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(VENICE COMMISSION)

**PRELIMINARY DRAFT STUDY
ON INDIVIDUAL ACCESS TO CONSTITUTIONAL JUSTICE**

on the basis of comments by

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1 INTRODUCTION

1. All over Europe and beyond, the past 60 years have brought about a fundamental shift in the importance of constitutional protection of Human Rights. Respect for Human Rights is now considered essential in any democratic society¹. Consequently, mechanisms allowing the individual to directly or indirectly invoke these rights conferred upon him/her in court are becoming increasingly important.

2. The purpose of this draft study is to provide an overview of the existing mechanisms in the Venice Commission's member and observer states so as to contribute to a better understanding of the great variety of adopted solutions, but also to analyse the merits of the various systems.

3. The draft study presently draws from the constitutions and legal texts provided in the CODICES database of the Venice Commission². The Venice Commission is grateful to the liaison officers for their contribution to the Bulletin on Constitutional Case-law, the database and the present study.

4. In the present paper, we suggest use of the following definitions³:

5. "Constitutional jurisdiction means judicial institutions and procedures instituted for the purpose to guarantee the observation of the constitutional order of a state."⁴

6. By constitutional review we understand the power of a court to control a [legislative act / lower-ranking act] for conformity with the Constitution⁵ and to declare the former legally null⁶ or inapplicable in the case of incompatibility.

7. Under the title "individual access to constitutional justice" we summarise all the different mechanisms allowing violations of constitutionally guaranteed rights of individuals – alone or together with others – to be brought before a constitutional court or equivalent body. Basically, two different types can be discerned: indirect and direct individual access. Indirect access means here that the individual question reaches the Constitutional Court for adjudication through the intermediary of another body, whereas direct access comprises all legal means given to the individual to directly petition to the Constitutional Court without the intervention of a third body

¹ [CDL-STD\(1995\)015](#), *The protection of fundamental rights by constitutional courts*, Science and Technique of Democracy, no. 15

² CODICES can be ordered on CD-ROM or found online on www.codices.coe.int. However, some texts are not published in CODICES: For Serbia, the old version of the Law on the Constitutional Court has been used. For San Marino, the revised version of the Declaration of Citizens' Rights has been used. Secretariat translations have been done in relation to provisions of Chile, Peru, Argentina, San Marino, Uruguay. The laws of Luxemburg and Monaco have been kept in their original French versions. References to all legal texts that have been used that are not included in CODICES can be found in the bibliography.

³ These definitions only serve as guidance to determine the scope of this paper without purporting to give any judicial answer to some complicated terminological questions.

⁴ [CDL-STD\(1993\)002](#), H. Steinberger, *Models of constitutional jurisdiction*, Science and Technique of Democracy, no. 2,

⁵ [CDL-INF\(2001\)009](#) Decisions of constitutional courts and equivalent bodies and their execution. It should be noted that the question of community law as a standard of review is entirely left aside in this report as it applies only to half of the states under consideration.

⁶ A. Cavari, "Between Law and Politics: Constitutional Review of Legislation" *Paper presented at the annual meeting of The Law and Society Association, Renaissance Hotel, Chicago, Illinois, May 27, 2004*, in: http://www.allacademic.com/one/www/www/index.php?cmd=www_search&offset=0&limit=5&multi_search_search_mode=publication&multi_search_publication_fulltext_mod=fulltext&textfield_submit=true&search_module=multi_search&search=Search&search_field=title_idx&fulltext_search=Between+Law+and+Politics%3A++Constitutional+Review+of+Legislation, accessed 4 May 2009

8. In view of better legibility of this study, “Constitutional Court” will be used as a generic term to describe constitutional courts, tribunals, councils, and, if not specified otherwise, other supreme courts which have been identified as fulfilling the functions of constitutional courts⁷.

1.1.1.1 Existence of a - written - Constitution

9. Many authors suggest that the existence of a written Constitution is the first prerequisite for constitutional review⁸; and, consequently also for individual access to constitutional justice if no written text is being given a specific status (primacy), there would be no need – and no possibility – for an organ whatsoever, the Parliament or the courts, to distinguish between legal and constitutional affairs and thus to conduct review of the former using the latter as review standard which could then lead to annulment of the ordinary law. However, some countries have – often in addition to a written Constitution - unwritten or customary constitutional law⁹, or at least unwritten constitutional principles¹⁰, which can serve as review standard. Of the Venice Commission’s member and observer states, one, the United Kingdom, doesn’t have a formal, hierarchically distinguished Constitution. This means that simple laws cannot be reviewed on their compatibility or conformity with a written Constitution¹¹. Even in the absence of a written Constitution, however, some authors suggest that the 1998 UK Human Rights Act serves as a basis for a constitutional protection of human rights and that in the United Kingdom “constitutional review” or “secondary, average constitutional review” exists¹².

10. All other member and observer states of the Venice Commission¹³ base their legal system on a written Constitution, or, as is the case in Israel, on documents which have semi-constitutional rank¹⁴, which are considered the “supreme law of the land”, the top of the hierarchy

⁷ [CDL-INF\(2001\)009](#) Decisions of constitutional courts and equivalent bodies and their execution

⁸ See, for instance, J.-F. Flauss, “Human Rights Act 1998: Kaléidoscope”, in: *Revue française de droit constitutionnel* No 48 2001/4, P.U.F., Paris, p. 695 f., or P. Perenthaler, *Allgemeine Staatslehre und Verfassungslehre*, 2nd rev. ed., Springer Verlag, Vienna, 1996, p. 174

⁹ Korea: Constitutional Court, “Relocation of the Capital Case”, no. 2004, Hun-Ma554-566 of 21.10.2004, CODICES: KOR-2004-3-003.

¹⁰ Austria: fundamental principles, a change of which would entail a total revision of the Constitution (Article 44.3 of the Constitution) and which the Constitutional Court even uses as a standard for substantial review of constitutional amendments, see decision of 11.10.2001, VfSlg. G12/00, CODICES: AUT-2001-3-005.

¹¹ However, the Human Rights Act of 1998 has to some point been given supra-legislative value as courts should assess the compatibility of a law with this act and make a declaration of incompatibility¹¹ (see Article 4 Human Rights Act 1998, in: http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1#pb2-l1g3, accessed 11 February 2009), which can have a persuasive effect on the Parliament whose formal sovereignty is only partly challenged through this system. Judicial protection of fundamental rights is gaining importance in the UK. In addition, legality review (review of individual and general administrative acts in relation to Acts of Parliament including fundamental rights) has been taking more and more space since the 1970s and the common law system provides a number of principles some of which might be considered as part of “unwritten constitutional law”.

¹² D. Fontana, “Secondary Constitutional Review: American Lessons from the New British System of Constitutional Review”, in: http://www.allacademic.com/meta/p178285_index.html ; A. Kavanagh, *Constitutional Review Under The UK Human Rights Act*, Cambridge University Press, Cambridge, 2009.

¹³ Since the 2002 amendments to the Declaration of Citizens’ Rights and of the fundamental principles of the San Marinese legal order, San Marino also seems to have a written Constitution. Before, the Declaration, together with the Statutes dating from 1600, could hardly be called a Constitution, but gave rise nevertheless to a certain review of compliance of normative acts with the principles: Ordinary courts had to refer the question of compatibility to the Great and General Council (Article 16 Declaration of Citizens’ Rights and of the fundamental principles of the San Marinese legal order). The 2002 amendments seem to give the Declaration even clearer supra-legislative value in that not only special quota for its revision are required, but a “*Collegio Garante*” of the “constitutionality” – the use of this term is another indication for the quality of the legal document at hand – of norms is instituted. This *Collegio Garante* reviews the constitutionality of laws, and other acts having the force of law with respect to the Constitution, at the initiative of certain state organs and also in a preliminary ruling procedure initiated by an ordinary court or a party to a process.

See <http://www.consigliograndeegenerale.sm/new/ricercaleggi/vislegge.php3?action=visTestoLegge1&idlegge=6175&twidth=580&=>, accessed 20 February 2009). The judges of the *Collegio* also have the power to deliver final decisions in civil, administrative and penal cases as single judges (see <http://www.consigliograndeegenerale.sm/new/index.php3>, Article 26).

¹⁴ See http://www.knesset.gov.il/laws/special/eng/basic8_eng.htm

of norms. This supremacy manifests itself formally amongst others in specific rules of creation, for instance through higher quota for their adoption, and/or materially in that Constitutional norms should contain provisions of particular importance for the functioning of the state and the protection of the individual. Such a written document needs to be protected lest it loses its supremacy: It is insufficient to merely impose that all normative acts in a country, especially laws, should respect the Constitution. The legislator's or executive's incapacity or unwillingness to comply with this obligation should be sanctionable in the sense that their acts need to be reviewed and possibly invalidated if they are unconstitutional. The level of protection and the techniques employed to protect the supremacy of the Constitution varies significantly in the states this report deals with according to various factors. Some of them reflect the historical development of the state and the constitutional order sometimes with long periods of authoritarian or totalitarian rule, the moment of promulgation of a new Constitution, or the legal tradition of a state as a common law or civil law system.

11. In so far as individual access to constitutional justice is concerned constitutional review is exclusively or at least dominantly focussed on human rights. Therefore, as stated in the French Constitution of 1791, in order to be relevant for individual access, the constitutional texts must necessarily contain a catalogue of human rights, either as part of the text or as an annex.

1.1.1.2 Historical background

12. Many authors have attempted to create ideal-types of constitutional justice by classifying legal systems according to the existence of a Constitutional Court, its competences, the type and moment of review of legal acts. Most commonly, an "American model" is presented as being opposed to a "European" or "Austrian" model, which again is distinct from the "French" model of a priori review. However, especially as recent Constitutions often contain elements of various models, this report will not overemphasise models of constitutional jurisdiction, but compare element by element the national solutions related to individual access.

13. The historical and legal context of the respective creation of constitutional review explains legislators' choices.

14. At the beginning of the 17th century the idea of constitutional review was credited with the activity of the Privy Council of Great Britain which invalidated the acts of colony legislatures if they contradicted the laws adopted by the British Parliament for those colonies or common law. The first state to introduce constitutional control was the United States with the famous 1803 *Marbury vs. Madison* case, which opened a path to constitutional control for the citizens. In the postcolonial United States, the concept of natural law (and thus of legal hierarchy) and the idea of social contract where the citizen may demand that the government fulfil its obligations were very present. On a more institutional basis, the threat of upcoming institutional conflicts and deviators in a system of vertical separation of powers made visible the necessity to construct a framework to avoid such clashes. The common law character of the American legal system, a heritage of the past as British colonies, explains the introduction of a diffuse system of review (see below), even if the American Supreme Court has extended its powers through legal practice so that it now holds a relatively strong position in the system of checks and balances.

15. In Europe, the German Constitution of 1849 ("Paulskirchenverfassung") first provided explicitly for an individual constitutional complaint in § 126 lit. g¹⁵, which, however, never entered into force. In France, Belgium and Switzerland comparable models were discussed, but not implemented either. In Austria in 1867 in Article 3 lit. b Staatsgrundgesetz the Reichsgericht

¹⁵ "Zur Zuständigkeit des REichsgerichts gehören ... Klagen deutscher Staatsbürger wegen Verletzung der durch die Reichsverfassung ihnen gewährten Rechte."

was declared competent to adjudicate complaints of citizens based on the violation of their constitutionally guaranteed rights.

16. In the 20th century, Kelsen's model of concentrated review vested a single court with the competence to remove unconstitutional acts from the legal order, upon application only by authorised constitutional bodies.

17. The constitutional settings and in particular the constitutional courts' practice after World War II reflect the paradigm shift towards protection of individual Human Rights to be operated by one of the constitutional powers (the courts, or a separate Constitutional Court).

18. Almost all civil law countries chose to give the power of constitutional review to a specific court that is either on the top of the judicial system or situated outside the judiciary. It is quite clear that this challenges the authority of the Parliament, and might lead to fear of a "government of judges": The Constitutional Court can void acts of Parliament without being directly elected and responsible before the constituents (the people). Exceptions to this general principle, however, are present in some countries outside Europe: pursuant to Article 79 of the Constitution of Japan, the appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment. In the above-mentioned cases, if the majority of the voters favours the dismissal of a judge, he or she shall be dismissed. The Netherlands and France have traditionally held a hostile posture towards constitutional review. In the Netherlands, which are a civil law country, the Parliament has always had such a high status that they proscribed the constitutional review of parliamentary acts and rely on the self-restriction of the Parliament in the creation of laws in relation to the Constitution, even if Article 120 of the Netherlands Constitution is being revised currently. It is interesting to note that the protection of human rights has been reinforced with the help of international law, as international human rights could be directly referred to in invalidating national laws. Likewise, France has introduced a *posteriori* review of constitutionality of the law and thereby veers away from its traditional respect of the rigid separation of powers¹⁶.

19. The Latin American states most often reflect a strong American influence with diffuse review and a strong Supreme Court (e.g. Brazil, Mexico). Some have opted for a specialised Constitutional Court (e.g. Peru, Chile).

1.1.1.3 Diffuse vs. concentrated review

20. The oldest model of constitutional review is the American one, characterised by diffuse, incidental control, which offers an direct individual access to constitutional justice as the individual can directly address the problem of unconstitutionality before a court. Ordinary courts are entitled to assess the constitutionality of a legal norm or of an individual act; this means that the ordinary judge doesn't apply a norm he or she considers unconstitutional. This has the advantage that the complainant doesn't need to endure lengthy procedures before a Constitutional Court. On the other hand, it has the inconvenient that courts treat constitutional and legal matters at the same time, which can lead to incoherence in interpretation operated by the various courts, especially if cases are not appealed at the Supreme Court¹⁷. This can lead to a problem of legal certainty.

¹⁶ See French Constitutional Law of 23 July, 2008

¹⁷ M. Kau, *Bundesverfassungsgericht und US Supreme Court: Die Bedeutung des United States Supreme Court für die Errichtung und Fortentwicklung des Bundesverfassungsgerichts*, Springer, Berlin/Heidelberg, 2007, p.304 f. Also, the example of *Marbury vs. Madison* was quickly followed by Monaco and Norway.

21. H. Kelsen developed the model of concentrated review in the Austrian Constitution of 1920¹⁸. Especially in countries in transition to democracy this model had an extraordinary success¹⁹ and was taken up after WWII by Germany and Italy, in the early 1980s by Spain and Portugal, and after the fall of communism by virtually all Central and Eastern European states. In a concentrated system, a separate court that is usually placed outside of the ordinary courts system is given the power to review the constitutionality of normative acts. In a concentrated system, constitutional review is exercised by the Constitutional Court, either upon preliminary request of the ordinary judge who suspends²⁰ the case before him or her and submits a preliminary request to the Constitutional Court to assess the constitutionality of a provision (indirect access) or by way of an individual complaint to the Constitutional Court, usually after the exhaustion of all other legal remedies (direct access). Two main advantages are greater unity of jurisdiction and legal security in the sense that no diverging decisions blur the application of a statute.

22. The classification of a system as diffuse or concentrated can be difficult as not the name, but the material competences of a Supreme Court determine whether or not there is one single institution entitled to decide over constitutional matters. It seems appropriate to divide the Venice Commission's member states' systems into having diffuse, concentrated or a "special" type of constitutional jurisdiction²¹.

23. Countries with entirely diffuse constitutional review are Denmark, Finland, Iceland, and Norway. In Sweden, the ordinary judge can refuse to apply normative acts only "if the error is manifest"²².

24. Concentrated review exists in Albania, Armenia, Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Georgia, Germany, Hungary, Italy, South Korea, Kyrgyzstan, Latvia, Liechtenstein, Luxemburg, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, "the Former Yugoslav Republic of Macedonia", Turkey, and Ukraine. The Algerian, French, Moroccan and Tunisian constitutional councils are also institutions specialised in constitutional review, even if their focus differs from that of the above constitutional courts.

25. "Special constitutional jurisdiction" can be found in a number of member and observer states of the Venice Commission. All of these states have a certain degree of diffuse review, but there exists a Supreme Court (sometimes even called "Constitutional Court"²³) that has the capacity to invalidate normative acts or to rule in a case (sometimes even on the merits) upon demand of a lower court. The Supreme Court has a relatively strong position both in terms of competence and legal culture which brings it close to a traditional Constitutional Court in Switzerland²⁴. Andorra, Chile and Peru²⁵ have a Constitutional Court or Tribunal with vast powers. However, *amparo* claims are dealt with by ordinary courts.

¹⁸ The first Constitutional Court, however, was not set up in Austria, but in Czechoslovakia in February 1920 (Constitutional Act no. 21/1920 Coll.). The Austrian Court followed some months later, in October 1920.

¹⁹ As L. Garlicki puts it, "following a period of authoritarian rule, the existing courts were unable to offer adequate guarantees of structural independence and intellectual assertiveness." (See L. Garlicki, "Constitutional courts versus supreme courts", *International Journal of Constitutional Law* 2007 5(1), Oxford University Press, Oxford, in: <http://icon.oxfordjournals.org/cgi/content/full/5/1/44#FN59#FN59>, accessed 11 February 2009)

²⁰ The ordinary judge can be obliged to do so upon request by a party (e.g. Belgium) or can do so only when he or she shares the doubts raised of a party or has him or herself doubts about the constitutionality of a provision to be applied in the case.

²¹ [CDL-JU \(2001\)22](#), G. Brunner, "Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum", report for the CoCoSem seminar in Zakopane, Poland, October 2001, p. 35f.

²² Chapter 11 Article 14 Constitution

²³ Andorra, Portugal; Estonia has a special chamber on constitutional matters, Peru and Chile have Constitutional Tribunals

²⁴ However, the Federal Tribunal is only competent to review the constitutionality of cantonal laws and the conventionality of federal laws.

²⁵ H. Nogueira Alcalá, "El recurso de protección en Chile", *Anuario iberoamericano de justicia constitucional*, no. 3, 1999, Madrid, 1999, in: <http://dialnet.unirioja.es/servlet/articulo?codigo=1976169>, accessed 25 February 2009

26. Argentina, Brazil, Canada, Cyprus, Estonia, Greece, Ireland²⁶, Israel, Japan²⁷, Malta, Mexico, Monaco, the Netherlands, Portugal, San Marino, South Africa²⁸ and in the USA have introduced diffuse review, but with special review competences for the Supreme Court. For the purpose of this study, the proceedings and review activities of these Supreme Courts will also be examined.

27. Diffuse and concentrated systems rarely exist in their pure form. The institute of *stare decisis* introduces an element of unification of interpretations in diffuse systems (see section 4.2.2.5 below), whereas in concentrated systems, the Constitutional Court is far from being unanimously recognised as the only body competent to review and interpret statutes concerning their constitutionality.

1.1.1.4 Abstract review vs. review related to a specific case²⁹

28. When a Constitutional Court conducts abstract review it looks at the law or regulation with the force of law without relation to a specific case applying the normative act. From what has been said about diffuse review and review related to a concrete case, it follows that diffuse normative review is necessarily related to a concrete case, concentrated review can be both abstract and related to a case³⁰.

1.1.1.5 *A priori* vs. *a posteriori* review

29. Review can take place before or after promulgation of a normative act. While review related to a concrete case is necessarily posterior to promulgation of the general act³¹, abstract review can take place before and after promulgation.

30. Often, abstract review and the capacity to conduct review after adoption but before promulgation of a law is identified with the French model of review. In contrast, the American model is *a posteriori* and incidental, related to a concrete case³².

31. Review *a priori* may only be initiated by constitutional bodies designated in the Constitution or law on the Constitutional Court, not by individuals. In South Africa, the President can refer a

²⁶ The Supreme Court and the High Court may declare the unconstitutionality of a normative or individual act and attribute damages to the complainant; see <http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/pagecurrent/9034466B2045E5EC8025743200511625?openDocument&l=en>, accessed 9 April 2009

²⁷ H. Hyun Lee, Rapporteur, Report for the Asian Constitutional Courts, in: http://www.venice.coe.int/WCCJ/Papers/KOR_Kong%20Hyun%20Lee3_E.pdf, accessed 10 March 2009

²⁸ While ordinary courts are competent to hear cases involving constitutional matters, the Constitutional Court of South Africa is the highest court on constitutional matters. The Constitutional Court may be directly accessed or accessed by means of appeal from a lower court, and has exclusive jurisdiction over a number of matters including the confirmation of a declaration of the constitutional invalidity of a normative act (statute) by an ordinary court.

²⁹ The wording is deliberately chosen to avoid the terminological confusions linked to different meanings of the pair of opposites abstract – concrete review in different languages or legal cultures. One can distinguish those for whom the distinctive factor is the trigger of a review (abstract- without relation to a case, concrete because an individual is being affected in his/her legal positions). Secondly, in German legal terminology, constitutional review can be considered concrete if it takes place in preliminary ruling procedures, where constitutional complaints constitute a third, separate type of review operated by the Constitutional Court which are not called “concrete”.

³⁰ W. Sadurski argues that even if review is related to a concrete case, the continental European Constitutional Courts follow abstract considerations in assessing the law. Unlike, for instance, the American Supreme Court, European review techniques are based on Kelsen’s idea of cleaning of the legal order. Therefore, according to Sadurski Constitutional Courts don’t decide on the merits of the individual case.

³¹ Unless the normative act is a disguised individual act.

³² Abstract *a priori* review puts the Constitutional Court in the position of an arbiter – typically between the executive and the legislative or a parliamentary minority with standing before the Constitutional Court – and generally considered as being politically sensitive. See Rosenfeld, “Constitutional Adjudication in Europe and the United States: Paradoxes and Contrasts”, report prepared for the UniDem Seminar 2003, in: [CDL-STD\(2003\)037](#) Science and Technique of Democracy no. 37 (2003), T. Ginsburg, Comparative Constitutional Review, 2008

Bill, before it is passed by Parliament, to the Constitutional Court for an evaluation of its constitutional validity.

1.1.1.6 Competences of constitutional courts

32. The following areas of competence of constitutional courts³³ can be distinguished:

- Jurisdiction in conflicts of competence between state organs, conflicts of competence between the central state and regional or other subdivisions and jurisdictional conflicts
- Jurisdiction in conflict of laws
- Electoral control
- Jurisdiction with respect to referendums and other instruments of direct democracy
- Jurisdiction in relation to constitutional revision
- Binding interpretation of laws or of the Constitution
- Restrictive areas of jurisdiction:
 - Prohibition of political parties
 - Prosecution of violations of the Constitution, impeachment or removal from office
 - Jurisdiction on the withdrawal of specific constitutional rights of the individual

33. Of interest for the present report are mostly constitutional complaints and constitutional review as far as the latter can be initiated directly or indirectly by an individual and not only by constitutional bodies. However, it must be noted that *a priori* and *a posteriori* control initiated by a constitutional body, often aiming in principle at preserving the constitutional order, can raise questions related to fundamental rights and are therefore paramount to protecting these rights.

1.1.1.7 Vision of the function of constitutional review

34. With the growing importance of fundamental rights and the protection thereof, national legislators must decide which role the Constitution and, consequently, the constitutional courts should play: Should they only protect the objective constitutional order (which also includes the protection of fundamental rights in the sense that these are part of the objective constitutional order)? Or should there be a specific guarantee of subjective fundamental rights conferred to the individual by the Constitution? There is a clear tendency towards the introduction of mechanisms that allow for the protection of individual (fundamental) rights through the Constitutional Court, and, more specifically, for individual access. Conversely to the original model where only constitutional bodies were entitled to approach the Constitutional Court, states now often give the individual (physical person) the means to question the constitutionality of a normative or individual act.

35. In systems with diffuse control, any participant in a lawsuit can express his/her doubts about the constitutionality of a normative or individual act in an ordinary proceeding. It is the ordinary judge who decides on the constitutionality or unconstitutionality of a provision; in the latter case, he/she doesn't apply the statute.

2 APPEAL TO THE CONSTITUTIONAL COURT

36. Historically, the oldest type of constitutional review is operated by ordinary judges (incidental review in diffuse review systems). Incidental review takes place at any stage of ordinary proceedings by any ordinary judge. Contrary to the writ of *amparo*, the simple contestation of

³³ This classification serves only the purpose of this study and follows [CDL-STD\(1993\)002](#), H. Steinberger, "Models of constitutional jurisdiction", Science and technique of democracy, no. 2, 1993 and [CDL-JU \(2008\)031](#) Systematic Thesaurus Version 20

constitutionality does not constitute a specific action, but can be raised during proceedings. Access to constitutional review is therefore open to any person who has standing in ordinary proceedings. The effectiveness of this type of review relies both on the individuals' knowledge of their rights and on the ordinary judges' capacity and willingness to investigate even violations of fundamental rights that are not entirely evident or obvious³⁴. This system works well where it has evolved slowly, i.e. in North America and Scandinavia.

2.1 Standing in systems with concentrated or special type of constitutional review

37. The Constitutional Court can be approached by different bodies, organs or individuals. A simple classification would distinguish between claims by public or constitutional bodies (including courts)³⁵ and claims by private natural or moral persons. In some states, the Constitutional Court may also start review proceedings *proprio motu*.

38. As has been said, *a priori* review is open only for certain constitutional bodies, not for individuals. *A posteriori* review on the other hand can be initiated by individuals and by constitutional bodies.

39. There are not many countries that don't provide means for the individual to question the constitutionality of a general or individual provision, not even indirectly through preliminary ruling procedures. These are Algeria, Tunisia, France³⁶, Moldova, and Morocco.

40. As individual access serves mostly the function of protecting fundamental rights of the individual and as these rights – with the exception of political rights (e.g. right to vote) and sometimes also social rights (e.g. right to social security) are usually conferred upon citizens and non-citizens without distinction, individual access provisions concern all persons³⁷. Nevertheless, the protection of foreigners may be less comprehensive than the protection of nationals.

2.2 Types of access

41. Individual access to constitutional review can be direct or indirect: As explained above, indirect access means that the individual question reaches the Constitutional Court for adjudication through the intermediary of another body, whereas direct access comprises all legal means given to the individual to directly petition to the Constitutional Court without the intervention of a third body.

Related to a concrete case	Indirect	Abstract	Direct	Individual complaint/related to a concrete case
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³⁴ See X. Philippe, "Le contrôle de constitutionnalité des droits fondamentaux dans les pays européens", *Actes du colloque international " L'effectivité des droits fondamentaux dans les pays de la communauté francophone "*, Port-Louis (Île Maurice), 29-30 septembre, 1^{er} octobre 1993, p.412

³⁵ The Venice Commission's Systematic Thesaurus lists *inter alia* Head of State, legislative bodies, executive bodies, organs of federated or regional authorities, organs of sectoral decentralisation, local self-government bodies, the public prosecutor, the Ombudsperson. Furthermore, there is a systematic distinction between referrals by a court (especially as concerns preliminary questions) and claims by private or public bodies. See [CDL-JU\(2008\)031](#) Systematic Thesaurus

³⁶ Until the promulgation of a law that concretises the new Article 61-1 of the Constitution. With this law, the Constitutional Council will have the power to review the constitutionality of laws. Already now, the French *Conseil d'État* can review the legality and constitutionality of administrative acts.

³⁷ According to Article 125 of the Constitution of Russia, "citizens" are entitled to apply to the Constitutional Court, but the Constitutional Court has given a broad interpretation of this term, including also foreigners and stateless persons.

Ombudsperson	Preliminary ruling procedures					Against normative acts			Against individual acts		
	Preliminary request	Exception/objection of unconstitutionality	<i>Actio popularis</i>	<i>Quasi actio popularis</i> / legal interest	Individual suggestion	Normative constitutional complaint	Russia: Individual complaint	Ukraine: Constitutional petition/submission	<i>Amparo</i>	Constitutional revision	Full constitutional complaint

2.2.1 Indirect access

42. Review initiated by Ombudsmen or ordinary courts are a first type of individual access and protection of individuals' rights (complementary to direct individual access) and is welcomed by the Venice Commission³⁸.

2.2.1.1 Ombudsperson

See 6.2.1 Table: Indirect access: Ombudsperson

43. Most of the Venice Commission's member and observer states dispose of an Ombudsperson institution (Mediator, Parliamentary Commissioner, etc.), usually appointed by national parliaments³⁹. These Ombudspersons are independent and impartial. In many states, Ombudspersons are conceived as Human Rights protectors (People's Advocate etc.) trying to find viable solutions when Human Rights violations have occurred.

44. From the perspective of human rights protection, the Venice Commission recommends that **“the mandate of the Ombudsman or Human Rights Defender should include the possibility of applying to the constitutional court of the country for an abstract judgment on questions concerning the constitutionality of laws and regulations or general administrative acts which raise issues affecting human rights and freedoms.** The Ombudsman should be able to do this of his/her own motion or triggered by a particular complaint made to the institution.”⁴⁰ [It is the primary task of the ordinary courts to provide remedies against illegal acts. However, when a Constitutional Court is competent to control also the constitutionality of individual acts, it seems logical to give the ombudsman also a right to bring individual cases to the Court. In any case], as the access to the constitutional court via an Ombudsman offers only an indirect access to the court, this mechanism cannot replace direct access, but has to be seen as a complementary means. It depends on the legal culture of a given country to choose between the different mechanisms or to open up parallel options.

45. In many states, the Ombudsperson does not have standing at all to apply to the Constitutional Court but can only file reports to Parliament and facilitate the resolution of conflicts between the public administration and an individual (e.g. Greece, Republic of Korea)⁴¹.

46. In systems with diffuse review, the Ombudsperson, if it has been vested with the power to initiate proceedings, must do so at the competent ordinary court – not at the Supreme Court

³⁸ See [CDL-AD\(2007\)020](#), Opinion on the possible reform of the Ombudsman institution in Kazakhstan, 2007

³⁹ According to the “Paris Principles” on national human rights institutions, UN General Assembly resolution 48/134 of 20.12.1993.

⁴⁰ [CDL-AD\(2007\)020](#), Opinion on the possible reform of the Ombudsman institution in Kazakhstan, 2007

⁴¹ G. Kucsko-Stadlmayer, “The Competences of European Ombudspersons – Description and Analysis of the Status Quo”, in: <http://www.ioi-europe.org/index2.html>

(e.g. specialised ombudsmen in Finland). The Ombudspersons in the United Kingdom and in Israel do not have standing before ordinary courts.

47. The Israeli Ombudsperson may, at the request of an individual, ask the Judges' Appointment Committee to dismiss a judge if he or she did not comply with his or her obligations.

48. In Montenegro, Portugal and Slovenia, the Ombudsperson has powers to initiate constitutional review without relation to a concrete case. In Slovenia, the procedure can be initiated by the Ombudsperson for Human Rights if he or she deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms.

49. The Azeri, Peruvian and Ukrainian Ombudsmen have the power to initiate review of the normative act (Austria: Only general administrative acts) in relation with a concrete case the Ombudsperson is currently dealing with.

50. Furthermore, in Azerbaijan, the Ombudsperson has standing to initiate review in cases of unconstitutional court decisions the Ombudsperson has been petitioned to deal with. In South Africa, the Public Protector may approach the Constitutional Court or other courts to fulfil his or her mandate to protect the public against unlawful state action, but may not investigate court decisions.

51. In these cases, the capacity of Ombudsmen to initiate review proceedings gives the individuals the possibility to accede to the Constitutional Court, albeit indirectly, in a situation where individuals sometimes wouldn't otherwise have any access to the Constitutional Court. The Ombudsperson opens new ways of access.

52. Sometimes, the Ombudsperson intervenes in cases where the individual would have the possibility to do so on his/her own behalf, only that the Ombudsperson, through his/her legal expertise, helps to improve the quality of petitions. (Bosnia and Herzegovina, Latvia, Russian Federation, Slovenia⁴²). The Spanish Ombudsperson may lodge a claim of *amparo* against all acts by the public authorities on behalf of all people who, to his/her knowledge, have been affected by the challenged act, so as to include them in review proceedings. In these cases, the Ombudsperson's rights do in principle not go beyond the rights of the individual. Quite to the contrary, the Slovak Ombudsperson only indicates if the complainant has the possibility of lodging a constitutional complaint, but does not him-/herself initiate such proceedings⁴³.

53. Chile, which is one of the two Latin American states that do not dispose of an Ombudsperson (Uruguay is the second), is currently thinking about including three new articles in the Constitution so as to create the institution of "*Defensor del Pueblo*"⁴⁴.

⁴² According to Article 50(2) of the Constitutional Court Act the ombudsman for human rights may, under the conditions determined by this Act, lodge a constitutional complaint in connection with an individual case that he is dealing with. In addition, Article 52(2) of the Constitutional Court Act stipulates that the ombudsman for human rights lodges a constitutional complaint with the consent of the person whose human rights or fundamental freedoms he is protecting in the individual case.

⁴³ Article 14 Law on the Ombudsman, in: <http://www.vop.gov.sk/act-on-the-public-defender-of-rights>, accessed 28 April 2009

⁴⁴ See, in particular, *Segunde informe de las comisiones unidas de constitucion, legislacion y justicia y de derechos humanos, nacionalidad y ciudadania recaido en el proyecto de reforma constitucional que crea el Defensor del Ciudadano*, in: <http://www.ombudsman.cl/pdf/informe2-ddhh.pdf>, and other documents by the *Iniciativa chilena para establecer al Defensor del Pueblo*.

2.2.1.2 Preliminary ruling procedures

See 6.2.2 Table: Indirect individual access: Preliminary requests

54. Preliminary ruling procedures are amongst the most common types of individual access. If an ordinary court has doubts whether a normative act applicable in the concrete case violates the Constitution, it formulates a preliminary question to the Constitutional Court. The strength of this procedure is that ordinary courts are well-informed and capable of formulating a valid request. Ordinary courts serve as a first filter and can contribute to reducing the number of abusive or repetitive requests. Furthermore, preliminary ruling procedures are complementary to the abstract consideration of a provision as they allow for review related to concrete situations in which a provision is applied or should be applied⁴⁵. Its strength – the inclusion of ordinary courts – can in some court systems also constitute its inconvenient, as the effectiveness of preliminary ruling procedures relies heavily on the capacity and willingness of ordinary judges to identify potentially unconstitutional normative acts and to submit preliminary questions to the Constitutional Court. Preliminary ruling procedures exist in many states included in this study (the exceptions being France, Portugal, Switzerland⁴⁶). In Lithuania and Turkey, preliminary questions constitute the only type of individual access to the Constitutional Court. In Belarus, when trying a case, preliminary requests constitute the only type of individual access to the Constitutional Court apart from petitions to various State bodies (see below section 2.2.1.3). In states with special type systems preliminary question is rather uncommon, as usually ordinary courts are competent themselves to assess the unconstitutionality of an applicable act.

55. In many states, the parties to a proceeding before an ordinary court may suggest that a preliminary question be submitted to the Constitutional Court, without precluding the judge's discretion to accept or reject such a suggestion (e.g. Albania, Andorra, Belgium, Bulgaria, Germany, Hungary, Lithuania, Moldova, Spain, and Turkey).

56. However, the situation of the parties in ordinary proceedings can be considerably strengthened. The “exception of unconstitutionality” is a procedural remedy given to any party in a proceeding that has doubts as to the constitutionality of a statute that is to be applied in the given case. This exception may be lodged with the ordinary judge who is then obliged to consider it and to motivate an eventual denial of referral of the question to the Constitutional Court on the basis of only a certain number of reasons (the exception's being clearly unfounded etc.). Thus, even though the court's decision is final, there are procedural limits to the court's autonomy. This type of access exists in Albania, Chile, Greece, Hungary, Italy, Luxembourg, Malta, Portugal, San Marino. In states allowing for “leave to appeal” to the Constitutional Court, such a possibility exists as well: the individual can bring a case to the Constitutional Court upon leave to appeal by the lower court (e.g. South Africa).

57. Going even further, **the “exception of unconstitutionality” can be considered a very effective means of individual access if the ordinary court is obliged to put a preliminary question** (Cyprus, Romania, Slovenia).

2.2.1.3 Indirect access through other bodies

58. In some countries, the Prosecutors' Office has access to the Constitutional Court (e.g. Article 101 of the Constitution of Armenia, Article 130 of the Constitution of Azerbaijan, Article 150 of the Constitution of Bulgaria), which could be relevant as indirect access for the present report, On the issue of general human rights protection by the prosecutor's office see Part II of the Report on the Independence of the Judiciary, currently prepared by the Venice Commission.

⁴⁵ [CDL-INF\(1996\)010](#) Opinion on the draft law on the Constitutional Court of the Republic of Azerbaijan

⁴⁶ See *Bericht des Schweizerischen Bundesgericht für die VII. Konferenz der europäischen Verfassungsgerichte*, p. 17, in: <http://www.confcoconsteu.org/reports/Zwitzerland-DE.pdf>, accessed 2 June 2009

59. Belarus does not have an Ombudsperson. There, individuals (which are not entitled to appeal directly to the Constitutional Court) can only have indirect access to the Constitutional Court, addressing their initiative to examine the constitutionality of an act to the authorised bodies and persons vested with the right to forward motions to the Constitutional Court (i.e. the President of the Republic of Belarus, both parliamentary chambers – the House of Representatives and the Council of the Republic – the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus and the Council of Ministers of the Republic of Belarus).

2.2.2 Direct access

See 6.2.3 Table: Direct individual access: Constitutional and legal bases

2.2.2.1 Abstract review (review not related to a specific case)

2.2.2.1.1 *Actio popularis*

60. Every person is entitled to take action against a normative act after its promulgation, without needing to prove that he/she is currently and directly affected by the provision. As H. Kelsen put it, *actio popularis* is the broadest guarantee of comprehensive constitutional review, as any individual may petition to the Constitutional Court. He/she is perceived as merely fulfilling his/her citizen's duty as guardian of the Constitution. The complainant does not need to be a victim of a violation of his/her fundamental rights⁴⁷. *Actio popularis* plays a minor role in Liechtenstein (where several conditions need to be fulfilled to file an *actio popularis*), Malta⁴⁸, Peru and Chile, but has contributed to the clearing up of the legal order in Hungary, "the Former Yugoslav Republic of Macedonia"⁴⁹ and Georgia, for instance as concerns the death penalty in Hungary⁵⁰. In South Africa, a litigant may approach the court in the public interest. However, already Kelsen excluded *actio popularis* as a practicable solution as it can attract abusive complaints⁵¹. In Croatia, ***actio popularis* has led to the overburdening of the Constitutional Court, an issue on which the Venice Commission has also pronounced itself critically**⁵².

2.2.2.1.2 *Individual suggestion*⁵³

61. A variant of abstract review initiated by the individual which leaves more discretion to the Constitutional Court⁵⁴ is the individual suggestion. Here, individuals may approach the Constitutional Court suggesting that the Court review the constitutionality of a normative act. The individual cannot insist on the opening of a procedure. However, in Montenegro and in Serbia, the denial of review must follow a preliminary proceeding and be motivated.

⁴⁷ A. van Aaken, "Making International Human Rights Protection More Effective: A Rational-Choice Approach to the Effectiveness of *Ius Standi* Provisions", *Preprints of the Max Planck Institute for Research on Collective Goods Bonn* 2005/16, Bonn, 2005, p. 14, in: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=802424#, accessed 23 February 2009

⁴⁸ CDL-JU(2001)22, G. Brunner, "Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum", report for the CoCoSem seminar in Zakopane, Poland, October 2001, p. 35f.

⁴⁹ CDL-JU(2001)22, G. Brunner, "Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum", report for the CoCoSem seminar in Zakopane, Poland, October 2001

⁵⁰ W. Sadurski, *Rights before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*, Springer Netherlands, Dordrecht, 2005, p.6

⁵¹ H.Kelsen, cit.in: R. Ben Achour, "Le contrôle de la constitutionnalité des lois: quelle procédure ?", *Actes du colloque international "L'effectivité des droits fondamentaux dans les pays de la communauté francophone"*, Port-Louis (Île Maurice), 29-30 septembre, 1^{er} octobre 1993, p.401, in:

<http://www.bibliotheque.refer.org/livre59/l5905.pdf>, accessed 7 February 2009

⁵² CDL-AD(2008)030 Opinion on the Draft Law on the Constitutional Court of Montenegro

⁵³ The term used by G. Brunner is "Anregung" (incitement). In fact, there seems to be no common form of denomination in the different states, ranging from "suggestion" to "proposal".

⁵⁴ As a general rule, it is rather unusual that the Constitutional Court can review acts for their constitutionality *proprio motu*. However, Albania, Austria, Hungary, Moldova, Poland and Romania envisage this possibility in certain cases.

2.2.2.1.3 *Quasi actio popularis (necessity to prove a lawful interest)*

62. The institution of a *quasi actio popularis* takes up a middle position between the merely abstract *actio popularis* and the normative constitutional complaint. The standing rules of *quasi actio popularis* are more restrictive and thus avoid some of the problems related to *actio popularis* in that the applicant needs to prove that he has a certain legal interest in the general norm. The rules of standing are close to those related to the normative constitutional complaint, except that claimant does not need to be directly affected⁵⁵. He/she only needs to prove that the legal provision interferes with his/her rights, legal interests or legal position⁵⁶. This type of access to the Constitutional Court exists in Greece.

2.2.2.2 Individual complaint

2.2.2.2.1 *Against normative acts only*

2.2.2.2.1.1 *Normative constitutional complaint*⁵⁷.

63. An individual is given the right to complain against the violation of his/her subjective fundamental right through an individual act based on a normative act. Thus, the initiative for review is related to a concrete case. However, the individual act applying a normative act itself cannot be attacked, and the subsequent control by the Constitutional Court does not concern the implementation of the normative act. This can raise concerns as to the effective protection of individual fundamental rights, if only the implementation of a constitutional law or equivalent act violates such rights. Normative complaints exist inter alia in Armenia, Belgium⁵⁸, Georgia, Hungary, Poland, Kyrgyzstan, Latvia and Monaco. A limited form has been introduced in Estonia, where certain resolutions of Parliament and decisions of the President can be challenged. According to Article 96 of the Russian Federal Constitutional law on the Constitutional Court, citizens "whose rights and freedoms have been violated by the law that has been applied or ought to be applied in a specific case" may file a direct complaint to the Constitutional Court. The individual complaint can be lodged directly with the Constitutional Court and can be directed against an administrative decision. Also, individual complaint is distinct from abstract review, as the claimant needs to prove that there is certain likelihood that the statute will be applied in his case⁵⁹.

64. The effectiveness of the normative constitutional complaint as a means for human rights protection heavily depends on decisions by the ordinary courts implementing those made by the Constitutional Court, especially when there is no binding legislative requirement that ordinary courts follow the legal reasoning of the Constitutional Court. When ordinary courts do not take into account the reasoning of the Constitutional Court's decision and only formally implement only its operative part, a normative constitutional complaint can become an end in itself and remain ineffective for the protection of the constitutional rights of the individual concerned. Decisions of the Constitutional Courts are sources of constitutional law, providing a final interpretation of constitutional provisions and have to be followed by all State bodies, including ordinary courts..

⁵⁵ See W. Sadurski, op.cit., p. 6f

⁵⁶ Article 24 (2) Law on the Constitutional Court

⁵⁷ Term used in German: *Unechte Grundrechtsbeschwerde*, see CDL-AD(2005)005; para. 22, S. R. Dürr, "Individual Access to Constitutional Court in European Transitional Countries", in: B. Fort (ed.), *Democratising Access to Justice in Transitional Countries. Proceedings of the Workshop "Comparing Access to Justice in Asian and European Transitional Countries"*, Sang Choy International, Jakarta, 2006, p. 59

⁵⁸ [CDL-JU\(2008\)032](#) M.-Fr. Rigaux, "Introduction of a Constitutional Review of Laws: Benefit, Purpose and Modalities", *Report for the seminar on constitutional jurisdiction*, Ramallah, 2008

⁵⁹ See W. Sadurski, op. cit., p. 7ff

2.2.2.2.1.2 *Constitutional petition.*

65. In Ukraine, if an individual sets forth that diverging applications of a law could lead to or have led to a violation of his/her constitutional rights he/she can demand a binding interpretation by the Constitutional Court. Not an individual act is in question, but the interpretation of a normative act. Thus, the constitutional petition fulfils materially the function of a normative constitutional complaint⁶⁰.

2.2.2.2.2 *Against individual acts*

66. With the growing valuation of Human Rights protection, one can observe a clear tendency towards constitutional review of individual administrative acts and decisions of the judiciary upon application by the individual⁶¹, as Human Rights violations often are the result of unconstitutional individual acts based on constitutional normative acts⁶². **The Venice Commission is in favour of the full constitutional complaint and the *recurso de amparo* not only because they provide a comprehensive protection of constitutional rights but also from the viewpoint of subsidiary nature of the relief provided by the European Court of Human Rights and the desirability to settle human rights issues on the national level, also taking into account the Strasbourg Court's current case-load.**

2.2.2.2.2.1 *Full constitutional complaint.*

67. Full constitutional complaints allow undoubtedly for the most comprehensive individual access to constitutional justice and hence to a thorough protection of individual rights. An individual may subsidiarily⁶³ complain against any act by the public authorities which violates directly and currently his/her fundamental rights. To be precise, an individual may challenge a general act if it is directly applicable on him/her, or an individual act addressed to him/her. This possibility exists for example in Germany, Spain, Croatia, the Czech Republic, Liechtenstein, Slovenia, Montenegro, Serbia, South Africa and, to a limited extent, in "the Former Yugoslav Republic of Macedonia", Slovakia, and Cyprus⁶⁴. One can find various conditions to and sub-forms of constitutional complaints. The most prominent is the "constitutional revision", where an individual is being given a remedy against final decisions by ordinary courts, but not against individual administrative acts. This is the case in Malta⁶⁵, Bosnia and Herzegovina, Chile⁶⁶ and Albania. In Austria, on the other hand, only individual administrative acts can be reviewed, but no final civil or penal decisions⁶⁷.

⁶⁰ V. Skomorocha, *Konstytucyjnyj Sud Ukrajinjy: dosvid i problemy*, *Pravo Ukrajinjy* no. 1/1999, cit. in: [CDL-JU \(2001\)22](#), G. Brunner, *"Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum"*, report for the CoCoSem seminar in Zakopane, Poland, October 2001, p. 34

⁶¹ [CDL-AD \(2004\)24](#) Opinion on the draft constitutional amendments with regard to the Constitutional Court of Turkey

⁶² [CDL-AD \(2008\)029](#) Opinion on the draft laws amending and supplementing 1) the Law on Constitutional Proceedings and 2) the Law on the Constitutional Court of Kyrgyzstan

⁶³ Subsidiarity means that all other remedies must be exhausted.

⁶⁴ The Constitutional Court of Belarus, contrary to a previous practice adopted under part 4 of art. 122 of the Constitution (see judgment D-184/05 of 2 March 2005), the Constitutional Court is no longer accepting individual appeals.

⁶⁵ It is interesting to note that the constitutional petition can also be brought against potential violations of fundamental rights.

⁶⁶ Against certain types of resolutions by the higher courts (*auto acordados*).

⁶⁷ However, individual administrative acts can be challenged parallel to a recourse to the Supreme Administrative Court: First, the Constitutional Court verifies whether constitutional rights have been violated and in the negative it refers the case to the Administrative Court for verification whether ordinary laws have been violated. This is seen by the Austria Convention as a lacuna to be overcome in Austria. In legal systems with a complete administrative jurisdiction an individual has the possibility to challenge an illegal or unconstitutional act before administrative tribunals. This means that if the tribunals fail to invalidate the act, effective protection would require that the individual be given standing to challenge their judgments before the Constitutional Court, as access to the Constitutional Court is subject to the exhaustion of all legal remedies.

68. In full constitutional complaint review proceedings, the Constitutional Court will usually not decide on the merits of the case. Rather, it will consider the purely constitutional aspects of the case. In addition, the Court will not enter into a review of respect of the entire hierarchy of norms (e.g. review of legality of an individual act). The function of full constitutional complaints is in the first place the protection of the individual's rights.

2.2.2.2.2 *Recurso de amparo.*

69. Writ of *amparo* is a specific type of constitutional complaint where the individual is being given a specific action (the term "*recurso*" is misleading⁶⁸) against a violation of his/her fundamental rights. *Amparo* exists in Andorra, Chile, Peru, Argentina and Mexico. It is important to note that Spain's writ of *Amparo* should rather be qualified as a full constitutional complaint, because the proceeding doesn't take place before the ordinary courts, as is typically the case with the Latin American *recursos de amparo*, but before the Constitutional Court⁶⁹. Another difference is the fact that in a "subsidiary *recurso de amparo*" which is in place in Spain, the protected fundamental rights are exhaustively listed by the Constitution⁷⁰.

70. *Amparo* includes all fundamental rights stated in the Constitution except physical freedom, which is specifically protected in Latin America through habeas corpus remedies. The exception amongst the states under consideration here is Mexico, where *amparo* is comparatively vast and includes also the protection against deprivation of physical freedom⁷¹.

In Mexico, the individual aggrieved by a court decision, must lodge the (direct) *amparo* before the court that issued the challenged decision⁷².

2.2.2.2.3 *Individual complaints as a national "filter" for cases reaching the European Court of Human Rights*

71. An important aspect of individual complaints to the Constitutional Court against human rights violations is the question whether such a complaint has to be exhausted according to Article 35(1) of the European Convention on Human Rights before a person can appeal to the European Court of Human Rights like this is the case for example for the *amparo* complaint to the Constitutional Court of Spain. The discussion of this topic is especially relevant in view of the important case-load of the Court (some 120.000 cases in 2010) and the need to solve human rights issues on the national level before they reach the Strasbourg Court as called for by paragraph 4 of the Interlaken Declaration, which insists on the subsidiary nature of the Convention mechanism:

⁶⁸ H. Nogueira Alcala, "*El recurso de proteccion en Chile*", *Anuario iberoamericano de justicia constitucional*, no. 3, 1999, Madrid, 1999, in: <http://dialnet.unirioja.es/servlet/articulo?codigo=1976169>, accessed 25 February 2009

⁶⁹ See [CDL-JU \(2001\)22](#), G. Brunner, "*Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischnen Raum*", report for the CoCoSem seminar in Zakopane, Poland, October 2001, p.22

⁷⁰ [CDL-JU\(1997\)015](#), A. Mavčić, "Human rights protection with the help of the individual complaint"

⁷¹ A.R. Brewer-Carías, "Some aspects of the "*amparo*" proceeding in Latin America as a constitutional judicial mean specifically established for the protection of Human Rights", Paper for the Colloquium in International and Comparative Law, Baltimore, 2007, in:

http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1001&context=iclc_papers, accessed 25 February 2009

⁷² Article 86 Law on *Amparo*: "The claim of revision can be filed at the district judge, the authority that decides on the case, or at the collegial circuit tribunal in the case of direct *amparo*. (*El recurso de revision se interpondra por conducto del juez de distrito, de la autoridad que conozca del juicio, o del tribunal colegiado de circuito en los casos de amparo directo.*)" <http://info4.juridicas.unam.mx/ijure/fed/19/91.htm?s=>, accessed 17 March 2009

“4. The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:

...

d) ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;

...⁷³

...

72. In countries where a specialised Constitutional Court exists, an individual complaint to that Court seems a logical choice for such a remedy because typically such a complaint is subsidiary also on the national level and intervenes only after the exhaustion of appeals to ordinary courts, thus at the last possible stage on the national level before the possibility of an application to the European Court of Human Rights comes into play.

73. It seems evident that certain other types of individual access to the Constitutional Court discussed in the present report can be excluded as such an effective “domestic remedy”: an *actio popularis* is directed against a norm in the abstract and would not normally be an appropriate remedy against a concrete human rights violation. Also a “normative” individual appeal – directed only against a normative act but not its application in an individual case – would not be sufficient as a national “filter” because in practice human rights violations are most often not the result of the “technically correct” application of an unconstitutional law – which can be challenged in this type of appeal - but frequently they are the result of an unconstitutional individual act, which can but need not be based on a law, which is in conformity with the Constitution. A large number of human rights violations would thus escape a normative complaint and the filter-effect would remain marginal.

74. An interesting example of an attempt to introduce such a remedy concerns Turkey. In view of the high number of Turkish cases before the Strasbourg Court, the Constitutional Court of Turkey proposed in 2004 the introduction of an individual complaint to that Court relating to constitutional rights, which are also covered by the European Convention on Human Rights. The explanatory memorandum for these amendments explicitly states that “[t]he introduction of constitutional complaint will result in a considerable decrease in the number of files against Turkey brought before the European Court of Human Rights”.⁷⁴

75. In its opinion on these draft amendments, the Venice Commission found that the draft amendments were “justified, and follow solutions already known in other European countries and they meet European standards.”⁷⁵ The Commission thus recognised that an effective individual complaint to the constitutional court can be a national filter for cases before they reach the European Court of Human Rights.

⁷³ High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe, Interlaken 19. February 2010.

⁷⁴ In March 2010, the Turkish Government made proposals for a Constitutional reform package, which includes a very similar type of individual complaint to the Constitutional Court. [footnote to be amended in the light of the progress of the amendment procedure.]

⁷⁵ CDL-AD(2004)024, Opinion on the Draft Constitutional Amendments with Regard to the Constitutional Court of Turkey. The Venice Commission however questioned whether the individual complaint should be limited to constitutional rights, which were also covered by the Convention. It seemed that the purpose of this limitation was to exclude social rights from the scope of the individual complaint. The issue of social rights seems to be the reason why the Austrian Constitution does not include a complete “bill of rights” and why instead the Convention has been ratified on the level of constitutional law, thus allowing individual complaints to the Austrian Constitutional Court on the basis of the rights contained in the Convention and its Protocols.

76. In order to constitute such a filter and to require its exhaustion in the sense of Article 35(1) of the Convention, a national remedy has to be effective according to Article 13 of the Convention. The question how an individual complaint has to be conceived to be such an effective remedy is however complex.

77. The answer will vary from country to country and even for a given country the constitutional complaint may be an effective remedy for certain violations of the Convention, whereas – according to the case-law of the Strasbourg Court – it may not be not effective for other violations. In particular, a distinction has to be made between cases of alleged excessive length of proceedings and violations of “other” human rights.

78. Various elements have to be taken into account for determining whether a remedy is effective in the sense of Article 13. Where an individual has an arguable claim to be the victim of a violation of the Conventions rights he or she should have a remedy before a national authority, which is not necessarily a judicial authority but enjoys relevant powers to decide the claim and to provide redress.⁷⁶ The contracting states are free to chose an the remedy, which they provide and sometimes an aggregate of several remedies provided may be sufficient.⁷⁷

79. In the case of an individual complaint to a Constitutional Court, the judicial nature of the national authority does not need to be discussed. However it may be questioned whether in all cases the powers of a Constitutional Court will be sufficient. The Court must be in a position to provide redress though a binding decision in the case, when necessary providing compensation. A mere declaratory decision on unconstitutionality will not be sufficient and the complaint must be “effective” in practice as well as in law⁷⁸. If the violation of the Convention right concerns a positive obligation, the Court should be in a position to order the state authorities to take the action, which they failed to take in the given case. The Court must be obliged to hear the case, a discretion in the selection of cases by the Court (e.g. *certiorari*) will not be sufficient. The Court must also be accessible, unreasonable demands relating to costs or representation could render an appeal “ineffective”. When the consequences of measures would be irreversible, the Constitutional Court should be in a position to prevent the execution such measures.⁷⁹

80. In the framework of its Report on the Effectiveness of National Remedies in Respect of Excessive Length of Proceedings⁸⁰ the Venice Commission had occasion to discuss the effectiveness of constitutional complaints as a remedy. Based on the case-law of the European Court of Human Rights⁸¹, the Commission found that “[t]he obligation to organise its judicial system in a manner that complies with the requirements of Article 6 § 1 of the Convention also applies to a Constitutional Court”⁸² itself. This means that if a country intends to introduce an individual complaint to its Constitutional Court, this has do be done in a way, which does not excessively prolong the total length of the procedure. Consequently, the Court has to have the capacity – and the resources – to deal effectively with the additional case-load.⁸³

81. A main issue in the discussion of remedies against the excessive length of procedures is a distinctions between acceleratory – ie having a positive effect on the termination of the ongoing

⁷⁶ The individual also has to complain about the violation of the Convention right in the national proceedings. Failing to do so, will result in a finding of non-exhaustion of domestic remedies by the European Court of Human Rights, see for example *Debono v. Malta*, no. 34539/02, decision of 10 June 2004.

⁷⁷ See *Silver v. UK*, judgment of 25 March 1983.

⁷⁸ See *Ihan v. Turkey*, judgment of 27 June 2000, para. 58.

⁷⁹ See *Čonka v. Belgium*, judgment of 5 February 2002, para. 79.

⁸⁰ CDL-AD(2006)036rev, adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006).

⁸¹ See *Gast and Popp v. Germany*, judgment of 25 February 2005, para. 75.

⁸² Paragraph 33.

⁸³ Concerning doubts on the promptness of a individual complaint, see *Belinger v. Slovenia*, no. 42320/98, decision of 2 October 2001.

case - and compensatory remedies. Here, the Commission found that that “*in terms of the [Strasbourg] Court’s case-law, it is an obligation of result that is required by Article 13. Even when none of the remedies available to an individual, taken alone, would satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may be considered as ‘effective’ in terms of this article.*”⁸⁴ The Commission found that in order to be effective, a remedy would have to offer both aspects - acceleratory⁸⁵ and compensatory⁸⁶:

“182. In cases where the national legal system does not provide for acceleratory remedies (which is the case for most domestic legal systems), the individual is not afforded before his own authorities an equivalent redress to that which he may obtain in Strasbourg; there, the subsidiarity principle is deficient. Under these circumstances, the individual may argue not to have lost his status of victim even after obtaining (mere) pecuniary compensation in a domestic procedure and may challenge his need to exhaust the domestic remedy in question.

183. In conclusion, the Venice Commission considers that, in order to comply fully with the requirements of Article 13 of the Convention in relation to the reasonable time requirement laid down in Article 6 §1 of the Convention, Council of Europe member States should provide in the first place acceleratory remedies designed to prevent any (further) undue delays from taking place at any time until the proceedings are terminated.

