

## REVIEW MECHANISMS IN CONSTITUTIONAL AND ADMINISTRATIVE LAW

Contribution to the course *Public Policy, Legislation and Review Mechanism*  
from the perspective of comparison of laws

concerning § 2 IV of the course contribution

## Diagram 1

### Types of procedures before the German Bundesverfassungsgericht<sup>1</sup>

#### A. Dispute between constitutional organs [Organstreitverfahren]

(art. 93(1) no. 1 BL<sup>2</sup>, sect. 13 no. 5, 63 et seq. FCCA<sup>3</sup>)

- in the event of disputes about the constitutional rights and duties of federal constitutional organs or parts of them or other parties vested with such rights
- capacity to sue and to be sued: constitutional organ, parts of constitutional organs, other parties

#### B. Abstract constitutional review [abstrakte Normenkontrolle]

(art. 93(1) no. 2/2a BL, sect. 13 no. 6/6a, 76 et seq. FCCA)

- review of the compatibility of federal and Land law with the Basic Law and of Land law with other federal law, without a special reason
- on application of the Federal Government, a Land government or ¼ of the members of the German Bundestag
- since 1994 also review of compliance of federal law with the requirement of federal necessity in the national interest on application of the Bundesrat or a Land government or parliament (art. 72(2) BL, cf. art. 93(1) no. 2a BL)
- the Bundesverfassungsgericht shall declare an unconstitutional law void but often only declares it "incompatible" with the BL, in order to avoid an even worse situation, and sets a time limit for revision

#### C. Concrete constitutional review [konkrete Normenkontrolle] (art. 100(1) BL, sect. 13 no. 11, 80 et seq. FCCA)

- review of the constitutionality of federal or Land statutory law (not: statutory regulations), which a court considers unconstitutional (or of the compatibility of Land statutory law with federal statutory law, if the court considers it incompatible), if the decision of the court in the given case depends on the validity of the provisions in question
- judicial referral can be filed by every court of the state
- judicial referral must be thoroughly reasoned

#### D. Constitutional complaint [Verfassungsbeschwerde] (art. 93(1) no. 4a BL, sect. 13 no. 8a, 90 et seq. FCCA)

- review of all kinds of German acts of public power for possible violations of fundamental rights under the Basic Law
- can be filed by anyone (as holder of a fundamental right)
- only after all remedies have been exhausted (→ subsidiarity of the constitutional complaint)
- directly against a law only if the law affects the citizen directly (e.g. in criminal law); otherwise incidental review of the relevant provisions
- review of court decisions limited to *specific* violations of fundamental rights (ignorance of scope and meaning of f.r. in the interpretation or application of the law, → Constitutional Court no "super appellate body")
- causes a heavy workload: ca. 5.000 - 6.000 complaints per year; therefore filtering of irrelevant complaints in a (non-discretionary) acceptance procedure before a Chamber of 3 judges
- in most German Länder there is also the remedy of constitutional complaint before the Land constitutional court against violations of fundamental rights under the Land constitution

#### E. Federative dispute between the Federation and the Länder [Bund-Länder-Streitverfahren]

(art. 93(1) no. 3 BL, sect. 13 no. 7, 68 et seq. FCCA)

- in the event of disputes about the rights and duties of the Federation and the Länder emanating from their constitutional federal relationship
- on application of the Federal Government or a Land government

<sup>1</sup> Federal Constitutional Court, [www.bundesverfassungsgericht.de](http://www.bundesverfassungsgericht.de).

<sup>2</sup> Basic Law of the Federal Republic of Germany [Grundgesetz], [www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html).

<sup>3</sup> Federal Constitutional Court Act [Bundesverfassungsgerichtsgesetz], [www.gesetze-im-internet.de/englisch\\_bverfsg/index.html](http://www.gesetze-im-internet.de/englisch_bverfsg/index.html).

**F. Others** (selection)

- constitutional complaints of communes and counties against laws violating their right to self-government (art. 93(1) no. 4 b BL, sect. 13 no. 8a, 90 et seq. FCCA)
- electoral complaints (art. 41(2) BL)
- proceedings for the prohibition of political parties (art. 21(2) BL, sect. 13 no. 2, 43 et seq. FCCA)

*(Datei: Diagram 1 (Review Mechanisms))*