2000

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 4 October 2000
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Restricted
CDL-JU (2000) 40
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

S E M I N A R

ON "THE EFFICIENCY OF CONSTITUTIONAL JUSTICE
IN A SOCIETY IN TRANSITION"

YEREVAN, ARMENIA, 6-7 OCTOBER 2000

organised by the Venice Commission
in co-operation with the Constitutional Court of Armenia

Execution of judgments of the Constitutional Court of the Czech Republic

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Execution of Judgments of the Constitutional Court of the Czech Republic

Ladies and Gentlemen,

I should like to speak primarily about the enforceability of judgments, rather than about the actual execution of judgments. Of course, both problems are very closely connected. But no legal mechanism exists in the Czech Republic for the actual execution of Constitutional Court judgments.

1) The Constitution of the Czech Republic provides that Constitutional Court decisions are enforceable as soon as they are announced in the manner provided for by statute, unless the Constitutional Court decides otherwise concerning execution of judgments. Enforceability of a decision is generally understood as the legal possibility to execute a court decision (that is enforce the duties which are contained in them).

2) The enforceability of Czech Constitutional Court decisions is provided for in more detail in the Act on the Constitutional Court. The enforceability of judgments differs for the individual types of judgments falling under the Constitutional Court's jurisdiction, which can be categorized as follows:

A) In the first group belong those judgments in matters concerning petitions for the annulment of statutes or other regulations. These judgments are <u>enforceable on the day they are published in the Collection of Laws, unless the Court decides to delay enforceability.</u>

B) In the second group belong:

first: „Presidential" judgments, that is, especially, judgments in matters of a constitutional charge brought by the Senate against the President of the Republic for high treason;

second: the electoral judgments belong in this group. They include, for example, judgments in which the Court decides on remedial actions from decisions concerning the verification of the election of a Deputy or Senator .

Judgments in this group are enforceable when they are announced, which announcement must be made publicly.

C) The third group is comprised of Constitutional Court judgments in other matters, which are enforceable upon the personal delivery of the final written version of it to each party to the proceeding. This last group concerns especially the Court's judgments on constitutional complaints or natural or legal persons if allege that their fundamental rights and basic freedoms have been infringed as a result of the final decision in a proceeding by a public authority.

3) Now we can consider the actual enforceability of these decisions, that is the real possibility of requiring compliance with Constitutional Court judgments.

In my opinion the legal enforceability of Constitutional Court judgments and the actual possibility to enforce them is not the same thing. This distinction is a result of the nature of individual types of judgments.

a) The Czech Constitutional Court has had no problems with the enforceability of judgments annulling statutes or other legal regulations. The law provides that such judgments become enforceable on the day they are published in the Collection of Law, unless the Constitutional Court decides to delay enforceability. No state authority in the Czech Republic has yet refused to respect a Constitutional Court judgment annulling a statute or other legal regulation.

b) Nor have there been any problems so far with the second group of judgments, that is the judgments in matters concerning the President of the Republic or in electoral matters. The Constitutional Court has already annulled several decisions concerning the verification of the election of Senators, and the Electoral Commission respected them.

c) The third group of Constitutional Court judgments (those in which ordinary court decisions are annulled on the basis of a constitutional complaint by a natural or legal person) constitute the most complicated and problematic set of cases. I will now inform you about this issue in more detail.

4) The Czech Constitution provides that enforceable decisions of the Constitutional Court are binding on all authorities and persons. This text has brought on considerable difference of opinion between experts, ordinary court judges, and judges of the Constitutional Court.

A) The first group of problems consists in the issue of whether, in spite of the express wording of the Constitution, enforceable decisions of the Constitutional Court are binding in every case and for everybody (erga omnes), in other comparable cases as well, or for everybody, but only in the specific decided case, or only for the parties to the dispute.

One group of the interpreters of the Constitution generally argue restrictive:

first: the only judgments of the Constitutional Court which are generally binding in the full sense are those which annul legal regulations. Constitutional Court judgments which in specific matters annul individual decisions, such as court judgments, must naturally be respected by third parties and state authorities in relation to the decided case. They are not, however, obliged to apply that judgment in comparable future cases because there are no judicial precedents in the Czech Republic as is found in common law systems;

second: other experts even assert that Constitutional Court decisions annulling judicial decisions are not generally binding at all, due to the fact that they are enforceable only after they are delivered to the parties in the proceeding. For this reason, they cannot be binding either on third parties or on state authorities which are not informed about them, as this would be a violation of everybody's legal certainty.

