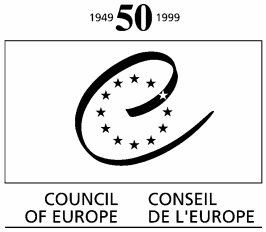

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

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EFFECTS, ENFORCEABILITY AND THE EXECUTION OF THE DECISIONS OF THE SPANISH CONSTITUTIONAL COURT

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1. Introduction

1.1. Purpose and structure of this paper

I appreciate the kind invitation by the Venice Commission and the Constitutional Court of Ukraine to participate in this seminar on "The Effects, Enforceability, and the Execution of the Decisions of Constitutional Courts". This is a subject of unquestionable interest with regard to contemporary constitutional justice. I will attempt to outline, as clearly as possible, the Spanish model; I will do so using a very narrow synthesis given the extreme technical complexity of the matter and the brevity of oral exposition. I will likewise attempt to offer some of my own reflections taken from my seven years of experience as Staff Attorney at the Constitutional Court. I trust that both factors will be of interest and use in the present forum of Comparative Law.

The structure of my presentation will be divided into four parts: first, a brief introduction to to the organization, composition, and principal powers of the Constitutional Court, in order to lay out the problem and to facilitate comprehension by non-Spanish jurists; second, a more detailed explanation of the effects of the constitutional decisions; third, a very brief reference to what is normally the voluntary observance of these decisions on the part of the public authorities; fourth, a reference to the possibility of compulsory execution by the Court itself.

My report will inevitably be unbalanced since, while legal provisions, scientific doctrine, and case law with respect to to the effects of the decisions are abundant, publications and experience regarding the latter two aspects are scarce. The explanation for this may lie in the fact that the *auctoritas* of our Constitutional Court is rather impressive (due to the prestige of the Judges and the fundamental legal basis of its decisions), and those at whom the decisions are directed—the public authorities—normally observe and comply with them with little excessive fuss, although criticism is unavoidable. However, the degree of compliance with the constitutional decisions is nearly universal.

In practice, disagreement tends almost always to be found in the interpretation and clarification of those decisions which declare a law to be unconstitutional. They can at times be quite difficult to clarify, and even more so as the matter with which the adjudicated law deals, as well as its political and economic ramifications, becomes more technically complicated. Recall, for example, the cases of the Personal Income Tax Act (*Ley del Impuesto sobre la Renta de las Personas Físicas*) and the State Land Act (*Ley del Estado sobre el Suelo*). The former was declared null by Constitutional Court Decision 45/1989 (*Sentencia del Tribunal Constitutional*, hereinafter STC) for requiring that a husband and wife file jointly; the latter for being found to fall under the authority of the Autonomous Communities (STC 61/1997).

1.2 Report on the composition, organization, and jurisdictions of the Constitutional Court.[1] On the activities of the institution

The Spanish Constitutional Court is composed of twelve members who are appointed by the King and nominated in the following manner: four at the proposal of the Congress of Deputies by a three-fifths majority of its members; four at the proposal of the Senate by the same three-fifths majority; two at the proposal of the General Council of the Judiciary; finally, two at the proposal of the Government. One-third of the Court is renewed every three years in a staggered series in order to prevent abrupt changes in its composition. Each of the parliamentary Houses are one-third; the Government and the General Council comprise the other third. Taking a lesson from what occurred in other European systems, a precautionary *prorrogatio* exists in the law (Art. 17.2 LOTC) by which the Judges of the Constitutional Court remain in office until such time as their successors take up office. In recent years, the building of consensus among the parliamentary groups to agree to proceed to the renewal of the Judges has been very slow given the majorities required for election; the terms of some Judges have been extended for up to as much as a year, which brings with it inconveniences in the normal operation of the institution.

