

Execution of the Constitutional Court Decisions as a Guarantee for Strengthening the Constitutionalism (Example of the Republic of Armenia)

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The article considers several contemporary issues concerning the execution of the Constitutional Court decisions. The author states that the key body vested with necessary competences for ensuring the execution of the discussed decisions is the Constitutional Court itself. At the same time, the author concludes that formation of the proper system of the Constitutional Court decision execution firstly depends on the corresponding level of constitutional and political culture of the society. This circumstance, in its turn, leads to suppose that the achievement of the discussed goal is possible only if all the subjects included in this sphere express respect to Constitutional Court, its competences and decisions.

Keywords: Constitutional Court, Constitutional Court decisions, constitutionalism, constitutional and political culture.

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Introduction

The law is not a static, but a dynamic phenomenon and can be considered real only if it factually fulfils its mission to form and develop the social environment, in other words – when it is realized in social life. The law formed as a result of the Constitutional Court's activities is not an exception in this sense, and its realization has an exceptional importance for strengthening the constitutionalism in the state.

Although in recent years many problems in this sphere have already found their solutions, there still are several issues, which should be clarified in order to contribute to the development of constitutionalism. Among these are the issues concerning the nature, legal consequences and the execution of the Constitutional Court decisions, which we consider necessary to discuss in this context.

I. Binding Nature of the Legal Positions of the Constitutional Court

Even though one of the most important features of the Constitutional Court's legal positions is their binding nature, the following question arises in this context: which part of the decision does the formulation "execution of the Constitutional Court decisions" concern – only the resolute part or also the legal reasoning?¹

According to Article 61, Part 5 of the RA Law "On the Constitutional Court,"¹ the decisions of the Constitutional Court on the merits of the case are mandatory for all the state and local self-government bodies, their officials, as well as for the natural and legal persons in the whole territory of the Republic of Armenia. It is obvious that this legislative provision itself implies that it concerns the whole decision of the Constitutional Court, hence, the legal positions, expressed both in the operative and in the reasoning parts of the decision. It is not accidental, as on the contemporary development stage of constitutional law the decisions of the Constitutional Court are no more perceived as a document just determining constitutionality or unconstitutionality of legal acts, but more emphasis is given to the circumstance that the latter are primary means for formation of a uniform constitutional doctrine and development of the Constitution. Therefore, the realization of this mission requires a proper consideration devoted both to the conclusion regarding the issue of the legal act's constitutionality, and to other legal positions of the Constitutional Court. The last ones are the primary means for ensuring stability and development of the Constitution and in this sense are no less important than the above-mentioned conclusions. Moreover, from the aspect of legal consequences, the legal positions are equivalent to them. In this sense, the viewpoint expressed in legal literature is worth mentioning, – according to that, it is not the resolving part of the Constitutional Court's ruling that legitimates and legalizes the part of reasoning, but on the contrary – the decision established in the resolving part is a logical and, for this reason, legally inevitable continuation and ending of the constitutional argumentation.² Moreover, the operative part of the Constitutional Court decision refers to the past. The function of the latter is to withdraw the act, contradicting the Constitution, from the legal turnover, while the reasoning part of the decision refers to the future and fulfils not only the function of justifying the adopted decision, but also a preventive function, a function of guiding the legislator to certain constitutional criteria, from which it cannot deviate.³

As indicated in the decision of the RA Constitutional Court DCC-943 of 25 February 2011, declaring the challenged act as being in conformity with the Constitution, the Constitutional Court often reveals the constitutional legal content of disputed legal norms through their interpretation and in the operative part of the

¹ Law of the Republic of Armenia "On the Constitutional Court", 1 June 2006. Available at http://concourt.am/english/law_cc/index.htm [last viewed 20.04.2015].

² *Kūris, E., et al.* Constitutional justice in Lithuania. Vilnius, Constitutional Court of the Republic of Lithuania, 2003, ISBN 9986-9181-5-4, pp. 222–225.

