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**INTERNATIONAL  
LEGAL TRAINING WORKSHOP**

**Improving Examination Methods of  
Individual Complaints  
Effective Case Management  
Effective Decision Drafting**

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**REPORT ON**

**“Administrative assistance in dealing with proceedings  
before the Federal Constitutional Court  
(*Bundesverfassungsgericht*), with particular reference to  
constitutional complaint proceedings”**

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## **Administrative assistance in dealing with proceedings before the Federal Constitutional Court (*Bundesverfassungsgericht*), with particular reference to constitutional complaint proceedings**

The number of 5,000 new proceedings that were brought before the Federal Constitutional Court in the year 2003 alone already suggests that administrative assistance is of particular importance especially as regards proceedings in which citizens have the right to directly invoke the Court's jurisdiction (that is, in mainly constitutional complaint proceedings). With more or less variation, the number of new proceedings has remained approximately the same each year since 1993. In this context, "new proceedings" only comprise proceedings that have been submitted to the Federal Constitutional Court judges for review and that have resulted in a court ruling. In each of these ten years, the number of new cases was between 5,911 and 4,620. These proceedings are ruled on by 16 judges, who work in two Panels with eight judges each. Especially constitutional complaint proceedings are normally decided in Chambers that are composed of three judges each. The chamber may refuse to accept the constitutional complaint or accept it prior to a decision. In this case the panel shall decide on acceptance or, if the constitutional issue determining the judgment of the complaint has already been decided upon by the Federal Constitutional Court, the chamber may allow the complaint if it is clearly justified. This decision is equal to a decision by the panel. A decision stating, that a law is incompatible with the Basic Law or with other Federal law shall be reserved for the panel. In the Chambers, only unanimous decisions are permitted. Because administrative assistance has its effect especially in constitutional complaint proceedings, I will first of all briefly explain in the following the formal prerequisites for constitutional complaint proceedings.

### **1. Prerequisites for lodging a constitutional complaint**

In the Federal Republic of Germany, constitutional complaints can be lodged by "any person", i.e. by any citizen. Representation by a lawyer is not required. For several years now, the number of constitutional complaints that have been lodged with the assistance of a lawyer has been more or less equal to the number of constitutional complaints that have been lodged without the assistance of a lawyer. Admittedly, among the decisions in which the relief sought is granted, the share of those that were lodged without the assistance of a lawyer is very small, but every year the relief sought is granted also in decisions that were lodged by ordinary citizens without the assistance of a lawyer. Besides, in the Federal Republic of Germany there are also proceedings in which representation by a lawyer is mandatory, for instance all proceedings before the Higher Regional Courts (*Oberlandesgerichte*) and the Federal Court of Justice (*Bundesgerichtshof*) in criminal and civil matters, before the Higher Administrative Courts (*Oberverwaltungsgerichte* and *Verwaltungsgerichtshöfe*) and the Federal Administrative Court (*Bundesverwaltungsgericht*), that is, before the first and second instances of appeal in administrative proceedings, before the Higher Labour Courts (*Landesarbeitsgerichte*) and the Federal Labour Court (*Bundesarbeitsgericht*), before the Higher Social Courts (*Landessozialgerichte*), the Federal Social Court (*Bundessozialgericht*) and the Federal Finance Court (*Bundesfinanzhof*). Nevertheless, there is no mandatory representation by a lawyer in the proceedings before the Federal Constitutional Court, which is the highest German court, in order not to put obstacles in the way of citizens who wish to lodge a constitutional complaint. There are also no court fees in the proceedings before the Federal Constitutional Court. However, several formal prerequisites exist which the citizen has to meet when lodging a constitutional complaint. To this effect, an instruction leaflet has been drawn up that is mailed to any citizen upon request, and which has recently been made available also on the court's web site. Unfortunately, the instruction leaflet, which explains the formal prerequisites for lodging a constitutional complaint in a manner that is clearly comprehensible to the citizens, is not

available in English. The reasons for this are that the language of the court is German and that we want to avoid the impression, which would be created by an instruction leaflet in English, that it is also possible to lodge a constitutional complaint in English or in other languages.