184. In addition, they should provide compensatory remedies for any breach of the reasonable time requirement which may have already occurred in the proceedings (prior to the introduction of the effective acceleratory remedies).”

82. To sum up, if a State intended to introduce an individual complaint to the constitutional court with the purpose of providing a national remedy or filter for cases otherwise reaching the Strasbourg Court, ie providing an effective remedy in the sense of Article 13 of the Convention and to require its exhaustion under Article 35(1), an individual complaint to the Constitutional Court should provide redress though a binding decision in the case. The Court must be obliged to hear the case and there must not be any unreasonable demands as to costs or representation.

83. In addition, in cases of alleged excessive length of procedure, an individual appeal to the Constitutional Court should enable the Constitutional Court to effectively order the speedy resumption and termination of the proceedings before the ordinary courts or to settle the matter itself on the merits. In addition, the Constitutional Court should be able to provide compensation equivalent to what the complainant would receive at the Strasbourg Court.

⁸⁴ Paragraph 137.

⁸⁵ See *Slavicek v. Croatia*, no. 20862/02, decision of 4 July 2002: “According to the new law everyone who deems that the proceedings concerning the determination of his civil rights and obligations or a criminal charge against him have not been concluded within a reasonable time may file a constitutional complaint. The Constitutional Court must examine such a complaint and if it finds it well-founded it must set a time-limit for deciding the case on the merits and it shall also award compensation for the excessive length of proceedings. The Court considers that this is a remedy which must be exhausted by the applicant in order to comply with Article 35 § 1 of the Convention.” See also *Debono v. Malta*, no. 34539/02, decision of 10 June 2004; *Andrásik v. Slovakia*, no. 57984/00, decision of 22 October 2002 and *Fernandez-Molina Gonzalez and others v. Spain*, no. 64359/01, decision of 8 October 2002.

⁸⁶ The compensation has to be in a reasonable relation to what the applicant would have obtained from the Strasbourg Court, see *Dubjakova v. Slovakia*, no. 67299/01, decision of 10 October 2004: “Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include not merely the duration of the proceedings in the specific case but the value of the award judged in the light of the standard of living in the State concerned, and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the [Strasbourg] Court under Article 41 of the Convention.”

2.3 The subjects of review

84. Different types of legal acts can be reviewed according to their conformity with several types of higher-ranking legal norms. As subjects of review individual and normative legal acts come into question. Individual acts as understood here include administrative acts where an administrative body⁸⁷ decides in an individual case, but also (final) court decisions. Normative acts are international treaties⁸⁸, laws and rules having the force of law, decrees and regulations by the executive, general rules of local self-governing bodies⁸⁹ that have a generally binding effect, that is, without distinct or distinguishable addressees.

85. In states with concentrated review it is very common to provide for constitutional review of laws or equivalent acts with force of law⁹⁰. This is consistent with one of the traditional objectives linked to the introduction of concentrated constitutional jurisdiction, namely the protection of the constitutional order. Also, the review of individual acts is gaining grounds as more and more states opt for full constitutional complaints.

86. In systems with diffuse review, typically any act, normative or individual, that is relevant to the concrete case, can be challenged. Therefore, the individual can question the constitutionality of any law that should be applied in a proceeding, any ruling of an inferior court and any administrative act that may be brought up due to the applicable procedural law. In South Africa, an ordinary court can declare a normative act (statute) unconstitutional, but such a declaration must be confirmed by the Constitutional Court before it becomes effective.

87. The writ of *amparo* can generally be directed not only against actions emanating from state organs, but also against private actions; it applies even in horizontal relations⁹¹.

88. In some states (Hungary, Belarus, Brazil, Chile, Germany, Liechtenstein, Peru, Slovenia, South Africa, “the Former Yugoslav Republic of Macedonia”), the Constitutional Court can address violations resulting from omissions upon application by an individual⁹². In Belarus, the Constitutional Court considers individual petitions against gaps in normative legal acts, and (or) conflict of certain norms of the act, which have been filed to the Constitutional Court in the exercise of the constitutional right to address personal or collective petitions to state bodies. These petitions are not constitutional complaints and do not entail the need of the Constitutional Court review of a normative legal act’s constitutionality, referred to in the petition.

89. In the Netherlands, the individual complaint can only be turned against an individual or general administrative act which can be interpreted in the light of the law and the Constitution.

⁸⁷ All types of administrative bodies constitutionally entitled to issue such acts can be taken into consideration, including regional or local administrative bodies, even though some federal states dispose of federated constitutional courts that review acts issued by the federated authorities as far as their compatibility with the Constitution of the federated state is concerned, for instance Germany.

⁸⁸ If these have infra-constitutional value

⁸⁹ E.g. According to Article 100.1 of the Constitution of Armenia, decisions of local self-governing bodies are the subject of constitutional review.

⁹⁰ *General Report, XIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009. However, it should be noted that in Switzerland, the Federal Tribunal can only review cantonal laws concerning their conformity with the federal Constitution.

⁹¹ A.R. Brewer-Carías, op.cit., p.21

⁹² This can cause conflicts with the Parliament as the Constitutional Court imposes that and in which margin gaps be filled. In Portugal, individual complaints against omissions are excluded, even if the Constitutional Court has the power to conduct abstract review on omissions (see Article 283 Portuguese Constitution). The detailed General Report of the XIVth Conference of European Constitutional Courts dedicated to this topic has been published in a Special Bulletin on Constitutional Case-Law by the Venice Commission (2008) and can be found on http://www.Irkt.lt/conference/Pranesimai/XIV%20Congress%20General%20Report_LT.doc

90. The Venice Commission warns of overburdening the Constitutional Court by transferring to it the competence to protect the entire hierarchy of norms. The review of legality of sub-statutory acts (decrees, bye-laws, etc.) should be left to administrative tribunals⁹³.

2.4 Protected rights

91. All Constitutions considered here contain some fundamental rights or refer to a catalogue of fundamental rights that is being given constitutional or at least supra-legislative rank. However, not all these rights serve as review standard in all cases⁹⁴: Parts of the rights catalogues are of programmatic nature, which means that the individual is not given a remedy against violations of such programmatic norms or national objectives. This is the case for social rights in some countries.

92. International Human Rights treaties⁹⁵, and in particular the European Convention of Human Rights for member states of the Council of Europe, have different legal ranks in the states included in this report. For instance, in Austria, the ECHR has constitutional value. Likewise, in the Netherlands, laws, which cannot be reviewed as far as their constitutionality is concerned, can be reviewed in the light of international treaties including the Convention. In Bosnia and Herzegovina, the ECHR "shall prevail over all laws"⁹⁶, which could mean that it stands above the Constitution⁹⁷. So far, the Bosnian Constitutional Court has not given a final answer to this question⁹⁸. The Human Rights Act 1998 of the United Kingdom and the European Convention Act of Malta transposed the international treaty into internal law so as to allow persons the possibility to directly invoke these rights. In Italy⁹⁹, Liechtenstein, Slovenia and "the Former Yugoslav Republic of Macedonia"¹⁰⁰, the European Convention has infra-constitutional but supra-legislative rank.

93. Protected rights are not necessarily inscribed in the Constitution¹⁰¹ or designed to be enforceable, but can be a product of jurisprudential creativity. The fundamental importance of a

⁹³ [CDL-INF\(1996\)010](#) Opinion on the draft law on the Constitutional Court of the Republic of Azerbaijan. However, some countries, which have a comparatively small population and limited resources, for instance, Latvia, prefer to concentrate the whole system of review of norms in the Constitutional Court and leave only issues of their implementation to administrative courts.

⁹⁴ For example, according to Article 110 of the Constitution of "the Former Yugoslav Republic of Macedonia", the jurisdiction of the Constitutional Court covers "the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation".

⁹⁵ Article 16(2) of the Portuguese Constitution reads: "The provisions of this Constitution and of legal precepts concerning fundamental rights shall be interpreted and completed in accordance with the Universal Declaration of Human Rights". The status of an interpretative standard in matters concerning fundamental rights is therefore attributed to the Universal Declaration of Human Rights and not the European Convention on Human Rights. Unlike the latter, the Universal Declaration of Human Rights is not an international treaty. In Portugal the position taken by both doctrine and jurisprudence is that fundamental rights must be interpreted in accordance with the various international human rights instruments, on condition that the preference accorded to the rules set out in the latter results in the primacy of rules which enshrine a superior level of protection for the fundamental rights.

⁹⁶ Article II.2 Constitution

⁹⁷ See J. Marko, "Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina: A First Balance", *European Diversity and Autonomy Papers- EDAP* (2004), 7, in:

http://www.eurac.edu/documents/edap/2004_edap07.pdf, accessed 3 June 2009

⁹⁸ [CDL-AD\(2008\)027](#) Amicus curiae brief in the cases of *Sejdić and Finci v. Bosnia and Herzegovina* (Applications no. 27996/06 and 34836/06) pending before the European Court of Human Rights

⁹⁹ See decisions no. 348 and 349/2007 of the Italian Constitutional Court, after the 2001 amendment to art. 117 of the Italian Constitution.

¹⁰⁰ See I. Spirovski, "Constitutional Validity of Human Rights Treaties in the Republic of Macedonia: The Norms and the Courts", *Report for the World Conference on Constitutional Justice*, in:

http://www.venice.coe.int/WCCJ/Papers/MKD_Spirovski_E.pdf, accessed 3 June 2009

¹⁰¹ In a number of countries, the catalogues of human rights is not exclusive but open ended., e.g. according Article 42 of the Constitution of the Armenia, the fundamental human and civil rights and freedoms set forth in the

provision can be “discovered” by jurisprudence. Here, the approach of the French Constitutional Council is particularly noteworthy: It enlarged the circle of protected rights by attributing constitutional value to texts that had been merely declaratory before, the Declaration of the Rights of Man and of the Citizen of 1789 and the preamble to the 1946 Constitution.

3 REVIEW PROCEEDINGS

3.1 Conditions for opening proceedings (“filters”)

94. The constitutional or legal provisions dealing with the various types of access and with constitutional proceedings include as a general rule procedural prerequisites or conditions which need to be fulfilled by the applicant or the application. While this serves the purpose of alleviating the Constitutional Court’s caseload, there is also the risk that these hurdles overly reduce access to the Constitutional Court.

95. According to the type of request to the Constitutional Court, there are different procedural admissibility conditions. However, some requirements in many cases: time-limits, the possible obligation to be legally represented.

3.1.1 Time-limits for applications

See 6.1.2 Table: Time-limits for applications

96. There exists a broad variety of time-limits for the different types of applications. Time-limits serve the purpose of legal certainty to assume that an act, after a certain period of time, becomes unassailable. While these **time limits should not be too long, they must be reasonable in order to provide enable the preparation of the complaint by the individual him- or herself in person or to find a lawyer who will defend his/her rights** because in some countries legal representation is obligatory individual complaints. **The Court should be able to extend the deadlines** in cases when a complainant is unable to comply with the time limit due to reasons not related to his fault or his lawyer’s sphere or if there other compelling reasons.¹⁰²

3.1.2 Obligation to be legally represented

See 6.1.3 Table: Obligation to be legally represented

97. Legal representation is intended to aid the complainant and to raise the quality of complaints. However, legal representation has strong financial implications. Therefore, especially if legal representation is mandatory, the denial of financial assistance or free legal aid could amount to the denial of the effective access to a court¹⁰³. Therefore, free legal aid should be provided to applicants if their material situation so requires.

98. Legal representation is mandatory in Monaco, Austria (for actions against normative acts), Azerbaijan, Czech Republic, Germany¹⁰⁴, Italy, Luxemburg, Poland, Portugal, Slovakia, Spain, Switzerland (if the individual is “clearly unable” to represent him-/herself).

Constitution shall not exclude the other rights and freedoms, prescribed by laws and international treaties. According to Article 55 of the Russian Constitution, the list of fundamental rights and freedoms in the Constitution shall not be interpreted as a denial of or derogation from other universally recognized human and civil rights and freedoms.

¹⁰² E.g. Germany, Law on the Federal Constitutional Court, Article 93(2); Slovenia, Constitutional Court Act Article 52(3).

¹⁰³ [CDL-JU\(2008\)012](#) The use of international instruments for protecting individual rights, freedoms and legitimate interests through national legislation and the right to legal defence in Belarus: challenges and outlook

¹⁰⁴ The Law on the Federal Constitutional Court provides in its Article 22.1 sentence 1, half-sentence 1 that the parties to proceedings before the Federal Constitutional Court may be represented by an attorney or by a lecturer of law at a

99. No obligation exists in Albania, Andorra, Armenia, Belgium, Croatia, Georgia, Hungary, Latvia, Liechtenstein, Poland, Romania, Russia, Slovenia and South Africa¹⁰⁵.

3.1.3 Court fees

100. Court fees for proceedings before the Constitutional Court are exceptional amongst the states under consideration in this report. However, in the U.S.¹⁰⁶, there is a fee of 300 \$ for lodging a petition to grant a writ of certiorari before the Supreme Court, in Russia, the fee amounts to one minimum wage, in Armenia to five, and in Switzerland a minimum of 200 CHF and a maximum of 100,000 CHF. In Kyrgyzstan, there is also a court fee. According to Article 34.2 of the Law on the Federal Constitutional Court of Germany, the latter may charge a fee of up to 2600 Euros if the lodging of a constitutional complaint or of a complaint in proceedings involving the scrutiny of elections constitutes an abuse or if an application for the issuing of a temporary injunction is made in an abusive manner.

101. The Venice Commission recommends that **in view of a more comprehensive Human Rights protection, court fees for individuals be relatively low and it should be possible to reduce them in accordance with the financial situation of the complainant. Their primary aim should be to exclude evident abuse.**¹⁰⁷.

3.1.4 Re-opening of cases

102. In principle, the Constitutional Court's ruling of unconstitutionality is final. Hence complaints on the same issue will not be accepted anymore. Typical situations for a re-opening are when new facts appear that the parties could not have been aware of¹⁰⁸, to correct errors made by the Constitutional Court¹⁰⁹ or if the Constitution was changed¹¹⁰. If the Constitutional Court found a normative act to be constitutional, two different regimes exist as to the admissibility of new complaints on the same grounds (below).

3.1.5 Abuse of the right to appeal to the Constitutional Court

German institution of higher education. Such representation is **only mandatory in the oral pleadings** before the Court (§ 22.1 sentence 1 half-sentence 2 of the Law). Outside oral pleadings, the Federal Constitutional Court may also permit another person than those mentioned above to act as counsel for a party.

¹⁰⁵ In South Africa, there is no obligation to be legally represented. In terms of Rule 4(11) of the Rules of the Constitutional Court, if it appears to the Registrar of the Court that a party is unrepresented, he or she shall refer the litigant to a body or institution that may be willing and in a position to assist the litigant.

¹⁰⁶ U.S. Supreme Court Rule 38

¹⁰⁷ [CDL\(2008\)065](#), Opinion on the draft laws amending and supplementing (1) the law on constitutional proceedings of Kyrgyzstan and (2) the law on the Constitutional Court of Kyrgyzstan, 2008

¹⁰⁸ See, for instance, Article 34 Austrian Law on the Constitutional Court. Contrary to this "*nova reperta*", "*nova producta*" where parties bring forward arguments only after closure of (first instance) proceedings even if they could have been aware of these points, is generally excluded.

¹⁰⁹ See U.S. Supreme Court Rule 44. Rehearing: "1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time." And Article 121 Swiss Federal Judicature Act: *La révision d'un arrêt du Tribunal fédéral peut être demandée: a. si les dispositions concernant la composition du tribunal ou la récusation n'ont pas été observées; b. si le tribunal a accordé à une partie soit plus ou, sans que la loi ne le permette, autre chose que ce qu'elle a demandé, soit moins que ce que la partie adverse a reconnu devoir; c. si le tribunal n'a pas statué sur certaines conclusions; d. si, par inadvertance, le tribunal n'a pas pris en considération des faits pertinents qui ressortent du dossier.*

¹¹⁰ Article 68(14) of the Law on the Const. Court of Armenia: Constitutional Court may reconsider any of its decisions mentioned in paragraph 1 of this Article within 7 years after ruling on the substance of the case on the basis of an appeal brought by procedure prescribed in this Law if: a) the provision of the Constitution applied for the case is changed, b) a new understanding of the provision of the Constitution applied for the case has emerged, which may be a basis for a differing decision on the same case and if the issue has a principle importance for Const. Law.)

103. In a number of states parties have the duty to exercise their procedural rights in *bona fide*¹¹¹. When an applicant abuses this obligation, the effectiveness of constitutional justice is distorted. Although the institute of the individual complaint is very important for the protection of human rights, such abuse is a prejudice to the constitutional order protected by the Constitutional Courts. According to §10(2) of the Rules of Procedure of the Russian Constitutional Court, if the applicant repeats its an application on an issue on which the Constitutional Court has already adopted a decision, a copy of the decision is sent to the applicant once again, informing him/her that thereafter the correspondence with him/her on this issue is terminated. Further complaints of the same persons on the same issue remain without answer.

3.1.6 Exhaustion of remedies

See 6.1.4 Table: Exhaustion of remedies and exceptions

104. The notion of exhaustion of remedies can have different meanings according to the context as, for instance, some procedural codes do not allow for a systematic access to the ordinary supreme courts. It is a typical condition for bringing a full or normative constitutional complaint to the Constitutional Court as it underlines the complaint's subsidiary character (e.g. Albania, Andorra, Armenia, Austria, Azerbaijan, Croatia, Czech Republic, Germany, Hungary, Republic of Korea, Latvia, Liechtenstein, Malta, Montenegro, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, and "the Former Yugoslav Republic of Macedonia").

105. In states with diffuse review, there is no such precondition. An individual may challenge an individual or normative act on the grounds of a violation of the Constitution at any stage of a proceeding. However, in *amparo* systems, the right to initiate a proceeding of *amparo* can be subordinate to exhaustion of existing remedies (e.g. Mexico).

106. In cases where the respect of this rule could cause an irreparable damage to the individual, exhaustion of remedies is usually not required (e.g. Austria, Azerbaijan, Croatia, the Czech Republic, Germany, Latvia, Montenegro, Slovakia, Slovenia, and Switzerland).

3.1.7 Complainant directly and currently affected by the violation

107. This requirement exists in all states that allow for review in relation to a concrete case, it is even its essence. If the individual is not currently and directly aggrieved by the act, his/her application initiates abstract review. However, there are two attenuations to these requirements. First, as concerns the condition of "direct" victimhood: Some laws on constitutional proceedings (e.g. the Chilean law of *amparo* and South African standing provisions) authorise anyone to act in the name of the aggrieved person, which means that the action is still related to the concrete case, but the complainant is not directly a victim. Also, legal representatives (relatives, tutors, but also public institutions¹¹²) may act on behalf of a person that does not have legal capacity him-/herself. Second, some laws contain details on the nature of the violation: In most states, the breach of the fundamental right must constitute a disadvantage to the complainant, thus affecting him/her negatively. Also, in some national laws it is required that the harm be sufficiently important (e.g. Slovenia¹¹³).

3.1.8 Complaint as a proper means to repair the complainant's grief

¹¹¹ E.g. Armenia: Article 48 of the Law on the Constitutional Court, Kazakhstan: Article 21 of the Law on the Constitutional Council.

¹¹² See for instance Article 59 Law on the Constitutional Court of Montenegro and Article 38 of the South African Constitution.

¹¹³ Article 55a Law on the Constitutional Court

108. If the constitutional review proceeding will not substantially change the complainant's situation, an application can be refused (e.g. Germany, South Africa¹¹⁴). This evaluation is sometimes difficult to conduct during preliminary proceedings; therefore, it should only lead to denial of review in cases where the absence of effectiveness of the Constitutional Court's decision is manifest.

3.1.9 Written form

109. Applications to the Constitutional Court must be done in writing, and sometimes follow very precise rules (as is the case in the United States, where length of the application in terms of pages and even the colour of the document's folder are determined by law). These rules pursue the goals of transparency and traceability. However, especially when formal requirements are very strict and even more so if legal representation is not an obligation, the applicant needs to be given the possibility to correct or complete a document (e.g. Estonia¹¹⁵, Slovenia¹¹⁶, "the Former Yugoslav Republic of Macedonia"). This prevents that review is denied for formal reasons despite the fact that the grievance continues to exist.

3.1.10 Filters in preliminary ruling procedures

See 6.1.5 Table: Preliminary ruling procedures

110. Preliminary questions are put before the Constitutional Court by an ordinary court. Specific regulations concerning admissibility of the question exist in many of the Venice Commission's member and observer states. In Andorra, Azerbaijan, Belarus, the Czech Republic, Georgia and Moldova, the Constitutional Court rejects a preliminary request on the grounds of procedural errors or lack of competence of the Constitutional Court. Whereas in Albania, Estonia, Hungary, Lithuania and "the Former Yugoslav Republic of Macedonia", the Constitutional Court must retransmit the request to the ordinary court in order to give the latter the possibility to reformulate its question¹¹⁷. Also, many constitutional courts will reject a preliminary question if the answer to the question is irrelevant for the resolution of the specific case (e.g. Germany, Poland). In this respect, the Constitutional Court also looks at the precise case at hand.

3.2 Intervention, joinder of similar cases

See 6.1.6 Table: Joinder of similar cases

111. In Armenia, Austria, Belgium, the Czech Republic, Lithuania¹¹⁸, Portugal¹¹⁹, Russia, Slovakia, Slovenia, South Africa¹²⁰, "the Former Yugoslav Republic of Macedonia" and the United States, applications relating to the same question can or must be dealt with in one single proceeding.

112. In Belgium, Greece and Spain, any person having a lawful interest in the question may be joined to the proceedings.

113. Not least for reasons of procedural economy, persons who have a lawful interest in the question should be entitled to intervene in a pending case.¹²¹ Clearly, the Court should not be

¹¹⁴ See Decision CCT 86/06 of 02/10/2007, in CODICES

¹¹⁵ §20 Constitutional Review Court Procedure Act

¹¹⁶ *Only when filing a constitutional complaint. See Article 55(1) of the Constitutional Court Act.*

¹¹⁷ See *General Report, XIIIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009

¹¹⁸ Article 41, Law on the Constitutional Court: "Upon establishing that there are two or more petitions concerning the compliance of the same legal act with the Constitution or laws, the Constitutional Court may join them into one case before beginning the judicial consideration".

¹¹⁹ Concerning applications by the Ombudsperson and constitutional revision

¹²⁰ See Decision CCT 24/08; CCT 52/08 of 21/01/2009, in CODICES

¹²¹ See for example decision CCD -751 of 15.04.2008 of the Constitutional Court of Armenia, pursuant to which the natural and legal persons affected by a law are entitled to challenge it before the Court.

obliged to reject a claim on the same subject as a pending case but be allowed to join it with the first claim.¹²²

3.3 Further relevant procedural rules

3.3.1 Adversary systems

See 6.1.7 Table: Adversary systems

114. Various laws on constitutional courts (including those of Armenia, Azerbaijan, Czech Republic, Georgia, Russia, and San Marino) provide that proceedings before the Court are adversary.

115. Adversary systems' advantage in constitutional proceedings is that the Court can take note of the different viewpoints and ponder on the arguments' validity, whereas in proceedings without open confrontation of positions, certain aspects may never reach the Constitutional Court. However, it should be ascertained that the Constitutional Court may investigate in its own to determine the truth so as to have tools to go beyond the arguments put forward by the parties¹²³.

116. It is important that the complainant¹²⁴ or the initiator of non-adversarial proceedings¹²⁵ be given the possibility to express him-/herself before the Constitutional Court. The **Venice Commission is in favour of the German¹²⁶ and Spanish provisions according to which in cases where the constitutional complaint is directed against a court decision, the Court should even give the party in whose favour the decision was taken an opportunity to make a statement.**¹²⁷ Courts, on the other hand, do not need to be heard if their decision is being reviewed, as their judgment reflects their position, but they are sometimes parties in preliminary ruling proceedings (e.g. Austria, Poland, Slovakia, Slovenia).

117. Adversariality does not necessarily mean oral proceeding: Proceedings most commonly take place in written form, with each party submitting its arguments¹²⁸.

3.3.2 Publicity of the procedure.

See 6.1.8 Table: Public proceedings and exceptions

118. Proceedings are usually public, but the Constitutional Court may weigh publicity against other legitimate public and party interests (e.g. Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Georgia, Italy, Liechtenstein, Lithuania, Russia, Serbia, Slovenia, South Africa, Switzerland, "the Former Yugoslav Republic of Macedonia").

¹²² [CDL-AD\(2006\)017](#) Opinion on the Amendments to the law on the Constitutional Court of Armenia

¹²³ [CDL-AD\(2001\)005](#), Opinion on the Draft Law on the Constitutional Court of Azerbaijan

¹²⁴ [CDL\(1997\)018rev](#) Opinion on the law on the Constitutional Court of Ukraine, adopted at the 31st plenary meeting of the Commission

¹²⁵ H. Steinberger, op.cit.

¹²⁶ Article 94 (3) Law on the Federal Constitutional Court: "If the constitutional complaint of unconstitutionality is directed against a court decision, the Federal Constitutional Court shall also give the party in whose favour the decision was taken an opportunity to make a statement."

¹²⁷ [CDL-AD\(2008\)030](#) Opinion on the Draft Law on the Constitutional Court of the Republic of Montenegro; Also in Albania, Andorra, Austria, Belarus, Belgium, Cyprus, Germany, Italy, Latvia, Romania and "the Former Yugoslav Republic of Macedonia", the parties in the ordinary proceeding can become parties in the review proceeding. See *General Report, XIIIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009., p.26

¹²⁸ [CDL-AD\(2004\)035](#) Opinion on the Draft Federal Constitutional Law "On Modifications and Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation"

119. From the perspective of human rights' protection public proceedings are preferable. The European Court of Human Rights repeatedly stated that the examination of a case before the Constitutional Court falls under Article 6(1) ECHR, leaving a margin of appreciation only as concerns the scope and measures of the implementation of this principle. Consequently, **proceedings before the Constitutional Court should be public, subject to restrictions only in narrowly defined cases.**

3.3.3 Conduct of oral proceedings

See 6.1.9 Table: Oral proceedings and exceptions

120. The advantage of oral proceedings is again the more direct confrontation of viewpoints and the fact that it is sometimes easier for a person to express his/her position orally, without having to comply with strict formal rules applicable to written proceedings. On the other hand, as it is important that in oral proceedings the parties are given effective possibility to expose their viewpoints, oral proceedings are very time-consuming. Following these considerations, three models exist in the states of this report: Either there are systematic oral proceedings, or decisions are based uniquely on written documents, or there is a combination of both¹²⁹. In Albania, Austria, Azerbaijan, Czech Republic, Italy, Germany, Liechtenstein, Slovenia and the United States, proceedings are oral, unless decided otherwise, which means that both oral and written procedures can be applied if deemed more adequate given the circumstances of the case. In South Africa, the Constitutional Court may decide an application on the basis of written submissions only and directions will be issued if oral argument is required. In practice, constitutional courts often dispense with oral proceedings (e.g. Germany¹³⁰ and Slovenia). In Hungary and Portugal, there are written proceedings only¹³¹. Oral proceedings are the exception in Switzerland; the review is usually based on the written arguments set forth by the parties.

121. In states with diffuse constitutional review, it is little surprising that proceedings are oral, as ordinary procedural rules apply (e.g. Denmark). In Sweden proceedings before the Supreme Court can be oral, but are mostly written.

122. The Venice Commission notes that it is widely accepted that it should be possible for the Constitutional Court to suspend oral proceedings if this is necessary to safeguard parties' or public interests¹³².

3.4 Interim measures

3.4.1 Suspension of implementation

See 6.1.10 Table: Suspension of implementation

123. Suspension of implementation of the challenged – normative and/or individual - act follows the logic of protecting the individual against irreparable damage, whereby it is the Constitutional Court who must decide on the suspension (e.g. Austria, Albania, Andorra, Belgium, Bosnia-Herzegovina, Croatia, Estonia, Georgia, Liechtenstein, Poland, Serbia, Slovenia, Spain, "the Former Yugoslav Republic of Macedonia" and the United States). Some states, however, for the sake of legal security, do not allow for a stay in the implementation of the act (e.g. Azerbaijan, Belarus, Bulgaria, Hungary, Latvia, Moldova, Montenegro, Portugal, Romania, Sweden,

¹²⁹ [CDL-AD\(2004\)035](#) Opinion on the draft federal constitutional law "on modifications and amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation"

¹³⁰ R. Jaeger, S. Broß, "Die Beziehungen zwischen den Verfassungsgerichtshöfen und den übrigen einzelstaatlichen Rechtsprechungsorganen, einschließlich der diesbezüglichen Interferenz des Handelns der europäischen Rechtsprechungsorgane", report for the XIIIth Conference of European Constitutional Courts, p.22

¹³¹ In Portugal there is only one exception to this rule for cases when the Constitutional Court is asked to declare that an organization carries on a fascist ideology: if the organization is abolished, a trial hearing must be held.

¹³² [CDL-AD\(2004\)035](#) Opinion on the draft federal constitutional law "on modifications and amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation"

Ukraine), whereas in Russia, the Constitutional Court may suggest to the relevant bodies to suspend implementation of the challenged act. In states with diffuse constitutional review, it is uncommon to suspend implementation (e.g. Denmark). In South Africa, when deciding a constitutional matter, a court may make any order that is just and equitable including making a temporary order. This may, where appropriate, include suspending the implementation of a normative act (statute). In Lithuania the challenged act may be suspended only in cases when the Constitutional Court receives submission by the President of the Republic to investigate whether an act of the Government is in compliance with the Constitution and the laws, or when it receives a resolution of the Parliament wherein it is requested to investigate whether a law of the Republic of Lithuania or other act adopted by the Parliament is in compliance with the Constitution, whether a decree of the President of the Republic, an act of the Government is in compliance with the Constitution and laws (article 26, Law on the Constitutional Court), but it is not a case when the ordinary court addresses with a preliminary ruling to the Constitutional Court.

124. The Venice Commission is in favour of the possibility to suspend implementation of a challenged individual and/or normative act, if the implementation could result in further damages or violations which cannot be repaired once the unconstitutionality of a provision is established¹³³. The conditions for suspension should not be too strict¹³⁴.

3.4.2 Stay of ordinary proceedings

See 6.1.11 Table: Stay of ordinary proceedings

125. Stay of ordinary proceedings in cases of preliminary ruling procedures. In Andorra, Armenia, Belgium, Chile, Cyprus, Latvia, Liechtenstein, Lithuania, Slovenia and Ukraine, the submitting court stays the proceedings in any case. In Austria, the suspension concerns “only what cannot be resolved in the absence of the constitutional decision”¹³⁵. The Croatian and Romanian regulations follow the same reasoning: If the ordinary court has doubts about a law it is about to apply, it must stay the proceedings; if doubts concern an administrative regulation, the court applies directly the law on which the regulation is based and refers the regulation to the Constitutional Court. In Slovenia, the ordinary court is obliged to stay ordinary proceedings when the issue of constitutionality concerns a law, but in case of by-laws ordinary courts can use the *exception illegalis*. Thus, the proceedings are not interrupted if this is not absolutely necessary to resolve the case at hand. The ordinary court in Spain may submit the question only after the end of the proceeding and before deliberating on the judgment; therefore, the judgment is subject to a decision by the Constitutional Court, even if ordinary proceedings continued even if there were already doubts as to the constitutionality of a provision. In Andorra, the proceedings continue, but the possibility of passing a judgment is limited: It must be established that the Constitutional Tribunal’s decision will not have an effect on the ordinary court’s judgment.

126. The ordinary judge should be obliged to suspend the case before them when s/he appeals to the Constitutional Court on the issue of constitutionality of the law applicable in the given case. Otherwise, the ordinary judge would be obliged to apply a of which he or she reasonably doubts the constitutionality.

3.4.3 Injunctive measures

See 6.1.12 Table: Injunctive measures

¹³³ See, for instance, [CDL-AD\(2004\)024](#) Opinion on the draft constitutional amendments with regard to the Constitutional Court of Turkey

¹³⁴ [CDL-AD\(2007\)039](#) Comments on the Draft Law on the Constitutional Court of the Republic of Serbia

¹³⁵ *General Report, XIIIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009., p.37

127. Injunctive measures. The Constitutional Court can order positive actions from the public authorities to ensure that no further harm is done to the applicant (e.g. Germany, Malta, Liechtenstein, South Africa, Switzerland).

3.5 Discontinuation if the petition is withdrawn

128. In the case of normative reviews, the Constitutional Court doesn't necessarily stop proceedings if the application is being withdrawn. **Following the withdrawal of the application, the Court should be enabled to continue the examination of the case if this is in the public interest.** This is an expression of the autonomy of constitutional courts and their function as guardians of the Constitution, even if the applicant is no longer party to the proceedings.

129. The same is possible in relation to review following a full constitutional complaint, if the Constitutional Court has the power to initiate a review of the normative act that underlies an individual decision or act – even if the individual complaint is being withdrawn, the Constitutional Court can have the possibility to continue its review of the normative act. For normative acts, some laws on the Constitutional Court impose a cessation of proceedings if the petition is withdrawn (e.g. Austria¹³⁶, Lithuania, Serbia, South Africa¹³⁷, Ukraine).

130. For individual acts, proceedings require necessarily that the applicant upholds his/her petition (e.g. Austria, Montenegro, Slovenia). The Constitutional Court of Slovakia has the power to refuse withdrawal of a full constitutional complaint. In Portugal, the view is that that once a petition has been submitted, the instance is no longer within the power of the petitioner, and therefore a petition cannot be withdrawn.

3.6 Discontinuation if the challenged act loses validity

131. There is no shared view on the possibility of the Constitutional Court to continue review proceedings. In some states, the Court terminates its review immediately (e.g. Czech Republic¹³⁸, Montenegro¹³⁹); in others, it continues its control and declares the act unconstitutional, whereby it can be limited to certain reasons for continuing review (e.g. Poland and Russia, if this is necessary to prevent Human Rights violations) or be entirely free to continue review (e.g. Liechtenstein, Serbia). In Lithuania, the annulment of the disputed legal act shall be grounds to adopt a decision to dismiss the instituted legal proceedings (article 69, paragraph 4 of Law on Constitutional Court), but according to the jurisprudence of the Court, in such cases, when an ordinary court investigating a case applies to the Constitutional Court after it has had doubts concerning the compliance of a law or other legal act applicable in the case with the Constitution (other legal act of higher power), the Constitutional Court has a duty to investigate the request of the court regardless of the fact whether or not the disputed law or other legal is valid (see, for instance, Ruling of 27th March 2009, part I of Court's reasoning, point 8).

132. **The mere discontinuation of a case can be insufficient for human rights protection in cases of concrete review or individual complaints. In such cases the Constitutional Court should be enabled to award or initiate pecuniary compensation for the violation of a right.**

¹³⁶ Article 57 (4), 62 (4) Law on the Constitutional Court

¹³⁷ Rule 27 of the Rules of the Constitutional Court.

¹³⁸ Article 67 Constitutional Court Act

¹³⁹ Article 65 Law on the Constitutional Court

4 DECISION

133. When Constitutional Courts decide in matters brought before them by individuals or courts or Ombudspersons acting in relation to a concrete case, their decisions certainly affect individuals' legal positions either directly or, in the case of the abstract *actio popularis*, potentially. In fact, the question is not only whether the Constitutional Court decides in favour of the applicant or not; the scope of the decision's effect as well as the possible retroactivity of a decision determines whether the grief the individual is confronted with can be effectively removed.

134. The ruling can have different consequences. The decision can have effects on a specified circle of persons or on everybody (see 4.2 below); Then, the Constitutional Court can have the power to annul or derogate the challenged provision, but this latter may also stay in effect and be only interpreted in a specific manner (see 4.3 below).

4.1 Time limits for taking the decision

135. Time limits for the adoption of decisions should not be too short to provide the Constitutional Court with the opportunity to examine the case fully and should not be so long to prevent the effectiveness of the protection of human rights via constitutional justice. From the perspective of the effectiveness of constitutional justice the Constitutional Court should be enabled to prolong the mentioned time limits in exceptional cases.¹⁴⁰

4.2 Scope of the decision

4.2.1 Scope of review

136. Once the Constitutional Court has admitted a petition (all or in part), there is no possibility to reduce the scope of review. The Constitutional Court must in any case reply to all questions put before it¹⁴¹. It cannot refuse or omit to reply. However, can it go beyond the application before it? What reasoning does such an extension follow?

4.2.1.1 No extension

137. In some states, the Constitutional Court's review is limited to the original petition (review *ultra petitur* is excluded), as is the case in Andorra¹⁴², Belgium¹⁴³, Georgia¹⁴⁴, Hungary, Montenegro¹⁴⁵, Poland¹⁴⁶ and Switzerland¹⁴⁷. The Constitutional Court can invalidate an act only

¹⁴⁰ E.g. Armenia: the Law on the Constitutional Court, in both the cases of abstract and concrete review, the Constitutional Court adopts the decision not later than 6 months after registration of the appeal and by a reasoned decision, the Constitutional Court can extend the time limit for case examination, but no longer than for three months.

¹⁴¹ *General Report, XIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009.

¹⁴² Article 7 Qualified Law on the Constitutional Court: "3. The decision or judgment determining a case, which has been declared admissible, may not contain considerations different from those submitted by the parties in their respective claims."

¹⁴³ C.A. n°12/86 du 25 mars 1986, 3.B.1

¹⁴⁴ Art.26 Law on the Constitutional Court: "The Constitutional Court shall not be competent to judge the conformity of the whole law or other normative act with the Constitution if the petitioner or applicant requests recognition of only a certain provision or provisions of the law or other normative act as unconstitutional."

¹⁴⁵ Article 63 draft law on Constitutional Court: "The Constitutional Court shall decide only on the violation of human right or freedom cited in the constitutional complaint."

¹⁴⁶ Article 66 Constitutional Tribunal Act: "The Tribunal shall, while adjudicating, be bound by the limits of the application, question of law or complaint."

¹⁴⁷ Article 107 Federal Judicature Act: Le Tribunal fédéral ne peut aller au-delà des conclusions des parties.

insofar as this has been petitioned and with reference to the constitutional provision or principle that was mentioned in the referral. This is often problematic as inexpertly filed petitions often don't set out clearly the basis on which an act is contested, or the challenged act itself, and thus have little chance of succeeding¹⁴⁸.

138. It follows that there are two possibilities for the Constitutional Court to extend its review beyond the explicit terms of the request: The Court can, on the one hand, review other acts concerning their constitutionality, and on the other hand, it can extend the circle of constitutional or other higher-ranking provisions that serve as review standards. A more restrictive approach is to limit the control to issues of substance; a broader approach would be to include review of procedure as well.

4.2.1.2 Extension of norms under review

See 6.1.13 Table: Extension of norms under review

139. In relation to requests to review normative acts, the Constitutional Court can decide to review the constitutionality not only of a challenged phrase, but of a whole law or act, and it may decide to review other normative acts (e.g. Austria, Croatia, Estonia, Liechtenstein, Lithuania¹⁴⁹, Serbia, Slovakia, Slovenia and "the Former Yugoslav Republic of Macedonia", and, to a lesser extent, in Germany¹⁵⁰, Italy, Moldova, Romania, Spain¹⁵¹ and Ukraine). Thereby, the Court combines the subjective and the objective function of constitutional review: The Court takes the original application as occasion for a more general review leading to a clearing up of the constitutional order, and, potentially, to a removal of more provisions violating subjective fundamental rights. The solution provided by Article 87 of the Russian Law On the Constitutional Court is worth mentioning, according to which a decision of unconstitutionality of a provision is the basis for the annulment of all other norms, which are based upon, reproduce or containing the same provisions as the unconstitutional provision.

140. If construed narrowly, the question is even more pressing with full constitutional complaints against individual acts. The Constitutional Court might have the power only to invalidate the individual act but be forbidden to lift the normative act that served as basis for the individual act, even if this act is unconstitutional and the violation challenged in the full constitutional complaint resulted from correct application of an unconstitutional normative act. The normative act thus stays valid, potentially exposing other persons to violations of their fundamental rights.¹⁵²

141. However, this situation is the exception (e.g. Switzerland, where the complaint¹⁵³ cannot lead to the opening of normative review proceedings).

¹⁴⁸ For instance, United States Supreme Court interprets the terms of a petition and conducts review not only on the explicit questions stated, but also on those implied in the petition: "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." In Portugal, to avoid problems arising from inexpertly filed petitions, the Rapporteur has the power to invite a petitioner who has not yet done so, to specify the decision he is filing an appeal against, which constitutional rule or principle he considers to have been breached (even if this does not limit the Court, see 4.1.1.3.), and to identify the document in the case file in which he originally raised the question of unconstitutionality or illegality.

¹⁴⁹ The Court hold that "The Constitutional Court, having established that the provisions of a law the compliance with the Constitution of which is not disputed by the petitioner but by which the social relations regulated by the disputed law are interfered with conflict with the Constitution, must state so" (Rulings of 9 November 2001, 14 January 2002, 19 June 2002, 27 June 2007, 3 March 2009, 2 September 2009).

¹⁵⁰ The Court may do so on the basis of Article 78 sentence 2 of the Law on the Federal Constitutional Court, which applies to the abstract review of statutes.

¹⁵¹ See A. Alen, op.cit.

¹⁵² The opposite situation is critical as well, i.e. when in the framework of the normative constitutional complaint, the Constitutional Court does not have the possibility to address the constitutionality of the individual act adopted on the basis of that norm.

¹⁵³ The complaint can only be directed against cantonal laws.

142. In Germany, Estonia, Liechtenstein and Lithuania the Constitutional Court has to annul the normative act in the same proceeding; in Austria¹⁵⁴, the Czech Republic and in Spain, the Constitutional Court is obliged to open a second proceeding for constitutional review, in Croatia, Slovenia and “the Former Yugoslav Republic of Macedonia”¹⁵⁵, this is a faculty. It is important to notice that in Austria, the law may only be lifted in its entirety if this doesn’t run counter to the complainant’s interests.

4.2.1.3 Extension of the circle of review standards

143. Often, individual applicants have difficulties specifying the precise grounds on which they lodge their application. In view of admitting a greater number of applications despite these errors, the Constitutional Court may issue decisions on another constitutional basis than that mentioned in the request¹⁵⁶ (e.g. Albania, Belgium, Bulgaria, the Czech Republic, Estonia, Germany, Portugal, Russia, Slovenia and Spain).

4.2.1.4 Interpretation of the impugned provision by the Constitutional Court

144. In order to reach its decision, the Constitutional Court must identify the contents of an impugned provision. Here, two possibilities can be envisaged: Either the Constitutional Court defers to the interpretation of ordinary courts or it gives its own interpretation.

145. Following a preliminary request, none of the constitutional courts considered in this report is “strictly bound by the interpretation of the reviewed regulation given by the referring court”¹⁵⁷ (see, for instance, Estonia¹⁵⁸), with the exception of Portugal, where the Constitutional Court has consistently stated that in concrete reviews of constitutionality, its review is limited by the referring court’s interpretation of the rule under consideration. The Austrian, Belgian and Spanish constitutional courts will in principle apply the interpretation contained in a referral by a court, except if another interpretation could be in line with the Constitution. The German Constitutional Court may ask the federal courts to submit their interpretations on a specific question, but is free to diverge from this interpretation¹⁵⁹. If it interprets statutes by its own, it must ensure that the ordinary courts will be ready to follow the Constitutional Court (see below).

146. In fact, the technique of “*réserve d’interprétation*” or “*verfassungsgemäße Auslegung*” (“power to ensure constitutionality through a specific interpretation”) through which the Constitutional Court imposes on all other state organs to apply a normative act only in a specific interpretation which the Constitutional Court has found to be constitutional, helps preserve normative acts even if one or several unconstitutional interpretations would be possible¹⁶⁰, but is ineffective if the ordinary courts and administrative bodies don’t follow this interpretation¹⁶¹. **An explicit legislative – or even better constitutional – provision obliging all other state organs, including the courts, to follow the constitutional interpretation provided by the Constitutional Court provides an important element of clarity in the relations between the**

¹⁵⁴ In Austria, the Constitutional Court opens itself a new abstract review proceeding of the normative act and stays the proceeding following the constitutional complaint. After having decided in the abstract proceeding, it takes up the concrete case again.

¹⁵⁵ See Article 56 and 14 Rules of Procedure of the Constitutional Court

¹⁵⁶ See *General Report, XIIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009.

¹⁵⁷ A. Alen, M. Melchior, *General Report, XIIth Congress of the Conference of European Constitutional Courts*, Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009

¹⁵⁸ §14 Constitutional Review Court Procedure Act: “(1) Upon hearing a matter the Supreme Court shall not be bound by the reasoning of a request, court judgment or ruling.”

¹⁵⁹ Article 82 Law on the Federal Constitutional Court. According to Article 82.4 sentence 1, this applies not only to the federal supreme courts but also to the supreme courts of the *Länder*.

¹⁶⁰ See CCT 1/00 in CODICES.

¹⁶¹ See X. Samuel, “Les réserves d’interprétation émises par le Conseil constitutionnel”, in: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/reserves.pdf, accessed 4 June 2009

Constitutional Court and ordinary courts and can serve as a basis to individuals for claiming their rights before the courts.

147. In order to overcome the problem of non application of the Constitutional Court's decision, the Italian Constitutional Court took the opposite way and developed the concept of "*diritto vivente*" (living law). The constitutional judge interprets a contested legal provision as it is "usually" interpreted by ordinary courts and decides on the unconstitutionality of this common interpretation, even if the provision could be interpreted in a constitutional manner. Thus, a law that has consistently been interpreted in an unconstitutional manner is annulled and the Parliament is called upon to adopt a new law which (hopefully) cannot be or is less likely to be interpreted in an unconstitutional manner. The Constitutional Court of the Republic of Armenia declares a challenged norms unconstitutional on the basis of the interpretation commonly given to the law in its application.

4.2.2 Effect *ratione personae*

148. A typical attribute of constitutional courts following the European model is the *erga omnes* effect of their decisions. *Erga omnes* effect of decisions means that these decisions become binding on everyone, as opposed to decisions which have effect only between the parties of the concrete legal dispute (effect *inter partes*). While decisions following a complaint against an individual act usually have *inter partes* effect, the scope of decisions when a normative act has been challenged can vary and depends mostly on the legislator's preference. See 6.1.14 Table: *Erga omnes* effect

Also, rulings take different effects depending on whether the Constitutional Court finds a provision constitutional or unconstitutional. See 6.1.15 Table: Confirmation of constitutionality

4.2.2.1 Review of normative acts

149. The most obvious example of *erga omnes* effect is if the Constitutional Court invalidates a normative act. It is then removed from the legal order and can no longer be applied by anyone. If a (Constitutional) court considers a normative act to be unconstitutional, several configurations come into play: It can be obliged to invalidate the act with effect *erga omnes*. It can also declare the unconstitutionality of the act, leave it unapplied, but refrain from (or be incompetent to) removing it from the legal order. In most cases in the countries examined in this report, the review of a normative act will lead to a decision which is binding on everyone.

150. A more nuanced view is necessary considering preliminary ruling procedures. First, exceptions of unconstitutionality and preliminary questions initiate review of a normative act. It is uncontested that a decision following an exception of unconstitutionality has a binding effect between the parties and that the ordinary court is obliged to apply the Constitutional Court's decision in the concrete case¹⁶². In many states, the Constitutional Court's decision goes beyond this finding of unconstitutionality *inter partes* and lifts the challenged normative act. Thereby, the legislator combined the idea of protection of subjective fundamental rights and that of objective constitutional review. This is the case for example in Albania, Bulgaria, Greece, Italy, Lithuania, Romania, San Marino, South Africa¹⁶³. Also, in Malta and other common law states, the binding effect of the Supreme Court's decision is inherent in the system of precedents.

¹⁶² See, for instance, Article 57 Andorran Qualified Law on the Constitutional Court: "2. The decision of the Constitutional Court is binding on the court which referred the matter to it. [...]"

¹⁶³ In South Africa, if a normative act (statute) is found by a court to be inconsistent with the Constitution it is declared invalid to that extent and, once this declaration of invalidity is confirmed by the Constitutional Court, the normative act (statute) no longer applies to any person.

151. Exceptions are Belgium, Luxemburg, and Cyprus, where the effect of a ruling of the Constitutional Court is expressly limited to the concrete case. Also, in Turkey, the submitting court shall only await the Constitutional Court's ruling and apply it if the Constitutional Court decides within five months. Otherwise, the submitting court must apply the challenged law. In Portugal, even if the law on the Constitutional Court provides that decisions' effects are limited to the submitting case, the Constitutional Court, if it has issued three rulings on the same matter, can decide to open abstract review proceedings of the challenged normative act and possibly invalidate it¹⁶⁴.

152. Also, the ruling of unconstitutionality following a normative constitutional complaint or a full constitutional complaint attacking a normative act has *erga omnes* effect (e.g. Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Germany, Hungary, Kyrgyzstan, Liechtenstein, Poland, Slovenia, South Africa).

153. In states with diffuse or mixed review systems there exist two diametrically opposed logics. On the one hand, decisions can have real *erga omnes* effect or a similarly broad scope. *Erga omnes* effect exists in Brazil and Mexico¹⁶⁵, where the Constitutional Court may declare a law unconstitutional after five consecutive rulings concerning the same general act. Also, the institute of precedents in common law systems provides for a binding authority of Constitutional Court decisions for lower courts. Hence, the declaration of inapplicability of a law due to its unconstitutionality, for instance, will be applied by all lower courts, except if they make use of "distinguish" explaining why the present case is different from the precedent (e.g. Canada¹⁶⁶, USA¹⁶⁷, Peru, Mexico). In Iceland, *stare decisis* is not inscribed in the Constitution, but is a constitutional custom. In Malta and Brazil, not only does the system of precedents create a certain general effect of rulings, but the Courts may also suggest legislative changes.

154. On the other hand, in Argentina, Chile, Denmark, Finland, Japan, Norway and Sweden, the Constitutional or Supreme Court limits itself to declaring the inapplicability of a normative act in the concrete case. There is no formal guarantee for unity of legal practice by the courts. Therefore, there needs to be a strong informal coherence within the court system, especially through information and willingness to follow certain guidelines, to avoid fragmentation of rulings and consequently legal uncertainty.

155. Another group of decisions on normative acts that don't necessarily have *erga omnes* effect are declarations of unconstitutionality (see below "Continuing validity of a challenged act").

¹⁶⁴ In Portugal the existence of three Constitutional Court's decisions issued in concrete review of constitutionality, in which a given rule was held unconstitutional, is a mere precondition for the initiation of an autonomous review – this time of an abstract type – of the constitutionality of the rule in question. Inasmuch as the new review is autonomous, nothing prevents the new decision, now taken by the thirteen-justices Plenary, from being different from the earlier decisions, issued by five-justices panels within individual Sections of the Constitutional Court. See Ruling no. 221/2009 of 5 May 2009, in which the representative of the Public Prosecutors' Office at the Constitutional Court asked the Court to declare, with generally binding force, the unconstitutionality of a rule contained in an Executive Law on charging the amount due for the provision of healthcare at an establishment or service belonging to the National Health Service, when the interested party had not displayed an NHS user card and had not, within the deadline laid down by the Executive Law, provided evidence that he either held such a card, or had asked the competent department to issue one. The Constitutional Court had already held the prevailing interpretation of this rule materially unconstitutional in three concrete review cases. However, in Ruling no. 221/2009 the Plenary decided not to declare its unconstitutionality. It is worth adding that the Public Prosecutors' Office possesses the competence to request this process of rendering jurisprudence uniform, but that the process can also be initiated by any of the individual Justices of the Constitutional Court itself. The request cannot be made by a private individual.

¹⁶⁵ T. Ginsberg, "Comparative Constitutional Review", United States Institute for Peace Projects, http://www.usip.org/ruleoflaw/projects/tg_memo_on_constitutional_review.pdf, accessed 02 March 2009

¹⁶⁶ <http://www.er.uqam.ca/nobel/r31400/jur2515/ndecours/jur2515chap7-2007.pdf>, accessed 2 March 2009

¹⁶⁷ See "The Court and Constitutional Interpretation", in: <http://www.supremecourtus.gov/about/constitutional.pdf>, accessed 04 May 2009

4.2.2.2 Review of individual acts

156. Usually, the decision following a full constitutional complaint or a writ of *amparo* challenging an individual act has effects only on the case or situation on the basis of which the proceedings were initiated¹⁶⁸. The question of the scope of a decision by the Constitutional Court raises fundamental problems concerning the role and effectiveness of constitutional complaints. It binds only the applicant, and the judicial or administrative body whose act was impugned, and possibly also the public bodies concerned with the concrete question also for the future, as long as the concrete situation at the origin of the case hasn't changed (e.g. Austria, Germany¹⁶⁹).

157. Three cases can be distinguished. Either the Constitutional Court decides on the substance or it quashes an individual act or it only orders a re-opening of a proceeding or a change of the administrative act, without annulling the act.

158. The Constitutional Court has the possibility to rule on the substance of the case in Canada, Cyprus (only concerning court decisions), Iceland, Ireland, Japan, Slovenia, South Africa, Spain and the United States. However, in most of these states, this is not the rule, and the Constitutional Court can decide to send the case back to a lower court for deciding on the substance¹⁷⁰.

159. If the Constitutional Court annuls a final court decision, it usually orders a re-trial of the case at hand (e.g. Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Germany, Liechtenstein, Portugal, Slovakia, Slovenia, Republic of Korea). Likewise, if the Court lifts an individual administrative act, the absence of an administrative act puts the administrative bodies in principle under an obligation to pass a new act.

160. If the Constitutional Court only sends a case back to the highest ordinary courts for re-opening of proceedings without actually quashing the unconstitutional decision (e.g. Azerbaijan), the delicate question arises whether the highest ordinary court will follow the orders passed by the Constitutional Court. Also, the strength of the Serbian¹⁷¹ regulation where the Constitutional Court suspends its proceedings to give the administrative or legislative body time to rectify a potentially unconstitutional situation depends greatly on the bodies' willingness to follow such indications.

161. While some of the Constitutional Courts can really give orders as to how the relevant body must act in order to be in conformity with the Constitution and to execute correctly the decision at hand (e.g. Czech Republic¹⁷², Kyrgyzstan¹⁷³, Malta, Slovakia¹⁷⁴, Slovenia, Spain¹⁷⁵, Ukraine¹⁷⁶), in other countries, no such power to indicate or to command positive actions exist. In the latter case, separation of powers is more clearly respected; however, it might cause a lack of effectiveness of the Court's decision.

162. As noted above, the Constitutional Court may have the possibility to extend its review by either opening a new proceeding or deciding on the question of constitutionality of a normative act on which the challenged individual act was based in the same proceeding; this (second) decision will then have *erga omnes* effect. But also the decision on an individual act can have

¹⁶⁸ *General Report, XIIIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009., p.45

¹⁶⁹ R.Jaeger, S. Broß, op. Cit., p. 27

¹⁷⁰ [CDL-INF\(2001\)009](#) Decisions of constitutional courts and equivalent bodies and their execution

¹⁷¹ Article 55 Law on the Constitutional Court

¹⁷² Article 82b) Constitutional Court Act

¹⁷³ Article 14 Constitutional Court Law

¹⁷⁴ Article 127 (3) Constitution

¹⁷⁵ Article 55 1 c Organic Law on the Constitutional Court

¹⁷⁶ Article 70 Law on the Constitutional Court

an effect that is not limited to the submitting case: In Montenegro, when the Constitutional Court decides on an individual act through which several persons' rights were violated but only one or some of them complained to the Constitutional Court, the decision extends to all aggrieved persons. Also, in some states, the Constitutional Court may announce that future administrative or judicial acts comparable to the one annulled by the Constitutional Court will be unconstitutional in the future (e.g. Germany)¹⁷⁷. Hence, even when deciding in an individual case, the Constitutional Court gives general directions as to how courts or administrative organs or bodies may behave in order to act within the Constitution.

4.2.2.3 *Erga omnes* effect of rejections of applications

163. The rejection of an application has effect *inter partes* (e.g. San Marino¹⁷⁸), but has a broad importance in practice, as potential future applicants (especially ordinary courts) go by the Constitutional Court's decision and can already preview whether their application will probably be unsuccessful¹⁷⁹.

4.2.2.4 *Erga omnes* effect of rulings confirming constitutionality

See 6.1.15 Table: Confirmation of constitutionality

164. The scope of effects of rulings in which the Constitutional Court confirms the constitutionality, that is, where it refuses to invalidate a normative or individual act, is disputed.

165. Two opposing rationales exist: First, in Austria, Romania, Spain and Switzerland, the Constitutional Court will not accept any future applications regarding the same statute with respects to the same provision constitutionality by the same person¹⁸⁰. The ruling thus has effect between the litigants¹⁸¹.

166. On the other hand, rulings confirming the compatibility with the Constitution can have *erga omnes* effect. The ordinary judge in Peru must not consider questions of unconstitutionality put forward by a party if they concern a norm whose constitutionality has been affirmed by the Constitutional Tribunal in a previous ruling. Likewise, in Andorra, Armenia, Belgium, the Czech Republic, Germany¹⁸², Serbia and Lithuania, rulings of constitutionality are final. This means that the question may not be raised anymore at all or for a certain period of time (Armenia, Turkey).

167. The rules applicable in Slovenia and "the Former Yugoslav Republic of Macedonia"¹⁸³ take an intermediary position, as the Constitutional Court will not take up a question again if there are no reasons to believe that it will rule differently this time. *A contrario*, if there are reasonable doubts, it will admit an application.

¹⁷⁷ R. Jaeger, S. Broß, op.cit., p. 27

¹⁷⁸ Article 13 Qualified Law on the Organisation of the Collegio Garante

¹⁷⁹ R. Jaeger, S. Broß, op. cit., p. 26 f

¹⁸⁰ Except if the question is presented under a new angle.

¹⁸¹ G. Kucsko-Stadmayer, "Die Beziehungen zwischen den Verfassungsgerichtshöfen und den übrigen einzelstaatlichen Rechtsprechungsorganen, einschließlich der diesbezüglichen Interferenz des Handelns der europäischen Rechtsprechungsorgane", report for the XIth Conference of European Constitutional Courts, 2002, p. 23

¹⁸² However, the question of constitutionality of a statute can be raised again before the Federal Constitutional Court if there has been a substantial change of the factual or legal situations since the first decision.

