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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

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I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?

The appointment of constitutional judges is regulated by Article 147 Federal Constitution Act (*Bundes - Verfassungsgesetz, B - VG*). According to this provision the Constitutional Court is composed of a President, a Vice - President, twelve additional members and six substitute members.

The President, the Vice - President, all members as well as all substitute members are appointed by the Federal President. However, pursuant to Article 67 B-VG, the Federal President is bound by other constitutional organs' recommendations. According to Article 147 B - VG, Federal Government submits a proposal with regard to the President, the Vice - President, six members and three substitute members. These members and substitute members shall be selected from among judges, administrative officials, and professors holding a chair in law. Three additional members and two substitute members are appointed upon recommendation of the National Council (i.e. the Chamber of Parliament directly elected by proportional representation). The remaining three members and one substitute member are appointed on the basis of proposals submitted by the Federal Council (i.e. the indirectly elected Chamber of Parliament representing the Austrian *Länder*). These members may be selected from any professional category for which the completion of legal studies is prescribed. All constitutional judges must have a relevant professional experience of at least ten years.

The members of the Constitutional Court have the position of judges as defined by the Federal Constitution Act. Accordingly, they are independent, non - transferable and irremovable. Pursuant to Article 147 B - VG their office ends on December 31 of the year in which they complete their 70th year of life.

Before this time, a member of the Constitutional Court may only be removed from office by a judgment of the Constitutional Court itself. As provided for in Article 147 B - VG, such judgment may only be rendered if a member or substitute member disregards without satisfactory excuse three successive requests to attend a hearing of the Constitutional Court. The establishment of this fact by the Constitutional Court entails the loss of membership. This has never happened in practice.

Besides this case, a member of the Constitutional Court may only be removed from office by a judgment of the Constitutional Court for the following further reasons stipulated in the Constitutional Court Act:

- a) Occurrence of incompatibility (e.g. election to Federal President or to the National or Federal Council, appointment to member of the Federal or a *Land* Government, or to similar functions);
- b) if a member's or substitute member's conduct - in office or otherwise - has proved unworthy of the respect and confidence required by the office, or if the member has grossly disregarded the obligation of non - disclosure of confidential information, or
- c) if a member (substitute member) is incapable of performing her/his duties because of physical or mental infirmity.

In these cases, the removal from office has to be decided in judicial proceedings before the Constitutional Court in the course of which the Procurator General (i.e. the highest public prosecution authority in the Republic of Austria) has to be heard.

2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?

Like all other state organs, the Constitutional Court is bound to the Federal Finance Act (i.e. the federal budget) which pursuant to Article 51 B - VG has to be enacted by the National Council. The Federal Finance Act limits the revenues and expenditures, subdivided into personnel and material expenditures, expenditures for legal obligations and discretionary expenditures. In practice, the President of the Constitutional Court submits the Court's draft budget to the Minister of Finance who - after having reviewed thoroughly - integrates it into the bill of the Federal Finance Act. The National Council debates the budget of the Constitutional Court together with the budgets of the other highest constitutional organs (i.e. Federal President, National Council, Federal Council, Audit Office, Ombudsman Board and Administrative Court). Until now, National Council has never declined a well - founded draft budget drawn up by the Constitutional Court.

The President of the Constitutional Court administers the budget autonomously within the limits imposed by the law.

3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?

Provisions regulating the Constitutional Court's organisation and its functioning have to be enacted by federal law. When adopting such a law, National and Federal Council are not bound by any restrictions. As a consequence, the legislator is principally free to

amend the legal basis of the Constitutional Court's organisation and the proceedings before it. However, the Federal Constitution Act itself - to which the legislator is bound - already contains all essential provisions. The legislator is therefore not in a position to substantially amend the character of constitutional justice.

When amendments to legal provisions concerning the Constitutional Court are envisaged, the Court is usually involved via its President, who discusses the issue with all members of the Constitutional Court. In the past only minor such legislative amendments have been passed without consultation of the Constitutional Court.