³ *Kuris, E. H.* Konstitucionnoe pravosudie. Voprosy teorii i praktiki. Erevan, Konstitucionnyj Sud Respubliki Armeniya, 2004, p. 37.

Decision declares those norms to be in conformity with the Constitution, or as in conformity with the Constitution within the framework of certain legal positions, or partially within the framework of certain legal regulation, thus indicating:

- the legal limits of understanding and application of the given norm;
- the legal limits, beyond which the application or interpretation of the given norm shall lead to unconstitutional consequences;
- the constitutional legal criteria, based on which the competent authorities are obliged to provide additional legal regulations for the full application of the norm in question.⁴

Therefore, it is not possible to fully implement the decision of the Constitutional Court without taking the above-mentioned legal positions into consideration, which, in its turn, presupposes that the legal positions expressed not only in the operative, but also in the reasoning part of the Constitutional Court decision are subject to mandatory implementation.

This is the reason why, in pursuance of the RA Constitutional Court decision DCC-943, an amendment was made to Article 68, Part 8 of the RA Law “On the Constitutional Court”, according to which the Constitutional Court can make decisions not only regarding finding the challenged act or its challenged provision in conformity with the Constitution or finding the challenged act fully or partially invalid and incompatible with the Constitution, but also with regard to finding the challenged act or its challenged provision in conformity with the Constitution **by the constitutional legal content revealed by the decision of the Constitutional Court**. Moreover, Article 69, Part 12 of the RA Law “On the Constitutional Court” prescribes that in the cases defined by the quoted Article, if the provisions of the Law applied against the applicant are recognized as invalid and contradicting the Constitution, as well as when **the Constitutional Court, in the operative part of the decision, revealing the constitutional legal content of the provision of the law, recognizes it as being in conformity with the Constitution and has simultaneously found that the provision has been applied to the applicant in a different interpretation**, the final judicial act made against the applicant is subject to review on the grounds of new circumstances in accordance with the procedure prescribed by law.

The systemic analysis of the legal regulations about the discussed issue leads us to a conclusion that they are aimed at formation of a thorough system for the execution of the legal positions expressed in the reasoning part of the Constitutional Court decisions and serve as an evidence of their binding force.

It should be mentioned that the practice of recognizing the challenged provision in conformity with the Constitution within the framework of the legal positions expressed in the Constitutional Court decision is widespread in the activities of constitutional courts of various other states, including, for instance, Germany, Lithuania, Russian Federation, Slovenia, Spain, Hungary, etc. Although each of them has its specific characteristics, the circumstance that the interpretation presented in the decision becomes binding to all other state bodies is common for all the listed courts. In this context, the position of the European Commission for Democracy through Law (Venice Commission) is to be noted, according to which “An explicit legislative – or even better constitutional – provision obliging all other state organs, including the courts, to follow the constitutional interpretation

⁴ Decision of the RA Constitutional Court DCC-943 of 25 February 2011. Available at <http://concourt.am/english/decisions/common/pdf/943.pdf> [last viewed 06.05.2015].

provided by the constitutional court provides an important element of clarity in the relations between the constitutional court and ordinary courts and can serve as a basis for individuals to claim their rights before the courts.”⁵

Summarizing the above-mentioned, it should be noted that the legal positions expressed not only in the operative, but also in the reasoning part of the Constitutional Court decision are subject to mandatory implementation. Moreover, corresponding judicial acts are reviewed not only on the basis of the decisions, according to which, the RA Constitutional Court recognizes the provision of law applied by the court in the given civil or criminal case invalid and in non-conformity with the Constitution, but also on the basis of the decisions, according to which the Constitutional Court recognizes it in conformity with the Constitution, but in the operative part of the decision, revealing its constitutional legal content, finds that the provision was applied in a different interpretation.

II. Execution Mechanisms of the Constitutional Court Decisions

The next issue that we consider necessary to discuss in this context, is the following: should there be a special body, which will ensure the execution of the Constitutional Court decisions, and what kind of role should the Constitutional Court have in this sphere?

