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**Decisions of constitutional courts and equivalent bodies  
and their execution**

**Report adopted by the Commission at its 46<sup>th</sup> plenary meeting**

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## Introduction

At the dawn of the twenty-first century, constitutional courts have become one of the pillars of the primacy of law and, more generally, of constitutional law. Even though their role and jurisdiction differ from State to State, since they were instituted in very different historical and political circumstances, it is essential that their decisions should be carried out effectively. Accordingly, the main aim of this study is to consider the effects of judgments of constitutional courts and their execution, an exercise which will be carried out in Parts 2 and 3. These questions, however, cannot be divorced from an examination of the type and purpose of the review of constitutionality, which will be considered in Part 1.

Consequently, this study is not confined to issues relating to the execution of constitutional decisions, but sets out to provide a general description of the functioning of constitutional courts of States taking part in the proceedings of the Venice Commission. The study is based on the questionnaire on judgments of constitutional courts and their execution which was adopted by the Venice Commission following its 43<sup>rd</sup> meeting (June 2000)<sup>1</sup>. 45 States<sup>2</sup> sent replies to the questionnaire to the Secretariat.

For the purposes of this study, the term “constitutional courts” refers not only to judicial bodies with the name “Constitutional Court” but also to equivalent bodies of last instance which review constitutionality.

What may be involved is:

- a constitutional court which is, in principle, the only competent court in constitutional review matters, and which therefore carries out concentrated review, be it *ex post facto* (examples: *Austria*<sup>3</sup>, *Italy*<sup>4</sup>, *Latvia*<sup>5</sup>) or preliminary review (*France*<sup>6</sup>) or both (*Hungary*<sup>7</sup>);
- a supreme court which determines constitutional disputes at last instance in the context of a system of diffuse review (*Canada*<sup>8</sup>, *Ireland*<sup>9</sup>, *Japan*<sup>10</sup>, *Netherlands*, *Norway*, *United States*<sup>11</sup>);
- an intermediate situation: for example, in *Estonia*, the Supreme Court carries out concentrated<sup>12</sup> review; in *Israel* the constitutional court participates in a system which combines both diffuse and concentrated review; in *Portugal*<sup>13</sup> and to an even greater degree in *Malta*<sup>14</sup>, the constitutional court is involved in a diffuse system of review; in *Greece*, the higher courts rule as

<sup>1</sup> CDL (2000) 45.

<sup>2</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United States, Uruguay. See document CDL (2000) 89 and 89add. rev.

<sup>3</sup> See in particular Article 140 of the Constitution (Cst.).

<sup>4</sup> Cf. Article 134(1) Cst.

<sup>5</sup> Article 16 of the Law on the Constitutional Court.

<sup>6</sup> Article 54 and 61 Cst.

<sup>7</sup> Article 1 of the Law on the Constitutional Court

<sup>8</sup> Article 35 ss of the Law on the Supreme Court.

<sup>9</sup> Article 34(4)(1) Cst. (see also Article 34.3.2).

<sup>10</sup> Article 81 Cst.

<sup>11</sup> Article III, VI(2) Cst.

<sup>12</sup> Article 149(3) Cst., Article 2 ss of the Law on Constitutional Review Court Procedure.

<sup>13</sup> Cf. Article 280 Cst.

<sup>14</sup> Article 95 Cst.

courts of last instance in a system of diffuse review, but cases are referred to a Special Supreme Court when the higher courts have issued conflicting rulings as to the constitutionality or the meaning of a law.

## **I. The type and purpose of the review of constitutionality**

The review of constitutionality takes different forms depending on the State concerned. Furthermore, the various types of constitutional review have differing consequences with regard to the carrying out of judgments, which explains why it is appropriate to consider them here.

### 1. Preliminary review

Preliminary or preventive review is carried out with regard to a legal text before it enters into force. Such review is generally carried out by constitutional courts (*France*<sup>15</sup>) or supreme courts (*Estonia*<sup>16</sup>), which carry out a concentrated review. In some States, preliminary review is carried out only with regard to international treaties, thereby enabling any conflict between constitutional law and international law to be avoided (*Armenia*<sup>17</sup>, *Azerbaijan*<sup>18</sup>, *Bulgaria*<sup>19</sup>, *Lithuania*<sup>20</sup>, *Slovenia*<sup>21</sup>, *Spain*<sup>22</sup>); the *German* Constitutional Court has even introduced preliminary review of laws ratifying treaties with a view to avoiding such conflicts. In *Austria*<sup>23</sup> and *Italy*<sup>24</sup>, preliminary review is confined to the allocation of competences between central government and the *Länder* or regions. Preliminary review is not precluded in systems which, in principle, practise diffuse review, such as *Canada*, where it exists in the form of a request for a consultative<sup>25</sup> opinion, or *Ireland* (where it falls exclusively to the Supreme Court<sup>26</sup>); in Norway, Parliament may ask for the opinion of the Supreme Court on points of law.<sup>27</sup>

As we shall see later, preliminary review raises very few problems as far as execution is concerned. This is because the contested act quite simply does not enter into force and is not liable to be implemented.

### 2. Abstract review

Apart from preliminary review, abstract review of constitutionality relates to provisions that are already in force, and hence is carried out *ex post facto*. Such review exists in most States with a system of concentrated review, with the exception of the *Republic of Korea* and *Luxembourg*. Moreover, it is not ruled out in States applying diffuse review (*Canada*, *Ireland* and *Switzerland* - in the case of legislative measures of the cantons<sup>28</sup>).

Abstract review – whether it be solely preliminary (first case), solely *ex post facto* (second case) or a combination – of the two (third case) – is carried out generally at the request of an authority.

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<sup>15</sup> Articles 54 and 56 ss Cst.

<sup>16</sup> Article 107 Cst., Article 4(1)(2) and 4(1)(5) of the Law on Constitutional Review Court Procedure.

<sup>17</sup> Article 100(2) Cst.

<sup>18</sup> Article 130(III)(6) Cst.

<sup>19</sup> Article 140(1)(4) Cst.

<sup>20</sup> Article 105(3)(3) Cst. and 73(3) of the Law on the Constitutional Court.

<sup>21</sup> Article 160(2) Cst.

<sup>22</sup> Article 95(2) Cst.

<sup>23</sup> Article 138(2) Cst.

<sup>24</sup> Cf. Article 39 of Law N° 87 of 11 March 1953.

<sup>25</sup> Articles 55-56 of the Law on the Supreme Court.

<sup>26</sup> Article 26 Cst.

<sup>27</sup> Article 83 Cst.

<sup>28</sup> Article 84 of the Federal Law on the Organisation of the Judiciary.

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Examples:

- *France* (first case): a case may be referred only by the President of the Republic, the Prime Minister, the President of the Assembly, the President of the Senate, or sixty members of the National Assembly or Senators<sup>29</sup>,
- *Romania* (first case): a case may be referred by the President of Romania, the President of either of the two Chambers of Parliament, the government, the Supreme Court of Justice or at least 50 Deputies or 25 Senators<sup>30</sup>;
- *Czech Republic* (second case): an application for the annulment of legislative provisions and others, may be made by actively legitimate bodies, such as the President of the Republic, or at least forty-one Members of Parliament<sup>31</sup> or also following the lodging of a constitutional complaint<sup>32</sup>;
- *Moldova* (second case): cases may be initiated before the Constitutional Court by the President of the Republic, the government, the Minister of Justice, the State Prosecutor, Members of Parliament and parliamentary groups<sup>33</sup>;
- *Bulgaria* (third case: preliminary review relates solely to international treaties)<sup>34</sup>: the Constitutional Court meets at the request of at least one-fifth of Members of Parliament, the President, the Supreme Court of Cassation, the Supreme Administrative Court, the Council of Ministers or the State Prosecutor<sup>35</sup>;
- *Portugal* (third case): preliminary review is requested by the President of the Republic (Ministers in the case of lower-ranking provisions), *ex post facto* review by the President of the Republic, the President of the Assembly of the Republic, the Prime Minister, the *Provedor da Justiça*, the Prosecutor of the Republic, one-tenth of the Members of the Assembly of the Republic, the Ministers of the Republic, the regional legislative assemblies, etc.<sup>36</sup>
- *Hungary* (third case): although preliminary review can only be requested by the President of the Republic<sup>37</sup>, any citizen may request *ex post facto* review without the need to demonstrate a particular interest (*actio popularis*)<sup>38</sup>.
- *Italy* (third case): preliminary review relates only to regional laws and to those enacted by the provinces of Trento and Bolzano<sup>39</sup>; State legislation, on the other hand, is subject to *ex post facto* review in the abstract at the request of a region or one of the afore-mentioned provinces<sup>40</sup>.

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<sup>29</sup> Articles 54 and 61 Cst.

<sup>30</sup> Article 144.a Cst.

<sup>31</sup> Article 64 of the Law on the Constitutional Court.

<sup>32</sup> Article 74 of the Law on the Constitutional Court.

<sup>33</sup> Article 25 of the Law on the Constitutional Court.

<sup>34</sup> Article 149(1)(2) and (4) Cst.

<sup>35</sup> Article 150(1) Cst.

<sup>36</sup> Articles 279 and 281 Cst.

<sup>37</sup> Article 35 of the Law on the Constitutional Court.

<sup>38</sup> Article 32a(3) Cst., Articles 1(b) and 21(2) of the Law on the Constitutional Court.

<sup>39</sup> See in particular Article 127 Cst.

<sup>40</sup> Article 2 of Law N° 1 of 9 February 1948.

- *Liechtenstein* presents a special case. First there is the classic type of abstract *ex post facto* review at the request of the government, a municipality or, more innovatively, one hundred citizens, but only in respect of orders of the executive<sup>41</sup>. Secondly, where a law does not strictly speaking infringe the Constitution but is nonetheless not wholly in conformity with it, the State Court can deliver an “appeal decision” directed at the legislature, with a view to amendment of the law in question. This procedure is the result of recent new – and disputed – case law. Lastly, although there is no real provision for preliminary review, the Court can deliver advisory opinions on general matters of constitutional law.<sup>42</sup>

### 3. Referral of preliminary questions

The constitutionality of provisions may also be reviewed when considering a specific case (referral of preliminary questions – also known as specific or incidental review).

Specific review exists in the first place in systems of diffuse review (examples: *Canada*, *Japan*, *Malta*<sup>43</sup>, *Netherlands*, *Portugal*<sup>44</sup>, *United States*<sup>45</sup>).

In contrast, in States where there is concentrated review of constitutionality, review takes the form of a reference for a preliminary ruling by the ordinary courts to the Constitutional Court. This system is applied, for example, by *Estonia*<sup>46</sup>, *Italy*<sup>47</sup>, *Lithuania*<sup>48</sup>, *Luxembourg*<sup>49</sup> and *Turkey*<sup>50</sup>.

Preliminary referrals may be combined with the possibility of bringing proceedings in a specific case before the Constitutional Court for violation of constitutional rights, which may in turn result in a preliminary ruling on legislative measures (examples: *Albania*<sup>51</sup>, *Andorra*<sup>52</sup>, *Austria* in administrative matters<sup>53</sup>, *Hungary*<sup>54</sup>, *Slovakia*<sup>55</sup>, *Spain*<sup>56</sup>).

### 4. Direct action before the Constitutional Court

In many States, individuals may bring a direct action against decisions liable to detract from their constitutional rights, in particular where the breach of the constitution is the result of the decision itself and not of a legislative measure.

This is the case first of all in states in which diffuse review of constitutionality exists (examples: *Canada*<sup>57</sup>, *Finland*<sup>58</sup>, *Greece*, *Malta*<sup>59</sup>, *Switzerland*<sup>60</sup>, *United States*<sup>61</sup>).

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<sup>41</sup> Article 104(2) Cst., Articles 11, 24 and 26 of the Law on the State Court.

<sup>42</sup> Article 16 of the Law on the State Court.

<sup>43</sup> Cf. Article 95(2)(e) Cst.

<sup>44</sup> Article 280 Cst.

<sup>45</sup> Cf. Article VI(2) Cst.

<sup>46</sup> Article 5 of the Law on Constitutional Review Court Procedure.

<sup>47</sup> Article 23 ss of Law N° 87 of 11 March 1953.

<sup>48</sup> Articles 106(1) Cst. and 67 of the Law on the Constitutional Court.

<sup>49</sup> Article 95ter(2) Cst.

<sup>50</sup> Article 152 Cst.

<sup>51</sup> Article 131(f) Cst.

<sup>52</sup> Articles 98(c) and 100 Cst.

<sup>53</sup> Articles 140 and 144 Cst.

<sup>54</sup> Articles 38 and 48 of the Law on the Constitutional Court.

<sup>55</sup> Articles 127 and 130(3) Cst.; Article 18(1)(d) of the Law on the Constitutional Court with regard to references by courts to the Constitutional Court.

<sup>56</sup> Articles 161(1)(b), 162(1)(b), 163 Cst.

<sup>57</sup> Article 35 ss of the Law on the Supreme Court.

However, this is also possible in a number of States which practise concentrated review of constitutionality (examples: *Bosnia and Herzegovina*<sup>62</sup>, *Czech Republic*<sup>63</sup>, *Slovakia*<sup>64</sup>, *Spain*<sup>65</sup>). Accordingly, in the *Czech Republic* any natural or legal person may bring a complaint before the Constitutional Court alleging violation of fundamental rights guaranteed by the Constitution or an international treaty in the sphere of human rights. In this context, such a person may seek the annulment of provisions of legislation or regulations whose application gave rise to the situation to which the constitutional complaint relates (referral of a preliminary question); such a referral of a preliminary question may be made in addition to the constitutional complaint but is not a condition for lodging such a complaint. The constitutional complaint must be made after exhausting all remedies available before other authorities<sup>66</sup>.

