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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Workshop on
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**The execution of judgments of Constitutional Courts and bodies of equivalent
jurisdiction - Country report**

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The execution or enforcement of judgments (judicial decisions) today form one of the basic pre conditions of the total effectiveness of each judicial system. In this context the enforcement may be qualified as the process by which the judgments of courts may be enforced or put into execution. The enforcement of judicial decisions shall be therefore guaranteed by their execution. Such effectiveness has to be required not only for the judgments of ordinary courts in civil or criminal cases but for the judgments (findings) of constitutional courts and bodies of equivalent jurisdiction as well. Only effective (and enforceable) judgments of constitutional courts or other bodies of equivalent jurisdiction are able to fulfil the main task of each constitutional court namely to protect and promote constitutionalism on the basis a through its decision making activities. The main purpose of this paper is to identify which means and what kind of enforcement mechanism is provided by slovak legal order for the execution of the judgments (findings) of slovak Constitutional Court.

I. Enforcement of judgments concerning the constitutionality of legal norms and regulations.

According to Article 125 of the Constitution of Slovak Republic (hereinafter as Constitution) slovak Constitutional Court is entitled to review either constitutionality of various legal norms or compatibility of generally binding legal regulations with international treaties {letters a) until e) of Article 125 }. Provided that the judgment of Constitutional Court has found challenged norm or regulation unconstitutional and/or incompatible with international treaty according to Article 132 of Constitution such finding has to be published in Collection of Laws (Journal Official) of Slovak Republic with erga omnes effect. Both the legal effects of such judgment and subsequent obligations of relevant legislative or other bodies are regulated by Article 132 of Constitution as well. With respect of its legal effects it should be pointed out that the norm or regulation (or 2 its part) finding as unconstitutional and/or incompatible with international treaty shall be no longer applicable from the date of publication of court's judgment. Said by another words the challenged norm or regulation "affected" by the judgment of Constitutional Court becomes ineffective (inapplicable) ex constitutione as from the date of publication of Constitutional Court's finding in Collection of Laws. In this context one can speak about ex nunc or pro futuro effect of such judgment. In addition it should be pointed out that neither legislative nor executive branch has power to modify or delay such legal effect of published Constitutional Court's judgment. The relevant legislative or other bodies that enacted such norms or regulations shall be obliged to bring them to conformity with constitution or international treaty not later than six months following the publication of the judgment in Collection of Laws. Otherwise such norms shall become no longer in force. Above mentioned Article 132 of Constitution inter alia confirms constitutional obligation of relevant legislative or other bodies to make effective Constitutional Court's judgment and to take any relevant action it deems necessary to comply with court's requirements. It may be worth while to recall that for relevant legislative or other bodies such obligation issues directly from Constitution. Taking into consideration such circumstances and referring to Article 2 para. 2 of Constitution (State bodies may act solely in conformity with the Constitution) legislative or other bodies in practice make effective concrete judgments of Constitutional Court fluently and without necessity to use any enforcement procedure. In such a way one can discuss about the concept of self executory or self executing judgments of Constitutional Court. Provided that (and in the exceptional circumstances) the legislative or any other body did not take any action to put into constitutional conformity norm or regulation declared as unconstitutional and/or incompatible with

international treaty neither Constitutional Court nor any other public authority is entitled to execute such finding of slovak Constitutional Court. Generally speaking any constitutional court has no competence to replace relevant legislative activities of legislator or other body and such rule has no exemption not even 3 in the cases when they do not respect the finding of Constitutional Court. The constitutional principle of the separation of powers prevents any attempts of constitutional courts for doing such kinds of legislative "actions". The Constitutional Court at the same time cannot compel legislator to legislate in any other particular way to meet the requirements of its judgment. Such system of "self" enforcement is relevant with respect of all judgments of slovak Constitutional Court with erga omnes effect which have been published in Collection of Laws and which represent results of abstract and concrete review proceedings of Constitutional Court.