There are three general approaches concerning this in the international practice. According to the first one, the Constitutional Court is not vested with an authority of supervising the execution of its decisions and does not have concrete role in this sphere.⁶

In some countries, the authority of ensuring the execution of the Constitutional Court decisions is vested in state, particularly, in executive bodies (the second approach). For instance, Article 81 of the Law “On the organization and functioning of the Constitutional Court of Albania”⁷ prescribes that the execution of the decisions of the Constitutional Court is secured by the Council of Ministers of the Republic of Albania through the respective state administration. The Constitutional Court may assign another organ to execute its decision and the means of execution, if necessary. Article 31 of the Constitutional Act “On the Constitutional Court of the Republic of Croatia”⁸ prescribes that the Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and the rulings of the Constitutional Court.

In accordance with the third approach, the Constitutional Court itself ensures the execution of the decisions indicated above.

⁵ *Harutyunyan, G., Nussberger, A., Paczolay, P.* Study on Individual Access to Constitutional Justice, Adopted by the Venice Commission at its 85th Plenary Session (Venice, 17–18 December 2010), CDL-AD, 2010, 039 rev. § 165. Available at <http://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD%282010%29039rev-e> [last viewed 20.04.2015].

⁶ For instance, in Slovakia. But this does not presuppose that the Constitutional Court cannot have any impact on the execution of its decision (*Brostl, A., Kluchka, Y. A., Mazak, Y. A.* Konstitucionnyj Sud Slovackej Republiky (Organizaciya, process, doktrina). [Constitutional Court of the Republic of Slovakia (Organization, proceedings, doctrine).] Koshice: Konstitucionnyj sud Slovackej Republiky, 2001, ISBN 80-967396-8-9, p. 101.

⁷ Law “On the organization and functioning of the Constitutional Court of Albania”. Available at http://www.gjk.gov.al/web/law_nr_8577_date_10_02_2000_84.pdf [last viewed 20.04.2015].

⁸ Constitutional Act “On the Constitutional Court of the Republic of Croatia”. Available at http://www.usud.hr/default.aspx?Show=ustavni_zakon_o_ustavnom_sudu&m1=27&m2=49&Lang=en [last viewed 20.04.2015].

Referring to the regulation of the issue in the Republic of Armenia, it should be noted that, according to Article 61 of the RA Law “On the Constitutional Court,” the decisions of the Constitutional Court on the merits of the case are binding for all the state and local self-government bodies, their officials, as well as for the natural and legal persons in the whole territory of the Republic of Armenia. It is obvious that this legislative provision presupposes the obligation of all the presented bodies to ensure the execution of the Constitutional Court decisions, so far as the frames of their authorities or the concrete type of activities concern any aspect of the execution of that decisions. In other words, they ensure the execution of the Constitutional Court decisions through the factual possibilities provided by the system of “checks and balances,” existing in the context of separation of powers. Moreover, the nature of the Constitutional Court decisions and the peculiarities of their execution have such a form that beyond these frames the presented subjects cannot have any additional authorities, hence, also advantages in comparison with other bodies. This circumstance, in its turn, leads us to a conclusion that it is impossible to ensure the discussed process via considering any body, including executive bodies, as a special subject in this sense.

At the same time, we believe that the initial organ vested with necessary authorities in the sphere of ensuring the execution of these decisions is the Constitutional Court itself. It is not accidental that a practice is widespread within the framework of international constitutional justice, according to which, just the Constitutional Court follows the execution of its decisions and coordinates this process. For instance, according to Article 86 of the Rules of Procedure of the Constitutional Court of Belarus,⁹ the control over the execution of the Constitutional Court decisions is vested in the corresponding structural subdivision of the Secretariat of the Constitutional Court. Article 87 of the Rules of procedure of the Constitutional Court of the Republic of Macedonia¹⁰ prescribes that the Constitutional court follows the execution of its decisions, and if necessary, will ask from the Government of the Republic of Macedonia to ensure their execution. There is a Division of the Analysis and Summarization of the Practice of the Constitutional Court at the Constitutional Court of the Russian Federation, which executes monitoring of the implementation of the Court decisions and ensures the cooperation of the corresponding bodies and officials in the sphere of their execution. Moreover, in some states the corresponding bodies have an obligation to inform the Constitutional Court about the measures taken by them in the sphere of execution of the decisions. For instance, according to Article 40 of the Law “On the Constitutional Council of the Republic of Kazakhstan”¹¹ the recommendation and the offer on perfection of the legislation, contained in decisions of the Constitutional Council, shall be subject to obligatory consideration by the authorized state bodies and officials with the obligatory notice of the Constitutional Council on the accepted decision. Article 35 of the Law on the Federal Constitutional Court of Germany¹² is also worth mentioning in this context, according to this article, the Federal Constitutional Court may state in its