In some States, however, a direct action may be brought before the Constitutional Court only where it is alleged that a legislative measure is not in conformity with the Constitution (*Poland*<sup>67</sup>).

It is also possible in a State in which concentrated review of constitutionality exists to provide that the ordinary courts have jurisdiction to rule on allegations relating to the unconstitutionality of decisions (*Italy*).

## 5. Limits on the review of constitutionality

### a. Acts rendered immune

Whilst some form of review of constitutionality exists in all the States which answered the questionnaire, the extent of that review varies, not only with regard to the type of review and who may apply for such review (whether or not an individual may bring an application, for example) but also because some legislative measures are not amenable to a review of their constitutionality in all States.

The jurisdiction of the Constitutional Court varies from case to case. In *the Netherlands*, all laws are exempt from the review of constitutionality<sup>68</sup>. In *Switzerland*, the same applies to federal laws and all federal or cantonal provisions based directly on a federal law and likewise international treaties<sup>69</sup>. In *Luxembourg*, only international treaties are exempt<sup>70</sup>. In *France*, only laws approved by referendum do not fall within the scope of constitutional review.

In *Moldova*, acts that came into force before the Constitution cannot be subject to review of constitutionality<sup>71</sup>. The same is true in *Turkey* of a number of reform laws enacted between 1924

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<sup>58</sup> See, for example, Article 3 of the Law on the Supreme Court and Article 3 of the Law on the Supreme Administrative Court.

<sup>59</sup> Article 95(2)(e) Cst.

<sup>60</sup> Article 84 of the Federal Law on the Organisation of the Judiciary.

<sup>61</sup> Article III(2)(2) *in fine* Cst.

<sup>62</sup> Article VI(3)(b) Cst.

<sup>63</sup> Article 87(1)(d) Cst.

<sup>64</sup> Article 127 Cst.

<sup>65</sup> Article 161(1)(b) Cst.

<sup>66</sup> Articles 72-74 of the Law on the Constitutional Court.

<sup>67</sup> Article 79(1) Cst.

<sup>68</sup> Article 120 Cst.

<sup>69</sup> Article 191 Cst.

<sup>70</sup> Article 95ter(2) *in fine* Cst.

<sup>71</sup> Article 31(2) of the Law on the Constitutional Court.

and 1934 and of legislative measures going back to the regime of the Council of National Security<sup>72</sup>.

The Constitution itself and amendments thereto are in principle excluded from any review of constitutionality. However, some States make provision for a formal review of the constitutionality of amendments (*Hungary, Turkey*<sup>73</sup>).

It must also be noted that in States which only have preliminary review of constitutionality, acts not submitted to the Constitutional Court in time are *de facto* immune from review (*France*).

The systems for reviewing constitutionality in *Finland* and *Sweden* constitute a particular case. There review is limited to manifestly unconstitutional acts (without prejudice to acts adopted by bodies of lower rank than the government in *Sweden*<sup>74</sup>).

b. Unconstitutional omissions

For the most part, Constitutional Courts review the constitutionality of legislative acts that have already been adopted or are to be adopted (in the case of preliminary review). However, unconstitutionality may result, not from the existence of a legislative act, but from its non-existence where the Constitution requires such an act to be adopted. Few States provide that the Constitutional Court may rule on such omissions. This type of review is most developed in *Germany*. Such review may be carried out both in constitutional proceedings brought by individuals alleging unconstitutionality and in proceedings concerning conflicts of jurisdiction as between institutions of the State<sup>75</sup>; furthermore, unconstitutional omissions may be identified when carrying out a review of provisions *in abstracto* or *in concreto*. In *Bosnia and Herzegovina*, the Constitutional Court may recommend or order laws to be adopted so as to remedy gaps in the law. Constitutional Courts may also make findings that such omissions exist in the *Republic of Korea* (if the Constitution provides for a specific obligation on the part of the legislature), in *Italy* and in *Ukraine* (according to case-law), in *Hungary*<sup>76</sup> and in *Portugal*<sup>77</sup>. Furthermore, in some cases, in the absence of implementing legislation provided for by a provision of the Constitution, the Constitutional Court will apply that provision directly (*Greece*, in the case, for example, of compensation for owners who are the victim of restrictive measures imposed with a view to the protection of historical sites and monuments<sup>78</sup>). In *Croatia*, while the Constitutional Court has no jurisdiction, strictly speaking, to rule on unconstitutional omissions, it may review the Constitution's implementation and make observations to Parliament; should a body fail to bring in legislation as required by the Constitution, the Court reports this to the Government or, where the omission is the Government's, to Parliament.<sup>79</sup> In addition, where a Constitutional Court makes a finding that an inequality exists, this often leads to a further finding that there is a legislative omission, where, in order to remedy the inequality, the legislature has to extend the scope of the provision to cover other addressees.

Unconstitutional legislative omissions may also be grounds for actions for damages against the State (*Greece, Iceland, Japan*).

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<sup>72</sup> Articles 148(1) and 174 Cst.

<sup>73</sup> Article 148(1) Cst.

<sup>74</sup> See Article 106 Finnish Cst. and Chapter 11 Article 14 Swedish Cst.

<sup>75</sup> See Article 93(1),(3) and (4)(a) Cst.

<sup>76</sup> Article 49 of the Law on the Constitutional Court.

<sup>77</sup> Article 283 Cst.

<sup>78</sup> Article 24(6) Cst.

<sup>79</sup> Article 62 Cst.

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c. Questions of jurisdiction

For the sake of completeness, it should be pointed out that reviewing lower-ranking acts for conformity with higher-ranking acts does not fall within the remit of the Constitutional Court in all the States that have set up such a court. In such case, such acts are not rendered immune but fall within the jurisdiction of the ordinary courts. This is the *Belgian* approach, for example<sup>80</sup>; in *Italy*, lower-ranking acts are brought before the Constitutional Court only in the event of a conflict of jurisdiction; in *Armenia*<sup>81</sup>, acts adopted by the Government may be brought before the Constitutional Court, but not acts emanating from institutions of lower rank; on a more general level, in these two States, as well as in *Romania*, actions for violation of constitutional rights in a specific case fall within the jurisdiction of the ordinary courts. In *France*, regulatory measures come within the jurisdiction of the Council of State. In *Uruguay*, the Administrative Court has competence to set aside all law-making administrative acts, including decrees, issued by government departments<sup>82</sup>. In *Greece*, regulatory measures may be subject to appeal before the Council of State on *ultra vires* grounds.

A specific case arises in *Switzerland* as regards the cantonal Constitutions, which are guaranteed by the Federal Assembly (Parliament)<sup>83</sup>. The courts, and in particular the Federal Court, are entitled only to review whether they are in conformity with provisions which were not in force at the time when that guarantee was conferred.

6. Other powers of constitutional courts

In general, constitutional courts exercise a number of powers above and beyond the review of the constitutionality of legislative measures and decisions.

Obviously, Supreme Courts with general jurisdiction carry out their activities outside the constitutional sphere. These activities fall outside the scope of this study. However, it is appropriate to examine the powers of the various types of constitutional courts in the constitutional field.

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<sup>80</sup> Article 159 Cst.

<sup>81</sup> Cf. Article 100(1) Cst.

<sup>82</sup> Articles 309 and 311 Cst.

<sup>83</sup> Articles 51(2) and 172(2) Cst.

a. Conflicts between State bodies

Constitutional courts often have jurisdiction to determine conflicts (of jurisdiction and other conflicts) between State bodies, including those involving different levels of State competence. This role is particularly important in federal or regional States. In *Austria*, the Constitutional Court determines conflicts of jurisdiction as between the courts and the administrative authorities or as between the courts, on the one hand, and as between the Federation and the Länder or as between Länder, on the other<sup>84</sup>. In *Germany*, the Constitutional Court rules in particular on the interpretation of the Basic Law when disputes arise about the extent of the rights and obligations of a supreme federal institution or when there are differences of opinion as to the rights and obligations of the Federation and the Länder; it also entertains some actions from local authorities brought for breaches of their right of self-administration<sup>85</sup>. In *Italy*, disputes about the rights and obligations of the central organs of State or rights and obligations of the State or regions (as well as the provinces of Trento and Bolzano) come within the purview of the Constitutional Court.<sup>86</sup> In the *United States*, the Supreme Court rules both on questions concerning the separation of powers at the federal level and on the allocation of competences as between the Union and the States. Where certain regions have an autonomous status, this may result in such jurisdiction being conferred upon the constitutional court (in *Finland*, the Supreme Court has jurisdiction to determine conflicts between the Central State and the Åland Islands<sup>87</sup>). In other States, conflicts between the Central State and local and regional authorities also fall within the jurisdiction of the constitutional court (*Albania*<sup>88</sup>, *Andorra* in the case of parishes<sup>89</sup>, *Bulgaria*<sup>90</sup>, *Czech Republic*<sup>91</sup>, *Hungary*<sup>92</sup>); the Constitution of *Azerbaijan* provides that “the Constitutional Court ... shall determine questions ... relating to the settlement of disputes in connection with the delimitation of powers as between the legislature, the executive and the judiciary”, including local bodies<sup>93</sup>. In *Slovakia*, in contrast, the Court’s jurisdiction is restricted to conflicts between institutions of the Central State<sup>94</sup>. In the *Netherlands*, the Council of State has an advisory function in disputes between public bodies which are settled by Royal Decree. In *Greece*, the Special Supreme Court also has jurisdiction to settle conflicts of powers between courts and other administrative authorities, between administrative courts and civil and criminal courts, between the Court of Auditors and the other courts.

Moreover, even in States which do not provide for specific remedies, conflicts of jurisdiction may be determined indirectly in the context of the review of constitutionality (example: *Portugal*, in the case of conflicts between State legislation and legislation of the autonomous regions of Madeira and the Azores) or in the context of ordinary actions (*Iceland*).

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<sup>84</sup> Article 138 Cst.

<sup>85</sup> Article 93(1)(1)(4) and (4)(b) Cst; see also Articles 28 and 84(4)(2).

<sup>86</sup> Article 37 ss of Law N° 87 of 11 March 1953.

<sup>87</sup> Article 59 of the Statute of Autonomy of the Åland Islands.

<sup>88</sup> Article 131(ç) Cst.

<sup>89</sup> Article 98(d) Cst.

<sup>90</sup> Article 149(1)(3) Cst.

<sup>91</sup> Article 87(1)(c) Cst.

<sup>92</sup> Article 1(f) of the Law on the Constitutional Court.

<sup>93</sup> Article 130(III)(9) Cst.

<sup>94</sup> Article 126 Cst.

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b. Jurisdiction with regard to elections and votes

Constitutional courts and their equivalents often have jurisdiction in the electoral field (elections and referendums). This is true both of constitutional courts properly so called and of supreme courts having jurisdiction in constitutional matters, of courts carrying out preliminary review of constitutionality and of those carrying out *ex post facto* review.

Accordingly,

- In *France*, although it carries out essentially preliminary review, the Constitutional Council has the power to supervise the legality of the election of the President of the Republic, to rule – in the event of a dispute – on the legality of the election of Members of Parliament and senators and to supervise the conduct of referendums and to announce their results<sup>95</sup>.

- The *Austrian* Constitutional Court, which, in contrast, invariably carries out *ex post facto* review, except with regard to the distribution of powers, has jurisdiction with regard to electoral disputes<sup>96</sup>; the same situation obtains in *Albania* (the Constitutional Court rules on the election of the President of the Republic and Members of Parliament and on the constitutionality of referendums and the verification of their results<sup>97</sup>);

- In *Cyprus*, the Supreme Court has jurisdiction in matters of preliminary review, *in concreto* review and referrals of preliminary questions and also rules on electoral disputes.<sup>98</sup>

- In *Lithuania*, direct recourse to the Constitutional Court is no more possible in the electoral field than it is in others; the Constitutional Court gives an opinion as to whether there has been any infringement of electoral laws during the election of the President of the Republic and of the members of the *Seimas*<sup>99</sup>;

- In *Greece*, one of the main powers of the Special Supreme Court relates to disputes concerning elections and referendums<sup>100</sup>.

- In the *Netherlands*, the Council of State has jurisdiction in electoral disputes.

- In *Bulgaria*, the Constitutional Court rules on the legality of the election of the President, the Vice-President and members of the National Assembly.<sup>101</sup>

In other States, the Constitutional Court rules on the holding of referendums (*Italy*<sup>102</sup>, *Portugal*<sup>103</sup>) or on the results of referendums (*Armenia*<sup>104</sup>). In *Hungary*, the Constitutional Court rules on appeals against decisions of the National Electoral Commission concerning the permissibility of questions put in referendums and their results.

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<sup>95</sup> Articles 58-60 Cst.

<sup>96</sup> Article 141 Cst.

<sup>97</sup> Article 131(e) – (ë) Cst.

<sup>98</sup> Article 145 Cst.; cf. Article 140 ss in general.

<sup>99</sup> Article 105(3)(1) Cst.

<sup>100</sup> Articles 58 and 100(1)(a) – (b) Cst.

<sup>101</sup> Article 149(1)(6)-(7) Cst.

