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ORIGINAL PAPER

Controversial Issues Relating to Legal Disputes of Constitutional Nature between Public Authorities

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Abstract
The legal disputes of a constitutional nature are a relatively new concept in the Romanian space and this is the main reason why they still represent an important and yet a controversial aspect for the institutional framework of the state. The normative coordinates are extremely relevant for the constitutional nature of this legal conflicts due to the fact that they imply a variety of domains: the subjects involved (which can be only public authorities); the situations which may lead to the configurations of such disputes; the specific content of these litigations (represented mainly by the conflicts of jurisdiction, but somehow their sphere was extended through the jurisprudence of the Constitutional Court of Romania); the effects they are capable of produce (which consist in institutional blockages which affect the well functioning of the rule of state) and the examples may continue. Their controversial nature was the element that determined the provisions of the Fundamental Law to invest only the Constitutional Court with the settlement of these conflicts, thing that increased the interest of the scholars in this area encouraging them to proceed forward and to seek for answers in the constitutional jurisprudence, studying in detail every decision of the Court which came into notice. Our main objective is to emphasise and in the same time to analyse each one of the normative coordinates of the legal disputes of a constitutional nature throughout the jurisprudence of the Constitutional Court in this domain in order to offer a clear vision of the concept.

Keywords: *legal disputes of constitutional nature, Constitutional Court, normative coordinates, public authorities*

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The institution of legal disputes of a constitutional nature between public authorities is a relatively newly concept, which was introduced in the constitutional space of Romania quite late, since 2003- the moment when the fundamental law was reviewed, and, from my point of view, the main purpose of this action was the enhancement of the role of the Constitutional Court of Romania – this representing the moment when the Court became the guardian of the organic litigations- instead of establishing in the best manner possible this controversial category of disputes in order to ease the institutional relations of the Romanian state.

The predictable argument that justifies the need for a more precise and accurate regulation of this typology of conflicts is their controversial and complex nature and the significance they present for the well functioning of the rule of law.Their heterogenic nature in conjunction with the incomplete constitutional provisions which regulate this domain, inevitably place this typology of conflicts in obscurity and also generate many controversies when it comes to the procedure of solving such disputes.Initially the category of constitutional legal disputes between public authorities seemed not to raise many institutional complications, yet, the problems begin to arise as their occurrence inside the state is increasing, and the need for more precise regulations in this direction becomes a primary concern.The aspects which matter most are the normative coordinates of legal disputes of organic nature, the ones which distinguish themselves by the division of the structure which contains them.

Due to the fact that this institution presents a certain interest, some scholars (Gîrleşteanu, 2012b: 41-44) in their attempt to unravel their complexity, identified eight normative coordinates of the organic conflicts: the first coordinate is a procedural element which refers to the way the Romanian Constitutional Court is notified about the appearance and existence of such a dispute; another normative regards the circumstantial subjects between which these disagreements may appear – namely public authorities-; the third element is represented by the objective facts which trigger the conflict; the fourth normative is the concrete content of an organic dispute; the fifth relates to the effect such conflicts may arise in the legal framework of the state - an institutional blockage; and the last three of them refer to the activity of the Constitutional Court in such disputes – it is bound to solve throughout stating a decision any presumed conflict about which it has been noticed about in order to indicate the way those public authorities should act further.From the outset, the elucidation process of the normative coordinates of this institution was a difficult one, due to the fact that unlike other European countries that served as a model for Romania in the domain of the organic litigations, these components of a high importance were not entirely regulated by the provisions of the fundamental law, some of them being left to the subjective judgment of the Constitutional Court according to its new introduced attribution.

In accordance with the fundamental law, the Constitutional Court of Romania settles down the legal disputes of a constitutional nature between public authorities at the request of the President of Romania, one of the Presidents of the two Chambers of Parliament, the prime minister, and the President of the Supreme Council of Magistracy (Constitution of Romania, art. 146, letter e). Analyzing these fundamental provisions, exclusively from the perspective of a grammatical interpretation, only three conclusions can be drawn: which is the institution who has the ability to settle legal conflicts of a constitutional nature – the Constitutional Court of Romania; which are the public authorities which can notify the Court about the appearance of such disputes namely the

President of Romania, one of the Presidents of the two Chambers of Parliament, the prime minister, and the President of the Supreme Council of Magistracy; and which are the subjects which may become parties of this type of disagreement – public authorities of the state.