The Judges of the Constitutional Court must be elected from among ordinary judges, Public Prosecutors, university professors, public officials, and lawyers, all of whom must be "jurists of recognized standing" with more than fifteen years of professional experience (Art. 159.2, CE). They are appointed for a period of nine years and may not be immediately re-elected. Customarily, there is always a mix of university department heads from legal disciplines, who are accustomed to scientific publications, and career judges with many years of experience in handing down decisions, which has been revealed in the past twenty years to be very valuable and enriching. The majority of the members belong to the academic group.

The members of the Constitutional Court are independent; they are inviolable for the opinons they express in the exercise of their duties, and have a special privelege (*fuero*) before the Supreme Court. They are irremovable during their term of office and may only be dismissed or suspended by the Court itself on precise, legally established grounds. They have a long list of incompatible posts, which includes that of acting in a managerial capacity in a political party. They tend, in fact, to have *curricula* which center on legal work and not, typically, on positions of renown such as, in the executive branch for example, that of Minister or, in the legislative branch, that of member of parliament.

The Court is a "constitutional body" which is situated on the margin of the three classic powers and independent of them. It acts as the supreme interpreter of the Constitution. It is integrated neither organically nor functionally in the Judiciary, although it obviously adopts a judicial organization, and it issues its rulings as Orders and Judgements upon the completion of the constitutional proceedings between parties.

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[1] See Articles 161-165 and the Ninth Transitory Provision of the Spanish Constitution of 1978 (*Constitución Española*, hereinafter CE). See also the Organic Law on the Constitutional Court (*Ley Orgánica del Tribunal Constitucional*, hereinafter LOTC) of 1979, particularly Title I.

The following are the principal jurisdictions and functions of the Court:

- The **"procedures for a declaration of unconstitionality"** with respect to laws, regulations, and enactments having the force of law of the State and the Autonomous Communities (Title II of the LOTC). This declaration may be sought directly by certain public bodies and entities by means of the "action of unconstitutionality", or indirectly by means of the "question of unconstitutionality", which may be raised by any judge or court of law.

- The **"appeal for constitutional protection"** at the instance of natural or legal persons in order to guarantee certain fundamental rights, though not all of those which appear in our bill of rights (see Art. 53.2 SC and Title III of the LOTC).

- The **"constitutional conflicts of jurisdiction"** between the State and the Autonomous Communities, or between the latter, or between the State or the Autonomous Communities and the local entities (Municipalities and Provinces). There is no practical relevance to the "conflicts between constitutional bodies" (Title IV of the LOTC).

- Demands for **"declaration on the constitutionality of international treaties"** to which the consent of the state has not yet been given (Title VI of the LOTC).

The figures do not lie with regard to the reality of this constitutional model. In 1998 there were 5,441 appeals for constitutional protection, and just another 96 matters of the Plenum of the Court. Appeals for constitutional protection make up 94.5% of the 29,814 matters admitted through 1994. The other 4 or 5% is distributed among all of the other jurisdictions. Only about 3 or 4% of the appeals for constitutional protection which are entered into culminate with a favorable judgement, or judgement granting protection, by the Court when it is of the opinion that there has been some failure of justice. In this sense, it is not unlike a "constitutional luxury", bearing in mind that constitutional protection against judicial and administrative resolutions (Articles 42 and 43 LOTC) is subsidiary to the "judicial protection" before ordinary judges and courts. The Spanish Constitutional Court is therefore, like Germany's, a "court of protection".

It would be a mistake to claim, however, that the judgements having an effect on the constitutionality of laws are not the most important ones. Nevertheless, it is important to point out that the labor of the Court which is second in numerical importance is that of solving controversies which arise for reasons of territorial jurisdiction between the State and the Autonomous Communities. This is particularly the case with Catalonia, the Basque Country, and Galicia (by my calculations, about 90% of the time), three Autonomous Communities from among a total of seventeen. This is true with regard both to laws (formally, "actions") and to enactments ("conflicts").[2] From 1980 to 1998, 419 actions of unconstitutionality against laws for jurisdictional reasons between the State and the Autonomous Communities accounted

[2] These calculations are mine, starting from the official statistics published by the Technical Cabinet of the President of the Constitutional Court. There may therefore be small errors, which are attributable to me alone. It seems to me preferable to assume this risk in order to present a complete picture of the tendencies these statistics reflect.

for about 79% of actions in total. Additionally, there were 589 positive conflicts of jurisdiction against enactments. The Spanish Constitutional Court is also, therefore, a "court of conflicts".

