# Examining Ethiopia's Federal Supreme Court Cassation Division's Position on Concurrence of Fraudulent Misrepresentation and Forgery Offences

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## Abstract

*Forgery and fraudulent misrepresentation are usually categorised as commercial or white-collar offences since they are committed to get pecuniary benefits. The act of forgery is criminalised to ensure the trustworthiness of public and business documents, while the fraudulent misrepresentation act is criminalised to protect constitutionally guaranteed ownership rights. Consonant with these objectives, Ethiopia has criminalised these acts through its criminal law. It also makes the act of deceiving through counterfeited documents a material concurrent offence. Nonetheless, the Federal Supreme Court (FSC) cassation division has been holding an inconsistent position on the issue of material concurrence offences of deceiving through counterfeited documents. Thus, this article aims to examine these positions of the division in light of the Ethiopian criminal law through the analysis of the law and specific cases. The case analysis highlights the contradictory position of the FSC cassation division. The division, in some case, held that the act of deceiving through a counterfeited document is a material concurrence offence of fraud and forgery, while, in another cases, it held that the act of deceiving through a counterfeited document could not constitute material concurrence offence of fraudulent misrepresentation and forgery rather only the offence of fraudulent misrepresentation. Therefore, this article draws the flawed position held by the FSC cassation division and highlights the correct interpretation of material concurrence offences of deception through counterfeited documents.*

Keywords: Cassation Division, Concurrent Offences, Forgery, Fraudulent Misrepresentation, Unity of Offences

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## 1 Introduction

Even though constitutionally the term '*Cassation'* was introduced with the promulgation of the Federal Democratic Republic of Ethiopia (FDRE) constitution[1], the practice of reviewing lower courts' decisions by the higher and special division is not a new phenomenon.[2] The term cassation has not yet been firmly defined in the Ethiopian legal system. However, it denotes the act of annulling, cancelling, or quashing the lower courts' decisions by the higher one.[3] The pertinent provisions of the FDRE Constitution[4] and Federal Court Establishing Proclamations[5] expound that the cassation division (the division) is a special division of the regular Court in the FSC of FDRE with a specific mandate of the FSC to supervise the legality of the lower courts' decisions.[6]

The FSC Cassation Division articulated its legal mandate by claiming its inherent power is gauging the legality of the lower courts' decisions, but not examining the

[1] Constitution of the Federal Democratic Republic of Ethiopia Proclamation, 1995, art. 80(3(A)), Proc. No. 1/1995, *Fed. Neg. Gaz.*, Year 1, No.1. This provision states (. . .) the FSC has a power of cassation over any final court decision containing a basic error of law. Furthermore, some scholars argue that the term ``cassation`` was used in legislation in Ethiopia for the first time in the treaty signed between Ethiopia and France in 1908. According to the record, this treaty empowered the emperor, stating that the emperor had the prerogative to review final decisions of the special courts by way of cassation, that is, for error of law. Muradu Abdo, 'Review of Decisions of State Courts Over State Matters by the FSC, Mizan Law Review', Vol. 1 No.1, 2007, p. 62

[2] Criminal Procedure Code, 1961, Art. 183, Proclamation No.185/1961, *Neg. Gaz.*, (Extraordinary Issue No I of 1961). The Civil Procedure Code Decree, 1965, art. 361 -370, Neg. Gaz., (Extraordinary Issue No I of 1961) Year 25, No. 3; Mahari Radie, 'Cassation over Cassation and Its Challenges in Ethiopia, Mizan Law Review', Vol. 9, No.1, pp. 178 – 9

[3] Merriam-Webster dictionary, < https://www.merriam-webster.com/dictionary/cassation > accessed on December 1, 2023. Similarly, Muradu states that the term 'cassation' comes from the French verb 'Casser' and its literal meaning is to quash the force and validity of a judgment. In Ethiopia, cassation may be taken as a means by which a final decision of any lower courts, concerning which appeal is exhausted, containing a basic error of law, is reversed or varied by the cassation division. Muradu, (n 2) 62

[4] Article 80(3(A)) of the FDRE constitution

[5] Federal Court Proclamation, 2021, art. 10, Proc. No. 1234/2021, *Fed., Neg. Gaz.*, Year 27, No. 26

[6] It is argued that the purpose of the cassation division is to see the exactitude of the decisions; verifying whether the final decision rendered synchronises with the letter and spirit of the laws. Hirko Alemu, 'The Binding Interpretation of the FSC Cassation Division: A Critical Analysis to its' Novelty and Rickety, Oromia Law Journal', Vol 11, No.1, 2022, p. 46;

facts of the case like an appellate court.[7] Thus, the prime mandate of its establishment is to assist the uniform application of law across the Ethiopian territory[8] by setting final and applicable precedents that make the decisions of the courts predictable and consistent.[9]

However, owing to its distinct mandate, recently the division's decisions have been attracting several scholars' and lawyers' attention, and it has also become one of the research areas. Due to the wider legal implications of the division's decisions, the division's decisions have attracted scholars' scrutiny and critique.[10] Even invited the House of Federation's attention and reversed some of them.[11] Specifically, the issue of jurisprudential consistency in interpreting the material concurrence of fraudulent misrepresentation and forgery remains a critical concern. Certain rulings, such as those in the cases of Zakarias and Endashaw, recognize material concurrence in instances involving deception through counterfeit documents; however, other

[7]Zewdu Gizaw v. Ayelech Dastaa, (FSC, 2011, Cassation Civil Case No. 55273), Cassation Division Decisions Book, Vol. 13, p. 615

[8] Getachew Dasta and Fntu Tasfye v. Rukia Kedir, (FSC, 2012, Cassation Civil Case No. 68573), Cassation Division Decisions Book, Vol. 13, p. 623

[9] ጌታሁን ወርቁ, 'ሕግ የማውጣት ና የመተርጎም መስመር ሲጡብ, (በፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት የሰ/መ/ቁ 44800 እና የሰ/መ/ቁ 40109 ላይ የቀረበ ትችት), Hawassa University Journal of Law', Vol. 6, July 2022, p.191