Other group of the interpreters of the Constitution generally argue extensive:

first: Constitutional Court decisions are generally binding even in cases in which the judgment of an ordinary court is annulled. This conclusion does not follow alone from the text of the Constitution, but also from the Constitutional Court's special status as the judicial body for the protection of constitutionalism. This status is deduced also from the fact that no appeals against Constitutional Court decisions are permitted. Everybody is obliged to respect Constitutional Court decisions both in the decided case and in any future comparable cases;

second: it is true that Constitutional Court decisions in these matters are not enforceable until delivered to the parties to the proceeding. These decisions still bind everybody, however, because everyone may refer to them as soon as they learn about them.

B) The second group of problems concern what part of a Constitutional Court judgment annulling an ordinary court judgment is binding. Is it just the statement of judgment itself which is binding, or is the legal reasoning contained in the opinion also binding? In addition, is that legal reasoning binding even in other comparable cases?

One group of the interpreters of the Constitution generally argue restrictive:

first: the Constitutional Court's legal reasoning is not binding at all, especially in future cases. It is asserted that the Constitution gives no support for such a claim. The Constitutional Court's legal reasoning is persuasive based on the force of its arguments, but not on the Constitutional Court's legal authority;

second: the Constitutional Court's legal reasoning are not rules of conduct (norms); therefore, they cannot be enforced by command. It is only the statement of the judgment which is enforceable, and which parties can be obliged to obey, but in no case the reasoning.

Other group of the interpreters of the Constitution generally argue extensive:

first: the legal reasoning is a part of the Constitutional Court's decision, the whole of which is binding. This can be deduced as well from Art. 89 para. 2 of the Constitution;

second: the Constitutional Court's legal reasoning is generally binding not only in the specific decided case, but also in other comparable legal disputes. However, the ordinary courts sometimes do not respect this principle. Therefore, quite often another unconstitutional judicial decision is given in a case that is nearly identical to one already annulled by the Court, and the Court is obliged to annul the new one as well. This situation causes economic waste and also has negative moral consequences because citizens cannot understand why ordinary courts do not respect the Constitutional Court's legal reasoning.

third: the fact that also the Constitutional Court is bound by its own decisions in future cases is also the argument of this view. If the Constitutional Court wants to change an earlier declared legal principle, 9 of the Court's Justices must vote in favor of the new differing principle.

fourth: the legal principles declared by the Constitutional Court can be enforced before an ordinary court pursuant to of the Civil Procedure Code. It provides that when an appellate court has annulled the decision of a first instance court and returned the case to it for further proceedings, the legal principles declared by the appellate court are binding on the first instance court. The Civil Procedure Code applies (where appropriate) before the Constitutional Court.

5) Now we come to the question of whether and how ordinary courts can be forced to respect Constitutional Court judgments which annul ordinary court judgments. This is a complicated issue and no single opinion exists on it. Since no legal mechanism exists for enforcing Constitutional Court decisions, the ordinary courts cannot in fact be forced to obey them. The effect of Constitutional Court decisions depends upon whether they are willing to obey them voluntarily.

a) Mostly there are no problems in the Czech Republic with regard to the statement of judgment. If a judgment is annulled then, as a legal matter, it is null and the ordinary court is obliged to continue in the proceeding. Otherwise, it would be a case of denial of justice and of unreasonable delay in the proceeding, both of which can be sanctioned by disciplinary proceedings.

b) It is a more complicated matter if the ordinary courts do not respect the Constitutional Court's legal reasoning. Such cases have arisen repeatedly, especially in later similar matters. As far as I can learn, no sanction has yet been imposed for such conduct. But, I think, the situation changes for the better.

In conclusion, it can be affirmed that the issue of the enforceability and execution of Constitutional Court decisions, especially those in which ordinary courts are concerned, are among the most complicated. I am inclined to favor the following solution:

a) First, enforceable Constitutional Court decisions are binding on everybody (thus even in cases where a court decision is annulled);

b) Second, it is not just the Constitutional Court's statement of judgment which is binding but also the Constitutional Court's legal reasoning contained in the opinion of the judgment;

c) Third, the Constitutional Court's legal reasoning is binding on ordinary courts in the specific decided case. It is still controversial, however, whether the Constitutional Court's legal reasoning is legally binding also in later comparable matters.

Thank you!

JUDr. Vojen Güttler