Execution of the Constitutional Court Decisions in Republic of Bulgaria:

Developments and Challenges

I. Legal framework and scope of the decisions

A. **Scope of Constitutional Review** – no Individual Constitutional Complaint.
Personal cases (elections, impeachments)
Unconstitutionality of particular provisions in Acts of Parliament
Thus, execution in terms of initiating and/or performing specific acts to effect the proclaimed change in juridical sphere is less of an issue. The main issue of "execution" is connected with the effect of the Constitutional Court decisions in time: i.e. ex nunc, ex tunk and regulation of pending cases.

B. **Constitutional and legal provisions**

1. Constitutional provisions, dedicated to the legal effect of Constitutional Court Decisions

- Article 151. 2. of the Constitution stipulates that: "A decision shall enter into effect three days after the promulgation thereof. Any act which has been declared unconstitutional shall cease to apply as from the effective date of the decision."

- According to Article 151.3 of the Constitution unconstitutionality of part of a legal act, e.g. some of its provisions, shall not affect the legal force of the remaining part of the legal act.

It is construed by the Constitutional text that the Constitutional Court has no right to "correct", amend or add new substance to existent acts or provisions.

2. Legislation, related to execution of Constitutional court decisions

a) Constitutional Court Act

- As per Art. 14.6 of the Constitutional Court Act (CCA) Constitutional court decisions are binding for all state bodies, corporate bodies and citizens, i.e. they have erga omnes legal effect.

- Article 22.2 of the CCA provides that the legal acts declared as unconstitutional seize to be implemented.

- According to Art. 22.3 of the CCA acts that were found by the Constitutional court to be issued by an incompetent organ are to be declared as null and void.

- The legal consequences of unconstitutional law are to be resolved by the body which has issued it as per Art.22.6 of the CCA.

b) Code of civil procedure

Article 229.1.6 stipulates that courts shall suspend any proceedings pending before them when a relevant to the resolution of the case legal provision is being subject materae of an admitted before the Constitutional court constitutionality claim.

Appellate decisions that were pronounced contrary to a decision of the Constitutional court are subject to cassation as per Article 280.1.2.

c) Code of Administrative procedure

According to Art. 54.1.4 any pending administrative procedure shall suspended by the competent administrative body hold it pronouncement if the Constitutional court has admitted to hear on its merits a case regarding a relevant legal provision.

d) Code of Criminal Procedure

There are no explicit dispositions in the Code of Criminal Procedure neither on the legal effect of a pending constitutional case regarding a criminal law provision, nor on the legal effect of Constitutional court decisions with which relevant to the case legal provision is declared as unconstitutional. However, having in mind the direct applicability and supremacy of the Constitution, there are no obstacles to using analogy with the Code of Administrative procedure and the Code of civil procedure.

3. **Relevant case law of the Constitutional Court and the challenges faced**

- In Interpretive Decision No. 22/1995 on c.c. No. 25/1995 the Constitutional Court stated that when the Constitutional Court declares a law for revision as unconstitutional, then the version of the law prior to the revision stays into force as of the entry into force of the Constitutional court decision.

- In its reasoning the Court pointed out that Art.22.4 of the CCA is stipulating that the issuing authority shall resolve the legal effects of the implementation of the unconstitutional provision and thus this disposition is not regulating the consequences of the Constitutional court decision. When the revision legal act is declared unconstitutional the revised legal act should stay into force because otherwise there could be legal lacunae, the pending cases and legal relations will stay unresolved, the existing legal order and the legal certainty will be eroded and that could pose a risk for the rule of law and protection of individual rights.

However, there are no constitutional provisions imposing an obligation for the legislator to take action within a certain period of time as of the entry into force of the Constitutional court decision. Hence the motivation of the Constitutional Court at that point was that: It cannot be assumed that the constitutional legislator aiming at the removal from the legal order of unconstitutional legislation would allow a legal lacunae and uncertainty to result from the annulment decision.

- With Interpretive Decision N. 3/2020 on c.c. 5/2019 the Constitutional court found that unlike normative legal acts, non-normative legal acts, such as statues in the formal sense, decisions of the Parliament and decrees of the President, when they are found to be unconstitutional by the Constitutional court are invalidated as of day of their adoption or promulgation (under the legal force of the present Constitution. The Court stated annulled legal acts shall be inapplicable in all pending legal disputes.

- It was also established that annulment of a legal act for amendment or revocation doesn't have restorative legal effect.

- In Decision No. 4 on c.c. No.9/2019 the Court interpreted Art. 151.2 of the Constitution in the light of Art. 142.1 of the Code of administrative procedure. It found that if a material legal act,that is applicable in administrative proceedings is declared as unconstitutional, it seizes to be applicable in all pending procedure before courts and administrative bodies.

II.   The Scope of Execution

1.   **Execution of Constitutional Court Decisions by the Judiciary** - Clearly the courts are dealing with a nonexistent law, so they have to implement what is active under the general rules

Example: Dealing with a lacuna after declaring non-constitutional a provision on private-companies-party-financing that sets no limits to contributions.

2.   **Execution of Constitutional Court Decisions by the Administration** – the direct execution is clearly the same but when some form of restoring affected rights and obligation in order to avoid court cases particular administrative act have to be done

Example: Civil construction regulations based on a provision declared non-constitutional

3.   **Execution of decisions concerning personal acts of the Legislature.**

Example: Parliamentary decision rejecting a Members resignation

4.   **Execution of Constitutional Court Decision by the Legislature** is in fact the trickiest especially when in cases under the recent Interpretative Decisions a lacuna in the provisions on a particular matter exists:

Example: the recent mandatory machine voting provisions and the challenge to the Constitutional Court