[10]Biruk Haile, 'Period of Limitation Applicable to Claims over Immovable Property under the Ethiopian Law: Gateway to Hindsight Scrutiny of Legality of Nationalisation of Immovable? Case Analysis, Jimma University Journal of Law', Vol. 4 No. 1, 2012, p. 178; Zerihun Asegid, 'The Power to Transfer Employees: A Case Comment, Bahir Dar University Journal of Law', Vol. 6, No. 1, 2015, p. 156; Leake Mekonen, 'The Effect of Changes in Tax Rates Amidst Tax Years in the Determination of Corporate Income Taxes in Ethiopia: A Comment on FSC Cassation Decision on ERCA v MIDROC Gold, Bahir Dar University Journal of Law', Vol.8, No.1, 2017, p. 139; Mehari Redae, 'Dissolution of Marriage by Disuse: A Legal Myth, Journal of Ethiopian law', Vol. XXII, No.2, p. 37; Dejene Girma, 'Tell Me Why I Need to Go to Court: A Devastating Move by the Federal Cassation Division, Jimma University Journal of Law', Vol. 2, No. 1, 2009, p. 114,

[11]Mehari, for instance, bombarded the FSC Cassation Division decision, Shewaye Tessema v. Sara Lengana et al, File No.20938, with a critique arguing that the division was not empowered to create an extra method of dissolution of marriage rather than applying those designed by the lawmaker. Mehari Redae (n 11) 37; Dejene also repeated Mehari's argument; Dejene Girma (n 11) 114. After lengthy criticism, the House of Federation reversed this decision in a way that fits Mehari's and Dejene's argument. W/ro Kelemua Tefera V. Fiseha Demise, House of Federation, (File No. 50/10, October 8, 2019, unpublished); ተክለኃይማኖት ዳኜ, 'ፍቺ ከፍርድ ቤት ውጭ፡ የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት እና የፌዴሬሽን ምክር ቤት ውሳኔዎች አጭር ዳሰሳ, Journal of Ethiopian Law', Vol. XXXII, 2020, p. 223ff

rulings, such as Mu'az and Abiy, do not, resulting in contradictory precedents. This article critically investigates whether the Cassation Division consistently adheres to its mandate of legal uniformity when confronted with cases that encompass overlapping components of fraud and forgery. It examines the FSC Cassation Division's position regarding the material concurrence offences of deceiving through counterfeited documents by upholding jurisprudential consistency in its interpretation of concurrent offences involving fraudulent misrepresentation and forgery within the context of Ethiopian criminal law.

For this purpose, it employs a doctrinal legal research method by analysing the available relevant cases decided by the division in light of the Ethiopian criminal law. The case analysis highlights contradictory positions of the division regarding the material concurrence of offences related to deception through counterfeited documents. In the Zakarias and Endashaw case, the division's decision recognised the act of deception through a counterfeited document as a material concurrence offence involving both fraud and forgery. In contrast, the ruling in Mu'az and Abiy rejected this interpretation and limited the act to only a fraudulent misrepresentation offence. These analyses demonstrate that the position held by the division in Zakarias' and Endashaw's cases is a right reading of articles 61(3) and 699 of the FDRE Criminal Code (hereinafter the code), while the one held in Mu'az's and Abiy's cases is flawed. This article critiques this inconsistency and argues for a correct and consistent interpretation that acknowledges material concurrence in cases involving deception through counterfeit documents.

These findings are systematically presented in the subsequent four sections of this article. Section two analytically introduces the concept of fraudulent misrepresentation, forgery and concurrent offences in general and in the Ethiopian context, in particular. Section three provides a summary of the material facts of the selected cases and the FSC cassation division's decisions. The fourth section, the

main section of the article, analyses the incongruity between the law in the book and the law in action on the issue of material concurrent offences of forgery and fraudulent misrepresentation. Finally, the conclusion section highlights the arguments and provides recommendations for this article.

## 2 The Concept of Fraudulent Misrepresentation, Forgery and Concurrent Offences

Since forgery and fraudulent misrepresentation offences are committed to get pecuniary benefits, they are termed socio-economic offences,[12] and usually, categorised as commercial or white-collar offences. Though they are in one category of offences, they are distinct offences and evolved to govern distinct purposes. Accordingly, the act of forgery is criminalised to make public and business documents trustworthy documents while the fraudulent misrepresentation act is criminalised to protect constitutionally guaranteed ownership rights.

Regarding the basic definition of fraudulent misrepresentation offence, Judge Holmes stated that the law does not define fraud; it needs no definition; it is as old as falsehood and as versatile as human ingenuity.[13] Conceptually, nonetheless, fraudulent misrepresentation, also known as deception or fraudulent representation, is the act of making a false or misleading statement, either in a form of spoken or written form, usually to gain an advantage by deceiving.[14] Furthermore, since its

[12]Fundamental of Crime, Criminal Law & Criminal Justice, <https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001744/M027843/ET/152110522271.BASISOFCRIMINALIZATION.pdf> accessed on April 18, 2025

[13] Podgor Ellen S., 'Criminal Fraud, American University Law Review', Vol. 48, No.4, 1999, p.739

[14] Bryan A. Garner (ed.), Black's Law Dictionary, 7th Edition, 1999, P.1016; Jonathan Herring, 'Criminal Law' (Palgrave Macmillan Law Masters, 2008), P. 294ff. Nonetheless, on the one hand, it is argued that mere deceit is insufficient to convict someone of fraud; rather, it must also be proved that the defendant intended to cause harm to a victim's 'money or property'. On the other hand, it is maintained that it encompasses all forms of deceptive behaviour, even where the defendants intended no pecuniary harm. According to the latter group, the so-called 'right to control' theory, which holds that one's 'right to control' his or her assets qualifies as property. Thus, per this theory, even if defendants did not intend harm, they may be convicted if they withheld from the putative victims potentially valuable economic information, thereby depriving them of their right to control their assets; Tai H. Park, 'The Right to Control Theory of Fraud: When Deception Without Harm Becomes a Crime, Cardozo Law Review', Vol. 43:1

core objective is to get an advantage by deception, some consider it an offence of theft through lies.[15] In the case of Ethiopia, this offence is provided in a way that fits hereinabove mentioned conceptual definition of fraud.[16]

On the other hand, the concept of forgery is the making of a false document intending that it be used to induce a person to accept and act upon the message contained in it, as if it were contained in a genuine document.[17] Forgery[18] generally consists of the false making or material alteration or using a forged document of a legal instrument with the specific intent to defraud.[19] Besides, for some, the act of forgery constitutes simulation of writing by free hand, traced forgery, and disguised writing.[20] In the case of Ethiopia, in fitting this concept of forgery, article 375 of the code,[21] provides

[15] Id 138

[16] Article 692(1) of the Criminal code, the provision which is considered as the provision that defines a fraudulent misrepresentation offence in Ethiopia, states, *Whoever, with intent to obtain for himself or to procure for a third person an unlawful enrichment, fraudulently causes a person to act in a manner prejudicial to his rights in property, or those of a third person, whether such acts are of commission or omission, either by misleading statements, or by misrepresenting his status or situation or by concealing facts which he had a duty to reveal, or by taking advantage of the person's erroneous beliefs* [. . .]. Nonetheless, one should note that the act of fraudulent misrepresentation is criminalised through different proclamations.

