Relationship between the Supreme Court and Constitutional Court of the Republic of Azerbaijan after Recent Reforms – Conflict or Cooperation?

Ibrahim Ismayilov[*]

Abstract

This article will cover the recent developments in the judicial system of Azerbaijan regarding the relationship between the Supreme Court and the Constitutional Court. After the recent reforms, the Supreme Court's role in establishing uniform law application gained importance in the legal system of Azerbaijan. On the other hand, these developments paved the way for the conflict between the Supreme Court and the Constitutional Court of Azerbaijan. By analysing legislation and recent cases, this article examines the root causes of this jurisdictional clash and considers possible institutional solutions to ensure coherence between the functions of both courts.

Annotasiya

Bu məqalədə Azərbaycanda son məhkəmə-hüquq islahatlarının Ali Məhkəmə ilə Konstitusiya Məhkəməsi arasında münasibətlərə təsirini təhlil ediləcək. Belə ki, son islahatlardan sonra Azərbaycan hüquq sistemində Ali Məhkəmənin vahid məhkəmə təcrübəsi yaratmaq səlahiyyəti və bunun hüquqi müəyyənliyə təsiri aktual mövzuya çevirilmişdir. Bununla belə, Ali Məhkəmənin bu səlahiyyəti Konstitusiya Məhkəməsi ilə münasibətlərdə müəyyən zidiyyətlərə yol açmışdır. Hazırkı məqalə müvafiq qanunvericilik və məhkəmə qərarları konteksintdə hər iki məhkəmənin səlahiyyət ilə bağlı yaranmış zidiyyətlərin səbəbini və aradan qaldırılması üçün tətbiq ediləcək institusional mexanizmləri təhlil edir.

CONTENTS

[*] ADA University, LL. B'23.

Introduction

Imagine a situation where you are confidently bringing a claim into the court and referring to the established case law of the Supreme Court. Suddenly, when your proceedings continue, the Constitutional Court decides that the position of the Supreme Court is incorrect. In this scenario, the judicial system left you with two conflicting decisions, and you cannot certainly rely on the Supreme Court's decision. This uncertainty occurred after the recent reforms in the judicial system of Azerbaijan.

Under the Constitution of the Republic of Azerbaijan, the Supreme Court is vested with the authority to issue clarifications on matters related to judicial practice.[1] In practice, this provision proved insufficient for the Supreme Court to develop consistent case law necessary for maintaining legal certainty. Consequently, lawmakers introduced more comprehensive legislation to address this issue, thereby granting the Supreme Court extensive powers to ensure the uniform application of law.[2] New amendments enabled the Supreme Court to issue decisions on clarification regarding judicial practice and uniform application of law. Additionally, specific mechanisms were implemented to monitor the lower courts' adherence to the case law.

In essence, these reforms significantly augmented the Supreme Court's powers and underscored its public function. However, these changes also introduced new uncertainties concerning the delimitation of competencies between the Supreme Court and the Constitutional Court of Azerbaijan. As a result of these developments, a conflict has emerged between the Supreme Court and the Constitutional Court.

It must be mentioned that such a problem is not peculiar to the judicial system of Azerbaijan. It is inherent to every legal system that uses a centralized model of judicial review according to which a specialised

[1] The Constitution of the Republic of Azerbaijan, art. 148 (I) (1995).

[2] "Məhkəmə-hüquq sistemində islahatların dərinləşdirilməsi haqqında" Azərbaycan Respublikası Prezidentinin Fərmanı [Decree of the President of the Republic of Azerbaijan "On Deepening Reforms in the Judicial and Legal System"], art. 3.2 (2019). Available at: https://e-qanun.az/framework/41813 (last visited Apr. 20, 2025). *See also* Law of the Republic of Azerbaijan "On Courts and Judges", art. 79-1 (1997); Civil Procedural Code of the Republic of Azerbaijan, art. 418-1 (1999); Administrative Procedural Code of the Republic of Azerbaijan, art. 98-1 (2019).

constitutional court with the exclusive authority assesses the constitutionality of laws and invalidates those deemed unconstitutional. Soon most countries in Western Europe adopted the centralized model of judicial review. Moreover, new democracies in Eastern Europe and the Caucasus, including Azerbaijan also adopted this model. As can be observed, the centralized model of judicial review became an important feature of continental constitutionalism.[3]

Since constitutional courts started to develop their case law and interpretation of the statutes, they naturally stepped into the jurisdiction of the ordinary courts. In certain jurisdictions, this problem escalated into a significant institutional crisis between them. In order to refrain from such problems, constitutional courts had to balance their relationship with the ordinary courts and most importantly with the supreme courts. Nevertheless, examples of effective and peaceful cohabitation exist between the constitutional courts and supreme courts.[4] This resulted from the mixed labour of constitutional courts, ordinary courts, and legislators. Therefore, special procedures and mechanisms must be implemented to prevent institutional crises within the judiciary and promote uniform application of the law.

The present article will cover the recent developments in the judicial system of Azerbaijan in terms of the relationship between the Supreme Court and the Constitutional Court. More precisely, the article will discuss, firstly, how the uniform application of the law gained importance in the legal system of Azerbaijan and how it affected the relationship between the Supreme Court and the Constitutional Court. Finally, the legislative and institutional mechanisms will be proposed to set effective boundaries between these two courts.

I. Uniform Application of Law

A recent clash between the Supreme Court and the Constitutional Court emerged after the introduction of new legal reforms in 2019.[5] New reforms emphasised the Supreme Court's public function and several mechanisms were initiated to develop uniformity of case law. Before exploring the conflict between the Supreme Court and the Constitutional Court, it would be helpful to discuss the importance of uniform application of the law, as well as the role of the Supreme Court in its development.

[3] Lech Garlicki, *Constitutional Courts versus Supreme Courts*, 5 International Journal of Constitutional Law 44, 45 (2007).

[4] *Ibid*.

[5] *Supra* note 2.

A. The Concept and importance of uniform application of law

Uniform application of the law is essential from the perspective of advancing legal certainty and, more broadly, in the establishment of the rule of law. As observed by the European Court of Human Rights, divergences and inconsistencies are an inherent part of the judicial systems, which are based on the network of the courts.[6] This development must be accepted with a certain degree of understanding since different courts may arrive at divergent but logical conclusions about the same legal issue raised by similar factual circumstances. Moreover, pluralism and difference of opinion must be embraced for the dynamic development of the legal system.[7] However, such development should not interfere with the predictability of the case law. Therefore, the courts must formulate consistent case law.[8] In this sense, uniform application of law is an effective tool for protecting stability within the legal system.