¹⁸³ See Art.28 Rules of Procedure of the Constitutional Court

4.2.2.5 *Stare decisis* in systems with diffuse review

168. The U.S., Cyprus¹⁸⁴, Mexico, South Africa and Peru¹⁸⁵ apply the system of precedents (lower courts are bound by the interpretation of higher courts), which ensures a large degree of coherence of the courts' decisions, coming close to *erga omnes* effect in civil law systems. A lower court may sometimes refuse to apply the *ratio decidendi* (reasoning) of the higher court's ruling, but has to explain why the current case differs from the precedent case in order to justify its new ruling. Notwithstanding the principle of *stare decisis*, the highest courts of common law countries, like in the U.S. and in the United Kingdom (since 1966) can overrule their own decision by a majority of the judges and with adequate motivation. In some civil law states (e.g. Andorra¹⁸⁶), the Constitutional Court is bound by its own precedents, but may overrule them by motivated decision of a certain majority of its members. The same applies in Switzerland¹⁸⁷, where the plenary must decide in cases where a section intends to diverge from another section's rulings. In Lithuania, according to the jurisprudence of the Constitutional Court of Lithuania, the Constitutional Court is bound by the precedents that it itself has created and by the official constitutional doctrine which has been formulated by the Constitutional Court and which substantiates these precedents (Constitutional Court decision of 21 November 2006). It may be possible to deviate from the Constitutional Court precedents created while adopting decisions in cases of constitutional justice and new precedents may be created only in the cases when it is unavoidably and objectively necessary, constitutionally grounded and reasoned. The said necessity to reinterpret certain official constitutional doctrinal provisions so that the official constitutional doctrine would be corrected may be determined only by the circumstances as the necessity to increase possibilities for implementing the innate and acquired rights of persons and their legitimate interests, the necessity to better defend and protect the values enshrined in the Constitution. (Constitutional Court ruling of 24 October 2007).

4.3 Temporal effects of the decision

4.3.1 *Ex tunc* or *ex nunc* invalidation of an act

See 6.1.16 Table: *Ex nunc* or *ex tunc* effect of the Constitutional Court's decision

169. Decisions concerning the unconstitutionality of a normative act can have different temporal effects. The doctrine of nullity ("*Nichtigkeitstheorie*") opposes itself to the doctrine of invalidity ("*Vernichtbarkeitstheorie*"). This poses the dilemma between dogmatic coherence (if the unconstitutional act is considered as never having been part of the legal order) and legal security (with continuing validity of acts based on the derogated act prior to the entry into force

¹⁸⁴ http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLfaq_en/DMLfaq_en?OpenDocument, accessed 4 June 2009

¹⁸⁵ Article VI Code of Constitutional Procedure (p.t.): "The judges interpret and apply the law or any norm with force of law and the regulations following the constitutional precepts and principles, in conformity with the interpretation of the latter undertaken in the resolutions passed by the Constitutional Tribunal. (Los Jueces interpretan y aplican las leyes o toda norma con rango de ley y los reglamentos según los preceptos y principios constitucionales, conforme a la interpretación de los mismos que resulte de las resoluciones dictadas por el Tribunal Constitucional.) Article VII: "The judgments of the Constitutional Tribunal which obtain the authority of res iudicata become a binding precedent if the judgment so states, specifying the extent of its normative effect. If the Constitutional Court decides to deviate from the precedent, it must enunciate the factual and legal basis that underlies the judgment and the reasons why the Tribunal deviates from the precedent. (Las sentencias del Tribunal Constitucional que adquieren la autoridad de cosa juzgada constituyen precedente vinculante cuando así lo exprese la sentencia, precisando el extremo de su efecto normativo. Cuando el Tribunal Constitucional resuelva apartándose del precedente, debe expresar los fundamentos de hecho y de derecho que sustentan la sentencia y las razones por las cuales se aparta del precedente.)

¹⁸⁶ Article 3 Qualified Law on the Constitutional Court: "1. The Constitutional Court is subject only to the Constitution and to this Law. The precedents laid down by the Constitutional Court bind the Court in its subsequent interpretation of the Constitution; however, they may be amended by a reasoned decision taken by an absolute majority of its members. 2. For the purposes of the preceding paragraph, a precedent is presumed to exist where at least two identical cases have been resolved with the same decision and are based on the same doctrine."

¹⁸⁷ Article 23 Federal Judicature Act

of the Constitutional Court's decision)¹⁸⁸. No country under review in this report has opted for the former solution without leaving a certain room for manoeuvre to the Constitutional Court, because the annulment of an important normative act on which many individual acts are based could have vast consequences. The choice between annulment and derogation also has effects on the individuals' readiness to file a complaint against a normative act. If the court invalidates the norm with prospective effect, the claimant's case will not be solved by the removal of the unconstitutional general norm. Therefore, to provide an incentive for individuals to complain against normative acts, some states envisage a retroactive effect of the decision applying uniquely to the claimant's case (the so-called "premium for the catcher"¹⁸⁹). For example, in Hungary, the decision of the Court, albeit its merely derogatory effect, is applied to the individual applicant's case.

170. Only relatively few countries introduced *ex tunc* effect of Constitutional Court rulings. These are Andorra, Belgium, Germany, Italy, Kyrgyzstan, Poland, Portugal, Russia and Slovenia.

171. Amongst these countries, only Andorra, Belgium, Kyrgyzstan, Russia and Slovenia¹⁹⁰ provide for a vast *ex tunc* effect with only few exceptions which need to be specified by the Constitutional Court, whereas all other states (e.g. Germany¹⁹¹, Italy, Portugal) restrict the declaration of pre-existing nullity to acts other than final court decisions.

172. *Ex nunc* effect has been introduced in Albania, Armenia, Austria, Chile, Croatia, Czech Republic, Georgia, Hungary, South Korea, Latvia, Liechtenstein, Lithuania, Moldova, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia¹⁹², Spain, Switzerland, "the Former Yugoslav Republic of Macedonia", Mexico.

173. Here again, most states have certain moderations to the derogatory effect.

4.3.2

4.3.3 Moderations to the invalidations and their temporal effects

174. Both *ex tunc* and *ex nunc* rulings' inconvenients are sometimes found to need extenuation. One of the possibilities is to provide for the Constitutional Court to set the moment of entry into force of its decision (either in the past, as a middle course between nullity and derogation, or at some moment in the future, or both). The other possibility is to resort to techniques of (authoritative) interpretation that combine adequate protection of the Constitution and constancy of the legal order in that not all provisions are removed immediately from the legal order. In South Africa, a court declaring a normative act (statute) invalid on the ground of inconsistency with the Constitution may make an order relating to the extent of its retrospective effect.

175. *Ex tunc* decisions don't affect final court decisions. Legal certainty concerning final court decisions has been given the priority in the majority of states with retroactive Constitutional Court decisions (e.g. Italy, Portugal).

¹⁸⁸ The Albanian and Russian regulations are remarkable in that they state explicitly that the Constitutional Court may order an immediate effect of its decision even before publication if this is necessary to protect the individual's constitutional rights.

¹⁸⁹ Term exists in Austrian doctrine ("*Ergreiferprämie*"), for the translation see [CDL\(2008\)065](#), Opinion on the draft laws amending and supplementing (1) the law on constitutional proceedings of Kyrgyzstan and (2) the law on the Constitutional Court of Kyrgyzstan, 2008

¹⁹⁰ When the Constitutional Court annuls an unconstitutional or unlawful regulation or general act issued for the exercise of public authority. In Slovenia annulment has *ex tunc* effect. Art. 45(2) of the Constitutional Court Act.

¹⁹¹ According to Article 79.1 and 79.2 Law on the Federal Constitutional court, final decisions which are based on a statute that has been declared null and void remain unaffected even if a provision or a law is declared null and void *ex tunc*. Only in the case of a final conviction may new proceedings be instituted in accordance with the provisions of the Code of Criminal Procedure.

¹⁹² When the Constitutional Court abrogates either an unconstitutional law or an unconstitutional or illegal regulation or general act issued as exercise of public authority..Abrogation has *ex nunc* effect. Arts. 43 and 45(3) of the Constitutional Court Act.

176. *Ex tunc* effect for criminal cases. However, the reopening of criminal lawsuits is very common, even in countries with derogatory effect of Constitutional Court decisions, if this would lead to a more favourable penalty (e.g. Albania, Czech Republic, Hungary, Italy, South Korea, Moldova, Portugal, Romania, Slovenia, Spain, South Africa, Mexico, and Uruguay). In South Africa, a new ground for review of sentencing was established when such sentencing was conducted in accordance with an unconstitutional normative act (statute).¹⁹³ In Portugal, the Constitutional Court can provide for retroactive effects of a decision when the rule declared unconstitutional or illegal concerns criminal or disciplinary matters, or administrative offences, when its content is less favourable to the accused.¹⁹⁴ In Czech Republic reopening of the criminal proceeding is possible only if a judgment has not been enforced yet¹⁹⁵, whether in Slovenia, criminal proceedings can be reopened even in the presence of a final judgment, if the statute on which the conviction was based has been annulled or abrogated.

177. Specific delay of invalidation. Almost all states have specific regulations on the entry into force and the possible retroactive effect of the Constitutional Court's decision. Decisions enter into force already on the day of proclamation in Albania if this is necessary to protect the fundamental rights of the individual. Some states who apply the principle of derogatory effect of Constitutional Court decisions provide for retroactivity to repair or prevent damage (e.g. Armenia, Azerbaijan, Slovenia). Serbia and "the Former Yugoslav Republic of Macedonia" have provisions according to which individuals can request the reopening of proceedings in all cases where a final decision was based on an invalidated normative act. In a more restricted manner, the "premium for the catcher" (retroactive effect only in the submitting case) has been introduced in Armenia¹⁹⁶, Austria, Hungary, with moderations Liechtenstein.

178. Continuing validity of the provision. Several cases must be distinguished. In states with diffuse constitutional review, a challenged normative act cannot be invalidated but becomes inapplicable by lower instance courts (e.g. Denmark, Finland, Iceland, Malta, Norway, Sweden). In Malta, for instance, the Constitutional Court submits its decision to the legislator who is free to change legislation in accordance with the Court's ruling or not. Also, in Switzerland, the Federal Court cannot invalidate unconstitutional federal laws, but declare their unconstitutionality, which leaves the law in force.

179. The constitutional courts of Andorra, Germany, Poland, and Portugal, Slovenia and South Africa have the possibility of declaring a statute incompatible with the Constitution. The provision is then usually inapplicable but not void, and the legislator must change it so as to bring it in line with the Constitution within a specified period of time. In Germany, this option is chosen in particular in cases related to the principle of equality. The Constitutional Court sometimes gives concrete directives on the application of the law during the transitory period accorded to the legislator to change the law¹⁹⁷.

180. The same result is achieved in states whose Constitutional Court adopts decisions with *ex nunc* effect if the Court can suspend its entry into force (e.g. Austria, Azerbaijan, Hungary, Latvia, Liechtenstein¹⁹⁸, Slovenia, South Africa¹⁹⁹ and Switzerland²⁰⁰).

¹⁹³ See CCT 98/08 in the CODICES.

¹⁹⁴ One example of this is provided by Ruling no. 232/2004 of 31 March 2004, in which, with generally binding force, the Court declared the unconstitutionality of rules concerning accessory penalties involving the deportation of foreign citizens who are responsible for underage children who hold Portuguese nationality and reside in Portuguese territory. However, the Court determined the effects of the unconstitutionality of these rules in such a way as not to exclude cases in which sentences including accessory penalties of deportation had already been handed down, but had not yet been executed when Ruling no. 232/2004 was published.

¹⁹⁵ Section 71 of the ACC

¹⁹⁶ [CDL-AD\(2006\)017](#) Opinion on Amendments to the Law on the Constitutional Court of Armenia

¹⁹⁷ R. Jaeger, S. Broß, op. cit., p. 26

¹⁹⁸ See H. Wille, National report for the XIVth Conference of European Constitutional Courts, p.17, in: http://www.Irkt.lt/conference/Pranesimai/Q_Liechtenstein_D.doc#_Toc198870236

4.4 Material effects: Capacity of Constitutional Court to attribute damages

See 6.1.17 Table: Capacity of constitutional courts to attribute damages

181. Most of the constitutional courts under consideration here do not themselves have the capacity to attribute damages to the individual whose rights have been violated either through an individual or a normative act. Very often, however, the Constitutional Court's decision will only lead to a re-opening of the individual case (if an individual act was attacked or in the case of "rewards for the catcher" in relation to normative complaints), where the lower ordinary court or tribunal may then decide on the attribution of damages according to the applicable procedural rules (e.g. Cyprus). Also, if a ruling of unconstitutionality of a normative act has *ex tunc* effect, all acts based on the unconstitutional law since its entry into force are null and void and allow for re-opening of proceedings before ordinary courts.

182. In common law states, damages are a part of tort law; if a public authority infringes on individual rights, the individual is entitled to satisfaction.

183. It is also quite unsurprising that in states with diffuse review, in ordinary proceedings the individual may put a claim for compensation against a state authority whose action violated the individual's rights. In South Africa, the award of "constitutional damages", based solely on the infringement of a constitutional right, was held by the Constitutional Court to be competent under the court's jurisdiction to grant "appropriate relief".²⁰¹

5 OTHER QUESTIONS

5.1 Delimitation of jurisdiction between constitutional courts and ordinary courts

184. In the case of a violation of individual fundamental rights, redress should be accessible as quickly as possible. In this respect, the question of the relation between ordinary courts and the Constitutional Court is relevant. First of all, it is the ordinary courts that are at the front-line of application of ordinary (and constitutional) laws and whose role in ensuring the primacy of the Constitution can't be overestimated. The ordinary courts are the first ones to detect if the application of a law poses a problem with respect to the Constitution, and their understanding of the content of constitutional provisions will determine the overall quality of protection of the constitutional order and, and this is where the question becomes relevant for the individual, in the protection of fundamental rights. There are different modalities concerning the allocation of competences and the social valuation of the Constitutional Court and the ordinary courts, which have repercussions on the courts' relations. Also, the competence and willingness of ordinary courts to examine questions of constitutionality is important for the aggrieved individual as violations can be addressed more quickly either in the ordinary proceeding (in diffuse or special type systems) or through a preliminary question.

185. There are several sets of problems concerning the relations between ordinary courts and the Constitutional Court. First, the question of competence (to what extent do constitutional courts interfere in the ordinary courts' jurisdiction?). Second, the question of interpretation,

¹⁹⁹ See CCT 19/07 in the CODICES.

²⁰⁰ Concerning cantonal laws and decrees

²⁰¹ See CCT14/96 in the CODICES

which is twofold: Does the Constitutional Court refer to ordinary courts' interpretations and do ordinary courts apply the Constitutional Court's ruling ?

5.1.1 Review competences

186. "Systems that divide legal authority between a constitutional court and a supreme court face co-ordination problems when allocating jurisdiction and resolving inconsistencies in ruling."²⁰² As L. Garlicki points out, tensions between constitutional courts and supreme courts are inevitable in a system of concentrated constitutional jurisdiction: Specialised constitutional courts that are usually placed outside the ordinary judicial system must interpret the vague terms used in the Constitution, thus imposing itself as the competent body to precise constitutional principles. The fact that the Constitutional Court is competent to review not only on an abstract, but also on an incidental basis, and that its interpretations touch almost every legal branch, infringes on the traditional role of ordinary courts to interpret "their" codes and limits their scope of action when applying a provision. As constitutional courts interfere in concrete cases they evaluate the application and interpretation of statutes through ordinary courts.

187. Gusy²⁰³ situates the difference between constitutional courts and ordinary courts as concerns the protection of individuals' rights less in the fact that the former can review the latter's judgments than in the Constitutional Court's function as a provider of a specific fundamental rights guarantee, whereas the ordinary courts' task is to ensure the restoration of legality in horizontal and vertical relationships. Constitutional courts conduct purely legal reflections, whereas ordinary courts must decide in the concrete case at hand²⁰⁴. Therefore, while Supreme Courts in diffuse review systems decide on constitutional matters only if this is necessary for the current dispute, constitutional courts conduct a comparatively abstract review²⁰⁵.

188. Generally, the relation between the Constitutional Court and ordinary courts is less conflict ridden with normative constitutional complaint than with full ones²⁰⁶, as the Constitutional Court does not directly review the application of a normative act through the ordinary court. However, even in states with normative constitutional complaints, frictions can arise as soon as the Constitutional Court challenges the limits imposed to its review. In Hungary, the Constitutional Court can to some point express itself on the application of a normative act using the *diritto vivente* technique (see above) to interpret the statute at hand. Thus, if it finds the statute unconstitutional, this can be due to an unconstitutional constant interpretation by ordinary courts²⁰⁷ and the Constitutional Court "appear[s] as a fourth level of jurisdiction ... overseeing the decisions of the ordinary jurisdictions."²⁰⁸

189. As the Venice Commission puts it, "some constitutional courts having implemented the review of constitutional complaints faced the problem of interference with ordinary courts. The possibility to review the decisions of ordinary courts may create tensions, and even conflict between ordinary courts and the Constitutional Court. Therefore **it seems necessary to avoid a solution that would envisage the Constitutional Court as a "super-Supreme Court"**. Its

²⁰² T. Ginsberg, "Economic Analysis and the Design of Constitutional Courts", *Theoretical Inquiries in Law* 3 (2006), cit. in: Sadurski, op. cit., p.19

²⁰³ See C. Gusy, "Die Verfassungsbeschwerde", *Das Bundesverfassungsgericht im politischen System*, VS Verlag für Sozialwissenschaften, Wiesbaden, 2006, p. 205

²⁰⁴ See H. Schwartz, op.cit., p. 26

²⁰⁵ See M. Rosenfeld, op.cit.

²⁰⁶ See W. Sadurski, op.cit., p.7ff

²⁰⁷ H. Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe*, Chicago University Press, Chicago, 2000

²⁰⁸ L. Favoreu cit. in: H. Schwartz, op.cit., p. 25

relation to "ordinary" high courts (Court of Cassation) has to be determined in clear terms."²⁰⁹ "The Constitutional Court should only look into "constitutional matters", leaving the interpretation of ordinary law to the general courts. The identification of constitutional matters can be difficult in relation to the right to fair trial, where any procedural violation by the ordinary courts could be seen a violation of the right to a fair trial. Some restraint by the Constitutional Court seems appropriate, not least in order to avoid its own overburdening but also out of respect of the jurisdiction of supreme courts.

5.1.2 Binding force of the reasoning part of the judgment

190. The reasoning part of a judgment is where the court gives shape to its decision, where not only the "reasons" are reflected, but where also indications for the future position of a court on a specific question are given. Often, constitutional courts give interpretations of constitutional and legal precepts in the reasoning part. In states where supreme courts accept informally the Constitutional Court's interpretation of constitutional provisions, which is more and more the case (institutional loyalty between constitutional bodies²¹⁰), uniformity of application is guaranteed. However, the question of a formal binding force of the Constitutional Court's decisions' *ratio decidendi* opposed ordinary courts and the Constitutional Court²¹¹ amongst others in the Czech Republic. The latter, in favour of a generally binding force, argued that the justification of the decision actually contained the constitutionally required interpretation of the Constitution, and must thus be applied by ordinary courts in the future. However, ordinary courts frequently "refuse to decide in conformity" with the Constitutional Court's interpretation.²¹² In Germany, the Benetton I and II rulings of the Federal Constitutional Court are an evidence of this conflict: the Constitutional Court annulled a decision by the Federal Court of Justice contrary to the prior Constitutional Court's decision²¹³. P. Paczolay, when describing the relations between the Constitutional Court and ordinary courts in Hungary, writes:" [one of the interferences is t]he constitutional review of the normative decisions of the Supreme Court (these decisions are issued to secure the unity of judicial statutory interpretation). This competence of the Constitutional Court – after years of hesitation – was pronounced by the Court itself in 2005."²¹⁴ In Austria, the interpretation of the Constitutional Court is binding on the ordinary court in the concrete case, but if the court doesn't abide by it, the individual can only challenge this court's decision before higher ordinary instances; court decisions cannot be challenged before the Constitutional Court²¹⁵.

191. In common law systems, the operative part is the only part of the judgment that can constitute a binding precedent, whereas the reasoning part (or *obiter dicta*) only have persuasive power²¹⁶.

192. Albania, Andorra, Austria (concerning general administrative acts), Belgium, Bosnia-Herzegovina, the Czech Republic, Georgia, Germany, Hungary, Italy, Liechtenstein, Lithuania,

²⁰⁹ [CDL-AD\(2004\)024](#) Opinion on the Draft Constitutional Amendments with regard to the Constitutional Court of Turkey

²¹⁰ [CDL-JU\(2009\)001](#), "Reflections on the Execution of Constitutional Court Decisions in a Democratic State under the Rule of Law on the Basis of the Constitutional Law Situation in the Federal Republic of Germany", Baku, 2008

²¹¹ L. Garlicki, "Constitutional courts versus supreme courts", *International Journal of Constitutional Law* 2007 5(1), Oxford University Press, Oxford, in: <http://icon.oxfordjournals.org/cgi/content/full/5/1/44#FN59#FN59>, accessed 11 February 2009

²¹² P. Holländer, "The Role of the Czech Constitutional Court: Application of the Constitution in Case Decisions of Ordinary Courts", *Parker Sch. J.E.Eur. L* 4 (1997), cit. in: W. Sadurski, op.cit., p.22 f

²¹³ D.H.Scheuing, "Allemagne", Table Ronde: Justice constitutionnelle; justice ordinaire; justice supranationale: A qui revient la protection des droits fondamentaux en Europe? *Annuaire de justice constitutionnelle*, 2004, Presses universitaires d'Aix-Marseille, p. 157

²¹⁴ [CDL-JU\(2008\)040](#), P. Paczolay, "The Jurisdiction of the Hungarian Constitutional Court", report for the seminar "Models of constitutional jurisdiction", Ramallah, 2008

²¹⁵ G. Kucksko-Stadlmayer, *Beziehungen*, op.cit., p.27

²¹⁶ See for the U.S. *Central Green Co. V. United States* (99-859) 531 U.S. 425, in: <http://www.law.cornell.edu/supct/html/99-859.ZS.html>, accessed 04 May 2009

Malta, Poland, Slovakia, Slovenia, Romania, Russia, Spain, Turkey and “the Former Yugoslav Republic of Macedonia” all ordinary courts are competent to initiate a preliminary ruling procedure by putting a question before the Constitutional Court.

193. Submission of preliminary questions can be limited with the goal to raise the quality of submissions. In Austria (concerning laws), Azerbaijan, Belarus, Bulgaria, Greece, Moldova and Latvia, only the highest courts are authorised to make a preliminary request, and in Cyprus, only courts having jurisdiction in family issues can refer preliminary questions. In Russia and Belarus, the highest courts are authorised in addition to initiate an abstract review procedure.

194. While this is an effective tool to reduce number of preliminary questions and consistent with the logic of exhaustion of remedies (the individual should follow the ordinary sequence of courts), this leaves the parties to a proceeding in a potentially unconstitutional situation for a long period of time, as lower courts are obliged to apply the law even if they have doubts as to its constitutionality. **From the viewpoint of human rights protection, it is more expedient and efficient to give access to courts at all levels to the Constitutional Court.**

5.1.3 Obligation to put a preliminary request

195. The question not necessarily being clearly regulated by the Constitution, the constitutional courts struggle to impose a mandatory referral on ordinary courts concerning the ruling of constitutionality of a normative act that should be applied in a pending case, as this strengthens the Constitutional Court’s unifying and formulating role²¹⁷. Amongst those states where the faculty of submitting preliminary questions exists, three groups can be distinguished:

196. First, states in which ordinary courts don’t have discretion. As soon as they detect facts that could create doubts concerning the constitutionality of a law they would need to apply in a given case (Albania, Austria, Belgium, Bosnia-Herzegovina, Lithuania, Moldova, and Romania). Also, in Austria, a broad interpretation is given to the circle of laws that “could be applied” in a concrete case: the Constitutional Court will only reject a preliminary question if it is unthinkable that the provision could be necessary to the resolution of the proceeding at hand²¹⁸.

197. In Bulgaria, Czech Republic, Cyprus, Germany, Hungary, Italy²¹⁹, Luxemburg, Malta, Russia, Slovakia, Slovenia, Spain, Turkey, the ordinary judge refers a preliminary question to the Constitutional Court only if he/she is convinced of the unconstitutionality of a normative act and of the inexistence of an interpretation that would allow for a constitutional application of the law. This is particularly the case when parties in proceedings raise an exception of unconstitutionality. However, the Venice Commission notes that **it would be too high a threshold to condition preliminary questions with ordinary judges’ conviction of the unconstitutionality of a provision; serious doubts should suffice**²²⁰.

198. In Cyprus, ordinary courts are not obliged to pass on a question concerning the constitutionality of statutes to the Constitutional Court. This seems to be related to the relatively weak position of the Constitutional Chamber²²¹ in systems that combine elements of diffuse and concentrated review.

199. Thirdly, in the Czech Republic, Estonia, Germany and Slovenia, ordinary courts try to interpret a provision in line with the Constitution, and only if this is impossible, refer the question

²¹⁷ *General Report, XIIIth Congress of the Conference of European Constitutional Courts*, (A. Alen, M. Melchior), Brussels, 2002, p.7, in: <http://www.confcoconsteu.org/en/common/home.html>, accessed 23 February 2009.

²¹⁸ G. Kucsko-Stadlmayer, *Beziehungen*, op. cit., p. 25 and following

²¹⁹ See L.Garlicki, op. cit., and W. Sadurski, op.cit.

²²⁰ [CDL-INF\(2001\)28](#) Interim Opinion on the Draft Law on the Constitutional Court of the Republic of Azerbaijan

²²¹ C. Hönnige, “*Verfassungsgerichte in West- und Osteuropa*”, in: *Verfassungsgericht, Regierung und Opposition*, Verlag für Sozialwissenschaften, Wiesbaden, 2007, p. 131

to the Constitutional Court. In Hungary, the Constitutional Court is in principle competent to decide on the unconstitutionality of legal omissions. However, it will only rule on the question of legal gaps if the ordinary courts could not fill the gap in practice through analogy²²².

200. Another question concerns the courts' discretionary power in deciding whether or not an exception of unconstitutionality raised by one of the parties to an ordinary process must be referred to the Constitutional Court. In Italy, Luxemburg, Malta and Spain, the ordinary judge's decision not to pose a preliminary question after a request by a litigant party to do so underlines the former's autonomy in that the refusal must be motivated, but cannot be appealed. However, the refusal does not necessarily impede the petitioner's right to demand a referral of the preliminary question at every instance (the San Marinese law expresses this clearly). In Uruguay, on the other side, there exists a complaint against the refusal of the court, and in Cyprus and Romania, the ordinary judge is obliged to put a preliminary question before the Constitutional Court upon request by one of the parties.

5.2 Problem of direct individual access and overburdening of the Constitutional Court

201. The dilemma between overburdening of the Constitutional Court and providing an efficient Human Rights protection system has been solved in various ways: Some states opted against the introduction of the individual complaint from the outset, others defined filters to sift requests that are deemed unserious or "manifestly" or "most probably" unsuccessful.

202. All filters described above serve the purpose of reducing the Constitutional Court's case law. In addition, organisational changes as well as greater selectivity can serve the alleviation of the Court's caseload.

5.2.1 Pilot judgments or writs of certiorari

203. The United States Supreme Court²²³ is not obliged to review all the cases brought before it, but may choose the questions it deems relevant for protection of the constitutional order or for development of the case-law. Whilst the workload is diminished according to the Supreme Court's degree of selectivity, this discretion in selecting cases eliminates systematic individual protection. **The Venice Commission believes therefore that a writ of certiorari procedure is not advisable, at least in a system where the ordinary or lower ranking courts have not yet achieved a very high degree of independence and efficiency. Concerning pilot judgments²²⁴, the risk of erroneously denying review to a case that is substantially different from that of the pilot judgment is too great to be justified by its alleviating effect on the Court's workload.**

204. However, constitutional courts must be given the tools to prevent unserious, abusive or repetitive complaints.

²²² L. Csink, P. Paczolay, "Problem of legislative omission (sic) in constitutional jurisprudence", Hungarian National Report for the 14th Conference of Constitutional Courts, Vilnius, 2008 in: http://www.lrkt.lt/conference/Pranesimai/omissionHUN_en.doc, accessed 02 March 2009

²²³ Rule 10 U.S. Supreme Court Rules: "Review on a writ of *certiorari* is not a matter of right, but of judicial discretion. A petition for a writ of *certiorari* will be granted only for compelling reasons."

²²⁴ The European Court of Human Rights introduced the pilot judgement procedure in the Broniowski vs. Poland case in 2004. Pilot judgements are possible in cases that are a consequence of structural or systemic problems in a state. Once this systemic problem is established, the Court may deal with "repetitive" or "clone" cases in a summary proceeding. See, for instance, C. Paraskeva, "Human Rights Protection Begins and Ends at Home: The 'Pilot Judgment Procedure' Developed by the European Court of Human Rights", in: http://www.nottingham.ac.uk/shared/shared_hrlcpub/Paraskeva.pdf, accessed 5 June 2009

205. The German²²⁵, Hungarian²²⁶, Slovenian²²⁷ and Spanish²²⁸ Laws on the Constitutional Court allow for a preliminary control of the full constitutional complaint. A complaint will be dismissed if it doesn't contain questions that are significant in terms of constitutionality. In Austria, the constitutional complaint must be deemed to have a certain chance of succeeding. In South Africa, the Constitutional Court will hear a direct access application or an appeal if it raises a constitutional issue and it would be in the interests of justice for the Court to hear it. The interests of justice enquiry involves a number of sub-enquiries including the prospects of success, the interest of the public in the matter, and whether the Supreme Court of Appeal has had an opportunity to pronounce its views on the matter.²²⁹

206. Preliminary proceedings are conducted by a smaller number of judges than the main proceedings and require a lesser degree of formality²³⁰. In this respect, the German practice is remarkable: Constitutional complaints that are considered manifestly ill-founded or most probably unsuccessful are put into a "general register", and not directly into the proceedings register. The complainant is then contacted through an informal letter informing him or her of his or her possibility to request that the complaint be further dealt with by the Constitutional Court. If the complainant becomes active, the complaint will be put in the proceedings register, if not, it remains in the general register²³¹. Thereby, many applications can be dealt with without actually rejecting the complaints.

5.2.2 Changes in the organisation of the Constitutional Court

5.2.2.1 Summary proceedings

207. Very often, a smaller body of judges is habilitated to examine applications and to deny review if the application has no prospect of succeeding (e.g. Austria, Germany, Slovenia). This leads to an immediate relief in the Constitutional Court's workload.

5.2.2.2 More staff

208. The Venice Commission recommends that the judges are supported by qualified assistants; their number should be determined in relation to the case load of the court.²³²

"Depending on the number and qualification of the staff, the secretariat of the court may perform a first preliminary examination in order to weed out manifestly inadmissible complaints as far as possible. However, as the judicial power cannot be delegated to the secretariat, its opinion can only be advisory."²³³ In fact, permanent staff allows for the construction of an institutional memory conducive to greater consistency and continuity of the Court's jurisprudence.

²²⁵ Article 93a of the Law on the Federal Constitutional Court (acceptance procedure for constitutional complaints).

²²⁶ See, for instance, Article 23 Act on the Constitutional Court: "1. The President of the Constitutional Court shall forward the motion submitted by a party not entitled to submit such a motion to the organ entitled to submit it, while an obviously groundless motion shall be denied by the President of the Constitutional Court."

²²⁷ Article 55b Law on the Constitutional Court

(2) The constitutional complaint is accepted for consideration: – if there is a violation of human rights or fundamental freedoms which had serious consequences for the complainant; or – if it concerns an important constitutional question which exceeds the importance of the concrete case.

²²⁸ See the amended Constitutional Court Act of 2007.

²²⁹ Section 167(3) of the Constitution provides that the Constitutional Court may decide only constitutional matters and issues connected with decisions on constitutional matters. The Court itself makes the final decision whether a matter is a constitutional matter.

²³⁰ See, for instance, Article 93d.1 Law on the Federal Constitutional Court: "1. The decision in accordance with Articles 93 b and c above shall be taken without oral proceedings. This decision cannot be challenged. The refusal to accept the constitutional complaint does not require reasons."

²³¹ Merkblatt über die Verfassungsbeschwerde zum Bundesverfassungsgericht, in:

http://www.bundesverfassungsgericht.de/organisation/vb_merkblatt.html, accessed 8 June 2009

²³² [CDL-AD\(2008\)030](#) Opinion on the Draft Law on the Constitutional Court of Montenegro

²³³ [CDL-STD\(1995\)015](#) The Protection of fundamental rights by the Constitutional Court, Science and Technique of Democracy no. 15, 1995

5.2.2.3 Smaller chambers

209. A useful method for alleviating the Court's case load can be the creation of smaller panels of judges when deciding on matters initiated by one of the types of individual access, where the plenary only acts if new or important questions need to be decided. It is important that the law on the Constitutional Court provide for the possibility of a decision by the plenary if there are conflicting rulings by the chambers; otherwise, the unity of the Constitutional Court's jurisprudence is in danger²³⁴. There need to be clear rules to avoid any possibility of bias in the allocation of cases to the chambers or in the composition of panels. Here, only the relevant bodies (plenary, panels, chambers) deciding in matters related to individual access are being described. The Constitutional Court decides on matters related to individual access in the plenary in Albania, Armenia, Cyprus, Greece, Latvia, Liechtenstein, Romania, Slovenia and Ukraine. 8 to 11 judges sit in benches in Germany²³⁵, Kyrgyzstan, Russia and South Africa, 6 judges in Croatia and Spain, 5 judges in Austria, Bosnia and Herzegovina, Denmark, Estonia, Luxemburg, Monaco, the Netherlands, Norway and Poland. 3 or 4 judges sit in Georgia, Czech Republic, Hungary, Malta, Slovakia, and Switzerland. In Portugal, when the Constitutional Court is not sitting in plenary, its chambers are composed of 1, 3, or 5 Justices.

²³⁴ [CDL-AD\(2004\)024](#), Opinion on the draft constitutional amendments with regard to the Constitutional Court of Turkey

²³⁵ The Federal Constitutional Court consists of two autonomous panels of equal rank with eight members each (Article 2.1 and 2.2 Law on the Federal Constitutional Court). Each of the two panels by itself represents "the Federal Constitutional Court". In constitutional-court proceedings, the Plenum, i.e. all 16 judges, only decides if in a point of law, a panel intends to deviate from the legal opinion contained in a decision by the other panel (Article 16). In each panel, there are several chambers with three members each (Article 15a.1), which adjudicate in constitutional complaint proceedings and in proceedings involving the concrete review of statutes.

6 Tables

6.1.1 Table 1 summarising the types of access

Countries	Type of constitutional review (if individual access)	Ombudsperson (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	Actio popularis	Quasi actio popularis / legal interest	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint	Amparo
Albania	Concentrated		Y	Y							Y		
Algeria	No individual access												
Andorra	Special		Y										Y
Argentina	Special				Y								Y
Armenia	Concentrated	Y	Y	Y				Y					
Austria	Concentrated	Y	Y									Y ²³⁶	
Azerbaijan	Concentrated	Y	Y									Y	
Belarus	No		Y										
Belgium	Concentrated		Y					Y					
Bosnia and Herzegovina	Concentrated		Y								Y		
Bulgaria	Concentrated	Y	Y										
Canada	Special												
Chile	Special		Y	Y	Y								Y
Croatia	Concentrated		Y		Y							Y	
Cyprus	Special		Y	Y								Y ²³⁷	
Czech Republic	Concentrated		Y	Y								Y	
Denmark	Diffuse												
Estonia	Special	Y	Y ²³⁸					Y ²³⁹					
Finland	Diffuse												
France	No individual access												
Georgia	Concentrated		Y		Y ²⁴⁰			Y					
Germany	Concentrated		Y									Y	
Greece	Special		Y	Y		Y ²⁴¹							
Hungary	Concentrated		Y	Y	Y			Y					
Iceland	Diffuse												

²³⁶ Only against individual administrative acts

²³⁷ This control takes place in the framework of an administrative process

²³⁸ After having decided, ordinary courts may submit decisions to the Supreme Court

²³⁹ Very limited: Only against resolutions of Parliament, decisions of the President and of electoral committees

²⁴⁰ Only concerning a violation of fundamental rights through the normative act; see Article 89 Constitution

²⁴¹ Article 48 Law establishing a Special Highest Court is narrow: Conflicting interpretations of all three high courts are a condition.

Countries	Type of constitutional review (if individual access)	Ombudsperson (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	Actio popularis	Quasi actio popularis / legal interest	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint	Amparo
Ireland	Special												
Israel	Special												
Italy	Concentrated		Y	Y									
Japan	Special												
Kazakhstan			Y										
Korea, Republic	Concentrated		Y									Y	
Kyrgyzstan	Concentrated		Y					Y	Y				
Latvia	Concentrated	Y	Y					Y					
Liechtenstein	Concentrated		Y		Y ²⁴²							Y	
Lithuania	Concentrated		Y										
Luxembourg	Concentrated		Y	Y									
Malta	Concentrated		Y	Y	Y						Y		
Mexico	Special												Y
Moldova	Concentrated		Y										
Monaco	Special							Y ²⁴³					
Montenegro	Concentrated						Y					Y	
Morocco	No individual access												
Netherlands	Special												
Norway	Diffuse												
Palestinian National Authority													
Peru	Concentrated				Y								Y
Poland	Concentrated	Y	Y					Y					
Portugal	Special	Y	Y	Y									
Romania	Concentrated	Y	Y	Y									
Russian Federation	Concentrated	Y	Y						Y				
San Marino	Concentrated		Y	Y									
Serbia	Concentrated	Y					Y					Y	
Slovakia	Concentrated		Y									Y	
Slovenia	Concentrated		Y	Y		Y						Y	
South Africa	Diffuse ²⁴⁴	Y		Y	Y							Y	
Spain	Concentrated	Y	Y	Y								Y	
Sweden	Diffuse												
Switzerland	Special											Y	
"The former Yugoslav Republic of Macedonia"	Concentrated	Y			Y							Y ²⁴⁵	

²⁴² Only for a group of at least 100 citizens, only within one month after promulgation, and only concerning general administrative acts; see Article 20 Law on the Constitutional Court

²⁴³ Only concerning laws; administrative regulations and individual acts can be attacked at the Tribunal Suprême in its administrative formation concerning their illegality

²⁴⁴ All courts are able to hear matters concerning constitutional issues but the Constitutional Court is the highest Court on matters involving constitutional issues and is the only court able to confirm a declaration of the constitutional invalidity of a normative act by an ordinary court, to declare conduct of the President to be unconstitutional and to assess the constitutionality of a Bill or Act referred to the Court by the President or the legislature respectively.

Countries	Type of constitutional review (if individual access)	Ombudsperson (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	Actio popularis	Quasi actio popularis / legal interest	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint	Amparo
Tunisia	No												
Turkey	Concentrated		Y										
Ukraine	Concentrated	Y	Y							Y			
United Kingdom													
United States of America	Special												
Uruguay	Concentrated												Y

6.1.2 Table: Time-limits for applications

Time limit	State	Relevant constitutional or legal provision
8 days	Malta (constitutional revision)	Article 4 Legal Notice 35 of 1993 entitled Regulations Regarding Practices and Procedures of the Court The application to appeal (in the Constitutional Court) shall be made within eight working days from the date of the decision appealed from
10 days	Estonia (normative constitutional complaint)	§. 19. Constitutional Review Court Procedure Act A complaint against a resolution of the Riigikogu, the Board of the Riigikogu or a decision of the President of the Republic may be filed with the Supreme Court within 10 days after the date of entering into force of the resolution or decision.
15 days	Andorra (amparo)	Article 88 (1) Qualified Law on the Constitutional Court The appeal for protection is introduced by a document within 15 working days of the date of service of the decision appealed against.
	South Africa (appeal against decision of an ordinary court)	Rule 19(2) Rules of the Constitutional Court A litigant who is aggrieved by the decision of [an ordinary] court and who wishes to appeal against it directly to the [Constitutional] Court on a constitutional matter shall, within 15 days of the order against which the appeal is sought to be brought...lodge with the Registrar an application for leave to appeal.
20 days	Spain (full constitutional complaint)	Article 44 Organic Law on the Constitutional Court 2. The time-limit for lodging an appeal for protection shall be twenty days from the date of notification of the ruling given in the judicial proceedings.
4 weeks	Liechtenstein (full constitutional complaint)	Art. 15 4) Constitutional Court Act The complaint may be lodged within four weeks of service of the decision or order in the last instance or of effectiveness of the immediate violation (paragraph 3).
30 days	Croatia (full constitutional complaint)	Article 64 Constitutional Act on the Constitutional Court The constitutional complaint may be submitted during the term of 30 days from the day the decision was received." Article 66: "(1) The Constitutional Court shall permit restitution into the previous state to the person who for the justified reasons has omitted the term for submission of the constitutional complaint, if during the term of 15 days after the cessation of the reason which has caused the omission he submits the proposal for restitution into the previous state and at the same time submits the constitutional complaint (2) After the expiration of three months from the day of omission, the restitution into the previous state may not be sought.

²⁴⁵ Only concerning some fundamental rights

Time limit	State	Relevant constitutional or legal provision
	Montenegro	Draft Law on the Constitutional Court Article 60 Constitutional complaint may be submitted within 30 days from the date on which an individual act violating human right or freedom guaranteed by the Constitution was delivered.
	Switzerland	Article 100 Federal Judicature Act 1 Le recours contre une décision doit être déposé devant le Tribunal fédéral dans les 30 jours qui suivent la notification de l'expédition complète. Article 101 Le recours contre un acte normatif doit être déposé devant le Tribunal fédéral dans les 30 jours qui suivent sa publication selon le droit cantonal. Le recours contre un acte normatif doit être déposé devant le Tribunal fédéral dans les 30 jours qui suivent sa publication selon le droit cantonal.
1 month	Germany (full constitutional complaint)	Article 93 Law on the Federal Constitutional Court: 1. A complaint of unconstitutionality shall be lodged and substantiated within one month. This time-limit shall commence with the service or informal notification of the complete decision, if this is to be effected ex officio in accordance with the relevant procedural provisions. In other instances, the time-limit shall commence when the decision is proclaimed or, if it is not to be proclaimed, when it is otherwise communicated to the complainant; if the complainant does not receive a copy of the complete decision, the time-limit pursuant to the first sentence above shall be suspended by the complainant requesting, either in writing or by making a statement recorded at the court office, a copy of the complete decision. The suspension shall continue until the complete decision is served on the complainant by the court or ex officio or by a party to the proceedings.
6 weeks	Austria (full constitutional complaint)	Article 82 Federal Law on the Constitutional Court 1. A complaint against an administrative decree in pursuance of Article 144, subparagraph 1 of the B-VG can be lodged only after all administrative remedies have been exhausted, within six weeks following service of the decree delivered at last instance.
60 days	Czech Republic (full constitutional complaint)	Art. 72 Constitutional Court Act (3) A constitutional complaint may be submitted within 60 days of the delivery of the decision in the final procedure provided by law to the complainant for the protection of his rights; "procedures" are understood to mean ordinary remedial procedures, extraordinary remedial procedures, with the exception of a petition for rehearing, and other procedures for the protection of rights with the assertion of which is associated the institution of a judicial, administrative, or other legal proceeding.
	Hungary (normative constitutional complaint)	Article 48 Act on the Constitutional Court 2. The constitutional complaint may be submitted within sixty days after the receipt of the final decision.
	Poland (Ombudsperson)	Article 51 Constitutional Tribunal Act 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings. Provisions of Article 33 shall apply accordingly. 2. The Commissioner for Citizens' Rights may, within the period of 60 days from the receipt of information, give notice of his/her participation in the proceedings.
	Slovenia (full constitutional complaint)	Article 52 Constitutional Court Act (1) A constitutional complaint is lodged within 60 days of the day the individual act against which a constitutional complaint is admissible is served. (3) In especially well founded cases the Constitutional Court may exceptionally decide on a constitutional complaint which has been lodged after the expiry of the time limit referred to in the first paragraph of this article.
2 months	"The Former Yugoslav Republic of Macedonia" (full constitutional complaint)	Article 51 Rules of Procedure of the Constitutional Court Any citizen considering that an individual act or action has infringed his or her right or freedom, as provided in Article 110.3 of the Constitution of the Republic of Macedonia, he or she may lodge an application for protection by the Constitutional Court within 2 months from the date of notification of the final or legally binding individual act, or from the date on which he or she became aware of the activity undertaken creating such an infringement, but not later than 5 years from the date of the activity's being undertaken.

Time limit	State	Relevant constitutional or legal provision
	Slovakia	Article 53 Law on the Organisation of the Constitutional Court 3. The time-limit for lodging a constitutional complaint is two months. This time-limit starts to lapse on the day on which the decision becomes effective or the date on which the complainant is notified of the result of an appeal and, in the absence thereof, the date when the complainant's fundamental right or freedom was infringed.
75 days	Cyprus (constitutional revision)	Article 146 Constitution 3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.
90 days	United States (writ of certiorari)	U.S. Supreme Court Rule 13. Review on Certiorari: Time for Petitioning 1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.
3 months	Azerbaijan (against denial of access to courts)	Article 34.4 Law on the Constitutional Court Complaints can be submitted to Constitutional Court in following cases: 34.4.2. Within three months from the moment of violation of complainant's right to apply to court
	Poland (normative constitutional complaint)	Article 46 Constitutional Tribunal Act 1. Constitutional claim, further referred to as the "claim" can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the plaintiff, the final decision or other final judgment.
6 months	Albania (constitutional revision)	Article 30 Law on the Organisation and Functioning of the Constitutional Court If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court after all the other legal means in protection of such rights have been exhausted. Under such a case, the deadline for lodging the application is 6 (six) months from the date on which the decision of the relevant authority is announced.
	Azerbaijan (full constitutional complaint)	Article 34.4 Law on the Constitutional Court Complaints can be submitted to Constitutional Court in following cases: 34.4.1. After exhaustion of all remedies within six months from the moment of entrance of the decision of the court of last instance into force;
	Armenia (normative constitutional complaint)	Article 69 Law on the Constitutional Court: "5. In cases determined in this Article the appeals can be submitted to the Constitutional Court by the natural and legal persons no later than six months after the exhaustion of the opportunities of appeal of the judicial act ruled against those."
	Belgium (Normative constitutional complaint)	Article 3 Special Law on the Court 1. Without prejudice to paragraph 2 and to Article 4, an action for annulment, in full or in part, of a statute, decree or rule referred to in Article 134 of the Constitution shall not be admissible unless it is brought within six months of the publication of the statute, decree or rule referred to in Article 134 of the Constitution.
	Latvia (normative constitutional complaint)	Article 19.2 Law on the Constitutional Court 4. A constitutional claim may be submitted to the Constitutional Court within six months from the date of the decision of the last institution becoming effective
1 year	Germany (against normative acts)	Article 93 Law on the Federal Constitutional Court 3. If the constitutional complaint is directed against a law or some sovereign act against which legal action is not admissible, the constitutional complaint may be lodged only within one year of the law entering into force or the sovereign act being announced.
2 years	Albania (if no legal remedy is provided)	Article 30 Law on the Organisation and Functioning of the Constitutional Court 2.The application of persons regarding the violation of a constitutional right is to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them.

Time limit	State	Relevant constitutional or legal provision
5 years	Peru (actio popularis)	Article 87 Code of Constitutional Procedure (p.t.) The delay for lodging the actio popularis is five years from the day following the publication of the norm. (El plazo para interponer la demanda de acción popular prescribe a los cinco años contados desde el día siguiente de publicación de la norma.)

6.1.3 Table: Obligation to be legally represented

State	Relevant constitutional or legal provision
Albania	Article 24 Law on the Organisation and Functioning of the Constitutional Court: Parties to the constitutional case may represent themselves or may appoint a person to represent them as provided by this Law.
Andorra	
Armenia	Article 46 Law on the Constitutional Court: 1. Parties may appear before the Constitutional Court personally as well as through their representatives.
Austria (for complaints against normative acts)	Article 17 Federal Law on the Constitutional Court: 2. Actions in accordance with Article 37, applications in accordance with Articles 46, 48, 50, 57, 62 and 66 and complaints which are not covered by Article 24, subparagraph 1 shall be submitted by a duly authorised lawyer.
Azerbaijan	Article 35.1. Law on the Constitutional Court: The following documents shall be enclosed to petition, application or complaint submitted to Constitutional Court: 35.1.2. Letter of attorney or other document, confirming the authorities of the representative except the cases when representation is implemented ex officio as well as copies of documents confirming the right of a person to speak at Constitutional Court as a representative;
Belgium	Art. 5 of the Special Law on the Court Actions for annulment shall be instituted before the Court by means of a petition which, as the case may be, is signed by the Prime Minister, by a member of the Government designated by that Government, by the president of a legislative assembly, or by a party with a justifiable interest or its lawyer; Art. 75 The Court may appoint a lawyer ex officio. This appointment shall be considered null and void if the party concerned chooses its own legal adviser.
Croatia	Article 24 Constitutional Act on the Constitutional Court (1) Participants may undertake actions in the proceedings in person or through a representative.
Czech Republic	Article 30 Constitutional Court Act: (1) A natural or a legal person who is a party or a secondary party to a proceeding before the Court must be represented by an attorney to the extent provided for in special statutes and enactments.
Georgia	Article 30 Law on the Constitutional Court 1. The parties shall have the right to entrust the protection of their interests to a lawyer or other person having a high level of legal education at every stage of the proceedings.
Germany	Article 22 Law on the Federal Constitutional Court: 1. The parties may be represented at any stage of the proceedings by an attorney registered with a German court or a lecturer of law at a German institution of higher education; in the oral pleadings before the Federal Constitutional Court they must be represented in this manner.
Hungary	Article 19 Act on the Constitutional Court: Unless otherwise provided by this Act or the Rules of the Constitutional Court, the provisions of the Civil Procedure Code shall be applied in issues concerning legal assistance, the ensuring of the use of the native-tongue during the proceedings and the exclusion of judges.
Italy	Section 20 Law on the composition and procedures of the Constitutional Court At all hearings before the Constitutional Court the parties may only be represented by lawyers authorised to appear before the Court of Cassation.
Latvia	Article 23 Law on the Constitutional Court 1. Participant in the case – the applicant as well as the institution or official who issued the disputable act – may perform procedural actions at the Constitutional Court himself/herself or be represented by his/her respective representative.
Liechtenstein	Article 41 Constitutional Court Act 1) The parties may lodge individual complaints (article 15) themselves and participate in the hearings, or they may choose to be represented by lawyers who are listed in the Register of Lawyers or who are otherwise admitted to practice in the Principality of Liechtenstein by law or

State	Relevant constitutional or legal provision by authorisation of the Government.
Luxemburg	Article 11 Law on the Constitutional Court The parties shall be allowed to make submissions to and plead before the Constitutional Court through any lawyer registered on List I of the roll of lawyers drawn up each year by the Bar Councils.
Monaco	Article 29 Ordonnance sur l'organisation et le fonctionnement du Tribunal suprême: Les parties se présentent à l'audience par le ministère d'un avocat-défenseur.
Poland	Article 48 Constitutional Tribunal Act 1. The complaint or claim on the judgment refusing further consideration of the complaint shall be drawn up by an advocate or legal counsel unless the person making the complaint is a judge, prosecutor, notary public, professor or doctor habilitated of legal science.
Portugal	Article 83 Law on the Constitutional Court 1. In appeals made to the Constitutional Court, the appointment of a lawyer is obligatory, without prejudicing the ruling in n.º 3.
Romania	Article 24 Law on the Organisation and Functioning of the Constitutional Court 5. The parties may be represented by lawyers having the right to plead before the Supreme Court of Justice.
Russian Federation	Article 53 Federal Constitutional Law on the Constitutional Court The parties may also be represented by lawyers or persons with an academic degree in law, whose powers are confirmed by relevant documents.
Slovakia	Article 20 Law on the Organisation of the Constitutional Court 1. A petition shall be supported by a power of attorney enabling a petitioner to be represented by a lawyer or by a commercial lawyer, unless otherwise provided by this law. This power of attorney shall expressly state that it was issued for the purpose of representation before the Constitutional Court
Slovenia	Article 24.a Constitutional Court Act (1) If a participant in proceedings before the Constitutional Court is represented by an authorised representative, he must submit an authorisation which is provided especially for proceedings before the Constitutional Court. (2) An authorised representative who is not a lawyer must have a special authorisation to transfer the authorisation in proceedings before the Constitutional Court to another person. Article 50 (3) If a complainant in a constitutional complaint procedure is represented by an authorised representative, he must submit an authorisation which is given especially for the constitutional complaint procedure. The authorisation must be given after the individual act against which the constitutional complaint is lodged has been served. The second paragraph of Article 24a of this Act applies regarding the transfer of such authorisation.
Spain	Article 49 Organic Law on the Constitutional Court 2. The application shall be accompanied by: a. The document mandating the representative of the applicant for protection;
South Africa	Rule 11 Rules of the Constitutional Court (a) If it appears to the Registrar [of the Constitutional Court] that a party is unrepresented, he or she shall refer such party to [an] appropriate body or institution that may be willing and in a position to assist such party.
Switzerland	Article 41 Federal Judicature Act 5. When a party is clearly unable to act for himself, the Court may ask him to appoint a representative.

6.1.4 Table: Exhaustion of remedies and exceptions

State	Exhaustion of remedies – relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies – relevant constitutional or legal provisions
Albania	Article 131 Constitution The Constitutional Court decides on: f. the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.	
Andorra	Article 94 Qualified Law on the Constitutional	

State	Exhaustion of remedies – relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies – relevant constitutional or legal provisions
	<p>Court</p> <p>2. When no further appeal can be lodged nor is there any further means in defending the constitutional right infringed, the person who has suffered the infringement of the constitutional right to jurisdiction may lodge an appeal for protection before the Constitutional Court within fifteen working days of the day after notification of the last resolution of refusal or of the date on which he had knowledge of the judicial decision which violated the constitutional right to jurisdiction.</p>	
Armenia	<p>Article 69 Law on the Constitutional Court</p> <p>1. The appeals on the cases described in this Article (hereinafter individual appeals) can be brought by those natural and legal persons who were participants at the courts of general jurisdiction and in specialised courts, in relation of who the law was implemented by a judicial act, who exhausted all the remedies of judicial protection and who believe that the provision of the Law applied for the particular case contradicts the Constitution.</p>	
Austria	<p>Article 144 Constitution</p> <p>The complaint can only be filed after all other stages of legal remedy have been exhausted.</p>	
Azerbaijan	<p>Article 34.4 Law on the Constitutional Court</p> <p>Complaints can be submitted to Constitutional Court in following cases: 34.4.1. After exhaustion of all remedies within six months from the moment of entrance of the decision of the court of last instance into force;</p>	<p>Article 34.5. Law on the Constitutional Court</p> <p>If the legal protection of constitutional rights by means of courts of general jurisdiction cannot prevent the imposing of serious and irreplaceable damage to complainant then application can be submitted directly to Constitutional Court.</p>
Croatia	<p>Article 62 Constitutional Act on the Constitutional Court:</p> <p>(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted.</p>	<p>Article 63 Constitutional Act on the Constitutional Court:</p> <p>(1) The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.</p> <p>(2) If the decision is passed to adopt the constitutional complaint for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court of justice within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such deadline for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette Narodne novine.</p>
Czech Republic	<p>Article 75 Constitutional Court Act:</p> <p>(1) A constitutional complaint is inadmissible if</p>	<p>Article 75 Constitutional Court Act:</p> <p>(1) A constitutional complaint is inadmissible</p>

State	Exhaustion of remedies – relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies – relevant constitutional or legal provisions
	<p>the complainant failed to exhaust all procedures afforded him by law for the protection of his rights (§ 72 para. 3); that does not apply to extraordinary remedial procedures which the body that decides thereupon has discretionary authority to reject as inadmissible (§ 72 para. 4).</p>	<p>if the complainant failed to exhaust all procedures afforded him by law for the protection of his rights (§ 72 para. 3); that does not apply to extraordinary remedial procedures which the body that decides thereupon has discretionary authority to reject as inadmissible (§ 72 para. 4). (2) The Constitutional Court shall not reject a constitutional complaint, even though it does not satisfy the condition stated in the preceding paragraph, if: a) the significance of the complaint extends substantially beyond the personal interests of the complainant, so long as it was submitted within one year of the day when the events which are the subject of the constitutional complaint took place, or b) the proceeding in an already filed remedial procedure under paragraph 1 is being considerably delayed, which delay gives rise to or may give rise to serious and unavoidable detriment to the complainant.</p>
Germany	<p>Law on the Federal Constitutional Court, Article 90.2 1st phrase: If legal action against the violation is admissible, the constitutional complaint may not be lodged until all remedies have been exhausted.</p>	<p>Law on the Federal Constitutional Court Article 90.2 2nd phrase: However, the Federal Constitutional Court may decide immediately on a complaint of unconstitutionality lodged before all remedies have been exhausted if it is of general relevance or if recourse to other courts first would entail a serious and unavoidable disadvantage for the complainant.</p>
Hungary	<p>Article 48 Act on the Constitutional Court 1. Anybody aggrieved by the application of an unconstitutional legal rule who has exhausted all other legal remedies or has no other remedy available, may submit a constitutional complaint to the Constitutional Court because of the violation of his/her constitutional rights.</p>	
Korea, Republic	<p>Article 68 Constitutional Court Act (1) Any person who claims that his basic right which is guaranteed by the Constitution has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint, except the judgments of the ordinary courts, with the Constitutional Court: Provided, that if any relief process is provided by other laws, no one may file a constitutional complaint without having exhausted all such processes.</p>	
Latvia	<p>Article 19.2 Law on the Constitutional Court 2. The constitutional claim shall be submitted only after exhausting the ordinary legal remedies (a claim to a higher institution or official, a claim or application to a court of general jurisdiction etc.) or if there are no other means</p>	<p>Article 19.2 Law on the Constitutional Court 3. If the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim, the Constitutional Court may reach a decision to review the claim (application) before all the other legal means have been exhausted.</p>
Liechtenstein	<p>Article 15 Constitutional Court Act 1) The Constitutional Court shall decide on complaints to the extent that the complainant claims a violation, by a final decision or order in the last instance issued by a public authority, of one of his constitutionally guaranteed rights or of one of his rights guaranteed by international</p>	

State	Exhaustion of remedies – relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies – relevant constitutional or legal provisions
	conventions for which the lawmaking power has explicitly recognised an individual right of complaint	
Malta	Article 4 European Convention Act Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other ordinary law.	
Montenegro	Article 58 Draft Law on the Constitutional Court Constitutional complaints may be lodged against an individual act of state authority, local self-government authority or organisation vested with public powers, for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.	Article 58 Draft Law on the Constitutional Court All effective legal remedies referred to in paragraph 1 above shall be deemed exhausted within the meaning of this Law, if the complainant in the dispute exhausted all ordinary and extraordinary legal remedies prescribed by law.
Poland	Article 47 Constitutional Tribunal Act 1. The complaint shall, apart from the requirements referring to the procedural letters, include the following: 1) a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given ultimate decision in respect of freedoms or rights or obligations determined in the Constitution and which is challenged by the person making the complaint for the confirmation of non-conformity to the Constitution,	
Portugal	Article 70 Law on the Constitutional Court 5. Decisions subject to obligatory ordinary appeal, according to the terms of the respective procedural law, may not be admitted for appeal to the Constitutional Court.	
Slovakia	Article 53 Law on the Organisation of the Constitutional Court 1. Constitutional complaints shall be deemed inadmissible if the complainants have not exhausted regular legal remedies afforded by the law for the protection of their rights.	Article 53 Law on the Organisation of the Constitutional Court 2. The Constitutional Court shall not reject a constitutional complaint as inadmissible even if the precondition set out in the preceding paragraph is not fulfilled, if the complaint is so important that it significantly transcends the personal interests of the complainant.
Slovenia	Article 51 Constitutional Court Act (1) A constitutional complaint may be lodged only after all legal remedies have been exhausted.	Article 51 Constitutional Court Act (2) Before all extraordinary legal remedies have been exhausted, the Constitutional Court may exceptionally decide on a constitutional complaint if the alleged violation is manifestly obvious and if irreparable consequences for the complainant would result from the implementation of the individual act.
Spain	Article 44 Organic Law on the Constitutional Court 1. Violations of constitutionally protected rights and freedoms that are the immediate and direct result of an act or omission by a judicial body may give grounds for such an appeal provided that the following conditions are met:	

State	Exhaustion of remedies – relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies – relevant constitutional or legal provisions
	a. That all available judicial remedies have been exhausted;	
Switzerland	Article 86 Federal Judicature Act 1. Le recours est directement recevable contre les actes normatifs cantonaux qui ne peuvent faire l'objet d'un recours cantonal. 2. Lorsque le droit cantonal prévoit un recours contre les actes normatifs, l'art. 86 est applicable.	Article 94 Federal Judicature Act Le recours est recevable si, sans en avoir le droit, la juridiction saisie s'abstient de rendre une décision sujette à recours ou tarde à le faire.
"The Former Yugoslav Republic of Macedonia"	Article 51 Rules of Procedure of the Constitutional Court Any citizen considering that an individual act or action has infringed his or her right or freedom, as provided in Article 110.3 of the Constitution of the Republic of Macedonia, he or she may lodge an application for protection by the Constitutional Court within 2 months from the date of notification of the final or legally binding individual act [...]	