[17] It is noted that document usually contains messages of two distinct kinds – the first a message is about the document itself, while the second a message is the words of the document that is to be accepted and acted upon. It is argued that it is documents which convey not only the first type of message but also the second type that need to be protected by the law of forgery. < https://www.oxfordlawtrove.com/display/10.1093/he/9780198890942.001.0001/he-9780198890942-chapter-29> accessed on April 18, 2025

[18] Material forgery could take three forms; viz., a) forgery of a document – is the execution of the document in whole or in part, while maintaining the appearance as if the document came not from the perpetrator, but from another person; b) forging a document – giving an existing authentic document by an unauthorised person a different content than the one originally possessed; and c) using a counterfeit or forged document as an authentic one - this is using the function of the document's legal meaning; Ewelina Rytelewska, Material Forgery of the Document, <https://thepolicereview.akademiapolicji.eu/article/01.3001.0053.9745/en > accessed on September 17, 2024

[19] Forgery < https://en.wikipedia.org/wiki/Forgery > accessed on September 17, 2024

[20] Vinita Kacher, Forgery, <https://www.lkouniv.ac.in/site/writereaddata/siteContent/20200406193943558 9Vinita_Kacher_LAW_OF_CRIMES_FORGERY.pdf > accessed on September 21, 2024

[21] In criminalising the act of forgery, this provision states, *Whoever, with intent to injure the rights or interests of another, or to obtain for himself or to procure for another any undue right or advantage:*

the basic elements for forgery offence. Nonetheless, like fraudulent misrepresentation offences, the act of forgery is criminalised through different proclamations.

On the other side, a close reading of articles 375 and 692 of the code reveals that the constituting ingredients of these two offences are distinct. Owing to this, the commission of one of these offences does not require or entail the commission of the other. This indicates that these two offences are designed for different purposes, and one of these offences could not be subsumed under the other. Beyond this general understanding, article 699 of the code specifically addresses that these offences are separate.

Moreover, the term 'concurrent offence' is known by different names in different legal systems; namely, mainly multiple crimes or multiple offences, cumulative charge, or criminal episode.[22] As Elias notes, concurrent offences are offences together charged and tried against the same defendant.[23] Further, Graven also observed that concurrence of offence comes into beings either when several unlawful acts are done in contravention of one or more articles of law, which he named concurrence of offences or material concurrence, or when one unlawful act is done

*(a) falsely executes an instrument, such as a writing, a deed or any document or material means constituting proof of, or capable of proving, a fact material, or susceptible of becoming material, to legal proceedings; or*
*(b) makes use of the sign manual, signature, mark or stamp of another to make a false instrument; or*
*(c) counterfeits, an instrument. especially by changing his handwriting, by affixing to the instrument a false signature, mark or stamp, or by signing it in a false capacity purporting to certify its authorship; or*
*(d) falsifies an instrument, especially by modifying, deleting, adding or altering, in whole or in part, the name or signature of its author or the terms, figure, fact or material details it contains, [. . .].*

[22] Yihenew Hailu, 'Concurrent Crimes in the Ethiopian Criminal Justice System: The Law and the Practice in Northern Showa Zone, Amhara Region (LLM thesis, Bahir Dar University School of Law, 2020, unpublished), P.12

[23] Elias N. Stebek, *Principles of Ethiopian Criminal Law, A Textbook*, (Revised Edition, Addis Ababa, 2022), P. 189

in contravention of several articles of law, which he labelled concurrence of provision or notional concurrence.[24]

In addition, Vestal and Gilbert argue that multiple crimes may arise from a single event when the criminal commits several crimes against one individual, the criminal commits multiple crimes against different individuals, a single event constitutes crimes under the laws of several jurisdictions – particularly in the case of USA, or a combination of these possibilities occurs.[25]As well, according to Ashworth, concurrent crimes may follow from either a single or successive act(s) or omission(s).[26]

In the case of Ethiopia, reading the pertinent article of the code reveals that three categories of concurrent offences are recognised in the Ethiopian criminal justice system, namely, material, notional and victim concurrent offences.[27] Material concurrence of offence, according to article 60(a) of the code, is committed when perpetrator successively commits several criminal acts that results the commission of two or more similar or different offences against similar or different interests while notional concurrence offence, as prescribed through Article 60 (b) of the code, is committed when a single criminal act simultaneously contravenes several criminal provisions. The third one, according to article 60(c) of the code, concerns a situation

[24] Philippe Graven, *An Introduction to Ethiopian Penal Law* (Haile Selassie I University, 1965), p. 163

[25] Allan D. Vestal and Douglas J. Gilbert, 'Preclusion of Duplicative Prosecutions: A Developing Mosaic, Missouri Law Review', Vol. 47, No.1, 1982, p. 4

[26] Andrew Ashworth (2010) Sentencing and Criminal Justice (5th ed., Cambridge University Press), p. 260 as cited in Leake Mekonen, 'Concurrence of Crimes under Ethiopian Law: General Principles vis-à-vis Tax Laws, Mizan Law Review', Vol. 17, No.1, 2023, p. 82

[27] Article 60 of the criminal code states that a person commits concurrent crimes,
*a) in cases of material concurrence, when the criminal successively commits two or more similar or different crimes, whatever their nature; or b) in cases of notional concurrence, when the same criminal act simultaneously contravenes several criminal provisions or results in crimes with various material consequences; or c) in the case of a criminal act which, though flowing from the same criminal intention or negligence and violating the same criminal provision, causes the same harm against the rights or interests of more than one person.*

in which several similar offences are committed against the protected interest of two or more victims through a single guilty act.[28]

Consequently, one can construe from the foregoing observation that the term concurrent offences conceptually denotes a situation in which a single guilt act is committed against a single protected interest in contravention of several provisions of criminal law simultaneously; or several guilt acts are committed against a single or several protected interests successively; or a single guilt act is committed against a several protected interest in contravention of the same provisions of criminal law.

