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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**QUESTIONNAIRE ON THE EXECUTION
OF CONSTITUTIONAL COURT DECISIONS**

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For the purposes of the present questionnaire, «constitutional court decisions» comprise constitutional review decisions of constitutional courts and equivalent bodies.

Note

In the response to questions I and II, the following should be taken into consideration :

A. The type of constitutional review and its subject :

1. Constitutional review of normative acts
 - a. preliminary review
 - b. abstract or principal review (direct claim of unconstitutionality)
 - c. concrete or incidental review of norms
2. Review of unconstitutional omission of legislation (failure of the legislator to act when it is obliged to do so by the Constitution)
3. Decisions concerning the protection of constitutional rights (Verfassungsbeschwerde, amparo)
4. Other areas constitutional court jurisdiction (examples : unconstitutionality of political parties, referenda, conflicts between infra-state entities, conflicts between state bodies)

B. The effects of constitutional court decisions :

1. Concerning normative acts :
 - a. Are constitutional court decisions merely declaratory ?
 - b. Is the norm which is declared contrary to the Constitution null and void, or annulled immediately ? Can the constitutional court modify the norm ?
 - c. Must the decisions be implemented (i.e. by repealing the norm) by another organ ?
 - d. Can the effects of annulment be postponed ?
 - e. Do the effects of the decisions go beyond the individual case, where incidental concrete review of norms is concerned ? What is the position regarding similar cases which have already been the subject of a final decision ?
 - f. Can the constitutional court order another authority to act ? Within a fixed period of time ?
2. Concerning protection of constitutional rights :
If the constitutional court quashes a decision by a public authority (administration, court, etc.) :
 - a. Is it sent back to the original authority for a new ruling ? or
 - b. Does the constitutional court decide on the matter ?
3. Furthermore, do decisions by constitutional courts have :
 - a. binding force (binding the constitutional court itself) ?
 - b. *res iudicata* force (*inter partes*; *erga omnes*) ?
 - c. force of law (see for instance § 31.2 of the German law on the constitutional court) ?
 - d. are they published in an official journal ? What happens if a decision declares that a norm will become unconstitutional if it is not modified within a certain period ?

Do the answers to the previous questions depend on the type of constitutional review (for example : concrete/abstract control) ?

I. What means are available to ensure the execution of constitutional court decisions ?

The response to this question should take account of the legislation concerning the execution of constitutional court decisions, either by other courts or by executive bodies. In particular :

1. Is there a norm indicating which authority has to execute the judgments of the constitutional courts ?
2. If not, is there a norm providing that the constitutional court or any other authority has the power to designate the body which will execute the decisions of the court ? How does the system work in practice ?

II. What are the consequences if constitutional court decisions are not executed or are not executed within a reasonable time ?

III. Cases where decisions are not executed

- A. Have there been any recent cases where a constitutional court decision has not been executed in your country ?
- B. If so, is it possible to identify the reasons why the decision was not executed (eg. political or financial reasons, lack of clarity in the decision, inadequate rules on the execution of decisions) ?

IV. Cases of unsatisfactory execution

In certain cases, even where a decision of a constitutional court has been executed, the situation remains unsatisfactory because an unconstitutional norm continues to be applied.

- A. Has such a situation arisen recently in your country ?
- B. What are the causes of such a situation ? Do they stem from the effects of the constitutional court decision (absence of *erga omnes* effect, declaratory nature of the decision), or from other causes, such as those mentioned in III.B above ?

Concerning points III and IV, did specific problems arise when decisions of ordinary higher courts were declared contrary to the Constitution ?