Principally, uniform application of the law has three effects on the legal system.[9] Firstly, it has an institutional impact, meaning that uniform application of law increases the public confidence in the judicial system by enhancing the public perception of fairness and justice. Secondly, the uniform application of the law is essential to the principle of equality before the law. In a functioning legal system, citizens reasonably expect to be treated as others and rely on similar cases to foresee and plan their future behaviours. Finally, the formation of uniform case law also has an economic effect. This effect happens because the litigants may refuse to go to court when there is established case law. Thus, if there are clear precedents, judicial intervention can be minimised, which would increase the legal system's efficiency. These positive effects of unifying judicial practice have been reflected in recent reforms, as the Azerbaijani judicial system needed mechanisms to ensure legal certainty and the smooth operation of the judicial economy.

For this reason, the growing importance of the uniform application of law was also acknowledged by both the Supreme Court and the Constitutional Court. On a number of decisions, the Constitutional Court reaffirmed that

[6] Tudor Tudor v. Romania, ECHR No. 21911/03, § 29 (2009).

[7] Nejdet Şahin and Perihan Şahin v. Turkey, ECHR No. 13279/05, § 86 (2011).

[8] İnzibati məhkəmə icraatında kassasiya şikayətinin mümkünlüyünə dair Azərbaycan Respublikası Ali Məhkəməsinin İnzibati Kollegiyasının Qərardadı [Writ of the Administrative Collegium of the Supreme Court of the Republic of Azerbaijan on the possibility of cassation appeal in administrative court proceedings], No. 01/2023, § 46 (2023). Available at: https://supremecourt.gov.az/storage/pages/1970/kassasiya-sikayetinin-mumkunluyu-06112023-yenilenmis-son-1.pdf (last visited Apr. 15, 2025).

[9] Consultative Council of European Judges, Questionnaire for the Preparation of the CCJE Opinion No. 20 (2017): The Role of Courts with Respect to Uniform Application of the Law, 5-8 (2017).

uniform application of law and consistent case law are essential factors in the development of legal certainty.[10] The Supreme Court also expressed a similar opinion and embraced the earlier mentioned three effects of uniformity of case law in the legal system.[11] Especially the effect of minimization of judicial intervention is one of the goals of the recent reforms since the courts were overwhelmed by the workload.[12] In summary, the recent reforms on the uniform application of law are the natural result of the development of the legal system of Azerbaijan. As the system became more complex and the number of cases increased, the judicial system needed stability to establish legal certainty. In this connection, the Supreme Court had to play a significant role in this development. Hence, the nature and function of the Supreme Court had to be rethought.

B. Judicial decisions and the uniform application of law

Before going to the new function of the Supreme Court, it would be helpful to define the status of judicial decisions in Azerbaijan and generally in civil law jurisdictions. Being a civil law jurisdiction, Azerbaijan's legal system does not recognise judicial precedents as a legal source.[13] Moreover, the Constitution of Azerbaijan explicitly provides that the judges are bound only to the Constitution and laws of the Republic of Azerbaijan.[14]

This stems from the peculiar understanding of the concept of judicial independence in the continental legal system. Concepts such as the separation

[10] *See* S.Süleymanovanın şikayəti üzrə Azərbaycan Respublikası Ali Məhkəməsinin Mülki işlər üzrə məhkəmə kollegiyasının 01 oktyabr 2009-cu il tarixli qərarının Azərbaycan Respublikasının Konstitusiyasına və qanunlarına uyğunluğunun yoxlanılmasına dair Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the verification of the compliance of the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan dated October 1, 2009 with the Constitution and laws of the Republic of Azerbaijan on the complaint of S.Suleymanova] (2010). Available at: https://e-qanun.az/framework/19812 (last visited April 21, 2025); Klark Qordon Morrisin (Clark Gordon Morris) şikayəti üzrə bəzi normativ hüquqi aktların Azərbaycan Respublikasının Konstitusiyasına uyğunluğunun yoxlanılmasına dair Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the verification of the compliance of certain normative legal acts with the Constitution of the Republic of Azerbaijan on the complaint of Clark Gordon Morris] (2017). Available at: https://e-qanun.az/framework/38502 (last visited April 21, 2025).

[11] Azərbaycan Respublikası Ali Məhkəməsinin İnzibati Kollegiyasının Qərardadı [Writ of the Administrative Collegium of the Supreme Court of the Republic of Azerbaijan], № 2-1(102)-14/2022, § 17 (2022). Available at: https://sc.supremecourt.gov.az/storage/Inzibat/2022/9_14+02.03.2022.pdf (last visited Apr. 22, 2025).

[12] *Supra* note 8, § 72. *See also* İnzibati məhkəmələrdə iş yükü niyə çoxdur və necə azaltmaq olar? (2021), https://www.e-huquq.az/az/news/mehkeme/31717.html (last visited Apr. 1, 2024).

[13] *Supra* note 1.

[14] *Id.*, art. 127 (I).

of powers and judicial independence were interpreted to mean that courts should resolve disputes before them rather than create new laws.[15] This approach to the continental legal system was significantly influenced by thinkers like Montesquieu, who famously proclaimed that "*judges are no more than the mouth that pronounces the words of the law*".[16] As a result, courts were bound solely by the Constitution, laws, and international treaties, rather than by the past judgements of other courts. This tradition stands in stark contrast to the common law tradition, where the judiciary was viewed as a protector of individual rights. Thus, it was granted certain authority to control both the legislative and executive branches.[17]

In contemporary civil law systems, court decisions are indirectly used as a source of law. One example is the decisions of constitutional courts. Although they are not directly defined as a "source of law", they modify the text of the Constitution and legislation. This results in lower court judges being forced to apply the constitutional court's case law. [18]

In addition, lower courts follow the rulings of the highest courts, which are generally tasked with ensuring the uniform application of the law.[19] For instance, the Basic Law of Germany grants this power to the Supreme Federal Courts.[20]

Therefore, we can conclude that civil law jurisdictions indirectly use judicial decisions as a source of law. As mentioned in the previous chapter, as judicial systems evolve, court decisions play a pivotal role in ensuring the uniform application of the law. Consequently, the status of judicial decisions was reconsidered, and with the introduction of the Supreme Court's new public function, they became key to developing a uniform application of law.