<sup>102</sup> Article 33 of Law N° 352 of 25 May 1970.

<sup>103</sup> Article 225(2)(f) Cst.

<sup>104</sup> Article 100(3) Cst.

Electoral disputes also come within the jurisdiction of supreme courts exercising diffuse supervision, as in *Iceland*, *Ireland*, the *Netherlands* and *Switzerland*<sup>105</sup>.

c. Powers with regard to the constitutionality and the dissolution of political parties

A good number of constitutional courts have jurisdiction to rule on the constitutionality of political parties and, as a result, on their dissolution and their prohibition (examples: *Czech Republic*<sup>106</sup>, *Germany*<sup>107</sup>, *Republic of Korea*, *Poland*<sup>108</sup>, *Portugal*<sup>109</sup>, *Slovakia*<sup>110</sup>, *Slovenia*<sup>111</sup>, *Turkey*<sup>112</sup>). In some countries, the constitutional court's jurisdiction extends not only to parties but also to other organisations: in *Albania*<sup>113</sup> and *Bulgaria*<sup>114</sup>, it includes other political organisations and, in *Azerbaijan*, associations in general<sup>115</sup>.

d. Other matters

Sometimes, constitutional courts and equivalent bodies have other competences in constitutional matters or in allied fields. By way of example,

- in *Austria*, the Court may examine election disputes and disputes relating to the dismissal of statutory professional bodies, proceedings against the Federal or Länder authorities, determination of differences in the interpretation of the law as between the Federal Government or a Minister and the Ombudsman's office<sup>116</sup>;

- in *Bulgaria*, the Constitutional Court may deliver binding interpretations of the Constitution or rule on National Assembly impeachments of the President or the Vice President<sup>117</sup>;

- similarly, in *Hungary*<sup>118</sup> and in *Slovakia*<sup>119</sup>, the Constitutional Court may deliver binding abstract interpretations of constitutional provisions;

- in *Romania*, the Constitutional Court ascertains the existence of circumstances justifying a suspension in the exercise of the functions of the President of Romania; delivers consultative opinions on proposals to suspend the President of Romania from office; verifies whether the requirements for the exercise of legislative initiative by citizens have been met<sup>120</sup>.

- in *France*, the Constitutional Council's opinion is sought in a variety of circumstances by the President of the Republic, in particular where the latter contemplates implementing Article 16 of the Constitution in the event of grave and imminent danger to the functioning of the institutions;

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<sup>105</sup> Article 189(1)(f) Cst.

<sup>106</sup> Article 87(1)(j) Cst.

<sup>107</sup> Article 21(2) Cst.

<sup>108</sup> Article 188(4) Cst.

<sup>109</sup> Article 225(2)(e) Cst.

<sup>110</sup> Article 129 (4) Cst.

<sup>111</sup> Article 160(1)(10) Cst.

<sup>112</sup> Article 69(6) Cst.

<sup>113</sup> Article 131(d) Cst.

<sup>114</sup> Article 149(5) Cst.

<sup>115</sup> Article 130(III)(7) Cst.

<sup>116</sup> Articles 141(1), 142, 148f Cst.

<sup>117</sup> Article 149(1)(1) and (8) Cst.

<sup>118</sup> Article 51 of the Law on the Constitutional Court.

<sup>119</sup> Article 128(1) Cst.

<sup>120</sup> Article 144.f-h Cst.

questions as to whether an international agreement includes a clause that is contrary to the Constitution may be referred by the President of the Republic, the Prime Minister, the president of either house of parliament or by 60 members of the National Assembly or Senators. If such a clause is present, the ratification or approval of the international agreement can only be authorised following the revision of the Constitution;

- in *Germany*, the Constitutional Court has jurisdiction, in particular, to entertain public-law disputes between the Federation and the Länder, between different Länder or within a Land where they are not amenable to any other means of judicial review<sup>121</sup>; in impeachment proceedings brought against the Federal President or judges<sup>122</sup>; in cases involving deprivation of fundamental rights<sup>123</sup>; and cases involving doubt as to whether a rule of international law forms an integral part of federal law and whether it directly creates rights and obligations for individuals<sup>124</sup>;

- in the *Czech Republic*, the Constitutional Court rules *inter alia* on constitutional actions brought by the Senate against the President of the Republic, at the proposal of the President of the Republic in proceedings seeking the annulment of a decision of the Assembly of Deputies and the Senate that the office of the Presidency has become vacant and with regard to measures necessary to carry out a decision of an international court that is binding on the Czech Republic if such decision cannot be carried out in any other way<sup>125</sup>;

- in *Liechtenstein*, should any doubts arise with regard to the interpretation of the Constitution which the government and the Diet (Parliament) are unable to settle between themselves, the State Court has jurisdiction to adopt a binding interpretation<sup>126</sup>; the State Court may take decisions on parliamentary impeachment of government ministers<sup>127</sup>.

- in *Moldova*, the Constitutional Court rules on initiatives for the revision of the Constitution and on circumstances justifying the dissolution of Parliament, the suspension of the President of the Republic from his office or the acting President<sup>128</sup>;

- in *Ukraine*, the Constitutional Court rules on the permissibility of a revision of the Constitution and on its conformity with intangible norms on human and citizens' rights, independence and territorial integrity, and likewise on its conformity with the prohibition on carrying out revisions within certain specified periods<sup>129</sup>.

## **II. The effects of judgments**

### **1. Principle and temporal effects**

It is important to dwell on the question of the effects of judgments, since the way in which they are carried out largely depends on their effects.

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<sup>121</sup> Article 93(4) Cst.

<sup>122</sup> Articles 61 and 98(2) and (5) Cst.

<sup>123</sup> Article 18 Cst.

<sup>124</sup> Article 100(2) Cst.

<sup>125</sup> Art 87(1)(g)-(i) Cst.

<sup>126</sup> Article 112 Cst.

<sup>127</sup> Article 104(1) Cst.

<sup>128</sup> Article 135(c) and (f) Cst.

<sup>129</sup> Articles 157-159 Cst.

Where *preliminary review* is carried out, this, by definition, prevents the provision from entering into effect. No measure is annulled or declared void; rather it is the legislative procedure that does not reach its conclusion: the effect of the judgment is non-promulgation (*France*<sup>130</sup>, *Italy*<sup>131</sup>). If only part of the contested text is declared unconstitutional, the rest enters into force – except, of course, in the case of international treaties, which may not be ratified only in part. Thus, in *France*, it is for the government to assess whether the law, severed of its unconstitutional provisions, still has any interest; if so, it will present the text so amended to the President of the Republic for promulgation.

In the case of *ex post facto review*, the unconstitutional provision is declared void or annulled (invalidated) where the judgment has effect *erga omnes*<sup>132</sup>. The difference in terminology has no real significance, rather it is the question of the date on which the judgment takes effect that is determinative. Invalidation usually takes effect on the date on which the judgment is given or published (*ex nunc* effect) or soon afterwards (in *Bulgaria*, three days after its publication in the Official Gazette<sup>133</sup>). States in which invalidation systematically takes effect retroactively (*ex tunc*) are the exception: in such case, invalidation of a legislative measure does not apply only to the pending proceedings and to proceedings under way at the date of the judgment, but also to certain proceedings which have already been closed. This is the case:

- in *Belgium*, where judgments by the Court of Arbitration have effect *ex tunc*; nonetheless, the Court may indicate which effects of provisions that have been set aside must be considered irreversibly cancelled and which effects are maintained provisionally for a period which it specifies. A special revocation procedure exists for court decisions which have become final<sup>134</sup>;
- in *Ireland*, where the courts may however limit the retroactive effect to persons who had brought court proceedings at the date of the judgment;
- in *Portugal*: the principle of *res judicata* is maintained; the Constitutional Court may order an exception to this principle, in particular in criminal matters<sup>135</sup>.

In other States, the Constitutional Court may stipulate that its judgment has *retroactive effect* (examples: *Andorra*, *Greece*<sup>136</sup>). In *Germany*, judgments in criminal matters which are based on an unconstitutional provision may be revised; other decisions are no longer capable of being carried out<sup>137</sup>. Decisions of the *Spanish* Constitutional Court have retroactive effect where the non-application of the unconstitutional provision would have resulted in a less severe criminal or administrative sanction or no sanction at all<sup>138</sup>. In *Slovenia*, the Constitutional Court may determine that a judgment is to have retroactive effect where regulations adopted for the exercise of public powers are annulled; a party adversely affected by a decision adopted on the basis of such a measure is entitled to seek the amendment or annulment of such measure, provided that it was adopted less than one year before<sup>139</sup>. In *Hungary*, an *ex tunc* effect – or conversely a postponement of the effect of the judgment – is possible where required on grounds of legal

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<sup>130</sup> Article 62(1) Cst.

<sup>131</sup> Cf. Article 127 Cst. for the regional laws.

<sup>132</sup> See point II.2, *infra*.

<sup>133</sup> Article 14(3) of the Law on the Constitutional Court.

<sup>134</sup> Article 8 ss of the Special Law on the Court of Arbitration.

<sup>135</sup> Article 282 Cst.

<sup>136</sup> For the Special Supreme Court, see Article 51(1) and (4) of the Law on the Special Supreme Court.

<sup>137</sup> Article 79 of the Law on the Constitutional Court.

<sup>138</sup> Article 40 of the Organic Law on the Constitutional Court.

<sup>139</sup> Articles 45-46 of the Law on the Constitutional Court.

certainty; the Constitutional Court will order the reopening of criminal proceedings which resulted in a sanction based on an unconstitutional provision where its adverse effects subsist<sup>140</sup>. In *Romania*, a finding of unconstitutionality in a case of concrete review constitutes legal grounds for a retrial in civil cases, at the request of the party that claimed the exception of unconstitutionality, and in criminal cases in which the conviction was based on the provision declared unconstitutional<sup>141</sup>.

In numerous States, *the date on which the judgment takes effect may be deferred*, in order to give the authorities time to adapt the legislation to suit the Court's decision. This occurs particularly where the contested provision embodies an inequality which may be rectified by one of two opposing solutions (extending the scope of the provision or simply abrogating it) or more generally, where several solutions consistent with the Constitution are possible; the effects of judgments are deferred in particular where the judgment has major budgetary implications (for example in the field of tax or social security benefits) or where it requires administrative reorganisations (see below for an example from the *United States*). In *Poland*, the Constitution provides that "judgments of the Constitutional Court shall enter into force on the date of their publication; however, the Court may determine another date for the extinction of the binding force of the legislative measure. This time may not exceed 18 months in the case of a law and 12 months in the case of other legislative measures. In the case of judgments giving rise to financial burdens not provided for in the budgetary law, the Constitutional Court shall determine the date on which the measure loses its binding force after having cognisance of the opinion of the Council of Ministers"<sup>142</sup>. In *Slovenia*, judgments of the Constitutional Court are declaratory where they make a finding that there has been a legislative omission or that the unconstitutionality cannot be remedied by annulling or abrogating the contested measure; in such case, the Court sets a period for the competent authority to rectify the unconstitutionality<sup>143</sup>. In the *Czech Republic*, the Constitutional Court is even at liberty to determine the date on which its judgments take effect<sup>144</sup>. In other States, the possibility of altering the date on which judgments take effect has developed through practice (*Italy*, by way of exception); in the *United States*, the Supreme Court may, in certain cases, allow a reasonable time for carrying out its decisions, as in the case of the well-known judgment in *Brown* prohibiting racial segregation in schools.

Whilst judgments of constitutional courts never formally amend the contested measure, it is possible in practice for the court's decision to add new aspects to the provision. Accordingly, in *Italy*, the Constitutional Court sometimes gives judgments which result in the scope of a provision being extended to cover persons who have suffered unjustified discrimination or which add provisions directly derived from the Constitution to provisions declared unconstitutional on the ground that they fail to implement the Constitution fully.

The Romanian Constitution provides for a specific institution in the framework of abstract preliminary review: the Court's judgment has the effect of a suspensory veto, in that the unacceptable provision is sent back to the Parliament to be reexamined. "If the law is passed again in the same formulation by a majority of at least two-thirds of the members of each Chamber, the objection of unconstitutionality shall be removed, and promulgation thereof shall be binding"<sup>145</sup>. Parliament is thus authorised to derogate from the Court's decision by the same majority as that which allows the revision of the Constitution; however, such a revision is not

<sup>140</sup> Articles 43(3)-(4) of the Law on the Constitutional Court.

<sup>141</sup> Article 26 of the Law on the Organisation and Operation of the Constitutional Court.

<sup>142</sup> Article 190(2) Cst.

<sup>143</sup> Article 48 of the Law on the Constitutional Court.

<sup>144</sup> Article 70 of the Law on the Constitutional Court.

<sup>145</sup> Article 145 Cst.

possible without a referendum<sup>146</sup>; the reexamination procedure is therefore not equivalent to a revision of the Constitution.

## 2. Scope of judgments

Most judgments have effect *erga omnes*. This is always the case following a declaration of nullity or the annulment of a legislative act, where there has been preliminary review or abstract review. The *erga omnes* effect extends in certain States to all judgments relating to the unconstitutionality of a legislative measure, in particular in the context of a referral for a preliminary ruling or of a direct action before the constitutional court (*Bulgaria*<sup>147</sup>, *Hungary*<sup>148</sup>, *Poland*<sup>149</sup>) or the Supreme Court (*Ireland*). The provision is then invalidated. In a number of States, it is even provided that judgments of the constitutional court have the force of law (*Armenia, Canada, Lithuania*<sup>150</sup>) or even force superior to law (*Andorra*). In *Austria*, judgments relating to the allocation of competences are in principle equated to constitutional law. Constitutional courts may be bound by their previous decisions (*Cyprus, Portugal*), but this is not the rule, even in common law countries (*Ireland, United States*). In *Italy*, decisions in matters of constitutional review only affect cases pending.