6.1.5 Table: Preliminary ruling procedures

State	Relevant constitutional or legal provisions
Albania	Article 69 Law on the Organisation and Functioning of the Constitutional Court 1. When the Constitutional Court concludes that the file referred to it is not complete and in conformity with the above provision, it shall send it back to the original court. The latter should complete the file within one month from the date on which it receives the file.
Andorra	Article 100 (2) Constitution The Tribunal Constitucional may not admit the transaction of the request without further appeal. If the request is admitted judgment shall be passed within the maximum period of two months.
Belgium	Art. 100 of the Special Law on the Court The Court of Arbitration in full session may join actions for annulment or preliminary questions relating to one and the same regulation to be ruled on in one and the same judgment. In this circumstance, the cases will be investigated by the bench that was seized of the first case. The registrar shall notify the parties of the decision to join cases. Where two or more cases are joined, the judges-rapporteurs shall be those who in accordance with Article 68 were appointed to the case of which the Court was first seized.
Estonia	§63 Constitutional Review Court Procedure Act (1) If a request is not in compliance with the requirements of this Act, the Supreme Court shall set a term for elimination of deficiencies. If the person filing the request fails to eliminate the deficiencies within a specified term, the Supreme Court shall return the request without a hearing.
Lithuania	Article 70 Law on the Constitutional Court In the case that a petition or appendices thereof fail to comply with the provisions set forth in Articles 66 and 67, the Chairperson of the Constitutional Court shall return the petition to the petitioner on his own initiative or on the initiative of a judge. The return of a petition shall not take away the right to appeal to the Constitutional Court according to the general procedure after abolishing reasons thereof.

6.1.6 Table: Joinder of similar cases

State	Relevant constitutional or legal provision
Armenia	Article 39 Law on the Constitutional Court Before the start of the case review only the cases referring to the same issue can be combined by the decision of the Constitutional Court.

State	Relevant constitutional or legal provision
Czech Republic	<p>Article 63 Constitutional Court Act</p> <p>Where an issue is not covered by this Statute, in proceedings before it the Court shall apply the relevant provisions of the Code of Civil Procedure, as well as other enactments issued for the implementation thereof.</p> <p>Section 112 of the Act 99/1963 Coll., Civil Procedure Code,</p> <p>The court can join cases to joint proceedings in the interest of proceedings' effectiveness, provided the proceedings were initiated and relate to the same matter or to the same participants.</p> <p>Art. 35 Constitutional Court Act</p> <p>(2) A petition shall also be inadmissible in instances when the Court has already taken some action in the same matter; if one is submitted by an authorised petitioner, he has the right to take part, as a secondary party, in the proceeding concerning the earlier submitted petition."</p> <p>Article 76: "(1) The complainant and the state body or other public authority, against the encroachment of which the constitutional complaint is directed, shall be parties to the proceeding on the constitutional complaint. (2) Other parties to a prior proceeding, the contested decision of which gives rise to the complaint, shall be secondary parties. If the complaint concerns a criminal proceeding, the parties to that proceeding shall be secondary parties. (3) The Court may grant the status of a secondary party to other persons who demonstrate a legal interest in the outcome of the proceeding.</p>
Germany	<p>Article 66 Law on the Federal Constitutional Court</p> <p>The Federal Constitutional Court may combine independent proceedings and separate combined ones.</p>
Greece	<p>Article 13 Law establishing a Special Highest Court</p> <p>1. Any person wishing to intervene and having a lawful interest in the case may be joined to the proceedings before the Court.</p>
Lithuania	<p>Article 41 Law on the Constitutional Court</p> <p>Upon establishing that there are two or more petitions concerning the compliance of the same legal act with the Constitution or laws, the Constitutional Court may join them into one case before beginning the judicial consideration. In this case the Constitutional Court shall adopt a reasoned decision.</p>
Portugal	<p>Article 64 Law on the Constitutional Court</p> <p>1. When a request has been admitted, any others with the same object that are also admitted are included in the file concerning the first.</p> <p>Article 74 – (Extension of appeal)</p> <p>1. The appeal filed by the Public Prosecutor's Office has an effect on all those who have legitimacy to appeal. 2. The appeal filed by an interested party in the cases envisaged in sub-paragraphs a), c), d), e), g), h) and i) in n.º1 of article 70 can be used by all other interested parties. 3. The appeal filed by an interested party, in the cases envisaged in sub-paragraphs b) and f) of n.º1 of article 70 can be used by others according to the terms and limits established in the law regulating the case in which the decision has been made. 4. There can be no subordinate appeal nor may any other party adhere to the appeal already made to the Constitutional Court.</p>
Russian Federation	<p>Article 48 Federal Constitutional Law on the Constitutional Court</p> <p>The consideration of each case shall be the subject of a special session. The Constitutional Court of the Russian Federation may merge in one proceeding petitions pertaining to one and the same subject.</p>
Slovakia	<p>Article 24 Law on the Organisation of the Constitutional Court</p> <p>Article 52</p> <p>2. The Constitutional Court may grant the status of a secondary party to the proceedings to those persons who have demonstrated their legal interest in the outcome of the proceedings.</p>
Slovenia	<p>Article 48 The Rules of Procedure of the Constitutional Court</p> <p>If in their applications more than one applicant requests the review of the constitutionality or legality of the same provisions or provisions related in terms of content of a law, regulation, or general act issued for the exercise of public authority, the Constitutional Court may, upon the proposal of the judge rapporteur, decide by an order to join all applications for joint consideration and deciding on their constitutionality or legality.</p>
South Africa	<p>Rule 29 of the Rules of the Constitutional Court makes rule 6(14) of the Uniform Rules of Court applicable, which in turn provides for the application of Rule 11 of the Uniform Rules of Court.</p> <p>Rule (11): Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions...</p>
Spain	<p>Article 47 Organic Law on the Constitutional Court: 1. Persons who benefited by the decision, act or circumstance that led to the appeal or persons with a legitimate interest</p>

State	Relevant constitutional or legal provision
	therein may appear in the proceedings for constitutional protection as a defendant or additional party.
“The Former Yugoslav Republic of Macedonia”	<p>Article 21 Rules of Procedure of the Constitutional Court</p> <p>If during the course of the proceedings, it is found that a number of participants with separate petitions have requested the assessment of the constitutionality of the same provisions of the same law or of the constitutionality and legality of the same provisions of the same law, other regulation or common act, all petitions will be attached to the first petition submitted, and for all of them a single procedure is conducted and a single judgment is made.</p> <p>If there are a number of files in the Court for several separate petitions for the assessment of the constitutionality of the same law or the constitutionality and legality of the same regulation or common act, all files created later may be attached to the first file created, a single lawsuit may be carried out for all of them and a single judgment made.</p>
United States of America	<p>Rule 12 U.S. Supreme Court Rules</p> <p>4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices.</p>

6.1.7 Table: Adversary systems

State	Relevant constitutional or legal provision
Andorra	<p>Article 87 Qualified law on the Constitutional Court</p> <p>2. The respondents and assistants in the appeal for protection are the defendants and assistants in the earlier proceedings.</p>
Belgium	<p>Art. 76 Special Law on the Court</p> <p>§ 1. The registrar shall notify actions for annulment instituted by the Council of Ministers to the governments of the Communities and Regions and to the presidents of the legislative assemblies.</p> <p>§ 2. The registrar shall notify actions for annulment instituted by the government of a Community or Region to the Council of Ministers, to the other governments, and to the presidents of the legislative assemblies.</p> <p>§ 3. The registrar shall notify actions for annulment instituted by the president of a legislative assembly to the Council of Ministers, to the governments of the Communities and Regions, and to the presidents of the other legislative assemblies.</p> <p>§ 4. The registrar shall notify actions for annulment instituted by an individual interested party to the Council of Ministers, to the governments of the Communities and Regions, and to the presidents of the legislative assemblies.</p> <p>Art. 77</p> <p>The registrar shall notify referral decisions to the Council of Ministers, to the governments of the Communities and Regions, to the presidents of the legislative assemblies, and to the parties in the lawsuit before the court of law that took the referral decision.</p> <p>Art. 85</p> <p>Within 45 days after receipt of the notifications sent by the registrar by virtue of Articles 76, 77 and 78, the Council of Ministers, the Governments, the presidents of the legislative assemblies and the persons to whom said notifications are addressed may make a written submission to the Court.</p> <p>Where the case involves an action for annulment, those submissions may contain new grounds. After that, the parties shall no longer be able to adduce new grounds.</p>
Armenia	<p>Article 19 Law on the Constitutional Court</p> <p>The Constitutional Court clarifies all the circumstances of the case in ex-officio without limiting itself with the motions, suggestions, evidences and other materials of the case brought by the participant of the Constitutional Court trial.</p>
Azerbaijan	<p>Article 28.1. Law on the Constitutional Court: “Constitutional proceedings shall be held on the basis of principles of legal equality of parties and adversary.”</p>
Czech Republic	<p>Article 28 Constitutional Court Act: “(1) The petitioner and those specified by this Statute shall be parties to a proceeding.”</p>
Cyprus	<p>Article 144 Constitution</p> <p>2. The Supreme Constitutional Court, on a question so reserved, shall, after hearing the parties, consider and determine the question so reserved [...]</p>
Georgia	<p>Article 1 Law on the Constitutional Court</p>

State	Relevant constitutional or legal provision
	1. Constitutional proceedings before the Court shall be conducted in conformity with the equality of the parties and the adversarial principle.
Germany	<p>Even though the principle of judicial investigation applies, Articles 26 and 94 of the Law on the Federal Constitutional Court are relevant:</p> <p>Articles 26 Law on the Federal Constitutional Court</p> <p>1. The Federal Constitutional Court shall take evidence as needed to establish the truth. It may charge a member of the court with this outside the oral pleadings or ask another court to do so with regard to specific facts and persons.</p> <p>...</p> <p>Article 94 Law on the Federal Constitutional Court</p> <p>1. The Federal Constitutional Court shall give the federal or Land constitutional organ whose act or omission is complained of in the constitutional complaint an opportunity to make a statement within a specified period.</p> <p>2. If the act or omission was committed by a minister or a federal or Land authority, the competent minister shall be given an opportunity to make a statement.</p> <p>3. If the constitutional complaint of unconstitutionality is directed against a court decision, the Federal Constitutional Court shall also give the party in whose favour the decision was taken an opportunity to make a statement.</p> <p>4. If the constitutional complaint is lodged directly or indirectly against a law, Article 77 above shall apply mutatis mutandis.</p> <p>5. The constitutional organs named in paragraphs 1, 2 and 4 above may join the proceedings. The Federal Constitutional Court may dispense with oral pleadings if they are not expected to advance the proceedings any further and if the constitutional organs which are entitled to make a statement and have joined the proceedings waive oral proceedings.</p>
Greece	Article 49 Law establishing a Special Highest Court: "1. With the exception of the applicants, the parties to the proceedings before the Special Court shall be all the parties in the case which prompted the referral to the Special Court for a preliminary ruling to resolve the dispute."
Kyrgyzstan	<p>Article 15 Law on constitutional proceedings</p> <p>The participants in constitutional proceedings shall be designated as:</p> <p>1. parties – individuals or bodies on whose appeals or petitions constitutional proceedings are brought;</p>
Liechtenstein	<p>Article 18 Constitutional Court Act</p> <p>3) In the proceedings, the Government shall be given the opportunity to give a statement within a period to be determined.</p>
Lithuania	<p>Article 31 Law on the Constitutional Court</p> <p>The following persons shall be considered parties to the case:</p> <p>the petitioner—the State institution²⁴⁶, the group of Members of the Seimas who are granted by law the right to apply to the Constitutional Court with a petition to investigate the compliance of a legal act with the Constitution or laws or to present a conclusion, and their representatives;</p> <p>the party concerned—the State institution which has adopted the legal act whose compliance with the Constitution and laws is under investigation and its representative; the Member of the Seimas or other State official, the compliance of whose actions with the Constitution must be investigated due to impeachment proceedings which have been instituted against them in the Seimas and his representative; the President of the Republic, when a conclusion is presented concerning his state of health and his representative.</p> <p>The parties to the case shall have equal procedural rights. They shall have the right to get familiar with the material of the case, make extractions, duplicates, and copies from it, declare removals, provide evidence, participate in the investigation of evidence, give questions to other parties to the case, as well as to witnesses and experts, make requests, give explanations, provide their own arguments and reasoning, object to requests, arguments and reasoning of other persons participating in the case.</p>
Luxembourg	<p>Article 11 Law on the Constitutional Court</p> <p>The parties shall be allowed to make submissions to and plead before the Constitutional Court through any lawyer registered on List I of the roll of lawyers drawn up each year by the Bar Councils.</p>
Poland	<p>Article 27 Constitutional Tribunal Act</p> <p>The participants in the proceedings before the Tribunal shall be:</p> <p>1) a subject who submitted an application or complaint concerning constitutional infringement;</p> <p>2) an organ which issued an act included in the application or complaint concerning constitutional infringement;</p>

²⁴⁶ *inter alia* the ordinary court

State	Relevant constitutional or legal provision
	2a) the court, which has presented a question of law to the Constitutional Tribunal, provided that it has notified participation in proceedings initiated as the result of that legal question and has appointed amongst the judges of that court its authorised representative
Romania	<p>Article 23 Law on the Organisation and Functioning of the Constitutional Court</p> <p>4. A case shall be submitted to the Constitutional Court through an interlocutory judgment of the Instance before which the exception of unconstitutionality was raised.5. The interlocutory judgment shall include the parties' for and against viewpoints concerning the exception, and the opinion of the Instance on the exception, together with the evidence provided by the parties. In case the exception has been raised by the Instance, ex officio, the interlocutory judgment shall be motivated, including also the arguments of the parties, as well as the necessary evidence.</p> <p>Article 24</p> <p>3. In case the provisions of paragraph 2 above are not applicable, the Judge-rapporteur shall be bound to notify each Chamber of Parliament and the Government of the interlocutory judgment by which the Constitutional Court was apprised, indicating the date by which they can hand in their viewpoint, and he shall ensure that the necessary measures are taken for evidence to be given by the date of judgment.</p>
Russia	<p>Article 35 Federal Constitutional Law on the Constitutional Court of the Russian Federation</p> <p>The parties shall enjoy equal rights and opportunities while asserting their positions in the session of the Constitutional Court of the Russian Federation on the adversarial basis.</p>
San Marino	<p>Article 14 Qualified law on the organisation of the Collegio Garante: " 1. The discussion is oral and respects the principle of adversariality. (<i>La discussione è orale e si svolge nel rispetto del principio del contraddittorio</i>)", in: http://www.consigliograndeegenerale.sm/new/index.php3, viewed on: 20/02/2009</p>
Serbia	<p>Article 29 Law on the Constitutional Court</p> <p>Article 31</p> <p>Participant in proceedings is entitled to present and explain his/her position and reasons during the procedure, as well as to answer the claims and reasons of other participants in the procedure.</p>
Slovakia	<p>Article 21 Law on the Organisation of the Constitutional Court</p> <p>1. Parties to the proceedings are the plaintiff, the person against whom the petition is filed and persons as laid down in the present Act.</p>
Slovenia	<p>Article 56 Constitutional Court Act</p> <p>(2) In the instances referred to in the preceding paragraph, the constitutional complaint is sent to the persons who participated in the proceedings in which the challenged individual act was issued by which their rights, obligations, or legal entitlements were decided, in order for them to make statements within a determined period of time.</p>
South Africa	<p>Rule 11 Rules of the Constitutional Court</p> <p>(3) Any person opposing the granting of an order sought in the notice of motion shall... notify the Registrar in writing of his or her intention to oppose the application [and] lodge his or her answering affidavit.</p>
Spain	<p>Article 51 Organic Law on the Constitutional Court</p> <p>1. Where an application for protection is admitted, the Division shall urgently request the body or authority with which the decision, act or circumstance originated or the judge or court that heard the previous proceedings, to provide it with the court records or the supporting documents within a period of not more than ten days.</p> <p>2. The body, authority, judge or court shall immediately acknowledge receipt of the request, shall dispatch the documents within the prescribed period and shall notify the persons who were parties to the former proceedings so that they may appear in the constitutional proceedings within ten days.</p>
Switzerland	<p>Article 56 Federal Judicature Act</p> <p>1. Les parties ont le droit d'assister à l'administration des preuves et de prendre connaissance des pièces produites.</p> <p>2. Si la sauvegarde d'intérêts publics ou privés prépondérants l'exige, le Tribunal fédéral prend connaissance d'un moyen de preuve hors de la présence des parties ou des parties adverses.</p>
"The Former Yugoslav Republic of Macedonia"	<p>Article 13 Rules of Procedure of the Constitutional Court</p> <p>The petitioner and the body having enacted or issued the impugned act are participants in the proceedings before the Constitutional Court.</p>
United States	<p>U.S. Supreme Court Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs</p> <p>1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.</p>

State	Relevant constitutional or legal provision
	Rule 19. Procedure on a Certified Question 2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2). 4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs.

6.1.8 Table: Public proceedings and exceptions

State	Relevant constitutional or legal provision
Albania	Article 21 Law on the Organisation and Functioning of the Constitutional Court: " 1.Cases are heard at the Constitutional Court in open plenary sessions. 2. The Constitutional Court may bar the public from attending all or part of a session, in order to protect public morals, public order, national security and the right to private life or personal rights."
Armenia	Article 22 Law on the Constitutional Court: "1. The court hearing is open for public with the exceptions provided in the Part 3 of this article. 3. By a majority vote, the Constitutional Court may decide to hold a session or part of a session in the absence of the media and the public for the interest of community morals, public order and state security, and for the privacy of the parties and the case."
Azerbaijan	Article 27.1. Law on the Constitutional Court: "Proceedings of cases in Constitutional Court shall be public. The hearing of a case in camera shall be admissible only when Constitutional Court assumes that public sessions can become a reason of disclosure of the state, professional or commercial secret or when it reveals the necessity to protect private or family life of citizens."
Belgium	Article 104 Special Law on the Court The Court's hearings shall be public, unless a public hearing would jeopardise public order or morality; in such cases, the Court may so declare by a reasoned judgment.
Bosnia and Herzegovina	Article 11 Rules on the Constitutional Court: "1. The work of the Constitutional Court shall be public."
Croatia	Article 21 Constitutional Act on the Constitutional Court: "If there exist reasons to exclude the public from the proceedings, a judge of the Constitutional Court shall note it in his/her report."
Cyprus	Article 134 Constitution: "1. The sittings of the Supreme Constitutional Court for the hearing of all proceedings shall be public but the Court may hear any proceedings in the presence only of the parties, if any, and the officers of the Court if it considers that such a course will be in the interest of the orderly conduct of the proceedings or if the security of the Republic or public morals so require."
Czech Republic	Article 45 Constitutional Court Act: "(1) Oral hearings before the Court shall be public; the Court may limit attendance by the public or may exclude the public altogether only if such is required by important interests of the state or of the parties to the proceeding, or by morality."
Denmark	§64 Constitution: "(1) In the administration of justice all proceedings shall to the widest possible extent be public and oral."
Georgia	Article 26 Law on the Constitutional Court 2. A sitting of the Constitutional Court or a part of it may be closed to the public on the initiative of the Court or by agreement of the parties for the protection of personal information or of professional, commercial or state secrets.
Germany	Article 17 Law on the Federal Constitutional Court Unless this Law contains provisions to the contrary, the provisions of Titles 14 to 16 of the Law on the Constitution of Courts shall apply mutatis mutandis with regard to admission of the public, police powers in court, the language of the court, deliberations and voting. [In its Article 169, the Law on the Constitution of Courts provides that the proceedings before the court of decision including the pronouncement of judgements and order are public.]
Italy	Section 15 Law on the composition and procedure of the Constitutional Court Hearings of the Constitutional Court shall be held in public, but the President may order a hearing behind closed doors when a public hearing might threaten the security of the State, public order or morality, or when the conduct of the members of the public present in court is likely to interfere with the due process of law.
Latvia	Article 27 Law on the Constitutional Court 1. Sessions of the Constitutional Court shall be open except in cases when this is contrary to the interests of protecting state secrets, commercial secrets as well as protecting the inviolability of the private life of a person.
Liechtenstein	Article 47 Constitutional Court Act 1) Subject to the following provisions, the hearings before the Constitutional Court shall be public.

State	Relevant constitutional or legal provision
	2) The public shall be excluded in cases in which they are excluded by the provisions of the Rules of Civil and Criminal Procedure or if the Court rules to exclude the public due to legitimate interests of a party or in the interests of public security and order.
Lithuania	Article 18 Law on the Constitutional Court Constitutional Court sittings shall be open, and may be attended by persons who are of age as well as by representatives of the press and other public mass media. The Constitutional Court may announce closed sittings provided that this is necessary for the safeguarding of a State, professional, commercial or other secret which is protected by law, or the security of a citizen or public morality.
Poland	Article 23 Constitutional Tribunal Act Hearings of the Tribunal shall be public unless particular provisions provide otherwise. The Presiding Judge of the bench in a given case may dispense with its public nature for reasons of security of the State or protection of State secrets. Article 59 2. The Tribunal may, at a sitting in camera, examine a complaint concerning constitutional infringements if, from the pleadings submitted by the participants in the proceedings in writing, it results without dispute that the normative act, on the basis of which a court or organ of public administration has made a final decision in respect of freedoms or rights or obligations of the person making the complaint, is in non-conformity to the Constitution. The decision given in this procedure shall be subject to publication.
Romania	Article 14 Law on the Organisation and Operation of the Constitutional Court 1. The sessions of judgment shall be open, unless, with good reason, the President of the Court or the Panel of Judges shall decide on a secret session.
Russian Federation	Article 54 Federal Law on the Constitutional Court The sessions of the Constitutional Court of the Russian Federation shall be open except for the events stipulated by the present Federal Constitutional Law. Article 55 The Constitutional Court of the Russian Federation shall set a session in camera when it is necessary to preserve secrets protected by the law, to ensure safety of citizens, to protect social moral.
Serbia	Article 3 Law on the Constitutional Court The work of the Constitutional Court is public. Publicity is guaranteed by public hearings in procedures before the Constitutional Court, publication of its decisions, release of communiqués to the public information media and in other manner. The Constitutional Court may exclude the public, only for the purpose of protecting the interests of national security, public order and morality in a democratic society, as well as for the purpose of protecting the interests of juveniles and the privacy of participants in a procedure. Article 37 c) Public Hearing Constitutional Court shall hold a public hearing in the procedure for assessing constitutionality and legality, in the procedure for deciding on electoral disputes, as well as in proceedings for prohibition of work of a political party, trade union organisation, citizens' association or religious community. Constitutional court can decide not to hold a public hearing in procedure for assessing the constitutionality and legality: if it deems that the matter was sufficiently clarified in the course of procedure and that, on the basis of evidence collected, it can decide even without holding a public hearing; if it has already decided on the same matter and new evidence for making a different decision on the matter have not been provided, as well as if there are conditions for discontinuation of procedure.
Slovakia	Article 30 Law on the Organisation of the Constitutional Court 4. Oral hearings in matters laid down in Articles 125, 126, 127a, 129, paragraph 4 of the Constitution shall be held in public. Oral hearings in other matters shall also be held in public unless the Constitutional Court, because of important considerations, excludes the public from participating in the entire proceedings or part thereof. 5. Public character of oral hearings shall be governed, mutatis mutandis, by the provisions of the Code of Civil Judicial Procedure or, in case of constitutional complaints against decisions adopted in criminal proceedings, the Code of Criminal Procedure.
Slovenia	Article 35 Constitutional Court Act (1) The Constitutional Court considers a case at a closed session or a public hearing. A majority of all Constitutional Court judges must be present at the closed session or public hearing. Article 37 The Constitutional Court may exclude the public from a hearing or a part thereof when so required in order to protect morals, public order, national security, the right to privacy, or personality rights.

State	Relevant constitutional or legal provision
	Article 57 If a constitutional complaint is accepted, as a general rule it is considered by the Constitutional Court at a closed session, or a public hearing may be held.
South Africa	Article 34 Constitution of the Republic of South Africa Everyone has the right to have any dispute that can be resolved by the application of law decided on in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
Switzerland	Article 59 Federal Judicature Act 1 Les éventuels débats ainsi que les délibérations et votes en audience ont lieu en séance publique. 2 Le Tribunal fédéral peut ordonner le huis clos total ou partiel si la sécurité, l'ordre public ou les bonnes mœurs sont menacés, ou si l'intérêt d'une personne en cause le justifie. 3 Le Tribunal fédéral met le dispositif des arrêts qui n'ont pas été prononcés lors d'une séance publique à la disposition du public pendant 30 jours à compter de la notification.
"The Former Yugoslav Republic of Macedonia"	Article 85 Rules of Procedure of the Constitutional Court The public can be excluded from the public hearings, meetings and preparatory meetings of the Court, if this is required in the interests of country's security and defence, the protection of state, official or business secrets, for the protection of the public morality and in other justified cases defined by the Court.

6.1.9 Table: Oral proceedings and exceptions

State	Relevant constitutional or legal provision
Albania	Article 23 Law on the Organisation and Functioning of the Constitutional Court: "The case is presented orally at the plenary session, or through the relevant documents, according to the nature of the case."
Austria	Article 19 Federal Law on the Constitutional Court: " 1. Judgments of the Constitutional Court, apart from those delivered under Article 10 and Article 36c, shall be delivered after an oral hearing in public to which the applicant, the opposing party and any parties which may be interested in any respect shall be summoned. 3. Upon application by the reporting judge, the Court, sitting in private without a fuller procedure being necessary and without an oral hearing, may 1. refuse to examine a complaint as provided for in Article 144, subparagraph 2 of the B-VG. 2. reject an application upon the following procedural grounds: a. the Constitutional Court clearly has no jurisdiction to deal with it, b. the statutory time-limit has not been observed, c. the defect is not covered by the formal requirements, d. the case has become definitive, and e. the applicant is no entitled to bring the application 3. discontinue the proceedings on the ground that the application has been withdrawn or that the claim has been satisfied (Article 86). 4. The Constitutional Court may dispense with an oral hearing where it is apparent from the written submissions of the parties to the constitutional proceedings and the documents submitted to the Constitutional Court that no further light can be expected to be shed on the dispute in an oral discussion. In addition, upon application by the reporting judge, the Court, sitting in private and without an oral hearing, may 1. dismiss a complaint where there has clearly been no breach of a constitutionally guaranteed right; 2. settle any dispute where the legal problem has been raised in sufficiently clear terms in a previous judgment of the Constitutional Court; 3. allow a complaint which led to an judgment overruling an unlawful regulation, an unconstitutional law or an illegal treaty."
Azerbaijan	Article 27.2. Law on the Constitutional Court: "Proceedings at Constitutional Court shall be oral. In case of consent by parties and interested subjects, Plenum of Constitutional Court can hold written proceedings via procedure provided for by Rules of Procedure of Constitutional Court."
Belgium	Article 106 Special Law on the Court Only those parties who have lodged an application or filed a memorial, and their lawyers, shall be admitted to the hearing and such persons shall be limited to oral statements.
Czech Republic	Article 44 Constitutional Court Act: "(1) In matters dealt with by the Court under Article 87 para. 1 or 2 of the Constitution, if the petition was not rejected by preliminary ruling without an oral hearing and without the parties being present, an oral hearing shall be held. (2) Unless this Statute provides otherwise, with the consent of the parties, the Court may dispense with an oral hearing if further clarification of the matter cannot be expected from such a hearing."
Denmark	§64 Constitution: "(1) In the administration of justice all proceedings shall to the widest possible extent be public and oral."
Germany	Article 25 Law on the Federal Constitutional Court: "1. In the absence of provisions to the contrary, the Federal Constitutional Court shall decide on the basis of oral pleadings, unless all parties expressly waive them." Art.94: "5. The constitutional organs named in paragraphs 1, 2 and 4 above may join the proceedings. The Federal Constitutional Court may dispense with oral

State	Relevant constitutional or legal provision
	pleadings if they are not expected to advance the proceedings any further and if the constitutional organs which are entitled to make a statement and have joined the proceedings waive oral proceedings." Article 93d: ". The decision in accordance with Articles 93 b and c above shall be taken without oral proceedings. This decision cannot be challenged. The refusal to accept the constitutional complaint does not require reasons."
Liechtenstein	Article 46 Constitutional Court Act 2) All parties and defendant authorities shall be summoned to the hearings. Absences shall not stand in the way of hearings and decisions. Article 47 3) An oral final hearing shall be omitted if the case is to be ruled upon in a closed meeting or if the Court, upon receiving the report of the rapporteur, does not believe an oral hearing is necessary to hear the pleadings of the parties.
Poland	Article 59 Constitutional Court Act 1. The Tribunal shall, at a hearing, examine applications in cases specified in Article 2.2. The Tribunal may, at a sitting in camera, examine a complaint concerning constitutional infringements if, from the pleadings submitted by the participants in the proceedings in writing, it results without dispute that the normative act, on the basis of which a court or organ of public administration has made a final decision in respect of freedoms or rights or obligations of the person making the complaint, is in non-conformity to the Constitution. The decision given in this procedure shall be subject to publication.
Russian Federation	Article 62 Federal Constitutional Law on the Constitutional Court In conformity with the procedure established by the decision of the Constitutional Court of the Russian Federation the presiding Judge shall propose to the parties to give explanations on the merits of the question under consideration and to adduce legal arguments to prove their position.
Serbia	Article 31 Law on the Constitutional Court Participant in proceedings is entitled to present and explain his/her position and reasons during the procedure, as well as to answer the claims and reasons of other participants in the procedure Article 38 Law on the Constitutional Court All participants in proceedings are summoned to public hearing, in order to express their positions and provide necessary information.
Slovakia	Article 30 Law on the Organisation of the Constitutional Court 1. Oral hearings in respect of matters reviewed by and petitions considered admissible by the Constitutional Court shall be conducted as laid down in Articles 125, 125a, 126, 127, 127a, 129, paragraphs 4 and 5 of the Constitution. 2. The Constitutional Court may, with the consent of parties to the proceedings, waive the oral hearing if there are reasonable grounds to believe that oral hearing would not bring any clarification of the reviewed case.
Slovenia	Article 36 Constitutional Court Act (1) The Constitutional Court invites to public hearings the participants in proceedings, representatives, and persons authorised by the participants in proceedings, as well as other persons whose presence at the public hearing is deemed necessary.
South Africa	Rule 11(4) Rules of the Constitutional Court When an applications is placed before the Chief Justice... he or she shall give directions as to how the application shall be dealt with and, in particular, as to whether it shall be set down for hearing or whether it shall be dealt with on the basis of written argument.
Spain	Article 52 Organic Law on the Constitutional Court 1. On receipt of the court records and on expiry of the notification period, the Division shall transmit the records to the originator of the appeal for protection, the parties who appeared in the proceedings, the Government Advocate in cases involving the public Administration, and the Office of the Public Prosecutor. The hearing shall take place within a period applicable to all parties of not more than twenty days during which pertinent arguments may be put forward. 2. The Division, proprio motu or at the request of a party, may agree to an oral hearing in place of the formal presentation of arguments.
Switzerland	Article 57 Federal Judicature Act Le président de la cour peut ordonner des débats.
United States	U.S. Supreme Court Rule 28 1. Oral argument should emphasise and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favoured. 2. The petitioner or appellant shall open and may conclude the argument. [...] 3. Unless the Court directs otherwise, each side is allowed one-half hour for argument.

6.1.10 Table: Suspension of implementation

State	Relevant constitutional or legal provision
Albania	Article 45 Law on the Organisation and Functioning of the Constitutional Court 1. The Constitutional Court, of its own motion or at the request of either of the parties, when it considers that the implementation of the law or normative act at issue may have consequences on state, social or individual interests, upon the decision of the meeting of judges or at the plenary hearing, may decide to suspend the relevant law or normative act. The suspension lasts until the final decision of the Constitutional Court is enforced.
Andorra	Article 88 (1) Qualified Law on the Constitutional Court The appellant asks the Court to set the decision aside and also, where applicable, to suspend its effects, by reiterating the claim for judicial protection of the right in question, the breach of which shall be presented in the same terms as before the ordinary court.
Armenia	Article 34 of the Law "On the Constitutional Court" of the Republic of Armenia 1. By the initiative of the applicant or the Constitutional Court, after the case is admitted, the Constitutional Court shall suspend the application of the legal act, the constitutionality of which is challenged, if the absence of such decision on suspension can cause irretrievable or harmful consequences to the applicant or the society. 2. The decision on suspension of the arguable legal act gets into force after its publication. The public is immediately informed on that by the means of Mass Media and the Public Television and Radio release the relevant information.
Austria	Article 85 Federal Law on the Constitutional Court 1. The complaint shall not have suspensory effect. 2. Upon application by the appellant the Constitutional Court, by its decision, shall confer suspensory effect on the complaint, provided that there are no pressing reasons in the public interest why it should not do so and that, after all the conflicting legal interests concerned have been taken into consideration, the appellant would sustain disproportionate harm as a result of the implementation or exercise by a third party of the right conferred by the administrative decree. Where the conditions which determined the decision as to the suspensory effect of the complaint have fundamentally changed the Court will have to give a fresh decision upon application by the appellant, the administrative authority (Article 83, subparagraph 1) or any persons interested on any other basis.
Belgium	Article 19 Special Law on the Court At the request of the applicant, the Court may, by a reasoned decision, suspend in full or in part a statute, decree or rule referred to in Article 134 of the Constitution against which an action for annulment has been brought. Article 20 Without prejudice to Article 16 ter of the Special Law on Institutional Reforms of 8 August 1980 and Article 5 ter of the Special Law of 12 January 1989 on the Brussels institutions, the decision to suspend may be made only where: 1. serious grounds are invoked and provided the immediate enforcement of the statute, decree or rule referred to in Article 134 of the Constitution against which the action has been brought is likely to occasion serious damage which is not readily redressable; 2. the action is brought against a provision which is identical or similar to a provision which has already been annulled by the Court of Arbitration and which was enacted by the same legislator.
Croatia	Article 45 Constitutional Law on the Constitutional Court The Constitutional Court may, until the final decision, temporarily suspend the execution of the individual decisions or actions undertaken on the grounds of the law or the other regulation, the constitutionality respective the legality of which is being reviewed, if their execution might cause grave and irreparable consequences." Article 67 Constitutional Act on the Constitutional Court: " (1) The constitutional complaint, as a rule, does not prevent the application of the disputed act. (2) The Constitutional Court may, on the proposal of the applicant, postpone the execution of court of justice decision until the decision is made, if the execution would cause to the applicant such damage, which could hardly be repaired, and the postponement is not contrary to the public interest nor would the postponement cause to anyone greater damage.
Czech Republic	Article 79 Constitutional Court Act (1) Constitutional complaints shall not have suspensive effect. A petition under Article 73 para. 1, appealing from a decision dissolving a political party or disallowing its activities, shall have suspensive effect. (2) Upon a motion of the complainant, the Court may suspend the enforceability of a contested decision, if such would not be inconsistent with important public interests and so long as the complainant would suffer, due to the enforcement of the decision or the exercise of the right granted to a third person by the decision, a disproportionately greater detriment than that which other persons would suffer while enforceability is suspended." Article 80 : "(1) If a constitutional complaint is directed at some encroachment of a public authority other than a decision by it, then in order to avert threatened serious harm or

State	Relevant constitutional or legal provision
	detriment, in order to forestall a threatened intervention by force, or from some other weighty public interest, the Court may enjoin the public authority from continuing in its actions ("provisional measures").
Denmark	§63 Constitution (1) The courts of justice shall be empowered to decide any question relating to the scope of the executive's authority; though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority.
Estonia	§12 Constitutional Review Court Act On the basis of a reasoned application of a participant of the proceedings or on its own motion the Supreme Court may suspend the entry into force of a contested legislation of general application or a provision thereof or of an international agreement, until the entry into force of the Supreme Court judgment.
Georgia	Article 25 Law on the Constitutional Court 3. If the Constitutional Court considers that the effects of the normative act are causing irreparable harm to one party it shall suspend the action of the disputed act before taking a final decision.
Germany	Article 93d Law on the Federal Constitutional Court 2. As long as and in so far as the panel has not decided on the acceptance of the complaint of unconstitutionality, the chamber may take all decisions involving the complaint proceedings. A temporary injunction wholly or partly suspending the application of a law may only be issued by the panel; Article 32 (7) above shall remain unaffected. The panel shall also decide in the cases described in Article 32 (3) above. Article 32 Law on the Federal Constitutional Court 1. In a dispute the Federal Constitutional Court may deal with a matter provisionally by means of a temporary injunction if this is urgently needed to avert serious detriment, to ward off imminent force or for any other important reason for the common weal. 2. The temporary injunction may be issued without oral pleadings. In particularly urgent instances, the Federal Constitutional Court need not give the parties to the principal proceedings, the parties entitled to join them or the parties entitled to make a statement an opportunity to make a statement. 3. If the temporary injunction is issued or refused by an order, a protest may be lodged. This shall not apply to the complainant in proceedings on a complaint of unconstitutionality. The Federal Constitutional Court shall decide on the protest after oral pleadings. These must be held within two weeks of receiving the reasons for the protest. 4. A protest against a temporary injunction shall not have any suspensive effect. The Federal Constitutional Court may stay the execution of the temporary injunction. 5. The Federal Constitutional Court may announce the decision on the temporary injunction or the protest without giving reasons. In this case the reasons shall be transmitted separately to the parties involved. 6. The temporary injunction shall cease to have effect after six months. It may be renewed with a majority of two thirds of the votes. 7. If a panel does not have a quorum, a temporary injunction may be issued in particularly urgent cases if at least three judges are present and the decision is taken unanimously. It shall cease to have effect after one month. If it is confirmed by the panel, it shall cease to have effect six months after the date of issue.
Greece	Article 50 Law establishing a Special Highest Court 3. Any court which has pending before it a case requiring the application of the provisions of a law concerning which litigation is pending before the Special Court as provided in Article 48, shall, after learning of such litigation by any means whatsoever, of its own motion refrain from delivering a final judgment until the Special Court has ruled.
Latvia	Article 19.2 Law on the Constitutional Court 5. Submitting of the constitutional claim does not suspend the execution of the court decision, with an exception of cases when the Constitutional Court has ruled otherwise
Liechtenstein	Article 52 Constitutional Court Act 1) Petitions to the Constitutional Court shall not suspend the act complained of. 2) Upon application of the party, the chairman may rule that individual complaints (article 15) shall suspend the act complained of, unless compelling public interests countervail and if the execution would result in a disproportionate burden upon the complainant.
Lithuania	Article 106 paragraph 4 Constitution of the Republic off Lithuania The presentation by the President of the Republic for the Constitutional Court or the resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act.
Montenegro	Article 63 Draft Law on the Constitutional Court Constitutional complaint shall not preclude implementation of the individual act against which it

State	Relevant constitutional or legal provision
	was lodged.
Poland	Article 50 Constitutional Tribunal Act 1. The Tribunal may issue a preliminary decision to suspend or stop the enforcement of the judgment in the case to which the complaint refers if the enforcement of the said judgment, decision or another ruling might result in irreversible consequences linked with great detriment to the person making the complaint or where a vital public interest or another vital interest of the person making the complaint speaks in favour thereof.
Russia	Article 42 Federal Constitutional Law on the Constitutional Court In the events of urgency the Constitutional Court of the Russian Federation may propose to the respective bodies and officials that they suspend the disputed act, the process of entry of the contested international treaty of the Russian Federation into force until the Constitutional Court of the Russian Federation has completed the consideration of the case.
Serbia	Article 56 Law on the Constitutional Court In the course of procedure, until the issuing of a final decision, the Constitutional Court may suspend the enforcement of an individual act or action taken on the basis of the general act whose constitutionality or legality are being assessed, where such enforcement could cause irreversible detrimental consequences.
Slovakia	Article 55 Law on the Organisation of the Constitutional Court 1. The filing of a constitutional complaint shall not have a suspensive effect. (1) 2. The Constitutional Court however may decide upon the complainant's motion on temporary injunction and it may suspend the execution of the challenged lawful decision, measure or other encroachment if it does not contradict to imperative public interest. This applies unless such execution of the challenged judgement, measure or other encroachment might entail the complainant greater damage than which other persons might incur in case if the enforceability is suspended; particularly the Court shall impose to such a body that in the complainant's opinion has violated his/her fundamental rights or freedoms temporarily to desist from execution of the lawful decision, measure, or other encroachment and the Constitutional Court shall impose on third parties temporarily to desist from their power, recognised by means of lawful decision, measure, or other encroachment.
Slovenia	Article 39 Constitutional Court Act (1) Until a final decision, the Constitutional Court may suspend in whole or in part the implementation of a law, other regulation, or general act issued for the exercise of public authority if difficult to remedy harmful consequences could result from the implementation thereof. (3) If the Constitutional Court suspends the implementation of a regulation or general act issued for the exercise of public authority, it may at the same time decide in what manner the decision is to be implemented. Article 58 If a constitutional complaint is accepted, the panel or the Constitutional Court may suspend the implementation of the individual act which is challenged by the constitutional complaint at a closed session if difficult to remedy harmful consequences could result from the implementation thereof.
South Africa	Article 172(2)(b) Constitution of the Republic of South Africa A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief... Article 172(1)(b) Constitution of the Republic of South Africa When deciding on a constitutional matter within its power, a court may make any order that is just and equitable.
Spain	Article 56 Organic Law on the Constitutional Court 1. The Division that hears an appeal for protection shall, proprio motu or at the request of the applicant, stay execution by the public authorities of the act in respect of which constitutional protection is claimed where such execution might cause an injury that would defeat the very purpose of the protection. It may, however, deny the stay where it could seriously harm the general interests or the fundamental rights or public freedoms of a third party.
Switzerland	Article 103 Federal Judicature Act 1. En règle générale, le recours n'a pas d'effet suspensif. 3. Le juge instructeur peut, d'office ou sur requête d'une partie, statuer différemment sur l'effet suspensif.
"The Former Yugoslav Republic of Macedonia"	Article 57 Rules of Procedure of the Constitutional Court During the proceedings, the Constitutional Court may pass a resolution to suspend the execution of the individual act or action until a final judgment has been adopted.
United States	U.S. Supreme Court Rule 23 2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment.

6.1.11 Table: Stay of ordinary proceedings

State	Relevant constitutional or legal provision
Albania	Article 68 Law on the Organisation and Functioning of the Constitutional Court 1. When a court of any instance or a trial judge considers during the trial <i>ex officio</i> or at the request of either party involved that a certain law is unconstitutional and if there is a direct link between the law and the solution of the case at hand, that particular law shall not be applied in the case at hand and after suspending the trial the judge shall refer the file to the Constitutional Court, which on its side should deliver its verdict as to the constitutionality of the said law.
Andorra	Article 4 Qualified Law on the Constitutional Court: "2. The jurisdiction of the Constitutional Court takes priority over that of the ordinary courts. A case which has been brought before the Constitutional Court cannot at the same time be examined by another court. Where the Constitutional Court declares admissible a case which has first been brought before an ordinary court that court ceases to deal with it."
Armenia	Article 71 Law on the Constitutional Court: "2. Before applying to Constitutional Court the courts must and the Chief Prosecutor has the right to suspend the given case until the decision of the Constitutional Court gets into force."
Belgium	Art. 30 of the Special Law on the Court A decision to refer a question to the Court of Arbitration for a preliminary ruling shall have the effect of suspending the proceedings and the time limits for proceedings and limitation periods from the date of that decision until the date on which the ruling of the Court of Arbitration is notified to the court of law that posed the preliminary question. A copy of the ruling shall be sent to the parties.
Chile	Article 94 Constitution [The Chamber] shall be competent to decide on the suspension of the proceeding in which the action of inapplicability due to unconstitutionality originated.
Croatia	Article 37 Constitutional Law on the Constitutional Court: "(1) If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, are not in accordance with the Constitution, it shall stop the proceedings and present a request with the Constitutional Court to review the constitutionality of the law, or some of its provisions. (2) If the court of justice in its proceedings determines that another regulation to be applied, or some of its provisions, are not in accordance with the Constitution and the law, it shall directly apply the law to that specific case and shall present a request with the Constitutional Court to review the constitutionality and legality of the disputed regulation or some of its provisions."
Cyprus	Article 144 Constitution: "1. A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court."
Germany	Article 100 Constitution (1) Where a court considers that a law on whose validity its ruling depends is unconstitutional it shall stay the proceedings and, if it holds the constitution of a Land to be violated, seek a ruling from the Land court with jurisdiction for constitutional disputes or, where it holds this Basic Law to be violated, from the Federal Constitutional Court.
Greece	Article 48 Law establishing a Special Highest Court [...] The case shall furthermore remain pending before the court requesting the preliminary ruling which, upon delivery of the Special Court's ruling, shall try the case again at the request of one of the parties or of its own motion, it being compelled to abide by the ruling of the Special Court which shall be transmitted to it by the Registrar of the Special Court.
Hungary	Article 38 Act on the Constitutional Court 1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.
Italy	Section 23 Law on the composition and procedures of the Constitutional Court If the case cannot be tried without first resolving the question of constitutionality, or if the trial court does not consider that the question of constitutionality raised is groundless, it shall issue an order referring the matter immediately to the Constitutional Court, setting out the terms and the reasons for raising the question of constitutionality, and shall suspend trial proceedings.
Latvia	Article 19.2 Law on the Constitutional Court 3. [...] Initiating a case at the Constitutional Court means the civil, criminal or administrative

State	Relevant constitutional or legal provision
	case shall not be reviewed at the court of general jurisdiction to the time of announcement of a Constitutional Court Judgment;
Liechtenstein	Article 18 1) Constitutional Court Act: "The Constitutional Court shall decide on the constitutionality of laws or individual legislative provisions: b) on application of a court, if and to the extent that the court has to apply a law or individual provisions thereof (on the basis of precedent) that it believes to be unconstitutional in a matter pending before it and the court has decided to interrupt the proceedings to request a ruling by the Constitutional Court."
Lithuania	Article 67 Law on the Constitutional Court of the Republic of Lithuania Provided that there are grounds to consider that a law or other legal act, which shall be applicable in a concrete case, fails to conform with the Constitution, the court (judge) shall suspend the examination of said case and, with regard to the competence of the Constitutional Court, shall appeal to it with a petition to decide whether the said law or other legal act is in conformity with the Constitution.
Luxemburg	Article 7 Law on the Organisation of the Constitutional Court The decision to put a preliminary question to the Constitutional Court suspends the proceedings and all procedural time limits or limitation periods from the date of the decision up to the date on which the referring court receives the Constitutional Court's ruling on the preliminary question.
Romania	Article 23 Law on the Organisation and Operation of the Constitutional Court 6. During the period in which the exception of unconstitutionality is being examined, the Instance may issue a motivated interlocutory judgment, ordering the suspension of the case. The interlocutory judgment is subject to appeal within five days from the date of the pronouncement.
Russian Federation	Article 98 Federal Law on the Constitutional Court The Constitutional Court of the Russian Federation having taken up the complaint on the violation by the law of the constitutional rights and freedoms of citizens for the consideration shall notify about that the court or other body which considers the case in which the appealed law has been applied or ought to be applied. Such notification does not entail the suspension of the proceedings on the case. The court or other body which considers the case in which the appealed law has been applied or ought to be applied may suspend the proceedings pending the passing of the judgment of the Constitutional Court of the Russian Federation. Article 103 Consequences of the Submission of Requests During the period from the time when the court hands down a decision to petition the Constitutional Court of the Russian Federation and until the adoption of a ruling by the Constitutional Court of the Russian Federation, proceedings on the case or the implementation of the decision handed down by the court on the case shall be suspended.
Slovenia	Article 156 Constitution If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision. Article 23 Constitutional Court Act (1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality. (2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality. (3) If by a request the Supreme Court initiates proceedings for the review of the constitutionality of a law or part thereof, a court which should apply such law or part thereof in deciding may stay proceedings until the final decision of the Constitutional Court without having to initiate proceedings for the review of the constitutionality of such law or part thereof by a separate request.
South Africa	Section 172(2)(b) Constitution of the Republic of South Africa A court which makes an order of constitutional invalidity ... may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.
Spain	Article 35 Organic Law on the Constitutional Court 2. The judicial body may raise the question only on completion of the proceedings and within the prescribed time-limit for delivering its judgment, by specifying the law or enactment having the force of law whose constitutionality is contested and the constitutional precept that is deemed to have been violated, and by indicating with supporting evidence the extent to which the judgment emanating from the proceedings depends on the validity of the enactment in question. Before delivering its final judgment, the judicial body shall hear the parties and the Office of the Public Prosecutor so that, within a joint time-limit of ten days that may not be

State	Relevant constitutional or legal provision
	extended, they can put forward such arguments as they see fit regarding the appropriateness of raising a question of unconstitutionality, whereupon the judge shall give a ruling without further process within three days. That ruling may not be appealed. However, the question of unconstitutionality may be raised again at successive stages of the proceedings or in higher courts until such time as a judgment not subject to appeal has been delivered.
Ukraine	Article 83 Law on the Constitutional Court When, in the process of examination of cases under general court procedure, a dispute concerning the constitutionality of norms of a law which is being applied by the court arises, the examination of the case shall be suspended.

6.1.12 Table: Injunctive measures

State	Relevant constitutional or legal provision
Germany	Article 32 Law on the Federal Constitutional Court: "1. In a dispute the Federal Constitutional Court may deal with a matter provisionally by means of a temporary injunction if this is urgently needed to avert serious detriment, to ward off imminent force or for any other important reason for the common weal. 2. The temporary injunction may be issued without oral pleadings. In particularly urgent instances, the Federal Constitutional Court need not give the parties to the principal proceedings, the parties entitled to join them or the parties entitled to make a statement an opportunity to make a statement. 3. If the temporary injunction is issued or refused by an order, a protest may be lodged. This shall not apply to the complainant in proceedings on a complaint of unconstitutionality. The Federal Constitutional Court shall decide on the protest after oral pleadings. These must be held within two weeks of receiving the reasons for the protest. 4. A protest against a temporary injunction shall not have any suspensive effect. The Federal Constitutional Court may stay the execution of the temporary injunction."
Liechtenstein	Article 53 Constitutional Court Act 1) Upon the request of a party and subject to the conditions specified in article 52 paragraph 2, the chairman may order such preliminary measures for the duration of the proceedings as appear necessary to regulate an existing situation in the interim or to preserve endangered legal circumstances.
Malta	Article 4 European Convention Act 2. The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection 1 of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled
South Africa	Section 172(2)(b) Constitution of the Republic of South Africa A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct. Article 172(1)(b) of the Constitution of the Republic of South Africa When deciding on a constitutional matter within its power, a court may make any order that is just and equitable.
Slovenia	Article 39 Constitutional Court Act (1) Until a final decision, the Constitutional Court may suspend in whole or in part the implementation of a law, other regulation, or general act issued for the exercise of public authority if difficult to remedy harmful consequences could result from the implementation thereof. (2) If a participant in proceedings motions for a suspension referred to in the preceding paragraph, and the Constitutional Court deems the conditions for the suspension not to be fulfilled, it dismisses the motion by an order. If the Constitutional Court does not decide otherwise, the statement of reasons of the order by which the motion was dismissed includes only a statement of the legal basis for the adoption of the decision and the composition of the Constitutional Court. (3) If the Constitutional Court suspends the implementation of a regulation or general act issued for the exercise of public authority, it may at the same time decide in what manner the decision is to be implemented. (4) An order by which the implementation of a regulation or general act issued for the exercise of public authority is suspended must include a statement of reasons. (5) The order referred to in the preceding paragraph is published in the Official Gazette of the Republic of Slovenia as well as in the official publication in which the respective regulation or general act issued for the exercise of public authority was published. Such suspension takes effect the day following the publication of the order in the Official Gazette of the Republic of

	<p>Slovenia, and in case of a public announcement of the order, the day of its announcement.</p> <p>Article 58</p> <p>If a constitutional complaint is accepted, the panel or the Constitutional Court may suspend the implementation of the individual act which is challenged by the constitutional complaint at a closed session if difficult to remedy harmful consequences could result from the implementation thereof.</p>
Switzerland	<p>Article 104 Federal Judicature Act</p> <p>Le juge instructeur peut, d'office ou sur requête d'une partie, ordonner les mesures provisionnelles nécessaires au maintien de l'état de fait ou à la sauvegarde d'intérêts menacés.</p>

6.1.13 Table: Extension of norms under review

State	Relevant constitutional or legal provisions
Armenia	<p>Article 68 of the Law On the Constitutional Court of the Republic of Armenia</p> <p>9. While determining the constitutionality of any general act mentioned in Paragraph 1 of Article 100 of the Constitution the Constitutional Court together with the challenged provision of the act finds out the constitutionality of any other provision of the act from the perspective of systematic interrelation of those. If the findings of the Court prove that other provisions of the act are interrelated with the challenged provisions and are not in conformity with the Constitution, the Constitutional Court can determine those provisions also invalid and unconstitutional.</p>
Croatia	<p>Article 71 Constitutional Act on the Constitutional Court</p> <p>(1) The Chamber, respective the Session of the Constitutional Court shall examine only the violations of constitutional rights which are stated in the constitutional complaint." But: Article 74: "If ascertained that the constitutional right of the applicant has been violated not only by the disputed, but also by some other act brought in this matter, the Constitutional Court shall repeal by the decision, as a whole or in part, and this act as well.</p>
Liechtenstein	<p>Article 19 Constitutional Court Act</p> <p>1) If the Constitutional Court finds that a law or individual provisions thereof are incompatible with the Constitution, it shall annul the law or the relevant provisions. If further provisions of the law that are directly connected therewith are incompatible with the Constitution for the same reasons, the Constitutional Court may also annul them ex officio without an application.</p>
Serbia	<p>Article 54 Law on the Constitutional Court</p> <p>In the procedure of assessing constitutionality and legality, the Constitutional Court is not constrained by the request of the authorised propounder, or initiator.</p>
Slovenia	<p>Article 30 Constitutional Court Act</p> <p>In deciding on the constitutionality and legality of a regulation or general act issued for the exercise of public authority, the Constitutional Court is not bound by the proposal of a request or petition. The Constitutional Court may also review the constitutionality and legality of other provisions of the same or other regulation or general act issued for the exercise of public authority for which a review of constitutionality or legality has not been proposed, if such provisions are mutually related or if such is necessary to resolve the case.</p> <p>Article 59</p> <p>(1) By a decision the Constitutional Court either dismisses a constitutional complaint as unfounded or grants such and in whole or in part annuls or abrogates the individual act, and remands the case to the authority competent to decide thereon.</p> <p>(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act. ...</p>
"The Former Yugoslav Republic of Macedonia"	<p>Article 14 Rules of Procedure of the Constitutional Court: During the examination of the constitutionality of a law or of the constitutionality and legality of a regulation or other common act, the Constitutional Court may also assess the constitutionality and legality of a regulation or other common act that is not challenged in the petition.</p>
Ukraine	<p>Article 61 Law on the Constitutional Court: If consideration of the case arising from constitutional claim or constitutional petition reveals the non-conformity with the Constitution of Ukraine of legal acts (their separate parts) other than those for which an examination has been opened and which influences the adoption of a decision or the providing of an opinion in the case, the Constitutional Court of Ukraine recognises such legal acts (their separate parts) as unconstitutional.</p>

6.1.14 Table: Erga omnes effect

State	Relevant constitutional or legal provision
Albania	Article 132 (1) Constitution: "The decisions of the Constitutional Court have general binding force and are final."
Armenia	Article 61 Law on the Constitutional Court 5. The decisions of the Constitutional Court on the substance of the case are mandatory for all the state and local self-government bodies, their officials as well as for the natural and legal persons in the whole territory of the Republic of Armenia. 6. The procedural decisions of the Constitutional Court are mandatory for all the participants of the case and other addressees of those. Article 69 Law on the Constitutional Court 12. In cases defined by this Article if the Constitutional Court decision finds the challenged provision unconstitutional and annuls it, the final judicial act shall be revisited in the order prescribed by Law.
Austria	Article 139 Constitution (6) If an ordinance has been rescinded on the score of illegality or if the Constitutional Court has pursuant to para. 4 above pronounced an ordinance to be contrary to law, all courts and administrative authorities are bound by the Court's decision, the ordinance shall however continue to apply to the circumstances effected before the rescission, the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to para. 5 above, the ordinance shall apply to all the circumstances effected, the case in point excepted, till the expiry of this deadline. Article 140 (7) If a law has been rescinded on the score of unconstitutionality or if the Constitutional Court has pursuant to para. 4 above pronounced a law to be unconstitutional, all courts and administrative authorities are bound by the Court's decision. The law shall however continue to apply to the circumstances effected before the rescission the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to para. 5 above, the law shall apply to all the circumstances effected, the case in point excepted till the expiry of this deadline.
Azerbaijan	Article 66 Law on the Constitutional Court. Legal Force of Resolutions of Constitutional Court 66.1. According to Article 130.9 of the Constitution of Azerbaijan Republic, the resolutions of Constitutional Court shall have binding force through out the territory of Azerbaijan Republic.
Belgium	Article 9 Special Law on the Court 1. Judgments of annulment delivered by the Court of Arbitration shall have force of <i>res judicata</i> commencing from their publication in the Moniteur belge. 2. Judgments delivered by the Court of Arbitration which dismiss an action for annulment shall be binding on the courts in respect of questions of law settled by such judgments. Article 28 The court which raised the preliminary issue, and any other court called upon to rule on the same matter, shall, in settling the dispute which gave rise to the questions referred to in Article 26, comply with the ruling of the Court of Arbitration.
Bosnia and Herzegovina	Article 63 Rules of the Constitutional Court 2. In a decision establishing incompatibility under Article VI.3 (a) and VI.3 (c), the Constitutional Court may quash the general act or some of its provisions, partially or entirely. Article 64 1. In a decision granting an appeal, the Constitutional Court shall quash the challenged decision and refer the case back to the court or to the body which took that decision, for renewed proceedings. If the law regulating the competence for acting in the respective legal matter was amended prior to taking of a decision by the Constitutional Court, the court or the body which took the quashed decision is obligated to refer the case to the competent court or body without delay.
Brazil	Article 52 Constitution It is exclusively the competence of the Federal Senate: X – to stop the application, in full or in part, of a law declared unconstitutional by final decision of the Supreme Federal Court. Article 103-A. The Supreme Federal Court shall have the power to, by own initiative or by provocation, by means of a decision taken by two thirds of their members, after reiterated decisions about constitutional matter, approve summary which, after publication in official gazette, shall have binding effect over the other bodies of the Judiciary Power and over the direct and indirect public administration, at federal, State and municipal levels, as well as proceed to their revision or cancelling, in the manner provided for in law.
Bulgaria	Article 22 Constitutional Court Act 1. With its decision the Court shall rule only on the motion as presented. It shall not be limited to the indicated grounds for non-conformity with the Constitution. 2. Acts which have been declared unconstitutional shall not be implemented.