C. Public function of the Supreme Court

The present chapter will examine the public function of the Supreme Court. Before analysing its new role, a brief review of its status before the reforms would be helpful.

1. Status of the Supreme Court before the reforms

Prior to the reforms, the legal system of Azerbaijan did not possess sufficient mechanisms under which the Supreme Court could develop uniformity of case law. This limitation arose from the wording of the

[15] Vincy Fon & Francesco Parisi, *Judicial Precedents in Civil Law Systems: A Dynamic Analysis*, 26 International Review of Law and Economics 519, 522 (2006).

[16] Charles Louis de Secondat, Baron de Montesquieu, Spirit of the Laws (translated by T. Evans) 223 (1777).

[17] Hans Kelsen, General Theory of Law and State, 281 (2005).

[18] Andrii Varetskyi, *The Role of Precedent in the System of Sources of Law*, 4 Veritas Iuris 57, 59 (2021).

[19] *Supra* note 9, 11-12.

[20] Basic Law for the Federal Republic of Germany, art. 95 (1949).

Constitution of Azerbaijan, which only grants the Supreme Court the authority to issue clarifications related to judicial practice.[21] Until 2019, following the practice of its predecessor (Supreme Court of Azerbaijan SSR), the Plenum of the Supreme Court was issuing decisions on the judicial practice. Nevertheless, these decisions had no binding effect as they had an advisory character.[22]

As mentioned earlier, the evolution of the legal system necessitated adequate mechanisms for developing the uniformity of the case law. The Constitutional Court of Azerbaijan acknowledged this necessity in two decisions dated to 2010[23] and 2012.[24] The Constitutional Court pinpointed that the Supreme Court is not only obliged to correct errors of lower courts, but it is also tasked with the power to establish and preserve the uniform application of the law. Interestingly, the Constitutional Court of Azerbaijan supported the public function of the Supreme Court. It comes in great contrast to certain Eastern European jurisdictions. For example, the Constitutional Court of Hungary and the Constitutional Court of the Czech Republic feared that by increasing the public function of the Supreme Court, the right to access the court would be limited. Usually, the increasing public function of the Supreme Court goes with the limitation of the right to access the court with the introduction of mechanisms such as the leave-to-appeal system. Thus, in those jurisdictions, the constitutional courts were sceptical about reforms that emphasised the public function of the Supreme Court.[25]

However, the Constitutional Court of Azerbaijan did not have such reservations and supported the increase of the public functions of the Supreme Court.

2. Effect of the reforms on the role of the Supreme Court

[21] *Supra* note 1, art. 131 (I).

[22] Ramiz Rzayev, Azərbaycan Respublikasının Ali Məhkəməsi: Bir Əsrlik Yol, 390 (2023).

[23] V.Q. Teryoxinin şikayəti ilə əlaqədar Azərbaycan Respublikası Ali Məhkəməsi Mülki işlər üzrə məhkəmə kollegiyasının 02 iyun 2009-cu il tarixli qərarının Azərbaycan Respublikasının Konstitusiyasına və qanunlarına uyğunluğunun yoxlanılmasına dair Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the verification of the compliance of the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan dated June 2, 2009 with the Constitution and laws of the Republic of Azerbaijan on the complaint of V.Q. Teryokhin] (2010). Available at: https://e-qanun.az/framework/19469 (last visited Apr. 20, 2025).

[24] Azərbaycan Respublikası Mülki Prosessual Məcəlləsinin 420-ci maddəsinin şərh edilməsinə dair Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the interpretation of Article 420 of the Civil Procedure Code of the Republic of Azerbaijan] (2012). Available at: https://e-qanun.az/framework/23176 (last visited Apr. 20, 2025).

[25] Aleš Galič, *A Civil Law Perspective on the Supreme Court and its Functions*, 81 Studia Iuridica 44, 64-68 (2019).

Though the Constitutional Court acknowledged the power of the Supreme Court to create and preserve uniform application of the law, necessary legislative mechanisms were not implemented until the recent reforms. After those amendments to legislation, the Supreme Court develops and preserves the uniform application of the law by four mechanisms:[26]

- By decision of the ordinary cassation chambers or the Plenum of the Supreme Court on individual cases;
- By decision of the Plenum of the Supreme Court on uniform application of law;
- By special writs of the Chambers of the Supreme Court on uniform application of law;
- By decision on jurisdictional issues from a mixed board of judges from the Supreme Court's civil, commercial, and administrative chambers.

The Supreme Court dynamically used all the above-mentioned methods to ensure the uniform application of law. The Administrative Chamber of the Supreme Court even went further by adopting the leave-to-appeal system and introducing specific requirements for the admissibility of cassation appeals. To determine the admissibility, the Supreme Court introduced two key criteria: (1) the legal issue must be of fundamental significance and the further development of the law; (2) the case must present a necessity for judicial intervention to promote uniform application of law.[27]

As a result of the reforms, the Supreme Court broadened its powers and role, and its function transformed within the judiciary. The new function of the Court meant that as the highest court, it did not act only as the court of the last instance but also as the Court, which has the power to develop and preserve the uniformity of law. Although initially, the Constitutional Court supported the increased public function of the Supreme Court, inevitably, these courts started to clash on the application and extent of this power.

II. The inevitable conflict between the Constitutional Court and the Supreme Court

As was noted earlier, the conflict between the constitutional and ordinary jurisdictions is inevitable in the Kelsenian model of judicial review. Because the judicial system is based on a network of courts, judges are not obliged to follow the judgements of other courts. Naturally, the independent courts will have diverging opinions regarding their competencies and interpretation of law.

These differences can be attributed to various reasons: the professional background of the judges, the legal and political environment under which

[26] Rzayev, *supra* note 22.