⁹ Rules of Procedure of the Constitutional Court of Belarus. Available at <http://www.kc.gov.by/ru/main.aspx?guid=21745> [last viewed 20.04.2015].

¹⁰ Rules of procedure of the Constitutional Court of the Republic of Macedonia. Available at <http://www.ustavensud.mk/domino/WEBSUD.nsf> [last viewed 20.04.2015].

¹¹ Law “On the Constitutional Council of the Republic of Kazakhstan”. Available at <http://ksrk.gov.kz/eng/norpb/ocons/> [last viewed 20.04.2015].

¹² Law on the Federal Constitutional Court of Germany. Available at <http://www.iuscomp.org/gla/statutes/BVerfGG.htm> [last viewed 20.04.2015].

decision by whom it is to be executed; in individual instances it may also specify the method of execution.¹³ Such an authority is also granted to the constitutional courts of Albania, Croatia, Ukraine, Spain, etc.

The RA Law “On the Constitutional Court” directly does not prescribe such a possibility. At the same time, it is obvious that several legal positions of the Constitutional Court are aimed at defining the method of the execution of the decisions. For example, the legal positions prescribing how the concrete regulation should be interpreted or applied, or which interpretation we should avoid during its realization, the legal positions, through which the Court indicates the expedience or necessity (from the aspect of constitutionality) of the concrete regulation.¹⁴

The annual reports on the situation of constitutionalism in the state and execution of the Constitutional Court decisions published by the Court also evidence the initial role of the body, administering constitutional justice, in the sphere of ensuring the execution of the Constitutional Court decisions. According to Article 67 of the RA Law “On the Constitutional Court,” the Constitutional Court publishes a report about the situation on the execution of its decisions at the end of each year. It is sent to the relevant state and local self-government bodies. It should be noted that these reports are significant not only from the aspect of presenting information concerning the discussed decisions and the situation of their execution, but also from the aspect of revealing the problems existing in this sphere and proposing corresponding solutions thereof. Hence, the abovementioned reports are highly important not only for improving the situation of the execution of the discussed decisions, but also for enhancing the state’s legal policy generally and for contributing to the development of constitutionalism. It is obvious that the basis for establishing the institute of annual reports is the logic of the implementation of these aims. This presupposes that the positions presented in them should have a proper attention and cannot remain without consequences.

The abovementioned provides a sufficient grounds to state that the initial organ vested with necessary authorities to ensure the execution of the noted decisions is the Constitutional Court itself. Other subjects of the discussed relations can’t be considered as special bodies ensuring the mentioned process and are obliged to guarantee the execution of the Constitutional Court decisions so far as the frames of their authorities or the concrete type of activities concerns any aspect of the execution of the mentioned decisions.

At the same time, we believe that despite the importance of these organizational mechanisms, formation of the proper system of the Constitutional Court decision execution primarily depends on the corresponding level of society’s constitutional and political culture, and most of the problems in the noted sphere result from shortcomings existing in this context. This primarily concerns the activities of the state bodies and their interrelations.

¹³ With regard to the specification of the subjects, who will execute the decision of the Constitutional Court, it is widespread in legal literature that though the Constitutional Court has such an authority, it has never had serious importance, as the Court believes that in such cases the principle of separation of powers will be violated (*Walter S. The Execution of the Decisions of the Federal Constitutional Court of Germany. Konstitucionnoe pravosudie: Vestnik Konferencii organov konstitucionnogo kontrolya stran molodoj demokratii*, No. 4 (10), 2000, ISSN 18290125, p. 33).

