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THE LEGAL FRAMEWORK OF THE COURT OF JURISDICTIONAL CONFLICTS UNDER ORGANIC LAW NO. 25-13

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Abstract:

The Court of Jurisdictional Conflicts is considered an inevitable result of adopting a dual judicial system, due to its effective contribution to consolidating this system and strengthening its foundations through the decisions and jurisprudential rulings it issues in order to define, with precision, the scope of jurisdiction of each judicial body, and thereby avoid the most important criticism directed at the dual system—namely, the difficulty of establishing a criterion capable of determining the jurisdiction of both the ordinary judiciary and the administrative judiciary, especially when it comes to mixed acts that simultaneously bear the characteristics of a civil dispute and an administrative dispute.

Keywords: Court of Jurisdictional Conflicts; conflict of jurisdiction; ordinary judiciary; administrative judiciary; dual jurisdiction.

INTRODUCTION:

The separation between judicial bodies constitutes a fundamental guarantee for the stability of the judicial system and the consolidation of the rule of law, as it represents the principal safeguard against conflicts of jurisdiction and contradictory rulings between the ordinary judiciary and the administrative judiciary. In order to give effect to this principle, the Court of Jurisdictional Conflicts was established as a supreme body entrusted with resolving issues related to determining the competent judicial authority and adjudicating disputes when contradictory judgments are issued by the two judicial branches.

With the developments witnessed by the Algerian constitutional system, particularly under the 2020 Constitution[1], the need emerged to review the legal framework governing the Court of Jurisdictional Conflicts, especially after shortcomings appeared in the application of Organic Law No. 98-03 due to ambiguity in certain procedures, delays in adjudicating disputes, and the inadequacy of regulatory mechanisms for addressing conflicts of jurisdiction. In this context, Organic Law No. 25-13 was enacted to reorganize the Court of Jurisdictional Conflicts and introduce new provisions. Its importance lies in its aim to achieve legal certainty by strengthening harmony between judicial bodies, establishing clearer rules for cases of positive and negative conflicts of jurisdiction, and ensuring the prompt and effective adjudication of cases of a particular nature. This law also addresses previous deficiencies by introducing new

regulatory mechanisms, expanding the Court's powers, and adopting more modern working methods.

To what extent has Organic Law No. 25-13 succeeded in reorganizing the Court of Jurisdictional Conflicts in a manner that ensures effectiveness in resolving conflicts of jurisdiction and contradictory judgments compared to Organic Law No. 98-03, and what are the most significant innovations and improvements it has introduced?

To address this issue, the study adopts a descriptive-analytical approach, while also relying on a comparative method in presenting the new developments. The study is divided into two sections: the first examines the concept of the Court of Jurisdictional Conflicts and its composition, and the second addresses the Court's jurisdiction.

THE FIRST TOPIC: THE CONCEPT OF THE COURT OF JURISDICTIONAL CONFLICTS AND ITS COMPOSITION

Defining the concept of the Court of Jurisdictional Conflicts and clarifying its composition are fundamental issues for understanding the role played by this body within the Algerian judicial system, particularly in light of the adoption of the principle of duality of jurisdiction. The Court of Jurisdictional Conflicts does not represent an ordinary or administrative judicial body; rather, it constitutes a special constitutional mechanism aimed at ensuring the proper distribution of jurisdiction among the various judicial bodies, preventing contradictory judgments, and achieving legal certainty.

FIRST REQUIREMENT: DEFINITION OF THE COURT OF JURISDICTIONAL CONFLICTS

The Court of Jurisdictional Conflicts is defined as a neutral and autonomous judicial body situated between the apex of the ordinary and administrative judicial hierarchies. It is neither subordinate to them nor does it exercise hierarchical or supervisory authority over them. It is an independent judicial body of an arbitral nature, and its decisions are binding[2].

Moreover, the jurisdiction of the Court of Jurisdictional Conflicts is legally defined and exhaustively enumerated[3]. It does not possess general jurisdiction; its judge's role is limited to the application of the law only. The Court may not intervene in conflicts of jurisdiction arising between judicial bodies belonging to the same judicial order, whether ordinary or administrative[4].