On the other hand, the unity of offences is a contrary concept of concurrent offences. In essence, the term unity of offences denotes a concept-form that arises when the criminal activity consists of a single action or inaction or even several such manifestations that combine naturally or according to the will of the legislator, forming the content of a single offence.[29] This definition implies two forms of unity of offences; viz., natural and legal. The unity of offences made based on the will of the lawmaker is termed legal unity of offence, while natural unity of offences occurs from the nature of the offence, in which the unity component derives from the nature of the action or inaction and the unique result caused.[30]

In Ethiopia, the principle of unity of offences is enshrined under article 61 of the Code.[31] As stated by Graven, the drafter of the Ethiopian Penal Code of 1957, article

[28] Graven (n 24) 163; Dejene Girma, A Handbook on the Criminal Code of Ethiopia, 2013, p. 33, Leake, (n 26) 81, Yihenew (n 23) p.11

[29] Ivan Mari-Claudia, Unity of Offence (Summary of Doctoral Dissertation) <https://drept.unibuc.ro/documente/dyn_doc/oferta-educationala/scoala-doctorala/2018-2019/rezumat%20%C3%AEn%20limba%20englez%C4%83.pdf > accessed on August 20, 2024

[30] Ștefănuț Radu, Differentiation between the Concurrence of Offences and the Unity of Offence with Multiple Passive Subject, European Integration - Realities and Perspectives, Proceedings, 2021, p. 505

[31] This provision states,

*(1) The same criminal act or a combination of criminal acts against the same legally protected right flowing from a single criminal intention or negligence, cannot be punished under two or more concurrent provisions of the same nature if one legal provision fully covers the criminal acts.*

*(2) Successive or repeated acts against the same legally protected right flowing from the same initial criminal intention or negligence constitute one crime; the criminal shall be punished for the said crime and not for each of the' successive acts which constitute it. Similarly, where the repetition or succession of criminal acts or the habitual or professional nature of a crime constitutes an element of*

61 (1) of the code is all about an imperfect or apparent concurrence offence.[32] Moreover, as he put it, the content of imperfect concurrences of offences denotes offences consist of behaviour of one offence which is also an ingredient of other offences or imply a combination of acts, some of which are also material elements of other offences. He also adds that, in apparent concurrence, when one of the offences is committed, the other offence is also committed.[33] Put otherwise, apparent concurrence of offences is the combination of guilty acts which seems to violate several provisions but actually one criminal law provision engrosses them.[34] On top of that, it is also contended that guilt acts to be apparent concurrent offences it must be committed once, against the same protected right, and must be from a single criminal intention or negligence.[35]

All the same, article 61(1) of FDRE Criminal Code makes some improvement to article 60(1) of the 1957 Penal Code. To reproduce these two provisions of the codes for contrast,

Article 60(1) of the 1957 Penal Code states,

> *The same criminal act or a combination of criminal acts against the same protected right flowing from single criminal intention or act of negligence cannot be charged under two or more concurrent provisions of the same nature.*

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*an ordinary or aggravated crime, or where the criminal act is pursued over a period of time, the criminal shall be regarded as having committed a single crime and not concurrent material crimes. (3) In cases where the criminal is regarded to have intention to commit a specific crime, in particular where he committed a crime on property to obtain unlawful enrichment or he made counterfeit currency, used it of put it into circulation or executed a forged document and used it, the subsequent acts performed by the criminal himself after the commission of the main crime for the purpose of carrying out his initial criminal scheme shall not constitute a fresh crime liable to punishment and are merged by the unity of intention and purpose.*

[32] Graven (n 24) 163.

[33] Ibid

[34] Leake (n 26)81-116.

[35] Graven (n 24)163 – 165

Article 61(1) of the 2004 Criminal Code states,

> *The same criminal act or a combination of criminal acts against the same legally protected right flowing from a single criminal intention or negligence cannot be punished under two or more concurrent provisions of the same nature if one legal provision fully covers the criminal acts (emphasis added).*

A flick through these two provisions of these codes shows that the latter code adds an ingredient to the principle of unity of guilt and penalty to the content of the previous code, being fully covered by a single provision of the code. As per the later code, therefore, cases which fulfil the ingredients of article 61(1), committed once, against the same right, and flow from a single criminal intention or negligence, may be concurrent offences, if it is not fully covered by a single provision of the code.

Similarly, referring *expose des motif* of article 61(1) of the code also shows that it added an ingredient to the prior code's unity of guilt and penalty.[36] As a result, per the latter code's provision, unity of guilt may not always demand unity of penalty; rather, it demands so if only one legal provision could fully cover the criminal acts of the defendant. In the Ababa case,[37] the FSC Cassation Division also held the same position.

Leaving it as it is, the foregoing discussion shows that the concept of apparent concurrences of offences denotes the principle of unity of offence. As well, a close

[36] Legislative History of FDRE Criminal Code of 2004, p. 38

[37] Ababa Tefera v. Federal Public Prosecutor, (FSC, 3 Oct. 2017, Cassation Criminal Case No. 134549), Cassation Division Decisions Book, Vol. 22, p. 178. The same position is also held in different cases; Mamay Abara v. Tigray Regional State Justice Bureau (FSC Cassation Division, Criminal Case No. 132492, March 1, 2017, unpublished); Dejene Mokenin v. Federal Public Prosecutor (FSC Cassation Division, Criminal Case No. 119159, 27 July 2016), Cassation Division's Decisions Book, Vol. 20, p. 353; Federal Public Prosecutor v. Mu'az Desta, FSC Cassation Division (Criminal Case No. 104637, January 2, 2017), Cassation Division's Decisions Book, Vol. 21, p. 332

look at article 61(1) of the code reveals that it talks about the natural unity of offences in the Ethiopian legal system.

Linked to the issue under discussion, the point worth discussing at this point is article 61 (3) of the code that highlights the principle of non-punishable acts of execution preceding or following an offence or ancillary (subordinate) acts. This principle is provided as an exception to the material concurrence of offences.[38] As per this principle, when a person with a single end view commits several offences closely linked one to another, a guilty mind is deemed to have concerning the main offences but not to the act done thereafter in furtherance of the initial criminal scheme.[39] As stated earlier, like article 61(1) of the code, which added some improvement to article 60(1) of the Penal Code, article 61(3) of the code also made some modifications to article 60(3) of the Penal Code. According to the Penal Code, three ancillary acts were provided exhaustively, while the Criminal Code provides them illustratively. These ancillary acts, which were provided exhaustively but now illustratively, are crimes against property, counterfeiting currency and forgery of documents.

