Strasbourg, 6 July 2009 **CDL-JU(2009)010**

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

8th MEETING OF THE JOINT COUNCIL ON CONSTITUTIONAL JUSTICE

"Mini-conference"
on
Effects and execution of constitutional review decisions

Tallinn, 19 June 2009

WRITTEN CONTRIBUTION FOR THE "MINI-CONFERENCE"

"CONSTITUTIONAL COURT DECISIONS – SLOVENIA"

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Constitutional Court Decisions - SLOVENIA

1. Does the Constitutional Court have the competence or the instruments to shape the consequences of its decisions (particularly concerning the contents of the legal norm after the decision has been issued, the binding time of the norm etc)?

The Constitutional Court Act in the third paragraph of Article 1 determines that the decisions of the Constitutional Court are binding.

Legal consequences of the Constitutional Court's decisions are stipulated in Articles 43 to 48 of the Constitutional Court Act. The Constitutional Court may in whole or in part abrogate a law which is not in conformity with the Constitution. Such abrogation takes effect the day following the publication of the decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court. The Constitutional Court annuls or abrogates regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful. The Constitutional Court annuls such acts when it determines that it is necessary to remedy harmful consequences arising from such unconstitutionality or unlawfulness. Annulment has retroactive effect. In other instances, the Constitutional Court abrogates such acts. Abrogation takes effect the day following the publication of the Constitutional Court decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court.

The Constitutional Court deems a law, other regulation, or general act issued for the exercise of public authority unconstitutional or unlawful as it does not regulate a certain issue which it should regulate (i.e. legislative omission) or it regulates such in a manner which does not enable annulment or abrogation, a declaratory decision is adopted on such (Article 48 of the Constitutional Court Act). If necessary, the Constitutional Court determines which authority must implement the decision and in what manner. The legislature (or authority which issued such unconstitutional or unlawful regulation or general act issued for the exercise of public authority) must remedy the established unconstitutionality or unlawfulness within a period of time determined by the Constitutional Court. This legislature's duty to fill a gap in the law follows from Article 2 (the principle of a state governed by the rule of law) and Article 3 of the Constitution (the principle of the separation of powers).

As a general rule, the legislature (i.e. the National Assembly) reacts promptly to the decisions of the Constitutional Court. However, every year there remain several cases of established unconstitutionality that are not remedied. The Constitutional Court draws special attention to to such cases and to the necessity that Constitutional Court decisions be respected in its annual report on the work of the Constitutional Court.

If the legislature does not respect a time-limit which the Constitutional Court determined on the basis of Article 48 of the Constitutional Court Act, the Constitutional Court may in the event of the repeated review of such regulation establish that the legislature violates Articles 2 and 3 of the Constitution. There is also a possibility of an intensification of sanctions.

The case in which the Constitutional Court in a repeated review intensified the sanction:

The Constitutional Court decided by Decision No. U-I-17/94, dated 13/10-1994, Official Gazette RS, No. 74/94 and OdlUS III, 113, that Article 51 of the Compulsory Composition, Bankruptcy and Liquidation Act, which as a method of financial reorganisation of a company also determined the reduction of the number of employees employed with a debtor, is inconsistent with the Constitution because the legislature did not regulate the rights of employees whose employment is terminated on the basis of this provision with a special law in compliance with the second paragraph of Article 8 of the same act. This decision required that the legislature

adopt such a law within six months of its publication in the Official Gazette RS. In the reasoning of the decision it drew attention to the fact that the rights of redundant employees of insolvent companies must be regulated retroactively, from the day of the implementation of the Compulsory Composition, Bankruptcy and Liquidation Act. The time-limit for remedying the unconstitutionality expired on 31 May 1995.