The most important formal prerequisites for lodging a constitutional complaint are the following:

- as a general rule, all legal remedies must have been exhausted, which means that a constitutional complaint can only in extremely rare and exceptional cases be lodged before all legal remedies have been exhausted, or directly against a law,
- the constitutional complaint must be lodged within a month after the notification of the ruling of the last instance of appeal, or - in the rare case of a constitutional complaint that directly challenges a law - within a year after the promulgation of such law,
- constitutional complaints against a law are only admissible in exceptional cases, that is, if the citizen is directly and presently affected by the law without another act of state being required,
- it must be alleged and substantiated that a violation of a fundamental right has occurred by the challenged ruling of the last instance of appeal or by the challenged law,
- if, and this is normally the case, the constitutional complaint challenges a court ruling, the ruling must, according to the Federal Constitutional Court's case-law, also be submitted, or all its material statements must be reproduced in the constitutional complaint,
- the constitutional complaint must be signed,
- as a general rule, only lawyers who are admitted before a German court or lecturers of law at a German university are permitted to act as authorised representatives before the Federal Constitutional Court.

## **2. Administrative assistance work**

To make the judges' work easier, and to avoid unnecessary work for them wherever possible, several administrative activities are provided in the Federal Constitutional Court's rules of procedure, and/or they are performed in the court's conduct of business. I will now describe these activities.

### **a) First screening of incoming applications**

Pursuant to §§ 16 and 61 subsection 1 sentence 2 of the Rules of Procedure (*Geschäftsordnung*) of the Federal Constitutional Court, the incoming mail is presented to the President or to the Vice-President unless they state to the contrary. The task to go through the incoming mail and to decide how the letters will be further dealt with has been delegated to the so-called *Präsidialräte*, or advisers. Here, I have to explain that every Panel has an adviser, or presiding administrative officer, who is a jurist and a civil servant. The advisers assist the chairperson of the respective Panel in his or her work. The adviser of the First Panel is at the same time director at the Federal Constitutional Court, a function which makes him or her the head of the Court's administration. This is my function. The adviser of the Second Panel deputises for the Director if the Director is absent. The incoming mail is first presented to the adviser of the Second Panel and afterwards to me. We decide jointly whether an incoming matter, a constitutional complaint in most cases, is

recorded in the register of proceedings, which means that it will be submitted to the competent reporting judge of one of the Panels, or if it will be recorded in the General Register.

b) The complainants' information procedure that is performed in the General Register

The procedure in the General Register is regulated in § 60 *et seq.* of the Federal Constitutional Court's Rules of Procedure. All in all, ten court registrars with a three-year training (*Rechtspfleger*) and one jurist with the legal qualifications of a judge or a lawyer work in the so-called "General Register". The jurist, who signs all letters of instruction, ensures their legal correctness and also ensures that a consistent procedure is followed if a large number of parties are involved. A large German daily newspaper, for example, once called upon its readers to lodge a constitutional complaint by publishing a form to this effect. Numerous complainants followed this call and lodged a constitutional complaint. In this case, all these complainants were informed **in the one way** that their complaint was inadmissible.

A submission is recorded in the General Register, for example, if it does not make a specific application or if it does not assert a claim that falls within the competence of the Federal Constitutional Court. But constitutional complaints are also not recorded in the register of proceedings but in the General Register if their admission for decision is out of the question because they are obviously inadmissible or if they obviously cannot be successful, taking into account the Federal Constitutional Court's case-law. In all these cases, the sender is informed about this by the General Register, he or she is sent the instruction leaflet and is given specific information concerning the inadmissibility of the complaint. Such submissions, or obviously inadmissible constitutional complaints, are frequent. Since 1992, their number has been between 6,700 and 3,900 every year.

