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The Constitutional Court of the Republic of Lithuania

PROBLEMS OF LEGISLATIVE OMISSION IN CONSTITUTIONAL JURISPRUDENCE

Questionnaire

For the XIVth Congress of European Constitutional Courts

I. LEGAL GAPS IN THE SCIENTIFIC DOCTRINE.

1. The concept of the legal gap.

Provide a short review of the positions of scientists and specialists of law of your country on the legal gaps (how the legal gap is described, what are the sorts of legal gaps (for example, the indetermination of legal regulation, *lacuna legis*, legal vacuum, legislative omission, etc.); are the reasons of appearance of legal gaps, the problem of real and alleged legal gaps and peculiarities of gaps in public and private law are considered?)

Answer: The concept of legal gap has been recently introduced to Albanian jurisprudence and that is the reason why we don't have any academic or doctrinal positions toward this concept until now.

In the Albanian legal system, the concept of legal gap has been foreseen only by article 1 of the Civil Procedure Code, which has stated that: *“the court cannot refuse to consider and make decisions on issues, which are presented to it for consideration, on the ground of lack of law, it being incomplete, contradictory or unclear.”*

From the literal context of this provision, it's not clear enough whether it has been referred to procedural or material law, or to both of them.

Joint Chambers of the Supreme Court has been referred to this provision several times, but only to fill in the legal gaps of procedural law, namely of Procedural Civil Code. In this context, it is worth mentioning the Unifying Decision nr.1029, dated 27.10.2000, of the Joint Chambers of the Supreme Court.

2. The concept of legislative omission.

Are the legal gaps which are prohibited by the Constitution (or legal regulation of higher power) distinguished in the scientific literature? What is the prevailing concept of legislative omission¹ as a sort of the legal gap in the country's legal literature?

Answer: For the first time, the Constitutional Court has mentioned the concept of legal gap or legislative omission to the parallel opinion of the Constitutional Court decision nr.33, dated 12.09.2007. Judge Fehmi Abdiu, who has been the case rapporteur, has written as follows:

I consider that these gaps or omissions in the Labor Code should have been filled by the legislator. Through its case law, the Court has kept a consolidated position, according to which, in cases of legal (gaps) omissions, it is the duty of the lawmaker to fill them. It is not the duty of this Court to take the role of the positive legislator and define legal regulations. It should review if the solutions given by the lawmaker are in conformity with the constitutional provisions or not.

3. The Constitutional Court (the corresponding institution which implements the constitutional control) as a "negative" and "positive" legislator.

What is the prevailing concept of the mission of the constitutional court (the corresponding institution which implements the constitutional control) as a judicial institution in the scientific doctrine of the country? Is the constitutional court (the corresponding institution which implements the constitutional control) considered only as a "negative legislator"? Are the problems of the relation between the constitutional court (the corresponding institution which implements the constitutional control) and

¹ In the procedure of preparation of the draft questionnaire, the concept of the legislative omission set forth in the decision of the Constitutional Court of the Republic of Lithuania of 8 August 2006 was followed. The decision is attached to the draft questionnaire. In the said decision, legislative omission is understood as a legal gap prohibited by the Constitution (or any other legal act of higher power). Various aspects of the constitutional concept of the legal gap and legislative omission are revealed in Items 4.3–9.2 of Chapter II of the reasoning part of the said decision.

law-making considered? Can one find any elements of the concept of the constitutional court (the corresponding institution which implements the constitutional control) as a “positive legislator” in the scientific doctrine? According to the scientists, what should the constitutional court (the corresponding institution which implements the constitutional control) do after it has established a gap in legal regulation? What are the legal consequences of stating of the existence of legislative omission in the constitutional jurisprudence? Is it possible to consider the whole act (corresponding provisions thereof) as unconstitutional if it has been held that it includes a gap prohibited by the constitution? Has the scientific doctrine ever assessed the ways to fill in the legal gaps and the influence of the constitutional court (other courts) while filling in the legal gaps?

Answer: With regard to the position of the Constitutional Court as a positive or negative legislator, it can be said that this position has already been clearly defined in a considerable number of the Constitutional Court decisions. Among them, it can be mentioned the decision nr.75, dated 19.04.2002, an extract from which states as follows:

When interpreting these norms, the Constitutional Court does not undertake to play the role of the positive legislator, stipulating one by one all the cases that might fall within the group of these constitutional reasons. Such thing would be impossible in cases when the Constitution, laws or even the courts' decisions cannot accurately codify the acts and behaviors that seriously discredit the figure of judge and prosecutor, or in cases when the law has been seriously violated.