¹⁴ For instance, according to Decision of the Constitutional Court of 8 February 2011, DCC-936 “Any procedural peculiarity or proceeding type, namely, special proceeding, **may not be legislatively interpreted or implemented** in a way that makes human fundamental rights guaranteed by Articles 18 and 19 of the Constitution completely meaningless or impedes their implementation”.

The international practice concerning the discussed issue unambiguously shows that the main key for ensuring the execution of the Constitutional Court decisions is not establishing a special body for the aim or vesting executive bodies with required authorities thereof, but the fact of forming a corresponding level of cooperation among the state bodies and readiness to execute the acts of the Court.

The principle of separation of powers itself implies that, having clearly delimited spheres of jurisdiction, the state bodies are vested with a number of competences, which are closely interrelated.¹⁵ It is obvious that they must exercise these competences, respecting the powers of other bodies in a concrete sphere, hence, to their authority.¹⁶ This also concerns the issue of ensuring the execution of the Constitutional Court decisions and presupposes respect to that body, its authorities, hence, also to decisions by all the subjects included in this sphere. In other words, the achievement of the noted goal is possible only in the conditions of mutual respect among the discussed organs (including the Constitutional Court), accompanied with their adherence to the principle of “efficient self-restraint”.¹⁷

Summary

Summarizing the abovementioned, it should be noted that despite the importance of various organizational mechanisms, formation of the proper system of the Constitutional Court decision execution primarily depends on the corresponding level of the society’s constitutional and political culture. This presupposes that the achievement of the noted goal is possible only in the conditions when all the subjects included in this sphere pay respect to that institution, its authorities, and hence, also to its decisions.¹⁸ Therefore, all the steps in this sphere should, first of all, be taken towards at the formation of the described culture and the thorough system of the execution of the Constitutional Court decisions based on it.

¹⁵ It is not accidental that a viewpoint was expressed in legal literature, according to which the mentioned principle is necessary not for isolating the branches of power, but for ensuring their cooperation (*Kravec, I. A.* *Rossijskij konstitucionalizm: problemy stanovleniya, razvitiya i osushchestvleniya.* [Russian constitutionalism: problems of formation, development and realization.] Sankt-Peterburg: Yuridicheskij centr Press, 2005, ISBN 5-94201-425-6, p. 290).

¹⁶ The Constitutional Court of Hungary has repeatedly stated that in the exercise of their competences the various powers shall cooperate and shall respect the division of procedural and decision-making autonomy. It is the obligation of state organs regulated in the Constitution to exercise their constitutional powers in good faith, cooperatively, mutually facilitating the performance of their tasks (*Paczolay, P.* (ed.). *Twenty Years of the Hungarian Constitutional Court.* Budapest, Constitutional Court of Hungary, 2009, ISBN 978-963-88605-0-7, pp. 101–102).

¹⁷ There was a very interesting practice concerning this in the Republic of Armenia, when a working group was established in the RA National Assembly for working out drafts of the corresponding legislative acts in pursuance of the decisions of the Constitutional Court, according to which the RA laws or their provisions are declared as in non-conformity with the Constitution and invalid, or which contain issues of improving the legislation, as well as a Special Commission for preparing proposals in order to guarantee the implementation of the Constitutional Court legal positions was established in the RA Ministry of Justice.

¹⁸ In this context Article 108 of the Serbian Law “On the Constitutional Court” is worth mentioning, according to which in exercise of its functions, the Constitutional Court cooperates with state and other authorities and organizations, scientific and other institutions, companies and other legal persons, on questions of interest for preservation of constitutionality and legality (Law “On the Constitutional Court of the Republic of Serbia”. Available at <http://www.ustavni.sud.rs/page/view/en-GB/237-100030/law-on-the-constitutional-court> [last viewed 20.04.2015.]).

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