conflict of a constitutional nature.

Why was this extension of research towards the fundamental principles of the state even necessary?

The answer is simple to anticipate, because, first of all, the existence of the principle of the separation of powers in the state involves the idea of balance and collaboration between the powers of the state, a collaboration that must be

governed by mutual respect and constitutional loyalty. This is actually the yearning, because in reality this lack of cooperation between the state institutions leads to an obvious violation of the constitutional principle of the separation of powers and affects the internal order of the rule of law.

Moreover, the tendency of any public authority is to strengthen its own position, to defend its legitimate interests even to the detriment of a good state functioning, and simply refuses the idea of an institutional collaboration that may not satisfy its own pride.

Precisely for these reasons, through the research made, I have discovered certain situations in which the behavior of the representatives of the three powers, although formally enforced in the letter of the Constitution, were, however, likely to cause an imbalance under the regime of the separation of powers in the state and to create institutional blockages, and such situations will definitely be encountered also in the future.

These blockages are due to the emergence of a legal conflict of a constitutional nature constituted between public authorities, which, is nothing else but a violation of the constitutional loyalty.

This is also the reason why the concept of constitutional loyalty has experienced an impressive evolution from the moment when the notion of legal conflict of a constitutional nature was shaped and regulated.

Thus, in the Constitutional Court's view, the constitutional loyalty starts from the concept of compulsory behavior that each of the public authorities must adopt, so that later should be reached deeper notions such as those of rules of constitutional loyalty, and finally to be even transformed into a constitutional principle, namely that of loyal cooperation.

Taking into consideration this evolution of the "constitutional loyalty" within the constitutional jurisprudence, I have even dared to outline a new idea, that of the process of "constitutionalisation" of this notion through the constitutional jurisprudence.

Not being regulated by the provisions of the fundamental law, and taking into account some aspects of extreme importance, such as the proper interaction of public authorities within the state and the need to avoid the occurrence of legal conflicts of a constitutional nature, the Constitutional Court of Romania has contributed to the process of "constitutionalisation" of the principle of loyal behavior and constitutional loyalty.

The Constitutional Court, as the mediator of legal conflicts of a constitutional nature, was the one who has given the due importance to this concept, and starting from the idea that the constitutional loyalty cannot be dissociated from the principle of the separation of powers in the state, and that any legal conflict of a constitutional nature implies above all a violation of the constitutional loyalty, it aimed to raise this loyal behavior to the rank of a constitutional principle.

Beyond all of the above mentioned, I do consider that any legal conflict of a constitutional nature is a matter of constitutional loyalty, but, in turn, not any constitutional loyalty issue constitutes a legal conflict of a constitutional nature and, for these reasons, I am in favor of the position adopted by the Court, and I do appreciate that the principle of the constitutional loyalty provides consistency to the whole constitutional edifice and not infringing it ensures the proper functioning of the state of law and leads to the avoidance of legal conflicts of a constitutional nature, with the direct and obvious consequence of respecting the fundamental principle of the separation of powers in the state.

Although the controversies that lie on the two concepts of "constitutional loyalty" and "legal conflict of constitutional nature" seem to be removed, this is nothing but a trivial appearance, especially if it is taken into account the political essence that surrounds the category of organic disputes overall.

Here is how, inevitably, the typology of political conflicts that frequently appear between the public authorities is introduced into discussion, and which, paradoxically or not, have a close connection with legal conflicts of constitutional nature and implicitly with the constitutional principle of the constitutional loyalty. This strong connection that we have reminded about is obviously due to the fact that any legal conflict of constitutional nature has, in essence, a more or less accentuated political background.

The degree of intensity of the political character of a divergent is the one which distinguishes the two categories - the category of political conflicts from that of legal conflicts of constitutional nature - because a political nature is found in any dispute between public authorities, but as this political nature highlights, the constitutional character fades, thing that determines the non-involvement of the Constitutional Court of Romania in the settlement of the dispute on the grounds that it is not competent in this field.

The attitude of the Constitutional Court is a legitimate one and it is the expression of one of its main concerns; that of being involved in the settlement of political conflicts, which is due to the fact that it is extremely exposed given that any legal conflict of a constitutional nature is based on a political conflict; yet, the Court, in the virtue of its newly introduced constitutional attribution, should not intervene and settle political disputes because in this way it would not fulfill its role as the guardian of the Constitution and would not restore the institutional balance of the state, but would become a simple political partisan.

From this perspective, but also in order to eliminate the risk of such a bad consequence to become possible, it is of great importance to create a precise delimitation between the notion of political conflict and that of the legal conflict of a constitutional nature, especially in the context where the tendency to confuse the two typologies is accentuated by the ongoing tensions between state authorities.

Although the present research was conceived as a thorough study of legal conflicts of constitutional nature within the state, with insistence on the procedural normative coordinates and those of content of this institution, and with efforts in attempting to outline legitimate answers to a series of questions risen regarding the organic conflicts, yet the controversy which surrounded this typology of disputes have not been completely eliminated because, irrespective of the perspective from which it is being analyzed, the institution of legal conflicts of a constitutional nature is an inexhaustible source of research, being an extremely complex and controversial subject, which will certainly maintain these two characteristics for a long time now on, especially if it is taken into account the fact that the adversities and animosities between public authorities are becoming increasingly pronounced, that the seizing to the Constitutional Court's judgment in this area has intensified and the multitude of cases under which legal conflicts of a constitutional nature are presented is becoming more and more diverse.