Similarly, a close reading of this provision suggests that it is all about a legal unity of offences. As far as this sub-provision covers legal unity, it could be argued that the lawmaker could provide an exception to it by following any appropriate approach. In Ethiopia, material forgery offences are criminalised in Book IV, Title I and Chapter I of the code, while fraudulent misrepresentation is essentially criminalised in Book VI, Title I and Chapter III of the code. Needless to state, these two offences are criminalised in different books of the Criminal Code. Owing to this design of the code and also for clarity purposes, article 699 of the code comes up with an unequivocal limitation to the principle of non-punishable acts of execution

[38] Elias (n 23) 197
[39] Graven (n 24) 170

preceding or following an offence of article 61(3) of the code.[40] Consequently, article 699 of the code is designed to provide a clear exception to the principle of non-punishable acts of execution preceding or following an offence.[41]

## 3 Summary of the Selected Cases and Holding of the FSC Cassation Division

In this section, the summary of fraudulent misrepresentation and material forgery offences' decisions of the division is provided, along with the holding of the division. As a result, the material facts and the division's positions on the four cases of these offences, which the FSC Cassation Division have heard and decided at different times, are summarised as follows.

[40] Nonetheless, examining some decisions of the division reveals that they have not yet developed clear jurisprudence on article 61(3) of the code and reached a common consensus on the concept of this provision. To substantiate this argument, reading Abdulfata Kadir and Biniyam Abiy v. Oromia Attorney General Case is adequate. In this case, the defendants were apprehended at Bishan Guracha town while they were transporting illegal coffee from Hawassa to Addis Ababa using a forged pass permit and certificate of competency. They were charged for using forged pass permit and certificate of competency under article 23(1(A, B, C), 2 & 3) of Corruption Offenses Proclamation No. 881/2015 and for transporting illegal coffee under article 19(10) of Coffee Marketing and Quality Control Proclamation No.1051/2017. The West Arsi Zone High Court, in its first instance jurisdiction, convicted and sentenced the defendants for both offences. Being unsuccessful in appellate courts, the defendants took their complaints against the conviction and sentence to the FSC Cassation Division. In the Appellate Courts and the FSC Cassation Division, the defendants argued against their conviction and sentence using article 61(3) of the code and some decisions of the FSC Cassation Division. Nonetheless, the FSC Cassation Division, three to two, confirmed the lower courts' conviction. In confirming the lower courts' conviction, the majority opinion argued that to benefit from article 61(3) of the code, the defendants should prove that transporting illegal coffee is the extension of using a forged pass permit and certificate of competency. On the other hand, the dissenting opinion argued that the defendants used forged pass permits and certificates of competency to transport illegal coffee. Owing to this, they argued that since a forged pass permit and certificate of competency were employed to transport illegal coffee, the defendants should only be convicted and sentenced for transporting illegal coffee; Abdulfata Kadir and Biniyam Abiy v. Oromia Attorney General FSC Cassation Division (Criminal Case No. 226130, 5 November 2021, unpublished)

[41] This provision states: *Where there is misrepresentation of any kind, committed by means of a forgery, the relevant provisions shall apply concurrently*

### 3.1 Zakarias G/Tsadik *v.* Federal Public Prosecutor[42]

This case was commenced in the Federal High Court. The fact of the case was that the defendant was authorised to renew the title deed of the victim's building. Nonetheless, the principal (the victim) revoked the power of attorney, and the Federal First Instance Court also attached the building of the victim because the defendant was found while he was attempting to sell the victim's building using the power of attorney, which he had obtained to renew the title deed. Nonetheless, the defendant sold the victim's building using a forged court order that showed the attachment was withdrawn and also using a forged power of attorney document. As a result, the defendant was indicted with an aggravated fraudulent misrepresentation offence under article 696 (C) of the Criminal Code and concurrently for using forged instruments offence under article 378 of the same code.

The Federal High Court, after examining the case, convicted and sentenced the defendant for both offences. Being unsuccessful in his appeal to the FSC, the defendant lodged his complaint with the division. The division examined his complaint, *inter alia,* from the perspective of article 699 of the code and confirmed the lower Courts' decision. In confirming the lower Courts' decisions, the division held that the concurrency of offences under article 696 (C) and 378 of the code is vividly understood from article 699 of the same.

[42] Zakarias G/Tsadik v. Federal Public Prosecutor, (FSC Cassation Division, Criminal Case No. 85237, 5 April 2013), Cassation Decision Book, Vol. 15, p. 355

### 3.2 Endashaw Yilmaa *v.* Federal Public Prosecutor[43]

This case began in the Federal High Court; its material fact states that the defendant approached the victim by making himself a facilitator, who could provide the victim a certificate of divorce following all procedures. Convincing the victim, he was paid Birr 40,000 but delivered her a forged certificate of divorce. Of this reason, he was charged with two concurrent offences; viz., fraudulent misrepresentation offence for taking birr 40,000 by misrepresenting his status and providing forged certificate of divorce to the victim under article 692 (1) of the code as well as for Forged Certificates, providing counterfeiting certificate of divorce, offence against article 385(1(A)) of the same code concurrently. At the Federal High Court, he was convicted and sentenced as per the charge. Being unsuccessful in his appeal to the FSC, the defendant lodged his complaint with the division. The division, after examining his complaint, *inter alia,* from the perspective of articles 60, 61, 63 and 699 of the code, confirmed the lower courts' conviction of the defendant under article 696 (C) as well as article 378 of the code. In confirming the lower Courts' conviction, the division held that article 61(1) of the code shows that the principle of unity of guilt and penalty comes into the picture when different criminal acts are committed with a single criminal intention or negligence. It also added that, against this principle, when the lawmaker provides that the concurrency of offences committed with a single mental state, the case will be entertained as per articles 60 and 63 of the code. Lastly, in confirming lower courts' decisions, the division held that, since article 699 of this code plainly provides the concurrency of forgery and misrepresentation offences, no basic error is committed by the lower courts.