4. The assessment of the significance of the constitutional jurisprudence while eliminating legislative omissions.

How is the activity of the constitutional court (the corresponding institution which implements the constitutional control) of the country while considering the constitutional justice cases related to the legislative omission assessed in the scientific doctrine? Is the naming of the activity of the constitutional court (the corresponding institution which implements the constitutional control) as the one of “activism”, “moderation” and “minimalism” grounded taking into account the said cases? Have the problems of the legislative omission been researched in the scientific works by the justices (current and former) of the constitutional court?

II. CONSOLIDATION OF CONTROL OF CONSTITUTIONALITY OF THE LEGISLATIVE OMISSION IN THE CONSTITUTION, THE CONSTITUTIONAL JURISPRUDENCE AND OTHER LEGAL ACTS OF THE COUNTRY

1. The constitution in the system of national law.

The hierarchical relation of the constitution with other national legal acts. Is it in the text of the constitution of your country *expressis verbis* established that the constitution takes the highest position in the hierarchy of legal acts and no law or other legal act may be in conflict with it?

Answer: The Constitution of the Republic of Albania, in its article 4/2, has provided for that: “The Constitution is the highest law in the Republic of Albania”, but it has not *expressis verbis* established that no law or other legal act may be in conflict with it.

Has the constitutional court (the corresponding institution which implements the constitutional control) of your country formed such attitude in its jurisprudence? Does the constitutional court (the corresponding institution which implements the constitutional control) of your country assess the constitution as the law with no gaps?

Answer: Constitutional Court appraises that the Constitution is relatively comprehensive and it can be further completed through the interpretation of its provisions.

The concept of the constitution as an explicit and implicit legal regulation. Describe the hierarchical system of your national legal acts (for example, in the Republic of Lithuania no national legal acts may be in conflict with the Constitution, and no laws and other legal acts adopted by the Seimas or acts of the Government or the President of the Republic may be in conflict with constitutional laws).

Answer: Article 116 of the Constitution has foreseen that normative acts that are effective in the entire territory of the Republic of Albania are: the Constitution, ratified international agreements, the laws, normative acts of the Council of Ministers.

Is such hierarchical system of legal acts directly established in the text of the constitution or has it been revealed by the constitutional court (the corresponding institution which implements the constitutional control) in its jurisprudence while construing the constitution?

Answer: Yes, it has been established in the text of our Constitution.

What is the relation between the constitution and acts of international public law in your state?

Answer: International agreements that have been ratified by Albanian State have normative effect, being ranked in the hierarchical system of legal acts immediately after the Constitution (article 116). Any ratified international agreement constitutes part of the internal juridical system and has superiority over the domestic laws that are not in compliance with it (article 122)

What is the implementation system of the acts of international public law in your state?

Answer: Article 122 of the Constitution has stated that any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania and that it is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law.

Does the constitutional court (the corresponding institution which implements the constitutional control), under the constitution, have any possibilities to present a conclusion on the compliance of acts of international public law with the Constitution?

Answer: Constitutional Court decides on the compatibility of international agreements with the Constitution, prior to their ratification (article 131/2 of the Constitution). In cases when the Constitutional Court decides on the incompatibility of international agreement with the Constitution, it cannot be ratified (article 52 of the law on organization and functioning of the Constitutional Court). So, the acts of international law should be in compliance with the principles of Constitution.

Nevertheless, the constitutional review is not exercised for all the cases and over all the international acts before their ratification. The objects of review before the Constitutional Court are only those international agreements, which are signed on behalf of the Republic of Albania prior to their ratification, a prerequisite that has been explicitly stated. In any case, the constitutional review is initiated by the subjects provided for by the Constitution only when they consider as indispensable the exercise of such review and when they address to the Constitutional Court a well-reasoned application.

2. The *expressis verbis* consolidation of the jurisdiction of the constitutional court (the corresponding institution which implements the constitutional control) to investigate and assess the constitutionality of legal gaps in the constitution.

