

concerning § 3 of the course contribution

Diagram 1

Types of constitutional review of laws before the German Bundesverfassungsgericht¹

A. Abstract constitutional review [abstrakte Normenkontrolle] (art. 93(1) no. 2/2a BL²)

- 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
- 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

B. Concrete constitutional review [konkrete Normenkontrolle] (art. 100(1) BL)

- 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 but must be thoroughly reasoned

C. Constitutional complaint [Verfassungsbeschwerde] (art. 93(1) no. 4a BL, sect. 13 no. 8a, 90 et seq. FCCA³)

- 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
- filtering of irrelevant complaints in a (non-discretionary) acceptance procedure before a Chamber of 3 judges
- in most German Länder there is a similar remedy before the Land constitutional court against violations of fundamental rights under the Land constitution

D. Constitutional complaint of a commune or county

- only against laws violating its right to self-government (art. 93(1) no. 4b BL)

E. Others (in case of violation of constitutional rights of others by passing a law)

- dispute between constitutional organs [Organstreitverfahren] (art. 93(1) no. 1 BL)
- federative dispute between the Federation and the Länder [Bund-Länder-Streitverfahren] (art. 93(1) no. 3 BL)

(Datei: Diagram 1 (ConstLegisl))

¹ Federal Constitutional Court, www.bundesverfassungsgericht.de.

² Basic Law of the Federal Republic of Germany [Grundgesetz], www.gesetze-im-internet.de/englisch_gg/index.html.

³ Federal Constitutional Court Act [Bundesverfassungsgerichtsgesetz], www.gesetze-im-internet.de/englisch_bverfgg/englisch_bverfgg.html.