Principally it has to be emphasised that in Austria - prior to the enactment of laws based on a government bill - an intense dialogue with the groups affected by the bill takes place in the course of its evaluation procedure. This practice is also customary when the Constitutional Court is concerned.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

It is important to note that the legal term "regulation" has different meanings in German. It may be understood as regulation or ordinance ("*Verordnung*") but also as a mere internal regulation ("*interne Anordnung*"). The difference is of great significance for the Austrian constitution's legal protection system. Regulations (often referred to as "regulations specifying a law") may only be adopted if their content is predetermined by law, they have external normative effect and may consequently constitute or amend rights and duties of natural and legal persons. They are therefore general normative acts adopted by administrative authorities. Mere internal regulations have to be clearly distinguished from them, although they might be adopted as general norms as well, addressing an indeterminate number of administrative officials/administrative organs and have general character in so far. Such internal regulations (when adopted in written form, sometimes deceptively referred to as "administrative regulations" - "*Verwaltungsverordnungen*") cannot constitute rights and duties for addressees outside the professional sphere of administrative officials or other administrative organs.

In accordance with the Austrian legal protection system the Constitutional Court is entitled to review the legality of "real" regulations (i.e. regulations specifying a law) in proceedings similar to law review proceedings, it may however not review internal regulations.

In Austria, the „Rules of Procedure of the National Council" which contain most and the most important internal rules of Parliament have been enacted by law whose constitutionality (including its constitutional enactment) may be reviewed - like any other Federal law - by the Constitutional Court.

The Rules of Procedure of the National Council specify in particular the rights and duties of the National Council's members, the rules for the consideration of business by the National Council, the procedure for the enactment of federal law, the participation by the National Council in the Federation's executive power (administration), the order of deliberations, the right to interpellation and all other rights of the parliamentary opposition. The aforesaid applies *mutatis mutandis* also for the "Rules of Procedure of the Federal Council".

Furthermore, the administration of the National Council and the Federal Council - conducted by the President of the National Council and to a certain degree by the President of the Federal Council - is only to a very limited extent entitled to adopt "real" regulations. Exceptions are, for instance, regulations specifying legal provisions concerning civil servants' law (e.g. the evaluation of posts for civil servants of Parliament). In such a case, the President of the National Council is considered as an administrative organ whose regulations (as well as decisions concerning individuals) may be subject to review by the Constitutional Court. However, all other internal regulations, as for instance the rules of the house or similar issues, may not be reviewed by the Constitutional Court.

The aforesaid applies *mutatis mutandis* for legal acts by the Federal Government:

„Real“ regulations (specifying a law) adopted by the Federal Government are subject to constitutional review just as any other regulation. The Constitutional Court is not entitled to review internal acts by the Federal Government. As regards the Rules of Procedure of the Federal Government the Austrian situation is quite particular: Rules of Procedure of the Federal Government do not exist, a fact quite unusual measured by international standards. The internal rules for Government's operating activities are based on individual decisions and "customs" developed in the legal practice of Federal Governments since 1945. The most important such rule is that decisions of the Federal Government must be adopted unanimously. Since this rule undisputedly applies there is no need for further discussion on the interpretation of rules of procedure because in case of a dispute an agreement in the decision - making process will not be reached anyway.

The Federal Ministries Act, however, regulates in comparatively much detail the responsibilities of the Federal Ministries and their internal structure. Like any other law it is subject to constitutional review.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

According to the concept of the Austrian Federal Constitution, every legal act directly interfering with the legal sphere of the addressee is subject to review when it constitutes, abolishes or amends rights and duties. Any such legal act having general effect (i.e. addressing a target group marked by general criteria) is subject to review,

as are all individual legal acts provided they are issued by an administrative authority. By contrast, individual legal acts by ordinary courts (judgments and decisions) may not be reviewed by the Constitutional Court at all. An exception exists however in the field of asylum law: judgments and decisions of the Asylum Court may be challenged before the Constitutional Court.