[27] *Supra* note 8, 48-61.

the courts operate.[28] Mostly, the judges of the Constitutional Court come from academia, therefore, they are more likely to decide on different issues from a more theoretical perspective and concern themselves with the protection of constitutional rights.[29] Alternatively, judges of the ordinary courts are engaged in the day-to-day application of the law, and they can go to certain compromises for the sake of judicial expedience to ensure the pragmatic functioning of the judicial system.[30]

Historical, political and legal developments may also affect the relationship of these two institutions. In many European countries, supreme courts were much older and established institutions. Hence, they were sceptical about newly established constitutional courts. Conversely, the constitutional courts viewed themselves as guarantors of fundamental rights and distrusted supreme courts with their reserved view on constitutional rights and freedoms.[31]

As mentioned above, these divergences were further intensified by legal developments such as the institution of constitutional complaint[32] and the constitutionalisation of the law.[33] In the former case, the Constitutional Court gains the power to review the decisions of ordinary courts based on individuals' applications, which can create conflicts between the courts.

A. Constitutional complaint as a tension point between the Supreme Court and the Constitutional Court

The institution of the constitutional complaint opens the possibility for a conflict between the Constitutional Court and the Supreme Court. In this way, constitutional courts enter the realm of ordinary courts by reviewing their decisions. As a result, they gain the opportunity to impose their interpretation on ordinary courts.[34] By doing so, they are inevitably clashing with the supreme courts over the interpretation of the statutes.

Initially, out of concerns that the Constitutional Court might effectively function as a fourth-instance court, the Constitution of the Republic of Azerbaijan did not establish the institution of the constitutional complaint.[35] However, the 2002 referendum on the Constitution introduced this

[28] Garlicki, *supra* note 3, 64.

[29] *Ibid.*

[30] John Henry Merryman & Vincenzo Vigoriti, *When Courts Collide: Constitution and Cassation in Italy*, 15 The American Journal of Comparative Law 665, 682-683 (1966-1967).

[31] *Supra* note 3, 65.

[32] *Id.*, 48-49.

[33] Galič, *supra* note 25, 71.

[34] *Ibid*.

[35] Jeyhun Qarajayev, *Individual Constitutional Complaint in the Republic of Azerbaijan*, International Humanitarian University Herald 34, 35 (2023).

institution.[36] The litigants gained the right to challenge decisions made by ordinary courts directly in the Constitutional Court. Based on the referendum, the "Law on the Constitutional Court" granted the Constitutional Court broad powers to review decisions by the ordinary courts.[37] In its 2005 decision,[38] the Constitutional Court affirmed that it would not function as a "*reexamination court*" and would limit itself only to the review of protection of constitutional rights by the ordinary courts. However, in the same decision, the court set up a broad test under which it could review the decisions by the ordinary courts. The Constitutional Court noted that it has the power to review whether the court decided arbitrarily, which resulted in an erroneous decision. The Constitutional Court went even further by reviewing whether the ordinary courts had lawfully assessed the factual circumstance of the dispute.[39] In practice, it transformed into an unusual situation in which the Constitutional Court actively struck down decisions of the Supreme Court.[40]

Although there was some friction between these institutions, due to the lack of mechanisms, the Supreme Court initially refrained from challenging the authority of the Constitutional Court.[41] However, following the introduction of new reforms, the Supreme Court began developing its own interpretations on certain issues, ultimately leading to a confrontation between the two Courts.

Again, it must be stressed that the Constitutional Court recognised and supported the Supreme Court's expanding public function. Simultaneously, in many decisions, both the Plenum and the different divisions of the Supreme Court used the opinions of the Constitutional Court to form the uniform

[36] Azərbaycan Respublikasının Konstitusiyasında dəyişikliklər edilməsi haqqında Azərbaycan Respublikasının Referendum Aktı [Referendum Act of the Republic of Azerbaijan on Amendments to the Constitution of the Republic of Azerbaijan], art. XVI (2002). Available at: https://e-qanun.az/framework/972 (last visited Apr. 19, 2025).

[37] Law of the Republic of Azerbaijan "On the Constitutional Court", art. 34.2 (2003).

[38] "Azərbaycan Respublikasının bəzi qanunvericilik aktlarına əlavələr və dəyişikliklər edilməsi barədə" 11 iyun 2004-cü il tarixli, 688-IIQD saylı Azərbaycan Respublikası Qanununun III hissəsinin 9-cu bəndinin və IV hissəsinin 7-ci bəndinin Azərbaycan Respublikası Konstitusiyasının 130-cu maddəsinin I hissəsinə uyğunluğunun yoxlanılmasına dair Azərbaycan Respublikası Konstitusiya Məhkəməsinin Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the verification of the compliance of Paragraph 9 of Part III and Paragraph 7 of Part IV of the Law of the Republic of Azerbaijan No. 688-IIQD dated June 11, 2004 "On Amendments and Additions to Certain Legislative Acts of the Republic of Azerbaijan" with Part I of Article 130 of the Constitution of the Republic of Azerbaijan]. Available at: https://e-qanun.az/framework/17775 (last visited Apr. 20, 2025).

[39] *Ibid.*

[40] Eldar Mammadov, *The Constitutional Court and Courts of Ordinary Jurisdiction in Azerbaijan: Theoretical and Practical Problems of their Interrelations*, 1 The Caucasus and Globalization 6, 22 (2007).

[41] *Id.*, 16.

application of law. In this regard, the contradictions between these courts do not manifest themselves directly, nor does one court entirely annul the decision of the other. However, the differing positions and conclusions reached by the courts in the following two cases serve as clear examples of this contradiction. The ambiguity surrounding the retroactive application of pension legislation and set-off clauses in the second case led to constitutional complaints from individuals.

1. Judicial Conflict Over Pension Rights: Retroactive Application of Pension Legislation[42]

Before the amendments to the Law on Labour Pensions, the pensioner could obtain the aggregate amount of the pensions for the whole unpaid period from the date of application. However, under the new system, the pensioner who obtained the right to pension would receive the pension and aggregated amount for the last three years from the date of application.[43] The issue arose about the applicability of this provision to the pensioners who obtained their rights before the amendments but did not apply for the benefits.[44]

1.1. Writ of Administrative Chamber of the Supreme Court No. 03/2020

Regarding this issue, the Supreme Court developed the case law by affirming that, under the principle of non-retroactivity, this provision could not be extended to pensioners who obtained their rights before the reforms. However, in 2021, it reversed its earlier case law, and the Administrative Chamber of the Supreme Court issued the writ on a uniform application of article 32.1-1 of "Law on Labour Pensions".[45]