What legal acts (laws, regulations of the parliament, international agreements, laws of the subjects of the federation, substatutory acts, as well as laws adopted before coming into force of the constitution, etc.) are directly named as the object of the constitutional control?

Answer: Laws and other acts with the force of law, international agreements, normative acts of central and local organs (decisions and ordinances), individual acts (for the discharge from duty of some state functionaries), courts' decisions of all instances.

Does the competence of the control of the constitutionality of these acts belong only to the constitutional court (the corresponding institution which implements the constitutional control)?

Answer: Yes

If not, what competence is under the constitution enjoyed by other courts? What control of laws and other legal acts (*a priori*, *a posteriori*, both forms) is implemented by the constitutional court?

Answer: The control implemented for these kinds of acts is always an *a priori* control, except for international agreements, as it has been clarified from the above-mentioned question.

Is the constitutional control performed by the constitutional court (the corresponding institution which implements the constitutional control) concrete or abstract?

Answer: The control is abstract and concrete, depending on the subjects that have the right to put the Constitutional Court into motion. Abstract control is implemented in cases when it is reviewed the constitutionality of laws and normative acts of the local and central organs (article 131 of the Constitution). Concrete control is implemented in cases when the judgment is initiated by the courts of ordinary jurisdiction, when during the examination of a certain case, they appraise that the law to be applied is unconstitutional (article 145).

Is in the constitution of the country *expressis verbis* entrenched that the constitutional court (the corresponding institution which implements the constitutional control) investigates and assesses the constitutionality of the gaps (legislative omission) of the legal regulation? Does the constitution provide for any special procedures for the investigation of such gaps? Does the constitution provide for any special powers of

the constitutional court (the corresponding institution which implements the constitutional control) in the elimination of the gaps which emerged because of the deliberate activity of the legislator (other institution of law-making)? Does the constitution provide that the constitutional court (the corresponding institution which implements the constitutional control) investigates the legislative omission only in laws or does it investigate the legislative omission in legal acts of other types? Does the constitution provide what duties fall on the legislator (other subject of law-making) after the existence of the legislative omission was stated? How, under the constitution, must such duty be stated in the decision of the constitutional court (the corresponding institution which implements the constitutional control)?

Answer: Constitutional Court does not have a special competence to review the legal or constitutional gaps. After the abrogation of a certain act, it can only ascertain the obligation of the respective organ to fill in the created gap.

3. Construction of the jurisdiction of the constitutional court (the corresponding institution which implements the constitutional control) to investigate and assess the constitutionality of legal gaps in the constitutional jurisprudence.

The constitutional court (the corresponding institution which implements the constitutional control) as the official interpreter of the constitution. Norms and principles of the constitution in the constitutional jurisprudence. The revelation of the implicit consolidation of the competence of the constitutional court (the corresponding institution which implements the constitutional control) to investigate and assess the legislative omission in the constitutional jurisprudence. Substantiation of the mission and powers of the constitutional court (the corresponding institution which implements the constitutional control) to investigate gaps (or only the legislative omission) of the legal regulation in the constitutional jurisprudence (if such competence is not directly provided for in the constitution or in the text of the law on the constitutional court). Are the problems of the legislative omissions considered while deciding disputes on the competence, on the constitutionality of international agreements, while considering individual appeals regarding the violation of constitutional rights and freedoms, etc.?

Answer: In some cases, it might have been superficially identified the lack of a certain legal regulation. The Constitutional Court has not considered these cases to be unconstitutional, but as the legislator's need to fill in these regulation within the shortest possible and in conformity with the constitutional principles.

4. Consolidation of the jurisdiction of the constitutional court (the corresponding institution which implements the constitutional control) to investigate and assess the constitutionality of the legal gaps in the law which regulates the activity of the constitutional court.

Is there a possibility provided for in the law on the constitutional court to investigate and assess gaps in the legal regulation established in laws and other legal acts? Does this law provide for any special procedures for investigation of such gaps? Does the law establish what decision (decisions) the constitutional court (the corresponding institution which implements the constitutional control) adopts after it has stated the existence of the legislative omission?