In contrast, review of the constitutionality of decisions, including cases involving a referral for a preliminary ruling as to the validity of provisions, often results in judgments whose scope is merely *inter partes*, leaving the way open for a reversal of the case-law and hence to contrary decisions of the ordinary courts, both in States in which there is diffuse review of constitutionality (examples: *Finland, Japan, Netherlands, Sweden*) and in those which essentially practise concentrated review (examples: *Austria, Slovakia*<sup>151</sup>, *Slovenia*<sup>152</sup>). However, the *inter partes* effect of such judgments does not prevent victims of the application of unconstitutional measures from requesting the reopening of proceedings or claiming damages (*Denmark*). In *Luxembourg*<sup>153</sup>, where only references for preliminary rulings are possible, judgments of the Constitutional Court always have an *inter partes* effect. In *Belgium*, only judgments on an abstract petition have effect *erga omnes*, while, in principle, those resulting from a request from another court for a ruling have *inter partes* effect; in reality, however, the impact on case-law is more general. Following an unconstitutionality verdict on a legislative measure, the federal Council of Ministers or a Community or Regional Government has six months in which to request Court annulment of the measure.<sup>154</sup> In *Portugal*, a judgment given following a review *in concreto* only has effect on an *inter partes*<sup>155</sup> basis, but, once the Constitutional Court has declared a provision unconstitutional in three specific cases, it may decide to carry out an *in concreto* review with *erga omnes* effect. In *Spain*, decisions relating to the protection of constitutional rights in principle have effect *inter partes*, but the interpretation given by the Constitutional Court is binding on the other courts and the agreement of the full court is needed in order to change the case-law. In addition, if a law contravenes fundamental rights or public freedoms, it may be subjected to review in the abstract<sup>156</sup>. In *Switzerland*, a

<sup>146</sup> Article 147 Cst.

<sup>147</sup> Cf. Article 22 of the Law on the Constitutional Court.

<sup>148</sup> Article 27(2) of the Law on the Constitutional Court.

<sup>149</sup> Article 190(1) Cst.

<sup>150</sup> Article 72(2) of the Law on the Constitutional Court.

<sup>151</sup> Article 57 of the Law on the Constitutional Court.

<sup>152</sup> Cf. Articles 45-46 of the Law on the Constitutional Court for the effects *erga omnes* of the decisions on the constitutionality of normative acts.

<sup>153</sup> Article 15(2) of the Law on the Constitutional Court.

<sup>154</sup> Article 4(2) of the Special Law on the Court of Arbitration.

<sup>155</sup> Article 80 of the Law on the Organisation, Functioning and Procedure of the Constitutional Court.

<sup>156</sup> Article 55 of the Organic Law on the Constitutional Court.

reversal of the case-law has to be justified on serious grounds and one division of the Federal Court cannot deviate from the case-law of another without the latter's agreement<sup>157</sup>. In *Iceland*, since *stare decisis* has the force of a constitutional custom, judgments of the Supreme Court have *de facto* effect *erga omnes*.

In most States, judgments of the Constitutional Court or the equivalent body are published in an official gazette (examples: *Bosnia and Herzegovina* – publication in the Official Gazettes of Bosnia and Herzegovina and its constituent entities<sup>158</sup>, *Bulgaria*, *Estonia*<sup>159</sup>, *France*<sup>160</sup>, *Hungary*<sup>161</sup>, *Italy*<sup>162</sup>, *Greece* – for the judgments of the Special Supreme Court). In *Poland*, judgments are published in the organ in which the contested measure was promulgated and, in the absence of such an organ, in the official gazette<sup>163</sup>. However, some States merely provide for publication in an official series of court reports (*Canada*), whereas others publish only a selection of judgments (*Greece*, in the case of the superior courts – Court of Cassation, Council of State, Court of Auditors -, as opposed to the Special Supreme Court; *Ireland*; *Republic of Korea*).

### 3. Effects on other authorities

In a number of States, the judgments of the constitutional court do not have to be carried out by other institutions and the constitutional court has no power to order another authority to act. This is the case in particular where there is only preliminary review, since the effect of the judgment in such a case is non-promulgation (*France*<sup>164</sup>). The situation is similar in some States which allow abstract review and referrals for preliminary rulings (*Bulgaria*, *Estonia*, *Turkey*), and even direct actions before the constitutional court (*Canada*, *Czech Republic*, *Finland*). In *Albania* in principle judgments of the Constitutional Court have no effect on other authorities except where they determine the competent authority in a particular case.

Among the affirmative answers to the question as to the effect of judgments of the constitutional court on other authorities, some mention solely the obligation for the government to publish judgments declaring measures unconstitutional. This can be of considerable importance, because it causes measures declared unconstitutional to be set aside with immediate effect (*Austria*<sup>165</sup>). Others mention the obligation on the competent institutions to adopt measures (in particular laws) conforming to the Constitution (*Japan*, *Lithuania*<sup>166</sup>, *Moldova*, *Netherlands*), in some cases within a time limit laid down by the constitutional court (*Bosnia and Herzegovina*<sup>167</sup>). In *Slovakia*, the legislature has to bring the legislation into line with the Constitution within a period of six months of the decision of the Constitutional Court<sup>168</sup>. In the *Czech Republic*, there is a general arrangement which stipulates that enforceable decisions of the Constitutional Court are binding on all authorities and persons<sup>169</sup>. In *Italy*, the Prosecutor's Office orders the release

<sup>157</sup> Article 16 of the Federal Law on the Organisation of the Judiciary.

<sup>158</sup> Article 71 of the Rules of Procedure of the Court.

<sup>159</sup> Article 24(1) of the Law on Constitutional Review Court Procedure.

<sup>160</sup> Article 20 of the Ordinance incorporating an Organic Law on the Constitutional Court.

<sup>161</sup> Article 41 of the Law on the Constitutional Court (for the decisions of annulment).

<sup>162</sup> See in particular Article 30 of Law N° 87 of 1953.

<sup>163</sup> Article 190(2) Cst.

<sup>164</sup> Article 62(1) Cst.

<sup>165</sup> Article 140(5) Cst.

<sup>166</sup> Article 72(3) of the Law on the Constitutional Court.

<sup>167</sup> Article 59 of the Rules of Procedure of the Court.

<sup>168</sup> Article 132 Cst.

<sup>169</sup> Article 89 Cst.

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of anyone detained on the basis of an unconstitutional law. In contrast, in other States, the constitutional court may request another authority to act, for example:

- by ordering a detainee to be freed (*Switzerland*);
- by ordering the legislature to amend a provision (*Republic of Korea, Hungary*), if necessary within a specified time (*Germany*), or by giving notice to this effect (*Italy*);
- by ordering the reopening of criminal proceedings which gave rise to a sanction with continuing adverse effects: *Hungary*<sup>170</sup>;
- in *Slovenia*, “where necessary, the Constitutional Court shall specify the institution responsible for the implementation and the conditions for applying the decision”<sup>171</sup>; in *Ukraine*, it “may specify in its decision or its opinion the procedures to be followed in order to give effect to them and compel the competent institutions of the State to carry out the decision to comply with the opinion”<sup>172</sup>;
- in some States, the constitutional court has extensive powers and may give all orders necessary to have its judgments carried out, including giving instructions to other authorities: *Ireland, Malta*<sup>173</sup>, *United States*; in the *United States*, the courts may, if necessary, impose severe sanctions in the event of a refusal to carry out their orders. In *Greece*, court rulings and administrative acts issued after the Special Supreme Court has pronounced its judgment and which are in conflict with this judgment may be the subject of an appeal before a court or an administrative authority; these rules also apply to decisions handed down before the Court’s judgment is published, if the case was already pending before the Court when the decision was made; furthermore, if the Supreme Court declares the provision void with retrospective effect, any irrevocable decision handed down by a judicial body during the period covered by the retrospective effect may form the subject of a special appeal; administrative measures taken by virtue of the provision that has been found unconstitutional must be annulled by the administrative authorities.

#### 4. The effects of judgments given in direct actions before the Constitutional Court

Where a constitutional court (be it a Constitutional Court or a Supreme Court ruling under a system of diffuse review) rules in the context of a direct action brought by an individual for violation of constitutional rights, it may rule in one of two ways: either by giving judgment on the substance or by referring the case to an inferior authority for a fresh decision.

The most frequent case is to send the case back to an inferior authority, especially in States with a specialised Constitutional Court, as the appeal has the effect of setting aside the judgment of the lower court (examples: *Austria, Czech Republic, Portugal, Slovakia*<sup>174</sup>). Alternatively, it is incumbent upon the competent authority to act in accordance with the judgment of the Constitutional Court, which amounts to the same thing (*Republic of Korea*).

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<sup>170</sup> Article 43(3) of the Law on the Constitutional Court.

<sup>171</sup> Article 40(2) of the Law on the Constitutional Court; see also Article 60(2) of the Law on the Constitutional Court.

<sup>172</sup> Article 70 of the Law on the Constitutional Court.

<sup>173</sup> Article 46(2) Cst.

<sup>174</sup> Cf. Article 57 of the Law on the Constitutional Court.

In some States, the usual practice is to send the case back to a lower court, although the constitutional court may itself rule on the substance: *Ireland*, *Netherlands* (in administrative proceedings) and *Slovenia*<sup>175</sup>.

In other States, the Constitutional or Supreme Court decides whether to rule itself or to send back the case to a lower court: *Canada*, *Japan*, *Spain*.

In *Cyprus*, when ruling on administrative decisions, the Supreme Court sends back the case for a fresh decision by a lower-ranking authority; where a court decision is challenged, however, it rules on the substance. In *Denmark* and *Iceland*, whether the competent court rules on the substance or sends back the case to a lower-ranking authority depends on the applicable legislation.

Of the States which answered the questionnaire, only *Israel* indicated that the Supreme Court itself rules on the substance in all cases.

*Hungary* is a particular case since, except in criminal cases, it is for the parties to reopen the proceedings before the ordinary courts. In the *United States*, sending the case back to a lower court is the exception, although this does not preclude a resumption of the proceedings before such an authority. In *Poland*, a decision of the Constitutional Court ruling that a measure is unconstitutional constitutes the basis for reopening the proceedings before the inferior authorities.

### III. Execution of judgments

Before examining the execution of judgments in more detail, it should be pointed out that the term is used to refer here not only to the specific order or ruling made in the judgment, but also to the *ratio decidendi*.

#### 1. Means for securing execution

The question of executing judgments is dealt with in a fairly varied way depending on the State. Several States have not adopted any provision in this connection (examples: *Bulgaria*, *Estonia*, *Latvia*, *Luxembourg*). In *Turkey*, once a contested provision has been annulled, the question of the execution of the judgment is regarded as being to no purpose<sup>176</sup>. In the case of preliminary review (as in *France*<sup>177</sup>), the fact that the contested provision does not enter into force suffices in order to execute the judgment.

Some answers relating to States where judgments take effect solely on an *inter partes* basis indicate that the question of the execution of judgments does not really arise there (*Finland*, *Uruguay*). Such an assertion may hold true in law, without really holding true in fact, as maintaining in force a provision that has been declared unconstitutional in a particular case is, to say the least, unsatisfactory (*Luxembourg*).

Other answers indicate that judgments are enforceable (*Canada*<sup>178</sup>), or binding on all authorities (*France*<sup>179</sup>) or both (*Czech Republic*<sup>180</sup>). In *Azerbaijan*, judgments are binding<sup>181</sup>; the court

<sup>175</sup> Article 60 of the Law on the Constitutional Court.

<sup>176</sup> Cf. Article 53(3) of the Law on the Constitutional Court.

<sup>177</sup> Articles 61-62 Cst.

<sup>178</sup> Article 94 of the Law on the Supreme Court.

<sup>179</sup> Article 62(2) Cst.

follows up their execution on the basis of annual or six-monthly reports and informs the other institutions of the State where necessary. The execution of the judgment or opinion is notified to the *Moldovan* Constitutional Court on such terms as it indicates; the Court's secretariat monitors enforcement. In *Poland*, the judgment of the Constitutional Court indicates the authority competent to amend the unconstitutional measure.

In numerous States, it falls to the *executive* (government and administration) to execute the judgments. Accordingly,

- in *Albania*, execution is carried out by the Council of Ministers through the competent bodies of the State administration; the Constitutional Court may designate another institution as being responsible for executing its judgment and, where necessary, specify how the judgment is to be executed; in one case the Public Prosecutor's office executed a judgment;

- in *Austria*, judgments are executed by the Federal President or under his or her authority, with the exception of judgments relating to pecuniary claims against the Federation, the Länder, or the local authorities, which are executed by the ordinary courts<sup>182</sup>;

- in *Switzerland*, an appeal may be made to the Federal Government in the event of non-execution<sup>183</sup>.

In *Slovakia*, whereas there is no provision on the execution of judgments, the prosecutors may ensure, pursuant to their ordinary powers that judgments are in fact executed.