The Supreme Court ruled that the State has broader discretion in regulating social and economic issues. Therefore, the State can enact retroactive legislation in the field of social security to ensure the stability of the economy and to build a sustainable social security system. Moreover, recent changes to the legislation did not drastically change the legal status of the pensioners. The rationale was that the necessary mechanisms had been implemented for

[42] Azərbaycan Respublikası Ali Məhkəməsinin İnzibati Kollegiyasının "Əmək pensiyaları haqqında" Azərbaycan Respublikası Qanununun 32.1-1-ci maddəsinin tətbiqinə dair Qərardadı [Writ of the Administrative Collegium of the Supreme Court of the Republic of Azerbaijan on the application of Article 32.1-1 of the Law on Labour Pensions of the Republic of Azerbaijan], No. 03/2020 (2020). Available at: https://supremecourt.gov.az/az/media/xeberler/azerbaycan-respublikasi-ali-mehkemesinin-inzibati-kollegiyasinin-emek-pensiyalari-haqqinda-azerbaycan-1228 (last visited Apr. 20, 2025).

[43] "Əmək pensiyaları haqqında" Azərbaycan Respublikasının Qanunu [Law of the Republic of Azerbaijan "On Labour Pensions"], art. 32.1-1 (2006). Available at: https://e-qanun.az/framework/11566 (last visited Apr. 20, 2025).

[44] *Supra* note 42, § 75-76.

[45] *Id*., § 6.

pensioners who gained their rights under the previous regime, allowing them to exercise these rights during the transition period, which involves the time between the adoption of the law and its entry into force.[46]

Following the approach of the Supreme Court, the lower courts started to apply the above-mentioned provision to the pensioners who obtained their rights before the amendments. Subsequently, two applicants lodged a constitutional complaint against the decisions based on the Supreme Court's writ.[47] They alleged that the Supreme Court's approach disregards the fact that, in certain situations, the application can be missed without the fault of the pensioner. Primarily, it can happen in cases where the administrative bodies have made mistakes regarding the calculation of retirement years. Therefore, the approach by the Supreme Court violated their constitutional right to social security under Article 38 of the Constitution.

1.2. Decision of the Constitutional Court on Verification of Conformity of Rulings Dated October 14, 2020, and November 20, 2020 of the Supreme Court of the Republic of Azerbaijan with Constitution and laws of the Republic of Azerbaijan based on complaints of R.Hajiyev and R.Akhundov[48]

In the final decision, the Constitutional Court overruled the Supreme Court's decision concerning the applicants. The Constitutional Court reiterated its earlier position by affirming the Supreme Court's authority to preserve uniformity of the law. Nevertheless, the Constitutional Court criticized how the Supreme Court exercised this power. In the Constitutional Court's opinion, the case law must be developed taking into account fundamental rights and freedoms enshrined in the Constitution. The Constitutional Court pointed out that the impugned decision set a precedent where the lower courts would automatically deny the right to social security for pensioners who obtained their rights before reforms. The emphasis was that the administrative courts have an *ex officio* duty to investigate why certain applicants missed the statutory period of application for the pensions.

[46] *Id*., § 105.

[47] «Əmək pensiyaları haqqında» Azərbaycan Respublikası Qanununun bəzi müddəalarının tətbiqi ilə bağlı R.Hacıyevin və R.Axundovun şikayətləri üzrə Azərbaycan Respublikası Ali Məhkəməsinin İnzibati Kollegiyasının 20 noyabr 2020-ci il və 14 oktyabr 2020-ci il tarixli qərarlarının Azərbaycan Respublikasının Konstitusiyasına və qanunlarına uyğunluğunun yoxlanılmasına dair" Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the verification of the compliance of the decisions of the Administrative Collegium of the Supreme Court of the Republic of Azerbaijan November 20, 2020 and October 14, 2020, regarding the application of certain provisions of the Law on Labour Pensions of the Republic of Azerbaijan, with the Constitution and laws of the Republic of Azerbaijan on the complaints of R. Hajiyev and R. Akhundov] (2021). Available at: https://www.constcourt.gov.az/az/decision/1244 (last visited Apr. 20, 2025).

[48] *Ibid.*

Otherwise, it would breach the due process rights of the pensioners, which would infringe their right to social security.

Interestingly, the Constitutional Court took a more cautious approach and did not overturn the writ of the Supreme Court. The Constitutional Court only reversed the two decisions of the Supreme Court concerning the applicants. A certain part of the Constitutional Court was dissatisfied and expressed willingness to overrule the whole writ of the Supreme Court.[49]

This decision demonstrated that the Constitutional Court supported the expansion of public function and accepted the precedent formed by the Supreme Court. Nevertheless, it reiterated its position as a supreme constitutional body that checks the observance of constitutional rights and freedoms by ordinary courts. Although in this decision, the Constitutional Court tried to set an effective boundary between itself and the Supreme Court, it later abandoned this position.

2. Conflicting Views on Set-Off Clauses and Workers' Constitutional Rights[50]

Recently, a significant legal controversy arose between the Supreme Court and the Constitutional Court concerning the impact of set-off clauses in loan and surety agreements on debtors' wages. The dispute was triggered when a bank deducted more than fifty percent of the debtor's wage pursuant to a surety agreement.[51] Consequently, the debtor filed a claim in court, seeking the annulment of the bank's actions on the grounds that they violated his constitutional rights to life and work.[52]

2.1. Writ of Civil and Commercial Chambers of the Supreme Court No. 03/2022

The Supreme Court found itself divided on this matter. On one side, a part of the court invoked the principle of freedom of contract, which grants parties the right to regulate set-off clauses as per their agreements. This group argued that enforcing such clauses is consistent with the parties' autonomy and contractual intentions.[53] Conversely, another group of justices expressed concerns about adopting this position, asserting that it could result in the infringement of constitutional rights, particularly the right to life and the right to work. Particularly, they emphasised that the set-off clauses can undermine

[49] *Id.*, *see also* the dissenting opinion of Justice Kamran Shafiyev.

[50] *See* Əqdə əsasən borclunun əmək haqqından akseptsiz qaydada tutmanın mümkün hədləri ilə bağlı qanunvericiliyin tətbiqi üzrə Azərbaycan Ali Məhkəməsinin Mülki və Kommersiya Kollegiyalarının Qərardadı [Writ of the Civil and Commercial Collegiums of the Supreme Court of Azerbaijan on the application of legislation concerning the permissible limits of non-consensual deductions from the debtor's wages under the contract], No. 03/2022 (2022). Available at: https://supremecourt.gov.az/storage/pages/1013/qerardad-14-12-2022.pdf.