No other normative coordinate of the legal conflicts of constitutional nature may appear from the constitutional provisions indicated, and, due to the fact that this research could not be resumed to the grammatical interpretation, I proceeded to analyzing in detail this matter, and I reached the following reasoning: since the Fundamental Law establishes in an extremely concrete manner that only the Romanian Constitutional Court is empowered to settle legal disputes of a constitutional nature this means that the Constitutional Court is bound to carry out the settlement of any legal conflict of constitutional nature of which existence it has been noticed about, and shall never be allowed to refuse to solve such a disagreement; moreover, once the Court has proceeded to the settlement of the conflict, her activity should be completed by issuing a decision, a decision which, emanating from the constitutional jurisprudence is likely to be executed.From these hypothesis, another three normative coordinates arise and refer to the fact that the Constitutional Court is required to settle all legal disputes about which it was notified about, while having a constitutional duty to pronounce a decision in order to indicate the way public authorities shall interact in similar further situations, a decision which is capable of being executed.

Any other aspect regarding the concept of organic conflicts cannot even be deduced from the constitutional provisions, thing that raises a series of questions about this domain and also places the Constitutional Court of Romania into a relatively difficult position, who in order to fulfill its role as the guardian of legal disputes of a constitutional nature is obliged to intervene and clarify, in all respects, the enigmatic character of these legal disputes.(Gîrleșteanu,2012a: 381). In such conditions, without having the benefit of a rigorous legal framework and of a judiciary precedent, the Constitutional Court was simply forced on one hand to analyze in a detailed manner any legal conflict of constitutional nature that arose between the public authorities of the state and which was brought in its attention for its settlement and, on the other hand, to discover other constituents of such disputes.

Throughout its own jurisprudence, the Constitutional Court identified a series of defining elements of the organic litigations: the objective situations which favor the emergence and outbreak of such disagreements; their concrete content- which, in fact, is an extremely diverse one due to the multitude of contexts which can generate legal disputes of this nature- and the specific effects that these conflicts must engender so that they can be classified by the Constitutional Court as having a constitutional nature- an institutional blockage in the absence of which the Court shall never proceed to the settlement of the conflict since it considers that it does not have a constitutional nature therefore it does not fit in its competences. These are another three normative coordinates of legal organic disputes, which can exclusively be drawn from the jurispridencial activity of the Constitutional Court. Currently the normative coordinates of the constitutional conflicts can be divided by two criteria namely by how they are regulated and from the point of view of the aspects to which they refer to.

In what concerns the first criteria set there can be identified two sets of coordinates – normative coordinates which are regulated throughout Constitutional provisions – and into this category can be mentioned the institution empowered to settle such conflicts and its obligations toward this action; the persons who have the ability to

notify the Constitutional Court about the existence of organic litigations and the parties of such disagreements; and the second category represented by the normative coordinates which are established throughout the constitutional jurisprudence – namely the triggering fact of the conflicts, their concrete content and their devastating effect towards the institutional framework of the state. Referring to the other criteria, we may indicate procedural coordinates of organic disputes and also the coordinates of content.Taking into consideration these aspects, whenever the constitutional court was seized with the existence of a legal conflict of constitutional nature, it proceeded above all to the analysis of these normative coordinates from all points of view, in order to avoid its involvement in all sorts of disputes, most often political ones, and thus transforming herself into a political arbitrator between public authorities.Should it have not proceeded in such manner, the purpose for which the Constitutional Court has become the guardian of legal conflicts of constitutional nature, namely the insurance of the institutional balance of the state by the well-functioning of the rule of law, would not be a justified one.

Yet, neither the identification nor the classification of the normative coordinates of organic disputes are equivalent to removing all controversy about these concepts, due to the fact that there are some issues which continue to be enlightened within the most significant coordinates of this institution such as the subjects involved and the concrete content of the organic disputes.I have emphasized the importance of these two elements simply because only those two are able to confer for any conflict which may arise inside the state a constitutional nature. Thus, only if a legal conflict appears between public authorities – those who are considered such by the provisions of Title III of the Fundamental Law – and is related to certain competences established by the Constitution on certain authorities, only then, this type of conflict can be considered an organic one who's settlement is exclusively conferred to the Constitutional Court of Romania.