The Federal Constitutional Court's reputation in the Federal Republic of Germany is very high so that many citizens address concerns to the Federal Constitutional Court that do not fall under its competence. If, for example, the federal government takes a decision that is widely discussed in the media, the Federal Constitutional Court often receives submissions whose senders request that the Federal Constitutional Court dismiss the federal government; the senders of other submissions express their wish for better social conditions, etc. Obviously inadmissible constitutional complaints are also frequent. In many cases, the challenged decision is not enclosed with the constitutional complaint, and its material statements are also not reproduced in it, or all legal remedies have not been exhausted. Especially in recent years many constitutional complaints were lodged which challenged laws that had just been passed, without the complainant having exhausted all legal remedies. This occurs in particular when the law changes the social security system, although normally, there is recourse to the social courts in such cases, but it also happened when tolls were introduced or when tax laws were amended. In all these cases, the complainants are informed about their legal position. Only if the complainant insists on a judicial decision in spite of having been informed, the submission or application will be recorded in the register of proceedings.

The "success rate" of such letters of information is relatively high. In the last ten years, between 60 and 80% of the complainants did not pursue their concern any further after receiving a letter of information. To put it the other way round: between 20 and 40% of submissions were recorded in the register of proceedings in spite of the senders having been informed about their legal position. This percentage amounts to about one third of all recorded constitutional complaints. In some cases, the court refrains from sending a letter of information; this is possible because the decision whether a submission is recorded in the General Register and the sender is informed afterwards is a discretionary decision. As a general rule, the complainant does not

receive a letter of information if it has become apparent in earlier proceedings that he or she is not open to such information. Unfortunately, there are citizens who lodge ten or more constitutional complaints every year, and hundreds of constitutional complaints over the years. The legal premises, and in particular the fundamental right to one's lawful judge require that in such cases, the constitutional complaint be presented to a panel of judges at least once in such cases. However, the Federal Constitutional Court Act does not provide that the same constitutional complaint can be lodged more than once.

The complainants' submissions are distributed, in alphabetical order according to the complainant's last name, among the court registrars in the General Register, who prepare the letters of information and present them to the jurist for signature. This approach has proved particularly efficient. Every court registrar is in charge of the complainants whose last names begin with specific letters of the alphabet so that the court registrar will recognise complainants who again and again take recourse to the court. In contrast to this, the competencies of the Panels, of the Chambers within the Panels and of the individual judges in their function as reporting judges are determined by the field of law or by the fundamental right of which they are in charge. There is, for example, a reporting judge, and thus also a Chamber, that are responsible for social law, and another reporting judge who is responsible for family law.

#### c) IT assistance

Every incoming submission or constitutional complaint is entered in the court's IT system irrespective of whether it is recorded in the register of proceedings or in the General Register. The complainant's first name, last name and his or her address (if the complainant has indicated it), the challenged act of state and the complainant's authorised representative are entered in a data file. This makes it possible to find out very quickly already through a database inquiry that is performed when the submission or constitutional complaint is received if the complainant has already taken recourse to the Federal Constitutional Court with the same request. The staff of the General Register, and also the Constitutional Court judges, is supplied with the so-called "list of previous proceedings." This list shows how often the complainant has invoked the Federal Constitutional Court's jurisdiction before; moreover, the list indicates the act, or acts, of state that the complainant challenged before, and whether he or she was informed by the Court then. Thus, it can be established whether a constitutional complaint is lodged repeatedly, a possibility which is not provided by the law.

At present, a computerised system for the registries (*Geschäftsstellen*) of the Panels is being developed which will make it possible for all departments of the Federal Constitutional Court to further process the file that is created when a submission or a constitutional complaint is received. I would like to explain this with the help of the following example: A submission is received, which is recorded in the General Register. The reference number that is assigned by the General Register, the complainant's name, his or her address, the challenged act of state and the complainant's authorised representative are entered in the file. In cases in which the complainant insists on a court ruling, and after he or she has been informed, the so-called transfer order is made. The transfer order is the basis of the presentation with which the adviser of the respective Panel can transfer the submission from the General Register to the register of proceedings. In the future, it will be possible to generate the transfer order on the basis of the existing data, and it will be complemented by the fundamental rights that are challenged and by the reason why the constitutional complaint is lodged. The registry that is assigned to the respective Panel will then draw up the file, whose cover sheet will bear the data that already exists and will also indicate the competent Panel, the reference number of the proceedings, and the reporting judge. The idea is that at this stage, the same original file will be used and further processed, so that the registries

will not have to enter the essential data again, as, for instance, name, address, the act of state that is challenged and the complainant's authorised representative. Even when the judgment or the order are made out after the panel's verdict, the master data are supposed to be available so that it is not necessary to again enter the complainant's data that are contained in the heading of the case, the challenged act of state and the complainant's authorised representatives. We expect that the new system will save us a considerable amount of work and that it will eliminate possible sources of error. We hope that we will be able to install the system by 1 April 2004. At the moment, a trial run is performed.