Within the framework of recent constitutional reforms, particularly following the 2020 Constitution, the legislature reorganized the Court of Jurisdictional Conflicts pursuant to Organic Law No. 25-13, which amended and supplemented Organic Law No. 98-03. While preserving the essence of its definition and function, the new law adopted a more abstract and flexible formulation in defining its jurisdiction. It can be understood from the provisions of this law that the Court of Jurisdictional Conflicts remains the judicial body entrusted with safeguarding the unity of the judicial system by intervening whenever the overlap of jurisdiction between judicial bodies undermines the authority of judicial decisions or obstructs the right to litigation.

Accordingly, the definition of the Court of Jurisdictional Conflicts under Organic Law No. 25-13 falls within the framework of legislative continuity, while refining its formulation in a

manner that allows the Court's role to adapt to the various emerging forms of jurisdictional conflict.

SECOND REQUIREMENT: THE COMPOSITION OF THE COURT OF JURISDICTIONAL CONFLICTS

Organic Law No. 25-13 regulates the composition of the Court of Jurisdictional Conflicts with precision. It provides for a diverse structure responsible for its administration and for adjudicating its cases, working to reach sound solutions in all matters brought before it.

Firstly: The President of the Court of Jurisdictional Conflicts

Article 7 of Organic Law No. 25-13 provides[5]: The President of the Court of Jurisdictional Conflicts shall be appointed by the President of the Republic for a term of five years, on a rotational basis, from among the judges of the Supreme Court and the Council of State, upon proposal by the President of the Permanent Bureau of the Supreme Judicial Council, after obtaining the corresponding opinion of this Council and consulting the President of the Council of State with regard to judges of the Council of State.

It is thus clear that the President of the Court of Jurisdictional Conflicts is a judge appointed by the President of the Republic by presidential decree. The President serves for a term of five years and is selected on a rotational basis from among the judges of the Council of State and the Supreme Court.

Secondly: The Judges

In addition to its President, the Court of Jurisdictional Conflicts is composed of nine judges, including judges from the Supreme Court and an equal number from the Council of State. This composition aligns with the principle of duality of jurisdiction, which requires, in form as well, the embodiment of dual representation within this special judicial body[6].

Pursuant to Articles 5 and 8 of Organic Law No. 25-13, the Court consists of nine judges, half appointed from among the judges of the Supreme Court and the other half from among the judges of the Council of State. They are appointed by the President of the Republic by presidential decree, upon proposal by the President of the Permanent Bureau of the Supreme Judicial Council, after obtaining the corresponding opinion of this Council and consulting the President of the Council of State with regard to judges of the Council of State.

The Algerian legislature made a sound choice in selecting these judges from the highest level of the judicial hierarchy, which implies that the judges of the Court of Jurisdictional Conflicts possess extensive experience and competence.

Thirdly: The State Commissioner and the Assistant State Commissioner

Article 9 of Organic Law No. 25-13 provides that: The President of the Republic shall appoint a judge, in the capacity of State Commissioner, for a term of five years, on a rotational basis between judges of the Supreme Court and judges of the Council of State, upon proposal by the President of the Permanent Bureau of the Supreme Judicial Council and after obtaining the corresponding opinion of this Council and consulting the President of the Council of State with regard to judges of the Council of State. An Assistant State Commissioner shall be appointed under the same conditions mentioned in the first paragraph above and for the same term.

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It is noteworthy that Organic Law No. 25-13 specifies the judicial body to which the State Commissioner and the Assistant State Commissioner belong, unlike Organic Law No. 98-03[7], which did not clarify their institutional affiliation. This may be attributed to the nature of their functions, which essentially consist of submitting applications and presenting oral observations.

Fourthly: The Registry

The Court is administered through a set of structures and resources, primarily the Registry. According to Article 10 of Organic Law No. 98-03, the Registry is headed by a Chief Registrar appointed by the Minister of Justice. The legislature did not specify whether the holder of this position must possess the status of a judge, unlike the Chief Registrar of the Council of State, who is required to be a judge.

The President and members of the Court of Jurisdictional Conflicts are responsible for preparing the Court's internal regulations. As a general rule, these regulations determine the procedures governing the Court's functioning, including the convening of members, the distribution of case files, and the preparation of reports[8].