Next, I will proceed to highlight each element of an organic litigation and in order to achieve that, I will introduce a procedural normative coordinate of a great importance for the institution of legal disputes of a constitutional nature which primarily emerges from the provisions of the Fundamental Law and refers to the way the Constitutional Court of Romania is being notified when such situations arise, specifically on the request of the President of Romania, one of the presidents of the two Chambers, the Prime Minister or the President of the Supreme Council of Magistracy. (Fundamental Law of Romania, art. 146 letter e). From the interpretation of these provisions it emerges extremely clear that only five people may notify the Constitutional Court about the existence of an organic legal conflict, and these are set out in a restrictive manner in the provisions of the fundamental law.

It is therefore the case of the representatives of the three powers of the state, more precise the heads of the institutional structures of the state; the President and Prime Minister (as heads of Government and representatives of the executive power); presidents of the two Chambers of Parliament (representing the legislative power) and President of the Supreme Judicial Council - the judiciary. In other words, all those authorities who are directly involved in the exercise of separation of powers (Bogdan Dima, 2009;14).

The constitutional provisions concerning this aspect, of notifying the Constitutional Court, should be interpreted in a restrictive manner so as it may lead to the idea that when it comes to legal conflicts of a constitutional nature the Court can never take itself notice of the existence of such dispute and nor can it state about such an existence while it exercises another of its constitutional competences.

I strongly believe that the provisions of the Fundamental Law referring to this normative coordinate are conclusive and relevant and do not over estimate the role of the Constitutional Court in the Romanian institutional system, due to the fact that they do not allow the Court to act on her own, on the contrary they introduce a certain condition - the notification of the constitutional court by certain authorized institutions, which often have an interest in the cause they are making reports for.Due to the fact that the Constitution clearly stated these things, within the constitutional jurisprudence did not appear many controversy from this point of view on the grounds that if certain issues were to emerge from the way the Court was seized, the guardian of the conflicts would have noticed it was not properly notified and as a consequence would proceed to the dismissal of the request as an inadmissible one.Yet, the only matter with a relatively complex aspect and which could be able to generate uncertainty, since the Constitution does not mention it at all, is the term in which this type of request must be introduced before the Constitutional Courts. Taking into account certain aspects, such as the importance conferred to the organic disputes, the nature of the subjects involved in such disagreements, their object and the effects these conflicts may generate within the state, it was also established the term within such a request may be introduced, term with varies from one state to another.

So, in the case of Germany, the provisions of the fundamental law clearly express that the Federal Constitutional Court should be noticed about the existence of an organic litigation within 6 months since the acknowledgment of the measure taken by the opposing party or the latter's failure to accomplish an act that was part of its attributions (National Rapport for the XV th Congress of the Conference of Constitutional European Courts presented by the Constitutional Court of Germany, 2011: 29). Unlike Germany, where it is emphasized the period of time compulsory for introducing this request to the Federal Constitutional Court, in Romania things are not even similar as there is absolutely no mention of the existence such a procedure.Although nobody indicates a period of time within which the Constitutional Court should be notified about the existence of a legal conflict of a constitutional nature of whose resolution it should be invested with, yet, things are being rapidly solved due to the fact that a lot of aspects are of a great importance in this domain.

From my point of view, the procedure of seizing the Court is a rather accelerate one firstly because of the political reasons that imply these conflicts and also of the disastrous effects they can generate within the institutional framework of the rule of law.

A relevant situation was presented in front of the Romanian Constitutional Court (Decision no. 435/2006 pronounced by the Constitutional Court of Romania, 2006) when the President of the Superior Council of Magistracy seized the Court on 4th of April 2006 about the existence of a legal conflict of a constitutional nature between the judicial authority on one hand, and the President of Romania and the Prime Minister of Romanian Governement, on the other hand, dispute generated by the public statements against the judiciary and magistrates, made on several occasions by the President, referring to the "incompetence", "independence of law" and "a high level of corruption".As it can be seen, things developed fast, between 10th of March 2006 and 4th of April - even though certain statements of some authorities of the state referring to the judicial system dated one year ago, they had no relevance since the one who had a legitimate interest in the cause did not consider they represent a reason relevant enough to create legal conflicts of constitutional nature-.