I believe this perspective should be kept in mind when speaking abstractly of the effects of constitutional judgements.

The Court is organizationally divided into several collegial bodies, more or less reduced in order to issue rulings. These include the Plenum of the Court (the twelve Judges, who possess all jurisdictions less that of protection), the Divisions (two Divisions made up of six Judges, who handle the appeals for constitutional protection), and the Sections of each Division or of the Plenum of the Court. The Sections are made up of three judges and make decisions on procedure and practice in judicial proceedings; above all, they make decisions on the admissibility of the highly numerous appeals for constitutional protection.

The Court elects its President from among its members. The President sets the order of the day for the Plenum of the Court, selects the matters to be covered, and directs debate. He possesses a casting vote to resolve those cases in which there is a tie, though this is used infrequently since public opinion tends to frown on it. The ability to decide what shall be argued and in what order, or to decide when a case shall be heard and when it shall not, is a very important presidential power, since a strictly chronological order is not typically followed. It is not unusual in the Plenum of the Court for six or seven years to pass—and in some cases up to ten—before a judgement is issued on a matter. This is due to the excessive workload, the number of cases pending, and the amount of time invested in debate among the members. The structural delays are a very troublesome situation which does not have easy answers.

The President also sets the order of the day for the First Division, while the Vice-President handles the Second Division. With regard to appeals for constitutional protection in the Divisions, however, a strict chronological order does tend to be maintained, which is based on the date on which the appeal was entered into the register. As things stand, matters which were admitted three or four years ago are being resolved by judgement now. But about 78% of the thousands of appeals are rejected by the Sections. This is done in court orders written in very succinct, but reasoned language applying the dispositions of Article 50 of the LOTC.

The order by which the Judges are assigned the power to draft recommendations for the judgement is based neither on specialization nor on reasons of subject matter, but rather is a distribution of matters which is likewise founded on a chronological order of turns. When the entity in some matter demands it, or when the Judge appointed to draft the judgement is not part of the majority opinion, exceptions have been made.

The Judges may dissent from the majority with regard to the judgement or its grounds, and may express their dissenting opinions in writing so as to reflect the positions they defended during deliberation. It is commonly thought that the best criticism of constitutional judgements is found in the dissenting opinions themselves, and that this contributes to a reinforcement of their authority and legitimacy. It is not

unusual to find that, after a period of time, minority opinions have been taken up by the majority, thus closing a cycle.

The Court possesses an excellent library (one of the best in Spain in public law) and typically pays heed to the criticism of its case law which emanates from scientific doctrine. This dialogue, or exchange of opinions between doctrine and case law is essential in order to prevent the Court from isolating itself in its own monologues. It is true, however, that the Judges do not always accept the criticism well, especially if they are very radical.

2. The effects of constitutional judgements

2.1 Effects according to the type of constitutional judgement

Continuing with the same approach, the effects of the judgements depend in great part on the type of jurisdiction and action.[3] In truth, there are as many types of constitutional judgements as there are actions, or rather, material functions, since the actions of unconstitutionality against laws for jurisdictional reasons are very similar to conflicts. It is not easy to formulate general categories which apply to all of them. Before speaking of "constitutional judgements" we should first consider, with relative independence, the effects of the "judgement on appeals for protection", the "judgement on constitutional control of the law", and the "judgement on conflicts". This more rigorous approach, however, makes the job of synthesis more difficult.

The Constitution (Art. 164), however, considers the subject in the abstract. It limits itself to pointing out the following:

- The judgements and dissenting opinions shall be published in the Official State Gazette (*Boletín Oficial del Estado*), as shall the laws, and they shall have the same degree or **dissemination**.