THE SECOND TOPIC: THE JURISDICTION OF THE COURT OF JURISDICTIONAL CONFLICTS AND THE PROCEDURES FOLLOWED BEFORE IT

The jurisdiction of the Court of Jurisdictional Conflicts and the procedures followed before it constitutes among the most essential pillars upon which the legal system of this special judicial body is founded, in view of the pivotal role it plays in ensuring harmony between the ordinary judicial bodies and the administrative judicial bodies[9]. The Court of Jurisdictional Conflicts is not established to adjudicate the merits of a dispute; rather, its primary purpose is to determine the competent judicial authority and to prevent conflicts of jurisdiction and contradictory judgments, thereby safeguarding the principle of legal certainty and the right to litigation.

Through Organic Law No. 25-13, the Algerian legislature has sought to clearly define the jurisdiction of the Court of Jurisdictional Conflicts and to affirm its character as a court of law with exceptional and exclusive jurisdiction, while establishing procedures characterized by simplicity and expedition, in consideration of the nature of the disputes brought before it and the serious consequences resulting from the persistence of jurisdictional conflicts between judicial bodies.

FIRST REQUIREMENT: FORMS OF JURISDICTIONAL CONFLICT

Positive and negative conflicts represent the most serious forms of imbalance in the distribution of judicial jurisdiction. The former leads to a duplication of adjudication in the same dispute, while the latter results in depriving the litigant of the right to seek judicial remedy. For this reason, the legislature has granted the Court of Jurisdictional Conflicts the authority to decide in these two situations in order to avoid contradictory judgments or denial of justice. This constitutes a direct application of the constitutional principle guaranteeing the right to litigation[10].

Firstly: Positive Conflict

A definition of positive conflict was set out in Article 16 of Organic Law No. 98-03. A conflict of jurisdiction exists when two judicial bodies—one subject to the ordinary judicial system and the other subject to the administrative judicial system—each declare themselves competent to adjudicate the same dispute. Accordingly, proceedings for a positive conflict may

not be initiated unless the administrative authority considers that the ordinary court is about to rule on a matter falling within the jurisdiction of the administrative judiciary[11].

To bring an action for a positive conflict before the Court of Jurisdictional Conflicts, a number of conditions must be satisfied:

- A dual declaration of jurisdiction in respect of a single dispute by two judicial bodies belonging to different judicial systems.
- The termination of the dispute before both judicial bodies through the issuance of two final judgments not subject to any form of appeal.
- The two decisions must concern the same issue, meaning unity of the dispute in terms of cause, subject matter, and parties[12].

Under Organic Law No. 25-13, the legislature reorganized positive conflict within a comprehensive procedural framework. The bodies authorized to refer matters were expanded; the power of referral is no longer limited to the parties and the Public Prosecution but also includes the judicial body before which the conflict is raised. The legislature also gave particular attention to simplifying and expediting procedures, while emphasizing the suspensive effect of referring the matter to the Court of Jurisdictional Conflicts, thereby reinforcing the principle of legal certainty and the unity of the judicial system[13].

Thus, the Algerian legislature moved from a traditional regulation of positive conflict under Article 16 of Organic Law No. 98-03 to a more comprehensive and flexible framework under Organic Law No. 25-13, reflecting an evolving view of the Court of Jurisdictional Conflicts as a fundamental mechanism for resolving the duality of jurisdiction.

Secondly: Negative Conflict

Negative conflict is defined as the declaration by both the ordinary judiciary and the administrative judiciary that they lack jurisdiction to hear the dispute, as provided in Article 16 of Organic Law No. 98-03. For a situation of negative conflict to arise, certain conditions must be met:

- The dispute must fall within the jurisdiction of one of the two judicial bodies that have declared themselves incompetent.
- The declaration of lack of jurisdiction must concern the same dispute, meaning unity of cause, subject matter, and parties.
- Each judicial body must declare its lack of jurisdiction on the basis that the other judicial order is competent[14].

Under Organic Law No. 25-13, the legislature reorganized negative conflict within a more flexible and effective framework. The conditions for referral were simplified, and the role of the Court of Jurisdictional Conflicts in preventing denial of justice was reinforced. The bodies authorized to refer matters were also expanded, with emphasis placed on the need for prompt adjudication of this type of conflict due to its direct impact on litigants' rights.