Answer: No

III. LEGISLATIVE OMISSION AS THE OBJECT OF INVESTIGATION BY THE CONSTITUTIONAL COURT (THE CORRESPONDING INSTITUTION WHICH IMPLEMENTS THE CONSTITUTIONAL CONTROL)

1. Application to the constitutional court (the corresponding institution which implements the constitutional control).

What are the sorts of the application to the constitutional court (the corresponding institution which implements the constitutional control) according to the object of investigation in your country?

Answer: According to article 131 of the Constitution, the object of review of the applications submitted before the Constitutional Court might be: 1) the compatibility of laws with the Constitution or with the international agreements; 2) compatibility of international agreements with the Constitution prior to their ratification; 3) compatibility of normative acts of local and central organs with the Constitution and international agreements; 4) conflicts of competencies between powers, as well as between central government and local government; 5) constitutionality of the parties and other political organizations, as well as their activity; 6) dismissal from duty of the President of the Republic and verification of the impossibility for him to exercise his functions; 7) issues related to the eligibility and incompatibilities in exercising the functions of the President of the Republic and of deputies, as well as the verification of their election; 8) constitutionality of referendum and verification of its results; 9) final adjudication of the individuals' complaints for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.

What subjects may apply to the constitutional court (the corresponding institution which implements the constitutional control) in your country?

Answer: According to article 134 of the Constitution, Constitutional Court is put into motion by two categories of subjects: 1) special subjects: President of the Republic, Prime Minister, not less than 1/5 of the deputies, Head of High State Audit, and 2) ordinary subjects: every court, People's Advocate, organs of local government, organs of religious communities, political parties, other organizations, as well as individuals. These subjects can be addressed to the Constitutional Court only for issues related to their interests.

Do the courts have, if a doubt arises that the legal act which is to be applied in the specific case is unconstitutional, to apply to the constitutional court (the corresponding institution which implements the constitutional control)?

Answer: According to article 145/2 of the Constitution, if judges find that a law comes into conflict with the Constitution, they do not apply it. In these cases, they suspend the proceedings and send the case to the Constitutional Court. Decisions of the Constitutional Court are obligatory for all the courts.

2. Legislative omission in the petitions of the petitioners.

May the petitioners, who apply to the constitutional court, ground their doubts on the constitutionality of the disputed act on the fact that there is a legislative omission in the act?

Answer: No

What part of the petitions received at the constitutional court (the corresponding institution which implements the constitutional control) comprises the petitions, wherein the incompliance of the act with the constitution is related to the legislative omission? What subjects who have the right to apply to the constitutional court, relatively more often specify in their petitions the legislative omission as the reason of the act's being in conflict with the constitution? Do courts often apply to the constitutional court (the corresponding institution which implements the constitutional control) grounding their petitions to investigate the constitutionality of the legal act on the legislative omission? Submit the statistics. Are there any specific requirements provided for as regards the form, contents and structure of the applications concerning the unconstitutionality of the legislative omission? Are they established in the law which regulates the activity of the constitutional court (the corresponding institution which implements the constitutional control) or formulated in the constitutional jurisprudence?

Answer: No

3. Investigation of the legislative omission in the case when it is not required by the petitioner.

Does the constitutional court begin the investigation of the legislative omission on its own initiative while considering the petition and upon what does it ground it (if the petitioner does not request to investigate the question of the legislative omission)? Specify more typical cases and describe the reasoning of the court in more detail.

Have, after it has been recognized in the constitutional jurisprudence that the constitutional court investigates and assesses the legislative omission, the petitioners started to dispute the constitutionality of the laws and other legal acts on the said grounds more intensively?

Answer: There is no provision according to which the Constitutional Court has the right to begin on its own initiative the investigation of cases while considering the petitions submitted before it. The Constitutional Court has had no cases of investigation of legislative omission, since it does not have the competence for such kind of investigation.

4. Legislative omission in the laws and other legal acts.

Does the constitutional court consider and assess the gaps of legal regulation not only in laws but also in other legal acts? Does the legislative omission mean only the absence of the legal regulation that is in conflict with the constitution, or also the absence of the legal regulation that is in conflict with the legal regulation of higher power (for example, when an act of the government does not include the elements of the legal regulation which, under the constitution or a law, which is not in conflict with the constitution, should be established by the government)?

5. Refusal of the constitutional court (the corresponding institution which implements the constitutional control) to investigate and assess legal gaps.