The first applicant in his request of 28 June 1995 alleged that the legislature did not respect the Constitutional Court decision. In the opinion of the applicant a gap in the law thus arose, as the Constitutional Court adopted the standpoint that the rights of employees in cases determined in Article 51 the Compulsory Composition, Bankruptcy and Liquidation Act were not regulated by the Employment Relations Act, which determines the rights of redundant employees, whereas employees who lose or have lost their jobs due to the commencement of compulsory composition procedure are not protected by a special act with retroactive effect, as such act was not adopted. The applicant therefore again alleged the violation of the principle of a state governed by the rule of law (Article 2 of the Constitution). In addition, he alleged that by not respecting the Constitutional Court decision the legislature undermined the authority of the Constitutional Court. He proposed that Article 51 of the Compulsory Composition, Bankruptcy, and Liquidation Act be annuled.

The third paragraph of Article 161 of the Constitution determines that the legal consequences of Constitutional Court decisions be regulated by law. In addition, the second paragraph of Article 48 of the Constitutional Court Act determines that the legislature must remedy the established unconstitutionality within a period of time determined by the Constitutional Court. In the discussed case, the legislature did not respect the statutory provision based on the constitutional provision, although it is one of the fundamental rules of a state governed by the rule of law (Article 2 of the Constitution) that legality must be respected first by the legislature itself. Such conduct of the legislature is unfortunately not an isolated example. Also in cases No. U-I-104/92, dated 7/7-1994, Official Gazette RS, No. 45/1 and OdlUS III, 86; U-I-42/94, dated 6/10-1994, Official Gazette RS, No. 67/94 and OdlUS III, 97; U-I-48/94, dated 25/5-1995, Official Gazette RS, št. 37/95 and OdlUS IV, 50; and U-I-47/94, dated 19/1-1995, Official Gazzete, No. 13/95 and OdlUS IV, 4, the legislature did not remedy the established unconstitutionality in six laws reviewed within the period of time determined by the Constitutional Court, and the delays still exist at the time of the present deciding**.** It is thus not an isolated coincidental oversight of this obligation or a minor delay caused by unforeseeable circumstances: the National Assembly clearly already in planning its work does not comply with the rule that it is necessary to remedy an established unconstitutionality within the determined period of time.

The legislature thereby gravely violated the principle of a state governed by the rule of law, as well as the principle of the separation of power (the second paragraph of Article 3 of the Constitution).

Respecting the principle of the separation of powers, namely, entails not only that none of the branches of power interferes with the competencies of another branch, but also that none of them neglects activities which they are obliged to perform within their sphere of activities - especially when such an obligation has been imposed by a judicial decision. The Constitutional Court, in compliance with its constitutional function, is all the more obliged to draw attention to such, in view of the fact that the Constitution, understandably, does not envisage such violations of fundamental rules for exercising power in compliance with the principles of a state governed by the rule of law, and thus also no systemic measures against it.

In the discussed case, the gravity of the unconstitutionality is that much greater because - as follows from the statutory text - the legislature should have at the same time as at the implementation of the Compulsory Composition, Bankruptcy and Liquidation Act, and the challenged Article 51, separately enacted the special rights of employees, and that the delay

has already lasted since January 1994, thus at the time of this deciding of the Constitutional Court, already for 22 months, of which it was warned by the submission of the request of the applicant in 1994, by Decision No. U-I-17/94 of the same year (cited above), and the time-limit to remedy the unconstitutionality determined in this decision, which expired on 31 May 1995. The legislature was informed of a new request for the abrogation of Article 51 on 5 September 1995, and did not answer it. On the other hand, special importance is attributed to the unconstitutionality by the fact that it is a case of a legal position regarding which it is highly probable that it may cause difficult to remedy harmful consequences to individuals.

All these signs indicate that it is not simply a delay in adopting a planned law. The Constitutional Court must, on the contrary, in cases in which it encounters the above-mentioned statutory situation on the basis of both requests in the new procedure to review constitutionality, also count upon the possibility that the legislature does not intend to adopt, or will not adopt, the planned and mandated law.

