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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**Questionnaire
on the execution of constitutional review decisions**

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For the purposes of the present questionnaire, «constitutional review decisions» comprise constitutional review decisions of constitutional courts and other judicial bodies of ultimate appeal that exercise constitutional review.

I. General questions on constitutional review

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
 - d. normative acts that are not subject to constitutional review
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*, appeal to a judicial body of ultimate appeal)
4. Other areas of constitutional review (examples : unconstitutionality of political parties, referenda, conflicts between infra-state entities, conflicts between state bodies)

B. The effects of constitutional review decisions :

1. Concerning normative acts :
 - a. Are constitutional review decisions merely declaratory ?
 - b. Is the norm which is declared contrary to the Constitution null and void, or annulled immediately ? Can the body exercising constitutional review 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 body exercising constitutional review order another authority to act ? Within a fixed period of time ?
2. Concerning the protection of constitutional rights :

If the body exercising constitutional review quashes a decision by a public authority (administration, court, etc.) on the grounds that it is unconstitutional :

 - a. Is it sent back to the original authority for a new ruling ? or
 - b. Does the body exercising constitutional review decide on the matter ?
3. Furthermore, do constitutional review decisions have :
 - a. binding force (binding the body exercising constitutional review 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 ?
 - e. 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) ? Do special rules apply in the cases mentioned in point I.A.4 above ?

The reply to questions II and III will make a distinction, if necessary, according to the type/subject of constitutional review as well as to the effects of decisions (see question I).

II. What means are available to ensure the execution of constitutional review decisions ?

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

1. Is there a norm indicating which authority has to execute the constitutional review decisions ?
2. If not, is there a norm providing that the body exercising constitutional review 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 ?

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

IV. Cases where decisions are not executed

- A. Have there been any recent cases where a constitutional *review* 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) ?

V. Cases of unsatisfactory execution

In certain cases, even where a constitutional review decision 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 review decision (absence of *erga omnes* effect, declaratory nature of the decision), or from other causes, such as those mentioned in IV.B above ?

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