In contrast, in *Greece*, an action may be brought in the courts against court decisions and administrative measures taken after delivery of a judgment of the Supreme Court and contrary thereto.

As mentioned above<sup>184</sup>, in some States, the constitutional courts may give all the orders necessary in order to have their judgments carried out, including giving instructions to other authorities (*Ireland*, *Malta*<sup>185</sup>, *Ukraine*<sup>186</sup>, *United States*) or may at least specify the body responsible for carrying them out and for the conditions for implementing them (*Germany*<sup>187</sup>, *Slovenia*<sup>188</sup>). In *Spain*, the Constitutional Court may determine who has to execute the judgment and where applicable, rule on objections to execution<sup>189</sup>. Accordingly, it may put an authority on notice to terminate difficulties in execution.

In *Belgium*, the law allows the Court of Arbitration, on appeal, to suspend a measure with immediate effect if the measure is identical to another measure enacted by the same legislative body which the Court has already declared void<sup>190</sup>.

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<sup>180</sup> Article 89 Cst.

<sup>181</sup> Article 130(VI) Cst.

<sup>182</sup> Articles 146(and 137) Cst.

<sup>183</sup> Article 39(2) of the Federal Law on the Organisation of the Judiciary.

<sup>184</sup> See point II.3 *supra*.

<sup>185</sup> Article 46(2) Cst.

<sup>186</sup> Article 70 of the Law on the Constitutional Court.

<sup>187</sup> Article 35 of the Law on the Constitutional Court.

<sup>188</sup> Article 40(2) of the Law on the Constitutional Court.

<sup>189</sup> Article 92 of the Organic Law on the Constitutional Court.

<sup>190</sup> Article 20(2) of the Special Law on the Court of Arbitration.

## 2. Problems relating to the execution of judgments

Most of the replies to the questionnaire do not mention recent cases of non-execution or inadequate execution of judgments of constitutional courts. However, some problems were noted.

- Some related to the *absence of clear legal provisions on the effect of judgments*; hence, in *Hungary*, until 1999 there were no provisions on how to reopen ordinary proceedings where an unconstitutional provision had been applied.

- It is also possible that *ordinary courts* are not inclined to comply with judgments of the constitutional court. In *Estonia*, the law provides that the ordinary proceedings continue in the event of a referral to the Supreme Court for a preliminary ruling, which may lead to contradictory decisions; it can occur that a judgment of a lower court which is contrary to one of the Supreme Court enters into force. In *Italy*, the Court of Cassation has not always followed the interpretation given by the Constitutional Court, which considered, in a judgment with no *erga omnes* effect, that the law – according to its own interpretation – did comply with the Constitution: the Court of Cassation took the line that it alone was competent to interpret the law. Now, in principle, the Constitutional Court no longer diverges from the way in which the ordinary courts interpret laws. There have also been cases where an ordinary court has failed to follow the case-law of the Constitutional Court in the *Czech Republic*, but these have been resolved. Similar problems have arisen in *Croatia* and *Portugal*.

- Other difficulties arise from the *concrete nature of the review*, especially in countries which do not have diffuse review of constitutionality: since the unconstitutional provision is not abrogated, it is possible for it to be applied by lower courts or administrative bodies (examples: *Greece, Ireland, Malta, Netherlands*). Similar problems have arisen in *Germany* where the Constitutional Court held that certain fiscal legislation was unconstitutional but did not declare it null and void (given the financial implications involved).

- The administration's reluctance to apply across the board the principles identified by a given judgment may be ascribed in particular to *financial or practical reasons* – for example, with regard to the right of handicapped children to primary education in *Ireland* or the finding that prison overcrowding in the *United States* is unconstitutional.

- *Political reasons* may be involved where it is necessary to *adopt laws in conformity with the Constitution*, in particular in the case of an unconstitutional omission: in *Hungary*, this was the case with statutes on minorities, the media and the minimum number of Members of Parliament per parliamentary political group, which were ultimately enacted. *Financial grounds* may also make execution difficult, as in *Moldova*, as regards legislation on foreign investment. In *Croatia*, delayed or incomplete execution of Constitutional Court judgments has always had to do with financial factors, which, for example, have caused the Parliament to enact similar legislation to that which was ruled unconstitutional. Delays in the adoption of statutes in conformity with the Constitution have also been observed in *Italy, Slovakia* and *Slovenia*. In *Ukraine*, the death penalty has been maintained in peacetime, likewise the simultaneous holding of legislative and executive offices, contrary to the case-law of the Constitutional Court.

- Difficulties in executing judgments of constitutional courts may also be due to *lack of knowledge of them* or their *lack of clarity* (*Portugal*).

- In *Germany*, in cases where the Constitutional Court declares a law unconstitutional but does not set it aside, the legislature may be slow to enact legislation that accords with the Constitution. This situation recently arose in connection with prison wages, which the Court ruled were too low. It ruled, however, that the ordinary courts were empowered to set wage levels in accordance with the Constitution if the legislative changes were not in place by 1 January 2001.

Without there being any question of non-execution, properly so-called,

- public disagreement of certain authorities with a judgment of the constitutional court could make its application more difficult (*Armenia*);
- postponing the effects of a judgment of the constitutional court (by the court itself) may give rise to an unsatisfactory situation (*Austria*);
- claims arising out of a declaration of unconstitutionality may be time-barred (*Iceland*).

### 3. Consequences of the non-execution of judgments

Most of the answers to the questionnaire indicate that the consequences of non-execution are not catered for by the legislation. Often, this is due to the fact that there have been few real cases of non-execution, owing in particular to the means conferred on the constitutional court in order to impose its decisions on other authorities.

In the absence of specific provisions, ordinary judicial proceedings (*Iceland, Netherlands*) or fresh proceedings before the Constitutional Court (*Portugal*) or the Supreme Court (*Cyprus*<sup>191</sup>) may be brought by the parties.

A number of States provide for legal sanctions in the event of non-execution. These may be *criminal sanctions*, as in *Azerbaijan*<sup>192</sup> or in *Ireland* (contempt of court); in *Albania*, the President of the Constitutional Court may impose a fine. An administrative fine is provided for in *Moldova*<sup>193</sup>.

In addition, in *Azerbaijan*, the President of the Court refers the matter to the full court in the event of non-execution with a view to its taking the necessary measures.

*Civil sanctions* (damages) may also be imposed on persons who do not carry out a judgment of the constitutional court (*Ireland, Portugal*).

Finally, in extreme cases, judgments may be executed by *force*, as was the case in the *United States* in order to suppress racial segregation in education.

### **Conclusion**

As might have been expected, the diversity of forms of constitutional courts results in diversity in the effects of their decisions and in the manner of executing them.

For example, preliminary or even abstract review will give rise to fewer difficulties of execution than review carried out in individual cases where such review nevertheless results in judgments

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<sup>191</sup> See Article 146(1) Cst.

<sup>192</sup> Article 80 of the Law on the Constitutional Court.

<sup>193</sup> Article 82 of the Code of Constitutional Jurisdiction.

of general scope. A decision that prevents a law from entering into force or invalidates it is easier to execute than a decision requiring an institution to revise the measures which it has adopted or, worse, requiring the administration to alter a long-established practice. Political or financial considerations may also constitute major impediments to the execution of judgments.

Obviously, this does not signify that only judgments which are easy to execute should be given, as such reasoning could have the undesirable effect of reducing the scope of the review of constitutionality. Nor does this mean that courts should not take subtle decisions, leaving a degree of leeway to the legislator, rather than unrealistically imposing substantial expenditure or creating a legislative vacuum. On the other hand, procedural rules must be framed sufficiently precisely so as to avoid leaving the way open to non-execution or to doubts as to the effects of a judgment; legislation must provide for institutions empowered to execute judgments and, where necessary, to act in the event of non-execution. It is fortunate in this regard that, despite their imperfections, the systems currently applied give rise to only a limited number of cases of non-execution.

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## QUESTIONNAIRE

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 ?

**Synoptic Tables**  
**of the replies to the questionnaire**

**B to F**

A	B	C	D	E	F
<b>State</b>	<b>Court of last instance performing constitutional review</b>	<b>Type and subject of constitutional review</b>			
		<b>Review of normative acts</b>			
		<b>Preliminary review (Q.1.A.1.a)</b>	<b>Abstract review (Q.1.A.1.b)</b>	<b>Concrete or incidental review (Q.1.A.1.c)</b>	<b>Acts excluded from constitutional review (Q.1.A.1.d)</b>
<b>Albania</b>	Constitutional Court	International treaties; referendums	Conformity of legislation with the Constitution and international treaties	Yes (referral of preliminary questions) See column G	None
<b>Andorra</b>	Constitutional Tribunal	Yes	No (in respect of promulgated legislation); yes, preliminary review (see column C)	Yes (referral of preliminary questions) See column G	None (the tribunal gives decisions concerning laws and legislative decrees)
<b>Armenia</b>	Constitutional Court	International treaties subject to ratification	Yes (conformity of laws, resolutions of the National Assembly, orders and decrees of the President and resolutions of the Government, as well as of international treaties with the Constitution)	No	Acts, other than acts adopted by Parliament, President of the Republic and Government
<b>Austria</b>	Constitutional Court	Yes, but only questions of jurisdiction	Yes	Yes (referral of preliminary questions)	None

A	B	C	D	E	F
State	Court of last instance performing constitutional review	Type and subject of constitutional review			
		Review of normative acts			
		Preliminary review (Q.1.A.1.a)	Abstract review (Q.1.A.1.b)	Concrete or incidental review (Q.1.A.1.c)	Acts excluded from constitutional review (Q.1.A.1.d)
<b>Azerbaijan</b>	Constitutional Court	International treaties	Yes	Yes (Supreme Court through the intermediary of the competent courts)	None
<b>Belgium</b>	Court of Arbitration	No	Yes	Yes (referral of preliminary questions)	None (except the Constitution and revisions thereof); subordinate legislation comes under the jurisdiction of the ordinary courts
<b>Bosnia and Herzegovina</b>	Constitutional Court	No	Yes	Yes (referral of preliminary questions) See column G	None; even normative acts adopted by the High Representative are subject to constitutional review
<b>Bulgaria</b>	Constitutional Court	International treaties	Yes	Yes (referral of preliminary questions by the Supreme Court)	None
<b>Canada</b>	Supreme Court (diffuse review)	Yes, referrals for opinion	Yes, petitions for a declaration of unconstitutionality and referrals for opinion	Yes (diffuse review)	None
<b>Croatia</b>	Constitutional Court	No	Yes	No	No
<b>Cyprus</b>	Supreme Court	Yes	No	Yes	No
<b>Czech Republic</b>	Constitutional Court	No	Yes	Yes (constitutional complaint)	No

A	B	C	D	E	F
State	Court of last instance performing constitutional review	<b>Type and subject of constitutional review</b>			
		<b>Review of normative acts</b>			
		Preliminary review (Q.1.A.1.a)	Abstract review (Q.1.A.1.b)	Concrete or incidental review (Q.1.A.1.c)	Acts excluded from constitutional review (Q.1.A.1.d)
Denmark	Supreme Court (diffuse review)	No	No (except where there is sufficient legal interest: one case)	Yes (diffuse review)	None
Estonia	Supreme Court	Yes (laws and treaties)	Yes (preliminary review - see column C - and <i>ex post facto</i> review (unilateral normative acts))	Yes (referral of preliminary questions)	None
Finland	Supreme Court (diffuse review)	No	No (subject to the review performed by the Constitutional Committee of Parliament)	Yes (diffuse review)	Constitutional review of laws only concerns obvious cases of unconstitutionality
France	Constitutional Council	Yes	Yes (preliminary review)	No	None; the Constitutional Council has jurisdiction to review laws except constitutional laws and laws passed by means of referendum; regulatory instruments come within the jurisdiction of the Conseil d'Etat
Germany	Constitutional Court	Only laws ratifying international treaties	Yes	Yes (referral of preliminary questions) See column G	None

A	B	C	D	E	F
State	Court of last instance performing constitutional review	<b>Type and subject of constitutional review</b>			
		<b>Review of normative acts</b>			
		Preliminary review (Q.1.A.1.a)	Abstract review (Q.1.A.1.b)	Concrete or incidental review (Q.1.A.1.c)	Acts excluded from constitutional review (Q.1.A.1.d)
<b>Greece</b>	Court of Cassation / Council of State / Audit Court (diffuse review) - Special Supreme Court in the event of conflicting decisions of higher courts	No	No (except regulatory instruments, which are reviewed by the Council of State)	Yes (diffuse review)	None
<b>Hungary</b>	Constitutional Court	Yes, only on the initiative of the President of the Republic	Yes	Yes (referral of preliminary questions) see column G	None; constitutional reforms are reviewed only as to formal requirements
<b>Iceland</b>	Supreme Court (diffuse review)	No	No	Yes (diffuse review)	None
<b>Ireland</b>	Supreme Court (diffuse review)	Yes (Supreme Court, on the initiative of the President of Ireland)	Yes (High Court then Supreme Court)	Yes (High Court then Supreme Court)	Amendments to the Constitution; legislation passed under emergency powers procedure
<b>Israel</b>	Supreme Court	Yes	Yes	Yes	None
<b>Italy</b>	Constitutional Court	Yes, only legislation adopted by the regions and the provinces of Trento and Bolzano	Yes (legislation of the state, a region or one of the provinces of Trento or Bolzano, at the request of the region or one of the aforementioned provinces)	Yes (referral of preliminary questions)	None; but acts of sub-statutory rank are only submitted to the Constitutional Court in the event of a dispute as to jurisdiction