As regards the above-mentioned, the Constitutional Court, upon reviewing a new petition, decided that Article 51 of the Compulsory Composition, Bankruptcy and Liquidation Act on the termination of employment as a measure for financial reorganisation cannot be applied until the statutory provisions on the special rights of employees enter into force, as determined in the second paragraph of Article 8 of the same act. Such decision was rendered on the basis of the *mutatis mutandis* interpretation of the first sentence of Article 43 of the Constitutional Court Act by applying the interpretation *a maiori ad minus*: according to this provision the Constitutional Court may annul a law, it may, as this is a less grave interference than annulment, also suspend (temporarily excludes it from application) in cases – as in the present case – of endangered constitutional values that cannot be protected in a usual manner. In the present case, the Constitutional Court chose such exceptional manner of deciding because according to the constitutionally established unconstitutionality of a law, the legislature did not do anything to remedy the established unconstitutionality of a statutory regulation which interferes with important constitutional values (especially the principles of a state governed by the rule of law and a social state), and the annulment of a deficient statutory provision is not possible or does not make any sense. Also suspension of a disputable statutory provision will have certain negative consequences (temporary impossibility of the use of one of the methods of compulsory composition), however, respecting the principle of proportionality, the Constitutional Court nevertheless decided on it because in its judgement it is the mildest means by which it can be achieved that constitutional values are respected regarding the persons affected by the established unconstitutional statutory regulation, and at the same time respecting the principle of the separation of powers (Decision, No. U-I-114/95, dated 7/12-1995, Official Gazette RS, No. 8/95 and OdlUS IV, 20).

A case in which the Constitutional Court decided that an intensification of the sanction was not possible:

The petitioner challenged the statutory provision which the Constitutional Court had already established to be inconsistent with the Constitution and determined that the legislature must remedy the established unconstitutionality within a certain period of time. In had already reasoned in the first decision why it decided to render a declaratory decision.

The National Assembly did not remedy the established unconstitutionality within the determined period of time, and therefore the petitioner filed another similar petition in which he proposed that the Constitutional Court annul the statutory provision which it had already established to be inconsistent with the Constitution. In this case, the Constitutional Court decided that the expiry of the period of time in which unconstitutionality should have been remedied cannot by itself influence the Constitutional Court's decision, as all the reasons for which the provisions could not be annuled previously still exist, and thus it dismissed the

petition for the review of the constitutionality as unfounded (Order, No. U-I-168/97, dated 3/7-1997, OdlUS VI, 103).

2. Does the Constitutional Court have the competence or instruments to shape the so called "temporary consequences" of the decisions, such as e.g. a suspension of the binding force of the normative act until the decision has been issued?

Article 39 of the Constitutional Court Act determines that until a final decision, the Constitutional Court may suspend in whole or in part the implementation of a law, other regulation, or general act issued for the exercise of public authority if difficult to remedy harmful consequences could result from the implementation thereof. If a participant in proceedings motions for a suspension, and the Constitutional Court deems the conditions for the suspension not to be fulfilled, it dismisses the motion by an order.

If the Constitutional Court suspends the implementation of a regulation or general act issued for the exercise of public authority, it may at the same time decide in what manner the decision is to be implemented.

The order of the Constitutional Court is published in the Official Gazette of the Republic of Slovenia as well as in the official publication in which the respective regulation or general act issued for the exercise of public authority was published. Such suspension takes effect the day following the publication of the order in the Official Gazette of the Republic of Slovenia, and in case of a public announcement of the order, the day of its announcement.

When dealing with a constitutional complaint under Article 58 of the Constitutional Court Act the panel or the Constitutional Court may suspend the implementation of the individual act which is challenged by the constitutional complaint at a closed session if difficult to remedy harmful consequences could result from the implementation thereof, if a constitutional complaint is accepted.

Article 56 of the Rules of Procedure of the Constitutional Court of the Republic of Slovenia stipulates that the Constitutional Court considers proposals for the temporary suspension of the implementation of laws, regulations, and general acts issued for the exercise of public authority in a manner such that the judge rapporteur submits a report and a draft decision to the other Constitutional Court judges. If none of the Constitutional Court judges declares his opposition to the draft decision within eight days or within a time limit determined by an order of the Constitutional Court, such decision is adopted. If any Constitutional Court judge declares his opposition to the draft decision within the time limit referred to in the preceding paragraph, deciding on the draft decision is placed on the agenda of the next session.