- The judgements shall have the force of ***res judicata*** and no appeal may be brought against them.

- Those judgements which declare the unconstitutionality of a law and, in general, those not limited to the subjective acknowledgment of a right, shall be **fully binding on all persons**.

- That part of the law not affected by unconstutionality shall remain in force (the preference for **partial unconstitutionality**).

[3] This is, in my view, the more proper approach; it is the one which was used by the Association of Staff Attorneys of the Constitutional Court to study the question in a series of conferences carried out over three years (1995-1997). The Association has published three separate studies on judgements on appeals for protection, judgements on the constitutionality of laws, and judgements on conflicts. These appear in three books—to which I refer—edited by the Center for Constitutional Studies of Madrid. On the same subject, see also the report presented by the Spanish Constitutional Court to the *VII Conferencia dos Tribunais Constitucionais Europeus*, Lisbon, 1985, 180*ff.*

The Organic Law on the Court deals with the effects in greater detail. Articles 38-40 (Chapter IV, Title II) discuss the **judgement on the constitutionality of a law**. The following pronouncements found in these articles are worthy of mention:

- Judgements shall have the force of ***res judicata***, so that judgements which dismiss an action of unconstitutionality will prevent any subsequent raising of the same question in a new action based on an infringement of an identical constitutional precept and with identical reasoning. Of course, it is possible both to raise a question of unconstitutionality and to substantially change the basis of the action.

- Judgements **shall be binding** on all public authorities. In particular, it was established that the Constitutional Court should immediately communicate to the responsible judicial authority the judgements handed down on questions of unconstitutionality so that both the judicial authority and the parties to the action, once notified, would be bound by it.

- They shall have **consequences of a general nature** from the date of their publication in the Official State Gazette.

- Where a judgement declares a law to be unconstitutional, it shall also declare invalid the contested provisions and any other provisions to which it must be extended by association or consequence (what we call "**associated provisions**").

- Judgements which declare the unconstitutionality of a law **shall not provide grounds for review of proceedings concluded by means of a judgement having force of *res judicata*** in which said law may have been applied, though an important exception to this general rule is made: judgements in criminal proceedings and administrative litigation concerning a sanctioning administrative procedure (the two manifestations of the State's *ius puniendi*) would, as a consequence of the invalidity of the law, provide benefit to the justiciable party by means of a reduction of the penalty or sanction.

- At all events—that is, at all times—the ordinary case law of judges and courts relating to the laws adjudicated on constitutionality **shall be amended by the constitutional doctrine** resulting from those judgements.

The LOTC dedicates Articles 53-58 to **judgements on appeals for constitutional protection** (Chap. III, Title III). I should like to point out some of the basic effects resulting from these judgements:

- The first three effects are derived from the rulings which the law obliges the Court to make. The first is the declaration of **nullity of the judicial or administrative resolution** which infringed on the fundamental right (of course, there may be several rights), "**specifying, where applicable, the scope of the consequences**" (Art. 55.1.a). This is very important since the Court itself specifies the consequences of its judgement in the verdict and, on occasions, in a final summation of the legal grounds. Thus, for example, the Court may annul a judgement in a criminal proceeding for having violated the constitutional presumption of innocence, may declare said judgement null, and establish very well-defined effects: it may annul the guilty verdict, which has the effect of

freeing the convicted party, or may take the proceeding back to the moment of the oral hearing so that the evidence may be heard in due form, or to the moment of the issuance of the judgement so that it may be properly reasoned. The effect depends on the infringing entity.

- The second of these effects requires that the judgement **recognize the fundamental right** which was violated and that it be expressly stated in the verdict.

- The last of the three requires the **full restoration of the applicant's right**, adopting those measures of restoration which are conducive to that end. These may include, for example, a new judicial application or appeal, a completely new proceeding, the anulment of that which was judged, a rejudging which complies with certain guarantees, etc.