II. Enforcements of other judgments of Constitutional Court.

According to Constitution the Constitutional Court of Slovakia is entitled to decide in a number of other proceedings as well namely to review challenges to decisions that confirms or abrogate the seat of a member of the National Council of Slovak Republic (Article 129 para.1 of the Constitution), to decide whether the elections to the National Council of the Slovak Republic and to local self governing bodies have been held in conformity with the Constitution and the law (Para.2), to review the challenges to the results of a public referendum (Para 3.), to decide whether a decision dissolving a political party/movement or suspending political activities thereof is consistent with the constitutional statutes and other laws (Para.4.), to decide about the constitutional complaint against decisions of central government authorities, local government authorities and local self government bodies (Article 127) and to decide about petition of natural or legal persons (Article 130 para.3 of the Constitution). Unlike of above mentioned judgments, both the legal effects of judgments adopted in such proceedings and obligations of subjects concerned by them are regulated only by relevant provisions of the "ordinary" law of the National Council of Slovak Republic and not on the "top" constitutional level of regulation. In this connection the talk is about Act on the organization of the Constitutional Court of the Slovak Republic, on the proceedings before the Constitutional Court and on the status of its Judges (Act No.38/1993 Coll. in the wording 4 of Act No.293/1995 Coll. hereinafter as Act on Constitutional Court, or Act). There is possible briefly summarize that within the proceeding about the constitutional complaint Constitutional Court shall repeal the decision violating fundamental right or freedom of complainant and due to such decision "defendant" is obliged to re examine case and to take new decision. Legal opinion of the constitutional court pronounced in its decision is binding for each defendant in proceeding about constitutional complaint. (Article 57 para.1 and 2 of the Act). In proceedings in electoral matters Constitutional Court may declare elections invalid, annul the challenged election result or annul the decision of electoral commission (Article 63 of the Act). In proceedings on the complaints challenging the results of referendum constitutional court issues a finding annulling referendum (Article 69 of the Act) etc. Similarly as with respect of previous judgments the slovak Constitutional Court has no power to execute its own judgments in such proceedings as well. On the other hand failure to comply with such judgments of constitutional court may be qualified as unlawful activity of concerned subjects whereas these violate their concrete legal obligations to respect and to comply with judgments of court flowing from the Act on Constitutional Court. Generally speaking in Slovak Republic there are the organs of procuracy (public prosecutors) vested with power to guarantee the legality (the respect of laws). Provided that in such cases legal conditions

for practical application of the Act No.1/1996 Coll. on procuracy have been met public prosecutors may use their own enforcement mechanism to make effective (to enforce) judgments of slovak Constitutional Court.

III. Enforcement of judgment on the high treason of the President of Slovak Republic.

According to Article 129 para.6 of the Constitution the Constitutional Court shall decide case of high treason allegedly committed by the President of the Slovak Republic following an accusation by the National Council of the Slovak Republic. In such case the slovak Constitutional Court shall be bound by the Penal Code and the proceedings shall be governed mutatis mutandis by 5 the provisions of Criminal Procedure Act. If the Constitutional Court shall decide that the president is guilty of high treason it shall divest him of his presidential office. The constitutional Court in such case adopts a sentence the enforcement of which shall be governed by the relevant provisions of Criminal Procedure Act.

IV. Enforcement of the decisions of international organizations in matters involving fundamental rights and freedoms by Constitutional Court.

According to Article 75 and subs. of the Act on the Constitutional Court it is directly involved into enforcement procedure of the Geneva Human Rights Committee views. If the government of the Slovak Republic is notified by the Human Rights Committee that a measure, decision or another kind of public authority intervention has violated the right or freedom of the individual under International Covenant on Civil and Political Rights the government is obliged immediately to notify such view to the Constitutional Court. For the purposes of its proceeding such notification shall be qualified as a constitutional complaint yet admitted for further proceeding of court. The Constitutional Court shall notify individual complainant and other parties about the opening of constitutional complaint proceeding. The finding of Constitutional Court in such case represents one of the means how to make effective (to enforce) the view of the Human Rights Committee into domestic legal order of Slovak Republic.