[51] *Id.*, § 2.

[52] *Ibid.*

[53] *Id.*, § 4.

employees' ability to maintain a minimum standard of living, thereby conflicting with broader social and constitutional obligations of the State.[54]

Ultimately, the Supreme Court decided that, under the Labour Code, set-off clauses may only cover up to twenty percent of an employee's wages.[55] The Court reasoned that although the Civil Code enshrines the principle of freedom of contract, this principle can be curtailed to protect the weaker party and to uphold the State's responsibility to safeguard the worker's right to life and work.[56] The Court further noted that this approach aims to ensure employees maintain a minimal standard of living.[57] Therefore, set-off clauses permitting lenders to seize more than twenty percent of an employee's wages were deemed invalid.[58]

2.2. Decision of the Constitutional Court on the Interpretation of the Article 176 of Labour Code[59]

The Constitutional Court rejected the position of the Supreme Court regarding set-off clauses. While the Constitutional Court agreed with the Supreme Court on the importance of protecting debtors' constitutional rights to life and work, it also pointed out that the rights of the lenders must be safeguarded. In this context, the Court noted that the Labour Code permits courts to mandate wage seizures up to fifty percent. Consequently, there is no justification for limiting set-off clauses to twenty percent in contracts. Therefore, the amount specified in set-off clauses may extend to fifty percent of the wage.

Finally, the Constitutional Court held that wage deductions can be made following the procedure in the reasoning section of the decision. Most notably, the Constitutional Court directly instructed the ordinary courts to follow this procedure in the pending cases.

As observed, in the former case, despite some dissenting voices on the Plenum, the Constitutional Court did not completely disregard the Supreme Court's interpretation. Instead, it recommended that, while applying the Supreme Court's interpretation, lower courts fulfil their *ex officio* duties in investigating why pensioners missed the deadlines for the application. In contrast, in a later dispute, the Constitutional Court entirely abandoned the

[54] *Id*., § 52.
[55] *Id*., § 16.
[56] *Ibid*.
[57] *Id*., § 26.
[58] *Id*., § 27.
[59] *See* Azərbaycan Respublikası Əmək Məcəlləsinin 176-cı maddəsinin bəzi müddəalarının şərh edilməsinə dair Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the interpretation of certain provisions of Article 176 of the Labour Code of the Republic of Azerbaijan] (2023). Available at: https://e-qanun.az/framework/54824 (last visited Apr. 19, 2025).

Supreme Court's position and imposed its own interpretation on the ordinary courts.

These cases illustrate how constitutional complaints impact the relationship between the Supreme Court and the Constitutional Court. A constitutional complaint serves as an effective mechanism for constitutional courts to intervene in the realm of ordinary jurisdiction and impose their interpretations.[60] On one hand, this mechanism provides a robust framework for the protection of constitutional rights. Nevertheless, it presents a pitfall in the form of prolonged litigation and can transform the Constitutional Court into a de facto fourth-instance court.[61] As can be seen, despite the Constitutional Court's statement, sometimes it acted as a "*reexamination court*" by not exercising self-restraint. Therefore, the Constitutional Court's role had to be reassessed.

That's why in 2023, the "Law on the Constitutional Court" was amended.[62] The shift was made from an individual constitutional complaint to a normative constitutional complaint system. In this regard, the approach taken by the Azerbaijani lawmakers is similar to that of Poland and Hungary, which use the normative constitutional complaint model.[63] This model narrows the scope of the constitutional complaint. Now, instead of directing review to the entire decision, the Constitutional Court focuses on the statute that underpins the ordinary court's decision.[64] In other words, the Constitutional Court does not assess procedural or substantive violations in judicial proceedings. Rather, it focuses solely on norms that create the possibility for such infringements.

Additionally, these cases illustrate a broader issue in the relationship between the Supreme Court and the Constitutional Court: the overlap between constitutional and ordinary jurisdictions.

B. Constitutionalisation of law and the overlap between constitutional and ordinary jurisdictions

The original rationale behind the Kelsenian model of judicial review was that the Constitutional Court would address issues and disputes arising under the Constitution, while ordinary courts would deal with matters of ordinary legislation.[65] However, the introduction of incidental review and

[60] *Supra* note 25, 71-73.

[61] *Ibid*.

[62] "Konstitusiya Məhkəməsi haqqında" Azərbaycan Respublikasının Qanununda dəyişiklik edilməsi barədə Azərbaycan Respublikasının Qanunu [Law of the Republic of Azerbaijan on Amendments to the Law of the Republic of Azerbaijan "On the Constitutional Court"], art. 2 (2023). Available at: https://e-qanun.az/framework/54709 (last visited Apr. 20, 2025).

[63] European Commission for Democracy through Law (Venice Commission), *Draft Study on Individual Access to Constitutional Justice,* CDL-AD(2010)039rev, § 77 (2010).

[64] *Supra* note 37, art. 32.2.

[65] *Supra* note 3, 46.

constitutional complaints has blurred the line between constitutional and ordinary adjudication.[66] This process is known as the "constitutionalisation of law". As Professor Martin Loughlin noted, "constitutionalisation involves the attempt to subject all governmental action within a designated field to the structures, processes, principles, and values of a 'constitution'".[67] This process has had three significant effects on the legal system:[68]

Firstly, the Constitution's text is no longer limited to its original wording; instead, it has been modified through the Constitutional Court's case law. Hence, the protection of fundamental constitutional rights and freedoms is enforced by applying the Constitutional Court's opinions.[69] Secondly, the Constitutional Court started to enter different branches of law, including private law. The Constitutional Court was tasked with reviewing the conformity of the legislation and judicial decisions to the Constitution. This led to the fact that ordinary judges and legislators had to look up and take into consideration the case law of the Constitutional Court. Moreover, to review the conformity of the legislation, the Constitutional Court had to clarify the meaning of the statute, which also would become part of case law.[70] Finally, as constitutional provisions, principles, and values started to affect individual statutes, not only the Constitutional Court but also the ordinary courts had to apply them.[71]

In this regard, the aforementioned cases concerning the interpretation of certain provisions of the Labour Code are pretty illustrative in terms of constitutionalisation. Instead of focusing on a uniform interpretation of this provision, the Supreme Court has entered into the realm of constitutional Court by assessing the constitutionality of practices between parties concerning the application of that provision in the loan and surety agreements. Simultaneously, in subsequent decisions, the Constitutional Court went beyond determining constitutional issues and provided its interpretation of the provisions of the Labour Code. Although the Supreme Court's decisions can be scrutinized for constitutional interpretation, such scrutiny does not grant the Constitutional Court the power to offer its interpretations and encroach upon the realm of ordinary courts.