- **Claims for damages** arising from the harm caused as a result of a stay of the judicial or administrative ruling which the Constitutional Court may initially adopt are decided by the ordinary judges and courts.

- If the defect in constitutionality of the judicial decision or administrative resolution which prevented the full exercise of fundamental rights proceeds in reality from a law, the Division of constitutional protection lays a **question of inconstitutionality** before the Plenum of the Constitutional Court (Art. 55.2), which may declare the unconstitutionality of that law. Here the effects of the judgement on constitutional protection consist of allowing a pronouncement on the constitutionality of the law, it is a sort of "indirect protection against against laws", since Spanish citizens may not apply for judicial review of laws.

Finally, Articles 61, 66 and 67 of the LOTC basically take up the question of **judgements on conflicts of jursdiction**, that is, for reasons concerning the territorial distribution of jurisdictions among various entities. The effects of these are as follows:

- The judgement is binding on all public authorities and is fully enforceable in all cases (**binding effect *erga omnes***).

- The **body with which the challenged jurisdiction lies** is specified.

- Where appropriate, the **regulatory decision or administrative act** which gave origen to the conflict and lacked jurisdiction **is annulled**.

- The judgement may take whatever action it sees fit regarding *de facto* or *de jure* situations created under the adjudicated enactment; these we call **measures of restoration**.

The Court is progressively transferring procedural categories on the effects of the judgements on conflicts to the actions of unconstitutionality which in fact resolve conflicts of jurisdiction against laws—actually "**conflicts of legislative jurisdiction**".

It is interesting to point out that if the Court, upon analyzing a specific enactment, recognizes in a conflict that, for example, the jurisdiction with regard to maritime fishing (extraction of fishing resources) pertains to the State and/or to the Autonomous Communities, the applicability of this decision greatly transcends the case, the parties and the annulled judgement; it has consequences of a general nature, or *erga omnes*. Naturally, it applies to any other regulation or case where, in the past or in the future, the same jurisdiction has been exercised. The interpretation of the Constitution carried out transcends the judgement and the case.

Furthermore, if an enactment of the State is "unconstitutional", being inapplicable in Catalonia or the Basque Country for lack of jurisdiction, it does not necessarily mean that the enactment is null or "invalid". Occasionally, it is simply "ineffectual" and is not applied in those territories, though it may be in other Autonomous Communities which do not have the same jurisdictions. The debate—currently fashionable—has become so sophisticated that at present we are arguing over whether the "territorial inapplicability" which the unconstitutionality of an enactment produces signifies only "direct inapplication" and not "subsidiary inapplication", or whether it produces both at the same time. Case law on the matter is varied and of diverse opinion.

On other occasions, the Court has not annulled an enactment deemed *ultra vires* in order to avoid seriously harming a *de facto* or *de jure* situation created under the enactment which was subsequently declared unconstitutional, that is, to avoid causing detriment to the general interst or to the legitimate interests of third parties. It was recently decided—in STC 195/1998—that the State lacked jurisdiction with regard to the natural environment to the extent that it was unable to declare certain marshlands (Santoña and Noja in Cantabria) protected zones, or natural reserves, and that the Autonomous Community had jurisdiction to make that declaration. Naturally, however, the law was not declared null until the Autonomous Community passed a similar law, in order to avoid leaving the natural environment unprotected and causing irreparable damage to the general interest. There is an irreproachable logic to this pronouncement. The problem is that the LOTC does not expressly gives the Constitutional Court the power to declare such a "deferred or postponed nullity", interesting as it may be. Once again, though, notice how the Court modulates the consequences of its judgements.

The case which I have just outlined (and we could offer numerous other examples) shows that any legal regulation of the effects of judgements is, in general, insufficient. It seems to me that only constitutional case law itself, on a case-by-case basis (supported by doctrine) and with the necessary flexibility may delimit the powerful range of authority which is necessary to delimit the effects of the the Court's judgements.