In detail, the following legal acts are concerned:

- Laws (Article 140 B - VG):

All laws, i.e. general norms enacted by the competent, democratically legitimated legislator, are subject to review by the Constitutional Court with regard to their constitutionality. In line with Austria's federal structure, both Federal laws (enacted by National and Federal Council) and *Land* laws (enacted by the respective *Land* Parliaments) are concerned. According to the Austrian Federal Constitution certain essential amendments to the Constitution (i.e. a so - called "total revision of the Constitution" by which the amendment of basic principals of the Constitution is understood, like for instance the republican or the democratic principles) require an obligatory referendum. The Constitutional Court therefore also examines whether the Constitution has been profoundly amended manner by a constitutional law not having been subject to a referendum. In so far, the Constitutional Court reviews the "constitutionality of constitutional laws", whereby it generally also examines them with respect to the procedure of their lawful enactment. (This procedure is partly regulated by simple law as well, e.g. by the Rules of Procedure of the National Council.)

- Regulations (Art. 139 B - VG):

As mentioned above (see question 4.), regulations are general legal norms adopted by administrative authorities. Pursuant to Article 18 B - VG, any administrative authority is entitled - within its scope of responsibilities - to adopt detailed provisions based on a law (so - called "legal regulations" or "regulations specifying a law"). The Constitutional Court reviews the legality of these regulations, thereby also examining whether the law sufficiently predetermines the contents of the regulation. If this is not the case, the Constitutional Court reviews the law for lack of determination.

- Agreements of the Federation and the *Länder* concluded among themselves within their respective sphere of competence (Article 138a B - VG):

Based on the Austrian Federal Constitution, the Federation and the *Länder* as well as the *Länder* among themselves may conclude agreements. For these agreements the rules for international treaties apply (although, in line with Austria's federal character, the *Länder* as such are no subjects of international law). These agreements have direct

binding effect only for the organs of the Federation and the *Länder* including the organs of legislature, but not for other addressees. The Constitutional Court examines whether such an agreement has been lawfully concluded and whether the obligations and duties following such an agreement have been fulfilled by the Federation or a *Land*.

- Republication of a law or a state treaty (Article 139a B - VG):

According to the Austrian Constitution the responsible highest constitutional organs of the Federation and the *Länder* may republish laws and state treaties. This means that the text of a legal norm in force at the relevant time is approved as authentic and that its wording is binding for the addressees in future. The purpose of this provision is to make laws or state treaties in the form of a continuous text easily accessible again if they have become too complicated to be understandable at a glance because of numerous amendments made in the course of time. The Constitutional Court reviews whether the limits for republication have been exceeded, i.e. it examines whether the republished text including all amendments has actually been enacted by the competent legislator in the exact wording that has been republished.

- State treaties (Article 140a B - VG):

Moreover, the Constitutional Court may review all state treaties and other international treaties, whereby - according to their rank in national law - the provisions for law review proceedings or for regulation review proceedings apply.

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Principally, according to the system of the Austrian Constitution a judgment of the Constitutional Court directly eliminates a normative act that has been found unconstitutional or generally unlawful from the legal order. For this reason, judgments of the Constitutional Court invalidating general normative acts are published in the respective official gazettes of the Federation or a *Land* (or in special gazettes for the publication of regulations), so that the repeal by decision of the Constitutional Court is equivalent in rank with the invalidated norm. However, the Constitutional Court may set a deadline for the respective normative legal act's expiration which must not exceed 18 months. The normative legal act continues to apply to circumstances realised before the repeal (with the exception of the case that gave reason for it), unless the Constitutional Court in its judgment decides otherwise.

The reason for the deadline is to enable the responsible legislator (or the responsible regulation issuing authority) to implement a new normative act that is in conformity

with the Constitution. For such laws (or regulations) the usual legislation procedure (or procedure for issuing regulations) applies. The new general norm may be subject to constitutional review again like any other general normative act.