Only in April 2006 these public opinions acquired, according to the vision of the President of the Supreme Council of Magistracy, a more pronounced nature that justified

the necessity of drawing a warning signal, reason for what, shortly after, within a month, this presumed legal conflict of constitutional nature was presented in front of the Court for its settlement.In what concerns the normative coordinate of the parties involved in an organic dispute, I will present in a very short manner their content because it has been the subject of a different study, and I will focus on highlighting certain controversies that may arise about them.Thus, the Fundamental Law of Romania clearly expresses that a legal conflict may appear only between public authorities (Fundamental Law of Romania art. 146 letter e).), and the Court not only that it supports this idea but it also completes it establishing that can be considered parties of organic litigations only the authorities that are included in the category stipulated in the provisions of Title IIIrd of the Constitution (Decision no. 838/2009 pronounced by the Constitutional Court of Romania, 2009) .

The first controversy that outlines from this normative coordinate is that if a party involved in the dispute must also be the one that notifies the Court about the disagreement. This hypothesis was immediately solved by the guardian of the organic conflicts concluding that such a condition is not an admissibility one.Another question that arises is why in every organic dispute that has been brought in front of the Constitutional Court the only parties involved were either the President of Romania and the Government, or President and the High Court of Cassation and Justice, or C.S.A.T and the Government, or the Parliament and the President, or the Parliament and the Government, and so on, but never local government bodies, although they had also according to the fundamental law, the ability to be become topics of this type of conflicts?

The answer is difficult to be discovered reason for what I will launch the following hypothesis: concerning the central public administration as a party of organic disputes, the Constitutional Court was notified about the existence of certain conflicts and in this regard I mention the case when the Court was invested with the settlement of a legal conflict of a constitutional nature between the Romanian Government and the Supreme Council of National Defense, disagreement caused by the obstruction of C.S.A.T from accomplishing its constitutional duties, obstruction consisting in the elimination of this authority from the decisional process established by law in its charge (Decision no. 97/2008 pronounced by the Constitutional Court of Romania); yet, regarding local government bodies, they were never a part of a legal conflict of a constitutional nature, thing that can easily be noticed from the constitutional jurisprudence in this domain.

Although in the case of Romania could have been possible such a dispute, due to the fact that the provisions of the Fundamental Law estate that local government bodies can also be a subject of legal conflicts of a constitutional nature, yet until now such a disagreement regarding the relation between central and local government have not appeared, the way they appear inside other European states. Italy, for example, it is considered that in the category of organic disputes are included two types of conflicts taking into account the criteria of subjects involved- the conflicts between constitutional organs of the state and conflicts of competence between state and autonomous regions.

In the last category the parties involved are the state represented by the President of the Council of Ministers and the regions represented by the Presidents of regional executive bodies as in Italy there are twenty regions and two autonomous provinces (Trento and Bolzano), thing that leads to the following conclusion only twenty three subjects of the organic litigations of competence can be admitted -the state, two provinces and 20 regions- (Carpentier Elise, 2006: 385).

A similar situation exists also in Spain, where the constitutional provisions regulate the domain of organic litigations thus assuring the separation of the powers

between the organs of the state – between the Parliament, The Government, and organs of the judicial system, and also between territorial powers of decentralized states as here exist seventeen communities and two autonomous cities who have their own institutional organs and their own system of law which, of course, are in accordance with the constitutional provisions, and that can, for sure, become parties of the legal conflicts of constitutional nature (Favoreu, 1996: 157).

I strongly believe that concerning the local government bodies in Romania, this category can be subjects involved in the legal organic disputes due to the fact they hold, from the constitutional provisions (Fundamental Law of Romania, art. 146 letter e) and Title III), the capacity of becoming parties of such disputes.The simple fact that they have never been party of organic disagreements does not become a strong reason to allow the Constitutional Court to definitely discard them from the category of public authorities between which can appear organic divergences.I do believe that the main reason why local government bodies have never become part of a conflict in order to determine the involvement of the Constitutional Court in their settlement is not because they have not been granted by the fundamental law, but it is due to the fact that they did not have a certain person with a legitimate interest to seize the Court in this direction.