3. Should the answer to these questions be positive, are those competences statutory or are they based solely on the Court's case-law?"

The mentioned competences are statutory.

4. Temporary Orders

Pursuant to the regulation in force, a temporary order may refer to both a general and an individual act. It could be applied in the proceedings of an abstract review, a constitutional complaint as well as impeachment. The Constitutional Court considers this type of decision-making to be its own discretionary right. The disputed provision formally still remains in force, but it is prohibited to use it. Accordingly, the temporary order (because of the temporary situation as well as due to legal security) can not be legally implemented by itself, unless the Constitutional Court itself specifies the respective implementation mode.

The Constitutional Court can adopt a temporary order either with a special ruling (if the proceedings is initiated on the request of a privileged applicant) or with a ruling on a general subject. If the Constitutional Court adopts a special ruling on a temporary order, but the constitutional proceedings are subsequently discontinued, the Constitutional Court, by issuing a ruling that discontinues the proceedings, explicitly orders that the temporary order itself is no longer in force either. Otherwise the term of the temporary order is considered to expire according to the final Court decision.

Whether the applicant's proposal for a temporary order is accepted or refused depends on the decision of the Constitutional Court. The Court weighs whether not-easily-reparable damages are probable, which could justify the temporary order. On the other hand, it may also weigh the possible damages following the adoption of the temporary order. Accordingly, the Court decides not to adopt the temporary order if it is of the opinion that the damages resulting from the temporary order might exceed the risk of an unconstitutional interpretation of the disputed legal provision in a concrete case. The Constitutional Court may refuse the applicant's request for a temporary order with a special ruling, but may do it in a ruling on the non-acceptance of a popular complaint.

Suspending the implementation of an act can be total or only partial provided that the implementation thereof could involve not-easily-reparable consequences . If during the term of the temporary order the consequences of the respective ruling are interpreted in different ways, the Constitutional Court may, by a special decision, specify the manner its decision must be implemented.

With reference to the Slovenian system, a temporary order is not limited in time, as in the German constitutional review system (Para. 6 of Article 32 of the *Federal Constitutional Court Act/BverfGG*). The ultimate limit of its duration extends to the issuance of the relevant final Constitutional Court decision. However, the Constitutional Court is free to order the termination of its validity at any time during its term.

Concerning temporary orders in the Slovenian system, the constitutional court decisions may be as follows:

The Abstract Review

- An abstract review can result in the possible stay of the implementation of a general act pending a final decision.

The Constitutional Complaint

- A ruling on the suspension of the implementation of an individual act which is the subject of a constitutional complaint can be issued while deciding on a constitutional complaint.
- A ruling on the possible suspension of the implementation of a general act pending a final decision can be issued while deciding on a constitutional complaint. The above mentioned possibility of a temporary order parallels the temporary order foreseen in the abstract review proceedings.

The Constitutional Court may decide on a temporary order on a general act only in a plenary session, not also in an *a camera* session.

The Constitutional Court decides on temporary orders in proceedings examining a constitutional complaint and/or may suspend the implementation of a disputed individual act

only if the constitutional complaint is accepted. If procedural prerequisites are lacking and/or if the constitutional complaint is not accepted, the Constitutional Court does not decide on the applicant's request for a temporary order.

Other (Specific) Proceedings

The court may issue a decision suspending the President/Prime Minister/Ministers from office - while deciding on impeachment. The Constitutional Court may decide for such a temporary prohibition by a two-thirds majority of votes of all judges.

5. Contents and the effects of decisions

Contents

5.1. Abstract Review

The following forms are possible, particularly concerning the Slovenian system of constitutional review:

- The abrogation (*ex nunc*) in whole or in part of unconstitutional statutes is effective immediately or within such a period of time, not exceeding one year, as specified by the Constitutional Court.