6. b) Parliament can invalidate the constitutional court's decision: specify conditions.

As a matter of principal, Parliament cannot invalidate a decision of the Constitutional Court, it may, however, enact a new law which might possibly be unconstitutional as well. In this case, the Constitutional Court may review the law again.

Compared to other states, the Austrian Constitution can be easily amended (the only requirements are the presence of at least half of the members of the National Council and a two thirds majority of the votes cast). Therefore, it occurred in the past that Parliament (re)enacted a repealed law again in the form of a law amending the Constitution. This practice has been criticised repeatedly by legal doctrine and does not occur often (any more). However, in such a case the Constitutional Court also examines whether the constitutional law possibly entails a total revision of the Constitution (see question 5. above). In one specific case the Constitutional Court invalidated a constitutional provision by which constitutionally guaranteed rights were temporarily abrogated for a specific field of law (public procurement), and, as a result, the authority of the Constitutional Court's review undermined.

7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?

Generally, in Austria the spirit of cooperation among all constitutional institutions prevails, based on mutual respect for their responsibilities. This applies for the relations between Parliament and Government as well as between Parliament and Government on the one hand and other constitutional control institutions - like the Constitutional Court or the Audit Office - on the other. The general public in Austria would not tolerate any pressure contradicting the principle of respect for the Constitution imposed on a control institution by Parliament or Government. The same applies for the relation between the Federal President and other state powers. Also where joint cooperation is necessary (e.g. when drawing up the budget), the respective spheres and functions are in so far respected.

Many more or less formal and informal contacts exist in the fields of representation and exchange of thoughts.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

It appears appropriate to combine the answers to questions 1 - 8

- 1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**
- 2. Specify whether the Constitutional Court is competent to resolve such litigation.**
- 3. Which public authorities may be involved in such disputes?**
- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**
- 5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**
- 6. What procedure is applicable for the adjudication of such dispute?**
- 7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.**
- 8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.**

In Austria, the Constitutional Court does not have general jurisdiction with respect to organic litigations. Jurisdiction to be qualified as the settlement of organic litigation is only provided for as follows (answers to questions referred to separately with regard to the entitlement to initiate proceedings and in respect of the effect of the jurisdiction will be answered in the following as well):

a) Pursuant to Article 126a B - VG the Constitutional Court decides on divergences of opinion between the Audit Office and the administration (of the Federation or the *Länder*, or the municipalities' administration derived thereof) on the interpretation of the legal provisions prescribing the competences of the Audit Office. The Constitutional Court decides upon application of the Federal Government or a *Land* Government or the Audit Office. All legal entities are obliged in accordance with the legal opinion of the Constitutional Court to render possible a scrutiny by the Audit

Office. Also the *Länder* may constitute a jurisdiction of the Constitutional Court with regard to institutions equivalent to the Audit Office (Article 127c B - VG).

b) Similarly, according to Article 148f B - VG the Constitutional Court decides on differences of opinion between the Ombudsman Board and the Federal Government or a Federal Minister on the interpretation of legal provisions prescribing the competences of the Ombudsman Board. The Constitutional Court decides upon application of the Federal Government or the Ombudsman Board.

c) Pursuant to Article 138.1.3. B - VG the Constitutional Court pronounces on conflicts of competence between the Federation and a *Land* or between the *Länder* amongst themselves. Such a conflict arises when both regional authorities claim one and the same competence (so - called positive conflict of competences). Proceedings may be initiated by the respective governments involved, i.e. the Federal Government or the *Land* Government(s).