State	Relevant constitutional or legal provision
	<p>3. When an act has been issued by an incompetent organ the Constitutional Court shall declare it null and void.</p> <p>4. The legal effects which have occurred on the basis of the act set out in paragraph 2 shall be resolved by the organ which has issued it.</p>
Croatia	<p>Constitutional Act on the Constitutional Court</p> <p>Article 31</p> <p>(1) The decisions and the rulings of the Constitutional Court are obligatory and every individual or legal person shall obey them.</p> <p>(2) All bodies of the central government and the local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.</p>
Cyprus	<p>Article 144 (3) Constitution: "Any decision of the Supreme Constitutional Court under paragraph 2 of this article shall be binding on the court by which the question has been reserved and on the parties to the proceedings and shall, in case such decision is to the effect that the law or decision or any provision thereof is unconstitutional, operate as to make such law or decision inapplicable to such proceedings only."</p>
Czech Republic	<p>Article 89 Constitution.</p> <p>(2) Enforceable decisions of the Constitutional Court are binding on all authorities and persons.</p> <p>Constitutional Court Act</p> <p>Article 82</p> <p>(3) If it grants the constitutional complaint of a natural or legal person under Article 87 para. 1, lit. d) of the Constitution, the Court shall:</p> <p>a) annul the contested decision of the public authority, or</p> <p>b) if a constitutionally guaranteed fundamental right or basic freedom was infringed as the result of an encroachment by a public authority other than a decision, enjoin the authority from continuing to infringe this right or freedom and order it, to the extent possible, to restore the situation that existed prior to the infringement.</p>
Germany	<p>Article 94 Constitution</p> <p>(2) The constitution and procedure of the Federal Constitutional Court shall be governed by a federal law which shall specify the cases in which its decisions have the force of law.</p> <p>Article 31 Law on the Federal Constitutional Court</p> <p>1. The decisions of the Federal Constitutional Court shall be binding upon federal and Land constitutional organs as well as on all courts and authorities.</p> <p>2. In cases pursuant to Article 13 (6), (11), (12) and (14) above decisions of the Federal Constitutional Court shall have the force of law. This shall also apply in cases pursuant to Article 13 (8a) [constitutional complaint] above if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law or to be null and void. If a law is declared to be compatible or incompatible with the Basic Law or other federal law or to be null and void, the decision shall be published in the Federal Law Gazette by the Federal Ministry of Justice. The above shall apply mutatis mutandis to decisions in cases pursuant to Article 13 (12) and (14) above.</p> <p>Article 79 Law on the Federal Constitutional Court</p> <p>1. New proceedings may be instituted in accordance with the provisions of the Code of Criminal Procedure against a final conviction based on a rule which has been declared incompatible with the Basic Law or null and void in accordance with Article 78 above or on the interpretation of a rule which the Federal Constitutional Court has declared incompatible with the Basic Law.</p> <p>2. In all other respects, subject to the provisions of Article 95 (2) below or a specific statutory provision, final decisions based on a rule declared null and void pursuant to Article 78 above shall remain unaffected. The execution of such decision shall not be admissible. Where enforcement is to be effected in accordance with the provisions of the Code of Civil Procedure the provisions of Article 767 of the Code shall apply mutatis mutandis. Claims on account of unjustified benefit shall be excluded.</p> <p>Article 95 Law on the Federal Constitutional Court</p> <p>1. If the constitutional complaint is upheld, the decision shall state which provision of the Basic Law has been infringed and by which act or omission. The Federal Constitutional Court may at the same time declare that any repetition of the act or omission against which the complaint was directed will infringe the Basic Law.</p> <p>2. If a constitutional complaint against a decision is upheld, the Federal Constitutional Court shall quash the decision and in cases pursuant to the first sentence of Article 90 (2) above it shall refer the matter back to a competent court.</p> <p>3. If a constitutional complaint against a law is upheld, the law shall be declared null and void. The same shall apply if a constitutional complaint pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law.</p>
Greece	<p>Article 51 Law on the Special Highest Court</p> <p>1. A decision by the Special Court resolving a dispute concerning assessment of the constitutionality of a law or its interpretation shall have force <i>erga omnes</i> as from its delivery in open court, subject to paragraph 4 of this article.</p>
Hungary	<p>Article 32A Constitution</p>

State	Relevant constitutional or legal provision
	(2) The Constitutional Court shall annul the statutes and other legal norms that it finds to be unconstitutional. Article 27 Law on the Constitutional Court 1. The decision of the Constitutional Court may not be appealed. 2. The decisions of the Constitutional Court shall be binding on everybody.
Ireland	Article 34 (3) Constitution 6° The decision of the Supreme Court shall in all cases be final and conclusive. 4° No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.
Italy	Article 136 Constitution When the Court declares the constitutional illegitimacy of a law or enactment having the force of law, the law ceases to have effect from the day following the publication of the decision. Article 30, cl. 3 of the Law on the composition and procedures of the Constitutional Court (Law no. 87/1953): Laws declared unconstitutional cannot find application starting from the day following publication of the decision
Korea, Republic	Constitutional Court Act Article 47 (Effect of Decision of Unconstitutionality) (1) Any decision that statutes are unconstitutional shall bind the ordinary courts, other state agencies and local governments.
Kyrgyzstan	Article 85 4. The decision of the Constitutional Court shall be final and not subject to appeal. The finding by the Constitutional Court that laws or their provisions are unconstitutional shall annul their application on the territory and also cancel the effect of other legal and regulatory acts based on the laws or provisions deemed unconstitutional, with the exception of judicial acts. Judicial acts based on norms of laws deemed unconstitutional shall be reviewed by the court in every specific case upon complaints of citizens whose rights and freedoms were affected.
Liechtenstein	Article 17 Law on the Constitutional Court 1) If the Constitutional Court finds a violation, by the decision or order of a public authority complained of, of one of the complainant's constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint (article 15 paragraph 2), the Constitutional Court shall annul such decision or order and, if applicable, shall call upon the responsible authority to decide the matter anew. Article 19 Law on the State Court 1) If the Constitutional Court finds that a law or individual provisions thereof are incompatible with the Constitution, it shall annul the law or the relevant provisions. If further provisions of the law that are directly connected therewith are incompatible with the Constitution for the same reasons, the Constitutional Court may also annul them ex officio without an application. Article 54 The decisions of the Constitutional Court shall be binding upon all authorities of the country and of the municipalities as well as upon all courts. In cases according to articles 19, 21 and 23, the judgment of the Constitutional Court shall be universally binding.
Lithuania	Article 72 Law on the Constitutional Court Rulings adopted by the Constitutional Court shall have the power of law and shall be binding to all governmental institutions, companies, firms, and organisations as well as to officials and citizens.
Luxembourg	Article 15 Law on the organisation of the Constitutional Court: The referring court and any other court called on to deal with the same case shall abide by the Constitutional Court's ruling when determining the case.
Malta	Article 242 Code of Organisation and Civil Procedure When a court, by a judgment which has become <i>res judicata</i> , declares any provision of any law to run counter to any provision of the Constitution of Malta or to any human right or fundamental freedom set out in the First Schedule to the European Convention act, or to be ultra vires, the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives, who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House.
Moldova	Article 140 Constitution (1) Laws and other regulations or parts thereof become null and void from the moment that the Constitutional Court passes the appropriate decisions to that effect.
Montenegro	Article 151 Constitution The decision of the Constitutional Court shall be generally binding and enforceable. Article 62 Draft Law on the Constitutional Court If a human right or freedom guaranteed by the Constitution of more persons was violated by an individual act, and only some of them lodged constitutional complaint, the decision of the Constitutional Court shall also relate to persons who did not lodge the constitutional complaint, provided that they are in the same legal situation.

State	Relevant constitutional or legal provision
Peru	<p>As for procedures before ordinary courts: Article 14 Organic Law on the Judicial Power²⁴⁷ In all these cases the judges shall limit themselves to declaring the inapplicability of the legal norm due to unconstitutionality, for the concrete case, without affecting its legal force, which is controlled in the form established by the Constitution. Article 35 of Law no. 26.435²⁴⁸ The sentences passed in unconstitutionality proceedings shall have authority of <i>res judicata</i>, shall bind all public powers and shall produce general effects from the day following their publication. Article VII Constitutional Procedure Code (p.t.)²⁴⁹ The sentences of the Constitutional Tribunal which have authority of <i>res judicata</i> shall constitute binding precedent if the sentence specifying the scope of its normative effects so states. If the Constitutional Tribunal decides to diverge from the precedent, it must specify the factual and legal bases that underlie the sentence and the reasons why it diverges from the precedent. Article 2²⁵⁰ If the threat to or violation of acts that have their basis in the application of a directly applicable unconstitutional norm is invoked, the sentence declaring the request admissible shall declare in addition the inapplicability of the specified norm.</p>
Poland	<p>Article 190 Constitution: 1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final. 4. A judgment of the Constitutional Tribunal on the nonconformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings. Article 71 Constitutional Tribunal Act 2. Where the Tribunal decides that the normative act ceases to have effect after the day of the publication of the judicial decision confirming its non-conformity to the Constitution, ratified international agreement or statutes, it shall, in the judicial decision, determine the date the act shall cease to have effect.</p>
Portugal	<p>Article 281 Constitution General review of constitutionality and legality: 3. The Constitutional Court also has jurisdiction to review and give generally binding rulings on the unconstitutionality or illegality of a legal rule, the application of which it has held to be unconstitutional or illegal in three appeals. Article 80 law on the Constitutional Court: 1. The decision on the appeal determines <i>res judicata</i> regarding the question of unconstitutionality or illegality. 2. Should the Constitutional Court judge the appeal to be founded, even if only partially, the proceedings drop back to the court from which they came, so that this same court, depending on the case, can change the decision or have it changed in agreement with the judgment on the question of unconstitutionality or illegality. 3. In the case of a judgment of unconstitutionality or legality on the rule applied in the decision appealed, or refused application, being founded on a particular interpretation of this same rule, this should be applied with the same interpretation in the case in question.</p>
Romania	<p>Article 26 Law on the Organisation and Functioning of the Constitutional Court 1. The final decision by which the unconstitutionality of a law or of a statutory order is established shall constitute legal ground for a retrial of the case in a civil lawsuit, at the request of the party which has claimed the exception of unconstitutionality.</p>

²⁴⁷ Ley organica del poder judicial
Artículo 14

En todos estos casos los magistrados se limitan a declarar la inaplicación de la norma legal por incompatibilidad constitucional, para el caso concreto, sin afectar su vigencia, la que es controlada en la forma y modo que la Constitución establece.

²⁴⁸ Artículo 35 de la ley n°26.435,

las sentencias recaídas en los procesos de inconstitucionalidad tienen autoridad de cosa juzgada, vinculan a todos los poderes públicos y producen efectos generales desde el día siguiente a la fecha de su publicación.

²⁴⁹ Las sentencias del Tribunal Constitucional que adquieren la autoridad de cosa juzgada constituyen precedente vinculante cuando así lo exprese la sentencia, precisando el extremo de su efecto normativo. Cuando el Tribunal Constitucional resuelva apartándose del precedente, debe expresar los fundamentos de hecho y de derecho que sustentan la sentencia y las razones por las cuales se aparta del precedente.

²⁵⁰ Article 2 Código procesal constitucional:

Cuando se invoque la amenaza o violación de actos que tienen como sustento la aplicación de una norma autoaplicativa incompatible con la Constitución, la sentencia que declare fundada la demanda dispondrá, además, la inaplicabilidad de la citada norma.

State	Relevant constitutional or legal provision
Russian Federation	<p>Article 6 Federal Constitutional Law on the Constitutional Court</p> <p>The decisions of the Constitutional Court of the Russian Federation shall be obligatory throughout the territory of the Russian Federation for all representative, executive, and judicial organs of State Government, organs of local government, enterprises, agencies, organisations, officials, citizens and their associations.</p> <p>Art. 79</p> <p>Legal Force of Decisions</p> <p>Decisions of the Constitutional Court of the Russian Federation shall be final, not subject to appeal and shall enter into force without delay after their announcement. Decisions of the Constitutional Court of the Russian Federation shall be directly effective and not require confirmation by other bodies or officials. The legal force of a decree of the Constitutional Court of the Russian Federation declaring an act unconstitutional may not be overcome by the repeat adoption of the same act. Acts or certain of their provisions declared unconstitutional shall lose force; international agreements of the Russian Federation which have not entered into force shall not be subject to introduction into force or application. Decisions of courts and other bodies based on acts declared unconstitutional shall not be enforced and must be reviewed where established by federal law. In the event that the declaration of a normative act as unconstitutional has created a gap in legal regulation, the Constitution of the Russian Federation shall be directly applied.</p>
San Marino	<p>Qualified law on the organisation of the <i>Collegio Garante</i> (p.t.)</p> <p>Article 13²⁵¹</p> <p>The declaration of inadmissibility of the request by the judge <i>a quo</i> doesn't preclude to lodge again a request concerning the same question before other instances or in other proceedings.</p> <p>Article 14²⁵²</p> <p>4. The decision of acceptance and of rejection are adopted with sentences. In the case of an acceptance, the <i>Collegio Garante</i> will declare the impugned provisions illegitimate.</p> <p>6. Within five days after their deposit, the decisions following requests submitted incidentally are transmitted, with the restitution of the files, to the judicial authority before which the proceeding is pending.</p>
Serbia	<p>Article 7 Law on the Constitutional Court</p> <p>Decisions of the Constitutional Court are final, enforceable and universally binding.</p>
Slovakia	<p>Article 127(2) Constitution</p> <p>If the Constitutional Court accepts a complaint, it shall hold in its decision that the rights or freedoms according to paragraph 1 were infringed by a valid decision, measure or by other action and it shall cancel such a decision, measure or other action.</p> <p>Article 56</p> <p>(1) Should the Constitutional Court grant the complaint, in its finding the Court shall state which fundamental right or freedom or which provision of the Constitution, Constitutional Act or international agreement have been breached and also shall specify the final judgement, proceeding or encroachment due to which the fundamental right or freedom has been violated.</p> <p>(2) Should the fundamental right or freedom be violated by means of decision or measure, the Constitutional Court shall quash such a decision or measure. The Constitutional Court shall also abate other intervention that has violated a fundamental right or freedom, should the nature of such an intervention make abatement possible.</p> <p>(3) If the Constitutional Court comply with the complaint, it may:</p> <ul style="list-style-type: none"> a) order that the party, violating the fundamental right or freedom through omission, shall try the case under special regulations, 14) b) revert the case to further proceedings c) prohibit continued violation of fundamental right or freedom d) order to that party which has violated fundamental right or freedom to recover the state, prior to the violation of fundamental right or freedom <p>(4) The Constitutional Court may however award to that party whose fundamental right or freedom has been violated an appropriate financial compensation as an indemnification of non-material damage, valued in financial terms.</p> <p>(5) Should the Constitutional Court decide on awarding of appropriate financial compensation, the</p>

²⁵¹ 5. La dichiarazione di inammissibilità dell'istanza da parte del giudice *a quo* non impedisce la riproposizione del medesimo negli altri gradi o in procedimenti diversi.
<http://www.consigliograndeegenerale.sm/new/ricercaleggi/vislegge.php3?action=visTestoLegge1&idlegge=6373&twid th=580&=>

²⁵² 4. Le decisioni di accoglimento e di rigetto sono adottate con sentenza. In caso di accoglimento il Collegio Garante dichiara le disposizioni impugnate illegittime.
 6. Entro cinque giorni dal deposito, le decisioni rese sui ricorsi presentati in via incidentale sono trasmesse, con la restituzione degli atti, all'autorità giudiziaria avanti alla quale pende il procedimento.
<http://www.consigliograndeegenerale.sm/new/ricercaleggi/vislegge.php3?action=visTestoLegge1&idlegge=6373&twid th=580&=>

State	Relevant constitutional or legal provision
	<p>authority which has breached a fundamental right or freedom should be liable to pay it to the complainant within two months of the decision of the Constitutional Court entering into force.</p> <p>(6) If the final judgement, measure or other intervention is being quashed or if the case is being reverted by the Constitutional Court for further proceedings, the party who has issued the decision, decided on the measure or caused other intervention shall be liable to rehear the case and to decide it again. In such proceedings or procedure the concerned authority shall be bound by the Constitutional Court's legal opinion.</p> <p>(7) Whosoever has issued a decision in a case, decided on a measure or made other intervention, shall be bound by the decision under clause (3) which is enforceable on its delivery.</p>
Slovenia	<p>Article 1 Constitutional Court Act</p> <p>(3) The decisions of the Constitutional Court are binding.</p> <p>Article 59</p> <p>(1) By a decision the Constitutional Court either dismisses a constitutional complaint as unfounded or grants such and in whole or in part annuls or abrogates the individual act, and remands the case to the authority competent to decide thereon.</p> <p>(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act.</p>
South Africa	<p>Article 165(5) Constitution of the Republic of South Africa</p> <p>An order or decision issued by a court binds all persons to whom and all organs of state to which it applies.</p>
Spain	<p>Article 38 Organic Law on the Constitutional Court</p> <p>1. Judgments handed down in unconstitutionality proceedings shall have the force of <i>res judicata</i>, shall be binding on all public authorities and shall have consequences of a general nature from the date of their publication in the "Official State Gazette".</p> <p>Article 55</p> <p>1. A judgment granting protection shall contain one or more of the following pronouncements:</p> <p>c. Full restoration of the applicant's right or freedom and adoption, where appropriate, of measures conducive to its preservation.</p> <p>2. Where protection is granted because the law applied violates fundamental rights or public freedoms, the Division shall lay the question before the full Court, which may declare the law in question unconstitutional in a new judgment entailing the ordinary consequences provided for in Article 37 and related articles.</p>
"The former Yugoslav Republic of Macedonia"	<p>Article 80 Rules of Procedure of the Constitutional Court</p> <p>The execution of legally binding individual acts passed on the basis of a law, regulation or other common act that is revoked by a judgment of the Court cannot be allowed, nor implemented, and if such execution has commenced, it will be cancelled.</p>
Turkey	<p>Article 152 Constitution</p> <p>The Constitutional Court shall decide on the matter and make public its judgment within five months of receiving the contention. If no decision is reached within this period, the trial court shall conclude the case under existing legal provisions. However, if the decision on the merits of the case becomes final, the trial court is obliged to comply with it.</p>
Argentina	<p>No precedent; decisions concern only concrete case, even by Supreme Court; however, precedent is informally established in practice.</p>
Canada	<p>Section 52 of the Supreme Court Act.</p> <p>The Court shall have and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada, and the judgment of the Court is, in all cases, final and conclusive.</p> <p>Only decisions of Supreme Court have <i>erga omnes</i> effect; see http://www.er.ugam.ca/nobel/r31400/jur2515/ndecours/jur2515chap7-2007.pdf</p>
Mexico	<p>As for judgments by ordinary courts:</p> <p>Art.107 Constitution</p> <p>I. Judgment will always be such that it only will be concerned with particular parties, limited to relief and protection in special cases for those who are making the complaint, without making a general declaration with respect to the law or act that motivates the complaint.</p> <p>Art.76 Law of <i>amparo</i>²⁵³ (p.t.)</p> <p>The decisions issued in proceedings of <i>amparo</i> only concern the probate or official natural or juristic persons who lodged the claim, limiting itself to the protection of the individuals in the special case in relation to which the claim was lodged, without making a general declaration on the law or act that</p>

²⁵³ Artículo 76.- las sentencias que se pronuncien en los juicios de amparo solo se ocuparan de los individuos particulares o de las personas morales, privadas u oficiales que lo hubiesen solicitado, limitandose a ampararlos y protegerlos, si procediere, en el caso especial sobre el que verse la demanda, sin hacer una declaracion general respecto de la ley o acto que la motivare.
<http://info4.juridicas.unam.mx/ijure/fed/19/80.htm?s=>

State	Relevant constitutional or legal provision
	underlie the matter. Article 192 ²⁵⁴ The jurisprudence established by the Supreme Court of Justice, either sitting in plenary or in chambers, is obligatory for these in relation to what the plenary decrees, and also to the unitary and collegial circuit tribunals, the district courts, the military tribunals and courts under common authority of the States and the federal district, and local and federal administrative tribunals and labour tribunals. The resolutions shall constitute jurisprudence if what is declared in the resolutions is upheld in five consecutive enforceable sentences, that they are approved of by at least eight judges if it concerns the jurisprudence of the plenary and four judges in the case of jurisprudence of the chambers.
United States of America	<i>Stare decisis</i> : Decisions of higher courts are in principle binding upon lower courts; however, "distinguish" is possible if the judge shows that the circumstances of the case differ from the precedent
Uruguay	Article 259 Constitution (p.t.) ²⁵⁵ The judgment of the Supreme Court of Justice shall refer exclusively to the concrete case and shall only take effect in the proceedings in which it is being passed. General Code of Procedure Article 520 (p.t.) ²⁵⁶ Sentence. The sentence shall limit itself to the declaration of constitutionality or unconstitutionality of the impugned dispositions and shall only take effect in the concrete case in relation to which it is passed. There shall be no recourse against it.

6.1.15 Table: Confirmation of constitutionality

State	Relevant constitutional or legal provision
Andorra	Article 44 Qualified Law on the Constitutional Court: "3. Where these laws and regulations are declared compatible with the Constitution they cannot subsequently be challenged on the ground that they infringe the same constitutional provisions."
Armenia	Article 32 Law on the Constitutional Court 4) the issue raised in the appeal has been subject to a prior decision of the Constitutional Court in cases determined by Articles 76, 78-80 of this Law and any new factual circumstances (not known to the applicant before the adoption of the Constitutional Court Decision for some independent reasons or not appeared at the case hearing) regarding that issue are not presented in the application;
Belgium	Article 9 (2) Special Law on the Court Judgments delivered by the Court of Arbitration which dismiss an action for annulment shall be binding on the courts in respect of questions of law settled by such judgments.
Czech Republic	Article 35 Constitutional Court Act: "(1) A petition instituting a proceeding is inadmissible if it relates to a matter upon which the Court has already passed judgment and in other instances provided for by this Statute. (2) A petition shall also be inadmissible in instances when the Court has already taken some action in the same matter; if one is submitted by an authorised petitioner, he has the right to take part, as a secondary party, in the proceeding concerning the earlier submitted petition."
Germany	Article 31 Law on the Federal Constitutional Court: "2. In cases pursuant to Article 13 (6), (11), (12) and (14) above decisions of the Federal Constitutional Court shall have the force of law. This shall also apply in cases pursuant to Article 13 (8a) above if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law or to be null and void."
Lithuania	Article 69 Law on the Constitutional Court

²⁵⁴ Artículo 192.- la jurisprudencia que establezca la suprema corte de justicia, funcionando en pleno o en salas, es obligatoria para estas en tratándose de las que decreta el pleno, y además para los tribunales unitarios y colegiados de circuito, los juzgados de distritos los tribunales militares y judiciales del orden común de los estados y del distrito federal; y tribunales administrativos y del trabajo, locales o federales.

Las resoluciones constituirán jurisprudencia, siempre que lo resuelto en ellas se sustenten en cinco sentencias ejecutorias ininterrumpidas por otra en contrario, que hayan sido aprobadas por lo menos por ocho ministros si se tratara de jurisprudencia del pleno, o por cuatro ministros, en los casos de jurisprudencia de las salas.

También constituyen jurisprudencia las resoluciones que diluciden las contradicciones de tesis de salas y de tribunales colegiados. <http://info4.juridicas.unam.mx/ijure/fed/19/80.htm?s=>

²⁵⁵ Artículo 259

El fallo de la Suprema Corte de Justicia se referirá exclusivamente al caso concreto y sólo tendrá efecto en los procedimientos en que se haya pronunciado.

²⁵⁶ Artículo 520

Sentencia.- La sentencia se limitará a declarar la constitucionalidad o inconstitucionalidad de las disposiciones impugnadas y solamente tendrá efecto en el caso concreto en que fuere planteada. Contra ella no se admitirá recurso alguno.

<http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=>

State	Relevant constitutional or legal provision
	By a decision, the Constitutional Court shall refuse to consider petitions for the examination of the constitutionality of a legal act if: 4. the Constitutional Court has already initiated the examination of a case concerning the same issue
Luxemburg	Article 6 Law on the Organisation of the Constitutional Court The court shall not be required to refer the matter to the Constitutional Court if, in its view: c. the Constitutional Court has already ruled on a question submitted to it concerning the same matter.
Peru	Article 6 Constitutional Procedure Code (p.t.) ²⁵⁷ The Judges cannot refrain from applying a norm whose constitutionality has been confirmed in a proceeding on unconstitutionality or an <i>actio popularis</i> proceeding.
Romania	Article 23(3) Law on the Organisation and Operation of the Constitutional Court Legal provisions whose constitutionality has been established according to Article 145 paragraph 1 of the Constitution cannot form the object of an exception." "decision dismissing the objection of unconstitutionality is not effective erga omnes, but only inter partes, which allows other legal subjects as well to raise an identical objection, in anticipation that the Constitutional Court may decide to change its jurisprudence and eventually admit the objection of unconstitutionality." ²⁵⁸
Russian Federation	Article 43 Federal Constitutional Law on the Constitutional Court The Constitutional Court of the Russian Federation shall take decision to dismiss the petition in the events where: 3. the Constitutional Court of the Russian Federation has issued a ruling on the object of the petition, that ruling retaining its force.
Serbia	Article 53 Law on the Constitutional Court Where the Constitutional Court finds there are grounds to commence a procedure on the basis of an initiative, it shall commence the procedure by a ruling. Where the constitutionality and legality are being challenged by an initiative, except for the laws and statute of an autonomous province or local self-government unit, or individual provisions of that act regulating questions on which the Constitutional Court has already assumed a position or where during the preliminary procedure the legal situation has been determined in full and the data collected provide a reliable foundation for determination, the Constitutional Court determines the matter without issuing a ruling on commencement of procedure. Where the Constitutional Court finds there are no grounds to initiate on initiative, it will not accept the initiative..
Spain	Article 38 Organic Law on the Constitutional Court 2. Where judgments entailing dismissal of applications are handed down in actions of unconstitutionality, the question may not be raised subsequently through the same channels if it is based on infringement of an identical constitutional precept. Article 50 1. The Section, ruling unanimously through an order that shall not be substantiated, may declare the action inadmissible in the following cases: d. Where the Constitutional Court has already dismissed an action or question of unconstitutionality or an appeal for constitutional protection on the merits in a broadly identical case, in which case it shall make specific reference in the order to the judgment or judgments concerned.
Turkey	Article 152 Constitution No allegation of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after the publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.

6.1.16 Table: *Ex nunc* or *ex tunc* effect of the Constitutional Court's decision

State	Relevant constitutional or legal provision
Albania	Article 132 Constitution (2)The decisions of the Constitutional Court enter into force on the day of their publication in the Official Journal, unless the Constitutional Court has decided that the law or normative act be invalidated on another date." Article 26 Law on the Organisation and Functioning of the Constitutional Court 1. Decisions of the Constitutional Court are final. They are published in the Official Gazette and enter into force on the day of their publication. The Court may decide that its decision shall enter

²⁵⁷ Article 6 Código procesal constitucional

Los Jueces no pueden dejar de aplicar una norma cuya constitucionalidad haya sido confirmada en un proceso de inconstitucionalidad o en un proceso de acción popular.

²⁵⁸ [CDL-JU\(2004\)021](#), I. Vida, "The obligatory force of decisions of the Constitutional Court for other courts as stabilising factor", report for the Conference on the "Role of the Constitutional Court in the Maintenance of the Stability and Development of the Constitution", Moscow, 2004

State	Relevant constitutional or legal provision
	<p>into force on the day of its proclamation when the decision concerns the protection of the constitutional rights of the person.”</p> <p>Article 76 Legal effects of the decisions of the Constitutional Court</p> <p>1. The decision of the Constitutional Court annulling a law or normative act as incompatible with the Constitution or international agreements will as a rule take legal effect from the date of its entry into force.</p> <p>2. The decision may be retroactive only where:</p> <p>a. it concerns a criminal sentence which is being executed, if this is directly related to the implementation of the annulled law or normative act,</p> <p>b. it concerns a case under review by the courts, unless their decision is final,</p> <p>c. it concerns a law or normative act that has not been implemented.</p>
Andorra	<p>Article 8 Qualified Law on the Constitutional Court</p> <p>1. Where the constitutionality of a general legal law or regulation in its entirety, or of certain provisions thereof, is challenged and the Court finds that there is only one interpretation which is compatible with the Constitution and one or more other interpretations which are incompatible therewith, it declares that the law or regulation in question is temporarily inapplicable until the organ which issued it has corrected the unconstitutional elements. The new law or regulation issued corrects the previous law or regulation although it remains subject to the general system of checking for constitutionality.</p> <p>Article 44</p> <p>2. Any laws and regulations declared unconstitutional are null and void.</p>
Armenia	<p>Article 102 Constitution The decisions and conclusions of the Constitutional Court shall be final and shall come into force following the publication thereof.</p> <p>Article 68 Law on the Constitutional Court</p> <p>10. In case of making a decision on determining the challenged act fully or partially invalid and unconstitutional the act is annulled after the Constitutional Court decision enters into force, except for the cases described in Parts 12 and 13 of this Article. 12. The Constitutional Court can decide to validate the influence of the decisions mentioned in Point 2 of Part 8 of this Article on the relations that started before those decisions got into force if the absence of such decision of the Court can cause irretrievable consequences for the state or the public</p> <p>The administrative and judicial acts that were adopted and implemented on the basis of the general acts that were annulled and found unconstitutional (together with those acts that were providing the implementation of the former) by the decision defined in the Paragraph 1 of this Article within three years before the Constitutional Court decision got into force shall be revisited by the administrative and judicial bodies that adopted those in the procedure stipulated by Law.</p>
Austria	<p>Article 140 Constitution:</p> <p>(5) The judgment by the Constitutional Court which rescinds a law as unconstitutional imposes on the Federal Chancellor or the competent Governor the obligation to publish the rescission without delay. This applies analogously in the case of a pronouncement pursuant to para. 4 above. The rescission enters into force on the day of publication if the Court does not set a deadline for the rescission. This deadline may not exceed eighteen months.</p> <p>(6) If a law is rescinded as unconstitutional by a judgment of the Constitutional Court, the legal provisions rescinded by the law which the Court has pronounced unconstitutional become effective again unless the judgment pronounces otherwise, on the day of entry into force of the rescission. The publication on the rescission of the law shall also announce whether and which legal provisions again enter into force.</p> <p>(7) If a law has been rescinded on the score of unconstitutionality or if the Constitutional Court has pursuant to para. 4 above pronounced a law to be unconstitutional, all courts and administrative authorities are bound by the Court's decision. The law shall however continue to apply to the circumstances effected before the rescission the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to para. 5 above, the law shall apply to all the circumstances effected, the case in point excepted till the expiry of this deadline.</p>
Azerbaijan	<p>Article 130 X Constitution: “Laws and other acts, individual provisions of these documents, intergovernmental agreements of the Azerbaijan Republic cease to be valid in term specified in the decision of Constitutional Court of the Azerbaijan Republic.”</p> <p>Article 67 law on the Constitutional Court.</p> <p>67.0 Resolutions of Constitutional Court shall enter into legal force at the following periods of time:</p> <p>67.1 Resolution adopted on the matters specified by Articles 130.3.1-7, 130.5 and 130.7 of the Constitution of Azerbaijan Republic shall enter into force from the date specified in the resolution itself</p>
Belgium	<p>Article 8 Special Law on the Court</p> <p>If the application is well-founded, the Court of Arbitration shall annul, in full or in part, the statute, decree or rule referred to in Article 134 of the Constitution against which the action has been</p>

State	Relevant constitutional or legal provision
	<p>brought.</p> <p>If it deems necessary, the Court shall, by means of a general provision, stipulate those effects of the annulled provision which are to be regarded as definitive or maintained provisionally, for a period of time which it shall determine.</p>
Bosnia and Herzegovina	<p>Article 63 Rules of the Constitutional Court</p> <p>1. The Constitutional Court shall, in the decision granting a request, decide on its legal effect (<i>ex tunc, ex nunc</i>).</p> <p>3. The quashed general act or its quashed provisions shall cease to be in force on the first day following the date of publication of the decision in the Official Gazette of Bosnia and Herzegovina.</p> <p>4. Exceptionally, the Constitutional Court may by its decision establishing the incompatibility under Article VI.3 (a) and VI. 3 (c) of the Constitution, grant a time-limit for harmonisation, which shall not exceed six months.</p> <p>5. If the established incompatibility is not removed within the time-limit referred to in paragraph 4 of this Article, the Constitutional Court shall, by a further decision, declare that the incompatible provisions cease to be in force.</p> <p>6. The incompatible provisions shall cease to be in force on the first day following the date of publication of the decision referred to in paragraph 4 of this article in the Official Gazette of Bosnia and Herzegovina.</p>
Chile	<p>Article 94 Constitution (p.t.)²⁵⁹</p> <p>There shall be no recourse against the resolutions of the Constitutional Tribunal, without prejudicing the Tribunal's possibility to rectify, in conformity with the law, the factual errors it has incurred.</p> <p>When dealing with a draft law or draft decree, the dispositions that the Tribunal declares unconstitutional cannot become a law.</p> <p>In the case of Article 93 no. 16, the impugned supreme decree will stay without effect in the sentence of the Tribunal which admits the claim. However, the precept that is declared unconstitutional in conformity with Article 93 no. 2, 4 or 7, will be derogated from the publication of the sentence in the in the Official Diary, without producing retroactive effect.</p>
Croatia	<p>Article 130 Constitution</p> <p>The Constitutional Court of Croatia shall repeal a law if it finds to be unconstitutional.</p> <p>The Constitutional Court of Croatia shall repeal or annul any other regulation if it finds it to be unconstitutional or illegal.</p> <p>Article 55 Constitutional Law on the Constitutional Court</p> <p>(1) The Constitutional Court shall repeal a law, or some of its provisions, if it finds that it is not in accordance with the Constitution; or another regulation, or some of its provisions, if it finds that it is not in accordance with the Constitution and the law.</p> <p>(2) The repealed law or other regulation, or their repealed separate provisions, shall lose legal force on the day of publication of the Constitutional Court decision in the Official Gazette <i>Narodne novine</i>, unless the Constitutional Court sets another term.</p> <p>(3) The Constitutional Court may annul a regulation, or its separate provisions, taking into account all the circumstances important for the protection of constitutionality and legality, and especially bearing in mind how seriously it violates the Constitution or the law, and the interest of legal security:</p> <ul style="list-style-type: none"> - if it violates the human rights and fundamental freedoms guaranteed by the Constitution, - if, without grounds, it places some individuals, groups or associations in a more or a less privileged position.
Czech Republic	<p>Article 89(1) Constitution Decisions of the Constitutional Court are enforceable as soon as they are announced in the manner provided for by statute, unless the Constitutional Court decides otherwise concerning enforcement.</p> <p>Constitutional Court Act</p> <p>Article 58 Constitutional Court Act</p> <p>(1) Judgments under Article 57 para. 1, lit. a) are enforceable on the day they are published in the Collection of Laws, unless the Court decides otherwise.</p> <p>(3) Other judgments are enforceable upon the personal delivery of a copy of the final written version of it to each party.</p> <p>Article 70</p>

²⁵⁹ Artículo 94. Contra las resoluciones del Tribunal Constitucional no procederá recurso alguno, sin perjuicio de que puede, el mismo Tribunal, conforme a la ley, rectificar los errores de hecho en que hubiere incurrido. Las disposiciones que el Tribunal declare inconstitucionales no podrán convertirse en ley en el proyecto o decreto con fuerza de ley de que se trate. En el caso del no. 16º del artículo 93, el decreto supremo impugnado quedará sin efecto de pleno derecho, con el solo mérito de la sentencia del Tribunal que acoja el reclamo. No obstante, el precepto declarado inconstitucional en conformidad a lo dispuesto en los numerales 2, 4 ó 7 del artículo 93, se entenderá derogado desde la publicación en el Diario Oficial de la sentencia que acoja el reclamo, la que no producirá efecto retroactivo. <http://www.gobiernodechile.cl/viewEstado.aspx?idArticulo=24065>

State	Relevant constitutional or legal provision
	<p>(1) If, after holding a proceeding, the Court comes to the conclusion that a statute, or individual provisions thereof, conflict with a constitutional act, or that some other enactment, or individual provisions thereof, conflict with a constitutional act or a statute, it shall declare in its judgment that such statute or other type of enactment, or individual provisions thereof, shall be annulled on the day specified in the judgment.</p> <p>Article 71</p> <p>(1) If, on the basis of a statute or some other enactment which the Court has annulled, a court in a criminal proceeding has passed a judgment which has acquired legal effect but has not yet been enforced, the invalidation of this statute or other enactment shall constitute grounds for reopening the proceeding in accordance with the provisions of the law on criminal judicial proceedings.</p> <p>(2) Other legally effective decisions issued on the basis of a statute, or some other enactment, which has been annulled remain unaffected; however, rights and duties arising from such decisions may not be enforced</p>
Estonia	<p>Constitutional Review Court Procedure Act</p> <p>§15 (preliminary ruling procedure)</p> <p>(1) Upon adjudicating a matter the Supreme Court may:</p> <p>2) declare legislation of general application or a provision thereof, which has entered into force, invalid;</p> <p>3) declare an international agreement, which has entered into force or has not entered into force or a provision thereof, unconstitutional;</p> <p>§. 24. (normative constitutional complaint)</p> <p>(1) Upon adjudicating a matter the Supreme Court may:</p> <p>1) repeal a resolution of the Riigikogu or the Board of the Riigikogu or a decision of the President of the Republic or a part thereof;</p>
Georgia	<p>Article 89(2) Constitution: "The judgment of the Constitutional Court shall be final. A normative act or a part thereof recognised as unconstitutional shall cease to have legal effect from the moment of the promulgation of the respective judgment of the Constitutional Court."</p> <p>Article 23 Law on the Constitutional Court</p> <p>1. If a petition or application concerning the issues envisaged in Article 19 points a and e and Article 20 of the present Law is allowed this shall cause the normative act or part of it to be abrogated as unconstitutional from the moment the corresponding judgment of the Constitutional Court is published.</p>
Germany	<p>Article 31 Law on the Federal Constitutional Court</p> <p>2. In cases pursuant to Article 13 (6), (11), (12) and (14) above decisions of the Federal Constitutional Court shall have the force of law. This shall also apply in cases pursuant to Article 13 (8a) above if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law or to be null and void. If a law is declared to be compatible or incompatible with the Basic Law or other federal law or to be null and void, the decision shall be published in the Federal Law Gazette by the Federal Ministry of Justice. The above shall apply mutatis mutandis to decisions in cases pursuant to Article 13 (12) and (14) above.</p> <p>Article 95 Law on the Federal Constitutional Court</p> <p>3. If a constitutional complaint against a law is upheld, the law shall be declared null and void. The same shall apply if a constitutional complaint pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law.</p>
Greece	<p>Article 100 (4) Constitution</p> <p>[...] Provisions of a statute declared unconstitutional shall be invalid as of the date of publication of the respective judgment, or as of the date specified by the ruling.</p> <p>Article 51 Law on the Special Highest Court</p> <p>1. A decision by the Special Court resolving a dispute concerning assessment of the constitutionality of a law or its interpretation shall have force <i>erga omnes</i> as from its delivery in open court, subject to paragraph 4 of this article.</p> <p>4. The Special Court may decide, by reasoned decision with effect erga omnes, that the provisions held unconstitutional are invalid even in respect of the period up to the publication of the decision.</p> <p>5. Where a decision retroactively declaring a law unconstitutional is taken in accordance with paragraph 4 above, an application for review may be made in respect of any irrevocable judicial decision taken during that period and founded on provisions held unconstitutional. Such application may be made by any party within six months as from the publication of the Special Court's decision. For the remainder, the ordinary procedure before the court in question shall be upheld, and it shall disregard the provision declared unconstitutional.</p> <p>6. The revocation of administrative acts which are founded on statutory provisions held unconstitutional and which have been performed during the period of retroactivity of the Special Court's decision shall be mandatory within six months following publication of the decision.</p>
Hungary	<p>Article 42 Act on the Constitutional Court</p> <p>1. In the case provided in Article 40, the legal rule or its provisions and the other legal means of State control or its provision shall be considered as repealed, on the day of the publication of the decision.</p>

State	Relevant constitutional or legal provision
	<p>Article 43</p> <p>1. Any legal rule or other legal means of State control which has been annulled by the decision of the Constitutional Court shall not be applied from the day of the publication of the relevant decision in the Official Gazette.</p> <p>2. The annulment of a legal rule or other legal means of State control shall – except for the case provided in section 3 – affect neither the legal relationships which have developed prior to the publication of the decision nor the rights and duties which derived from them.</p> <p>3. The Constitutional Court shall order the revision of any criminal proceedings concluded by a final decision (without appeal) on the basis of an unconstitutional legal rule or other legal means of State control, if the convict has not yet been relieved of the detrimental consequences, and the nullity of the provision applied in the proceedings would result in the reduction or the putting aside of the punishment or measure, or in the release from, or the limitation of responsibility.</p> <p>4. The Constitutional Court may determine the date of the abrogation of the unconstitutional legal rule or its applicability in the given case differently from the provision of Article 42, section 1 and Article 43, sections 1 et 2, if justified by a particularly important interest of legal security or of the person who initiated the procedure.</p>
Italy	<p>Article 136 Constitution</p> <p>When the Court declares the constitutional illegitimacy of a law or enactment having the force of law, the law ceases to have effect from the day following the publication of the decision.</p> <p>Article 30, cl. 3 of the Law on the composition and procedures of the Constitutional Court (Law no. 87/1953):</p> <p>Laws declared unconstitutional cannot find application starting from the day following publication of the decision</p>
Korea, Republic	<p>Constitutional Court Act</p> <p>Article 47</p> <p>(2) Any statute or provision thereof decided as unconstitutional shall lose its effect from the day on which the decision is made: Provided, That the statutes or provisions thereof relating to criminal penalties shall lose their effect retroactively.</p> <p>(3) In case referred to in the proviso of paragraph (2), the retrial may be allowed with respect to a conviction based on the statutes or provisions thereof decided as unconstitutional.</p>
Kyrgyzstan	<p>Article 85 Constitution</p> <p>4. The decision of the Constitutional Court shall be final and not subject to appeal.</p> <p>The finding by the Constitutional Court that laws or their provisions are unconstitutional shall annul their application on the territory and also cancel the effect of other legal and regulatory acts based on the laws or provisions deemed unconstitutional, with the exception of judicial acts.</p> <p>Judicial acts based on norms of laws deemed unconstitutional shall be reviewed by the court in every specific case upon complaints of citizens whose rights and freedoms were affected.</p> <p>Article 14 Constitutional Court Law</p> <p>A decision of the Constitutional Court stating unconstitutionality of a law or of another normative act in full or in part shall repeal their effect in the territory of the Kyrgyz Republic, as well as the effect of other normative acts based on the act recognised as unconstitutional.</p> <p>Decisions rendered by a court or by another legal practice body based on a normative act recognised as unconstitutional shall not be subject to execution.</p>
Latvia	<p>Article 32 Law on the Constitutional Court</p> <p>3. Any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.</p>
Liechtenstein	<p>Article 19 Constitutional Court Act</p> <p>3) The judgment on annulment and determination of unconstitutionality shall be published by the Government in the Liechtenstein Legal Gazette without delay. The annulment shall take effect with this publication, unless the Constitutional Court specifies a deadline of at most one year for this purpose; this shall not apply to the case being adjudicated.</p>
Lithuania	<p>Article 72 Law on the Constitutional Court</p> <p>Laws of the Republic of Lithuania (of a part thereof) or other Seimas acts (or a part thereof), acts of the President of the Republic, or acts of the Government (or a part thereof) shall not be applicable from the day that the Constitutional Court ruling that the appropriate act (or a part thereof) contradicts the Constitution of the Republic of Lithuania is publicised.</p> <p>Article 72 Law on the Constitutional Court</p> <p>All governmental institutions as well as their officials must revoke executive acts or provisions thereof which they have adopted and which are based on an act which has been recognised as unconstitutional.</p> <p>Decisions based on legal acts which have been recognised as being contradictory to the Constitution or laws must not be executed if they have not been executed prior to the appropriate Constitutional Court ruling became effective. The power of the Constitutional Court to recognise a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof.</p>

State	Relevant constitutional or legal provision
Mexico	Art.107 Constitution Concerning rulings by the Supreme Court The declaration of invalidity of the resolutions to which sections I and II refer will not have retroactive effects, except in penal matters, in which the general principles and legal dispositions that are applicable in these matters will rule.
Moldova	Article 140 Constitution (1) Laws and other regulations or parts thereof become null and void from the moment that the Constitutional Court passes the appropriate decisions to that effect.
Montenegro	Art. 152 Constitution When the Constitutional Court establishes that the law is not in conformity with the Constitution and confirmed and published international agreements, that is, that other regulation is not in conformity with the Constitution and the law, that law and other regulation shall cease to be valid on the date of publication of the decision of the Constitutional Court. The law or other regulation, i.e. their individual provisions that were found inconsistent with the Constitution or the law by the decision of the Constitutional Court, shall not be applied to the relations that have occurred prior to the publication of the Constitutional Court decision, if they have not been solved by an absolute ruling by that date.
Peru	Article 204 Constitution (p.t.) ²⁶⁰ The sentence of the Tribunal that declares the unconstitutionality of a norm shall be published in the Official Diary. The day following publication, the norm shall lose effect. The sentence of the Tribunal declaring total or partial unconstitutionality shall not have retroactive effect. Article 35 of Law N°26.435 The sentences passed in unconstitutionality proceedings shall have authority of <i>res judicata</i> , shall bind all public powers and shall produce general effects from the day following their publication.
Poland	Article 190(3) Constitution A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers. 4. A judgment of the Constitutional Tribunal on the nonconformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings. Article 71(2) Constitutional Tribunal Act Where the Tribunal decides that the normative act ceases to have effect after the day of the publication of the judicial decision confirming its non-conformity to the Constitution, ratified international agreement or statutes, it shall, in the judicial decision, determine the date the act shall cease to have effect.
Portugal	Article 282 Constitution 1. A generally binding ruling of unconstitutionality or illegality shall be given effect from the date when the provision ruled unconstitutional or illegal came into force and shall require that any provisions that may have been revoked shall be reinstated, with retroactive effect. 2. However, where unconstitutionality or illegality derives from contravention of a constitutional or legal provision that has been subsequently made, the ruling shall be given effect only from the date when that provision came into force. 3. Cases already decided shall hold good, except if the Constitutional Court rules otherwise in respect of a legal rule relating to penal or disciplinary matters or an illegal act under a regulatory ordinance or a provision that is disadvantageous to the accused. 4. When required in the interests of legal certainty, or for reasons of equity or public interest of exceptional importance, which shall be justified if requested, the Constitutional Court may prescribe effects of unconstitutionality or illegality that are more restrictive than those specified in paragraphs 1 and 2.
Romania	Article 147 Constitution (1) The provisions of the laws and ordinances in force, as well as those of the standing orders, which are found to be unconstitutional, shall cease their legal effects within forty-five days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the

²⁶⁰ Artículo 204º. La sentencia del Tribunal que declara la inconstitucionalidad de una norma se publica en el diario oficial. Al día siguiente de la publicación, dicha norma queda sin efecto.
No tiene efecto retroactivo la sentencia del Tribunal que declara inconstitucional, en todo o en parte, una norma legal.

State	Relevant constitutional or legal provision
	<p>provisions of the Constitution. For this limited length of time the provisions found to be unconstitutional shall be suspended de jure.</p> <p>(4) Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, decisions shall be generally binding and effective only for the future.</p> <p>Article 26 Law on the Organisation and Functioning of the Constitutional Court</p> <p>1. The final decision by which the unconstitutionality of a law or of a statutory order is established shall constitute legal ground for a retrial of the case in a civil lawsuit, at the request of the party which has claimed the exception of unconstitutionality.</p> <p>2. In criminal trials, the decision provided under paragraph 1 above shall constitute legal ground for the retrial of the cases in which the sentence was pronounced on the basis of the legal provision which was declared unconstitutional.</p>
Russian Federation	<p>Article 75 Federal Constitutional Law on the Constitutional Court of the Russian Federation</p> <p>The decision of the Constitutional Court of the Russian Federation, stated in an individual document, shall, depending on the nature of the question under consideration, contain the following data:</p> <p>11. statement on the final and binding nature of the decision;</p> <p>12. procedure for the entry into force of the decision, as well as the procedure, dates and specifics of its execution and promulgation.</p> <p>Article 79</p> <p>The decision of the Constitutional Court of the Russian Federation shall be final, may not be appealed and shall come into force immediately upon announcement.</p>
Serbia	<p>Article 168 Constitution</p> <p>The Law or other general acts which is not in compliance with the Constitution or the Law shall cease to be effective on the day of publication of the Constitutional Court decision in the official journal.</p> <p>Article 58 Law on the Constitutional Court</p> <p>When the Constitutional Court establishes that a law, statute of an autonomous province or local self-government unit, other general act or collective contract do not comply with the Constitution, generally accepted rules of international law and ratified international agreement, such law, statute of autonomous province or local self-government unit, other general act or collective contract shall cease to be valid on the day the Constitutional Court decision is published in the "Official Gazette of the Republic of Serbia".</p> <p>Article 59</p> <p>When the Constitutional Court determines the manner of rectifying the consequences which arose due to the implementation of a general act which is not in compliance with the Constitution or law, the decision of the Constitutional Court has legal effect from the date of its publication in the Official Gazette of the Republic of Serbia.</p> <p>Article 60</p> <p>Laws and other acts for which it has been established by a Constitutional Court decision that they do not comply with the Constitution, generally accepted rules of international law, ratified international agreements or law, cannot apply to relations that arose before the day of publication of the Constitutional Court decisions, if they were not finally resolved by that date. General act passed for the purpose of enforcement of laws and other general acts for which it is established, by a Constitutional Court decision, that they are not in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law, shall not apply from the day of publication of the Constitutional Court decision, if the decision implies that these general acts are incompatible with the Constitution, generally accepted rules of international law, ratified international agreements or law. Enforcement of finally binding individual acts passed on the basis of regulations that can no longer apply, cannot be allowed or implemented, and if the enforcement is initiated, it shall be discontinued.</p> <p>Article 61</p> <p>Everyone whose right has been violated by a final or legally-binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law is entitled to demand from the competent authority a revision of that individual act</p> <p>Proposals for revision of a final or legally-binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law may be submitted within six months from the date of the publication of the decision in the Official Gazette of the Republic of Serbia, unless more than two years have passed between the delivery of the individual act and the submittal of the proposal or initiative for initiating a procedure.</p>
Slovakia	<p>Article 125 Constitution of Slovak Republic</p> <p>(3) If the Constitutional Court holds by its decision that there is inconformity between legal regulations stated in paragraph 1, the respective regulations, their parts or some of their provisions shall lose effect. The bodies that issued these legal regulations shall be obliged to harmonize them with the Constitution, with constitutional laws and with international treaties promulgated in the</p>

State	Relevant constitutional or legal provision
	<p>manner laid down by a law, and if it regards regulations stated in paragraph 1 letters b) and c) also with other laws, if it regards regulations stated in paragraph 1 letter d) also with government regulations and with generally binding legal regulations of Ministries and other central state administration bodies within six month from the promulgation of the decision of the Constitutional Court. If they fail to do so, these regulations, their parts or their provisions shall lose effect after six months from the promulgation of the decision...</p> <p>(6) A decision of the Constitutional Court issued pursuant to paragraphs 1, 2 and 5 shall be promulgated in the manner laid down for the promulgation of laws. The valid judgement of the Constitutional Court shall be generally binding</p> <p>Article 41b Law on the Organisation of the Constitutional Court</p> <p>(1) If a court has issued a judgement in criminal proceedings on the basis of a legal regulation which later lost its force under Article 125 of the Constitution, and though that judgement has entered into force, but has not been executed, loosing of the effectivity of such a legal regulation or a part thereof or some of its provisions becomes a reason for a re-trial according to the provisions of the Code of Criminal Procedures.</p> <p>(2) Other valid decisions, issued in civil or administrative proceedings on the basis of a legal regulation that has gone out of force totally, partially or in some of its provisions remain unaffected; obligations, imposed by such decisions cannot be subject to enforcement.</p>
Slovenia	<p>Article 43 Constitutional Court Act</p> <p>The Constitutional Court may in whole or in part abrogate a law which is not in conformity with the Constitution. Such abrogation takes effect the day following the publication of the decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court.</p> <p>Article 44</p> <p>The abrogation of a law or a part thereof by the Constitutional Court applies to relations that had been established before the day such abrogation took effect, if by that day such relations had not been finally decided.</p> <p>Article 45</p> <p>(1) The Constitutional Court annuls or abrogates regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful.</p> <p>(2) The Constitutional Court annuls regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful when it determines that it is necessary to remedy harmful consequences arising from such unconstitutionality or unlawfulness. Annulment has retroactive effect.</p> <p>(3) In other instances, the Constitutional Court abrogates regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful. Abrogation takes effect the day following the publication of the Constitutional Court decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court. In instances of abrogation, Article 44 of this Act is applied <i>mutatis mutandis</i>.</p> <p>Article 59</p> <p>(1) By a decision the Constitutional Court either dismisses a constitutional complaint as unfounded or grants such and in whole or in part annuls or abrogates the individual act, and remands the case to the authority competent to decide thereon.</p> <p>(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act.</p>
South Africa	<p>Article 172(1)(b) Constitution of the Republic of South Africa</p> <p>When deciding a constitutional matter within its power, a court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency and may make any order that is just and equitable, including an order limiting the retrospective effect of the declaration of invalidity.</p>
Spain	<p>Article 161 Constitution</p> <p>The Constitutional Court has jurisdiction over the whole of Spanish territory and is competent to hear:</p> <p>a) appeals against the alleged unconstitutionality of laws and regulations having the force of law. A declaration of unconstitutionality of a legal provision with the force of law, interpreted by jurisprudence, shall also affect the latter, although the sentence or sentences handed down shall not lose their status of <i>res judicata</i>.</p> <p>Article 40 Organic Law on the Constitutional Court</p> <p>1. Judgements that declare the unconstitutionality of laws, regulations or enactments having the force of law shall not provide grounds for review of proceedings concluded by means of a judgement having force of <i>res judicata</i> in which unconstitutional laws, regulations or enactments were applied, save in the case of criminal proceedings or administrative litigation concerning a sanction procedure where the invalidity of the rule applied would entail a reduction of the penalty or</p>

State	Relevant constitutional or legal provision
	sanction or exclusion, exemption or limitation of liability.
“The former Yugoslav Republic of Macedonia”	<p>Article 56 Rules of Procedure of the Constitutional Court In its judgment regarding the application for protection of freedoms and rights, the Constitutional Court shall determine whether there is an infringement and in consequence, it will annul the individual act, prohibit the action causing the infringement or dismiss the application.</p> <p>Article 79 The judgment of the Constitutional Court of the Republic of Macedonia revoking or repealing a law, regulation or other common act produces legal effects from the day of its publication in the Official Gazette of the Republic of Macedonia.</p> <p>Article 80 The execution of legally binding individual acts passed on the basis of a law, regulation or other common act that is revoked by a judgment of the Court cannot be allowed, nor implemented, and if such execution has commenced, it will be cancelled.</p> <p>Article 81 Anyone whose rights have been infringed by a final or legally binding individual act adopted on the basis of a law, regulation or other common act which has been revoked by a judgment of the Constitutional Court has the right to request the competent organ to revoke that individual act, within 6 months from the date of publication of the judgment of the Court in the Official Gazette of the Republic of Macedonia.</p>
Uruguay	<p>General Code of Procedure (p.t.)²⁶¹ Article 521 The declaration of unconstitutionality leaves the legal norm affected by the declaration inapplicable in the proceedings in which the unconstitutionality has been pronounced. If it has been demanded through an action or in main proceedings, the sentence shall be effective to hinder the application of the norms declared unconstitutional against the person who had promoted the declaration and obtained the sentence. This person may invoke the decision in any judicial proceeding including the proceeding for annulment before the Tribunal of administrative disputes.</p>

6.1.17 Table: Capacity of constitutional courts to attribute damages

State	Relevant constitutional or legal provisions
Chile	<p>Autonomous rule of the Supreme Court of 24 June 1992 (p.t.)²⁶² 11. The Court of Appeals as well as the Supreme Court may, if they deem it appropriate, impose a condemnation for damages.</p>
Croatia	<p>Article 63 Constitutional Act on the Constitutional Court (3) In the decision in paragraph 2 of this Article, the Constitutional Court shall determine appropriate compensation for the applicant for the violation of his/her constitutional right committed by the court of justice by not deciding within a reasonable time about his/her rights and obligations, or about the suspicions or accusations of a criminal offence. The compensation shall be paid from the state budget within a term of three months from the date when the applicant lodged a request for its payment.</p>
Latvia	<p>Law on the Constitutional Court Article 26 – The procedure for reviewing cases 1. The procedure for reviewing cases is provided for by this Law and the Rules of Procedure of the Constitutional Court. Envisaging of procedural terms and procedural sanctions- fines- shall be carried out in accordance with the rules of the Civil Procedure.</p>
Monaco	<p>Ordonnance no. 2.984 du 16/04/1963 sur l'organisation et le fonctionnement du Tribunal Suprême Article 35 .- Lorsque le recours en annulation prévu au paragraphe B, chiffre 1, de l'article 90 de la Constitution comporte une demande en indemnité, le Tribunal Suprême, s'il prononce l'annulation statue, dans la même décision sur le sort de ladite demande, sous réserve de la possibilité</p>

²⁶¹ Artículo 521 Efectos del fallo.- La declaración de inconstitucionalidad hace inaplicable la norma legal afectada por ella, en los procedimientos en que se haya pronunciado.