The regulation in force allows to the Constitutional Court to abrogate a general act with deferred effect, *i.e.* the respective decision comes into effect on the expiry of the period specified by the Constitutional Court. In this case, too, the Constitutional Court evaluates whether the specific circumstances of the respective case justify such a measure. On one hand the reasons for an abrogation with deferred effect are opposite to the reasons for a temporary order: the absence of the direct risk that the further implementation of the general act could cause considerable or even irreparable damage. On the other hand, however, the Constitutional Court may, as a rule, impose this measure whenever it chooses to avoid a legal gap resulting from abrogation when it presumes that the legislature would be able to change the unconstitutional or unlawful provision in the respective period and to bring it into conformity with the Court's decision.

Besides deciding upon constitutional complaints regarding violations of human rights, the most important new element is that the Slovenian Constitutional Court is empowered to abrogate (*ex nunc*) a statute directly. Due to the Principle of the Unity of Powers and the Supremacy of the Parliament, the former function of the Constitutional Court focused on assessing the unconstitutionality of a statute. This changed into an active relationship not only involving the abrogation of statutes, but also offering guidance to the legislature for the creation of Law. However, the Constitutional Court agreed to allow the legislature the opportunity to review disputable regulations within a due period of time, following the guidelines of the Constitutional Court in a specific decision.

In this way the Court assumed the role of a "negative legislature". In a period of transition the legislature is not always able to follow developments nor to impose standards for all shades of the legal system and its institutions. The so-called interpretive decisions issued by the Constitutional Court and the appellate decisions include certain instructions from the Constitutional Court to the Legislature on how to settle certain questions or specific issues. However, in compliance with the Principle of Judicial Self-Restraint, a clear limit has been imposed on the Slovenian Constitutional Court by the Court itself, which indicates that the Constitutional Court has already been creating legal rule (usually reserved for the Legislature). On the other hand, there is the question whether the Constitutional Court actually creates the law, because it also involves the review of legislative activity. In any case, the Legislature cannot avoid the existence of contemporary Slovenian Constitutional Case-Law in its activity.

- The abrogation (*ab initio*/*ex tunc* or prospectively/*ex nunc*) of other unconstitutional or unlawful executive regulations and other general acts.
- The declaration of the unconstitutionality and illegality of statutes, other general acts or general acts for the exercise of public powers which were made to conform to the *Constitution* and statute or which cease to be valid if the consequences of their unconstitutionality or illegality are not eliminated.
- The declaration of the unconstitutionality or illegality of a statute, other general act or a general act for the exercise of public powers because a certain matter which it should have regulated was not regulated or is regulated in a manner which makes it impossible to be abrogated retroactively (*ex tunc*) or prospectively (*ex nunc*). The Legislature or body which issued such unconstitutional or illegal general act must abolish the ascertained unconstitutionality or illegality within the period set by the Constitutional Court. The *Constitutional Court Act* has not foreseen any "sanction" if the Legislature fails to bring the disputed provision into conformity with the *Constitution* following the Court decision. The Legislature is bound only by the general provision on legally binding decisions of the Constitutional Court. The disputed regulation remains in force, and this has been confirmed by constitutional case-law.
- Any affected person is entitled, based on a Constitutional Court decision regarding the constitutional review of general acts, to request an amendment or retroactive abrogation (*ex tunc*) of an individual act or the elimination of detrimental consequences or even claim damages within three months from the day of the publication of a Constitutional Court decision.

5.2. The Constitutional Complaint

The following results are possible:

- The abrogation, retroactive (*ex tunc*) or prospective (*ex nunc*), of an individual act and return of the case to the empowered body.
- The abrogation, retroactive (*ex tunc*) or prospective (*ex nunc*), of a general act (while deciding on a constitutional complaint).
- The final decision on a contested human right or freedom based on a constitutional complaint (entailing the replacement of the disputed individual act by the Court decision), in the case of a retroactive abrogation (*ex tunc*) of an individual act, if such proceedings is necessary in order to eliminate consequences that have already occurred on the basis of the abrogated individual act, or if such is the nature of the constitutional right or freedom, and if a decision can be reached on the basis of the information in the document. At first the above power of the Constitutional Court gave rise to a discussion of whether in this case the Constitutional Court represented an instance above the ordinary courts (especially above the Supreme Court). Present constitutional case-law, however, proves that the Constitutional Court is limited to the evaluation of pure constitutional issues, *e.g*. to the strict evaluation of breaches of certain constitutional rights.