d) The work of the registries

I have already mentioned that each Panel has a registry. The staff of the registries consists of clerical-class civil servants or employees with a similar training. All incoming mail that concerns pending or concluded proceedings is submitted to the competent registry. The registry files the incoming mail according to the proceedings to which they refer, and if the proceedings are not yet concluded, it presents the mail to the department of the competent judge. If the mail refers to concluded proceedings, it is submitted to the court registrars. They are in charge of the so-called "post-proceedings correspondence", which unfortunately, is entered into rather frequently. Many complainants are not satisfied with their decision and request that it be amended, which is normally not possible. The letters that can be referred to as "post-proceedings correspondence" are drawn up by the court registrars and are signed by the competent adviser. The registries also make out letters by order of the judges' departments, for instance if in cases in which the constitutional complaint was lodged together with a motion for a temporary injunction, a letter of information to the complainant is required because the complainant did not sufficiently substantiate the urgency of the matter.

e) Assistance by the court registrars

Apart from the task of preparing the correspondence for the General Register and the post-proceedings correspondence, the court registrars also have the task of assisting in the making out of the decision. This means that they proof-read the decisions to eliminate orthographical errors and to ensure consistent spelling. They also check all source references from legal literature and from statutes that are contained in the decisions.

f) The functions of the court office

The staff of the so-called court office (*Kanzlei*) consists of the head of office, of one executive-class civil servant (whose qualification is similar to that of a court registrar) and of a larger number of secretaries. It is true that the drafts and the decisions themselves are normally typed in the reporting judge's department by the reporting judge's secretary; however, if a bottleneck occurs there, the secretaries from the court office also type drafts and decisions. Moreover, the court office mails the decisions to the parties to the proceedings and to the complainant but also to other public institutions, such as, for example, courts and ministries. The court registrars' letters of information are also made out by the court office.

g) The in-house transfer of files

Here, it must be distinguished between the transfer of paper files in the court and the transfer of data files. The paper files are transferred within the court to and from the different areas and between the different persons that process them by our court messengers. The court messengers enter every office three times each day and fetch the files from the "Out" tray and put the

incoming files in the "In" tray. While normal files are transferred in yellow folders, there are red folders, marked "Urgent", for urgent matters. For urgent matters there is always an office messenger available who will fetch an urgent folder and will take it to the competent person. This means that the judges, law clerks and other clerks need not themselves move their files to the next stage of processing.

Apart from this, there is an intranet communications system that not only serves to assist in-house communications through computing but also serves to assist the processing of files. In this context, however, it must be emphasised that the Federal Constitutional Court does not yet pursue the "paperless file" approach. It would involve considerable effort to scan all incoming mail. The Federal Constitutional Court very consciously decided not to permit recourse to the court by e-mail. In other words: No constitutional complaint or other proceedings may be brought before the Federal Constitutional Court by e-mail. This decision was made because there is no mandatory representation by a lawyer before the Federal Constitutional Court, and the possibility of lodging a constitutional complaint by fax already constitutes a very low threshold for doing so. Many of the applications that are made this way lack substance and culture. There is a danger that this would be all the more the case if it were possible to lodge a constitutional complaint via e-mail.