A	B	C	D	E	F
State	Court of last instance performing constitutional review	<b>Type and subject of constitutional review</b>			
		<b>Review of normative acts</b>			
		Preliminary review (Q.1.A.1.a)	Abstract review (Q.1.A.1.b)	Concrete or incidental review (Q.1.A.1.c)	Acts excluded from constitutional review (Q.1.A.1.d)
<b>Japan</b>	Supreme Court (diffuse review)	No	No	Yes (diffuse review)	None
<b>Korea (Republic)</b>	Constitutional Court	No	No	Yes	None
<b>Latvia</b>	Constitutional Court	No	Yes	No, but should be introduced shortly (referral of preliminary questions)	None
<b>Liechtenstein</b>	State Court	No, but the State Court delivers expert opinions	Yes	Yes (referral of preliminary questions) + see column G	None
<b>Lithuania</b>	Constitutional Court	International treaties	Yes	Yes (referral of preliminary questions)	None
<b>Luxembourg</b>	Constitutional Court	No (subject to the review performed by the Conseil d'Etat)	No	Yes (referral of preliminary questions)	International treaties
<b>Malta</b>	Constitutional Court (in general diffuse review)	No	No	Yes (diffuse review)	None
<b>Moldova</b>	Constitutional Court	No	Yes	Yes (referral of preliminary questions)	Acts predating the Constitution
<b>Netherlands</b>	Supreme Court / Council of State (diffuse review of sub-statutory acts)	Only Council of State for preliminary opinions	No	Yes (diffuse review of sub-statutory acts)	Statutes - acts of lower rank may be reviewed

A	B	C	D	E	F
State	Court of last instance performing constitutional review	<b>Type and subject of constitutional review</b>			
		<b>Review of normative acts</b>			
		Preliminary review (Q.1.A.1.a)	Abstract review (Q.1.A.1.b)	Concrete or incidental review (Q.1.A.1.c)	Acts excluded from constitutional review (Q.1.A.1.d)
Norway	Supreme Court (diffuse review)	No, but Parliament may obtain the opinion of the Supreme Court on points of law	No	Yes (diffuse review)	No
Poland	Constitutional Tribunal	Yes, only on the initiative of the President, before signing the law adopted by Parliament	Yes	Yes (referral of preliminary questions)	None
Portugal	Constitutional Court	Yes	Yes	Yes (diffuse review)	None
Romania	Constitutional Court	Yes	No	Yes (referral of preliminary questions)	All normative acts that are not laws, ordinances assimilated to laws and internal regulations of the Chambers of Parliament.
Slovakia	Constitutional Court	No	Yes	Yes (referral of preliminary questions) see column G	None
Slovenia	Constitutional Court	International treaties	Yes	Yes (referral of preliminary questions) See column G	None (excepts acts giving concrete effect to constitutional law)
Spain	Constitutional Court	International treaties	Yes	Yes (referral of preliminary questions) See column G	The Constitutional Court only gives decisions concerning statutes, except in the event of an appeal for protection of constitutional rights or a dispute as to jurisdiction between territorial bodies

A	B	C	D	E	F
State	Court of last instance performing constitutional review	<b>Type and subject of constitutional review</b>			
		<b>Review of normative acts</b>			
		Preliminary review (Q.1.A.1.a)	Abstract review (Q.1.A.1.b)	Concrete or incidental review (Q.1.A.1.c)	Acts excluded from constitutional review (Q.1.A.1.d)
Sweden	Supreme Court, Supreme administrative Court (diffuse review)	No	No	Yes (diffuse review)	Review of parliamentary or government legislation only concerns cases of manifest unconstitutionality
Switzerland	Federal Court (diffuse review)	No	Yes (cantonal legislation)	Yes (diffuse review)	Federal laws and implementing legislation simply reiterating those laws; the constitutions of the cantons in so far as they are subject to review by the Federal Assembly
Turkey	Constitutional Court	No	Yes	Yes (referral of preliminary questions)	Specific reform laws, normative acts adopted under the National Security Council regime
Ukraine	Constitutional Court	Yes	Yes	Yes (referral of preliminary questions)	None
United States	Supreme Court (diffuse review)	No	No	Yes (diffuse review)	None
Uruguay	Supreme Court	No	Yes	Yes (referral of preliminary questions)	None; acts other than laws and regional government legislation with statutory force come within the jurisdiction of the Administrative Tribunal

**G to L**

<b>A</b>	<b>G</b>	<b>H</b>	<b>I</b>	<b>J</b>	<b>K</b>	<b>L</b>
<b>State</b>	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Albania</b>	Yes	No	Yes, including disputes between central and local government authorities	Yes, and other political entities	Disputes concerning presidential or parliamentary elections, constitutionality of referendums and verification of referendum results	
<b>Andorra</b>	Yes	No	Yes, including parishes			
<b>Armenia</b>	Yes, but the adoption of such decisions is dealt with by the ordinary courts	No	No	Yes	Disputes concerning presidential and parliamentary election results, as well as referendum results	

A	G	H	I	J	K	L
State	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Austria</b>	Yes	No	Yes, including disputes between the federation and Länder, between Länder and between courts	No	Disputes concerning elections and voting	Election/dismissal of members of the organs of statutory professional associations; indictment of members of federal and Land authorities; disputes over interpretation of the law between the federal government or a minister and the Ombudsman's office; pecuniary claims against the federation, Länder or local or regional authorities
<b>Azerbaijan</b>	No direct appeal: see columns C-E	No	Yes (legislative, executive and judicial bodies)	Yes, including other public associations	Verifies and confirms the results of parliamentary elections	

A	G	H	I	J	K	L
State	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Belgium</b>	No	Yes	Yes	No	No	No
<b>Bosnia and Herzegovina</b>	Yes	Yes	Disputes between Bosnia and Herzegovina and the entities, between the entities and between institutions			
<b>Bulgaria</b>	No	No	Yes, including with organs of local self-government	Yes, including other political associations	Lawfulness of election of the President and Vice-President and of parliamentary elections	Impeachment of the President or Vice-President by the National Assembly
<b>Canada</b>	Yes (diffuse review)	Yes	No			
<b>Croatia</b>	Yes	No, but the Constitutional Court may notify the authorities about such omissions	Yes	Yes	Review of constitutionality and legality of elections and referenda	Impeachment and incapacity of the President of the Republic; appeals in cases in which a judge is relieved from his office or on disciplinary responsibility of judges
<b>Cyprus</b>	Yes	No	Yes	Yes	Election disputes	

A	G	H	I	J	K	L
<b>State</b>	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Czech Republic</b>	Yes, including rights guaranteed by international treaties on human rights	No	Yes, including local and regional authorities	Yes	Election disputes; certification of elections, loss of eligibility or incompatibility with the office of a Deputy or a Senator	Implementation of decisions by international courts; impeachment of the President of the Republic, etc.
<b>Denmark</b>	Yes (diffuse review)	No	Yes, if questions are of a constitutional nature	Cf column I	Cf column I	Cf column I
<b>Estonia</b>	No	No			Validity of referendums on parliamentary bills, constitutionality of text	
<b>Finland</b>	Yes (diffuse review)	No	Yes, disputes between central government and the Åland islands			
<b>France</b>	No	No	No		Disputes concerning presidential or parliamentary elections and referendums	Opinions requested by the President of the Republic (emergency powers, etc.)

A	G	H	I	J	K	L
<b>State</b>	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Germany</b>	Yes	Yes, especially under constitutional complaint procedure (column G) and in disputes between state entities (column I)	Yes, both between federal entities and between the federation and the Länder	Yes	Elections to the Bundestag	Public-law disputes where no other judicial recourse exists; impeachment of the Federal President, of judges, etc.
<b>Greece</b>	Yes (diffuse review)	Yes (claims for damages; in theory failure to adopt a regulatory instrument can be challenged directly; where possible, direct application of constitutional provisions)	Disputes between courts or between judicial and administrative authorities: Special Supreme Court		Disputes concerning elections and voting; disqualification or removal from office of members of parliament: Special Supreme Court	
<b>Hungary</b>	No	Yes	Yes, including local government authorities		Appeals against decisions of the National Electoral Commission concerning the admissibility of questions put to referendum and referendum results	Abstract interpretation of a constitutional provision; review of acts (regulatory or otherwise) on the autonomy of universities and local authorities

A	G	H	I	J	K	L
<b>Type and subject of constitutional review (continued)</b>						
<b>State</b>	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Iceland</b>	Yes (diffuse review)	No, in principle. However, the courts may in practice decide concrete cases of violation of constitutional rights through omissions; claims for damages	No, the only solution is an appeal to the ordinary courts	No, the only solution is an appeal to the ordinary courts	The Supreme Court oversees and declares the results of presidential elections – as to other elections, there is only indirect judicial control	No
<b>Ireland</b>	Yes (diffuse review)	No, but the courts may note omissions	Yes; disputes relating to the powers of state entities or involving the separation of powers	No specific provision; laws and decisions concerning the registration of political parties and the suppression of unlawful organisations are subject to constitutional review in the ordinary way	Complaints concerning elections and voting	No
<b>Israel</b>	Yes (diffuse review)	Yes			Court of first and last instance concerning elections to the Knesset	

A	G	H	I	J	K	L
	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
<b>State</b>			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Italy</b>	No, this is a matter for the ordinary courts	Yes, under an established court practice	Yes; disputes between state bodies and between central and regional government bodies (but, in this case, solely in administrative and judicial matters)		Conformity with the constitution of proposals for abrogative referendums	
<b>Japan</b>	Yes (diffuse review)	Yes (claims for damages)	Yes			
<b>Korea (Republic)</b>	Yes (primarily concerning administrative decisions)	Yes (where parliament has a specific obligation under the Constitution)	Yes (including disputes involving local authorities)	Yes		Impeachment
<b>Latvia</b>	No, but should be introduced in the near future	No	No	No	No	No

A	G	H	I	J	K	L
State	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Liechtenstein</b>	Yes	Yes, only in the context of individual applications	Yes (between the courts and administrative authorities)	No, except on individual application	Applications to declare elections or referendums null and void	Binding interpretation of the Constitution in the event of disagreement between the government and parliament; indictment of a minister by parliament
<b>Lithuania</b>	No	No	No		Breaches of electoral law concerning presidential or parliamentary elections	Incapacity of the President of the Republic, measures taken by persons against whom impeachment proceedings have been instituted
<b>Luxembourg</b>	No	No	No	No	No	No
<b>Malta</b>	Yes (diffuse review)	No			Electoral disputes (first and last instance)	

A	G	H	I	J	K	L
State	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Moldova</b>	No	No			Confirms results of parliamentary and presidential elections and of referendums	Decides on proposals to reform the constitution; ascertains circumstances warranting dissolution of parliament, removal of the President from office, etc.
<b>Netherlands</b>	Yes (diffuse review)	No	Yes	Yes	Yes	
<b>Norway</b>	Yes (diffuse review)	No, but the courts may note omissions				Control of legality of administrative decisions
<b>Poland</b>	Yes	No; the Constitutional Tribunal may nevertheless draw attention to the omission	Yes	Yes		Incapacity of the President of the Republic
<b>Portugal</b>	Yes (diffuse review)	Yes	No	Yes	Constitutionality and lawfulness of referendums	

A	G	H	I	J	K	L
State	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Romania</b>	No	No	No	Yes	Review and confirmation - for the election of the President, - for referendums	Establishes if the interim in the exercise of office of the President is justified; gives consultative opinion for the suspension of the President; verifies the fulfilment of the conditions for legislative initiative from the citizens
<b>Slovakia</b>	Yes	No	Yes, central government bodies	Yes	Results and constitutionality of elections and referendums	Rules on a charge of treason brought against the President of the Republic
<b>Slovenia</b>	Yes	No	Yes, including disputes involving municipalities	Yes	Appeals against confirmation in office of members of parliament; rules on requests from the National Assembly to hold a referendum	Charges brought against the President of the Republic, the Prime Minister or a minister; complaints by local authorities
<b>Spain</b>	Yes	No	Yes	No	No	No

A	G	H	I	J	K	L
<b>State</b>	<b>Type and subject of constitutional review (continued)</b>					
	<b>Decisions concerning protection of constitutional rights (Q.1.A.3)</b>	<b>Review of unconstitutional omission of legislation (Q.1A.2)</b>	<b>Other powers (Q.1.A.4)</b>			
			<b>Conflicts between state entities</b>	<b>Constitutionality/ dissolution of political parties</b>	<b>Elections and voting</b>	<b>Other</b>
<b>Sweden</b>	Yes (diffuse review)	No	Yes (in disputes involving municipalities)	No	No	
<b>Switzerland</b>	Yes (diffuse review)	No	Yes (between the Confederation and the cantons or between cantons)	No specific jurisdiction	Yes (disputes concerning elections and voting)	No (in constitutional matters)
<b>Turkey</b>	No	No	No	Yes	No	No
<b>Ukraine</b>	No	Yes	No	No	No	Review of constitutional amendments; impeachment procedure
<b>United States</b>	Yes (diffuse review)	No	Yes (separation of powers between branches of federal government; distribution of powers between federal and state government entities)			
<b>Uruguay</b>	Yes	No	Yes (any conflict based on the Constitution)			Last instance in civil and criminal cases; cassation; diplomatic cases

