



Strasbourg, 6 July 2009

CDL-JU(2009)011

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**8<sup>th</sup> MEETING OF THE JOINT COUNCIL  
ON CONSTITUTIONAL JUSTICE**

**“Mini-conference”  
on  
Effects and execution of constitutional review decisions**

**Tallinn, 19 June 2009**

**REPORT**

**“PRACTICAL APPROACHES TO THE ISSUE OF EXECUTION OF THE  
DECISIONS OF THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF AZERBAIJAN”**

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As it is generally known, the main purpose of constitutional justice is the implementation of the ideas and values enshrined in the Constitution by means of interpretation and review of constitutionality of legal acts. With the view of materialization of ideas proclaimed in the Basic Law, the decisions of the Constitutional Court shall have binding force both for individuals and all state authorities, since the adoption of even perfect by its form and content constitutional act does not mean the full achievement of the goals of constitutional justice if this act is not executed or executed incorrectly.

As I mentioned above, according to legislation the decisions of the Constitutional Court of Azerbaijan shall be binding for all state institutions. This requirement implies that all state bodies should act in accordance with the decisions of the Constitutional Court and are obliged to respect them in future. If an omission of state authorities or non-functioning of state power are recognized by the Constitutional Court as unconstitutional then state authorities must take positive actions according to the decision of the Court.

In case of contradiction to the decisions of the Constitutional Court the acts of state bodies and bodies of local self-government can be annulled, and officials can be brought to legal responsibility.

Depending on the subject of the examined norm and the adopted decision, the legal effect of the decisions of the Constitutional Court of Azerbaijan can be divided into the following categories:

**a. Decision on unconstitutionality of a normative-legal act or its part:**

If the Constitutional Court by its decision adopted by a majority of 5 or more judges recognizes a legal act or its part as unconstitutional, then this decision shall have a binding force both for public and state authorities, and the act or its disputed part shall automatically lose its force without any additional procedures and, accordingly, can not be applied.

**b. Decision on impeachment of the Head of State:**

According to Article 59 of the Law on the Constitutional Court upon proposals of the Parliament or 3 judges of the Constitutional Court as well as upon opinion of the Supreme Court, the Constitutional Court by a majority of judges can declare the dismissal of the President of the Republic from office for health reasons or in case of commitment of grave crime. In this case if the Supreme Court and Parliament support the impeachment and recognize its grounds as legitimate then the Head of State shall be dismissed from office.

**c. Resolution of disputes on competences:**

In case of disputes on competences between state authorities, the state body can request from the Constitutional Court to adopt a decision on the disputed issue. If the Constitutional Court comes to the conclusion that the respondent part encroaches on the competence of the petitioner then the Court can annul the action taken by the respondent part.

**d. Adoption of decision on individual complaints:**

According to article 34 of the Law on the Constitutional Court any person who alleges that his/her rights and freedoms are violated by an act or omission of state authorities may submit a constitutional complaint. If such a violation is recognized by the Constitutional Court, then the Court can either annul the act of the state authority or recognize an unconstitutionality of its omission. Such a decision must be respected by all state bodies and bodies of local self-government.

Concerning the time limits for entry into force of decisions of the Constitutional Court, we can divide them into three categories:

1. A Decision on the constitutionality of legal acts, their provisions as well as inter-governmental agreements shall enter into force from the date specified in the decision itself.

2. A Decision on the separation of powers between the Legislature, Executive and Judiciary shall enter into force from the date of its publication.

3. A Decision on other issues shall enter into force from the moment of its announcement.

All decisions of the Constitutional Court are published in the official newspapers of the Republic of Azerbaijan and the Newsletter of the Constitutional Court.

In spite of the fact that the disputed law or its provision loses its force there is no specific procedure for the execution of decisions of the Court. However, for materialization of constitutional justice it is necessary to guarantee the normative competences and effectiveness of constitutional legal proceedings since even the high legal force of acts of constitutional jurisdiction does not mean their automatic execution. From the point of view of the effect via re-examination of judicial acts as a result of the decisions adopted by the Constitutional Court it does not matter via what procedure such re-examination there will be carried out. The main point is that such re-examination should take place effectively and on the basis of principles and legal positions reflected in the decision of the Constitutional Court. In this issue our approach is much closer to the approach of the European Court of Human Rights which repeatedly mentioned that setting-up of specific procedures for restoration of violated rights of complainants should be at the discretion of the domestic authorities. And the most important point is to ensure appropriate results for these procedures in the form of a restoration of rights and freedoms guaranteed by the Convention.