The objective situation that triggers an organic litigation is a material normative coordinate which can be extracted, exclusively constitutional jurisprudence.The complexity of this coordinate primarily appears because there always is a tend to merge the triggering situation with the actual content of these conflicts thing that means the attention is mainly focused on studying the content itself and thus skipping the other normative coordinate - this tendency can be noticed in the attitude of the Constitutional Court of Romania, but which I deeply disagree- and another reason consists in the diversity of these situations – aspect, which on one hand, is easily demonstrated throughout the multitude of complaints made at the Constitutional Court regarding the appearance of constitutional conflicts and which, on the other hand, makes it almost impossible to obtain an accurate classification of this triggering factors.At this time it is almost impossible to make a strict classification of these factors generators of organic litigations, because the area of these situations into which can be involved two or more public authorities is too extensive, conjuncture which is due principally to the characteristics of the institution of legal conflicts of a constitutional nature.

Taking into consideration all of the above and also the relevant jurisprudence of the Court as in Romania this institution does not have the privilege of concrete constitutional provisions as there are in other states, we can conclude that the objective triggering situations certainly imply a lack of collaboration between the public authorities of the state and may consist in judicial acts, actions or omissions (National Rapport for the XVth Congress of the Conference of Constitutional European Courts presented by the Constitutional Court of Romania, 2011: 35).

In what concerns the normative coordinate of the content of organic disputes, this is the most complex and most controversial element of this institutions, features that can be identified by means of two considerations: its complexity is due to the multitude of issues involved in this structure and its controversial profile is emerging as a result of constitutional provisions relevant in this domain, which, according to each state, may have a more or less pronounced nature.

In the case of Romania, this normative coordinate represented the one which arose a lot of queries mainly because the fundamental law of Romania, the only law that governs this typology of conflicts, does not have a concise and concrete content in comparison

with the constitutional provisions of other legal systems. Thus, there are fundamental laws from which one can identify with ease the content of the organic litigations - consisting mainly in conflicts of competence (Fundamental Law of Germany, art. 93. Par. 3,4, Fundamental Law of Spain, art 161, par.1, Fundamental Law of Italy 134, par.1), which cannot be sustained for Romania where the constitutional provisions do not even mention this issue (Fundamental Law of Romania, art. 146 letter e).)

For these reasons, the Constitutional Court of Romania intervened and elucidated, at least for the moment, this domain, expressly establishing that a constitutional legal conflict involves specific acts or actions throughout an authority or more assume powers which according to the Constitution, belong to other public authorities, or the omission of public authorities consisting in declining their competences or the refusal to perform certain acts that are part of their obligations (Decision no. 53/2005 pronounced by the Constitutional Court of Romania, 2005), so it is only about positive or negative conflicts of competence. This hypothesis proved to be extremely useful and relevant at that time given the small number of complaints the Constitutional Court had to solve in this field, and also represented a strong modality though which the Constitutional Court avoided meeting his biggest fears, being involved in the settlement of political conflicts. However, as the activity of the Court in the domain of organic litigations has intensified, it had to extend its vision and include in the category of legal conflicts of constitutional nature also other situations, in fact any conflicting legal situations whose occurrence results directly in the text of the Fundamental Law (Decision no. 98/2008 pronounced by the Constitutional Court of Romania,2008).

It is to be mentioned a decision of the Constitutional Court when it was invested with the settlement of a legal conflict of a constitutional nature between the President and the Government, caused by the refusal of the President to accent the proposal made by the Prime minister regarding the naming of Norica Nicolai as the Minister of Justice.Analyzing the facts, the Constitutional Court notes that both public authorities involved in this constitutional dispute properly fulfilled their duties set out in the Fundamental Law, so it can not be identified a positive or negative conflict of competence.Yet, it was generated an institutional blockage due to the fact that public authorities with conjunct attributions in achieving the same constitutional objective do not cooperate and are unable to agree repeatedly.Therefore, another two controversial issues outline: the institutional blockage inside the state and the hypothesis of constitutional loyalty between the powers of the state.

To put it in a nutshell, the process of defining legal conflicts of a constitutional nature is extremely complex, so complex that sometimes it seems impossible, and therefore it is compulsory, in order to achieve this objective, to take into consideration in the same manner both the constitutional provisions and the constitutional jurisprudence when it comes to the normative coordinates of organic disputes. But it should also be mentioned that no matter how intense we shall explore this domain, it will always be a certain situation of this kind that will take all of us – the Constitutional Court, public authorities, scholars - by surprise as it has and always will have a controversial nature.

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