Thirdly: Contradiction Between Two Final Judgments

The situation of contradictory final judgments arises when two final and conflicting decisions are issued by two different judicial bodies, one belonging to the ordinary judicial

hierarchy and the other to the administrative judiciary. This occurs when a dispute is brought before an administrative or ordinary judicial body, which declares itself competent and renders a decision on the merits, and the same dispute is subsequently brought before the other judicial body, which also adjudicates the matter on the basis of its conviction that it is competent to hear the dispute.

For this situation to exist, several conditions must be satisfied under the Code of Civil and Administrative Procedure:

- The existence of two decisions issued by two different judicial bodies.
- Both decisions must be final and possess the authority of res judicata.
- A complete contradiction between the two decisions, whether in terms of legal characterization or the law applied. Such contradiction exists only if the two judgments concern the same subject matter; unity of parties and causes is not required, as imposed by the nature of the existing conflict.
- The decisions must relate to the merits of the case, not to jurisdiction, which pertains to negative conflict.
- There must be a denial of justice, meaning that the claimant finds himself in a position that deprives him of obtaining his right.

Although Organic Law No. 25-13 does not expressly refer to the situation of contradictory final judgments in the same wording as Organic Law No. 98-03, this competence remains established on the basis of the general provision defining the jurisdiction of the Court of Jurisdictional Conflicts and the final and binding nature of its decisions. This indicates that the legislature has opted for a more abstract formulation rather than an explicit enumeration of cases.

Fourthly: Referral

Referral is defined as an attempt to prevent a conflict before it arises. It is a procedure aimed at avoiding a potential conflict of jurisdiction, whether positive or negative[15].

There are two types of referrals:

1- Mandatory Referral:

This occurs when a final judgment on jurisdiction or lack of jurisdiction has been issued by one of the ordinary or administrative judicial bodies, and the claimant subsequently brings the same case before the other judicial body. If this second judicial body considers that it also lacks jurisdiction, it is prohibited from issuing another judgment declaring lack of jurisdiction. Instead, it must refer the case to the Court of Jurisdictional Conflicts to determine the judicial body competent to hear the dispute[16].

2- Optional Referral:

This type of referral is granted exclusively to the Supreme Court and the Council of State. If either body, while examining a case before it, considers that there is a serious issue concerning jurisdiction, it may refer the case to the Court of Jurisdictional Conflicts to seek its opinion. This optional referral takes place before any actual conflict of jurisdiction arises, since the judicial body making the referral has not yet ruled on the dispute. Upon perceiving the likelihood of a

jurisdictional conflict, it refers the matter to the Court of Jurisdictional Conflicts to determine the competent judicial authority[17].

The conditions governing the referral mechanism are as follows:

- The existence of a judicial body[18].
- The issuance of a judicial decision on jurisdiction or lack of jurisdiction by a judicial body belonging to a judicial order different from that of the judicial body before which the dispute is currently pending (the referring judge).
- The observation by the judge seized of the matter that the decision he is about to render would inevitably contradict the decision issued by the first judicial body.
- The obligation of the seized judge to refer the case file to the Court of Jurisdictional Conflicts, before examining the merits, through a reasoned decision not subject to any appeal, in order to resolve the issue of jurisdiction.

Organic Law No. 25-13, as an amending and supplementary law to Organic Law No. 98-03, has maintained referral as a fundamental mechanism, while reorganizing it in a manner consistent with constitutional developments. Through Organic Law No. 25-13, the Algerian legislature has preserved referral as an instrument ensuring the effectiveness of the dual judicial system.

SECOND REQUIREMENT: PROCEDURES GOVERNING THE COURSE OF PROCEEDINGS

The procedures governing the course of proceedings before the Court of Jurisdictional Conflicts constitute essential matters reflecting the effectiveness of this body in ensuring the proper administration of justice within the dual judicial system. The particular nature of the Court of Jurisdictional Conflicts, as a supreme judicial body competent to decide conflicts of jurisdiction and contradictions between judgments issued by the ordinary and administrative judiciaries, requires a special procedural framework that balances the need for prompt adjudication with the safeguarding of the parties' rights.

The Algerian legislature first regulated these procedures under Organic Law No. 98-03. However, practical application revealed certain shortcomings, particularly with regard to the clarity of procedural stages and adjudication time limits. This led the legislature, within the framework of recent constitutional reforms, to enact Organic Law No. 25-13 amending and supplementing the previous law, with the aim of modernizing the procedural framework and enhancing the effectiveness of the Court of Jurisdictional Conflicts.