5.3. Other (Specific) Proceedings

Other proceedings, mainly adopted by systems of constitutional review, can result in the following:

- Stating the empowered body in jurisdictional disputes.
- Finding a proposal for impeachment to be unfounded.
- Deciding on the grounds for an impeachment/deciding on the suspension of the President's/Prime Minister's/Ministers office.
- The annulment of an unconstitutional political party act or activity, or an order requiring a deletion from the register of political parties.

- The annulment of a decision of the National Assembly, or a decision on a representative's election.
- An obligatory opinion on the conformity of international treaties with the *Constitution*.
- A declaration of the unconstitutionality of a request concerning a call for a referendum.

5.4 The Appointment of a Body Empowered to Implement Court Decisions

If necessary, the Court specifies which body must implement its decisions (regarding the constitutional review of general acts), and in what manner. The Constitutional Court may order the temporary suspension of the implementation of individual acts, based on a general act abrogated by the Court decision.

The replacement of a disputed individual act by a Court decision is implemented by the body empowered for the implementation of the individual act retroactively abrogated (*ex tunc*) by the Constitutional Court and replaced by the decision of the same. If there is no such empowered body according to the current regulations, the Constitutional Court appoints one.

5.5. Effects

Under the main accepted principle of constitutional review systems, the decisions of the Constitutional Court are binding and produce effects *erga omnes*.

Exceptions to this rule are constitutional complaints and jurisdictional disputes where decisions have effect only *inter partes*, but even here effects are felt *erga omnes*, when the Constitutional Court acts *ex officio*

5.6. The Rehearing of the Proceedings before the Constitutional Court

The decisions of the Constitutional Court are binding (*e.g.* Para. 3 of Article 1 of the *Slovenian Constitutional Court Act*, Official Gazette RS, No. 15/94) and executable (Para. 2 of Article 40 of the *Slovenian Constitutional Court Act*). The rules concerning the proceedings before the Constitutional Court do not include any exceptional legal remedy against a Constitutional Court decision, which also includes any rehearing or, in general, repetition of proceedings concerning an already adjudicated constitutional dispute.

The problem of rehearing proceedings was discussed in constitutional theory and practice in the eighties[1]. The discussions looked for inspiration in foreign systems, however not in the American system, which includes accessory constitutional review in ordinary cases with an in *inter partes* judgment effect of the judgment, but first of all in the Austrian and Italian systems[2]; even though also in these systems the rehearing of proceedings is excluded. Therefore, there were some proposals[3] concerning the subsidiary implementation of rules of other proceedings for the rehearing of proceedings before the Constitutional Court following the example of the regulation governing re-hearings in administrative disputes: *i.e.* on the grounds of a worse violation occurring during the proceedings, or on the grounds of a particular criminal offence, when a party uncovers new facts or they have an opportunity to be able to submit new evidence with which a case may have been adjudicated more advantageously for the party if such facts or evidence had been submitted in the previous proceedings. First of all, a rehearing in a constitutional dispute (taking into consideration its particularities, because the object of adjudication in such a dispute is a normative act) would be reasonable if after the issuance of the Constitutional Court decision, new facts or evidence were uncovered which, if they had been known and applied previously, would have caused a different Constitutional Court decision. The rehearing of proceedings would be

1 Globevnik, *Problem obnove v ustavnem sporu*, Pravnik, No.. 4-6/82,p. 82.

2 Globevnik, *Problem obnove*, p. 82.

3 Globevnik, *Problem obnove*, p. 83.

reasonable in all kinds of Constitutional Court decisions, except when the Constitutional Court by its previous decision has abrogated or annulled a particular normative act[4]. If the re-hearing could be implemented in the case of such a normative act, and the previous Constitutional Court decision on an abrogation or annulment were abolished, the Constitutional Court would without competency, in fact, enter into the normative function of the legislature or other author of normative acts which determine the legal order in a particular field.