Some of the precepts of the **general provisions** concerning procedure which are valid for all of these actions should also be seen (Articles 80*ff* of Title VII of the LOTC), in particular, the double legal mandate, applicable in any action, that the judgements of the Constitutional Court are binding on all public authorities (once again, **binding effect**), and that the courts must provide legal cooperation and assistance summarily and as a matter of priority when it may be requested (Art. 87 LOTC). Likewise, it is important to keep in mind the effects of the "opinions" (these

are not precisely judgements) that the Constitutional Court issues when it is asked about the constitutionality of an international treaty, and when it must decide whether it is necessary or not to proceed to an amendment of the Constitution prior to ratification of the treaty (see Art. 78.2 LOTC[4]). Both of these are aspects on which I cannot dwell.

2.2 Some general categories: *res judicata;* applicability *erga omnes*; disappearance of the object *ex post facto*; binding effect on all public authorities; various types of unconstitutionality

It does seem to me, however, that certain observations must be made on general categories common to all types of actions.

The effect of the **force of *res judicata* of the judgements** traditionally has a double value, and I do not believe that the aspects are of equal utility for constitutional justice. Force of *res judicata* means that the constitutional judgement, once final, may be neither appealed nor modified (formal *res judicata*). Article 93 of the LOTC (expounding on Art. 164.1 CE) takes up this category and provides that there may be no appeal whatsoever against constitutional judgements (save, of course, complaints before the European Court of Human Rights, when appropriate). It also provides that the parties may only request "clarification", that is, that the terms and scope of the judgement be made precise. The effect is evident and does not occasion problems, other than the risk that some requests for clarification may be reckless or abusive, though it is true that these have been infrequent in practice. More problematic is the **material** *res judicata*, which means that certain contents of the constitutional judgements have a special binding force on future actions and prevent new decisions from being handed down. This effect is incontrovertible for the ordinary judges and courts, who may not pronounce on what has already been decided by a constitutional judgement (though it may be concluded that such an effect is due not to *res judicada* but rather to the lack of jurisdiction). However, this effect does not actually exist for the Court which may, as in any evolutionary case law, subsequently modify its opinion in a suitably reasoned manner. In fact, changes have not been out of the ordinary. If we consider the effects of *res judicata* for the Court itself, which are the most interesting ones, this category is of little use. Case law has even created its own instruments. I should like to point out the so-called **"disappearance of the object *ex post facto*"**: the object of an action, a question, or a conflict disappears if, after the matter has been allowed to proceed, the Court issues a judgement on another matter which declares the unconstitutionality of the same provision, or even if the interpretative opinions adopted resolve the case.

From a subjective point of view, the effects of constitutional judgements greatly exceed civil procedural doctrine on *res judicata*. It is not merely the verdict of the judgement which is binding but also all of the doctrine which appears in the summation of legal grounds. This is inevitable given the Court's function of interpreting the Constitution. Neither do the effects of the judgements limit themselves to the parties (Art. 1252 of the Civil Code); it is evident that the

[4] See also the judgement of the Constitutional Court of July 1, 1992 on the right of passive suffrage of the EC nations in the Treaty of Maastricht, which gave rise to the constitutional amendment of Art. 13.2 SC.

declaration of nullity of law or an enactment greatly exceeds those subjective bounds and has applicability of a general nature, or *erga omnes*. The same thing occurs with the frequent "**interpretative judgements"**, in which the the constitutionality of a law is bound to a specific interpretation of that law. This is very clear in those cases which explain the general organization of the territorial jurisdictions in some area.

In sum, the old "material *res judicata*" seems to me neither an adequate nor useful procedural category for a modern, contemporary sytem of constitutional justice, unless it is understood in a very wide and diverse sense which is proper to civil procedure.

Much more powerful is the full, **general applicability, or erga omnes**, which is laid out in Article 164.1 SC. If a judgement declares the unconstitutionality and invalidity of a law, that applicability is quite clear; the law is expelled from the set of laws.