**M to Q**

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>			
<b>Albania</b>	Annulment with immediate effect	No	No, except where the court determines the authority competent in a specific case	Sent back to lower authority for a new ruling	<i>Erga omnes</i> , force of law, publication in official gazette
<b>Andorra</b>	Annulment with immediate effect	Possibility of favourable retrospective effect	No	Sent back to lower authority for a new ruling	<i>Erga omnes</i> , of greater force than statute law, publication in official gazette
<b>Armenia</b>	Invalidation of the act (upon the publication of the decision)	No		Not effective	<i>Erga omnes</i> , they are final, may not be subject to review and shall enter into legal force upon their publication in the Official Gazette
<b>Austria</b>	Annulment with immediate effect from the date of publication of the decision, not retrospective	The effects of a finding of unconstitutionality may be deferred for a maximum of 18 months	The federal government is required to publish the decision declaring an act unconstitutional	Sent back to lower authority for a new ruling	<i>Erga omnes</i> for constitutional review of a normative act; <i>inter partes</i> for review of decisions by administrative authorities; decisions on distribution of powers have force of the norm to be interpreted; publication in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Azerbaijan</b>	Null and void, with immediate effect	No	Court decisions are binding on other authorities, which are obliged to apply them	Not applicable	<i>Erga omnes</i> , publication in official gazette
<b>Belgium</b>	Annulment (total or partial), in principle with retrospective effect	The Court may waive the retrospective effect	The Court decision is automatically binding	Not applicable	<i>Inter partes</i> in theory for referrals of preliminary questions but with an effect on case-law; otherwise <i>erga omnes</i> ; the Court is not bound by its earlier decisions; publication in the Official Gazette
<b>Bosnia and Herzegovina</b>	Decisions finding an act unconstitutional give the body which adopted the act a time-limit within which the situation must be brought into line with the Constitution	Annulment with immediate effect is also provided for; the decision may be effective <i>ex tunc</i>	Yes, where a time-limit is imposed (for instance on parliament) within which the situation must be brought into line with the Constitution	The court may decide on the merits itself or refer the case back	<i>Res judicata: erga omnes</i> or <i>inter partes</i> according to the nature of the decision; the court is not bound by its earlier decisions; publication in the official gazettes of Bosnia and Herzegovina and the entities
<b>Bulgaria</b>	The act becomes inapplicable, with immediate effect	No	Yes, the decision is binding on all authorities	Not applicable	<i>Erga omnes</i> ; published in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Canada</b>	The act is invalidated to the extent necessary to cure the unconstitutionality (total or partial invalidation)	Postponement possible to allow parliament to amend unconstitutional provisions (time-limit set by Supreme Court)	No	The court may decide on the merits itself or refer the case back	Decisions are binding on the parties and on lower authorities; force of law; publication in Supreme Court Reports
<b>Croatia</b>	Annulment with immediate effect	The Court can postpone the effect of its decisions	The Court decisions must be implemented by other organs	Sent back to lower authority for a new ruling	Binding <i>erga omnes</i> ; annulment has force of law, but the Court is not bound by its precedents; published in official gazette.
<b>Cyprus</b>	Null and void, with immediate effect; preliminary review: the norm cannot be promulgated	No	The effects of the decision are binding on all authorities and persons	Administrative decision: sent back to the original authority for a new ruling; court decision : the Supreme Court decides on the merits	Review of acts and administrative decisions: <i>erga omnes</i> ; review of court decisions: <i>inter partes</i> ; publication in official gazette
<b>Czech Republic</b>	Annulment with immediate effect	The court can decide on the decision's date of effect	The decisions of the Constitutional Court are generally binding on all persons and authorities	Sent back to lower authority for a new ruling	<i>Erga omnes</i> , except perhaps in cases of concrete review; decisions are binding on the court itself; publication in Collection of Laws and in Collection of Constitutional Court Judgments

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Denmark</b>	The act is not annulled	No	No	According to the applicable law, either the Court will make a new decision or refer it to the lower authority	<i>Inter partes</i> ; however, a party who has been subjected to an unconstitutional regulation can seek to have the case re-opened or may seek compensation for damages; in principle no publication in an official gazette but often in a legal journal
<b>Estonia</b>	The impugned act does not enter into force (preliminary review); otherwise it becomes null and void	The Supreme Court has postponed the effect of a decision in one instance	No	Not applicable	<i>Erga omnes</i> ; force of law in practice; publication in official gazette
<b>Finland</b>	The act is not annulled	No	No		<i>Inter partes</i> ; no effect apart from in the concrete case concerned
<b>France</b>	Promulgation not permitted to the extent necessary to cure the unconstitutionality (total or partial invalidity)	Not applicable	No	Not applicable	<i>Erga omnes</i> ; publication in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Germany</b>	Declaration that the act is null and void ( <i>ab initio</i> ) or unconstitutional	Where an act is deemed unconstitutional, it may remain in force for a transitional period	Where an act is deemed unconstitutional, the Constitutional Court may lay down specific rules governing the transitional period and order parliament to amend the law in question; proceedings may be re-opened in cases where a criminal court gave judgment on the basis of an unconstitutional law; other decisions must not be executed; also see column R	As a general rule, the case is sent back to the lower court; in some cases the Constitutional Court gives a final decision itself	<i>Erga omnes</i> , the Court is not bound by its own precedents; force of law; decisions on the constitutionality of laws are published
<b>Greece</b>	Special Supreme Court: annulment with immediate effect	The Special Supreme Court may give decisions with retroactive effect			Special Supreme Court: <i>erga omnes</i> , plus publication in official gazette; High Courts: <i>inter partes</i>

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Hungary</b>	Decisions have the effect of creating or altering rights or status. Annulment with effect from the date of publication of the decision.	<i>Ex tunc</i> effect, where necessary to ensure certainty of the law or to safeguard the parties' interests. The court may also decide that a decision will have effect at a future date.	The court may order parliament to pass legislation. In the event of a finding of unconstitutionality concerning criminal law, the court orders the re-opening of criminal proceedings in cases where penalties were imposed, which continue to have negative consequences, otherwise it is for the parties to decide on whether to apply for the case to be re-examined by the ordinary courts.	See Column O	<i>Erga omnes</i> , force of law in practice; possibility of departure from precedents; publication in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Iceland</b>	In practice an unconstitutional act ceases to have effect (see column Q)	No, except for the fact that parliament may take some time to amend legislation	No, apart from execution in the concrete case	Court judgments: the Supreme Court decides the case itself; administrative decisions: parties may need to lodge a new request with the relevant authority	<i>Inter partes</i> in theory, but <i>erga omnes</i> in practice (force of precedent); the court is in principle not bound by its earlier decisions; publication in the Supreme Court Reports
<b>Ireland</b>	The act is declared null and void, in whole or in part, with retrospective effect (but see column N)	The effects of invalidation of an act may sometimes be purely prospective; the award of damages may be confined to the loss suffered by the plaintiffs from the date of institution of proceedings	The High Court may order another body to act	As a rule, the case is sent back to the lower authority	<i>Erga omnes</i> , for a finding of invalidity (see column N); the court is not bound by the rule of <i>stare decisis</i> ; most decisions with constitutional implications are published
<b>Israel</b>	Null and void with immediate effect	The Supreme Court may postpone the effect of a decision		The court decides the case itself	<i>Erga omnes</i> ; decisions are binding on the court itself; publication in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Italy</b>	In cases of preliminary review the act is not promulgated; in other cases the act loses legal force the day after publication of the decision; in practice, the court may take a decision which, <i>de facto</i> , adds new elements to legislation	No, in principle, but in practice the court has sometimes varied the date of effect of a decision	The court may ask parliament to amend legislation providing the reasons for its decision	Not applicable	<i>Erga omnes</i> (declaration of unconstitutionality), publication in official gazette
<b>Japan</b>	The act does not become null and void as a matter of course	No	Other authorities are required to act upon decisions (for instance, by repealing legislation), but the court cannot order them to do so	The case may be sent back to the lower authority	<i>Inter partes</i> : no effect apart from in the concrete case; departure from a precedent requires a decision by the Grand Bench
<b>Korea (Republic)</b>	Annulment with immediate effect	The Constitutional Court can postpone the effects of the decision	The Constitutional Court may order parliament to amend legislation	The relevant authority is required to act in accordance with the Constitutional Court's decision	<i>Erga omnes</i> , the court cannot re-decide a case, publication of important decisions
<b>Latvia</b>	Null and void with immediate effect	The Constitutional Court decides on the date of effect	No	Not applicable	Decisions by the Constitutional Court are binding on all authorities; publication in the official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Liechtenstein</b>	Annulment with immediate effect	The Court may postpone the effects of the annulment by a maximum of six months	The Court may call on parliament to amend a law which is not clearly unconstitutional	The case is sent back to the lower authority	<i>Erga omnes</i> ; publication in the Official Gazette; the annulment of an unconstitutional provision has force of law
<b>Lithuania</b>	An act deemed unconstitutional becomes inapplicable with immediate effect in all cases	No	Measures taken on the basis of an unconstitutional act must be revoked, and decisions based on such acts must not be executed	Not applicable	<i>Erga omnes</i> , force of law, publication in official gazette
<b>Luxembourg</b>	Declaratory effect (conformity or failure to conform with the Constitution); immediate effect in all cases, but only <i>inter partes</i>	No	No	Not applicable	<i>Inter partes</i> : referral of a preliminary questions not necessary where the issue of a provision's constitutionality has already been settled by the Constitutional Court; publication in the Mémorial (official gazette)

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Malta</b>	The act immediately ceases to have effect		An authority is not required to amend an unconstitutional act; the court may give such orders as are necessary to ensure the effective enforcement of its decisions		<i>Erga omnes</i> where the decision concerns the constitutionality of a normative act (according to prevailing opinion among legal writers); otherwise <i>inter partes</i> ; the court is not bound by its own decisions
<b>Moldova</b>	Null and void with immediate effect	The court may decide that the decision will have effect on the date of publication or another date	An unconstitutional act or decision must be amended by the authority which adopted it		<i>Erga omnes</i> , force of constitutional law; publication in official gazette
<b>Netherlands</b>	No annulment: <i>ex nunc</i> effect	No	It is for the competent authority to amend an unconstitutional act	The rule in administrative proceedings is that the case is sent back to the lower authority	<i>Inter partes</i> ; parliament may exceptionally be granted a time-limit within which to remedy the unconstitutionality

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Norway</b>	The act becomes inapplicable in the specific case	No	No	The Court may decide itself or send the case back to the lower authority	<i>Inter partes</i> , but precedential effect of the decision; publication in official gazette
<b>Poland</b>	Annulment with effect from the date of publication of the decision	The Constitutional Tribunal may postpone the effects of its decisions for a maximum of 18 months for laws and 12 months for other regulatory acts	Where a decision has financial consequences not foreseen in the budget, the court consults the government to determine the date of effect of its decision	Proceedings may be resumed before the lower authority	<i>Erga omnes</i> ; decisions are published in the publication in which the impugned act was promulgated or in the official gazette
<b>Portugal</b>	Abstract review: the act immediately ceases to have effect	In principle a decision has retrospective effect, but the Constitutional Court may decide that it will have <i>ex nunc</i> effect; however, final decisions in similar cases are protected by the principle of <i>res judicata</i>	Concrete review: the originating court must comply with the Constitutional Court's decision	The case is sent back to the lower authority	<i>Erga omnes</i> for abstract review; the Constitutional Court is bound by its own decisions, which have force of law; <i>inter partes</i> for concrete review, but abstract review is possible where an act has been deemed unconstitutional three times in concrete review proceedings; publication in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes, etc.</i>) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Romania</b>	Different effects depending on the normative act considered: - merely declaratory for act subject to preliminary review; - inapplicability for normative acts in force	Retrospective effect to the parties involved in cases where the claim of unconstitutionality was raised in civil cases; retrospective effect for convicted persons if their conviction was based on an act declared unconstitutional	The decision is binding, in cases of concrete review, on - the Court of Justice, which will disregard the act declared unconstitutional; - the Bucharest Tribunal, which is competent to dissolve the political party declared unconstitutional; - the Parliament, which must amend norms from its internal regulation that are declared unconstitutional	No	<i>Res judicata inter partes</i> or <i>Erga omnes</i> depending on the nature of the decision

A	M	N	O	P	Q
	<b>Effects of decisions</b>				
<b>State</b>	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Slovakia</b>	The unconstitutional act becomes inapplicable	<i>Ex constitutione</i> effect of the finding of the Constitutional Court, related to its publication in the collection of laws	Parliament must bring legislation into line with the Constitution within six months of the Constitutional Court's decision	Sent back to lower authority for a new ruling	<i>Erga omnes; inter partes</i> for decisions on protection of constitutional rights
<b>Slovenia</b>	In principle, annulment with immediate effect (on the day after publication of the decision); declaratory effect where abrogation does not make it possible to cure the unconstitutionality	The Constitutional Court may decide that a decision will have retrospective effect in the event of annulment of sub-statutory acts adopted with a view to exercising public authority; the date of effect may be postponed in the case of a declaratory decision; in the first case, measures implementing the annulled act may themselves be cancelled	The Constitutional Court determines the authority or authorities required to implement the decision and, if necessary, designates one to do so	In principle, the case is sent back to the lower authority but the Constitutional Court may exceptionally decide it itself	<i>Erga omnes</i> for abstract review; in principle, <i>inter partes</i> for concrete review; publication in the official gazette; implementing measures cancelled (see column N)