[43] Endashaw Yilmaa v. Federal Prosecutor, (FSC Cassation Division, Criminal Case No. 104715, 11 April 2013), Cassation Decisions Book, Vol. 17, p. 188. Nonetheless, some may argue that the fact of this case is not similar to the situation of Article 699 of the code since the defendant misrepresented the victim by misleading her believe that he has that power, and then he brought her a forged divorce document. Nonetheless, the fact of the case is that the defendant committed the offence of fraudulent misrepresentation accompanied by forged documents. Article 699 of the code makes fraudulent misrepresentation accompanied by forged documents a material concurrence offence. Thus, this author argues that arguing against the relevancy of article 699 of the code for this case is not substantial.

### 3.3 Federal Attorney General v. Mu'az Dasta[44]

The Federal High Court entertained this case in its original jurisdiction. As indicated in the decision, to succeed the properties of those whom he has no right to succeed, the defendant took a certificate of succession by providing a false plea supported with an oath to the court to change the name of his maternal grandfather, which the court changed the name per the plea. For this reason, the defendant was charged with committing an aggravated crime of fraudulent misrepresentation contrary to article 696(C) of the code by providing a false petition supported with an oath to the court to change the name of his maternal grandfather and taking a certificate of succession. He was also concurrently charged for use of forged instruments contrary to article 378 of the code for providing to the court to succeed those whom he had no right to succeed by using a certificate of succession he obtained by deceiving the court. The Federal High Court convicted and sentenced the defendant for both counts. Submitting his grievance to FSC, the lower court decision was reversed, and the defendant was acquitted. Grieved with the defendant's acquittal, the Federal Attorney General took its complaint to the division. The division, after examining the applicant's complaint, convicted the defendant only under Article 696(C) of the code. Concerning the second count, nonetheless, it held that since the defendant committed both acts with a similar mental state and one result, the second count is subsumed within the first count as per article 61(3) of the code. All the same, in this case, the division stated nothing about article 699 of the same code.

[44] Federal General Attorney v. Mu'az Dasta, (FSC Cassation Division Criminal Case No. 104637, 2 January 2017), Cassation Decisions Book, Vol. 21, p. 332

### 3.4 Abiy Dibaba v. Federal Ministry of Justice[45]

Abiy was charged with material forgery of public organisation documents as well as aggravated fraudulent misrepresentation concurrently at the Federal High Court. The fact of the case was that the defendant withdrew Birr 123,400 from Dashen Bank by using a forged cheque and Identity Card prepared in another person's name. For this act, he was indicted under article 696(C) of the code for withdrawing other person's money from the Bank using forged documents while under article 23(1(A, B, C), 2 & 3) of Corruption offences Proclamation No. 881/2015 for using forged Identity Card. The defendant was convicted and sentenced as per the charge at the Federal High Court. Being unsuccessful in his appeal to the FSC, the defendant took his grievance to the FSC Cassation Division. The division, after examining his complaint, altered the lower courts' decision by holding that the defendant's acts for which he was charged under article 23(1(A, B, C), 2 & 3) of Corruption Offences Proclamation No. 881/2015 was committed to facilitate the commission of the acts for which he was charged under article 696(C) of the code. Continuing its analysis, it stated that the lower courts have committed a fundamental error of law in convicting and sentencing the defendant under both counts, while he should have been convicted and sentenced only under Article 696(C) of the code. Per this argument, the division reversed the lower courts' conviction and sentence for using a material forgery offence.

[45] Abiy Dibaba v. Federal Ministry of Justice, FSC Cassation Division (Criminal Case No. 234082, 5 July 2023) unpublished. Nonetheless, since this case is unpublished, some may question whether it has a binding effect on the lower courts like the published one. This doubt may be cleared by a simple reading of Article 10(2) of Proclamation No.1234/2021. This sub-article states that '*interpretation of law rendered by the Cassation Division of the FSC with not less than five judges shall be binding from the date the decision is rendered.'* This provision makes it clear that the binding effect of cassation decisions commences, whether it is published or not, from the date it is pronounced. This to say that once it had been decided, Cassation Division's decision unconditionally become a law.

## 4. **Analysis of the Case in Light of Ethiopian Law**

As was indicated earlier, the Criminal Code has enshrined the principle of concurrent offence on the one hand, and the principle of unity of offence along with its exception, particularly in the case of fraudulent misrepresentation offences committed through counterfeited documents, on the other hand. Put in a nutshell, the code makes a fraudulent misrepresentation offence committed through counterfeited documents, material concurrence offences. Nonetheless, the division has been holding an inconsistent position on the (non)concurrency of these offences by misapprehension of a clear provision of the code, particularly articles 61(3) and 699 of the code. Wording it differently, the division has not yet held an unwavering position on the (non)concurrency issue of these two offences to date. Owing to this, the division has been holding contradictory positions on the issue of the material concurrence of fraudulent misrepresentation and material forgery offences.

Nonetheless, from the outset, this author opines that the position the division held in Zakarias' and Endashaw's case is a right reading of article 699 of the code, while the one held in Mu'az and Abiy cases is erroneous. As was argued, the (non)concurrency of fraudulent misrepresentation offences and material forgery offences issue has been vacillating the position of the division from one corner to the opposite. Needless to state, since its decisions are considered as a law, the division's vacillation of position on a particular issue has a far-reaching consequence on the administration of justice by disturbing the certainty and predictability of judicial decisions at all levels.

A close review of the interpretation held by the FSC Cassation Division in the above abridged cases reveals that one of the reasons that vacillates the division's position is the improper use of the rule of statutory interpretation.[46] Strauss opined that the

[46]Emphatically, there is no single and common rule of statutory interpretation across the jurisdictions. It is argued that Courts differ on whether they even admit that an issue of interpretation exists or that

problem of interpretation of law only arises when a lawyer has a problem before him and if the language of the statute is not clear or direct on the point, but if he finds that the language of the statute clear and appears to give an exact answer to his problem, then he needs go no further.[47] Elias also wrote that, where the law is clear, the issue of interpretation should not arise; the power of the court to interpret the law is only allowed in case of doubt.[48] To put it otherwise, if the lawmaker has done their job well, the inherent power of the judiciary, particularly those of the continental legal system, is to apply a law as per the letter and spirit of the lawmaker. Nonetheless, applying 'law as it is' does not require absolute clarity of law. In this line of argument, Dressler held that since the doctrine of statutory clarity is itself an indefinite concept, absolute clarity of law is not required; rather, it is to be the one that provides a person of ordinary intelligence a fair notice of what is prohibited.[49]