Firstly: The Petition

Proceedings before the Court of Jurisdictional Conflicts are initiated by means of a written petition signed by a lawyer accredited before the Supreme Court or the Council of State[19]. This petition may be submitted either by the concerned parties or by a judge through the referral mechanism.

In cases of positive conflict, negative conflict, or contradiction of final judgments, the concerned parties may bring their case before the Court by means of a petition within two months from the date on which the last decision becomes no longer subject to any form of appeal

before the judicial bodies, whether belonging to the ordinary or administrative judicial system[20]. This is provided for in Article 17, paragraph 1, of Organic Law No. 98-03.

In the case of referral by a judge, the petition is submitted by the judge to the Court of Jurisdictional Conflicts and is filed and registered with the Registry, as provided in Article 19 of the same law. In the same context, Article 19 of Organic Law No. 25-13 provides: The dispute shall be brought before the Court of Jurisdictional Conflicts by means of a paper petition or electronically, filed and registered with the Registry.

The applicant who has referred the matter to the Court of Jurisdictional Conflicts must specify the jurisdictional conflict he intends to submit to the judicial body in order to determine and settle the issue of jurisdiction.

In the case of referral, the rules set forth in the Code of Civil and Administrative Procedure concerning conflicts of jurisdiction between judges shall apply.

The petition must contain a number of mandatory particulars provided for in the Code of Civil and Administrative Procedure. These are the same conditions applicable to the introductory petition of any action, whether before the ordinary or administrative judiciary.

As for the time limits for filing, they differ depending on whether the petition is submitted by the concerned parties or referred by a judge. For the parties, the time limit is two months from the date on which the last decision becomes no longer subject to appeal[21], pursuant to Article 17 of Organic Law No. 98-03. In the case of referral by a judge under the referral mechanism, the clerk of the judicial body seized of the matter must send a copy of the referral decision to the Court of Jurisdictional Conflicts, accompanied by all procedural documents, within one month from the date of pronouncement of that decision. This is provided for in Article 18, paragraph 2, of Organic Law No. 25-13.

Secondly: Appointment of the Reporting Judge

After the petition is filed before the Court of Jurisdictional Conflicts within the legally prescribed time limits, the President of the Court is notified. Upon such notification, the President appoints a reporting judge from among the members of the Court. The reporting judge then examines the case file and prepares a written report containing the facts and the final submissions of the claimant[22]. This report is filed with the Registry and transmitted to the State Commissioner at the Court of Jurisdictional Conflicts, as provided in Article 22 of Organic Law No. 98-03.

The party who has been served with a copy of the petition or memorandum must respond and submit a defense within one month if residing in Algeria. If residing abroad, the defense must be submitted within two months from the date of service, pursuant to Article 23 of Organic Law No. 98-03.

According to Article 24 of the same Organic Law, the reporting judge sends a formal notice to the party who has failed to respond within the prescribed time limit, granting an additional period of one month from the date of notification to submit a response. If the party fails to respond within this additional month, a second notice is issued, granting a further month. If the party again fails to respond, the case is struck from the register of cases, and the rules governing lapse of proceedings apply.

It should be noted that service is of particular importance, since failure to effect proper service constitutes a violation of the rights of the defense. As service is carried out by the reporting judge, responsibility rests with him in the event that such service is not properly affected.

Under Organic Law No. 25-13, Articles 22 and 24 of Organic Law No. 98-03 were not amended. The amendments were limited to a restricted number of provisions directly affecting the organization of the Court of Jurisdictional Conflicts, which indicates that these articles remain in force in their original wording. This reflects the legislature's focus on procedural and structural aspects most in need of modernization.

Thirdly: Holding of the Hearing

The Court of Jurisdictional Conflicts may convene only upon a call by its President, pursuant to Article 25 of Organic Law No. 98-03. A hearing is valid only if composed of at least five members, including two members from the Council of State and two from the Supreme Court. In the event of the President's impediment, the most senior judge replaces him. The report is read publicly at the beginning of the hearing[23].

The President of the Court of Jurisdictional Conflicts is responsible for maintaining order during the hearing, as provided in Article 27 of Organic Law No. 25-13.