On the other hand, I regret to have to mention that there are some cases where the execution of decisions of the Constitutional Court which require the legislative regulation are sometimes ignored or delayed. At that, one of the characteristic features of constitutional justice is that as opposed to the courts of general jurisdiction the Constitutional Court in Azerbaijan can not assign to body of the Executive the issue of the execution of decisions of the Constitutional Court. In this case it is necessary to mention that the Legislator realizing the significance of decisions of the body of constitutional justice provided for in Article 130.9 of the Constitution the binding force of decisions of the Constitutional Court, according to which decisions of the Constitutional Court shall be binding throughout the whole territory of the Republic of Azerbaijan.

The Referendum held on March 18, 2009 on introduction of modifications and amendments into the Constitution has secured the binding force of decisions of all courts by means of introduction of the norm, which states that: «The non-execution of court decisions shall entail the responsibility provided for by legislation». This constitutional provision refers us to Article 306 of the Criminal Code which provides for criminal responsibility for premeditated non-execution of court decisions.

In the framework of our Court's daily activity, the control for results (consequences) of decisions of Constitutional Court is implemented by the Division on Supervision for Execution of the Decisions of the Constitutional Court of Azerbaijan. This Division implements its functions according to special Regulations approved by the Chairman of the Constitutional Court.

The Division on Supervision for Execution of the Decisions draws up the analytical opinions concerning the existing problems within the rule-making activity connected with ensuring of execution of decisions of the Constitutional Court and practice of application of law. On the basis of specific instructions of the Chairman of the Court, this Division co-operates with other state bodies which implement the execution of decisions of the Constitutional Court, studies their activity in this field, participates in preparation of statistics on execution of decisions, arranges the drafting and storage of the results of supervision on each constitutional case as well as prepares statistics and other informative materials concerning the execution of Constitutional Court decisions.

According to the statistics, the Constitutional Court of Azerbaijan has adopted 164 decisions for the period of its activity. 66 of them were adopted on individual complaints concerning constitutionality of judicial acts. It should be emphasized that only in this field there were the gaps concerning the execution of decisions of the Constitutional Court. In accordance with the legislation in force, any individual can lodge a complaint to the Constitutional Court against a decision of the Plenum of Supreme Court as the court of last instance. The Constitutional Court in case of annulment of the decision of the Plenum of Supreme Court shall refer this decision to the Supreme Court, which taking into account the legal position of the Constitutional Court should refer the case to the court of lower instance with the view of elimination of legal gaps and adoption of the new decision which would not be in conflict with Constitution and laws of Azerbaijan. Up to present, the Constitutional Court received 11 repeated complaints, where complainants pointed out the contradiction to Constitution and laws of the court decisions, which were adopted on their complaints after decision had been adopted by the Constitutional Court. The Constitutional Court admitted only two of 11 complaints and delivered new decisions where it obliged court instances to take into consideration legal positions of the Constitutional Court and apply the legislation in a proper manner. Of course, the adoption of decisions on two complaints is not so much. However, it shows the need for more detailed study of decisions of the Constitutional Court by courts of general jurisdiction.

When determining its position on this or another legal problem the Constitutional Court tries to observe the principle of separation of powers and take into account the need to avoid the creation of gaps within legislation caused by annulment of norms. In this connection, the Constitutional Court introduced into its practice the notion of "recommendation" to relevant central bodies of state authorities with statement concerning the existing problem and ways of its resolution through adoption of one or another legal regulation. This procedure has become very effective and we should admit that most of all of recommendations of the Constitutional Court have been taken into consideration by the addressees.

Making conclusion from the stated above, one can say that the Constitutional Court of Azerbaijan which celebrated its 10<sup>th</sup> Anniversary last year has taken its worthy place within the system of Judiciary of the State. By means of its decisions the Court tries to contribute to improvement of legal basis of Azerbaijan and bringing of this basis to conformity with the requirements of the Basic Law and International Law. Our Court realizing the burdens of responsibility assigned to it by the Constitution of the State gives significant attention to thorough execution and observance of its decisions. The contingent gaps concerning proper execution of decisions of the Constitutional Court can be explained only by the novelty of the system of constitutional review and, as it seems to me, to one of peculiarities of the country of young democracy.

Thank you for the attention.