How does the constitutional court ground its refusal to consider and assess the constitutionality of the absence of the legal regulation (absence of direct reference concerning such investigation in the constitution and laws, doctrine of “political questions”, respect to the discretion of the legislator in law-making, etc.)?

IV. INVESTIGATION ON THE CONSTITUTIONALITY OF LEGISLATIVE OMISSION

1. Peculiarities of the investigation of the legislative omission.

What are the peculiarities of the investigation of the legislative omission while implementing *a priori* control and a *posteriori* control, abstract and concrete control? How is the legislative omission investigated while considering the constitutional justice cases concerning the constitutionality of the laws which ratify international

agreements, of parliament regulations, other acts of the powers of laws and sub statutory laws?

2. Peculiarities of the investigation of the legislative omission in various spheres of legal regulation.

What is typical for the investigation and assessment of the legislative omission in the constitutional justice cases concerning the laws which regulate the relations that ensure the rights and freedoms of person? What is typical for the legislative omission in the legal regulations ensuring (1) the civil rights, (2) the political rights, (3) the social, economic and cultural rights? What are the typical attributes of the investigation of the legislative omission by verifying the compliance of the laws and other legal acts that regulate the relation between the organization and activity of the public power with the constitution and/or other laws? Does the constitutional practice allow to draw conclusions on the peculiarities of the investigation and assessment of the legislative omission in the material and procedural law? Is it possible to notice a peculiarity of the investigation of the legislative omission while considering the constitutionality of the laws regulating the relations between private and public laws and other legal acts? Is it possible to notice a peculiarity of the investigation of the legislative omission in the constitutional justice cases concerning the competence of the public power institutions, the official construction of the constitution or concerning the violated constitutional rights and freedoms of person, etc.?

When answering to these questions, specify the constitutional justice cases with more typical examples.

Answer: There does not exist any kind of investigation by the Constitutional Court for this purpose, because, as it has previously been mentioned, the Constitutional Court does not have the competence to investigate the legislative omission.

V. ESTABLISHMENT OF THE EXISTENCE OF THE LEGISLATIVE OMISSION

1. Establishment of the existence of the legislative omission.

Specify the criteria formulated in the jurisprudence of the constitutional court (the corresponding institution which implements the constitutional control) of your country, grounded whereon the gaps of the legal regulation may and must be recognized as

unconstitutional? Does the constitutional court (the corresponding institution which implements the constitutional control) investigate only the disputed provisions of the law (other legal act)? Is the constitutional court (the corresponding institution which implements the constitutional control) not satisfied only with the autonomous investigation of the disputed provisions (or disputed act) and does it analyse them in the context of the whole legal regulation established in the act (system of acts or the whole field of law)?

May the constitutional court consider and assess the legislative omission of the former legal regulation? Does the constitutional court record the noticed gaps of the legal regulation which is no longer valid, when it analyzes the development of the dispute provisions (dispute act)? Does the court, after it has stated the existence of such gap, if it is related with the protection of the rights of person, have to take measures to guarantee the said rights?

Answer: the Constitutional Court does not have the competence to investigate the legislative omission. Its case law has kept the consolidated position that it is the obligation of the lawmaker to complete the necessary legal framework.

2. The problem of the sufficiency of the arguments for statement of the existence of the legislative omission.

What are the typical arguments grounded whereon the existence of the legislative omission is stated? What methods and combinations thereof are applied by the constitutional court while analyzing the gaps of the legal regulation? Does the problem of the hierarchy of interpretation methods, namely to which method of the interpretation of law—grammatical, logical, historical, systemic, theological or other—the priority is given while revealing the legislative omission, arise in such cases?

3. Usage of the practices of other jurisdictions.

Does the constitutional court, while considering and assessing the legislative omission, directly or indirectly refer to the practice of the European Court of Human Rights, the European Court of Justice, other institutions of international justice and constitutional and supreme courts of other countries?

VI. STATEMENT OF THE EXISTENCE OF THE LEGISLATIVE OMISSION AND ITS ASSESSMENT BY THE CONSTITUTIONAL COURT

1. The constitutional court (the corresponding institution which implements the constitutional control) investigates the legislative omission as an element of the investigation of the case of constitutional justice, but it does not assess its constitutionality.