Si hubiere sido solicitada por vía de acción o principal, la sentencia tendrá eficacia para impedir la aplicación de las normas declaradas inconstitucionales contra quien hubiere promovido la declaración y obtenido la sentencia, pudiendo hacerla valer como excepción en cualquier procedimiento jurisdiccional, inclusive el anulatorio ante el Tribunal de lo Contencioso Administrativo

<http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=>

²⁶² Auto acordado de la Corte Suprema, de 24 de junio de 1992, sobre tramitación del recurso de protección de garantías constitucionales

11. Tanto la Corte de Apelaciones como la Corte Suprema, cuando lo estimen procedente, podrán imponer la condenación en costas.

State	Relevant constitutional or legal provisions d'ordonner toutes les mesures d'instruction utiles prévues à l'article 32.
Poland	Article 77 Constitution 1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.
Romania	Article 52 Constitution – Right of a Person Aggrieved by a Public Authority (1) Any person aggrieved in his legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his application within the legal deadline, is entitled to the acknowledgement of his claimed right or legitimate interest, the annulment of the act and reparation for the damage suffered. (2) The conditions and limitations on the exercise of this right shall be regulated by an organic law. (3) The State shall bear liability in tort for any damage caused by miscarriages of justice. Liability of the State shall be determined according to the law and shall not eliminate liability of the magistrates having exercised their office in ill faith or gross negligence.
Slovakia	Article 127(3) Constitution The Constitutional Court may, by the decision by which it allows a complaint, award the one whose rights according to paragraph were infringed an adequate financial satisfaction.
Slovenia	Article 46 Constitutional Court Act (1) Any person who suffers harmful consequences due to a regulation or general act issued for the exercise of public authority which has been annulled, is entitled to request that such consequences be remedied. If such consequences occurred as a result of an individual act adopted on the basis of the annulled regulation or general act issued for the exercise of public authority, entitled persons have the right to request that the authority which decided in the first instance change or annul such individual act. (2) Entitled persons may request a change or annulment of the individual act referred to in the preceding paragraph within three months of the day of the publication of the Constitutional Court decision, provided no more than one year elapsed from the service of the individual act to the lodging of the petition or request. (3) If the consequences occurred directly on the basis of a regulation or other general act issued for the exercise of public authority which was annulled by the Constitutional Court, the authority which issued such regulation or general act issued for the exercise of public authority is required to remedy such consequences. The entitled person lodges a request within the periods of time referred to in the preceding paragraph of this article. (4) If such consequences cannot be remedied in accordance with the preceding paragraphs, the entitled person may claim compensation in a court of law.
South Africa	Article 172(1) Constitution of the Republic of South Africa When deciding a constitutional matter within its power, a court ... may make any order that is just and equitable... Article 38 Constitution of the Republic of South Africa Anyone has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief...
Spain	Article 58 Organic Law on the Constitutional Court 1. Jurisdiction to rule on claims for damages consequent on the granting or refusal of a stay shall lie with the judges or courts, with which the sureties shall be deposited. 2. Claims for damages settled arising as a result of interlocutory matters shall be submitted within a year following the date of publication of the judgment of the Constitutional Court.
"The former Yugoslav Republic of Macedonia"	Article 81 Rules of Procedure of the Constitutional Court If the consequences of applying the law, regulation or the common act revoked by a judgment of the Constitutional Court cannot be eliminated by changing the individual act with respect to paragraph 1 of this article, the Court may determine the consequences to be eliminated by a return to the previous conditions, through compensation for damage or other means.
United States	U.S. Supreme Court Rule 42. Interest and Damages 1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorised by law. 2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

6.1.18 Table: Authorisation to put a preliminary request

State	Relevant constitutional or legal provision
Armenia	<p>Article 71 of the Law On the Constitutional Court of the Republic of Armenia</p> <p>1. In cases determined by this Article the Courts and the Chief Prosecutor appeal to the Constitutional Court if they find that the legal acts of general nature (or its provision(s)), which are under the jurisdiction of the Constitutional Court according to Paragraph 1 of Article 100 of the Constitution and which shall be implemented for the case under their review, contradict the Constitution.</p> <p>2. Before applying to the Constitutional Court the courts must and the Chief Prosecutor has the right to suspend the given case until the decision of the Constitutional Court gets into force.</p> <p>3. The Courts may apply to the Constitutional Court after taking the case under its review before making a decision on the substance of the given case and the Chief Prosecutor can apply after taking the case under its review before sending it to the relevant Court by the procedure prescribed by Law.</p> <p>4. In case of suspension of the case review the Courts and the Chief Prosecutor can submit the appeals for the cases determined by this Article within three days after such suspension. The appeal to the Constitutional Court is formulated in a relevant decision of the Court or the Chief Prosecutor.</p> <p>5. In the applications prescribed by Paragraph 1 of this Article the Court and the Chief Prosecutor shall justify their statements on the unconstitutionality of the provisions of the challenged general act as well as the fact that solution of the given case may be possible only by the implementation of the challenged provision.</p>
Austria	<p>Article 89 Constitution</p> <p>(2) Should a court have scruples against the application of an ordinance on the ground of it being contrary to law, it shall file an application with the Constitutional Court for rescission of this ordinance. Should the Supreme Court or a court of second instance competent to give judgment have scruples against the application of a law on the ground of its being unconstitutional, it shall file an application with the Constitutional Court for rescission of this law.</p> <p>Article 139</p> <p>(1) The Constitutional Court pronounces on application by a court or an independent administrative tribunal whether ordinances issued by a Federal or Land authority are contrary to law, but ex officio in so far as the Court would have to apply such an ordinance in a pending suit.</p> <p>Article 140</p> <p>(1) The Constitutional Court pronounces on application by the Administrative Court, the Supreme Court, a competent appellate court or an independent administrative tribunal whether a Federal or Land law is unconstitutional, but ex officio in so far as the Court would have to apply such a law in a pending suit.</p>
Belgium	<p>Article 26 Special Law on the Court</p> <p>2. Where such a question is raised before a court, it shall refer the matter to the Court of Arbitration for a ruling.</p> <p>However, a court shall not be required to do so:</p> <p>1. where it cannot hear the case on grounds of lack of jurisdiction or inadmissibility, except where those grounds are derived from provisions which are themselves the subject of the request for a preliminary ruling;</p> <p>2. where the Court of Arbitration has already ruled on a question or an application having the same subject matter.</p>
Bulgaria	Art. 150 (2) Constitution
Cyprus	1964, Attorney General of the Republic vs. Mustafa Ibrahim et al: Only courts having jurisdiction in family issues can refer preliminary questions.
Germany	<p>Article 100 of the Basic Law - Compatibility of legislation and constitutional law</p> <p>(1) Where a court considers that a law on whose validity its ruling depends is unconstitutional it shall stay the proceedings and, if it holds the constitution of a Land to be violated, seek a ruling from the Land court with jurisdiction for constitutional disputes or, where it holds this Basic Law to be violated, from the Federal Constitutional Court. This shall also apply where this Basic Law is held to be violated by Land law or where a Land law is held to be incompatible with a federal law.</p>
Greece	<p>Article 100 Constitution</p> <p>5. When a chamber or department of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors judges a provision of a statute enacted by Parliament to be contrary to the Constitution, it shall compulsorily refer the question to the respective plenum, unless this has been judged by a previous decision of the plenum or of the Special Highest Court of the present article. The plenum shall be assembled into judicial formation and shall decide definitively, as specified by law. This regulation shall apply analogously also in the elaboration of regulatory decrees by the Supreme Administrative</p>

State	Relevant constitutional or legal provision
Armenia	<p>Article 71 of the Law On the Constitutional Court of the Republic of Armenia</p> <p>1. In cases determined by this Article the Courts and the Chief Prosecutor appeal to the Constitutional Court if they find that the legal acts of general nature (or its provision(s)), which are under the jurisdiction of the Constitutional Court according to Paragraph 1 of Article 100 of the Constitution and which shall be implemented for the case under their review, contradict the Constitution.</p> <p>2. Before applying to the Constitutional Court the courts must and the Chief Prosecutor has the right to suspend the given case until the decision of the Constitutional Court gets into force.</p> <p>3. The Courts may apply to the Constitutional Court after taking the case under its review before making a decision on the substance of the given case and the Chief Prosecutor can apply after taking the case under its review before sending it to the relevant Court by the procedure prescribed by Law.</p> <p>4. In case of suspension of the case review the Courts and the Chief Prosecutor can submit the appeals for the cases determined by this Article within three days after such suspension. The appeal to the Constitutional Court is formulated in a relevant decision of the Court or the Chief Prosecutor.</p> <p>5. In the applications prescribed by Paragraph 1 of this Article the Court and the Chief Prosecutor shall justify their statements on the unconstitutionality of the provisions of the challenged general act as well as the fact that solution of the given case may be possible only by the implementation of the challenged provision.</p>
	Court.
Hungary	<p>Article 38 Constitutional Court Act</p> <p>1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.</p> <p>2. In a petition, anybody considering a legal rule to be applied in his/her pending process unconstitutional, may initiate the action of the judge provided in section 1.</p>
Lithuania	<p>Article 67 Constitutional Court Act</p> <p>The Supreme Court of Lithuania, the Court of Appeals of Lithuania, and district and area courts shall appeal to the Constitutional Court pursuant to a decision.</p>
Luxemburg	<p>Article 6 Law on the organisation of the Constitutional Court</p> <p>If a court considers that an issue concerning a law's conformity with the Constitution arises and that a ruling on the matter is necessary for it to deliver its judgment, it must raise the matter of its own motion after asking the parties to submit any observations.</p>
Malta	<p>Article 46 Constitution</p> <p>(3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious</p>
Moldova	<p>Article 135 Constitution</p> <p>(1) The Constitutional Court shall:</p> <p>g) solve the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice</p>
Poland	<p>Article 193 Constitution</p> <p>Article 3 Constitutional Tribunal Act</p> <p>Any court may refer a question of law to the Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or a statute if the answer to this question of law determines the matter pending before the court.</p>
Romania	Article 146d Constitution
Russia	<p>Article 125 Constitution</p> <p>1. The Constitutional Court of the Russian Federation shall consist of 19 members.</p> <p>2. The Constitutional Court of the Russian Federation, on the request of the President of the Russian Federation, the Council of the Federation, the State Duma, one fifth of the deputies of a chamber of the Federal Assembly, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Higher Court of Arbitration of the Russian Federation, legislative and executive bodies of the subjects of the Russian Federation, shall adjudicate in cases concerning the compatibility with the Constitution of the Russian Federation of: [...]</p> <p>Article 101 Federal Constitutional Law on the Constitutional Court of the Russian Federation</p> <p>The court while considering the case in any instance, having arrived at the conclusion about non-conformity with the Constitution of the Russian Federation of the law which has been applied or ought to be applied in a specific case, shall petition the Constitutional Court of the Russian Federation with an inquiry to verify the constitutionality of the aforementioned law.</p>
Slovakia	<p>Article 130 Constitution</p> <p>(1) The Constitutional Court shall commence the proceedings upon a petition submitted by: d) any court;</p>

State	Relevant constitutional or legal provision
Armenia	<p>Article 71 of the Law On the Constitutional Court of the Republic of Armenia</p> <ol style="list-style-type: none"> 1. In cases determined by this Article the Courts and the Chief Prosecutor appeal to the Constitutional Court if they find that the legal acts of general nature (or its provision(s)), which are under the jurisdiction of the Constitutional Court according to Paragraph 1 of Article 100 of the Constitution and which shall be implemented for the case under their review, contradict the Constitution. 2. Before applying to the Constitutional Court the courts must and the Chief Prosecutor has the right to suspend the given case until the decision of the Constitutional Court gets into force. 3. The Courts may apply to the Constitutional Court after taking the case under its review before making a decision on the substance of the given case and the Chief Prosecutor can apply after taking the case under its review before sending it to the relevant Court by the procedure prescribed by Law. 4. In case of suspension of the case review the Courts and the Chief Prosecutor can submit the appeals for the cases determined by this Article within three days after such suspension. The appeal to the Constitutional Court is formulated in a relevant decision of the Court or the Chief Prosecutor. 5. In the applications prescribed by Paragraph 1 of this Article the Court and the Chief Prosecutor shall justify their statements on the unconstitutionality of the provisions of the challenged general act as well as the fact that solution of the given case may be possible only by the implementation of the challenged provision.
Slovenia	<p>Article 156 Constitution</p> <p>If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision.</p> <p>Article 23 Constitutional Court Act</p> <ol style="list-style-type: none"> (1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality. (2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality. (3) If by a request the Supreme Court initiates proceedings for the review of the constitutionality of a law or part thereof, a court which should apply such law or part thereof in deciding may stay proceedings until the final decision of the Constitutional Court without having to initiate proceedings for the review of the constitutionality of such law or part thereof by a separate request.
Spain	<p>Article 35 Law on the Constitutional Court</p> <ol style="list-style-type: none"> 1. Where a judge or a court, proprio motu or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.
Turkey	<p>Law on the Organisation and Trial Proceedings of the Constitutional Court</p> <p>Article 28</p> <p>If a court which is trying a case:</p> <ol style="list-style-type: none"> 1. finds that provisions of a law or law-amending ordinance to be applied in this case are unconstitutional, this decision together with its reasons, or 2. is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, a decision explaining the claims and defences of the parties concerned in relation to this subject-matter and its own views which led to this conviction, the contents of the file together with certified copies of documents relating to this case are sent by the court concerned to the presidency of the Constitutional Court.
Ukraine	<p>Article 40 Law on the Constitutional Court</p> <p>Subjects of the right to a constitutional claim for adopting a decision by the Constitutional Court of Ukraine in cases provided for by subsection one, Article 13 of this Law are: [...] the Supreme Court of Ukraine [...]</p> <p>Article 83</p> <p>When, in the process of examination of cases under general court procedure, a dispute develops concerning the constitutionality of norms of a law which is being applied by the court, the examination of the case is suspended.</p> <p>Under such circumstances, a constitutional examination of the case is opened and the case is considered by the Constitutional Court of Ukraine immediately.</p>

6.2 Constitutional and legal bases for indirect and direct individual access

6.2.1 Table: Indirect access: Ombudsperson

State	Relevant constitutional and legal provisions
Albania	<p>Law on the Organisation and Functioning of the Constitutional Court Article 49</p> <p>1. A case before the Constitutional Court on the review of the compatibility of laws or other normative acts with the Constitution or international agreements may be initiated by an application of the President of the Republic, the Prime Minister, not less than one fifth of the deputies of the Assembly or the Chairman of the High State Control.</p> <p>2. This right extends, when it is demonstrated that the case concerns their interests, to the People's Advocate, local authorities, religious institutions, political parties and other organisations.</p>
Algeria	No individual access
Andorra	The Ombudsperson has no power to apply to the Constitutional Court
Argentina	<p>Constitution Section 86</p> <p>The Ombudsman is an independent body created within the sphere of the National Congress operating with full autonomy without receiving instructions from any authority. The mission of the Ombudsman is the defence and protection of human rights and other rights, guarantees and interests sheltered under this Constitution and the laws, in the face of deeds, acts or omissions of the Administration; as well as the control of public administrative functions. The Ombudsman has capacity to be a party in a lawsuit. He is appointed and removed by Congress with the vote of two-thirds of the members present of each House. He has the immunities and privileges of legislators. He shall hold office for the term of five years and may only be re-appointed on one occasion.</p> <p>The organisation and operation of this body shall be ruled by a special law.</p> <p>Law 24.379 (p.t.) Article 14²⁶³</p> <p>The Public Defender can initiate and continue, ex officio or at the request of an interested person, investigations conducting to the elucidation of the acts, deeds and omissions by the national public administration and its agents that, through the illegitimate, faulty, irregular, abusive, arbitrary, discriminatory, negligent, strongly unfavourable or inopportune exercise of their functions, including those acts, deeds and omissions that could affect diffuse or collective interests.</p> <p>Article 18²⁶⁴</p> <p>Every natural or juristic person that considers itself affected by the acts, deeds and omissions provided for in article 14 may petition to the Public Defender.</p>
Armenia	<p>Constitution Article 100</p> <p>The Constitutional Court shall, in conformity with the procedure defined by law:</p> <p>1) determine the compliance of the laws, resolutions of the National Assembly, decrees and orders of the President of the Republic, decisions of the Prime Minister and bodies of the local self-government with the Constitution;</p> <p>Article 101</p> <p>In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court the application to the Constitutional Court may be filed by:</p> <p>8) the Human Rights' Defender – on the issue of compliance of normative acts listed in clause 1 of Article 100 of the Constitution with the provisions of Chapter 2 of the Constitution;</p> <p>Article 68 Law on the Constitutional Court</p>

²⁶³ Artículo 14.- Actuación. Forma y alcance. El Defensor del Pueblo puede iniciar y proseguir de oficio o a petición del interesado cualquier investigación conducente al esclarecimiento de los actos, hechos u omisiones de la administración pública nacional y sus agentes, que impliquen el ejercicio ilegítimo, defectuoso, irregular, abusivo, arbitrario, discriminatorio, negligente, gravemente inconveniente o inoportuno de sus funciones, incluyendo aquellos capaces de afectar los intereses difusos o colectivos.

<http://www.defensor.gov.ar/institucion/ley-sp.htm>

²⁶⁴ Artículo 18 Legitimación. Puede dirigirse al Defensor del Pueblo toda persona física o jurídica que se considere afectada por los actos, hechos u omisiones previstos en el artículo 14.

<http://www.defensor.gov.ar/institucion/ley-sp.htm>

State	Relevant constitutional and legal provisions
	1. In regard to cases determined by Point 1 of Article 100 of the Constitution the constitutionality of the general acts as well as individual acts mentioned in that Point can be challenged, except for the cases of the appeals brought by the Ombudsmen. The Ombudsmen can challenge only the constitutionality of general acts.
Austria	Constitution Article 148e On application by the ombudsman board the Constitutional Court pronounces on the illegality of ordinances by a Federal authority.
Azerbaijan	Constitution Article 130 VII. Ombudsman of Azerbaijan Republic in accordance with the procedure provided for by the laws of the Republic of Azerbaijan for solving the matters indicated in items 1-7, para III of the given Article shall apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person had been violated by legislative acts in force, normative acts of executive power, municipalities as well as the court decisions. Law on the Constitutional Court Article 32. Petitions 32.1. Petition can be submitted to Constitutional Court by [...] Ombudsman of Azerbaijan Republic on the matters provided for by Article 130.7 of the Constitution of Azerbaijan Republic. 32.2. Petitions by Ombudsman of Azerbaijan Republic on the matter provided for by Article 130.3.4 of the Constitution of Azerbaijan Republic can be examined by Constitutional Court in following cases: 32.2.1. If the normative legal act which should have been applied was not applied by a court; 32.2.2. If normative legal act which should not have been applied was applied by a court; 32.2.3. If normative legal act was not properly interpreted by a court; 32.3. Petition envisaged in Article 32.2. of the present law can be submitted within 6 months from the moment of entrance of the relevant court act into legal force.
Belarus	No Ombudsperson
Belgium	The Ombudsperson has no power to apply to the Constitutional Court
Bosnia and Herzegovina	The Ombudsperson has no power to apply to the Constitutional Court
Brazil	
Bulgaria	Law on the Ombudsman Article 19 (1) The Ombudsman shall: 1. receive and consider complaints and signals regarding violations of rights and freedoms by the state and municipal authorities and their administrations as well as by persons assigned with the provision of public services; 2. make examinations upon the complaints and signals received; 3. reply in writing to the person, who has lodged the complaint or signal, within one month; if the case requires a more thorough examination, this term shall be three months; 4. make proposals and recommendations for reinstatement of the violated rights and freedoms before the respective authorities, their administrations, and persons under item 1; 5. mediate between the administrative authorities and the persons concerned for overcoming the violations admitted and shall reconcile their positions; 6. make proposals and recommendations for eliminating the reasons and conditions, which create prerequisites for violation of rights and freedoms; 7. notify the authorities, listed under article 150 of the Constitution, for approaching the Constitutional Court, when he/she is of the opinion that it is necessary the Constitution to be interpreted or a law to be declared unconstitutional;
Canada	The Ombudsperson has no power to apply to the Supreme Court
Chile	No Ombudsperson
Croatia	Constitutional Act on the Constitutional Court Article 35 The request by which the proceedings before the Constitutional Court are instituted may be presented by: - the People's Ombudsman in proceedings provided by Article 92 of the Constitution of the Republic of Croatia.
Cyprus	The Ombudsperson has no power to apply to the Supreme Constitutional Court
Czech Republic	Constitutional Court Act Article 64 (2) A petition, under Article 87 para. 1, lit. b) of the Constitution, proposing the annulment of some other enactment, or individual provisions thereof, may be submitted by: f) the Public Protector of Rights ["Ombudsman"];

State	Relevant constitutional and legal provisions
Denmark	Ombudsperson has no power to appeal to the Supreme Court
Estonia	<p>Article 142 Constitution</p> <p>If the Legal Chancellor considers that a legal act issued by the state legislature or executive or by a local government is in conflict with the Constitution or a law, he or she shall propose to the body which has adopted that act to bring the act into accordance with the Constitution or law within twenty days.</p> <p>If the act is not brought into accordance with the Constitution or law within twenty days, the Legal Chancellor shall apply to the National Court to declare the act null and void.</p> <p>Chancellor of Justice Act²⁶⁵</p> <p>§15</p> <p>Everyone has the right of recourse to the Chancellor of Justice to review the conformity of an Act or other legislation of general application with the Constitution or the law.</p> <p>§18</p> <p>(1) If a body which passed legislation of general application has not brought the legislation or a provision thereof into conformity with the Constitution or the law within twenty days after the date of receipt of a proposal of the Chancellor of Justice, the Chancellor of Justice shall propose to the Supreme Court that the legislation of general application or a provision thereof be repealed.</p> <p>§19</p> <p>(1) Everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by way of filing a petition to request verification whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties (hereinafter agency under supervision) adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration.</p> <p>§35(15)</p> <p>(1) If conciliation proceedings are terminated or the Chancellor of Justice has stated failure to reach an agreement, the petitioner has, within thirty days as of the receipt of the notice, the right of recourse to a court or to an authority conducting pre-trial proceedings as provided by law for the protection of his or her rights.</p> <p>Constitutional Review Court Procedure Act</p> <p>§. 4.</p> <p>(1) The Supreme Court shall review the constitutionality of legislation of general application or international treaties on the basis of a reasoned request, court judgment or court ruling.</p> <p>(2) A request may be filed with the Supreme Court by the President of the Republic, the Legal Chancellor and a local government council.</p> <p>(3) A court shall initiate proceedings by delivering its judgment or ruling to the Supreme Court.</p> <p>§. 6.</p> <p>(1) The Legal Chancellor may file a request to the Supreme Court that it</p> <ol style="list-style-type: none"> 1) declare legislation of general application or a provision thereof passed by the legislative or executive power or a local government, which has entered into force, invalid; 2) to declare an Act, which has been proclaimed but has not yet entered into force, unconstitutional; 3) to declare legislation of general application passed by the executive or a local government body, which has not entered into force, unconstitutional; 4) to declare an international agreement entered into by the Republic of Estonia or a provision thereof unconstitutional; 5) to repeal a resolution of the Riigikogu concerning submission of a draft Act or other national issue to a referendum, if the draft Act to be submitted to a referendum, except draft Acts amending the Constitution, or other national issues are in conflict with the Constitution or if upon deciding to hold a referendum the Riigikogu has materially violated the prescribed procedure. <p>(2) The Legal Chancellor shall file a request referred to in clause 5 of subsection (1) within 14 days as of the receipt of pertinent resolution of the Riigikogu.</p>
Finland	The Ombudsperson has no power to apply to the courts
France	The Ombudsperson has no power to apply to the Constitutional Council
Georgia	<p>Organic Law on the Public Defender of Georgia</p> <p>Article 21</p> <p>Following the results of the examination, the Public Defender of Georgia shall be authorised: to bring out a suit at the Constitutional Court of Georgia in a case where a referendum is not held, despite the request of the electorate; if he considers that the holding of a referendum contradicts the provisions of paragraph 2 of Article 74 of the Constitution of Georgia, or in the case where any legal act or any provision of this act violates human rights and fundamental</p>

²⁶⁵ See <http://www.legaltext.ee/text/en/X30041K6.htm>

State	Relevant constitutional and legal provisions
	<p>freedoms recognised by Chapter 2 of the Constitution of Georgia; Law on the Constitutional Court Article 36 1. The following shall have the right to lodge a constitutional claim to the Constitutional Court concerning constitutionality of holding a referendum: b. the Public Defender of Georgia, if notwithstanding the electors' request a referendum is not called; c. not less than one fifth of the members of the Parliament of Georgia, the Public Defender of Georgia, if they believe that the holding a referendum contradicts the requirements of Article 74.2 of the Constitution of Georgia. Article 39 1. The following shall have the right to lodge a constitutional claim on constitutionality of a normative act or a particular provisions thereof: b) The Public Defender of Georgia, if he/she believes that human rights and freedoms, recognised by Chapter Two of the Constitution of Georgia, are infringed upon.</p>
Germany	No Ombudsperson at federal level
Greece	Law 3094/2003 ²⁶⁶ The Ombudsperson has no power to apply to the Special Highest Court
Hungary	The Parliamentary Commissioner for Civil Rights and the Parliamentary Commissioner for the Rights of National and Ethnic Minorities have no power to apply to the Constitutional Court
Iceland	The Ombudsperson has no power to apply to the Constitutional Court
Ireland	The Ombudsperson has no power to apply to the Constitutional Court
Israel	<p>Ombudsman for Complaints against Judges Law, 2002²⁶⁷ Article 14 (a) Any individual who feels that he or she was injured by a judge's conduct in the fulfillment of his duties, including the manner in which the judge conducted the trial, or a party representing the said individual, is entitled to file a complaint with the Ombudsman. (e) The Ombudsman is entitled, should he deem it necessary following his findings, to recommend to the Judges Appointments Committee to dismiss the judge from office in accordance with its authority, or to recommend to the Minister or the President to propose to the Judges Appointments Committee to end the judge's term; Should the Committee, Minister or President decide not to accept the Ombudsman's recommendations, they will specify the reasons for their decision.</p>
Italy	No Ombudsperson at national level
Japan	The Ombudsperson has no power to apply to the Supreme Court
Kazakhstan	The Ombudsperson has no power to apply to the Constitutional Court
Korea, republic	The Ombudsperson has no power to apply to the Constitutional Court
Kyrgyzstan	<p>Law on constitutional proceedings including draft amendments of 2008 Article 14. The following entities may lodge applications with the Constitutional Court of the Kyrgyz Republic: 8) the Ombudsman (Akiykatchy);</p>
Latvia	<p>Ombudsman Law Section 13 In the performance of the functions and tasks specified by this Law, the Ombudsman has the right: 8) to submit an application regarding the initiation of proceedings in the Constitutional Court if an institution that has issued the disputable act has not rectified the established deficiencies within the time limit specified by the Ombudsman; 9) upon termination of a verification procedure and establishment of a violation, to defend the rights and interests of a private individual in court, if that is necessary in the public interest; 10) upon termination of a verification procedure and establishment of a violation, to apply to a court in such civil cases, where the nature of the action is related to a violation of the prohibition of differential treatment;</p>
Liechtenstein	The Council and Complaints Office has no power to accede to the Constitutional Court
Lithuania	<p>Law on the Seimas Ombudsmen Article 19. Rights of the Seimas Ombudsman 1. When performing his duties, the Seimas Ombudsman shall have the right to:</p>

²⁶⁶ http://www.synigoros.gr/en_law.htm

²⁶⁷ <http://www.justice.gov.il/NR/rdonlyres/5E97F18F-9224-4B99-BBBC-676C4B50A682/0/law.pdf>

State	Relevant constitutional and legal provisions
	11) propose to the Seimas to apply to the Constitutional Court regarding the conformity of legal acts with the Constitution and laws of the Republic of Lithuania;
Luxembourg	The Ombudsperson has no power to apply to the Constitutional Court
Malta	The Ombudsperson has no power to apply to the Constitutional Court
Mexico	
Moldova	Constitutional Jurisdiction Act ²⁶⁸ Article 38 1. The Constitutional Court shall exercise the constitutional jurisdiction upon appeal of the following subjects: i. Ombudsman; 2. The subjects foreseen by para. (1) may petition the Court on issues related to their competence [...]
Monaco	No Ombudsman
Montenegro	Constitution Article 81 The protector of human rights and liberties of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and liberties. The protector of human rights and liberties shall exercise duties on the basis of the Constitution, the law and the confirmed international agreements, observing also the principles of justice and fairness. The protector of human rights and liberties shall be appointed for the period of six years and can be dismissed in cases envisaged by the law. Law on the Protector of Human Rights and Freedoms Article 26 The Protector may propose the initiation of proceedings before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of the legislation and general enactment relating to human rights and freedoms.
Morocco	The Ombudsperson has no power to apply to the Constitutional Court
Netherlands	The Ombudsperson has no power to apply to the Constitutional Court
Norway	The Ombudsperson has no power to apply to the Constitutional Court
Peru	Public Defender has no power to apply to the Constitutional Court
Poland	Constitution Article 80 In accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority. Constitutional Tribunal Act Article 27 The participants in the proceedings before the Tribunal shall be: 8) the Commissioner for Citizens' Rights where he/she has given notice of his/her participation in the proceedings in relation to complaints concerning constitutional infringements. Article 51 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings. Provisions of Article 33 shall apply accordingly. 2. The Commissioner for Citizens' Rights may, within the period of 60 days from the receipt of information, give notice of his/her participation in the proceedings. Article 52 1. The participants in the proceedings before the Tribunal shall be: the person making the complaint, the organ which promulgated the challenged normative act and the Public Prosecutor-General; the Commissioner of the Citizens' Rights shall also be the participant in the proceedings when he/she has given notice of his/her participation therein. Act of 15 July 1987 on the Commissioner for Civil Rights Protection Article 16. 1. In connection with the cases examined, the Commissioner can present to the relevant agencies, organisations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve. 2. The Commissioner may also: 1) approach the relevant agencies with proposals for legislative initiative, or for issuing or amending other legal acts concerning the liberties and rights of a human and a citizen, 2) approach the Constitutional Tribunal with motions mentioned in Art. 188 of the

²⁶⁸ http://www.constcourt.md/index_en.html

State	Relevant constitutional and legal provisions
	Constitution, 3) report participation in the proceedings before the Constitutional Tribunal in the cases of constitutional complaints and take part in those proceedings, 4) request the Supreme Court to issue a resolution aimed at explaining legal provisions that raise doubts in practice, or application of has resulted in conflicting judicial decisions.
Portugal	Constitution Article 281 General review of constitutionality and legality 2. The following persons are entitled to request the Constitutional Court to make generally binding rulings on questions of unconstitutionality and illegality: d. The Ombudsman; Law n.º 9/91 Statute of the Ombudsman Article 20 3 – The Ombudsman may request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions, in accordance with article 281, paragraph 1 and paragraph 2, sub-paragraph (d), of the Constitution. 4 – The Ombudsman may request the Constitutional Court to rule on cases of unconstitutionality due to a legislative omission, in accordance with article 283, paragraph 1, of the Constitution.
Romania	Constitution Article 144 The Constitutional Court shall have the following powers: d) to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or of commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People; Law on the Advocate of the People ²⁶⁹ Article 13 The Advocate of the People shall have the following duties: b) receives and distributes complaints lodged by persons aggrieved by public administration authorities through violations of their civic rights and freedoms, and decides on these complaints; d) formulates points of view, at the request of the Constitutional Court; e) may notify the Constitutional Court on the unconstitutionality of laws, before their promulgation; f) brings directly in front of the Constitutional Court the exception of unconstitutionality of laws and ordinances; Article 14 (1) The Advocate of the People exercises his duties ex officio or upon complaints lodged by aggrieved persons as provided under Article 13 (b).
Russian Federation	Federal Constitutional Law "On the Representative under human rights in the Russian Federation" Article 29 1. By results of consideration of the complaint the Representative has the right: 5) to address in the Constitutional Court of the Russian Federation with the complaint to infringement of constitutional laws and freedom of citizens the law which is applied or subject to application in a concrete case.
San Marino	No Ombudsman as yet, but plans to introduce one.
Serbia	Draft Law on Ombudsman ²⁷⁰ Article 16 The Ombudsman shall have the power to initiate proceedings before the Constitutional Court for the assessment of legality and constitutionality of laws, other regulations and general acts which govern issues related to the freedoms and rights of citizens.
Slovakia	Constitution Article 130.f The Constitutional Court shall commence the proceedings upon a petition submitted by the Public Defender of Rights in matter of conformity of legal regulations according to Art. 125 (1) 1 of the Constitution of the Slovak Republic, if further application of the regulation could represent a threat to the fundamental rights and freedoms or human rights and fundamental freedoms, as arise from an international treaty that has been ratified by the Slovak Republic and published in a way specified by a law Article 151a (1) The Public Defender of Rights is an independent body which in the scope and in manner

²⁶⁹ <http://www.avp.ro/indexen.html>

²⁷⁰ [http://www.venice.coe.int/docs/2004/CDL\(2004\)113-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)113-e.pdf)

State	Relevant constitutional and legal provisions
	laid down by a law shall participate in the protection of the fundamental rights and freedoms of natural persons and legal persons in the proceedings, decision making or inactivity of public administration bodies, if their proceedings, decision making or inactivity is inconsistent with legal order or with principles of a democratic state and rule of law.
Slovenia	<p>Article 23.a Constitutional Court Act (1) The procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority can be initiated by a request submitted by: - the ombudsman for human rights if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms. Article 50 (2) The ombudsman for human rights may, under the conditions determined by this Act, lodge a constitutional complaint in connection with an individual case that he is dealing with. Article 52 (2) The ombudsman for human rights lodges a constitutional complaint with the consent of the person whose human rights or fundamental freedoms he is protecting in the individual case.</p>
South Africa	<p>Constitution of the Republic of South Africa Art. 182: Functions of Public Protector (1) The Public Protector has the power, as regulated by national legislation- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; (b) to report on that conduct; and (c) to take appropriate remedial action. (2) The Public Protector has the additional powers and functions prescribed by national legislation. (3) The Public Protector may not investigate court decisions. (4) The Public Protector must be accessible to all persons and communities. (5) An report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential. Art. 183: Tenure The Public Protector is appointed for a non-renewable period of seven years. Public Protector Act , no. 23 of 1994 Public Protector may apply to the Constitutional Court or any other court</p>
Spain	<p>Constitution Article 162 1. The following are eligible to: a) lodge an appeal against unconstitutionality: the President of the Government, the Defender of the People, fifty Deputies, fifty Senators, the executive corporate bodies of the Autonomous Communities and, when applicable, their Assemblies; b) lodge an individual appeal for protection ("recurso de amparo"): any individual or corporate body with a legitimate interest, as well as the Defender of the People and the Office of the Public Prosecutor. 2. In all other cases, the organic law shall determine which persons and agencies are eligible. Organic Law on the Constitutional Court Article 32 1. The following have standing to bring an action of unconstitutionality against Statutes of Autonomy and other State laws, organic or of any character whatsoever, against regulations and enactments of the State or Autonomous Communities having the force of law, and against international treaties and the Rules of Procedure of the Houses and the Cortès Générales: b. the Defender of the People (Defensor del Pueblo); Article 46 1. The following shall have standing to lodge an appeal for constitutional protection: a. In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor; b. In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor. 2. Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.</p>

State	Relevant constitutional and legal provisions
Switzerland	No Ombudsperson at federal level
"The former Yugoslav Republic of Macedonia"	<p>Law on the Ombudsman²⁷¹</p> <p>Article 13 The procedure for protection of the constitutional and legal rights of citizens before the Ombudsman shall be initiated by putting forward a submission. Anyone may put forward a submission to the Ombudsman when he assesses that his constitutional and legal freedoms and rights have been infringed or when the principle of non-discrimination and adequate and equitable representation of community members in the bodies set out in Article 2 of this Law has been breached. The Ombudsman may initiate a procedure on his own initiative if he assesses that the constitutional and legal rights of citizens, stipulated in Article 2 of this Law, have been infringed.</p> <p>Article 30 The Ombudsman may submit a proposal to the Constitutional Court of the Republic of Macedonia for evaluation of the constitutionality of the laws and the constitutionality and legality of the other regulations or general acts.</p>
Tunisia	Ombudsperson has no power to apply to the Constitutional Court
Turkey	No Ombudsperson
Ukraine	<p>Article 150 Constitution The authority of the Constitutional Court of Ukraine comprises: 1) deciding on issues of conformity with the Constitution of Ukraine (constitutionality) of the following: laws and other legal acts of the Verkhovna Rada of Ukraine; acts of the President of Ukraine; acts of the Cabinet of Ministers of Ukraine; legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea. These issues are considered on the appeals of: the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; Law of Ukraine on the Constitutional Court of Ukraine</p> <p>Article 13 The Constitutional Court of Ukraine adopts decisions and provides conclusions in cases concerning: 1. constitutionality of laws and the other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Supreme Rada of the Autonomous Republic of Crimea; 4. official interpretation of the Constitution and laws of Ukraine.</p> <p>Article 40 Subjects of the right to a constitutional claim for adopting a decision by the Constitutional Court of Ukraine in cases provided for by subsection one, Article 13 of this Law are: the President of Ukraine, no fewer than forty-five National Deputies of Ukraine (a National Deputy's signature may not be recalled), the Supreme Court of Ukraine, the Authorised Representative of the Verkhovna Rada of Ukraine on Human Rights and the Supreme Rada of the Autonomous Republic of Crimea.</p> <p>Article 41 Subjects of the right to a constitutional claim for providing opinions by the Constitutional Court of Ukraine in the cases provided for by subsections two, three and four of Article 13 of this Law are: - under subsection four, the President of Ukraine, no fewer than forty-five National Deputies of Ukraine (a National Deputy's signature may not be recalled), the Authorised Representative of the <i>Verkhovna Rada</i> of Ukraine on Human Rights, the Supreme Court of Ukraine, the Cabinet of Ministers of Ukraine, the other State power authorities, the Supreme Rada of the Autonomous Republic of Crimea and local self-government authorities.</p> <p>Article 82 The grounds for raising the issue of opening the examination of a case concerning the conformity of current legislative norms to the principles and norms of the Constitution of Ukraine as to the rights and freedoms of individuals and citizens are: 1. the existence of disputable questions concerning the constitutionality of laws and other legal acts adopted and promulgated in the prescribed order; 2. the development of disputable questions concerning the constitutionality of legal acts revealed in the process of general court procedure;</p>

²⁷¹ <http://www.unhcr.org/refworld/type,LEGISLATION,MKD,3fcb36dc4,0.html>

State	Relevant constitutional and legal provisions
	3. the development of disputable questions concerning the constitutionality of legal acts revealed by executive power authorities in process of their implementation and by the Authorised Representative of the Verkhovna Rada of Ukraine on Human Rights in the process of his/her activity.
United Kingdom	Parliamentary Commissioner Act 1967 ²⁷² Article 6 (1)A complaint under this Act may be made by any individual, or by any body of persons whether incorporated or not, not being— (a)a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; Article 10 (3)If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.
United States of America	The Ombudsperson has no power to apply to the Supreme Court
Uruguay	No Ombudsperson

6.2.2 Table: Indirect individual access: Preliminary requests

State	Relevant constitutional and legal provisions
Albania	Law on the Organisation and Functioning of the Constitutional Court Article 68 1. When a court of any instance or a trial judge considers during the trial ex officio or at the request of either party involved that a certain law is unconstitutional and if there is a direct link between the law and the solution of the case at hand, that particular law shall not be applied in the case at hand and after suspending the trial the judge shall refer the file to the Constitutional Court, which on its side should deliver its verdict as to the constitutionality of the said law.
Algeria	No preliminary ruling procedure
Andorra	Constitution Article 98 The Tribunal Constitucional tries: c) Processes of constitutional appeal. Article 100 1. If, in the course of litigation, a court has reasoned and founded doubts about the constitutionality of a law or a legislative decree, the application of which is relevant to its decision, it shall request in writing the decision of the Tribunal Constitucional about the validity of the rule affected. Qualified law on the Constitutional Court Article 43 1. In the case of actions where unconstitutionality is alleged, the Constitutional Court reviews the compatibility with the Constitution of the laws, legislative decrees and Rules of Procedure of the General Council or the individual provisions thereof. 2. These proceedings are introduced by a direct action submitted by one fifth of the ex officio members of the General Council, by the Head of the Government or by three Comuns, or by an interlocutory application in writing from an ordinary court. Article 52 In the exercise of their judicial functions, the Batlles (judges of first instance), the Court of Batlles, the Tribunal de Corts (criminal court) and the Higher Court of Andorra are entitled to apply for interlocutory proceedings to be opened in respect of laws, legislative decrees and regulations having statutory force on the ground that they are unconstitutional, irrespective of the date on which they entered into force.
Argentina	No preliminary ruling procedure
Armenia	Constitution Article 101 In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court the application to the Constitutional Court may be filed by:

²⁷² http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1967/cukpga_19670013_en_1

State	Relevant constitutional and legal provisions
	<p>7) courts and the Prosecutor General on the issue of constitutionality of provisions of normative acts related to specific cases within their proceedings; Law on the Constitutional Court Article 71 1. In cases determined by this Article the Courts and the Chief Prosecutor appeal to the Constitutional Court if they find that the legal acts of general nature (or its provision(s)), which are under the jurisdiction of the Constitutional Court according to Point 1 of Article 100 of the Constitution and which shall be implemented for the case under their review, contradict the Constitution.</p>
Austria	<p>Constitution Article 139 (1) The Constitutional Court pronounces on application by a court or an independent administrative tribunal whether ordinances issued by a Federal or Land authority are contrary to law, but ex officio in so far as the Court would have to apply such an ordinance in a pending suit.</p>
Azerbaijan	<p>Constitution Article 130 VI. In accordance with the procedure provided for by the laws of Azerbaijan Republic the courts may file the Constitutional Court of Azerbaijan Republic a request on interpretation of the Constitution and the laws of Azerbaijan Republic as regards the matters concerning the implementation of human rights and freedoms. Law on the Constitutional Court Article 33 33.1. Applications can be submitted to Constitutional Court by the Milli Majlis of Azerbaijan Republic on the matters provided for by Article 104.3 of the Constitution of Azerbaijan Republic and by courts of Azerbaijan Republic on the matters provided for by Article 130.6 of the Constitution of Azerbaijan Republic.</p>
Belarus	<p>Constitution Article 112. If, during the hearing of a specific case, a court concludes that an enforceable enactment is contrary to the Constitution, it shall make a ruling in accordance with the Constitution and raise, under the established procedure, the issue of whether the enforceable enactment in question should be deemed unconstitutional.</p> <p>The Code of the Republic of Belarus on Judicial System and Status of Judges. Article 7. The courts shall execute justice in conformity with the Constitution of the Republic of Belarus and normative legal acts adopted in compliance with the Constitution of the Republic of Belarus. If during the hearing of a specific case, a court concludes that a normative legal act is contrary to the Constitution, it shall make a ruling in accordance with the Constitution and, after its entry into force shall raise accordingly before the Supreme Court or the Supreme Economic Court of the Republic of Belarus the issue on submitting their motion to the Constitutional Court of the Republic of Belarus of whether the enforceable enactment in question should be deemed unconstitutional.</p>
Belgium	<p>Constitution Article 142 There is for all Belgium a Constitutional Court, the composition, competences and functioning of which are established by the law. This Court rules by means of judgments on: 1° those conflicts referred to in Article 141; 2° the violation of Articles 10, 11 and 24 by a law, a federate law or a rule as referred to in Article 134; 3° the violation of constitutional articles that the law determines by a law, a federate law or by a rule as referred to in Article 134. A matter may be referred to the Court by any authority designated by the law, by any person that can prove an interest or, pre-judicially, by any court.</p>
Bosnia and Herzegovina	<p>Constitution Article VI: Constitutional Court 3 Jurisdiction.</p> <p>c The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or</p>

State	Relevant constitutional and legal provisions
	concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.
Brazil	No preliminary ruling procedure
Bulgaria	Constitution Article 150 2. Should it find a discrepancy between a law and the Constitution, the Supreme Court of Cassation or the Supreme Administrative Court shall suspend the proceedings on a case and shall refer the matter to the Constitutional Court. Any portion of a law which is not ruled unconstitutional shall remain in force.
Canada	No preliminary ruling procedure
Chile	No preliminary ruling procedure
Croatia	Article 37 Constitutional Act on the Constitutional Court (1) If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, are not in accordance with the Constitution, it shall stop the proceedings and present a request with the Constitutional Court to review the constitutionality of the law, or some of its provisions. (2) If the court of justice in its proceedings determines that another regulation to be applied, or some of its provisions, are not in accordance with the Constitution and the law, it shall directly apply the law to that specific case and shall present a request with the Constitutional Court to review the constitutionality and legality of the disputed regulation or some of its provisions.
Cyprus	Constitution Article 144 1. A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court. 2. The Supreme Constitutional Court, on a question so reserved, shall, after hearing the parties, consider and determine the question so reserved 'and transmit its decision to the Court by which such question has been reserved. 3. Any decision of the Supreme Constitutional Court under paragraph 2 of this Article shall be binding on the court by which the question has been reserved and on the parties to the proceedings and shall, in case such decision is to the effect that the law or decision or any provision thereof is unconstitutional, operate as to make such law or decision inapplicable to such proceedings only.
Czech Republic	Constitution Article 95 (1) In making their decisions, judges are bound by statutes and treaties which form a part of the legal order; they are authorised to judge whether enactments other than statutes are in conformity with statutes or with such treaties. (2) Should a court come to the conclusion that a statute which should be applied in the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional Court.
Denmark	No preliminary ruling procedure
Estonia	Constitutional Review Court Procedure Act §. 4. (1) The Supreme Court shall review the constitutionality of legislation of general application or international treaties on the basis of a reasoned request, court judgment or court ruling. (3) A court shall initiate proceedings by delivering its judgment or ruling to the Supreme Court. §. 9. Constitutional review on the basis of court judgment or ruling (1) If a court of first or second instance has, upon adjudication of a case, not applied a pertinent legislation of general application or an international agreement, declaring it unconstitutional, it shall deliver the judgment or ruling to the Supreme Court. (2) The court shall append to its judgment or ruling to be delivered to the Supreme Court the text of the legislation of general application or international agreement or pertinent extracts thereof, which it has declared unconstitutional in the conclusion of the judgment or ruling.
Finland	No preliminary ruling procedure
France	No preliminary ruling procedure
Georgia	Law on the Constitutional Court Article 20

State	Relevant constitutional and legal provisions
	<p>1. If, while considering a specific case, an ordinary court concludes that there are sufficient grounds for considering the law or other normative acts applied by the court in its decision on the case, to be fully or partly inconsistent with the Constitution, it shall suspend its examination of the case and apply to the Constitutional Court. The examination of the case shall be resumed after a judgment on this issue has been reached by the Constitutional Court.</p>
Germany	<p>Constitution Article 100 (1) Where a court considers that a law on whose validity its ruling depends is unconstitutional it shall stay the proceedings and, if it holds the constitution of a Land to be violated, seek a ruling from the Land court with jurisdiction for constitutional disputes or, where it holds this Basic Law to be violated, from the Federal Constitutional Court. This shall also apply where this Basic Law is held to be violated by Land law or where a Land law is held to be incompatible with a federal law. (2) Where in the course of litigation doubt exists whether a rule of international law is an integral part of federal law and whether such rule directly establishes rights and obligations for the individual (Article 25), the court shall seek a ruling from the Federal Constitutional Court.</p>
Greece	<p>Constitution Article 100 5. When a chamber or department of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors judges a provision of a statute enacted by Parliament to be contrary to the Constitution, it shall compulsorily refer the question to the respective plenum, unless this has been judged by a previous decision of the plenum or of the Special Highest Court of the present article. The plenum shall be assembled into judicial formation and shall decide definitively, as specified by law. This regulation shall apply analogously also in the elaboration of regulatory decrees by the Supreme Administrative Court. Law no. 345 establishing the Special Highest Court Article 7 Cases within the jurisdiction of the Special Court shall be brought: b. by another court's reference of a preliminary question.</p>
Hungary	<p>Act no. XXXII on the Constitutional Court Article 38 1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.</p>
Iceland	No preliminary ruling procedure
Ireland	No preliminary ruling procedure
Israel	No preliminary ruling procedure
Italy	<p>Provisions governing the review of constitutionality and guaranteeing the independence of the Constitutional Court Section 1 Questions of constitutionality regarding an Act of Parliament or a central government statutory measure having the force of law raised by a court or by a party to judicial proceedings or not deemed by a court of law to be manifestly groundless, shall be referred to the Constitutional Court for a decision. Law on the composition and procedures of the Constitutional Court Section 23 If the case cannot be tried without first resolving the question of constitutionality, or if the trial court does not consider that the question of constitutionality raised is groundless, it shall issue an order referring the matter immediately to the Constitutional Court, setting out the terms and the reasons for raising the question of constitutionality, and shall suspend trial proceedings. A court before which a case is being tried may also refer a question of constitutionality <i>ex officio</i> by means of a court order setting out the information required under a) and b) above, and the measures referred to in the subsection above. Supplementary Provisions Governing Constitutional Court Proceedings 7 October 2008 as subsequently amended (Official Gazette No. 261 of 7 November 2008) Section 1 The order with which a judge sitting alone or jointly, before which the case is pending decision, refers a matter to the Constitutional Court for a ruling shall be filed with the Court</p>

State	Relevant constitutional and legal provisions
	together with all the documents from the case-file and evidence of service as provided by Section 23 of Law No. 87 of 11 March 1953.
Japan	No preliminary ruling procedure
Kazakhstan	<p>Article 78 Constitution</p> <p>1. The courts shall have no right to apply laws and other regulatory legal acts infringing on the rights and liberties of an individual and a citizen established by the Constitution. If a court finds that a law or other regulatory legal act subject to application infringes on the rights and liberties of an individual and a citizen it shall suspend legal proceedings and address the Constitutional Council with a proposal to declare that law unconstitutional.</p>
Korea, Republic	<p>Constitutional Court Act</p> <p>Article 2 (Jurisdiction)</p> <p>The Constitutional Court shall have jurisdiction over the following issues</p> <p>1. Constitutionality of statutes upon the request of the ordinary courts;</p> <p>Article 41 (Request for Adjudication on the Constitutionality of Statutes)</p> <p>(1) When the issue of whether or not statutes are constitutional is relevant to the judgment of the original case, the ordinary court (including the military court; hereinafter the same shall apply) shall request to the Constitutional Court, ex officio or by decision upon a motion by the party, an adjudication on the constitutionality of statutes.</p>
Kyrgyzstan	<p>Constitution</p> <p>Article 90</p> <p>2. If, during examination of a case in any judicial instance, there arises a question concerning the constitutionality of the law or other legal and regulatory act on which ruling of the case rests, the court shall send an inquiry to the Constitutional Court.</p>
Latvia	<p>Law on the Constitutional Court</p> <p>Article 17</p> <p>The following shall have the right to submit an application to initiate a case regarding compliance of laws and international agreements signed or entered into by Latvia -even before the Saeima has confirmed the agreement- with the Constitution, compliance of other normative acts or their parts with the legal norms (acts) of higher legal force (Clauses 1-3 of Article 16), as well as compliance of national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution (Clause 6 of Article 16):</p> <p>9. a court, when reviewing an administrative, civil or criminal case;</p>
Liechtenstein	<p>Constitutional Court Act</p> <p>Article 18</p> <p>1) The Constitutional Court shall decide on the constitutionality of laws or individual legislative provisions:</p> <p>b) on application of a court, if and to the extent that the court has to apply a law or individual provisions thereof (on the basis of precedent) that it believes to be unconstitutional in a matter pending before it and the court has decided to interrupt the proceedings to request a ruling by the Constitutional Court;</p> <p>Article 20</p> <p>1) The Constitutional Court shall decide on the compliance of ordinances or individual provisions thereof with the Constitution, laws, and international treaties:</p> <p>a) on application of a court or of a municipal authority, if and to the extent that the court or municipal authority has to apply an ordinance or individual provisions thereof (on the basis of precedent) that it believes to be incompatible with the Constitution, a law, or an international treaty in a matter pending before it and the court or municipal authority has decided to interrupt the proceedings to request a ruling by the Constitutional Court;</p> <p>Article 22</p> <p>1) The Constitutional Court shall decide on the constitutionality of international treaties or individual provisions thereof:</p> <p>a) on application of a court or an administrative authority, if and to the extent that the court or administrative authority has to apply an international treaty or individual provisions thereof (on the basis of precedent) that it believes to be unconstitutional in a matter pending before it and the court or administrative authority has decided to interrupt the proceedings to request a ruling by the Constitutional Court;</p>
Lithuania	<p>Constitution</p> <p>Article 106</p> <p>The Government, no less than one-fifth of the members of the Seimas, and the courts shall have the right to address the Constitutional Court concerning legal acts specified in part 1 of Article 105.</p> <p>Law on the Constitutional Court of the Republic of Lithuania</p> <p>Article 67</p> <p>Provided that there are grounds to consider that a law or other legal act, which shall be</p>

State	Relevant constitutional and legal provisions
	applicable in a concrete case, fails to conform with the Constitution, the court (judge) shall suspend the examination of said case and, with regard to the competence of the Constitutional Court, shall appeal to it with a petition to decide whether the said law or other legal act is in conformity with the Constitution. The Supreme Court of Lithuania, the Court of Appeals of Lithuania, and district and area courts shall appeal to the Constitutional Court pursuant to a decision.
Luxembourg	Law on the Organisation of the Constitutional Court Article 6 If a court considers that an issue concerning a law's conformity with the Constitution arises and that a ruling on the matter is necessary for it to deliver its judgment, it must raise the matter of its own motion after asking the parties to submit any observations.
Malta	Constitution Article 95 (2) One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine – (d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under section 46 of this Constitution; (e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under section 46 of this Constitution; European Convention Act Article 4 3. If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection 4 of this section, the court in which the question arose shall dispose of the question in accordance with that decision.
Mexico	Article 105 Constitution The Supreme Court of Justice of the Nation will get to know, in the terms that the regulating law specifies, about the following affairs: III. By itself or by petition of the appropriate unitary circuit tribunal, or the Attorney General of the Republic, it may get to know about cases of appeal of sentences of district judges in those cases in which the Federation took part, and in which their interest and importance merit its participation.
Moldova	Constitution Article 135 (1) The Constitutional Court shall: g) solve the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice;
Monaco	No preliminary ruling procedure
Montenegro	Constitution Article 150 The procedure before the Constitutional Court for the assessment of constitutionality and legality may be initiated by the court, other state authority, local self-government authority and five Members of the Parliament. Draft law on the Constitutional Court ²⁷³ Article 43 Proceedings for review of constitutionality and legality of general acts shall be initiated by a petition submitted by the petitioner referred to in Article 150 paragraph 2 of the Constitution and when the Constitutional Court institutes proceedings on the basis of an initiative submitted or on its own by an order.
Morocco	No preliminary ruling procedure
Netherlands	No preliminary ruling procedure
Norway	No preliminary ruling procedure
Peru	No preliminary ruling procedure
Poland	Constitution Article 193 Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court. Constitutional Tribunal Act

²⁷³ [CDL\(2008\)073](#) Draft Law on the Constitutional Court of Montenegro

State	Relevant constitutional and legal provisions
	Article 3 Any court may refer a question of law to the Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or a statute if the answer to this question of law determines the matter pending before the court.
Portugal	No preliminary ruling procedure
Romania	Law on the Organisation and Operation of the Constitutional Court Article 23 2. If, in the course of a judgement, the Instance finds, ex officio, or one of the parties pleads the unconstitutionality of a provision under a law or statutory order on which the judgment of the cause depends, the exception raised shall be sent to the Constitutional Court, in order to pronounce upon the constitutionality of that provision.
Russian Federation	Constitution Article 125 4. The Constitutional Court of the Russian Federation, upon complaints about violations of the constitutional rights and freedoms of citizens and upon requests of the courts, shall verify the conformity with the Constitution of any law which is applied or shall be applied in a concrete case in a way established by federal law. Federal Constitutional Law on the Constitutional Court of the Russian Federation Article 101 The court while considering the case in any instance, having arrived at the conclusion about non-conformity with the Constitution of the Russian Federation of the law which has been applied or ought to be applied in a specific case, shall petition the Constitutional Court of the Russian Federation with an inquiry to verify the constitutionality of the aforementioned law.
San marino	Qualified Law of 25 April 2003 Article 13(5) (p.t.) ²⁷⁴ The declaration of inadmissibility of the request by the judge doesn't forestall new requests concerning the same question before other instances or in other proceedings.
Serbia	No preliminary ruling procedure
Slovakia	Constitution Article 130 (1) The Constitutional Court shall commence the proceedings upon a petition submitted by: d) any court; f) any person whose rights shall be adjudicated as defined in Article 127 and article 127a. (2) The law shall specify who can commence the proceedings under Article 129. Act on the Organisation of the Constitutional Court Article 18 1. The Constitutional Court shall open proceedings on a petition that has been filed by: d. a court, in a matter if its jurisdiction ; Article 37 1.If the persons specified in Article 18, paragraph 1, letters a to f come to the conclusion that a regulation of lower legal force is in conflict with a regulation of higher legal force or international treaty they may file a petition with the Constitutional Court to proceedings.
Slovenia	Articole 156 Constitution If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision. Article 23.a Constitutional Court Act (1) The procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority can be initiated by a request submitted by: - the National Assembly; - one third of the deputies; - the National Council; - the Government; - the ombudsman for human rights if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms; - the information commissioner, provided that a question of constitutionality or legality arises in connection with a procedure he is conducting; - the Bank of Slovenia or the Court of Audit, provided that a question of constitutionality or legality arises in connection with a procedure they are conducting; - the State Attorney General, provided that a question of constitutionality arises in

²⁷⁴ La dichiarazione di inammissibilità dell'istanza da parte del giudice *a quo* non impedisce la riproposizione del medesimo negli altri gradi o in procedimenti diversi.