### 3. The research service

#### a) The task of the law clerks

Important assistance in the run-up to the passing of a decision is rendered by the so-called "law clerks". By far most of the Federal Constitutional Court judges have four law clerks, only some have three law clerks. As a general rule, the law clerks have several years of professional practice as judges, some of them; however, are administrative officials, research assistants at a university or lawyers (the latter, however, is not very frequent because the remuneration at the Federal Constitutional Court is by no means comparable to that of a good lawyer). While all other staff in the areas that I have described before are selected by the Director (that is, by myself) or by the head of the personnel department, it is for the judge alone to decide who will be employed as his or her law clerk (the actual employment itself is performed by the court administration). There are no law clerks who hold their office for life; normally, they only work at the Federal Constitutional Court for two years, for five years at most. In Germany, there is the possibility of delegation, which means that the Federal Constitutional Court borrows, so to say, the respective law clerk from a federal or *Land* (state) authority or from a court in one of the *Länder* (states), and the law clerk returns there when the term of delegation has ended. The law clerks have the task to draw up the so-called *Voten*, or drafts, which are the basis of the decision in the Chamber or in the Panel. As a general rule, there is an intensive exchange of opinions between the Federal Constitutional Court judge and his or her law clerk in the preparatory stage of a draft e.g. for a Panel decision. It must be emphasised, however, that only the judges themselves are permitted to take part in the Panel deliberations. As concerns Panel decisions, the drafts and their enclosures often comprise several files. Every judge in the Panel is provided with the draft and all enclosures. The enclosures consist of copies of the pleadings and of the relevant literature and case-law. In the making of the enclosure files, the registries render assistance, but also the in-house printing department, which consists of one printer who has a high-capacity copier at his disposal.

#### b) Library

An important tool for the judges, and of course also for the law clerks, is the legal literature and the case-law from other courts. To cater for this need, the Federal Constitutional Court places a sophisticated library at their disposal. 19 employees work in the library. Every year, a budget of approximately € 500,000 is available for the acquisition of books and other media. The library is open 24 hours a day. Outside office hours, all members and employees of the court can take books from the library themselves. At present, the library contains about 350,000 volumes. The library catalogue can be consulted via the Federal Constitutional Court's intranet so that all judges, law clerks and employees can perform inquiries from their own computers.

#### c) The JURIS documentation department

On the one hand, it is the task of the JURIS documentation department to maintain the Federal Constitutional Court's web site. Since 1998, all Federal Constitutional Court decisions that contain essential reasoning have been published there. In this context, it must be pointed out that *inter alia* orders by which a constitutional complaint is not admitted for decision can also be issued without grounds. The decision whether a specific decision will be published on the web site is made by the judge who was the reporting judge in the respective case.

Another task of the JURIS documentation department is to enter the Federal Constitutional Court's decisions in the JURIS database, which is operated by a limited liability company whose principal shareholder is the Federal Ministry of Justice. Only the important Federal Constitutional Court decisions are published in the JURIS database, which consequently contains fewer decisions than Federal Constitutional Court's web site. The Federal Constitutional Court decisions, however, are edited by the Federal Constitutional Court: Editing includes the writing of a note of reference that introduces the most important aspects of the decision to the reader. Moreover, the JURIS documentation department looks through all important legal journals to find out whether they reproduce Federal Constitutional Court decisions, whether they quote the decisions in essays or review them. This information is added to the decision in the JURIS database. While the Federal Constitutional Court's web site can be consulted free of charge, the JURIS users must pay a fee. Moreover, the database contains decisions of all supreme federal courts Germany-wide and apart from this, the most important decisions of courts of appeal and of the constitutional courts of the *Länder*. The JURIS database has meanwhile become a standard work of reference and can be consulted by private individuals, as, for example lawyers, or by others who are interested in legal matters, but, as I have already mentioned, a fee must be paid for its use.

#### 4. Summary

In my presentation, I have tried to take you on a tour of the different areas of the Federal Constitutional Court that play a vital part in assisting the judges before they pass their decision, but also in the decision-making process itself. I have not dealt with the core areas of administration, as, for example, the personnel and the budget departments. Because the Federal Constitutional Court enjoys far-reaching autonomy, we have a highly specialised administration in these areas. Apart from the 16 judges and the approximately 70 law clerks (their number is so high because some of them wish to work part-time) about 160 other employees, who are in charge of rendering the services that I have mentioned before, work at the Federal Constitutional Court.