(Moreover, pursuant to Article 138.1 B - VG the Constitutional Court decides on conflicts of competence between courts and administrative authorities as well as between ordinary courts and other courts including the Constitutional Court itself. Since mostly no highest constitutional organs are involved this disputes cannot be considered as organic litigations in the sense of public law terminology and may therefore be neglected in the given context.)

d) Pursuant to Article 138.2 B - VG the Constitutional Court determines whether an act of legislation or execution falls into the competence of the Federation or the *Länder*. The Federal Government or a *Land* Government are entitled to initiate such proceedings. The act in question, e.g. a bill, has to be precisely described. In this case, the judgment of the Constitutional Court has the rank of a constitutional law determining the competence of the Federation or the *Länder*.

e) An organic litigation is also the mentioned competence of the Constitutional Court to decide - according to Article 138a B - VG (see question 1.5. above) - whether an agreement between the Federation and the *Länder* concluded among themselves exists and whether the Federation or a *Land* has fulfilled the obligations resulting from it.

f) The entitlement of the Federation and the *Länder* to reciprocally challenge general normative acts may also be qualified as organic litigation.

Pursuant to Article 139 B - VG the Constitutional Court decides on application of a *Land* government whether regulations of the Federation are unlawful and on application of the Federal Government whether *Land's* regulation is unlawful.

Furthermore, pursuant to Article 140 B - VG the Constitutional Court decides on application of a *Land* government whether a Federal law is unconstitutional and on application of the Federal Government whether a *Land's* law is unconstitutional.

In all these cases, the effect of the Constitutional Court's judgment is the same as in all other proceedings concerning general norm review: The Constitutional Court repeals the respective normative act when it is unlawful. The review proceedings correspond to all other norm review proceedings, with the exception of one special feature: The review of the constitutionality of a law (or the lawfulness of a regulation) takes place irrespective of a specific case that gave reason for the review proceedings (so - called abstract norm review).

g) Moreover, one third of the members of the National Council or the Federal Council may challenge the constitutionality of a Federal Law before the Constitutional Court. The aforesaid referring to abstract norm control applies also here.

The purpose of this competence is to guarantee that a simple majority in Parliament may not pass laws for which the constitutional majority of two thirds of the votes cast is required.

h) According to Article 148e B - VG the Constitutional Court decides upon application of the Ombudsman Board on the unlawfulness of regulations adopted by a Federal administrative authority. The aforesaid applies again.

i) Pursuant to Article 142 B - VG the Constitutional Court may be called upon to conduct impeachment trials against the highest constitutional organs of the Republic. Principally, suit can be brought against any highest constitutional organ (i.e. Federal President, Federal Ministers which altogether form the Federal Government, members of Land Governments, Governors) for culpable violation of the law in the conduct of their office (against the Federal President only for culpable violation of the Constitution). This ensures that the respective general representative body responsible for the highest constitutional organ concerned (e.g. the National Council for Federal constitutional organs) may also claim that the other state organ has exceeded its competencies.

Such impeachment trials are very rare. They have been two cases in the time of the 1st Republic between 1918 and 1933 and one in the 2nd Republic between 1945 to date).

When impeachment was justified the Constitutional Court has to remove from office the highest constitutional organ concerned. The Court may, however, also pronounce the temporary forfeiture of the organ's political rights, or it may confine itself to the statement that the law has been contravened by the accused constitutional organ.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

The answers to questions 1 and 2 will be combined.

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
 - a) repealed;
 - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
 - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
 - d) other instances.

In any case, the decision of the Constitutional Court is final and not subject to any appeal. Also the Constitutional Court itself is bound to its decisions (apart from cases concerning the reinstatement of time - barred proceedings or the reopening of proceedings because of *nova reperta* or *nova producta*).

Basically, a distinction has to be made between judgments concerning general normative acts (laws and regulations) and those concerning individual decisions (especially decisions by administrative authorities).

Judgments concerning general normative acts (laws and regulations) have *erga omnes* effect. This means that any subject of the legal order - including state authorities - is bound by the Constitutional Court's judgment (see question 1.6.a above). There are, however, restrictions in two different directions:

Principally, the repeal of a general legal norm has no legal effect on circumstances realised before (and neither on legal affairs that have become final), with the exception of the case (or the cases) that gave reason for the repeal. The Constitutional Court may, however, declare inapplicable a general normative act with retroactive effect. (Sometimes this entails difficult questions with respect to the *res iudicata* effect of decisions that have been issued but have remained uncontested.)

