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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**THE COLLISION BETWEEN
ARTICLE 32
OF THE DRAFT LAW ON THE CONSTITUTIONAL COURT
AND ARTICLE 7
OF THE DRAFT CONSTITUTIONAL LAW
ON REGULATION OF THE IMPLEMENTATION
OF HUMAN RIGHTS AND FREEDOMS
IN THE REPUBLIC OF AZERBAÏJAN**

Comments by:

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(Substitute member, Hungary)

Taking into consideration the latest news and developments on the two draft laws, my doubts concerning them have been strengthened. The two regulations reflect two different concepts.

Article 32 provides for incidental norm control initiated by the ordinary judge. This can definitely result in the annulment of the unconstitutional provision.

Article 7 is aimed at to create the possibility for the judges to ask the Constitutional Court for the interpretation of laws. This possibility I consider to be similar to the advisory opinion. I admit that the two competences can be complementary, thus be exercised at the same time.

Even in this case the respective laws should regulate the relation of the two competences, namely specify who decides on which type of request is formulated by the ordinary judge. Or, looking at it from the point of view of the ordinary judge, has the judge the discretionary right to apply for both possibilities?

After our visit to Baku I understand that the Presidential Office tries to cut off the competence of the Constitutional Court to annul laws on the petition of ordinary judges, and rather persuade the judges to ignore unconstitutional provisions. But the present formulation of the two articles in question does not help to clarify the situation, just makes it more confusing. My proposal is to bring into harmony the two provisions by making clear to which jurisdiction is entitled the Constitutional Court.