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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**Seminar on the Execution of the Decisions
of the Constitutional Court**

28-29 October 1999 – Kyiv, Ukraine

S Y N O P S I S

Title of activity

Seminar on the Execution of the Decisions of the Constitutional Court

Field of activity:

Constitutional Justice – Venice Commission

Constitutional Law / Co-operation with Constitutional Courts

Type of activity: Seminar

Programme: EC/CoE Joint programme – UKR.III.B.5

Country: Ukraine

Date and place: 28-29 October 1999 – Kyiv, Ukraine

CoE experts:

Prof. J. Garcia Roca, University of Valladolid, Spain

Prof. P. Paczolay, Secretary General, Constitutional Court, Budapest

Prof. C. Pinelli, University of Macerata, Rome, Italy

Mr. F. Sundberg, Head of Section, Directorate of Human Rights, Council of Europe, Strasbourg

CoE Secretariat:

Schnutz Rudolf DÜRR, Secretariat of the Venice Commission

Participants (role/capacity):

Judges and staff of the Constitutional Court, representatives from the Constitutional Court of Azerbaijan, the Constitutional Court of Belarus, the Ukrainian Parliament, the Cabinet of Ministers, the Presidential administration, the Ministry of Justice.

Total number of participants: 61

Partner institutions/organisations:

Constitutional Court of Ukraine

Origin/reference to other activities:

This seminar was held as part of the Joint Programme between the European Commission and the Council of Europe for reform of the legal system and local government and the transformation of the law enforcement system in Ukraine. Following a request from the Constitutional Court of Ukraine, the Venice Commission organised this event within its series of seminars in co-operation with constitutional courts (CoCoSem).

Objectives:

To draw the attention to the problem of non-execution of decisions of the Constitutional Court of Ukraine and to find appropriate remedies.

General evaluation:

The seminar helped the Court in highlighting the difficulties it faces and raised the awareness of the participants from all branches of power for the need to implement decisions by the Constitutional Court, be they welcome or not. The non-execution of these decisions undermines not only the authority of the Constitutional Court but of the State as such. There was general consensus that the decisions of the Constitutional Court have to be implemented in order to comply with the requirements of a state ruled by law. Some participants doubted however that it would be appropriate that the Court indicates in its decisions in which way they are to be implemented and that the Court requests information from the other State authorities about the implementation of its decisions. These possibilities are foreseen in Article 70 of the Law on the Constitutional Court. The Court on the other hand insisted that it was obliged to use these measures because of already existing problems of execution of its decisions.

Results/conclusions:

Speakers from the Court pointed out that provisions on criminal liability for the non-execution of decisions of the Constitutional Court which had been foreseen in Article 70 of the Law on the Court had not been enacted. Provisions on the contempt of ordinary courts could not be applied in analogy. One striking example of non-execution concerned a decision of May 1998 which declared the incompatibility being a civil servant of a town or a region and to be its elected mayors or head of administration at the same time. Many of the persons concerned were still in office not having resigned as mayor or head of regional administration and still held their post as a civil servant. In order to overcome such problems, the Court would have to make more use of the means Article 70 of the Law on the Court gave it at hand.

The international rapporteurs (Hungary, Italy, Spain) insisted that the principle of the rule of law requires that court decisions and in particular decisions by the Constitutional Court are executed by the other state authorities. They underlined that while in the past public authorities sometimes had been opposed to decisions by the Constitutional Court they had in practically all cases respected these decisions and implemented them. The relationship with ordinary courts had in some cases been more difficult when these courts refused to apply the reasoning of the Constitutional Court in their own decisions. A coherent system of interpretation of the Constitution by the Constitutional Court, based on legal doctrine and referring to the case-law of other constitutional courts is bound to give added legitimacy to the decisions of the Court.

As concerns the decisions of the European Convention on Human Rights, it was pointed out that following decisions by the European Court of Human Rights many states had amended their legislation in order to bring it in conformity with these decisions. Even more important for constitutional courts was the fact that the non-execution of their decisions which concerned civil rights and obligations or a criminal offence could result in a violation of Article 6 of the Convention. Such a case was open to a complaint to the Strasbourg Court.