This problem does not solely arise from the practices and relationship between the Constitutional Court and the Supreme Court. The situation is further complicated by the constitutional demarcation established by the Constitution of Azerbaijan. Under Article 130 (IV) of the Constitution, the Constitutional Court not only addresses issues of constitutionality but is also

[66] *Ibid.*

[67] M.Loughlin, What is Constitutionalisation?, in *The Twilight of Constitutionalism?*, 47 (2010).

[68] *Supra* note 3, 47.

[69] *Id.*, 48.

[70] *Ibid.*

[71] *Id.*, 49.

required to provide interpretations regarding legislation. In practice, this has resulted in a situation where ordinary courts and public bodies refer issues to the Constitutional Court for legal interpretation and the establishment of uniform application of provisions.[72] This was not problematic until recent reforms. However, after new reforms emphasising the public function of the Supreme Court, the situation has hindered its ability to develop its case law. Even within the hierarchy of ordinary courts, the Constitutional Court is viewed as the institution responsible for establishing the uniform application of law.

These developments are natural in the legal systems that use the Kelsenian model of judicial review. Thus, it demonstrates that a complete separation between constitutional and ordinary jurisdictions is challenging.[73] For example, in certain jurisdictions, the supreme courts have openly declared that the Constitutional Court's interpretations do not bind them.[74] At the same time, constitutional courts have attempted to block legislative reforms aimed at enhancing the public function of the Supreme Court.[75] Additionally, these conflicts are not only limited to Europe, but can be seen in Asia.[76]

However, certain arrangements can be made to minimise overlaps and establish an effective working relationship between the Courts. Otherwise, the system may face an institutional crisis where each court claims supremacy.

III. How to end the conflict between the Courts?

As evidenced, the Kelsenian model of judicial review unavoidably leads to the competition between the Supreme Court and Constitutional Court. In this regard, judicial system of the Azerbaijan was no exception. Therefore, following institutional mechanisms must be implemented to prevent crisis within the judicial system and ensure the legal certainty.

A. Repealing the Article 130 (IV) of the Constitution of Azerbaijan

Firstly, Article 130 (IV) of the Constitution should be amended to revoke the Constitutional Court's authority to interpret ordinary legislation. This article provides that:

"*The Constitutional Court of the Republic of Azerbaijan shall interpret the Constitution and laws of the Republic of Azerbaijan on the basis of requests submitted by the President, the Milli Majlis, the Cabinet of Ministers, the Supreme Court, and*

[72] Qarajayev, *supra* note 35.
[73] *Ibid.*
[74] *Id*., 61.
[75] *Supra* note 25, 68.
[76] Seokmin Lee & Fabian Duessel, *Researching Korean Constitutional Law and the Constitutional Court of Korea*, 16 Journal of Korean Law 265, 269-270 (2016).

the Prosecutor's Office of the Republic of Azerbaijan, and by the Ali Majlis of the Autonomous Republic of Nakhchivan".

This provision is problematic as it contradicts the traditional Kelsenian model of judicial review, creating a conflict between constitutional and ordinary jurisdictions. As noted earlier, civil law jurisdictions indirectly use judicial decisions as a source of law, with decisions by specialised constitutional courts being among them. However, such decisions hold a specific value—namely, that the Constitutional Court acts as a "negative legislator" by assessing the constitutionality of legislation.

Kelsen's original idea was that centralising judicial review in a single specialised court would prevent inconsistencies and divergent views on constitutional matters, thereby ensuring legal certainty.[77] For example, although the Russian Constitution established the Constitutional Court for judicial review, until 1998, it lacked the power to fully impose its views on legislative constitutionality. This led to an uncertain situation where the Supreme Court and Supreme *Arbitrazh* Court expressed differing opinions on constitutional questions. Consequently, the Constitutional Court had to assert its dominance over constitutional issues.[78] This illustrates how the unclear status of the Constitutional Court can lead to legal uncertainty.

However, the power of judicial review over the constitutionality of the legislation was never intended as a tool for constitutional courts to provide their interpretations regarding ordinary legislation. First, such a development would contradict the nature of civil law, where judges are bound by statutory law rather than past precedents. More importantly, ordinary courts are practically better equipped to interpret statutes, as they handle legal disputes daily and are actively engaged in applying the law. Finally, it would make any interpretative development by the Supreme Court futile since the Constitutional Court would disregard them, as seen in its decision on the set-off clause.

Therefore, Article 130 (IV) must be repealed (*with respect to the interpretation of the laws*) to ensure that both courts remain within their respective jurisdictions.

B. "Living law" concept and Schumann formula

Secondly, since the Constitutional Court will no longer interpret ordinary legislation, its dynamics with ordinary courts must also change. Although the Constitutional Court will not interpret laws itself, it will inevitably assess their constitutionality and how ordinary courts interpret them. Therefore, in this

[77] Victor Ferreres Comella, *The European Model of Constitutional Review of Legislation,* 2 International Journal of Constitutional Law 461, 466 (2004).

[78] *See* Decree of the Constitutional Court of the Russian Federation In the Case Concerning Interpretation of Specific Provisions of Articles 125, 126, and 127 of the Constitution of the Russian Federation, No. 19-P (1998).

context, the Constitutional Court must act with caution, as the above-mentioned developments limit its ability to intervene in the jurisdiction of the ordinary courts. It may challenge this and further escalate conflicts with ordinary courts. However, in doing so, it risks further isolation and questioning of its prestige by them.[79] Instead, it would be in the best interest of both the Constitutional Court and the entire legal system for it to guide and coordinate the application of the Constitution.[80]

To achieve this, the Constitutional Court must exercise a sufficient level of self-restraint.