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Spain</b>	The impugned act becomes null and void with immediate effect	The Constitutional Court may postpone the effect of its decisions; they have retrospective effect as regards criminal and administrative penalties ( <i>lex mitior</i> )	The court may decide which authority is required to implement the decision	The court may send the case back to the lower authority or decide on the merits itself	<i>Erga omnes</i> , but exceptionally <i>inter partes</i> for decisions on protection of constitutional rights. However, the Constitutional Court's interpretation is binding on other courts. A departure from the case-law must be approved by the plenary court. Publication in official gazette
<b>Sweden</b>	An act deemed unconstitutional becomes inapplicable <i>in casu</i> ; the act is not annulled	No	It is for parliament to amend laws	The court may decide the case itself or send it back to the original authority	<i>Inter partes</i> ; the court is not bound by its earlier decisions; decisions are published, in full or in condensed form, in official law reports, but not in the official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
	<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>		
<b>Switzerland</b>	Annulment with immediate effect ( <i>ex nunc</i> )	No	In some rare cases, the Federal Court may order another authority to take a positive measure (for instance, release of a detainee)	The effect of the Federal Court's judgment is to set aside the contested decision; in practice, the case is sent back to the lower authority	Relative <i>erga omnes</i> effect: the courts and other authorities must take account of precedents established by the Federal Court; there must be serious grounds for a reversal of precedent; a section of the Federal Court may depart from the case-law of another section only with that section's approval
<b>Turkey</b>	Annulment with immediate effect	The Constitutional Court may postpone the effect of a decision for a maximum of one year	No	Not applicable	<i>Erga omnes</i> , publication in official gazette
<b>Ukraine</b>	Annulment with immediate effect	No	The Constitutional Court may make state authorities responsible for enforcing its decisions	Not applicable	<i>Erga omnes</i> , force of law (according to legal writers), publication in official gazette

A	M	N	O	P	Q
State	<b>Effects of decisions</b>				
	<b>Normative acts</b>			<b>Protection of constitutional rights (Q.1.B.2)</b>	<b>Force (<i>res judicata inter partes, erga omnes</i>, etc.) (Q.1.B.1 e &amp; 1.B.3)</b>
<b>In general (Q.1.B.1 a/b/d)</b>	<b>Over time: concrete cases (Q.1.B.1 a/b/d - continued)</b>	<b>Effect on other authorities (Q.1.B.1 c/f)</b>			
<b>United States</b>	Null and void with immediate effect (total or partial)	The courts - in particular the Supreme Court - may allow a period of time for curing an unconstitutionality	The courts may order other authorities to end an unconstitutionality	A case may be sent back for a new ruling	<i>Erga omnes</i> , the court is not bound by its earlier decisions, publication in an official reporter
<b>Uruguay</b>	The unconstitutional law becomes inapplicable <i>in casu</i> ; it does not become null and void		No	No possibility of sending back to the lower authority	<i>Inter partes</i>

**R to U**

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Albania</b>	Decisions are executed by the Council of Ministers through the intermediary of the relevant bodies and state authorities; the Constitutional Court may designate a body responsible for execution (in one instance it designated the public prosecution service) and, where necessary, stipulate how the decision is to be executed.	The President of the Constitutional Court may impose a fine	No	No
<b>Andorra</b>	Decisions are binding on all authorities	The problem has not arisen	No	No
<b>Armenia</b>	Failure to execute the decisions, their undue execution or the prevention of execution causes responsibility provided for by law	Legal penalties	No	No
<b>Austria</b>	Enforcement by the Federal President or under his or her authority; by way of exception, the ordinary courts are responsible for executing decisions on pecuniary claims		No	No, but postponement of the date of effect of decisions taken by the Constitutional Court may lead to an unsatisfactory state of affairs

<b>A</b>	<b>R</b>	<b>S</b>	<b>T</b>	<b>U</b>
<b>State</b>	<b>Execution of decisions</b>			
	<b>Means of ensuring execution (Q II)</b>	<b>Consequences of failure to execute (Q III)</b>	<b>Recent cases of failure to execute (Q IV)</b>	<b>Recent cases of unsatisfactory execution (Q V)</b>
<b>Azerbaijan</b>	Decisions are binding; the court monitors execution of its own decisions	The President of the Constitutional Court brings the matter before the plenary court, which decides on the measures to be taken; criminal penalties	No	No
<b>Belgium</b>	The King is responsible for ensuring enforcement; this means that recourse may be had to the law enforcement agencies	No cases of failure to execute	No	If a similar norm is drafted the Court may suspend it immediately; continuing validity of acts declared unconstitutional upon referral of a preliminary question
<b>Bosnia and Herzegovina</b>	In the event of failure to execute a decision, the matter is referred to the governments of the state and the entities	The problem has not arisen	No	No
<b>Bulgaria</b>	No rules in such matters	The problem has not arisen	No	No
<b>Canada</b>	Decisions have self-executing effect	Not applicable	No	No
<b>Croatia</b>	Decisions are obligatory on individuals and administration; executive bodies ensure execution of decisions; the Court may determine which body is authorised for execution and the manner in which its decision shall be executed	Not known so far	Conflicts between Constitutional Court and Supreme Court	Norm declared unconstitutional reaffirmed through another law or through renewed text of the repealed law / non-adoption of a law replacing an unconstitutional law: financial reasons
<b>Cyprus</b>	Preliminary review : non-promulgation; every individual or authority must abide by the decisions of the Supreme Court	An appeal is open before the Supreme Court	No	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Czech Republic</b>	The Constitutional Court's decisions have self-executing effect and are binding on all authorities and legal entities		Yes, such cases arose during the first few years of the court's functioning; lower courts failed to comply with the Constitutional Court's decisions; these problems have been resolved	No
<b>Denmark</b>	No rules in such matters	The normal remedies are available to parties	No	No
<b>Estonia</b>	No rules in such matters	The law does not make provision for such cases	In cases where a question of unconstitutionality is referred by a lower court, the viewpoints of the Supreme Court and the lower court may differ	In one instance an annulled act continued to be implemented for a very brief period because the decision became effective as of promulgation, not publication
<b>Finland</b>	Decisions relate to concrete cases, so there is no need for specific rules on execution	Not applicable	No	No
<b>France</b>	Decisions by the Constitutional Council (specific orders or rulings and reasons for the decision) are binding on all authorities	The problem has not arisen	No	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Germany</b>	The Constitutional Court may determine who is to execute its decisions and how	This is left to the court's discretion	Certain decisions concerning tax law have not been implemented within a reasonable time (for political, administrative or financial reasons). This concerned mere declarations of unconstitutionality (not decisions that an act was null and void).	See column T
<b>Greece</b>	Special means of recourse exist to allow interested parties to challenge decisions that conflict with judgments of the Special Supreme Court	The government sometimes takes steps towards reforming the law but an unconstitutional law can remain in force in some cases (for political or budgetary reasons, because of inertia or where a reversal of precedent is likely)	No	The public authorities sometimes continue to apply acts which the high courts have found to be unconstitutional (for political or budgetary reasons or because of inertia)
<b>Hungary</b>	No rules in such matters	The undesirable consequences of a legal vacuum may prompt parliament to act	Yes, the passing of legislation in conformity with the Constitution has been delayed for political reasons, but the laws were passed in the end	Yes, until 1999 there was no legal obligation to re-open judicial proceedings where a finding of unconstitutionality of the law applied in the final judgment had been made on an individual appeal
<b>Iceland</b>	Ordinary system of execution of judgments (execution by the administrative authorities)	Possibility of further court action; penalties for abuse of power	No, but claims resulting from a declaration of unconstitutionality may be time-barred	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Ireland</b>	The High Court can make any order necessary to ensure that its decisions are executed	Criminal and civil penalties	See column U	In a recent decision the authorities have been criticised for not being ready to accept the full implications of an earlier decision and for persisting with unconstitutional practices (in particular for financial reasons). The decision in question is under appeal
<b>Israel</b>	No rules in such matters	The problem has not arisen	No	No recent cases
<b>Italy</b>	No specific rules in such matters, apart from the rules of procedure of the houses of parliament concerning follow-up action to constitutional review decisions; decisions are binding on the authorities; for instance, the Public Prosecutor must take steps to have a prisoner released where that person was sentenced under a criminal law declared unconstitutional.		Parliament is sometimes slow to pass legislation required by the constitutional review decision; the Court of Cassation has occasionally refused to follow the interpretation of the law adopted by the Constitutional Court	No
<b>Japan</b>	No rules in such matters	The problem has not arisen; the competent authorities repeal or amend unconstitutional acts	No	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Korea (Republic)</b>	No rules in such matters; the competent authorities usually cancel unconstitutional provisions or measures as a matter of course	No rules	Yes, there has been one instance of failure to pass legislation necessary to remedy an unconstitutional situation (for political and financial reasons); in another instance the Supreme Court knowingly applied unconstitutional provisions (dispute between the two courts)	There have been instances where unconstitutional provisions continued to be applied or where legislation necessary to remedy an unconstitutional omission was not passed rapidly
<b>Latvia</b>	No rules in such matters	No rules, and the problem has not arisen	No	No
<b>Liechtenstein</b>	Annulment of a norm: <i>erga omnes</i> effect; annulment of a decision: re-examination of the case by the lower authority; annulment of election or vote: the latter must be repeated	The problem has not arisen	No	No
<b>Lithuania</b>	Decisions have force of law: regulatory instruments found to be unconstitutional must be revoked, and decisions based on an unconstitutional law must not be enforced	No rules in such matters	No	No
<b>Luxembourg</b>	No rules in such matters	No rules in such matters	The problem has not arisen (an unconstitutional provision is currently being revised)	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Malta</b>	The court may make any order necessary to ensure enforcement of its decisions	In the event of failure to amend a law deemed unconstitutional, the ordinary courts would no longer apply the legislation in question	There have been instances where, although legislation had been deemed unconstitutional, it was not repealed; however, all courts would be obliged to refuse to apply the legislation in question	No
<b>Moldova</b>	The court's decisions are transmitted to parties to proceedings and to the various authorities; the court is kept informed about execution of its decisions (or opinions) under the conditions laid down therein	Fines for failure to execute decisions	No	Problems of execution may arise for financial reasons
<b>Netherlands</b>	In administrative proceedings, a fine may be imposed; in civil proceedings, a tort action may be instituted	The normal remedies are available to parties	No	If there is a delay in repealing a regulation deemed to be unconstitutional, it may continue to be applied
<b>Norway</b>	Ordinary system for execution of court judgments	The problem has not arisen	No	No
<b>Poland</b>	The decision specifies the body competent for amending an unconstitutional act; also see column O.	The problem has not arisen	No, regarding budgetary questions see column O	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Portugal</b>	There is no specific rule; for instance, it is for parliament to refrain from enacting legislation deemed unconstitutional under a preliminary review decision or for the courts not to apply such legislation following concrete review	Possibility of further action before the Constitutional Court; claims for compensation if damages were caused by failure to execute	There have been a few cases; the parties concerned appealed again to the Constitutional Court, which confirmed its earlier decision. Reasons for non-compliance were ignorance of the court's decision, lack of clarity of the decision, unwillingness of the ordinary courts to acknowledge the court's authority to review their decisions	No
<b>Romania</b>	Not specific but ordinary means: administrative and court procedures	Legal penalties	No	No
<b>Slovakia</b>	No rules in such matters; however, public prosecutors may enforce decisions under their ordinary powers, but not in respect of parliament	Responsibility of bodies which fail to apply a Constitutional Court decision	Parliament has occasionally failed to comply with a decision within the constitutional six-month time-limit	No
<b>Slovenia</b>	The Constitutional Court itself decides which body is to implement a decision and in what manner	The Constitutional Court may call on parliament to comply with a decision	Delays in amending unconstitutional legislation	No

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
<b>Spain</b>	The Constitutional Court may determine who is required to execute the decision and resolve any incidents arising during execution, for instance by issuing a warning. Otherwise it is for the relevant authority to cure an unconstitutionality.	The problem has not arisen	No	No
<b>Sweden</b>	It is for parliament to amend laws	See column R, no remedy against parliament's failure to act	No	No
<b>Switzerland</b>	The cantons are required to execute decisions, and where they fail to do so an appeal may be lodged with the federal government.	The problem has not really arisen; but see column R	No; in one instance execution was delayed	No
<b>Turkey</b>	Not applicable; the impugned act becomes null and void	Not applicable	No	No
<b>Ukraine</b>	If need be, the Constitutional Court may stipulate the procedure and conditions of execution in its decision and make the relevant authorities responsible for enforcing it	In practice, no consequences so far	Yes, in particular regarding the court's ruling that a person may not simultaneously hold office as head of the local executive and mayor	Yes, the death penalty continues to apply in time of war (for political reasons)
<b>United States</b>	The courts will order the losing party to take the appropriate measures to execute the decision	The federal government may intervene, including by use of force	No	In practice, conduct prescribed in a decision may sometimes not be adopted, in particular because monitoring compliance is difficult.

A	R	S	T	U
State	Execution of decisions			
	Means of ensuring execution (Q II)	Consequences of failure to execute (Q III)	Recent cases of failure to execute (Q IV)	Recent cases of unsatisfactory execution (Q V)
Uruguay	The problem does not really arise because decisions have <i>inter partes</i> effect	See column R	No	Parliament is not required to repeal legislation found to be unconstitutional, but where it fails to do so the legislation may be applied