The Constitutional Court may set a deadline for the expiration of an invalidated legal provision (see question I.6.a. above). The deadline has no effect on the case that gave reason for the repeal, but is applicable to all other decisions to be taken until its

expiry. The norm becomes incontestable for everyone until the expiry of the deadline but ceases *ipso iure* to be in force afterwards.

Individual legal acts (by administrative authorities and the Asylum Court) cease to be in force as a consequence of an annulling decision by the Constitutional Court. The legal matter regains the status it had before the decision by the administrative authority or the Asylum Court has been challenged. The administrative authority is obliged to issue a decision in conformity with the Constitutional Court's legal opinion, but has to consider changes with regard to the facts or the legal situation having meanwhile occurred.

For cases that gave reason for norm review proceedings special circumstances apply. As already indicated, the legal protection system in Austria is as follows: In principle, every decision of a last instance administrative authority or the Asylum Court can be challenged directly before the Constitutional Court. If the Constitutional Court has doubts as to the constitutionality of the laws (or the lawfulness of other normative acts applied) on which the contested decision is based, it initiates norm review proceedings *ex officio*, examining the constitutionality or legality of the respective general normative acts. In case these normative acts are invalidated, the aforesaid applies, namely the judgment has *erga omnes* effect except for circumstances realised before. The case that gave reason for the norm review proceedings, however, is treated differently: The decision of the Constitutional Court must be based on the so-called "adjusted legal situation" ("*bereinigte Rechtslage*"). This means that the Court - when assessing this case - must disregard the invalidated legal norm (so-called "premium for the catcher"). Therefore, in most cases the Constitutional Court annuls the administrative authority's decision in the continued proceedings because the legal situation has to be assessed as if the invalidated normative act had never existed.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

The referring court is bound to the Constitutional Court's judgment. The binding effect for other courts depends on whether the Constitutional Court sets a deadline or pronounces retroactivity (see question 2. above).

A judgment determining the competence of the Federation or the *Länder* for the adoption of an act of legislation or executive has the rank of a constitutional law and may therefore only be amended by constitutional law.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?

In the light of the Austrian system allowing to set a deadline or to pronounce retroactivity this question does not arise in Austria. If the Constitutional Court sets a

deadline the legislator usually eliminates the unconstitutionality, otherwise the law ceases to be in force upon expiration of the deadline so that also the unconstitutionality ceases to exist. This may, however, entail politically undesirable results.

5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.

It is the Constitutional Court who has to set the deadline within the limits determined by the Constitution, i.e. not exceeding 18 months. After the expiry of the deadline the respective law (or the respective other general norm) ceases to exist.

6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.

According to the Austrian Constitutional system and the respective prevailing legal doctrine this is possible because legislature may enact any law in a legally valid way as long as it observes the rules for the legislative procedure as required by the Constitution (and not necessarily the substantive requirements by the Constitution). In line with the Austrian concept this is an essential element of the separation of powers. However, any such law may of course again be challenged before the Constitutional Court and may also be invalidated again.

7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?

Article 146.1 B - VG provides that the execution of judgments by the Constitutional Court made in accordance with Article 126a, Article 127c and Article 137 is implemented by the ordinary courts.

Pursuant to Article 146.2 B - VG the Federal President is entrusted with the execution of the remaining Constitutional Court's judgments. However, it is controversial in legal doctrine to what extent decisions of the Constitutional Court (as long as they do not concern payments or non - monetary benefits) may at all be executed. The request to the Federal President for the execution of judgments has to be made by the Constitutional Court. According to the wording of Article 146.2 B - VG the execution shall in accordance with his instructions lie with the Federal or the *Länder* authorities, including the Federal Army, appointed at his discretion for the purpose. The scope of this provision is controversial, such executions have not occurred so far.