One way to do so is through the adoption of the "living law" doctrine. This doctrine encompasses the notion that once ordinary courts have developed certain case law and a uniform interpretation of a statute, the Constitutional Court would not intervene in that practice.[81] The Constitutional Court would only review the constitutionality of the interpretation by the ordinary courts.

However, this doctrine cannot fully resolve the conflict between these courts. It is effective when the Constitutional Court lacks institutional mechanisms to impose its views on ordinary courts and instead relies on their referrals. The Italian Constitutional Court widely uses this technique. It stems from the fact that the Constitutional Court cannot impose its view through constitutional complaints. It primarily depends upon ordinary courts' referrals. Hence, the Italian Constitutional Court had to establish a careful relationship with ordinary courts.[82]

On the other hand, when the Constitutional Court is not solely dependent on referrals from ordinary courts and can receive constitutional complaints, the situation can become problematic. For instance, "Federal Constitutional Law on the Constitutional Court of Russia" stipulates that the Constitutional Court of the Russian Federation considers the constitutionality of a normative act evaluating both its literal meaning and the meaning given to it by official or other interpretations or by law-application practice that has been developed.[83]

Based on this, the Constitutional Court of the Russian Federation widely applied this norm to impose its interpretation on the ordinary courts.[84] It did so by declaring the interpretations of ordinary courts unconstitutional and

[79] *Supra* note 3, 68.

[80] *Ibid*.

[81] *Id*., 56, 60.

[82] David Kosař, Sarah Ouředníčková, *Responsive Judicial Review "Light" in Central and Eastern Europe – A New Sheriff in Town?*, 48 Review of Central and East European Law 445, 452-453 (2023).

[83] Federal Constitutional Law on the Constitutional Court of the Russian Federation, art. 74 (1994).

[84] William Burnham & Alexei Trochev, *Russia's War between the Courts: The Struggle over the Jurisdictional Boundary between the Constitutional Court and Regular Courts*, 55 The American Journal of Comparative Law 381, 400 (2007).

ordering the reopening of cases. Unsurprisingly, this angered the Supreme Court and the Supreme *Arbitrazh* Court of Russia, leading them to refuse compliance with the Constitutional Court's orders.[85] In contrast, the Italian judiciary has not faced a similar experience because the function and activity of the *Corte Costituzionale* heavily depend on referrals from ordinary courts. When citizens can lodge complaints directly before the Constitutional Court, the court gains greater leverage.

In other words, when the Constitutional Court relies on referrals from ordinary courts, it must maintain a balanced relationship with them. Otherwise, ordinary courts may refrain from addressing constitutional issues, thereby limiting its ability to manoeuvre. In contrast, when citizens can directly lodge constitutional complaints, the Constitutional Court is not solely dependent on ordinary courts and thus has greater flexibility to challenge their interpretations.

Therefore, the "living law" doctrine alone cannot fully demarcate the boundary between constitutional and ordinary jurisdictions. This raises a crucial question: How far should such a review extend?

In this regard, the jurisprudence of the Federal Constitutional Court of Germany may give a perspective. Typically, it uses the *Schumann formula* for reviewing the constitutionality of interpretations by ordinary courts. Under this formula, the Federal Constitutional Court may review a judgement by an ordinary court under the pretext of the constitutionality of the court's interpretation. This means that if the interpretation by the ordinary court were theoretically transformed into legislation, would it still be constitutional? If it would be constitutional, then the interpretation is acceptable. By narrowing the scope of the review, the Court focuses on the constitutionality of the interpretation rather than correctness.[86]

While the recent implementation of a more limited model of constitutional complaints has eased tensions between the Courts in Azerbaijan, additional steps must be adopted to establish an effective boundary between them. In this connection, the endorsement of the "living law" concept, combined with the application of the Schumann formula, can be effective in delineating clear lines between constitutional and ordinary jurisdictions. More precisely, the Constitutional Court can use the "living law" concept to adopt the Supreme Court's interpretations. Subsequently, the scope of reviewing these interpretations can be limited through the application of the *Schuman formula*.

Like its Italian and German counterparts, the Constitutional Court can endorse and integrate these concepts into its case law. Alternatively, amending the "Law on the Constitutional Court" could formalise these

[85] *Id*., 444-445.

[86] *See* European Commission for Democracy through Law (Venice Commission), *The Decisions of the German Federal Constitutional Court and Their Binding Force for Ordinary Courts*, CDL-JU(2006)047 (2006).

principles in a statutory law. In this regard, the norm can be added to the law to define the scope of the review by the Constitutional Court.

Conclusion

As Professor Anthony D'Amato observed, the legal system inherently gravitates towards uncertainty.[87] Therefore, it is vital to implement effective mechanisms to mitigate this uncertainty and fortify legal certainty. Although the primary objective of recent reforms was to advance legal certainty, subsequent developments have impeded this progress. It is important to recognise that, to some extent, these developments are an inherent part of the Kelsenian model. However, it is crucial that these developments should not escalate into an institutional crisis between the courts, thereby undermining legal certainty.

Fortunately, during the initial phase of the reforms, the judicial system successfully navigated this stress test, and the relationship between the Constitutional Court and the Supreme Court remained largely intact. The Constitutional Court endorsed the expansion of the Supreme Court's public functions and refrained from directly overturning decisions regarding the uniform application of the law. Similarly, the Supreme Court acknowledges the Constitutional Court's jurisprudence, consistently referencing its opinions in its rulings. Furthermore, ordinary courts actively refer constitutional questions regarding statutes and their interpretation to the Constitutional Court. Nevertheless, as previously highlighted, challenges may emerge from the flawed delineation of competencies between the courts.

To address these challenges, the following reforms should be enacted: Firstly, Article 130 (IV) should be amended to repeal the Constitutional Court's authority to interpret ordinary legislation. The Constitutional Court must exercise self-restraint and avoid functioning as a de facto fourth-instance court. Instead, it should assume the role of a coordinator, directing the application of constitutional principles and values. This can be achieved by adopting the "living law" doctrine and applying it in conjunction with the Schuman Formula.

Finally, the Supreme Court and the Constitutional Court must establish an effective relationship through cooperation to enhance legal certainty. Such a collabourative approach will ensure the stability and predictability of the legal system, thereby reinforcing public confidence in the judiciary.

[87] Anthony D'Amato, *Legal Uncertainty*, 71 California Law Review 1, 1 (1983).