Intimately related to this is the consequence of **binding effect on all public authorities**, to which I have made reference on a number of occasions. This category, which the LOTC uses more than once (in Art 38.1 for constitutional control, and in Art. 61.3 for positive conflicts), clearly appears to proceed from Art. 31 of the Law of the German Constitutional Court; the Spanish expression "*poderes públicos*" (public authorities) goes beyond even the all-inclusiveness of the German one, so that I do not see any reason that the category may not be understood in a similar manner. It goes beyond the obligation to comply with the judgements and has to do with the duty to respect—both negatively and positively as Art. 9.1 CE commands—the constitutional interpretation of the enactments which appears in the judgements. Article 5 of the Organic Law on the Judiciary expresses this quite well for ordinary judges and Court Judges, who "shall interpret and apply the laws and regulations according to the constitutional principles and precepts, and accordance with the interpretation of the laws and regulations which may result from the decisions issued by the Constitutional Court <u>in all types of actions</u>." This includes, therefore, appeals for constitutional protection—which have a much more subjective dimension—and not merely actions for the control of enactments, which have an objective nature. I would like to emphasize that the it is not necessary that the consequence of binding effect be conveyed to the verdict; it is taken as a matter of course. The phenomenon is so important that—it has been said—it brings constitutional case law close to the creation of law.

Finally, I would like to recall that the declaration of unconstitutionaliy may mean "**invalidity**" (nullity) or "**non-application**" in some part of the territory (inapplicability), and that various **types of nullities** may exist (*ex tunc, ex nunc*, deferred) according to the entity with which the *ultra vires* irregularity has to do and the principle of proportionality between the sanction which the declaration of unconstutionality carries and the defect from which it proceeds.

3. Voluntary compliance by the public authoritites with the constitutional judgements

Article 87.1 LOTC establishes that all public authorities are under obligation to comply with the whatever the Court may decide and that, in particular, judges and courts shall provide "legal cooperation and assistance" as a matter of priority and urgency when it may be requested of them.

I have already suggested that the degree of voluntary compliance on the part of the public authorities (the Government, the Parliament, The Autonomous Communities, etc.) with the constitutional judgements is practically universal. Exceptions to this general rule have been trivial.[5] Compliance is much higher than that which is seen in jurisdictional orders in administrative litigation, for example; non-compliance, delays, and obstacles on the part of the Administrations in observing what has judicially decided are not frequent.

I am unaware of this reasons for this. It is not easy to determine. It may derive from the *auctoritas* of the Court; its guaranteeing legitimacy which stems from its responsibility of facing the established powers as custodian of the Constitution. This is an honor earned day in and day out with much thoughtful labor, a solid basis in law, much wisdom, and, on rare occasions, through the use of the "powers to make public" of the presidency, by which the Court may disseminate information regarding its decisions in order to avoid falling into the trap of the daily political arguments between parties. In twenty years it has come to establish itself as the body which guarantees the the division of powers even if—as in any other country—certain particularly controversial or less than persuasive arguments have been heavily criticized by various sectors, especially by the social media. To be less ingenuous, I suppose that what is most likely is that it is a question of political culture; of democratic stability. Neither the Government of the Nation, nor the *Cortes Generales*, nor the Supreme Court, nor the Governments or Parliaments of the Autonomous Communities wish to appear before the watchful eye of public opinion as recalcitrant violators of the Constitution. This does not get good press in a country that had a long period of dictatorship without constitutional freedoms. If other authorities or minorities made such repeated and unjustified non-compliance public in the media, public opinion would react by demanding political accountability. It is clear, however, that we have gotten to a point outside the realm of the law, and one at which I can offer little. A strictly legal analysis of constitutions and the rule of law demands the political conditions of a sufficiently established democratic state and of the political culture of constitutionalism.

There have been many disagreements over how to comply with constitutional judgements. To mention one example, after the controversial STC 45/1989 of February 20 mentioned above, the Secretary General of the Treasury Department, overwhelmed after many questions and arguments, hurriedly issued a curious and detailed resolution, dated Feb. 28, 1989, in which she conveyed "instructions regarding the meaning of the STC of February 20, 1989 to procedure in the Tax Administration."