Concerning the conditions or reasons for rehearing, the same reasons may be applied as for the rehearing of an administrative dispute. In view of what has been explained above, in a constitutional dispute it would not be reasonable in a rehearing to abolish a previous Constitutional Court decision and to replace such a decision with a new one on the grounds that in the confrontation of a normative act with a certain constitutional or statutorial provision, such a provision had not been correctly interpreted and was mistakenly legally implemented. However, this does not mean that the Constitutional Court may not even without a formally held rehearing proceeding following a request of a party in the same case, and in a special proceeding, revise the Court's previous decision. In the constitutional case-law of the former Yugoslavia, in some cases a case before the Constitutional Court was reheard, the previous Constitutional Court decision was overturned and replaced by a new one[5]. The rehearing of a Constitutional Court case is not a rehearing in the classical judicial sense (despite the subsidiary implementation of rules concerning judicial proceedings). As a matter of fact, it is a special kind of rehearing of Constitutional Court proceedings that may result in the overturning of the previous Constitutional Court decision and its replacement with a different new decision.

Properly speaking, the Constitutional Court is internally procedurally bound by the text of its decision and/or with the "irrevocability" of the decision[6]. Such irrevocability means that the Constitutional Court may not abrogate or change a decision which has already been issued. "Any promulgated or issued decision is no longer in the disposition of the Constitutional Court "[7].

Consequently, the decisions of the Constitutional Court are indisputable for the parties. However, as an exception it is necessary to consider the *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 4 November 1950, which gives individuals the right to the so-called individual complaint against a national final Constitutional Court decision.[8] Because there is no (national) legal remedy against Constitutional Court decisions, they become formally final when issued.

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4 Globevnik, *Problem obnove*, p. 84.

5 Globevnik, *Problem obnove*, p. 85.

6 *Unwiderruflichkeit*, Jochen Abr. Frowein - Thilo Marauhn, Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und OstEuropa, Cremer, *Die Wirkungen verfassungsgerichtlicher Entscheidungen*, Springer, Band 130, 1998, p. 249.

7 Jochen Abr. Frowein, Thilo Marauhn, *Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa*, Springer, Band 130, 1998, p. 249.

8 The individual complaint under Article 25 of the Convention is an extraordinary legal remedy similar to the constitutional complaint (Stackelberg, 87). The Court deals with the case only if all national legal remedies have already been exhausted in accordance with generally accepted principles of international law. **Furthermore, the constitutional complaint before the Constitutional Court (if it is introduced in a particular national legal system), which is the sole subsidiary legal remedy, follows the exhaustion of legal remedies; this is confirmed also by permanent European constitutional case-law)** (Stackelberg, 93; Matscher, Der Rechtsmittelbegriff, 266; Nedjati, 16 in 18, Klecatsky, 544; Schmalz, 132). The individual has to exhaust, in a particular case, all legal remedies allowed by the national legal order, including the constitutional complaint (Bleckmann, 45).

Sources:

In a majority of Constitutional Court systems, Constitutional Court decisions are declared final, sometimes they are explicitly defined as irrevocable[9]. In this way, constitutional courts are prevented from changing their decisions after their enforcement, with the exception of corrections of obvious incorrectness[10]. So, constitutional courts are completely internally-procedurally bound by their own decisions.

However, the generally accepted principle of the irrevocability of constitutional court decisions are loosened or even partially waived by particular systems. A certain "relaxation" of the aforementioned principle means that such systems authorise the constitutional courts to interpret their own decisions[11]. Such systems relativise the finality of Constitutional Court decisions.[12]

On the other hand, the Byelorussian, Lithuanian and Ukrainian systems authorise the Constitutional Court to change its decision *ex officio* subsequently, without any external request or petition[13]. The Byelorussian and Lithuanian system require the necessary condition that some circumstances become known which had not been known by the Constitutional Court when issuing its decision, or that the constitutional provision which was the basis for the Constitutional Court decision was changed[14]. The Lithuanian system requires that in such cases the Constitutional Court have an appropriate new decision[15]. Under the Ukrainian system the required condition is that new circumstances are discovered connected with the case which