Fourthly: Issuance of the Decision

After the closure of pleadings, the judges deliberate on the facts of the case and the legal grounds. Upon completion of deliberations and agreement on a solution, the date for issuance of the decision is determined. Article 27 of Organic Law No. 25-13 provides that the President of the Court of Jurisdictional Conflicts oversees the orderly conduct of the hearing in accordance with the Code of Civil and Administrative Procedure.

Article 28 of Organic Law No. 98-03 states that decisions are issued by majority vote; in the event of a tie, the President has the casting vote[24]. The Court of Jurisdictional Conflicts must rule on cases brought before it within a maximum period of six months from the date of registration, pursuant to Article 29 of Organic Law No. 98-03.

Decisions of the Court of Jurisdictional Conflicts are issued in the name of the Algerian people and must include the names of the parties, the principal documents endorsed, the applicable legal provisions, and, where appropriate, the submissions of the parties or their lawyers.

The decisions must be reasoned and must mention the names of the judges who participated in the deliberation, as well as the name of the State Commissioner. The original decision is signed by the President, the reporting judge, and the Registrar, as provided in Article 30 of Organic Law No. 25-13.

The decisions of the Court of Jurisdictional Conflicts are served through all legally prescribed means by the Registry upon the concerned parties. The case file, accompanied by a copy of the decision, is transmitted to the relevant judicial bodies within a maximum period of one month from the date of pronouncement, under the responsibility of the President of the Court of Jurisdictional Conflicts, pursuant to Article 31 of Organic Law No. 25-13.

The decisions of the Court of Jurisdictional Conflicts are binding on judges of both the ordinary and administrative judicial systems and are not subject to any form of appeal. However, they may be subject to an interpretative action or an action for correction of a material error. The President of the Court of Jurisdictional Conflicts may correct purely material errors affecting its decisions, as provided in Article 32 of Organic Law No. 25-13.

CONCLUSION

Thus, the Court of Jurisdictional Conflicts represents the cornerstone in ensuring the coherence of the dual judicial system in Algeria, given the pivotal role it plays in resolving conflicts of jurisdiction and contradictions between judgments issued by ordinary judicial bodies and administrative judicial bodies. A review of Organic Law No. 98-03 shows that the Algerian legislature established an initial legal framework for organizing the Court. However, practical application revealed certain shortcomings, particularly with regard to the precision of procedural drafting and the clarity of certain aspects of jurisdiction.

Within the context of the constitutional reforms introduced by the 2020 Constitution, Organic Law No. 25-13, amending and supplementing Organic Law No. 98-03, embodied a new legislative orientation based on continuity combined with modernization. It preserved the fundamental principles governing the functioning of the Court of Jurisdictional Conflicts, foremost among them the final and binding nature of its decisions, while introducing amendments aimed at rationalizing procedures and enhancing judicial efficiency.

Accordingly, this study has led to a set of findings and recommendations, summarized as follows:

First: Findings

- Through Organic Law No. 25-13, the Algerian legislature reaffirmed the continued essential role of the Court of Jurisdictional Conflicts in safeguarding the principle of legal certainty and the unity of the judicial system.
- Organic Law No. 25-13 did not abolish the Court’s jurisdiction to decide on contradictions between final judgments; rather, it reformulated it within a broader and more flexible framework.
- The new law maintained the final and binding character of the decisions of the Court of Jurisdictional Conflicts, thereby preventing the re-litigation of disputes before judicial bodies.
- The new amendments focused primarily on fundamental structural and procedural aspects, while leaving certain provisions of Organic Law No. 98-03 unchanged.

Second: Recommendations

- Establish clear procedural time limits for adjudicating cases brought before the Court of Jurisdictional Conflicts, in order to promote prompt resolution and prevent prolonged disputes.
- Introduce explicit provisions clarifying the criteria for addressing contradictions between final judgments, in order to avoid divergent judicial interpretations.
- Strengthen coordination between ordinary and administrative judicial bodies to reduce instances of conflict before they reach the Court of Jurisdictional Conflicts.
- Promote the publication of the Court’s decisions and their doctrinal analysis, thereby contributing to the harmonization of judicial practice and the development of jurisprudence.

- Undertake a comprehensive future review of the organic law governing the Court of Jurisdictional Conflicts to keep pace with the digital and technological transformations affecting the administration of justice.

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