[5] See Order of the Constitutional Court 854/1986 (*Auto del Tribunal Constitucional*, hereinafter ATC), in which it was agreed to consider STC 94/1985 as having been complied with. This was a conflict between Autonomous Communities on the removal of the chains historically appearing on the coat of arms of Navarre from the coat of arms of the Basque Country.

In general this has been the method. The Court has left it to the public authorities to determine the consequences and the best way of complying with its decisions. But it seems to me appropriate to recall that on many occasions a greater effort should be made, by explaining in the final summation of legal ground of the judgements the effects of the judgements themselves, as well as the reach of the verdict, giving norms and guidelines on how they may complied with (Art. 92 LOTC gives legal coverage for this). Voluntary compliance on the part of the the public authorities should be facilitated with constitutional pedogogy.

4. Compulsory execution

The above-mentioned Article 92 LOTC states that the Court may specify in the judgement or ruling, or in subsequent acts, the body responsible for executing it and, where applicable, decide on interlocutory matters of execution. Its reach for all classes of judgements, however, is not clear. There exists, therefore, an "executive power" of the Court, called compulsory execution, which permits it to force compliance with what it is has judged. In principle, both action through the bodies of the Judiciary and coercion by fine are possible.

Article 95.4 LOTC, in fact, states that said fines (ranging from 5.000 to 100.000 pesetas!) may be imposed on "any party, with or without public authority status, who fails to comply with the Court's demands within the prescribed time-limits; such fines may be reimposed until full compliance by the parties concerned, without prejudice to any other liability therefrom."" Section 5 allows for the amendment of the upper and lower limits of these very modest fines; the fact that it has never been done gives an idea-—it seems to me—of the viability of the system of coercion, or compulsory execution of the constitutional judgements by fines. I cannot imagine the Constitutional Court fining the President of the Government, or the President of the *Cortes Generales*, 5.000 pesetas as a father would do with an adolescent child.

This irony actually allows me to stress once again that the problem is quite different according to the type of judgement.

In the judgements on protection, which resolve subjective legal situations and must be complied with by judicial bodies and specific citizens, there would seem to be no problem. If there were, it would be perfectly possible to proceed with an interlocutory issue with regard to the judgement, which would then be quickly resolved by means of a reasoned order. There would be no need to go through a new proceeding or lodge a new appeal for protection; a statement reporting the facts would be enough. It would even be possible to lodge an appeal for protection against an ordinary judgement which did not comply with the resolutions in a constitutional judgement, invoking the fundamental right to effective protection (Art. 24.1 CE). But I'm afraid that this is not what really concerns them.

In the judgements on constitutional control of the law and in the judgements on conflicts (which are similar to regulatory control), the problem of the powers of the Constitutional Court to execute resolutions against repeated non-compliance, be it absolute non-compliance or substandard compliance, is much more complicated.

In one very succinct, sparingly reasoned order (ATC 309/1987), the Constitutional Court actually denied that the above-mentioned Art. 92 LOTC , which is found among the general provisions on procedure, could be applied to a judgement which was issued pursuant to a question of unconstitutionality. This may be because the law had already been annulled. The Court stated emphatically that "judgements declaring the unconstitutionality of a law, which occasion the effect of invalidation of said law, do not have their execution in constitutional justice," since, "no special activity on the part of the Court is required for their execution" (this appears as number 2 in the summation of legal grounds). Interlocutory issues regarding judgements on conflicts, on the other hand, have been admitted (ATC 854/1986, cited above).

Naturally, if the law has not been annulled, it is likely that with certain conditions the question could be raised again by means of a new action or conflict. We would then, however, be creating a vicious circle. I suppose the solutions must come from other, not strictly judicial channels appropriate to constitutional uses, or what Italian doctrine calls "norms of correction among constitutional bodies".