Coming back to the issue under discussion, even skimming article 699 of the Criminal Code makes it clear that article 61(1 & 3) is not applicable when any kind of misrepresentation offence is committed by employing forged documents. Article 699 of the code unequivocally states that 'where there is misrepresentation, of any kind, committed by means of a forgery, the relevant provisions shall apply concurrently'. This provision is pretty clear, and it needs only to be enforced but not interpreted. That is to say, in principle, where the words of the act of the parliaments are clear, there is no room for applying any principle of interpretation.[50] In fitting

there is more than one possible way to read the statute. All the same, it is thought that a general distinction can be made between common law countries and civil law countries. It is also accepted that courts in common law countries tend to pay close attention to the facts and exercise more freedom in their legal reasoning while courts in civil law countries tend to take greater interest in the exact wording of the applicable rule and are generally stricter in their legal reasoning; Frans Vanistendael, 'Legal Framework for Taxation' in Victor Thuronyi (ed.), *Tax Law Design and Drafting* (vol. 1, International Monetary Fund, 1996) < https://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch2.pdf > accessed on December 6, 2024

[47] Peter L. Strauss, 'On Interpreting the Ethiopian Penal Code, Journal of Ethiopian Law', Vol. V - No. 2, 1968, p. 376

[48] Elias (n 23)45

[49] Joshua Dressler, *Understanding Criminal Law* (7th edition, Matthew Bender Company, 20115) chapter 5

[50] George Krzuczonowicz, Statutory Interpretation in Ethiopia, Journal of Ethiopian Law, Vol. 1, No. 2, 1964, p.318

this line of argument, in Zakarias'[51] and Endashaw's cases, the division itself held that since article 699 of the Criminal Code is pretty clear, the inherent power of the court is to apply it. In Endashaw's case,[52] particularly, the division held that the conviction of the defendant concurrently for forgery and misrepresentation offences, since the lawmaker provides the concurrency of these two offences, the lower court had not committed a basic error of law.

One of the relevant maxims of interpretation is that the special prevails over the general rule. Nonetheless, the position the division held in the Mu'az's and Abiy's cases manifests that the division misapprehended this maxim. Needless to say, the code has two main parts, namely, the general and the special parts. The general part provides general principles of criminal liability, while the special part defines crimes along with their ingredients and penalties. As a result, the structure of the code itself tells us, in case of conflict, if any, the provision of the code in the special part prevails over the provision in the general part of the code. In strengthening this line of argument, Strauss argued that the maxim of codified law's interpretation, particularly the Ethiopian Criminal Code, is that provision of the special part prevails over that of the general part.[53] In the structure of the Code, article 63 is a general provision while article 699 of the code is a special provision as well as article 699 of the code is an exception to article 63(3) of the code. Nonetheless, in Abiy case the division wrongly held that article 63(3) and 699 of the code were designed for different purpose and, consequently, held that classifying these provisions into general and special is not a water holding argument.

Inconceivably, in the Abiy case, it was held that article 699 of the Criminal Code is designed to show that article 61 of the code is not applicable in cases where the committed acts could not be covered by a single provision of the criminal law.

[51] Cassation Decision Book, vol.15, (n 42), p.358
[52] Cassation Decision Book, vol.17, (n 43), p.189
[53] Strauss (n 47)385

Nonetheless, article 61(1) of the code itself provides that in case the committed acts could not be covered by a single provision of criminal law, the acts will be concurrent offences. Owing to this, if the intention behind Article 699 of the code is what the division held, this provision is superfluous. Nonetheless, interpreting a given provision in a way that defeats the very purposes of the other provision goes against the doctrine of judicial interpretation.

Furthermore, even though the division should have come up with convincing reasons why the lawmaker included article 699 in the special part of the code, in Mu'az's and Abiy's case, it has failed to address the rationale behind this provision. This is because in statutory interpretation, the primary role of the judiciary is to attempt to discover the real intention of the lawmaker. In these cases, however, the division did nothing to discover the legislative intent behind this provision; rather, it only rushed to transcribe its whim, stating that this provision is designed for a different purpose and goal.

Nonetheless, the author believes that the rationale behind Article 699 of the code is the interest attached to protecting the sanctity of documents in private business transactions as well as public affairs. Put otherwise, it is asserted that the importance placed on the reliability of written documents justifies the special offences of forgery.[54] Moreover, as was indicated, these offences have evolved to different purposes and, thus, they are two separate offences. For this reason, to settle the dusk of confusion, article 699 of the code is designed in a way that the act of deceiving by employing counterfeited documents constitutes material concurrent offences of misrepresentation and forgery. Nonetheless, in Mu'az's and Abiy's case, the division decided contrary to the letter and the spirit of article 699 of the code without considering the rationale behind this provision.

[54] Jonathan (n 14) 312

The other rationale behind this provision is Aristotle's principle of justice that requires equals should be treated equally, and the same is true with unequals.[55] Accordingly, treating individuals in the same conditions similarly while treating differently those who are different in ways that are relevant to the situation in which they are involved. Besides, this principle suggests that the criminal punishment must be proportional to the criminal disposition of the offender. In line with this principle of justice, the criminal disposition of a person who is found only using forged documents and a person who defrauds others by employing forged documents is not the same. Moreover, punishing those who defraud others by employing forged documents only for offences of fraudulent misrepresentation but not additionally for using forged documents incentivises all who get forged documents to employ them to defraud others. Nonetheless, the very purpose of criminal law is not to incentivise people to commit further offences rather to discourage them. For this reason, in Ethiopia, the act of material forgery and fraudulent misrepresentation offences are criminalised independently under different provisions of its criminal law, and it makes the act of employing forged documents to defraud a different offence.