Is the gap of legal regulation (legislative omission) stated in the reasoning part of the ruling of the constitutional court (the corresponding institution which implements the constitutional control) and is the attention of the legislator (other subject of law-making) drawn on the necessity to fill in the gap (legislative omission)? Is the advice set forth to the legislator (other subject of law-making) on how to avoid such deficiencies of legal regulation (are the criteria of the possible legal regulation and recommended deadlines for the adoption of the amendments specified)?

Answer: No

Does the constitutional court (the corresponding institution which implements the constitutional control) set forth in the reasoning part of its decision how the legal regulation is to be understood so that it would not include the legislative omission, by this essentially changing the existing legal regulation (actually by supplementing it)?

Answer: It might happen if the Constitutional Court interprets the provisions of Constitution, which could have been narrowly interpreted by the subjects. In such case, the Constitutional Court, through its interpretation, broadens or adapts the context of this provision to the spirit of the Constitution as a whole.

Does the constitutional court (the corresponding institution which implements the constitutional control) state the existence of the legislative omission or other gap of the legal regulation in the reasoning part of its decision and does it specify that such inexistence of the legal regulation is filled when the ordinary courts apply the general principles of law?

Answer: No

Does the constitutional court (the corresponding institution which implements the constitutional control) apply other models of assessment of the legislative omission? Specify them.

When answering to these questions, specify the constitutional justice cases with more typical examples.

Answer: Constitutional court (the corresponding institution which implements the constitutional control), after having established the existence of legislative

omission in the reasoning part of its decision, acts as following: it points out the obligation of the legislator (or of the other lawmaking subject) to fill in the legal gap. Nevertheless, since the Constitutional Court of the Republic of Albania, in any case up to now, has not identified the existence of legislative omission in its *ratio decidendi*, the establishment of legislative omission and the assertion of the obligation of the lawmaker to fill it have been practiced only in those cases when the Court's decision itself, declaring a certain sub/paragraph/word group as being in conflict with the Constitution, has brought about a legal gap.

Example: Decision nr.26, dated 13.02.2002 of the Constitutional Court of the Republic of Albania. The appellant – Skrapari District Court – and the subject case – Abrogation on unconstitutional grounds of item 1.2 of article 34 of the law nr.8737, dated 12.02.2001 “On the organization and functioning of the Prosecutor’s Office in the Republic of Albania”. The abrogation of item 1.2 of article 34 of the law nr.8737, dated 12.02.2001 “On the organization and functioning of the Prosecutor’s Office in the Republic of Albania” has brought about a legal gap and, consequently, it has arisen the need of the lawmaker to fill in the above mentioned provision.

2. Assessment of the legislative omission in the resolution of the decision of the constitutional court (the corresponding institution which implements the constitutional control).

The constitutional court (the corresponding institution which implements the constitutional control), after it has stated the existence of the legislative omission in the reasoning part of the decision, performs the following:

- a) recognizes the law (other legal act) as being in conflict with the constitution;
- b) recognizes the provisions of the law (other legal act) as being in conflict with the constitution;
- c) leaves the act (provisions thereof) to be in effect and at the same time recognizes the omission of the legislator (other subject of law-making) as unconstitutional by specifying the time period in which, under the constitution, the obligatory legal regulation must be established;
- d) states the duty of the legislator (other subject of law-making) to fill in the legal gap;
- e) states the gap of the legal regulation and specifies that it may be filled in by the general or specialized courts;

- f) obligates the courts of general competence and specialized courts to suspend the consideration of the cases and not to apply the existing legal regulation until the legislator (other subject of law-making) fills in the gap;
- g) states the existence of the gap of the legal regulation without drawing direct conclusions or establishing any assignments;
- h) applies other models of assessment of the legislative omission (specify them).

When answering to these questions, specify the constitutional justice cases with more typical examples.

3. Means of the legal technique which are used by the constitutional court (the corresponding institution which implements the constitutional control) when it aims to avoid the legal gaps which would appear because of the decision after the law or other legal act is recognized as being in conflict with the constitution.

