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**POWERS OF CONSTITUTIONAL
COURTS AND INDIVIDUAL ACCESS TO
THE CONSTITUTIONAL REVIEW**

POWERS AND APPLICATIONS

- Legal basis (closed – open list of powers)
- Limits or expansion (theory-constitutional questions, constitutional/legal order), frequency
- Applications: primacy of subjective forms (no ex officio?)
- Qualified institution – privileged applicant (abstract review)
- Individual:
 - Abstract review-reduction to the national level
 - Concrete review-thorny path to the ECtHR

INDIVIDUAL

APPLICATION FORMS

- Abstract review: popular complaint (constitutional petition)
- Concrete review (constitutional complaint)
- Other individual applications (jurisdictional disputes, constitutional review of acts and actions of political parties, confirmation of deputies' terms of office etc.)
- Other forms possible out of constitutional court: habeas corpus, habeas data, tutela, amparo, subsidiary amparo, mandado de injuncao etc.

Individual application and functional capacity of constitutional courts

- American/diffuse/dispersal model of constitutional review – no problems?
- European/continental/concentrated/ Austrian German model of constitutional review – a problem of functional capacity?

Dilemma about legal remedies before the constitutional court

- Providing for and expansion of the respective legal remedies (in favor of individual) ?
- Limitation of legal remedies (in favor of protection of functional capacity of the constitutional court) ?
- Transfer of responsibility (from ECtHR to constitutional courts; from constitutional courts to ordinary courts; 4 instances?)?

SLOVENIA/abstract review/popular complaint

- 1963: Introduction without any limits
- 1974: Preservation without any limits
- 1991: Preservation with a limit: legal interest/standing – quasi popular complaint
- Restrictive interpretation of legal interest/standing
- 2007: Limitation of constitutional review of bylaws by fixing of a term
- Combination of procedural conditions for the popular and constitutional complaint (through the Court's interpretation+the popular complaint can be declared as inadmissible if it cannot be expected that an important legal question will be resolved!)
- Decrease of popular complaints

SLOVENIA/concrete review/constitutional complaint

- 1963: Introduction
- Limitation in practice
- 1974: Exclusion from the constitutional and legal system
- 1985-1990: Crisis of constitutional review
- 1991: Reintroduction, based on prescribed conditions
- 2007: Limitations prescribed by law (some questions are excluded by law+the const, complaint can be declared as inadmissible if the Court considers that the applicant has not suffered a significant disadvantage!) inspired by Article 12 of the Protocol 14 to the ECHR
- Decrease of constitutional complaints

SLOVENIA-HOW TO CONTINUE?

- New constitutional amendments?
- New amendments of the Constitutional Court Act?
- Continuation of limitation in the practice?
- Decentralisation of the constitutional review (e.g. Article 156 of the Slovenian Constitution)?
- Full discretion given to the Constitutional Court to be able to select applications/cases?
- No need for individual applications due to their relative ineffectiveness and/or their elimination in case of no adverse effects on the individual: similar experiences from the past-1974?

FOREIGN PATTERNS – preventive measures?

- ECHR/ECHR: restriction of applications - Protocol 14
- Supreme Court of USA: selection of applications/cases
- Constitutional Court of Spain 2007: restriction of individual application
- Constitutional Court of Turkey 2010/2011: introduction with hesitations: limited circle of potentially disputed regulations; limited circle of protected constitutional rights; limitation for foreigners; fee; constitutional importance of case as a criterion; refusal, in case of no major damage for the applicant
- Decisionmaking against the applicant as a method?

REASONS FOR PRESERVATION OF THE PROTECTION BEFORE THE CONSTITUTIONAL COURT

- National interest: individual application as individual's tool
- Removal of anomalies from the legal order
- National interest: supplementary importance in case of any inefficiency of national ordinary courts/inefficiency of the legislator in case of abstract review
- National interest: expected productivity of state bodies
- Oscillations of applications - no criterion
- International interest: supplementary importance in case of any inefficiency of national constitutional courts
- National and international interest: individual application is a connecting link between the national and international human rights protection