State	Relevant constitutional and legal provisions
	<p>connection with a case the State Prosecutor's Office is conducting;</p> <ul style="list-style-type: none"> - representative bodies of local communities, provided that the constitutional position or constitutional rights of a local community are interfered with; - representative associations of local communities, provided that the rights of local communities are threatened; - national representative trade unions for an individual activity or profession, provided that the rights of workers are threatened. <p>Article 23</p> <p>(1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality.</p> <p>(2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality.</p>
South Africa	No preliminary request procedure
Spain	<p>Constitution</p> <p>Article 163</p> <p>If a judicial body considers, in some action, that a regulation with the status of law which is applicable thereto and upon the validity of which the judgment depends, may be contrary to the Constitution, it may bring the matter before the Constitutional Court in the circumstances, manner and subject to the consequences to be laid down by law, which shall in no case be suspensive.</p> <p>Organic Law on the Constitutional Court</p> <p>Article 35</p> <p>1. Where a judge or a court, proprio motu or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.</p> <p>Article 46</p> <p>1. The following shall have standing to lodge an appeal for constitutional protection:</p> <ul style="list-style-type: none"> a. In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor; b. In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor. <p>2. Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.</p>
Sweden	No preliminary ruling procedure
Switzerland	No preliminary ruling procedure
"The former Yugoslav Republic of Macedonia"	No preliminary ruling procedure
Tunisia	No preliminary ruling procedure
Turkey	<p>Constitution</p> <p>Article 152</p> <p>If a court which is trying a case finds that the law or the decree having force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue.</p> <p>If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgement shall be decided upon by the competent authority of appeal.</p> <p>Law on the Organisation and Trial Proceedings of the Constitutional Court</p> <p>Article 28</p> <p>If a court which is trying a case:</p> <ul style="list-style-type: none"> 1. finds that provisions of a law or law-amending ordinance to be applied in this case are unconstitutional, this decision together with its reasons, or 2. is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, a decision explaining the claims and defences of the parties concerned in relation to this subject-matter and its own views which led to this conviction, the contents of the file

State	Relevant constitutional and legal provisions
	together with certified copies of documents relating to this case are sent by the court concerned to the presidency of the Constitutional Court.
Ukraine	<p>Law on the Constitutional Court Article 83</p> <p>When, in the process of examination of cases under general court procedure, a dispute develops concerning the constitutionality of norms of a law which is being applied by the court, the examination of the case is suspended.</p> <p>Under such circumstances, a constitutional examination of the case is opened and the case is considered by the Constitutional Court of Ukraine immediately.</p>
United Kingdom	No preliminary ruling procedure
United States of America	<p>§1254 US Code²⁷⁵</p> <p>Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:</p> <p>(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.</p> <p>U.S. Supreme Court Rules Rule 11. Certiorari to a United States Court of Appeals Before Judgment</p> <p>A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).</p> <p>Rule 19. Procedure on a Certified Question</p> <p>1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.</p> <p>2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2).</p>
Uruguay	<p>Article 258²⁷⁶ (p.t.)</p> <p>The Judge or Tribunal that cognises in any ordinary judicial proceeding, or the Tribunal of Administrative Disputes, within their jurisdiction and before administering justice, may request <i>ex officio</i> the declaration of unconstitutionality and inapplicability of a law.</p> <p>In this case and in the case of number 2, the proceedings are suspended and the proceeding is elevated to the Supreme Court of Justice.</p> <p>General Code of Proceedings (p.t.)²⁷⁷</p> <p>Article 262</p> <p>The complaint can be lodged against the resolution that denies recourse of cassation, an appeal or the exception of unconstitutionality so that the competent superior confirms or revokes the denying resolution.</p>

²⁷⁵ <http://www4.law.cornell.edu/uscode/28/1254.html>

²⁷⁶ Artículo 258.- La declaración de inconstitucionalidad de una ley y la inaplicabilidad de las disposiciones afectadas por aquélla, podrán solicitarse por todo aquel que se considere lesionado en su interés directo, personal y legítimo:

1° Por vía de acción, que deberá entablar ante la Suprema Corte de Justicia.
2° Por vía de excepción, que podrá oponer en cualquier procedimiento judicial.

El Juez o Tribunal que entendiere en cualquier procedimiento judicial, o el Tribunal de lo Contencioso Administrativo, en su caso, también podrá solicitar de oficio la declaración de inconstitucionalidad de una ley y su inaplicabilidad, antes de dictar resolución.

En este caso y en el previsto por el numeral 2º), se suspenderán los procedimientos, elevándose las actuaciones a la Suprema Corte de Justicia.

<http://www.parlamento.gub.uy/constituciones/const004.htm>

²⁷⁷ El recurso de queja procede contra las resoluciones que denieguen un recurso de casación, de apelación o la excepción de inconstitucionalidad a fin que el superior que corresponda confirme o revoque la resolución denegatoria.

<http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=>

6.2.3 Table: Direct individual access: Constitutional and legal bases

State	Constitution	Laws
Albania	<p>Article 131 The Constitutional Court decides on: f. the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.</p> <p>Article 134 1. The Constitutional Court initiates a proceeding only on the request of: g. individuals. 2. The subjects contemplated in subparagraphs dh, e, è, f and g of paragraph 1 of this article may make a request only for issues related to their interests.</p>	<p>Law on the Organisation and Functioning of the Constitutional Court Article 30 2. The application of persons regarding the violation of a constitutional right are to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them. If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court after all the other legal means in protection of such rights have been exhausted.</p> <p>Article 68 1. When a court of any instance or a trial judge considers during the trial ex officio or at the request of either party involved that a certain law is unconstitutional and if there is a direct link between the law and the solution of the case at hand, that particular law shall not be applied in the case at hand and after suspending the trial the judge shall refer the file to the Constitutional Court, which on its side should deliver its verdict as to the constitutionality of the said law.</p>
Algeria	No direct individual access	No direct individual access
Andorra	<p>Article 10 1. All persons shall have the right to jurisdiction and to have a ruling founded in the law, and to a due trial before an impartial tribunal established by law.</p> <p>Article 41 1. The rights and freedoms recognised in Chapters 111 and IV are protected by regular courts through urgent and preferent proceedings regulated by law, which in any case shall be transacted in two instances. 2. A law shall create an exceptional Procedure of Appeal before the Tribunal Constitutional against the acts of the public authorities which may violate the essential contents of the rights mentioned in the paragraph above, with the exception of the case provided for in article 22.</p> <p>Article 102 A constitutional appeal against the acts of public authorities impairing fundamental rights may be lodged by: a) Those having been part or accessory to the previous legal proceedings referred to in Article 41.2 of this Constitution. b) Those having a legal interest related to non-enforceable provisions or acts of the Consell General. c) The Public Prosecution in case of violation of the fundamental right to jurisdiction.</p>	<p>Qualified Law on the Constitutional Court Article 86 Except in the situations described in articles 95 and 96 of this Law, the appeal for protection shall be brought against decisions of the final instance of the ordinary courts dismissing applications during the urgent priority procedure provided for in article 41.1 of the Constitution.</p> <p>Article 87 1. The respondents or assistants in the proceedings mentioned in the preceding article have <i>locus standi</i> to bring an appeal for protection.</p> <p>Article 94 2. When no further appeal can be lodged nor is there any further means in defending the constitutional right infringed, the person who has suffered the infringement of the constitutional right to jurisdiction may lodge an appeal for protection before the Constitutional Court within fifteen working days of the day after notification of the last resolution of refusal or of the date on which he had knowledge of the judicial decision which violated the constitutional right to jurisdiction.</p>
Argentina	<p>Section 116 The Supreme Court and the lower courts of the Nation are empowered to hear and</p>	<p>Law on The Organisation of the National Judiciary²⁷⁸ (p.t.) Article 20²⁷⁹</p>

²⁷⁸ <http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116333/norma.htm>

²⁷⁹ Article 20. – Los Juzgados de Sección conocen en primera instancia, de todas las causas que se expresan en el artículo 100 [= Section 116 today] de la Constitución, sin incluir en ellas las exceptuadas en el artículo 101 de la misma Constitución, de las contenciosas administrativas y demás que interesen al Fisco Nacional, mas en las de

State	Constitution	Laws
	<p>decide all cases arising under the Constitution and the laws of the Nation, with the exception made in Section 75, subsection 12, and under the treaties made with foreign nations; all cases concerning ambassadors, public ministers and foreign consuls; cases related to admiralty and maritime jurisdiction; matters in which the Nation shall be a party; actions arising between two or more provinces, between one province and the inhabitants of another province, between the inhabitants of different provinces, and between one province or the inhabitants thereof against a foreign state or citizen.</p> <p>Section 117 In the aforementioned cases the Supreme Court shall have appellate jurisdiction, with such regulations and exceptions as Congress may prescribe; but in all matters concerning foreign ambassadors, ministers and consuls, and in those in which a province shall be a party, the Court shall have original and exclusive jurisdiction.</p>	<p>The Section Courts shall sit in first instance concerning all cases provided for in article 100 of the Constitution [=section 116 today], without including the exceptions mentioned in article 101 of the Constitution [=Section 117] [...]</p> <p>Article 21²⁸⁰ As established by the Constitution and the national laws, it [The Section Court] may sit as appeals court concerning the judgements and resolutions of the inferior Provincial Courts, except if the affected person prefers to petition the Superior Provincial Court or Tribunal.</p> <p>Article 22²⁸¹ In all matters mentioned in the two previous articles, the ordinary appeal or plea of nullity to the Supreme Court are open.</p> <p>Law on the writ of amparo Article 1²⁸² The writ of <i>amparo</i> shall be admissible against any act or omission by a public authority that, currently or imminently, violates, restricts, alters or threatens manifestly arbitrarily or illegally the rights and guarantees explicitly or implicitly attributed by the National Constitution, with the exception of the individual liberty which is regulated by the <i>habeas corpus</i>.</p> <p>Article 4²⁸³ The judge of first instance who has jurisdiction at the place where the act took place or should have taken place shall be competent to cognise of the writ of <i>amparo</i>.</p>
Armenia	<p>Article 101 In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court the application to the Constitutional Court may be filed by: 6) every person in a specific case when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the</p>	<p>Law on the Constitutional Court Article 25 The bodies and persons determined by Article 101 of the Constitution can appeal to the Constitutional Court in the order prescribed by the Constitution and this Law. Moreover, in cases determined in the Point 6 of Article 101 legal persons are also eligible to appeal to the Constitutional Court according to the Article 42.1</p>

contrabando, lo harán, por ahora, tanto en el territorio de la Provincia de Buenos Aires, cuanto en el resto de la República, ajustándose a las respectivas leyes y disposiciones dictadas y vigente en ellas.

<http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116333/norma.htm>

²⁸⁰ Article 21. – Puede conocer en grado de apelación de los fallos y resoluciones de los Juzgados inferiores de Provincia, en los casos regidos por la Constitución y Leyes Nacionales, siempre que el agraviado no prefiera concurrir al Juzgado o Tribunal Superior de la Provincia.

<http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116333/norma.htm>

²⁸¹ Art. 22. – En todas las causas mencionadas en los dos artículos precedentes, habrá los ordinarios recursos de apelación o nulidad para ante la Corte Suprema.

<http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116333/norma.htm>

²⁸² Artículo 1º — La acción de amparo será admisible contra todo acto u omisión de autoridad pública que, en forma actual o inminente, lesione, restrinja, altere o amenace, con arbitrariedad o ilegalidad manifiesta, los derechos o garantías explícita o implícitamente reconocidas por la Constitución Nacional, con excepción de la libertad individual tutelada por el *habeas corpus*.

<http://www.infoleg.gov.ar/infolegInternet/anexos/45000-49999/46871/norma.htm>

²⁸³ Artículo 4º — Será competente para conocer de la acción de amparo el juez de Primera Instancia con jurisdicción en el lugar en que el acto se exteriorice o tuviere o pudiere tener efecto.

<http://www.infoleg.gov.ar/infolegInternet/anexos/45000-49999/46871/norma.htm>

State	Constitution	Laws
	<p>constitutionality of a law provision applied by the act in question is being challenged;</p>	<p>of the Constitution. Article 69 1. The appeals on the cases described in this Article (hereinafter individual appeals) can be brought by those natural and legal persons who were participants at the courts of general jurisdiction and in specialised courts, in relation of who the law was implemented by a judicial act, who exhausted all the remedies of judicial protection and who believe that the provision of the Law applied for the particular case contradicts the Constitution. 2. The individual appeals can be submitted regarding the constitutionality of provisions of Laws adopted by the National Assembly and on referendum.</p>
Austria	<p>Article 139. (1) The Constitutional Court pronounces on application by a court or an independent administrative tribunal whether ordinances issued by a Federal or Land authority are contrary to law, but ex officio in so far as the Court would have to apply such an ordinance in a pending suit. It also pronounces on application by the Federal Government whether ordinances issued by a Land authority are contrary to law and likewise on application by the municipality concerned whether ordinances issued by a municipal affairs supervisory authority in accordance with Article 119a para. 6 are contrary to law. It pronounces furthermore whether ordinances are contrary to law when an application alleges direct infringement of personal rights through such illegality in so far as the ordinance has become operative for the applicant without the delivery of a judicial decision or the issue of a ruling; Art. 89 para. 3 applies analogously to such applications. Article 144. (1) The Constitutional Court pronounces on rulings by administrative authorities including the independent administrative tribunals in so far as the appellant alleges an infringement by the ruling of a constitutionally guaranteed right or the infringement of personal rights on the score of an illegal ordinance, an unconstitutional law, or an unlawful treaty. The complaint can only be filed after all other stages of legal remedy have been exhausted.</p>	<p>Federal Law on the Constitutional Court Article 82 1. A complaint against an administrative decree in pursuance of Article 144, subparagraph 1 of the B-VG can be lodged only after all administrative remedies have been exhausted, within six weeks following service of the decree delivered at last instance.</p>
Azerbaijan	<p>Article 130. II. Constitutional Court of the Azerbaijan Republic based on inquiry of the President of the Azerbaijan Republic, Milli Majlis of the Azerbaijan Republic, Cabinet of Ministers of the Azerbaijan Republic, Supreme Court of the Azerbaijan Republic, Procurator's Office of the Azerbaijan Republic, Ali Majlis of Nakhichevan Autonomous Republic takes decisions regarding the following: 1. correspondence of laws of the Azerbaijan Republic, decrees and orders of the President of the Azerbaijan Republic,</p>	<p>Law on the Constitutional Court Article 34. Complaints 34.1. Any person who alleges that his/her rights and freedoms have been violated by the normative legal act of the Legislative and Executive, act of municipality and courts may submit complaint to Constitutional Court to resolve matters provided for by Article 130.3.1-7 of the Constitution of Azerbaijan Republic in order to restore his/her human rights and freedoms. 34.2. Complaints on the matters provided for by Article 130.3.4 of the Constitution of Azerbaijan Republic can be examined by Constitutional</p>

State	Constitution	Laws
	<p>decrees of Milli Majlis of the Azerbaijan Republic, decrees and orders of Cabinet of Ministers of the Azerbaijan Republic, normative-legal acts of central bodies of executive power to Constitution of the Azerbaijan Republic;</p> <p>2. correspondence of decrees of the President of the Azerbaijan Republic, decrees of Cabinet of Ministers of the Azerbaijan Republic, normative-legal acts of central bodies of executive power to the laws of the Azerbaijan Republic;</p> <p>3. correspondence of decrees of Cabinet of Ministers of the Azerbaijan Republic and normative-legal acts of central bodies of executive power to decrees of the President of the Azerbaijan Republic;</p> <p>4. in cases envisaged by law, correspondence of decisions of Supreme Court of the Azerbaijan Republic to Constitution and laws of the Azerbaijan Republic;</p> <p>5. correspondence of acts of municipalities to Constitution of the Azerbaijan Republic, laws of the Azerbaijan Republic, decrees of the President of the Azerbaijan Republic, decrees of Cabinet of Ministers of the Azerbaijan Republic (in Nakhichevan Autonomous Republic – also to Constitution and laws of Nakhichevan Autonomous Republic and decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic);</p> <p>6. correspondence of interstate agreements of the Azerbaijan Republic, which have not yet become valid, to Constitution of the Azerbaijan Republic; correspondence of intergovernmental agreements of the Azerbaijan Republic to Constitution and laws of the Azerbaijan Republic;</p> <p>7. correspondence of Constitution and laws of Nakhichevan Autonomous Republic, decrees of Ali Majlis of Nakhichevan Autonomous Republic, decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic to Constitution of the Azerbaijan Republic; correspondence of laws of Nakhichevan Autonomous Republic, decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic to laws of the Azerbaijan Republic; correspondence of decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic to decrees of the President of the Azerbaijan Republic and decrees of Cabinet of Ministers of the Azerbaijan Republic;</p> <p>V. Everyone claiming to be the victim of a violation of his/her rights and freedoms by the decisions of legislative, executive and judiciary, municipal acts set forth in the items 1-7 of the Para III of this Article may appeal, in accordance with the procedure provided for by law, to the Constitutional Court of the Republic of Azerbaijan with the view of the restoration of violated human rights and freedoms.</p>	<p>Court in following cases:</p> <p>34.2.1. If the normative legal act which should have been applied was not applied by a court;</p> <p>34.2.2. If normative legal act which should not have been applied was applied by a court;</p> <p>34.2.3. If normative legal act was not properly interpreted by a court;</p> <p>34.3. In cases provided for by Article 34.2 of the present law the examination of facts of the case examined by the Supreme Court of Azerbaijan Republic shall be inadmissible.</p>

State	Constitution	Laws
Belgium	<p>Article 142</p> <p>There is for all Belgium a Constitutional Court, the composition, competences and functioning of which are established by the law.</p> <p>This Court rules by means of judgments on:</p> <p>1° those conflicts referred to in Article 141;</p> <p>2° the violation of Articles 10, 11 and 24 by a law, a federate law or a rule as referred to in Article 134;</p> <p>3° the violation of constitutional articles that the law determines by a law, a federate law or by a rule as referred to in Article 134.</p> <p>A matter may be referred to the Court by any authority designated by the law, by any person that can prove an interest or, pre-judicially, by any court.</p>	<p>Special Law on the Court</p> <p>Article 2</p> <p>The actions referred to in Article 1 may be brought:</p> <ol style="list-style-type: none"> 1. by the Council of Ministers, by the government of a Community or a Region; 2. by any natural or legal person who has a justifiable interest; or 3. by the presidents of the legislative assemblies, at the request of two-thirds of the membership.
Bosnia and Herzegovina	<p>VI.3 Jurisdiction.</p> <p>...</p> <p>b The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.</p>	<p>Rules of the Constitutional Court</p> <p>Article 15</p> <ol style="list-style-type: none"> 1. The participants to the proceedings shall be as follows: b. the parties to the proceedings that ended in a judgment/decision challenged and the court or body that rendered the challenged judgment/decision (Article VI.3 (b) of the Constitution);
Brazil	<p>Article 5²⁸⁴</p> <p>LXVIII – <i>habeas corpus</i> shall be granted whenever a person suffers or is in danger of suffering violence or coercion against his freedom of locomotion, on account of illegal actions or abuse of power;</p> <p>LXIX – a writ of <i>mandamus</i> shall be issued to protect a clear and perfect right, not covered by <i>habeas corpus</i> or <i>habeas data</i>, whenever the party responsible for the illegal actions or abuse of power is a public official or an agent of a corporate legal entity exercising duties of the Government;</p> <p>LXX – a collective writ of <i>mandamus</i> may be filed by:</p> <ol style="list-style-type: none"> a) a political party represented in the National Congress; b) a union, a professional association or an association legally constituted and in operation for at least one year, to defend the interests of its members or associates; <p>LXXI – a writ of injunction shall be granted whenever the absence of a regulatory provision disables the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty and citizenship;</p> <p>LXXII – <i>habeas data</i> shall be granted:</p> <ol style="list-style-type: none"> a) to ensure the knowledge of information related to the person of the petitioner, contained in records or databanks of government agencies or of agencies of a public character; b) for the correction of data, when the petitioner does not prefer to do so through a confidential process, either judicial or administrative; 	<p>Law no. 10,259 of 2001 allowed extraordinary appeals to decisions issued by judges at special higher courts to be forwarded to the Supreme Court</p>

²⁸⁴ <http://www.v-brazil.com/government/laws/>

State	Constitution	Laws
	<p>LXXIII – any citizen is a legitimate party to file a people’s legal action with a view to nullifying an act injurious to the public property or to the property of an entity in which the State participates, to the administrative morality, to the environment and to the historic and cultural heritage, and the author shall, save in the case of proven bad faith, be exempt from judicial costs and from the burden of defeat;</p> <p>Article 102.</p> <p>The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence:</p> <p>I – to institute legal proceeding and trial, in the first instance, of:</p> <p>a) direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal law or normative act;</p> <p>Text in purple added by CA 3, 17 March 1993. This CA created the declaratory actions of constitutionality.</p> <p>b) in common criminal offenses, the President of the Republic, the Vice-President, the members of the National Congress, its own Justices and the Attorney-General of the Republic;</p> <p>c) in common criminal offenses and crimes of malversation, the Ministers of State, except as provided in Article 52, I, the Commanders of Navy, Army and Air Force and the members of the Superior Courts, those of the Federal Court of Accounts and the heads of permanent diplomatic missions;</p> <p>Text in purple added by CA 23, September 2nd 1999, which created the positions of Commanders of Navy, Army and Air Force. See comments to Article 84, XIII.</p> <p>d) <i>habeas corpus</i>, when the petitioner is any one of the persons referred to in the preceding subitems; the writ of mandamus and <i>habeas data</i> against acts of the President of the Republic, of the Directing Boards of the Chamber of Deputies and of the Federal Senate, of the Federal Court of Accounts, of the Attorney-General of the Republic and of the Supreme Federal Court itself;</p> <p>i) <i>habeas corpus</i>, when the constraining party is a Superior Court or the petitioner is a court, authority or employee whose acts are directly subject to the jurisdiction of the Supreme Federal Court, or in the case of a crime, subject to the same jurisdiction in one sole instance;</p> <p>p) petitions of provisional remedy in direct actions of unconstitutionality;</p> <p>II – to judge on ordinary appeal:</p> <p>a) <i>habeas corpus</i>, writs of mandamus, <i>habeas data</i> and writs of injunction decided in a sole instance by the Superior Courts, in the event of a denial;</p> <p>b) political crimes;</p> <p>III – to judge, on extraordinary appeal,</p>	

State	Constitution	Laws
	<p>cases decided in a sole or last instance, when the decision appealed:</p> <p>a) is contrary to a provision of this Constitution;</p> <p>b) declares a treaty or a federal law unconstitutional;</p> <p>c) considers valid a law or act of a local government contested in the light of this Constitution.</p> <p>d) considers valid local law contested in the light of federal law.</p> <p>Amendment no. 45 of 2004: instrument of general repercussion was confirmed, setting forth that "in the extraordinary appeal the appellant must demonstrate the general repercussion of the constitutional issue discussed in the case, in accordance with the law, so that the court may decide whether to accept the appeal, being only able to reject it though an unfavorable opinion of two thirds of its members."</p> <p>binding precedent Article 5, LXXI Article 102, I, q,</p>	
Bulgaria	No direct individual access	No direct individual access
Canada	<p>24. Enforcement of guaranteed rights and freedoms</p> <p>(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.</p> <p>52. Primacy of Constitution of Canada</p> <p>(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.</p>	<p>Supreme Court Act Section 37.1</p> <p>An appeal lies to the [Supreme] Court from a decision of the Federal Court of Appeal in the case of a controversy between Canada and a province or between two or more provinces.</p> <p>Section 36</p> <p>An appeal lies to the [Supreme] Court from an opinion pronounced by the highest court of final resort in a province on any matter referred to it for hearing and consideration by the lieutenant governor in council of that province whenever it has been by the statutes of that province declared that such opinion is to be deemed a judgment of the highest court of final resort and that an appeal lies therefrom as from a judgment in an action.</p> <p>Section 37</p> <p>Subject to sections 39 and 42, an appeal to the Supreme Court lies with leave of the highest court of final resort in a province from a final judgment of that court where, in the opinion of that court, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision.</p> <p>Section 37.1</p> <p>Subject to sections 39 and 42, an appeal to the Court lies with leave of the Federal Court of Appeal from a final judgment of the Federal Court of Appeal where, in its opinion, the question involved in the appeal is one that ought to be submitted to the Court for decision.</p> <p>Section 38</p> <p>Subject to sections 39 and 42, an appeal to the Supreme Court lies on a question of law alone with leave of that Court, from a final judgment of the Federal Court or of a court of a province other than the highest court of final resort therein, the judges of which are appointed by the Governor General, pronounced in a judicial proceeding where an appeal lies to the Federal</p>

State	Constitution	Laws
		<p>Court of Appeal or to that highest court of final resort, if the consent in writing of the parties or their solicitors, verified by affidavit, is filed with the Registrar of the Supreme Court and with the registrar, clerk or prothonotary of the court from which the appeal is to be taken.</p> <p>Section 39 No appeal to the Court lies under section 37, 37.1 or 38 from a judgment in a criminal cause, in proceedings for or on: a) a writ of <i>habeas corpus</i>, <i>certiorari</i> or prohibition arising out of a criminal charge; or b) a writ of <i>habeas corpus</i> arising out of a claim for extradition made under a treaty.</p> <p>Section 40 1. Subject to subsection 3, an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court. 3. No appeal to the Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence. 4. Whenever the Court has granted leave to appeal, the Court or a judge may, notwithstanding anything in this Act, extend the time within which the appeal may be allowed.</p> <p>Section 41 Notwithstanding anything in this Act, the Court has jurisdiction as provided in any other Act conferring jurisdiction.</p> <p>Section 42 1. No appeal lies to the Court from a judgment or order made in the exercise of judicial discretion except in proceedings in the nature of a suit or proceeding in equity originating elsewhere than in the Province of Quebec and except in <i>mandamus</i> proceedings. 2. This section does not apply to an appeal under section 40.</p> <p>Section 52 The Court shall have and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada, and the judgment of the Court is, in all cases, final and conclusive.</p>

State	Constitution	Laws
Chile	<p>Article 19 (p.t.)²⁸⁵ The Constitution protects the right of every person: 21°. To perform any economic activity that is not contrary to morality, public order or national security and respects the legal norms which regulate it.²⁸⁶ Article 20²⁸⁷ Anyone who through arbitrary or illegal acts or omissions suffers deprivation, perturbation in or threats to the legitimate exercise of his rights and guarantees established in the articles 19 No. 1°, 2°, 3° fourth indent, 4°, 5°, 6°, 9° final indent, 11°, 12°, 13°, 15°, 16° as concerns the right to free labour and the right to be freely elected and employed, and as concerns what has been established in the fourth indent, 19°, 21°, 22°, 23°, 24°, y 25°, may approach the Court of Appeals in his own name or through a third person; the Court of Appeals shall immediately adopt measures it deems necessary to re-establish the rule of law and to ensure the due protection of the person concerned, without prejudice to the additional rights he might claim before the relevant authority or tribunal. The request for protection applies also in the case of no. 8 of Article 19 when the right to live in an environment free of contamination has been affected by an arbitrary or unlawful action imputable to an authority or a specific person. Article 21.²⁸⁸ Every individual who is under arrest, detention or imprisonment in breach of the laws or the Constitution may approach the administrative body indicated by the law so that the latter may order that the legal formalities be complied with and may immediately adopt the measures deemed necessary to reinstate the rule of law and ensure due protection of the affected individual. Article 93.²⁸⁹</p>	<p>Autonomous rule of the Supreme Court on the implementation of the recurso de protección²⁹⁰ (p.t.) 1. The recourse or action of protection can be lodged at the Appeals Court within whose jurisdiction the act or the arbitrary or illegal omission causing deprivation, perturbation in or threats to the legitimate exercise of the respective constitutional guarantees, within an unsuspensible respite of thirty days after the execution of the act or the occurrence of the omission, or, according to the nature of these, after notice or certain knowledge of the act or omission, which will be determined in the provisional procedure. 2. The recourse may be lodged on paper or even by telegraph or telefax by the affected person or by another person having legal capacity in his name even if that person does not have a special mandate. The Tribunal will examine if the recourse has been lodged within the respites and if facts are being brought forward that could constitute a violation of the guarantees indicated in article 20 of the Political Constitution of the Republic. If the recourse is extemporaneous or if no facts are being brought forward that could constitute a violation of the guarantees mentioned in the indicated constitutional provision, the Tribunal will declare the recourse inadmissible in the place of giving a reasoned resolution; against the declaration of inadmissibility only a recourse of reposition can be lodged before the same tribunal within three days. 5. For greater exactitude of the judgement, the Tribunal may take all measures it deems necessary. The Court will appreciate with sanity and reason the previous facts of the case and the ones that add to it during the proceedings. –The subsequent decision, may it accept or repeal the recourse or declare it inadmissible, can be appealed at the Supreme Court. Law N° 18.971²⁹¹</p>

²⁸⁵ <https://www.presidencia.cl/documentos/Constitucion%F3n%20Pol%EDtica.pdf>

²⁸⁶ La Constitución asegura a todas las personas: El derecho a desarrollar cualquiera actividad económica que no sea contraria a la moral, al orden público o a la seguridad nacional, respetando las normas legales que la regulen.

²⁸⁷ El que por causa de actos u omisiones arbitrarios o ilegales sufra privación, perturbación o amenaza en el legítimo ejercicio de los derechos y garantías establecidos en el artículo 19, números 1°, 2°, 3° inciso cuarto, 4°, 5°, 6°, 9° inciso final, 11°, 12°, 13°, 15°, 16° en lo relativo a la libertad de trabajo y al derecho a su libre elección y libre contratación, y a lo establecido en el inciso cuarto, 19°, 21°, 22°, 23°, 24°, y 25° podrá ocurrir por sí o por cualquiera a su nombre, a la Corte de Apelaciones respectiva, la que adoptará de inmediato las providencias que juzgue necesarias para restablecer el imperio del derecho y asegurar la debida protección del afectado, sin perjuicio de los demás derechos que pueda hacer valer ante la autoridad o los tribunales correspondientes.

Procederá, también, el recurso de protección en el caso del N° 8° del artículo 19, cuando el derecho a vivir en un medio ambiente libre de contaminación sea afectado por un acto u omisión ilegal imputable a una autoridad o persona determinada.

²⁸⁸ Todo individuo que se hallare arrestado, detenido o preso con infracción de lo dispuesto en la Constitución o en las leyes, podrá ocurrir por sí, o por cualquiera a su nombre, a la magistratura que señale la ley, a fin de que ésta ordene se guarden las formalidades legales y adopte de inmediato las providencias que juzgue necesarias para restablecer el imperio del derecho y asegurar la debida protección del afectado.

State	Constitution	Laws
	The Constitutional Tribunal is competent to: 2° Decide on the questions of unconstitutionality of autonomous rules of the Supreme Court, the Appellate Court and the Election Tribunal; 6° Decide, at the four fifth's majority of its members, on the inapplicability of a legal provision whose application in any proceeding before an ordinary or special tribunal would be contrary to the Constitution; 7° Decide, at the four fifth's majority of its members, on the unconstitutionality of a legal provision that has been declared inapplicable in conformity with the previous article; the question can be lodged by any	Any person can bring a charge against infractions against article 19 number 21 of the Political Constitution of Chile.

²⁸⁹ Artículo 93. Son atribuciones del Tribunal Constitucional: 1° Ejercer el control de constitucionalidad de las leyes que interpreten algún precepto de la Constitución, de las leyes orgánicas constitucionales y de las normas de un tratado que versen sobre materias propias de estas últimas, antes de su promulgación; 2° Resolver sobre las cuestiones de constitucionalidad de los autos acordados dictados por la Corte Suprema, las Cortes de Apelaciones y el Tribunal Calificador de Elecciones;

6° Resolver, por la mayoría de sus miembros en ejercicio, la inaplicabilidad de un precepto legal cuya aplicación en cualquier gestión que se siga ante un tribunal ordinario o especial, resulte contraria a la Constitución;

7° Resolver por la mayoría de los cuatro quintos de sus integrantes en ejercicio, la inconstitucionalidad de un precepto legal declarado inaplicable en conformidad a lo dispuesto en el numeral anterior;

En el caso del número 2°, el Tribunal podrá conocer de la materia a requerimiento del Presidente de la República, de cualquiera de las Cámaras o de diez de sus miembros. Asimismo, podrá requerir al Tribunal toda persona que sea parte en juicio o gestión pendiente ante un tribunal ordinario o especial, o desde la primera actuación del procedimiento penal, cuando sea afectada en el ejercicio de sus derechos fundamentales por lo dispuesto en el respectivo auto acordado.

En el caso del número 6°, la cuestión podrá ser planteada por cualquiera de las partes o por el juez que conoce del asunto. Corresponderá a cualquiera de las salas del Tribunal declarar, sin ulterior recurso, la admisibilidad de la cuestión siempre que verifique la existencia de una gestión pendiente ante el tribunal ordinario o especial, que la aplicación del precepto legal impugnado pueda resultar decisivo en la resolución de un asunto, que la impugnación esté fundada razonablemente y se cumplan los demás

requisitos que establezca la ley. A esta misma sala le corresponderá resolver la suspensión del procedimiento en que se ha originado la acción de inaplicabilidad por inconstitucionalidad.

En el caso del número 7°, una vez resuelta en sentencia previa la declaración de inaplicabilidad de un precepto legal, conforme al número 6° de este artículo, habrá acción pública para requerir al Tribunal la declaración de inconstitucionalidad, sin perjuicio de la facultad de éste para declararla de oficio. Corresponderá a la ley orgánica constitucional respectiva establecer los requisitos de admisibilidad, en el caso de que se ejerza la acción pública, como asimismo regular el procedimiento que deberá seguirse para actuar de oficio.

²⁹⁰ 1. El recurso o acción de protección se interpondrá ante la Corte de Apelaciones en cuya jurisdicción se hubiere cometido el acto o incurrido en la omisión arbitraria o ilegal que ocasionen privación, perturbación o amenaza en el legítimo ejercicio de las garantías constitucionales respectivas, dentro del plazo fatal de treinta días corridos contados desde la ejecución del acto o la ocurrencia de la omisión o, según la naturaleza de éstos, desde que se haya tenido noticias o conocimiento cierto de los mismos, lo que se hará constar en autos.

2. El recurso se interpondrá por el afectado o por cualquiera otra persona en su nombre, capaz de parecer en juicio, aunque no tenga para ello mandato especial, por escrito en papel simple y aún por telégrafo o télex.

Presentado el recurso, el Tribunal examinará en cuenta si ha sido interpuesto en tiempo y si se mencionan hechos que puedan constituir la vulneración de garantías de las indicadas en el artículo 20 de la Constitución Política de la República. Si su presentación es extemporánea o no se señalan hechos que puedan constituir vulneración a garantías de las mencionadas en la referida disposición constitucional, lo declarará inadmisibles desde luego por resolución fundada, la que sólo será susceptible del recurso de reposición ante el mismo tribunal, el que deberá interponerse dentro de tercero día.

5. Para mejor acierto del fallo se podrán decretar todas las diligencias que el Tribunal estime necesarias.

La Corte apreciará de acuerdo con las reglas de la sana crítica los antecedentes que se acompañen al recurso y los demás que se agreguen durante su tramitación.- La sentencia que se dicte, ya sea que lo acoja, rechace o declare inadmisibles el recurso, será apelable ante la Corte Suprema.

http://www.justicia.cl/documentos/docs_auto1.html, http://www.minsal.cl/juridico/CIRCULAR_35_07.doc

²⁹¹ Cualquier persona podrá denunciar las infracciones al artículo 19 número 21 de la Constitución Política de la República de Chile.

http://www.cecoch.cl/hm/revista/docs/estudiosconst/5n_2_5_2007/7_el_recurso_economico.pdf

State	Constitution	Laws
	<p>of the parties or by the judge who decides on the matter.</p> <p>In the case of number 2°, the Tribunal shall cognise on the matter at the request of the President of the Republic, of any of the Chambers or of ten of their members. Also, any person who is party to a pending proceeding before an ordinary or special tribunal or from the first action in a penal proceeding may formulate a request to the Tribunal, if he is affected in his fundamental constitutional rights by the respective autonomous rule.</p> <p>In the case of number 6°, the question may be lodged by any of the parties or by the judge that decides on the matter.</p> <p>In the case of number 7°, once a provisional judgement declaring the inapplicability of a legal provision has been delivered in conformity with number 6° of this article, a public action can be taken to request the declaration of unconstitutionality of the Tribunal, without prejudice to the latter's right to declare the provision unconstitutional <i>ex officio</i>. The respective organic constitutional law will establish the requisites for admissibility in the case of public action, and to regulate the proceeding that will need to be followed in order to act <i>ex officio</i>.</p>	
Croatia	<p>Article 18 The right to appeal against individual legal acts made in first-instance proceedings before courts or other authorised bodies shall be guaranteed. The right to appeal may exceptionally be denied in cases specified by law if other legal protection is ensured.</p> <p>Article 46 Everyone have the right to submit petitions and complaints, to make proposals to government and other public bodies and to receive answers thereto.</p> <p>Article 128 The Constitutional Court of Croatia shall: - decide upon constitutional suits against individual decisions by state bodies, bodies of local and regional self-government units and legal persons with public authorities when those decisions have violated basic freedoms and rights of man and citizen, as well as the right to a local and regional self-government, guaranteed by the Constitution of the Republic of Croatia.</p>	<p>Constitutional Act on the Constitutional Court</p> <p>Article 38 (1) Every individual or legal person has the right to propose the institution of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations.</p> <p>Article 40 (1) The proposal to institute proceedings to review the constitutionality of the law or the constitutionality and legality of other regulations contains, as a rule, the same as the request. (2) The Constitutional Court shall institute proceedings within a term of one year after the proposal has been lodged.</p> <p>Article 62 (1) Everyone may lodge a constitutional complaint with the Constitutional Court if he deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right).</p>
Cyprus	<p>Article 144 1. A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall</p>	

State	Constitution	Laws
	<p>reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court.</p> <p>Article 146</p> <p>1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.</p> <p>2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.</p>	
<p>Czech Republic</p>	<p>Article 87</p> <p>(1) The Constitutional Court has jurisdiction:</p> <p>a) to annul statutes or individual provisions thereof if they are in conflicts with the constitutional order;</p> <p>b) to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order, a statute;</p> <p>d) over constitutional complaints against final decisions or other actions by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms;</p>	<p>Constitutional Court Act</p> <p>Article 64</p> <p>(1) A petition, under Article 87 para. 1, lit. a) of the Constitution, proposing the annulment of a statute, or individual provisions thereof, may be submitted by:</p> <p>e) anyone who submits a constitutional complaint under the conditions stated in § 74 of this Statute or who submits a petition for rehearing under the conditions stated in § 119 para. 4 of this Statute.</p> <p>(2) A petition, under Article 87 para. 1, lit. b) of the Constitution, proposing the annulment of some other enactment, or individual provisions thereof, may be submitted by:</p> <p>d) anyone who submits a constitutional complaint under the conditions stated in § 74 of this Statute or who submits a petition for rehearing under the conditions stated in § 119 para. 4 of this Statute;</p> <p>Article 72</p> <p>(1) A constitutional complaint may be submitted:</p> <p>a) pursuant to Article 87 para. 1, lit. d) of the Constitution, by a natural or legal person, if she alleges that her fundamental rights and basic freedoms guaranteed in the constitutional order (hereinafter "constitutionally guaranteed fundamental rights and basic freedoms") have been infringed as a result of the final decision in a proceeding to which she was a party, of a measure, or of some other encroachment by a public authority (hereinafter "action by a public authority").</p> <p>Article 74</p> <p>A complainant may submit, together with his constitutional complaint, a petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, if the complainant alleges it to be in conflict with a constitutional act, or with a statute, where the complaint concerns some other</p>

State	Constitution	Laws
		enactment. [to be combined with Art. 78]
Denmark	<p>§60.</p> <p>(1). The High Court of the Realm shall try such actions as may be brought by the King or the Folketing against Ministers.</p> <p>(2) With the consent of the Folketing, the King may also cause other persons to be tried before the High Court of the Realm for crimes which he may deem to be particularly dangerous to the State.</p>	<p>Administration of Justice Act Section 371</p> <p>1. Appeals may not be lodged against judgments pronounced by a High Court as court of second instance. The Board of Appeal may, however, permit an examination in a court of third instance if the case concerns a fundamental principle.</p> <p>2. An application for the permission referred to in the second sentence of subsection (1) above must be submitted to the Board of Appeal within 8 weeks of pronouncement of the judgment concerned. The Board of Appeal may, however, exceptionally, grant such permission if the application is submitted later, provided it is within one year of pronouncement of the judgment.</p>
Estonia	<p>Article 152</p> <p>If any law or another legal act is in conflict with the Constitution, it shall not be applied by the Court in trying a case.</p> <p>If any law or other legal act is in conflict with the provisions and spirit of the Constitution, it shall be declared null and void by the National Court.</p>	<p>Constitutional Review Court Procedure Act §. 16.</p> <p>A person who finds that a resolution of the Riigikogu violates his or her rights may file with the Supreme Court a request for the repeal of the resolution of the Riigikogu.</p> <p>§. 18.</p> <p>A person who finds that a decision of the President of the Republic concerning appointment to or release from office of an official violates his or her rights, may file with the Supreme Court a request for the repeal of the decision of the President of the Republic.</p>
Finland	<p>Section 106</p> <p>If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.</p>	<p>Supreme Court Act Article 3</p> <p>The Supreme Court shall examine and decide as the final instance</p> <p>1. all litigation which according to law or special decrees may have been brought before the judicial department of the Senate of Finland;</p> <p>2. appeals against the decisions and actions of authorities, which until now have been subject to appeal to the judicial department of the Senate;</p> <p>3. appeals against the judgments and decisions of the Land Court;</p> <p>4. charges for misconduct in office committed by the President or a member of a court of appeal in the performance of his duties; and</p> <p>5. applications for the restoration of lapsed time and for the annulment of a final judgement.</p>
France	<p>Article 61-1²⁹².- [Entrée en vigueur dans les conditions fixées par les lois et lois organiques nécessaires à leur application (article 46-I de la loi constitutionnelle n° 2008-724 du 23 juillet 2008)]</p> <p>Lorsque, à l'occasion d'une instance en cours devant une juridiction, il est soutenu qu'une disposition législative porte atteinte aux droits et libertés que la Constitution garantit, le Conseil constitutionnel peut être saisi de cette question sur renvoi du Conseil d'État ou de la Cour de cassation qui se prononce dans un délai déterminé.</p> <p>Une loi organique détermine les conditions d'application du présent article.</p>	-

²⁹² <http://www.legifrance.gouv.fr/html/constitution/constitution2.htm>

State	Constitution	Laws
Georgia	<p>Article 89</p> <p>1. The Constitutional Court of Georgia on the basis of a constitutional claim or a submission of the President of Georgia, the Government, not less than one fifth of the members of the Parliament, a court, the higher representative bodies the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, the Public Defender or a citizen in accordance with a procedure established by the Organic Law shall:</p> <p>a. adjudicate upon the constitutionality of a Constitutional Agreement, law, normative acts of the President and the Government, the normative acts of the higher state bodies of the Autonomous Republic Abkhazia and the Autonomous Republic of Ajara (changes are added by the Constitutional Laws of Georgia of 20 April 2000 and 30 March 2001);</p> <p>f. consider on the basis of a constitutional claim of a citizen constitutionality of normative acts in terms of the issues of Chapter Two of the Constitution;</p>	<p>Law on the Constitutional Court</p> <p>Chapter One</p> <p>Principles of constitutional proceedings</p> <p>Article 1</p> <p>1. Constitutional proceedings before the Court shall be conducted in conformity with the equality of the parties and the adversarial principle.</p> <p>2. Individuals and bodies listed in paragraph 1 of Articles 33, 34, 35, 36, 37, 38, 39, 40 and 41 and in Article 42 of Georgia's Organic Law on the Constitutional Court of Georgia shall have equal rights to address the Constitutional Court directly.</p> <p>Article 39</p> <p>1. The following shall have the right to lodge a constitutional claim on constitutionality of a normative act or a particular provisions thereof:</p> <p>a) Citizens of Georgia, other individuals residing in Georgia and legal entities of Georgia, if they believe that their rights and freedoms recognised by Chapter Two of the Constitution of Georgia are infringed or may be directly infringed upon;</p>
Germany	<p>Article 93 (1)</p> <p>The Federal Constitutional Court shall rule:</p> <p>4a. on constitutional complaints which may be filed by anybody claiming that one of their basic rights or one of their rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been violated by public authority;</p> <p>Article 94</p> <p>(2) The constitution and procedure of the Federal Constitutional Court shall be governed by a federal law which shall specify the cases in which its decisions have the force of law. Such law may make a complaint of unconstitutionality conditional upon the exhaustion of all other legal remedies and provide for a special admissibility procedure.</p>	<p>Law on the Federal Constitutional Court</p> <p>Article 13</p> <p>The Federal Constitutional Court shall decide in the cases determined by the Basic Law, to wit</p> <p>8a. on constitutional complaints (Article 93 (1) (4 a) and (4 b) of the Basic Law),</p> <p>Article 90</p> <p>1. Any person who claims that one of his basic rights or one of his rights under paragraph 4 of Article 20, Articles 33, 38, 101, 103 and 104 of the Basic Law has been violated by public authority may lodge a constitutional complaint with the Federal Constitutional Court.</p> <p>Article 95 Law on the Federal Constitutional Court</p> <p>1. If the constitutional complaint is upheld, the decision shall state which provision of the Basic Law has been infringed and by which act or omission. The Federal Constitutional Court may at the same time declare that any repetition of the act or omission against which the complaint was directed will infringe the Basic Law.</p> <p>2. If a constitutional complaint against a decision is upheld, the Federal Constitutional Court shall quash the decision and in cases pursuant to the first sentence of Article 90 (2) above it shall refer the matter back to a competent court.</p> <p>3. If a constitutional complaint against a law is upheld, the law shall be declared null and void. The same shall apply if a constitutional complaint pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law.</p>
Greece	<p>Article 100</p> <p>1. A Special Highest Court shall be established, the jurisdiction of which shall comprise:</p> <p>d) Settlement of any conflict between the courts and the administrative authorities, or between the Supreme Administrative Court</p>	<p>Law no. 345 establishing the Special Highest Court</p> <p>Article 48</p> <p>Disputes concerning assessment of the constitutionality of a law or its interpretation</p> <p>1. Where conflicting judgments have been delivered by the Council of State, the Supreme</p>

State	Constitution	Laws
	<p>and the ordinary administrative courts on one hand and the civil and criminal courts on the other, or between the Court of Auditors and any other court.</p> <p>e) Settlement of controversies on whether the content of a statute enacted by Parliament is contrary to the Constitution, or on the interpretation of provisions of such statute when conflicting judgments have been pronounced by the Supreme Administrative Court, the Supreme Civil and Criminal Court or the Court of Auditors.</p>	<p>Court or the Comptrollers Council as to the assessment of the constitutionality of a law or its interpretation, the Special Court shall resolve the conflict at the request of:</p> <p>b. any person having a lawful interest.</p> <p>2. Should the Council of State, the Supreme Court or the Comptrollers Council wish to deliver a decision concerning assessment of the constitutionality of a law or its interpretation and conflicting with a previous decision of another of these authorities which has been invoked by one of the parties or is known to the authority so wishing, it shall refer to the Special Court by preliminary ruling.</p>
Hungary	<p>Article 32/A.</p> <p>(1) The Constitutional Court shall review the constitutionality of laws and perform the tasks assigned to its jurisdiction by statute.</p> <p>(2) The Constitutional Court shall annul the statutes and other legal norms that it finds to be unconstitutional.</p> <p>(3) Everyone has the right to initiate proceedings of the Constitutional Court in the cases specified by statute.</p>	<p>Act no. XXXII on the Constitutional Court</p> <p>Article 1</p> <p>The competence of the Constitutional Court shall comprise the following:</p> <p>b. the examination of the unconstitutionality of legal rules as well as other legal means of State control;</p> <p>d. the adjudication of constitutional complaints submitted because of alleged violations of constitutional rights;</p> <p>e. the elimination of unconstitutionality manifesting itself in omission;</p> <p>Article 21</p> <p>2. The procedure provided in Article 1, point b may be initiated by anyone.</p> <p>4. The procedure provided in Article 1, points d and e may be initiated by anyone.</p> <p>Article 38</p> <p>1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.</p> <p>2. In a petition, anybody considering a legal rule to be applied in his/her pending process unconstitutional, may initiate the action of the judge provided in section 1.</p> <p>Article 48</p> <p>1. Anybody aggrieved by the application of an unconstitutional legal rule who has exhausted all other legal remedies or has no other remedy available, may submit a constitutional complaint to the Constitutional Court because of the violation of his/her constitutional rights.</p>
Iceland		<p>Law No. 91/1991 on Procedure in Civil Cases as amended by Law No. 38/1994</p> <p>Article 143</p> <p>3. Anyone who considers that a district court judge, in his capacity as such, has performed a breach against him has the right to present an accusation against him by complaint appeal to the Supreme Court, who may issue an admonition to the judge or impose on him by judgement the penalty of a fine to the State.</p> <p>Part XXV</p> <p>Appeals to a higher court</p> <p>Article 151</p> <p>[1. Parties are permitted to make an appeal to the Supreme Court against a district court</p>

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		<p>judgement, subject to the limitations following from other provisions of this Law. In an appeal, a reconsideration of decrees and decisions made in a district court may be sought.</p> <p>3. A judgement can be appealed against so that it will be materially changed or confirmed, it will be quashed and the case sent to the district court or dismissed from the district court.</p> <p>4. Both or all parties are permitted to appeal against a judgement. The case shall then be heard in unison before the Supreme Court.</p> <p>5. The right to appeal a case may not be assigned, either verbally or silently, until a judgement has been rendered in the district court.]1</p> <p>1 Law No. 38/1994, Article 5</p>
Ireland	<p>Article 15</p> <p>4. 2° Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid.</p> <p>Article 34</p> <p>3. 2° Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.</p> <p>3° The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.</p> <p>4° No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.</p>	<p>VF LO reply:</p> <p>Order 84, Rule 20(4) of the Rules of the Superior Courts provides that leave to apply for judicial review shall not be granted unless the applicant has sufficient interest in the matter to which the application relates. It is submitted by Hogan and Morgan that this formulation of locus standi applies to all remedies, including challenges to the validity of a law on the basis of unconstitutionality²⁹³.</p>
Israel		<p>Basic Law: The Judiciary²⁹⁴</p> <p>Article 15</p> <p>(b) The Supreme Court shall hear appeals against judgments and other decisions of the District Courts.</p> <p>(d) Without prejudice to the generality of the provisions of subsection</p> <p>(c), the Supreme Court sitting as a High Court of Justice shall be competent –</p> <p>(2) to order State and local authorities and the officials and bodies thereof, and other persons carrying out public functions under law, to do or refrain from doing any act in the lawful exercise of their functions or, if they were improperly elected or appointed, to refrain from acting;</p> <p>(3) to order courts (batei mishpat and batei din)</p>

²⁹³ Hogan, Gerard & Morgan, David Gwynn, *Administration Law in Ireland*, 3rd Ed., Roundhall, Sweet & Maxwell, Dublin, 1998, p. 740

²⁹⁴ http://www.knesset.gov.il/laws/special/eng/basic8_eng.htm

State	Constitution	Laws
		<p>and bodies and persons having judicial or quasi-judicial powers under law, other than courts dealt with by this Law and other than religious courts (batei din), to hear, refrain from hearing, or continue hearing a particular matter or to void a proceeding improperly taken or a decision improperly given;</p> <p>(4) to order religious courts (batei din) to hear a particular matter within their jurisdiction or to refrain from hearing or continue hearing a particular matter not within their jurisdiction, provided that the court shall not entertain an application under this paragraph if the applicant did not raise the question of jurisdiction at the earliest opportunity; and if he had no measurable opportunity to raise the question of jurisdiction until a decision had been given by a religious court (beit din), the court may quash a proceeding taken or a decision given by the religious court (beit din) without authority.</p>
Italy	<p>Article 24 Everyone can take judicial action to protect individual rights and legitimate interests. The right to defence is inviolable at every stage and moment of the proceedings. The indigent are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction. The law determines the conditions and the means for the reparation for judicial errors. Constitutional Law No. 1 of 9 February 1948</p> <p>Section 1 Questions of constitutionality regarding an Act of Parliament or a central government statutory measure having the force of law raised by a court or by a party to judicial proceedings or not deemed by a court of law to be manifestly groundless, shall be referred to the Constitutional Court for a decision.</p>	<p>Provisions governing the review of constitutionality and guaranteeing the independence of the Constitutional Court</p> <p>Section 1 Questions of constitutionality regarding an Act of Parliament or a central government statutory measure having the force of law raised by a court or by a party to judicial proceedings or not deemed by a court of law to be manifestly groundless, shall be referred to the Constitutional Court for a decision.</p> <p>Law on the composition and procedures of the Constitutional Court</p> <p>Section 23 In the course of a judicial proceeding, any party to the case or the Public Prosecutor (Pubblico Ministero) may raise the issue of unconstitutionality in the appropriate form, indicating:</p> <ol style="list-style-type: none"> a. the provisions of the central or regional government Act or statutory measure deemed to be unconstitutional; b. the provisions of the Constitution or the constitutional laws allegedly infringed thereby. <p>If the case cannot be tried without first resolving the question of constitutionality, or if the trial court does not consider that the question of constitutionality raised is groundless, it shall issue an order referring the matter immediately to the Constitutional Court, setting out the terms and the reasons for raising the question of constitutionality, and shall suspend trial proceedings.</p> <p>Section 24 A court order rejecting the claim of unconstitutionality as being manifestly irrelevant or groundless must include adequate reasons. The same claim may be filed again at the beginning of proceedings at each subsequent instance.</p>
Japan	<p>Article 81 The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.</p>	