What means of the legal technique are used by the constitutional court (the corresponding institution which implements the constitutional control) when it aims to avoid the legal gaps which would appear because of the decision after the law or other legal act is recognized as being in conflict with the constitution? Does the constitutional court (the corresponding institution which implements the constitutional control) postpone the official announcement of the decision? Does the constitutional court (the corresponding institution which implements the constitutional control) establish a later date of the coming into force of the decision? Does the constitutional court (the corresponding institution which implements the constitutional control) state that the investigated act complies with the constitution temporarily at the same time specifying that in case that the act is not amended till certain time, it will be in conflict with the constitution? Is the act recognized as being in conflict with the constitution due to the legislative omission without removing it from the legal system? Is the interpretation of this act (provisions thereof), which complies with the constitution, applied in order to avoid the statement that the act (provisions thereof) is in conflict with the constitution due to the legislative omission?

When answering to these questions, specify the constitutional justice cases with more typical examples.

Answer: There is no such case law yet.

VII. CONSEQUENCES OF STATEMENT OF EXISTENCE OF LEGISLATIVE OMISSION IN CONSTITUTIONAL COURT DECISIONS

1. Duties arising to the legislator.

Does the statement of the existence of the legislative omission in a decision of the constitutional court (the corresponding institution which implements the constitutional control) mean a duty of the legislator to properly fill in such gap of legal regulation?

Answer: Of course, the Constitutional Court decisions are binding for all the organs of public power, including here even the lawmaker. In cases when the Constitutional Court repeals a law or another normative act, the effects of this repeal are sometimes related to the obligation of the respective organ to restate its will by rewording the provision according to the decision of the Constitutional Court. From this viewpoint, it can be said that the Constitutional Court decision obliges the lawmaker to fill in the legal gap created as a consequence of repealing of a certain act.

Does the regulation of the parliament provide how the questions are considered and what decisions are adopted when implementing the constitutional court decisions, wherein the legislative omission is stated?

Answer: Yes, it has been foreseen by article 87 of the Regulation of Assembly that immediately after the entering into force of the Constitutional Court decision, the Assembly, through the Council of Legislation, takes into consideration the ways of examination of the Constitutional Court decisions. This Council sends to the Government the necessary recommendations in order to fill in or replace the act repealed by the Constitutional Court.

Does the parliament promptly react to the decisions of the constitutional court (the corresponding institution which implements the constitutional control), wherein the legislative omission is stated?

Answer: As a rule yes, but it depends on the concrete case, which occasionally may ask for some more time.

Are there cases when the parliament disregarded the decisions of the constitutional court (the corresponding institution which implements the constitutional control) concerning the legislative omission? How is it ensured that the parliament would implement the duty which has arisen from the decision of the constitutional court (the corresponding institution which implements the constitutional control)?

Answer: This kind of guarantee derives from the binding force of the Constitutional Court decisions, as well as from the awareness of the public institutions of this kind of obligation (article 132 of the Constitution).

What are the powers and role of the constitutional court (the corresponding institution which implements the constitutional control) in this sphere?

Answer: For this aspect, there are no forcing instruments or other similar means to be applied by the Constitutional Court for the implementation of its decisions. All depends on the relations of cooperation between the institutions, as well as on the constitutional obligation to implement the Constitutional Court decisions.

2. Duties arising to other subjects of law-making

Does the statement of the legislative omission in the decision of the constitutional court (the corresponding institution which implements the constitutional control) mean the duty of the other law-making subjects to properly fill in such gap of legal regulation?

Answer: Of course, when the Constitutional Court repeals a certain act, it recommends to the respective organ the obligation to fill it.

Do the acts regulating the activity of these subjects provide how these subjects shall implement the constitutional court decisions?

Answer: Article 87 of the Regulation of Assembly (as mentioned above) has provided for that if the repealed act has been issued on the initiative of the Assembly, it is this organ which can also do the rewording of the act. If the repealed act has been presented by the Government, than, the act in question should be sent back to this organ.

Do the said subjects promptly react to the decisions of the constitutional court (the corresponding institution which implements the constitutional control), wherein the legislative omission is stated?

Answer: The reaction is different depending on the nature of the act and on actual will of the lawmaker.

Are there cases when these subjects disregarded the decisions of the constitutional court (the corresponding institution which implements the constitutional control) concerning the legislative omission?

Answer: It is possible

How is it ensured that the said subjects would properly implement such duty? What are the powers and role of the constitutional court (the corresponding institution which implements the constitutional control) in this sphere?

Answer: There are no forcing instruments in spite of the constitutional obligation to implement the Constitutional Court decisions and of the institutional awareness of this obligation. In this case, the instruments are only political.