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1. dr. Bleckmann Albert, Staatsrecht II - Die Grundrechte, 3. Auflage, Koeln, 1989, p. 29-46
2. Klecatsky-Oehlinger, Gerichtsbarkeit des oeffentlichen Rechts, Manz Verlag, Wien, 1984, p. 517, 540.
3. Matscher dr. Franz, Der Rechtsmittelbegriff der EMRK, Festschrift fuer Winifried Kralik, Wien, 1968, p. 257
4. Nedjati Zaim M., Human Rights under the European Convention, North-Hollang Publishing Company, Amsterdam-New York-Oxford, 1978, p. 13-20
5. Schmalz Dieter, Grundrechte, 2. Auflage 1991, Nomos Verlagsgesellschaft, Baden-Baden, p. 25-26, 131-133
6. Von Stackelberg Curt Freiherr sen.& jun., Das Verfahren der deutschen Verfassungsbeschwerde und der europaeischen Menschenrechtsbeschwerde, Koeln, 1988, p. 85.

9 *e.g.* Para. 3 of Article 26 of the Albanian *Constitution* (No. 7561); Para. 4 of Article VI of the *Constitution of the Federation of Bosnia and Herzegovina;* Para. 5 of Article 14 of the *Bulgarian Constitutional Court Act;* Para. 2 of Article 107 of the *Lithuanian Constitution* and Article 59 of the *Lithuanian Constitutional Court Act;* Para. 3 of Article 112 of the *Macedonian Constitution*; Para. 2 of Article 140 of the *Moldavian Constitution*; Para. 1 and 4 of Article 82 of the *Constitution of Kyrgyzstan*.

10 *e.g.* Article 58 of the *Lithuanian Constitutional Court Act*.

11 Para. 5 of Article 26 of the *Albanian Constitution*, No. 7561; Article 61 of the *Lithuanian Constitutional Court Act*; Article 83 of the *Russian Constitutional Court Act* and Article 41 of the *Belorussian Constitutional Court Act*.

12 In addition, it is interesting to note that by the provision of Para 3 of Article 61 of the *Lithuanian Constitutional Court Act*, the Constitutional Court has to interpret its own decisions in such way that the contents do not change. The request for such an interpretation is not permissible if the request does not concern the same disputed object, but may lead to the issuing of a new decision (Decision of the Lithuanian Constitutional Court of 21 September 1994, published in the Official Digest, No. 3/1995, 111).

13 Article 42 of the *Belorussian Constitutional Court Act*; Article 62 of the *Lithuanian Constitutional Court Act*; Article 68 of the *Constitutional Court Act*.

14 Article 42 of the *Belorussian Constitutional Court Act*; Para, 1 of Article 62 of the *Lithuanian Constitutional Court Act*.

15 Para 2 and 3 of Article 62 of the *Lithuanian Constitutional Court Act*.

were not previously discussed which existed at the time the case was discussed and decided[16]. In addition, the Byelorussian Constitutional Court is empowered to intervene in such cases *ex officio*[17]. The Lithuanian Constitutional Court, however, may react only on the basis of an "external" request[18]. Otherwise, the mentioned systems do not determine a legal remedy against Constitutional Court decisions. Therefore, Constitutional Court decisions are indisputable. An exception is the suspensive veto against a Constitutional Court decision which may be submitted by the President of State and the President of the Parliament, as determined by the Constitution of Kazakhstan[19].

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[16] Article 68 of the *Ukrainian Constitutional Court Act*.

[17] Para. 2 of Article 127 of the *Belorussian Constitution*.

[18] Articles 105 and 106 of the *Lithuanian Constitution* and Articles 64 and 74 of the *Lithuanian Constitutional Court Act*.

[19] Para. 3 to 5 of Article 131 of the *Constitution of Kazakhstan*. In a certain "milder" form a similar "intervention" in a Constitutional Court decision was determined by the former Polish system; similar forms exist in Latvia and Romania, but they are limited to the abstract control of norms.