On top of that, the reason that distances the FSC Cassation Division from the plain letter and spirit of article 699 of the code, though not clearly stated in the decision, is its purport to have lawmaking power. The reluctance of the division either to apply a plain law as it is or to interpret beyond its spirit manifests its purport to install a new law. Nonetheless, its purport to have this power is tantamount to eroding the principle of the separation of powers. Montesquieu's doctrine of the separation of

[55] Manuel Velasquez et al., Justice and Fairness, < https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/> accessed on September 17, 2024

powers[56] is designed to circumvent the tyranny of one state organ over the other state organ.[57]

Thus, according to this principle, it is argued that the roles of the judiciary, of the legislature and the executive must be carefully distinguished, be made independent of each other's and each of these organs is required to exercise its power only within its jurisdiction. Furthermore, it is maintained that, whether the matter before them is civil or criminal, courts ought to be courts not rule-makers.[58] The background design of judicial power is also hinged on the principle, particularly in criminal cases, where the courts should rely and interpret only the law, and that judicial creation of law is an abuse of power to be sternly avoided. Besides, it is also opined that the legislature determined the law while the courts merely applied it to the facts of cases which come before them.[59] This suggests that once the lawmaker enacts plain law, the job of the judicial sector is to apply it.[60]

This truism is not an exception to the Ethiopian case. In fitting the described principle, the FDRE Constitution stipulated the scope and power of the legislative, executive and judicial organs.[61] According to this constitution, the legislative power has not been entrusted to a judicial organ. Owing to this, in the Ethiopian context, some scholars argue that the division has not given the power to change or enact laws. Simeneh, for instance, argued that the power of the division does not include

[56] Max Radin, The Doctrine of the Separation of Powers in Seventeenth Century Controversies, University of Pennsylvania Law Review, < https://www.jstor.org/stable/3308798 > accessed on 02 February 2024

[57] Jeremy Waldron, Separation of Powers in Thought and Practice? Boston College Law Review, Vol. 54:433, 2013.

[58] Strauss (n 47) 421; **ጌታሁን** (n 9)177

[59] Strauss (n 47) 385

[60] **ተክለኃይማኖት** (n 11) 229

[61]This fact can easily be understood from article 50(2), 55, 77, 78 and other pertinent provisions of the FDRE Constitution.

changing the law, either in word or spirit, but rather to interpret it in an approach that sheds light on its application.[62]

As was alluded to, regarding the act of using material forgery to commit a fraudulent misrepresentation offence, article 699 of the code provides a clear limitation to the principle of non-punishable acts of execution preceding or following an offence. As far as the law is clear in word and spirit, the rule is to apply the law as it is. Reluctance to follow this rule is against the doctrine of separation of powers and an appetite to be a tyrant. The position the FSC Cassation Division held in Mu'az's and Abiy's case by disregarding article 699 of the code demonstrates not only its misapprehension of article 61(3) of the code but also the absolute desire of the division to grip binary powers and dishonestly circumvent the doctrine of separation of powers.

Besides, through its position held in Mu'az's and Abiy's case, for all practical purposes, the division repealed or at minimum amended article 699 of the code. Nonetheless, since the power of lawmaking is within the competence of the lawmaker in Ethiopia, as once Mahari[63] asserted, the division's repealing or amending a law is something beyond the interpretation of law and an action which amounts to invading the territory of the House of People's Representatives.

Similar to the other argument of the author,[64] the FSC Cassation Division's position lacks jurisprudential consistency on the same issue.[65] However, the uniform

[62] Simeneh Kros, 'Conspicuous Absence of Independent Judiciary and Apolitical Court in Modern Ethiopia, Mizan Law Review', Vol. 15, No. 2, 2021, P.408

[63] Mahari, (n 11) 45

[64]Fesseha Negash, 'Appraising the Interplay of Ethiopian Cassation Division's and House of Federation's Jurisprudence on (In)applicability Discourse of Period of Limitation to Rural Land: Case Analysis, Hawassa University Journal of Law', Vol. 5, July 2021, pp. 195 - 212

[65] It is argued that the principle that the like cases should receive like treatment is one of the most fundamental principles of any liberal theory of justice. Indeed, some philosophers are of the view that it is the most fundamental principle. It also added that without jurisprudence, it is completely impossible for that principle to be respected. Council of Canadian Administrative Tribunals, Conference - June 2006, Jurisprudence and Consistency, < https://www.ccat-

application and interpretation of legal principles should have been one of the features of the division's decisions. Since one has consistency when cases with like facts produce like results,[66] it is argued that consistency is a *sine qua non* to safeguard the citizen against arbitrariness by the government as a whole and, in particular, by its judges.[67] Conversely, against this maxim, the division held contradictory positions in Zakarisa's and Endashaw's case on one hand and in Mu'az's and Abiy's case on the other hand.

## 5. Conclusion and Recommendations

Through the analysis of four decisions of the FSC Cassation Division, an attempt is made to show that the position the division has held regarding the issue of (non)concurrency of fraudulent misrepresentation and material forgery offences is inconsistent and controversial. The controversy arises not from the vagueness of the Ethiopian criminal law on this issue, but rather from the indecisive position held by the division. The Ethiopian Criminal Code, at article 699, clearly states that the act of deceiving others using forged documents constitutes both fraudulent misrepresentation and material forgery offences. In other words, it constitutes offences of material concurrence. Consistent with this provision, the division adjudicated and decided as such in Zakarias' and Endashaw's cases. Consequently, in the author's view, the position upheld in Zakarias' and Endashaw's cases is the correct interpretation of article 699 of the Criminal Code.

However, later in Mu'az's and Abiy's cases, the division adopted a different stance, which effectively amounts to repealing or, at a minimum, amending article 699 of the code. In doing so, the division oversteps the jurisdiction of the lawmaker and contradicts its previous position without providing convincing justification by thoroughly examining articles 61(3) and 699 of the code. Furthermore, it disregards

ctac.org/CMFiles/Ron%20Ellis/13.JurisprudenceConsistency-CCATconferenceJune2006.pdf > accessed on December 3, 2024

[66] Ibid

[67] Strauss (n 47) 385

its earlier position in the Zakarias' and Endashaw's cases without clearly revising it or indicating that it held a different stance. Thus, the author argues that the position held by the division in Mu'az's and Abiy's cases results from a misapprehension of articles 61(3) and 699 of the code.

As a result, the author contends that granting the division unrestricted discretion to alter its previously held position and deviate from the clear letter and spirit of the law is not the right decision. Therefore, there is a need for legislative intervention regarding how to revise its past positions and the implications of the division's holdings that contradict the clear letter and spirit of the law in the lower courts. Hence, the Federal Courts' proclamation should be revised to provide clear rules on the revision of previously held positions and the impact of the division's decisions that disregard clear and appropriate law. In other words, the outcome of the division's contradictory interpretations must be resolved legislatively.

On the other hand, the division must develop a consistent jurisprudence on the procedure for revising its prior holdings. Moreover, it should also establish a clear jurisprudence that prevents the division from encroaching on the jurisdiction of the lawmaker. Lastly, it is recommended that the FSC arrange annual workshop(s) on the roles of the division and its practices.

## Conflict of Interest

The author declares no conflict of interest.