State	Constitution	Laws
Kazakhstan Korea, Republic	<p>No direct individual access</p> <p>Article 111 The Constitutional Court shall have jurisdiction over the following matters: 5. Constitutional complaint as prescribed by Act.</p>	<p>No direct individual access</p> <p>Constitutional Court Act Article 2 (Jurisdiction) The Constitutional Court shall have jurisdiction over the following issues: 5. Constitutional complaint. Article 41 (Request for Adjudication on the Constitutionality of Statutes) (1) When the issue of whether or not statutes are constitutional is relevant to the judgment of the original case, the ordinary court(including the military court; hereinafter the same shall apply) shall request to the Constitutional Court, ex officio or by decision upon a motion by the party, an adjudication on the constitutionality of statutes. Article 68 (Causes for Request) (1) Any person who claims that his basic right which is guaranteed by the Constitution has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint, except the judgments of the ordinary courts, with the Constitutional Court: Provided, That if any relief process is provided by other laws, no one may file a constitutional complaint without having exhausted all such processes. (2) If the motion made under Article 41 (1) for adjudication on constitutionality of statutes is rejected, the party may file a constitutional complaint with the Constitutional Court. In this case, the party may not repeatedly move to request for adjudication on the constitutionality of statutes for the same reason in the procedure of the case concerned.</p>
Kyrgyzstan	<p>Article 82 3. The Constitutional Court shall: 8) render decisions concerning the constitutionality of practices in the application of laws which affect the constitutional rights of citizens. Article 85 3. The Constitutional Court: 1) shall declare laws and other legal and regulatory acts unconstitutional if they contradict the Constitution;</p>	<p>Law on constitutional proceedings including draft amendments of 2008 Article 14 The following entities may lodge applications with the Constitutional Court of the Kyrgyz Republic: 10) legal entities and citizens – on questions directly affecting their constitutional rights if these do not lie within the competence of other courts.</p> <p>Law on the Constitutional Court Article 13 The Constitutional Court of the Kyrgyz Republic may: 1) admit laws other than constitutional and other normative legal acts in case of their inconsistency with the Constitution; 2) settle the disputes associated with functioning, applying and interpreting the Constitution; 7) cancel the decisions of local government bodies inconsistent with the Constitution of the Kyrgyz Republic; 8) render decisions on constitutionality of the legal practice affecting the constitutional rights of citizens. The Constitutional Court shall not consider the issues of lawfulness of sentences and other</p>

State	Constitution	Laws
		decisions rendered by courts, arbitration courts, investigation agencies or public prosecutor's offices with regard to civil, criminal, administrative or arbitration cases unless such decisions have been rendered based on the legislation inconsistent with the Constitution.
Latvia	<p>Article 85</p> <p>In Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid.</p>	<p>Law on the Constitutional Court</p> <p>Article 19.2</p> <p>1. Any person, who holds that his/her fundamental rights, established by the Constitution, have been violated by applying a normative act, which is not in compliance with the legal norm of higher legal force, may submit a claim (an application) to the Constitutional Court.</p>
Liechtenstein	<p>Article 43</p> <p>The right of complaint is guaranteed. Any citizen shall be entitled to lodge a complaint regarding any action or procedure on the part of a public authority which is contrary to the Constitution, the law or the official regulations and detrimental to his rights or interests. Such complaint shall be addressed to that authority which is immediately superior to the authority concerned and may, if necessary, be pursued to the highest authority, except when the right of recourse may be barred by a legal restriction. If a complaint thus submitted is rejected by the superior authority, the latter shall be bound to declare to the complaining party the reasons for its decision.</p> <p>Article 104</p> <p>1) A State Court shall be established by a special law as a court of public law to protect rights accorded by the Constitution, to decide in conflicts of jurisdiction between the law courts and the administrative authorities and to act as a disciplinary court for members of the Government.</p>	<p>Constitutional Court Act</p> <p>Article 15</p> <p>1) The Constitutional Court shall decide on complaints to the extent that the complainant claims a violation, by a final decision or order in the last instance issued by a public authority, of one of his constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint</p> <p>3) Moreover, the Constitutional Court shall decide on complaints to the extent that the complainant claims an immediate violation, by a law, an ordinance, or an international treaty, of one of his constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint (paragraph 2), and the legal provision in question has become effective for the complainant without a decision or order having been issued by a public authority.</p> <p>Article 20</p> <p>1) The Constitutional Court shall decide on the compliance of ordinances or individual provisions thereof with the Constitution, laws, and international treaties:</p> <p>c) on application of at least 100 citizens eligible to vote, if such application is submitted with one month after publication of the ordinance in the Liechtenstein Legal Gazette.</p>
Lithuania	No direct individual access	No direct individual access
Luxembourg	<p>Article 95^{ter}</p> <p>(1) The Constitutional Court decides, by way of arrêt, on the conformity of the laws with the Constitution.</p> <p>(2) The Constitutional Court is seized, in a prejudicial manner, pursuant to the modalities to be determined by the law, by any court to decide on the conformity of the laws, save the laws approving treaties, to the Constitution.</p>	<p>Law on the Organisation of the Constitutional Court</p> <p>Article 6</p> <p>When a party raises a question concerning a law's conformity with the Constitution before an ordinary court or an administrative court, that court shall refer the matter to the Constitutional Court.</p> <p>The court shall not be required to refer the matter to the Constitutional Court if, in its view:</p> <p>a. a decision on the matter raised is not necessary for it to deliver its judgment;</p> <p>b. the constitutionality issue is without foundation;</p> <p>c. the Constitutional Court has already ruled on a question submitted to it concerning the same</p>

State	Constitution	Laws
Malta	<p>46.</p> <p>(1) Subject to the provisions of subsections (6) and (7) of this section, any person who alleges that any of the provisions of sections 33 to 45 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.</p> <p>(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 33 to 45 (inclusive) to the protection of which the person concerned is entitled: Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.</p> <p>(3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection (4) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.</p> <p>(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.</p> <p>(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.</p> <p>Article 95</p> <p>(2) One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine –</p> <p>(c) appeals from decisions of the Civil Court, First Hall, under section 46 of this</p>	<p>matter.</p> <p>European Convention Act</p> <p>Article 4</p> <p>1. Any person who alleges that any of the Human Rights and Fundamental Freedoms, has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.</p> <p>2. The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection 1 of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled</p>

State	Constitution	Laws
	<p>Constitution;</p> <p>(d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under section 46 of this Constitution;</p> <p>(e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under section 46 of this Constitution; and</p> <p>(f) any question decided by a court of original jurisdiction in Malta together with any of the questions referred to in the foregoing paragraphs of this subsection on which an appeal has been made to the Constitutional Court:</p> <p>Provided that nothing in this paragraph shall preclude an appeal being brought separately before the Court of Appeal in accordance with any law for the time being in force in Malta.</p> <p>(3) Notwithstanding the provisions of subsection (2) of this section, if any such question as is referred to in paragraph (d) or (e) of that subsection arises for the first time in proceedings in a court of appellate jurisdiction, that court shall refer the question to the court which gave the original decision, unless in its opinion the raising of the question is merely frivolous or vexatious, and that court shall give its decision on any such question and, subject to any appeal in accordance with the provisions of subsection (2) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.</p> <p>Article 116</p> <p>A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of Sections 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action.</p>	

State	Constitution	Laws
Mexico	<p>Article 103 The courts of the Federation will resolve all questions that arise: I. About laws or acts of authority that violate individual guarantees. Article 105 The Supreme Court of Justice of the Nation will get to know, in the terms that the regulating law specifies, about the following affairs: III. By itself or by petition of the appropriate unitary circuit tribunal, or the Attorney General of the Republic, it may get to know about cases of appeal of sentences of district judges in those cases in which the Federation took part, and in which their interest and importance merit its participation. Article 107 All questions that Article 103 discusses will be subject to the proceedings and forms of judicial order, that the law determines, according to the following bases: I. Judicial relief always will follow to the aggrieved party. II. Judgment will always be such that it only will be concerned with particular parties, limited to relief and protection in special cases for those who are making the complaint, without making a general declaration with respect to the law or act that motivates the complaint. VIII. Against judgments that district judges or Unitary Circuit Tribunals pronounce in cases of relief, there will be review. Of these, the Supreme Court of Justice will hear: a) When the petition for relief has been challenged, because it directly violates this Constitution, federal, states, or local laws, international treaties, regulations dispatched by the President of the Republic in accordance with section I of Article 89 of this Constitution and regulations of state and local law made by the governors of the States or by the Federal District where the problem of constitutionality remains;</p>	<p>Organic Law on the Judicial Power of the Federation (p.t.) Article 10²⁹⁵ The Supreme Court of Justice will decide in the Plenary: II. On the appeal of revision against sentences passed in the constitutional hearing by district judges or unitary circuit courts in the following cases: a. If the problem of unconstitutionality of general norms subsists in the appeal of revision, if in the writ of amparo a federal or local law or a law of a federal district or an international treaty was impugned because they were deemed to directly violate the Political Constitution of the United Mexican States; b. If it makes use of its right to seize pending cases in view of deciding on a writ of amparo that it deems particularly interesting and having important implications for future legal action, as provided for in article 107 fraction VIII indent b) of the Political Constitution of the United Mexican States. III. On the claim of revision against decisions following a writ of direct amparo challenging the constitutionality of a federal, local, or district law or of an international treaty issued by a collegial circuit tribunal, or if the decision on the violation required a direct interpretation of a precept of the Political Constitution of the United Mexican States, the revision will limit itself to the questions that are properly constitutional. <i>Law of amparo</i> Article 1²⁹⁶ The object of the process of amparo is to resolve every controversy that comes up: I- Concerning laws or acts of authorities that violate the individual guarantees.</p>

²⁹⁵ Artículo 10. La Suprema Corte de Justicia conocerá funcionando en Pleno:

II. Del recurso de revisión contra sentencias pronunciadas en la audiencia constitucional por los jueces de distrito o los tribunales unitarios de circuito, en los siguientes casos:

a) Cuando subsista en el recurso el problema de constitucionalidad de normas generales, si en la demanda de amparo se hubiese impugnado una ley federal, local, del Distrito Federal, o un tratado internacional, por estimarlos directamente violatorios de un precepto de la Constitución Política de los Estados Unidos Mexicanos;

b) Cuando se ejercite la facultad de atracción contenida en el segundo párrafo del inciso b) de la fracción VIII del artículo 107 de la Constitución Política de los Estados Unidos Mexicanos, para conocer de un amparo en revisión que por su interés y trascendencia así lo amerite, y III. Del recurso de revisión contra sentencias que en amparo directo pronuncien los tribunales colegiados de circuito, cuando habiéndose impugnado la inconstitucionalidad de una ley federal, local, del Distrito Federal o de un tratado internacional, o cuando en los conceptos de violación se haya planteado la interpretación directa de un precepto de la Constitución Política de los Estados Unidos Mexicanos, dichas sentencias decidan u omitan decidir sobre tales materias, debiendo limitarse en estos casos la materia del recurso a la decisión de las cuestiones propiamente constitucionales.

<http://www.scjn.gob.mx/NR/exeres/6CAFC6D1-5EF0-4069-9EFD-82342B9084F6.frameless.htm>

²⁹⁶ El juicio de amparo tiene por objeto resolver toda controversia que se suscite: I- Por leyes o actos de la autoridad que violen las garantías individuales

<http://www.scjn.gob.mx/NR/rdonlyres/1A1F6A6C-64E8-4831-A596-03C68BBDB0CD/0/LeydeAmparo1.pdf>

State	Constitution	Laws
	<p>b) In the cases understood to be under Sections II and III of Article 103 of this Constitution.</p> <p>The Supreme Court of Justice, upon its initiative or upon petition may be by the corresponding Collected Circuit Tribunal, or the Attorney General of the Republic may hear cases of relief in review of which their interest and implications for future legal action merit.</p> <p>In the cases not foreseen in the previous paragraphs, the cases of relief will come before Collected Circuit Tribunals, and their judgments will have no recourse.</p> <p>IX. The resolutions that the Collected Circuit Tribunals give in cases of direct judicial relief have no appeal, unless they decide about the unconstitutionality of a law or establish a direct interpretation of a precept of the Constitution. Such resolutions, will be brought before the Supreme Court of Justice, and conform to general standards, that may establish criteria of importance and precedent. Only on these bases will they be reviewed by the Supreme Court of Justice, which will limit the matters of appeal exclusively to decision on the questions that are properly constitutional.</p> <p>Article 114</p> <p>The writ of amparo shall be lodged before the district court: I.- Against federal or local laws, international treaties, regulations issued by the President of the Republic in accordance with article 89 fraction I of the Constitution, regulations of local laws issued by the Governors of the States, or other regulations, decrees or generally applicable agreements, that, through their simple entry into force or through the first act of application cause prejudice to the complainant; II.- Against acts that don't emanate from judicial, administrative or labor tribunals; In the cases where the impugned act emanates from a judicial proceeding, the writ of amparo may only be lodged against final resolution if in that final act or during the proceedings a violation occurred in that the complainant was denied defence or the rights which the applicable law attributes to the complainant, except if the writ is lodged by a person standing outside of the controversy. III.- Against the execution of acts of judicial, administrative or labor tribunals that takes place outside of the proceeding or after the judgement[...] IV.- Against acts in relation to the proceeding, if they could cause irreparable damage; V.- Against acts executed during the or outside of the proceeding that are directed against outside persons [...]; VI.- Against laws or acts issued by the federal authority or the states in relation with article 1 fractions II and III of this law; VII.- Against resolutions of the Ministerio Público that confirm the non-</p>	

State	Constitution	Laws
	<p>exercise or the disclaimer of a penal action, in accordance with the dispositions in article 21 paragraph 4 of the Constitution.</p>	
Moldova	No direct individual access	No direct individual access
Monaco	<p>Article 90²⁹⁷</p> <p>A. – En matière constitutionnelle, le Tribunal Suprême statue souverainement:</p> <p>1°) sur la conformité du règlement intérieur du Conseil National aux dispositions constitutionnelles et, le cas échéant, législatives, dans les conditions prévues à l'article 61;</p> <p>2°) sur les recours en annulation, en appréciation de validité et en indemnité ayant pour objet une atteinte aux libertés et droits consacrés par le Titre III de la Constitution, et qui ne sont pas visés au paragraphe B du présent article.</p> <p>B.- En matière administrative, le Tribunal Suprême statue souverainement:</p> <p>1°) sur les recours en annulation pour excès de pouvoir formés contre les décisions des diverses autorités administratives et les ordonnances souveraines prises pour l'exécution des lois, ainsi que sur l'octroi des indemnités qui en résultent;</p> <p>2°) sur les recours en cassation formés contre les décisions des juridictions administratives statuant en dernier ressort;</p> <p>3°) sur les recours en interprétation et les recours en appréciation de validité des décisions des diverses autorités administratives et des ordonnances souveraines prises pour l'exécution des lois.</p>	<p>Decree n; 2.984 on the organisation and functioning of the Supreme Tribunal²⁹⁸</p> <p>Le tribunal peut être saisi par toute personne, physique ou morale ayant qualité et justifiant d'un intérêt, en matière administrative comme en matière constitutionnelle. Ainsi notamment, toute loi peut être annulée, pour inconstitutionnalité, à l'initiative d'un justiciable, personne physique ou morale, monégasque ou étranger.</p>

²⁹⁷ <http://www.conseil-national.mc/constitution.php>

²⁹⁸ <http://www.legimonaco.mc/305/legismc.nsf>

State	Constitution	Laws
Montenegro	<p>Article 149 The Constitutional Court shall decide on the following: 3) Constitutional appeal due to the violation of human rights and liberties granted by the Constitution, after all other efficient legal remedies have been exhausted</p> <p>Article 150 Any person may file an initiative to start the procedure for the assessment of constitutionality and legality.</p>	<p>Draft law on the Constitutional Court²⁹⁹</p> <p>Article 58 Constitutional complaints may be lodged against an individual act of state authority, local self-government authority or organisation vested with public powers, for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.</p> <p>Article 59 Constitutional complaints may be lodged by anyone who believes that his human right and freedom guaranteed by the Constitution was violated by an individual act of state authority, local self-government authority or organisation vested with public powers. Constitutional complaint may also be lodged by another natural person or a state authority or organisation in charge of the monitoring and realisation of human rights and freedoms on behalf of the person referred to in paragraph 1 above on the basis of his authorisation.</p>
Morocco	No direct individual access	No direct individual access
Netherlands	<p>Article 94 Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions.</p> <p>Article 120 The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.</p>	<p>Judiciary Organisation Act</p> <p>Article 95 1. The Supreme Court shall take cognisance of appeals in cassation against the procedures of the courts of appeal and the district and sub-district courts and against their judgements, whether lodged by the parties concerned or by the procurator general at the Supreme Court "in the interests of the law".</p> <p>Article 99 1. The Supreme Court shall quash procedures and judgements: 2. where they violate the law, with the exception of the law of other States.</p>
Norway	<p>Article 88 The Supreme Court pronounces judgment in the final instance. Nevertheless, limitations on the right to bring a case before the Supreme Court may be prescribed by law.</p>	<p>Civil Procedure Act</p> <p>§ 355 The court decisions which can be made subject of an independent appeal are judgments and such orders, for which it is specifically provided that they may be the subject of appeal. In connection with an appeal against a judgment or order a party may also appeal against preceding orders relating to the handling of the case.</p> <p>Criminal Procedure Act</p> <p>§ 306 Appeals against judgments of the District Court (herredsretten) or the City Court (byretten) or the High Court (lagmannsretten) may be brought by the parties to court of appeal indicated in Sections 6 to 8.</p>

²⁹⁹ [CDL\(2008\)073](#) Draft Law on the Constitutional Court of Montenegro

State	Constitution	Laws
Peru	<p>Article 138³⁰⁰ (p.t.) The power to administer justice emanates from the people and is exercised by the Judicial Power through its hierarchical organs and in conformity with the Constitution and the laws. If, in any proceeding, there is incompatibility between a constitutional norm and a legal norm, the judges shall give priority to the first. Likewise, they shall give priority to the legal norm over all other norms of inferior value. Article 144³⁰¹ The Plenary of the Supreme Court is the highest deliberating organ of the Judicial Power. Article 200³⁰² The Constitution guarantees the exercise of:</p> <ol style="list-style-type: none"> 1. The claim of <i>habeas corpus</i>, which can be lodged in relation to an action or omission by any authority, civil servant or person, which violates or threatens 	<p>Organic law on the judicial power(p.t.) Article 14 – Supremacy of the constitutional norm and diffuse control of the Constitution³⁰⁴ In conformity with art. 236 of the Constitution, when the competent magistrates, when deciding on the merits of the question, find in their interpretation that there is an incompatibility of a constitutional provision and one with force of a law, they shall resolve the case in conformity with the constitutional provision. These judgements shall be referred to the Constitutional and Social Chamber of the Supreme Court for consultation, if they are not being impugned. Likewise, judgements at second instance in which the same precept is being applied shall be referred to the Chamber, even if against these judgements no appeal for cassation may be lodged. In all those cases the magistrates only declare the inapplicability due to unconstitutionality of the legal norm in the concrete case, without affecting its validity, which is controlled</p>

³⁰⁰ La potestad de administrar justicia emana del pueblo y se ejerce por el Poder Judicial a través de sus órganos jerárquicos con arreglo a la Constitución y a las leyes.

En todo proceso, de existir incompatibilidad entre una norma constitucional y una norma legal, los jueces prefieren la primera. Igualmente, prefieren la norma legal sobre toda otra norma de rango inferior.
<http://www.tc.gob.pe/legconperu/constitucion.html>

³⁰¹ La Sala Plena de la Corte Suprema es el órgano máximo de deliberación del Poder Judicial.

³⁰² Son garantías constitucionales:

1.La Acción de Hábeas Corpus, que procede ante el hecho u omisión, por parte de cualquier autoridad, funcionario o persona, que vulnera o amenaza la libertad individual o los derechos constitucionales conexos.

2.La Acción de Amparo, que procede contra el hecho u omisión, por parte de cualquier autoridad, funcionario o persona, que vulnera o amenaza los demás derechos reconocidos por la Constitución, con excepción de los señalados en el inciso siguiente. No procede contra normas legales ni contra Resoluciones Judiciales emanadas de procedimiento regular.

La Acción de Hábeas Data, que procede contra el hecho u omisión, por parte de cualquier autoridad, funcionario o persona, que vulnera o amenaza los derechos a que se refiere el Artículo 2º, incisos 5) y 6) de la Constitución.

5.La Acción Popular, que procede, por infracción de la Constitución y de la ley, contra los reglamentos, normas administrativas y resoluciones y decretos de carácter general, cualquiera sea la autoridad de la que emanen.

6.La Acción de Cumplimiento, que procede contra cualquier autoridad o funcionario renuente a acatar una norma legal o un acto administrativo, sin perjuicio de las responsabilidades de ley.

Una ley orgánica regula el ejercicio de estas garantías y los efectos de la declaración de inconstitucionalidad o ilegalidad de las normas.

El ejercicio de las acciones de *hábeas corpus* y de amparo no se suspende durante la vigencia de los regímenes de excepción a que se refiere el artículo 137º de la Constitución.

Cuando se interponen acciones de esta naturaleza en relación con derechos restringidos o suspendidos, el órgano jurisdiccional competente examina la razonabilidad y la proporcionalidad del acto restrictivo. No corresponde al juez cuestionar la declaración del estado de emergencia ni de sitio.

³⁰³ Corresponde al Tribunal Constitucional: 1.Conocer, en última y definitiva instancia, las resoluciones denegatorias de *hábeas corpus*, *amparo*, *hábeas data*, y acción de cumplimiento.

³⁰⁴ Ley organica del poder judicial

Artículo 14.- Supremacía de la norma constitucional y control difuso de la Constitución.

De conformidad con el Artículo 236 de la Constitución, cuando los Magistrados al momento de fallar el fondo de la cuestión de su competencia, en cualquier clase de proceso o especialidad, encuentren que hay incompatibilidad en su interpretación, de una disposición constitucional y una con rango de ley, resuelven la causa con arreglo a la primera.(*)

Las sentencias así expedidas son elevadas en consulta a la Sala Constitucional y Social de la Corte Suprema, si no fueran impugnadas. Lo son igualmente las sentencias en segunda instancia en las que se aplique este mismo precepto, aun cuando contra éstas no quepa recurso de casación.

En todos estos casos los magistrados se limitan a declarar la inaplicación de la norma legal por incompatibilidad constitucional, para el caso concreto, sin afectar su vigencia, la que es controlada en la forma y modo que la Constitución establece.

Cuando se trata de normas de inferior jerarquía, rige el mismo principio, no requiriéndose la elevación en consulta, sin perjuicio del proceso por acción popular.

State	Constitution	Laws
	<p>individual liberty or the associated constitutional rights.</p> <p>2.The writ of <i>amparo</i>, which can be lodged against the action or omission by any authority, civil servant or person, which violates or threatens the other rights provided for in the Constitution, with the exception of those indicated in the following indent. The writ may not be lodged against legal norms or judicial resolutions that respected the regular procedure.</p> <p>The claim of <i>habeas data</i> which can be lodged against the action or omission by any authority, civil servant or person, which violates or threatens the rights provided for in Article 2 indents 5) and 6) of the Constitution.</p> <p>5. The popular action, which can be lodged in view of an infraction of the Constitution or the law, against regulations, administrative norms and resolutions and decrees of general character, no matter which authority these acts or omissions emanate from.</p> <p>6. The claim of performance of duty, which may be lodged against any authority or civil servant refusing to attack a legal norm or an administrative act, without prejudice to the legal responsibilities.</p> <p>An organic law shall regulate the exercise of these guarantees and the effect of the declaration of unconstitutionality or illegality of the norm.</p> <p>The right to lodge writs of <i>habeas corpus</i> or of <i>amparo</i> cannot be suspended during the effectiveness of exceptional regimes as</p>	<p>according to the form and procedure established by the Constitution.</p> <p>Concerning norms of lower rank, the same principle applies, but without necessity of referral for consultation, without prejudice to the procedure applying for popular action.</p> <p>Organic Law on the Constitutional Tribunal Article 5³⁰⁵</p> <p>The Tribunal shall be constituted of two Chambers of three members each to cognise, in last instance, concerning resolutions denying habeas corpus, amparo, habeas data and claim of performance of duty, initiated before the respective judges. The resolutions require three conform votes.</p> <p>Code of constitutional procedure Article VI.- Diffuse control and constitutional interpretation³⁰⁶</p> <p>When there is an incompatibility between a constitutional norm and another norm of lower rank, the judge must give priority to the former if this is necessary to resolve the controversy and if it is not possible to interpret the lower norm in conformity with the Constitution.</p> <p>The judges cannot refrain from applying a norm whose constitutionality has been confirmed in a proceeding on unconstitutionality or in a proceeding following a popular action.</p> <p>Article 75.-Finality</p> <p>The aim of the proceeding following a popular action and of the proceeding on unconstitutionality is the protection of the Constitution against infractions against its normative hierarchy or rank. This infraction can be direct or indirect, total or partial, and touch formal or material aspects.</p>

³⁰⁵ Para conocer, en última y definitiva instancia, las resoluciones denegatorias de los procesos de amparo, habeas corpus, habeas data y de cumplimiento, iniciadas ante los jueces respectivos, el Tribunal está constituido por dos Salas, con tres miembros cada una. Las resoluciones requieren tres votos conformes.

³⁰⁶ Código procesal constitucional

Artículo VI.- Control Difuso e Interpretación Constitucional

Cuando exista incompatibilidad entre una norma constitucional y otra de inferior jerarquía, el Juez debe preferir la primera, siempre que ello sea relevante para resolver la controversia y no sea posible obtener una interpretación conforme a la Constitución.

Los Jueces no pueden dejar de aplicar una norma cuya constitucionalidad haya sido confirmada en un proceso de inconstitucionalidad o en un proceso de acción popular.

Artículo 75.- Finalidad

Los procesos de acción popular y de inconstitucionalidad tienen por finalidad la defensa de la Constitución frente a infracciones contra su jerarquía normativa. Esta infracción puede ser, directa o indirecta, de carácter total o parcial, y tanto por la forma como por el fondo.

http://www.tc.gob.pe/Codigo_Procesal.pdf

³⁰⁷ Procedencia de la demanda de acción popular

La demanda de acción popular procede contra los reglamentos, normas administrativas y resoluciones de carácter general, cualquiera que sea la autoridad de la que emanen, siempre que infrinjan la Constitución o la ley, o cuando no hayan sido expedidas o publicadas en la forma prescrita por la Constitución o la ley, según el caso.

³⁰⁸ La demanda de acción popular puede ser interpuesta por cualquier persona.

³⁰⁹ Las acciones de garantía proceden aun en el caso que la violación o amenaza se base en una norma que sea incompatible con la Constitución. En este supuesto, la inaplicación de la norma se apreciará en el mismo procedimiento.

<http://turan.uc3m.es/uc3m/inst/MGP/JCI/02-peru-leyhabeascorpusyamparo.htm>

³¹⁰ Si se ejerce la acción a causa de la violación de un derecho constitucional por omisión de un acto debido, el fallo ordenará el cumplimiento incondicional e inmediato de dicho acto.

³¹¹ Las acciones de garantía también son pertinentes si una autoridad judicial, fuera de un procedimiento que es de su competencia, emite una resolución o cualquier disposición que lesione un derecho constitucional.

State	Constitution	Laws
	<p>referred to in Article 137 of the Constitution. When claims of this nature are being lodged against restricted rights, the competent jurisdictional organ shall examine the reasonability and the proportionality of the restricting act. The judge shall not be entitled to question the declaration of state of emergency or if state of siege.</p> <p>Article 202³⁰³ The Constitutional Tribunal is entitled to: To cognise, in first and last instance, on claims of unconstitutionality. To cognise, in last instance, concerning resolutions denying <i>habeas corpus</i>, <i>amparo</i>, <i>habeas data</i> and claim of performance of duty.</p>	<p>Article 76. <input type="checkbox"/> Admissibility of the popular action³⁰⁷ Popular action can be initiated against regulations, administrative norms and resolutions of general character, no matter which authority they emanate from, if they infringe the Constitution or the law, or if they have not been enacted or published as prescribed by the Constitution or the law applicable.</p> <p>Article 84.- Legitimation³⁰⁸ The popular action can be filed by any person.</p> <p>Law 23506 on <i>amparo</i> and <i>habeas corpus</i> Article 3³⁰⁹ The claims can be lodged even if the violation or threat emanates from a norm which is incompatible with the Constitution. In this case, the inapplicability of the norm shall be pronounced in the same proceeding.</p> <p>Article 4³¹⁰ If the claim is being lodged because of the violation of a constitutional right through omission where an action was due, the judgement will order the immediate and unconditional fulfilment of the act.</p> <p>Article 5311 The claims are also admissible if a judicial authority passes a resolution or any other act of disposal outside of a proceeding in its competence, that violates a constitutional right.</p>
<p>Poland</p>	<p>Article 79 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution. 2. The provisions of para. 1 above shall not relate to the rights specified in Article 56.</p>	<p>Constitutional Tribunal Act Article 27 The participants in the proceedings before the Tribunal shall be: 1) a subject who submitted an application or complaint concerning constitutional infringement;</p> <p>Article 46 1. Constitutional claim, further referred to as the "claim" can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the plaintiff, the final decision or other final judgement. 2. The Tribunal shall consider a complaint on the principles and in accordance with the procedure provided for the consideration of a application for the confirmation of conformity of statutes to the Constitution and of other normative acts to the Constitutions and statutes.</p>
<p>Portugal</p>	<p>Article 20 Access to law and effective judicial protection 1. Everyone is guaranteed access to law and to the courts in order to defend his or her rights and legally protected interests; justice shall not be denied to a person for lack of financial resources.</p> <p>Article 280 1. The Constitutional Court has jurisdiction to hear appeals against any of the following court decisions: a. Decisions refusing to apply a legal rule on the ground of unconstitutionality; b. Decisions applying a legal rule, the constitutionality of which was challenged during the proceedings.</p>	<p>Law on the Constitutional Court Article 70 – (Decisions that may be appealed) 1. An appeal may be made to the Constitutional Court, in section, regarding the following court decisions: a) Those rejecting the application of a rule on the grounds of unconstitutionality; b) Those applying a rule the unconstitutionality of which has been raised during the proceedings. c) Those rejecting the application of a rule which is included in a legislative act based on the grounds of its illegality in violating a law of reinforced value; d) Those rejecting the application of a rule appearing in regional legislation based on grounds of its illegality in violating the statute of</p>

State	Constitution	Laws
	<p>2. The Constitutional Court also has jurisdiction to hear appeals against any of the following court decisions:</p> <p>a. Decisions refusing to apply a legislative provision on the ground of illegality arising from contravention of some superior law;</p> <p>b. Decisions refusing to apply a provision of a regional legislative instrument on the ground of illegality arising from contravention of the statute of an autonomous region or the general law of the Republic;</p> <p>c. Decisions refusing to apply a provision of an instrument made by an organ with supreme authority on the ground of illegality arising from contravention of the statute of an autonomous region;</p> <p>d. Decisions applying a provision, the legality of which was challenged during the proceedings on any of the grounds specified in sub-paragraphs (a), (b) or (c).</p> <p>3. Where a court refuses to apply a provision of an international convention, any legislation or a regulatory decree, any appeal under paragraph 1(a) or 2(a) must be brought by the Public Prosecution.</p> <p>4. An appeal under paragraph (1)(b) or (2)(d) may be brought only by the party who raised the question of unconstitutionality or illegality; the law shall prescribe the requirements and procedure with respect to the bringing of these appeals.</p>	<p>an autonomous region or the general law of the Republic;</p> <p>e) Those rejecting the application of a rule issued by an organ of supreme national authority with grounds based on its illegality in violating the statute of an autonomous region;</p> <p>f) Those rejecting the application of a rule the illegality of which has been raised during the proceedings based on any of the grounds mentioned in sub-paragraphs c), d) and e);</p> <p>g) Those rejecting the application of a rule which has previously been judged unconstitutional or illegal by the actual Constitutional Court;</p> <p>h) Those rejecting the application of a rule which has previously been judged unconstitutional by the Constitutional Committee according to the exact terms in which it has been submitted for examination by the Constitutional Court;</p> <p>i) Those rejecting the application of a rule appearing in a legislative act on the grounds that it contradicts an international convention, or that apply it contrary to what has been previously decided on the matter by the Constitutional Court.</p> <p>Article 72 – (Legitimacy to appeal)</p> <p>1. The following may appeal to the Constitutional Court:</p> <p>a) The Public Prosecutor's Office;</p> <p>b) Persons who, in agreement with the law regulating the case in which the decision was passed, have legitimacy to file an appeal.</p> <p>2. The appeals envisaged in sub-paragraphs b) and f) of n.º 1 of article 70 may only be filed by the party that has raised the question of unconstitutionality or illegality in a way that is procedurally appropriate before the court that gave the decision appealed against in terms of the latter being obliged to know it.</p> <p>3. The appeal is obligatory for the Public Prosecutor's Office when the rule that was refused application, due to unconstitutionality or illegality, appears in an international convention, legislative act or regulatory decree, or when the cases envisaged in sub-paragraphs g), h) and i) of no. 1 of Article 70 are verified, with the exception of the ruling in the following number.</p> <p>4. The Public Prosecutor's Office may abstain from filing an appeal on decisions taken, within the guidelines already established, for the issue in question in the case law of the Constitutional Court.</p>
Romania	<p>Article 144</p> <p>The Constitutional Court shall have the following powers:</p> <p>d) to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or of commercial arbitration;</p>	<p>Law on the Organisation and Operation of the Constitutional Court</p> <p>Article 23</p> <p>1. The Constitutional Court shall pronounce upon the exceptions raised before Instances referring to the unconstitutionality of laws and statutory orders.</p> <p>2. If, in the course of a judgement, the Instance finds, <i>ex officio</i>, or one of the parties pleads the unconstitutionality of a provision under a law or statutory order on which the judgment of the cause depends, the exception raised shall be sent to the Constitutional Court, in order to pronounce upon the constitutionality of that provision.</p>

State	Constitution	Laws
Russian Federation	<p>Article 125</p> <p>4. The Constitutional Court of the Russian Federation, upon complaints about violations of the constitutional rights and freedoms of citizens and upon requests of the courts, shall verify the conformity with the Constitution of any law which is applied or shall be applied in a concrete case in a way established by federal law.</p>	<p>Federal Constitutional Law on the Constitutional Court</p> <p>Article 3</p> <p>To protect the foundations of the constitutional system and the basic rights and freedoms of individuals and citizens, and to ensure the supremacy and direct action of the Constitution of the Russian Federation on the entire territory of the Russian Federation, the Constitutional Court of the Russian Federation:</p> <p>3. shall, at complaints on the violation of constitutional rights and freedoms of citizens and at inquiries of courts, verify the constitutionality of a law that has been applied or ought to be applied in a specific case;</p> <p>Article 96</p> <p>The right to petition the Constitutional Court with the individual or collective complaint on the violation of the constitutional rights and freedoms shall be vested in the citizens, whose rights and freedoms have been violated by the law that has been applied or ought to be applied in a specific case, and in the associations of citizens, as well as in other bodies and persons, envisaged in the federal law.</p> <p>Enclosed with the complaint, apart from the documents listed in Article 38 of the present Federal Constitutional Law shall be the copy of the official document confirming the application or the possibility of the application of the appealed law in the decision of the specific case. The official or the body that considered the case shall produce the copy of the aforementioned document to the petitioner at his request.</p>
San Marino	<p>Declaration of Citizens' Rights and of the fundamental principles of the San Marinense legal order³¹² (p.t.)</p> <p>Article 16</p> <p>The <i>Collegio Garante</i>:</p> <p>a. Verifies, upon direct request of as least twenty Councillors, of the Congress of State, of five communities, of a number of citizens entitled to vote representing a minimum of 1,5% of the electorate as arises from the last and definitive annual revision of the electoral lists, as well as concerning cases pending before Tribunals of the Republic, upon request by the judges or by the parties to the case, the compatibility of laws and normative acts having the force of law with the fundamental principles of the present law or with the ones recalled by the present law.</p>	<p>Qualified Law of 25 April 2003 (p.t.)³¹³</p> <p>Article 11</p> <p>The constitutional review as provided for by article 16 of the Declaration of Rights may be direct or incidental in cases pending before the judicial organs.</p> <p>Article 13</p> <p>Constitutional review can be requested incidentally in relation to cases pending before the jurisdictional organs of the Republic by the parties or by the [Public Prosecutor in administrative matters]. The request must be lodged in written form, or, if the Judge acts <i>ex officio</i>, through a motivated ordinance.</p>

³¹² Il Collegio Garante:

a.verifica, su richiesta diretta di almeno venti Consiglieri, del Congresso di Stato, di cinque Giunte di Castello, di un numero di cittadini elettori rappresentanti almeno l'1,5% del corpo elettorale quale risultante dall'ultima e definitiva revisione annuale delle liste elettorali, nonché nell'ambito di giudizi pendenti presso i Tribunali della Repubblica, su richiesta dei giudici o delle parti in causa, la rispondenza delle leggi, degli atti aventi forza di legge a contenuto normativo, nonché delle norme anche consuetudinarie aventi forza di legge, ai principi fondamentali dell'ordinamento di cui alla presente legge o da questa richiamati;

<http://www.consigliograndeegenerale.sm/new/ricercaleggi/vislegge.php3?action=visTestoLegge1&idlegge=6175&twidth=580&>

State	Constitution	Laws
Serbia	<p>Article 168 A proceeding of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The procedure may also be instituted by the Constitutional Court. Any legal or natural person shall have the right to an initiative to institute a proceedings of assessing the constitutionality and legality. The Constitutional Court may assess the compliance of the Law and other general acts with the Constitution, compliance of general acts with the Law, even when they ceased to be effective, if the proceedings of assessing the constitutionality has been instituted within no more than six months since they ceased to be effective.</p> <p>Article 168 A proceedings of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The procedure may also be instituted by the Constitutional Court. Any legal or natural person shall have the right to an initiative to institute a proceedings of assessing the constitutionality and legality.</p> <p>Article 170 A constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.</p>	<p>(Draft) Law on the Constitutional Court Article 57 Constitutional complaints may be uttered against individual acts or actions of state authorities or organisations vested with public authority whereby are breached or denied human and minority rights and liberties guaranteed by the Constitution, when other legal remedies have been exhausted or are not prescribed or where the right to their judicial protection has been excluded by law. Constitutional complaints may also be uttered where all legal remedies have not been exhausted, in cases where the complainant's right to a trial in a reasonable time was breached.</p> <p>Article 58 Constitutional complaints may be uttered by all persons who believe that their human or minority rights and liberties guaranteed by the Constitution have been breached or denied by an individual act or action of a state authority or organisation vested with public authority.</p> <p>Constitutional complaints may on behalf of the persons referred to in § 1 of this Article and on the basis of their written authorisation also be uttered by natural or legal persons authorised by them in writing, as well as state and other authorities in charge of the overseeing and exercise of human and minority rights and liberties.</p>
Slovakia	<p>Article 127 (1) The Constitutional Court shall decide on complaints of natural persons or legal persons if they are pleading the infringement of their fundamental rights or freedoms, or human rights and fundamental freedoms resulting from the international treaty which has been ratified by the Slovak Republic and promulgated in the manner laid down by a law, save another court shall decide on protection of these rights and freedoms.</p> <p>Article 130 (1) The Constitutional Court shall commence the proceedings upon a petition submitted by: f) any person whose rights shall be adjudicated as defined in Article 127. (2) The law shall specify who can commence the proceedings under</p>	<p>Act on the Organisation of the Constitutional Court Article 18 1. The Constitutional Court shall open proceedings on a petition that has been filed by: f. any person whose right is to be adjudged as set out in Article 127 and 127a of the Constitution of the Slovak Republic.</p> <p>Article 49 A constitutional complaint may be filed by a natural person or a legal entity (hereinafter "complainant") claiming that his or her fundamental rights and freedoms have been violated by a lawful decision, measure or by other encroachment, unless the protection of these rights and freedoms falls under another court's jurisdiction.</p>

³¹³ 1. La verifica di legittimità costituzionale di cui all'articolo 16 della Dichiarazione dei Diritti può avvenire in via diretta ovvero incidentale nell'ambito dei giudizi pendenti avanti agli organi giudiziari.

1. La verifica di legittimità costituzionale può essere richiesta in via incidentale, nell'ambito di giudizi pendenti presso gli organi giurisdizionali della Repubblica, dalle parti o dal Procuratore del Fisco, con apposita istanza scritta, ovvero d'ufficio dal Giudice, mediante ordinanza motivata.

<http://www.consigliograndeegenerale.sm/new/index.php3>

State	Constitution	Laws
Slovenia	<p>Article 129.</p> <p>Article 160 of the Constitution The Constitutional Court decides: [...] on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts; [...] Article 162 (Proceedings before the Constitutional Court) Proceedings before the Constitutional Court shall be regulated by law. The law determines who may require the initiation of proceedings before the Constitutional Court. Anyone who demonstrates legal interest may request the initiation of proceedings before the Constitutional Court. The Constitutional Court decides by a majority vote of all its judges unless otherwise provided for individual cases by the Constitution or law. The Constitutional Court may decide whether to initiate proceedings following a constitutional complaint with fewer judges as provided by law.</p>	<p>Constitutional Court Act Article 24 (1) Anyone who demonstrates legal interest may lodge a petition that the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority be initiated. (2) Legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner directly interferes with his rights, legal interests, or legal position. Article 50 (1) Due to a violation of human rights or fundamental freedoms, a constitutional complaint may, under the conditions determined by this Act, be lodged against individual acts by which state authorities, local community authorities, or bearers of public authority decided the rights, obligations, or legal entitlements of individuals or legal entities.</p>
South Africa	<p>Article 167 (3) The Constitutional Court (a) is the highest court in all constitutional matters; (b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter. (6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court- (a) to bring a matter directly to the Constitutional Court; or (b) to appeal directly to the Constitutional Court from any other court. Article 172 (1) When deciding a constitutional matter within its power, a court- (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and (b) may make any order that is just and equitable, including- (i) an order limiting the retrospective effect of the declaration of invalidity; and (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect. (2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force</p>	<p>Rules of the Court 18 Direct access 1. An application for direct access as contemplated in section 167 (6) (a) of the Constitution shall be brought on notice of motion, which shall be supported by an affidavit, which shall set forth the facts upon which the applicant relies for relief. 19 Appeals 1. The procedure set out in this rule shall be followed in an application for leave to appeal to the Court where a decision on a constitutional matter, other than an order of constitutional invalidity under Section 172 (2) (a) of the Constitution, has been given by any court including the Supreme Court of Appeal, and irrespective of whether the President has refused leave or special leave to appeal.</p>

State	Constitution	Laws
	unless it is confirmed by the Constitutional Court.	
Spain	<p>Article 53</p> <p>1. The rights and liberties recognised in Chapter Two of the present Title are binding on all public authorities. The exercise of such rights and liberties, which shall be protected in accordance with the provisions of Article 161, 1a), may be regulated only by law which shall, in any case, respect their essential content.</p> <p>2. Any citizen may assert his claim to the protection of the liberties and rights recognised in Article 14 and in Section 1 of Chapter Two, by means of -a preferential and summary procedure in the Ordinary Courts and, when appropriate, by submitting an individual appeal for protection ("recurso de amparo") to the Constitutional Court. This latter procedure shall be applicable to conscientious objection as recognised in Article 30.</p> <p>3. The substantive legislation, judicial practice and actions of the public authorities shall be based on the acknowledgment, respect and protection of the principles recognised in Chapter Three. The latter may only be invoked in the Ordinary Courts in the context of the legal provisions by which they are developed.</p> <p>Article 161</p> <p>The Constitutional Court has jurisdiction over the whole of Spanish territory and is competent to hear:</p> <p>a) appeals against the alleged unconstitutionality of laws and regulations having the force of law. A declaration of unconstitutionality of a legal provision with the force of law, interpreted by jurisprudence, shall also affect the latter, although the sentence or sentences handed down shall not lose their status of <i>res judicata</i>.</p> <p>b) individual appeals for protection ("<i>recursos de amparo</i>") against violation of the rights and liberties contained in Article 53,2 of the Constitution, in the circumstances and manner to be laid down by law;</p> <p>Article 162</p> <p>1. The following are eligible to:</p> <p>b) lodge an individual appeal for protection ("<i>recurso de amparo</i>"): any individual or corporate body with a legitimate interest, as well as the Defender of the People and the Office of the Public Prosecutor.</p> <p>2. In all other cases, the organic law shall determine which persons and agencies are eligible.</p>	<p>Organic Law on the Constitutional Court</p> <p>Article 35</p> <p>1. Where a judge or a court, proprio motu or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.</p> <p>Article 41</p> <p>1. The rights and freedoms recognised in Articles 14 to 29 of the Constitution shall be secured by constitutional protection (<i>amparo constitucional</i>) in the circumstances and form laid down by this Law, without prejudice to the general guardianship thereof entrusted to the courts of law. The same protection shall be accorded to conscientious objection as recognised in Article 30 of the Constitution.</p> <p>2. The appeal for constitutional protection shall be available to all citizens, in accordance with the provisions of this Law, against violations of the rights and freedoms referred to in the previous paragraph resulting from provisions, legal enactments or common assault by the public authorities of the State, the Autonomous Communities and other territorial, corporate or institutional public bodies, as well as by their officials or agents.</p> <p>3. For the purposes of constitutional protection, no claims may be asserted other than those designed to restore or preserve the rights or freedoms for which the action has been brought.</p> <p>Article 42</p> <p>Decisions or enactments without the force of law taken by the Cortès or any of its organs or by the legislative assemblies of the Autonomous Communities or their organs, which violate the rights and freedoms protected by the Constitution, may be the subject of legal action within a period of three months following the time when, in accordance with the rules of procedure of the Houses or the assemblies, they shall be without appeal.</p> <p>Article 43</p> <p>1. The above-mentioned violations of rights and freedoms resulting from provisions, legal enactments or common assault by the Government, its authorities, or its officials or by the collegiate executive bodies of the Autonomous Communities or their authorities, officials or agents, may provide grounds for an appeal for protection when the relevant judicial remedy has been exhausted, in accordance with Article 53.2 of the Constitution.</p> <p>3. Such an appeal may be based solely on an infringement, by a non-appealable decision, of the constitutional precepts recognising protected rights and freedoms.</p> <p>Article 44</p> <p>1. Violations of constitutionally protected rights and freedoms that are the immediate and direct result of an act or omission by a judicial body</p>

State	Constitution	Laws
		<p>may give grounds for such an appeal provided that the following conditions are met: [...]</p> <p>Article 46</p> <p>1. The following shall have standing to lodge an appeal for constitutional protection:</p> <p>a. In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor;</p> <p>b. In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor.</p> <p>2. Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.</p> <p>Article 47</p> <p>1. Persons who benefited by the decision, act or circumstance that led to the appeal or persons with a legitimate interest therein may appear in the proceedings for constitutional protection as a defendant or additional party.</p> <p>2. The Office of the Public Prosecutor shall intervene in all protection proceedings in defence of legality, citizens' rights and the public interest under the custodianship of the law.</p>
Sweden	<p>Chapter 11 Article 14 Constitution</p> <p>If a court or other public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision may not be applied. If the provision has been approved by the Riksdag or by the Government, however, it shall be waived only if the error is manifest.</p>	
Switzerland	<p>Article 189 Constitutional Jurisdiction</p> <p>1 The Federal Supreme Court shall have jurisdiction over:</p> <p>a. Complaints about violations of constitutional rights;</p> <p>2 For the decision of certain disputes, the statute may attribute jurisdiction to other federal authorities.</p>	<p>Federal Judicature Act³¹⁴</p> <p>Article 82</p> <p>Le Tribunal fédéral connaît des recours:</p> <p>a. contre les décisions rendues dans des causes de droit public;</p> <p>b. contre les actes normatifs cantonaux;</p> <p>c. qui concernent le droit de vote des citoyens ainsi que les élections et votations populaires.</p> <p>Article 86</p> <p>1. Le recours est recevable contre les décisions:</p> <p>a. du Tribunal administratif fédéral;</p> <p>b. du Tribunal pénal fédéral;</p> <p>c. de l'Autorité indépendante d'examen des plaintes en matière de radio-télévision;</p> <p>d. des autorités cantonales de dernière instance, pour autant que le recours devant le Tribunal administratif fédéral ne soit pas ouvert.</p> <p>2. Les cantons instituent des tribunaux supérieurs qui statuent comme autorités précédant immédiatement le Tribunal fédéral,</p>

³¹⁴ <http://www.admin.ch/ch/d/sr/1/173.110.de.pdf>

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		<p>sauf dans les cas où une autre loi fédérale prévoit qu'une décision d'une autre autorité judiciaire peut faire l'objet d'un recours devant le Tribunal fédéral.</p> <p>Article 113 Le Tribunal fédéral connaît des recours constitutionnels contre les décisions des autorités cantonales de dernière instance qui ne peuvent faire l'objet d'aucun recours selon les articles 72 à 89.</p> <p>Article 115 A qualité pour former un recours constitutionnel quiconque: a. a pris part à la procédure devant l'autorité précédente ou a été privé de la possibilité de le faire et b. a un intérêt juridique à l'annulation ou à la modification de la décision attaquée.</p> <p>Article 116 Le recours constitutionnel peut être formé pour violation des droits constitutionnels.</p>
"The former Yugoslav Republic of Macedonia"	<p>Article 110 The Constitutional Court of the Republic of Macedonia: [...] - protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation; [...]</p>	<p>Rules of Procedure Article 11 Proceedings for assessing the constitutionality of a law and the constitutionality and legality of a regulation or other common act are initiated by a decision of the Constitutional Court upon the submission of a petition to the Court.</p> <p>Article 12 Anyone can submit a petition for initiating proceedings for assessing the constitutionality of law or the constitutionality and legality of a regulation or other common act.</p> <p>Article 28 The Constitutional Court will refuse the petition: - if it is not competent to decide upon the request; - if it has already dealt with the same matter, and there are no grounds for reaching a different judgment; and - if there are other procedural obstacles to deciding on the petition.</p> <p>Article 51 Any citizen considering that an individual act or action has infringed his or her right or freedom, as provided in Article 110.3 of the Constitution of the Republic of Macedonia, he or she may lodge an application for protection by the Constitutional Court within 2 months from the date of notification of the final or legally binding individual act, or from the date on which he or she became aware of the activity undertaken creating such an infringement, but not later than 5 years from the date of the activity's being undertaken.</p>
Tunisia	No direct individual access	No direct individual access
Turkey	No direct individual access	No direct individual access
Ukraine	<p>Article 55 Human and citizens' rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of</p>	<p>Law on the Constitutional Court of Ukraine Article 13 The Constitutional Court of Ukraine adopts decisions and provides conclusions in cases concerning: 4. official interpretation of the Constitution and</p>

State	Constitution	Laws
	<p>local self-government, officials and officers. Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the <i>Verkhovna Rada</i> of Ukraine. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant. Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.</p> <p>Article 150 The authority of the Constitutional Court of Ukraine comprises: 2) the official interpretation of the Constitution of Ukraine and the laws of Ukraine;</p>	<p>laws of Ukraine. Article 42 The constitutional petition is a written petition to the Constitutional Court of Ukraine on the necessity of an official interpretation of the Constitution of Ukraine and the laws of Ukraine in order to secure implementation or protecting the constitutional rights and freedoms of the individual and citizen as well as the rights of a legal entity. The constitutional petition sets forth: 3. articles (their separate provisions) of the Constitution of Ukraine or the Law of Ukraine, the interpretation of which will be made by the Constitutional Court of Ukraine; 4. rationale of the necessity of an official interpretation of the statements of the Constitution of Ukraine or the laws of Ukraine;[...]</p> <p>Article 43 Subjects of the right to a constitutional petition for providing opinion by the Constitutional Court of Ukraine in the cases foreseen by subsection 4 of Article 13 of this Law are the citizens of Ukraine, aliens, stateless persons and legal entities.</p>
<p>United Kingdom</p>		<p>Human Rights Act 1998³¹⁵ 4 Declaration of incompatibility (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right. (2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility. (3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right. (4) If the court is satisfied— (a) that the provision is incompatible with a Convention right, and (b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility. (6) A declaration under this section (“a declaration of incompatibility”)— (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and (b) is not binding on the parties to the proceedings in which it is made.</p> <p>6 Acts of public authorities (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.</p> <p>7 Proceedings (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may— (a) bring proceedings against the authority</p>

³¹⁵ http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1#pb2-11g3

State	Constitution	Laws
		<p>under this Act in the appropriate court or tribunal, or</p> <p>(b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.</p> <p>(2) In subsection (1)(a) "appropriate court or tribunal" means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.</p> <p>(3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.</p> <p>8 Judicial remedies</p> <p>(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.</p>
United States of America		<p>§ 1251 U.S. Code</p> <p>(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.</p> <p>(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.</p> <p>§1254 US Code³¹⁶</p> <p>Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:</p> <p>(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;</p> <p>(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.</p> <p>U.S. Supreme Court Rules³¹⁷</p> <p>Rule 10. Considerations Governing Review on <i>Certiorari</i></p> <p>Review on a writ of <i>certiorari</i> is not a matter of right, but of judicial discretion. A petition for a writ of <i>certiorari</i> will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:</p> <p>(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual</p>

³¹⁶ <http://www4.law.cornell.edu/uscode/28/1254.html>

³¹⁷ <http://www.supremecourtus.gov/ctrules/2007rulesofthecourt.pdf>

State	Constitution	Laws
		<p>course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;</p> <p>(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;</p> <p>(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.</p> <p>A petition for a writ of <i>certiorari</i> is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.</p> <p>Rule 18. Appeal from a United States District Court</p> <p>1. When a direct appeal from a decision of a United States district court is authorised by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law after entry of the judgment sought to be reviewed.</p> <p>Rule 20. Procedure on a Petition for an Extraordinary Writ</p> <p>1. Issuance by the Court of an extraordinary writ authorised by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised.</p>
Uruguay	<p>Article 258³¹⁸ (p.t.)</p> <p>The declaration of unconstitutionality of a law and of the inapplicability of the acts affected by the law can be requested by every person who considers that his direct, personal and legitimate interest has been violated:</p> <p>1. By entering an action before the Supreme Court of Justice.</p> <p>2. Through an exception of unconstitutionality, which can be filed in any ordinary judicial proceeding.</p>	<p>General Code of Procedure (p.t.)³¹⁹</p> <p>Article 509</p> <p>The declaration of unconstitutionality and the inapplicability of the provisions affected by the former may be requested</p> <p>1° By everyone who considers that his personal, legitimate and direct interest has been violated.</p> <p>2° Ex officio, by the tribunal that decides in any jurisdictional proceeding.</p> <p>The Supreme Court of Justice, in the matters brought before it, shall pronounce itself in its decision on the question of unconstitutionality.</p>

³¹⁸ Artículo 258.- La declaración de inconstitucionalidad de una ley y la inaplicabilidad de las disposiciones afectadas por aquélla, podrán solicitarse por todo aquel que se considere lesionado en su interés directo, personal y legítimo:

1° Por vía de acción, que deberá entablar ante la Suprema Corte de Justicia.

2° Por vía de excepción, que podrá oponer en cualquier procedimiento judicial.

El Juez o Tribunal que entendiere en cualquier procedimiento judicial, o el Tribunal de lo Contencioso Administrativo, en su caso, también podrá solicitar de oficio la declaración de inconstitucionalidad de una ley y su inaplicabilidad, antes de dictar resolución.

En este caso y en el previsto por el numeral 2º), se suspenderán los procedimientos, elevándose las actuaciones a la Suprema Corte de Justicia.

http://www.parlamento.gub.uy/Portadas/SitioConcursosCSS/downloads/Constitucion_2004.pdf

³¹⁹ Artículo 509.

Titulares de la solicitud. La declaración de inconstitucionalidad y la inaplicabilidad de las disposiciones afectadas por aquélla, podrán ser solicitadas. 1° Por todo aquél que se considere lesionado en su interés directo, personal y legítimo. 2° De oficio, por el tribunal que entendiere en cualquier procedimiento jurisdiccional. La Suprema Corte de Justicia, en los asuntos que se tramiten ante ellas, se pronunciará en la sentencia sobre la cuestión de inconstitucionalidad.

Artículo 510.

Cuando la declaración de inconstitucionalidad se solicitare por las personas a que se refiere el numeral 1° del artículo anterior podrá ser promovida: 1° Por vía de acción, cuando no existiere procedimiento jurisdiccional pendiente. En este caso, deberá interponerse directamente ante la Suprema Corte de Justicia. 2° Por vía de excepción o defensa, que deberá oponerse ante el tribunal que estuviere conociendo en dicho procedimiento.

<http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=>

State	Constitution	Laws
	<p>The Judge or Tribunal that cognises in any ordinary judicial proceeding, or the Tribunal of Administrative Disputes, within their jurisdiction and before administering justice, may request <i>ex officio</i> the declaration of unconstitutionality and inapplicability of a law.</p> <p>In this case and in the case of number 2, the proceedings are suspended and the proceeding is elevated to the Supreme Court of Justice.</p>	<p>Article 510</p> <p>If the declaration of unconstitutionality is requested by the persons referred to in number 1 of the previous article, it can be put</p> <ol style="list-style-type: none">1. Through an action, if there is no pending proceeding. In this case, it shall be lodged directly with the Supreme Court of Justice.2. As an exception which shall be lodged before the tribunal that decides on the matter.

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United States of America

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Supreme Court Rules <http://www.supremecourtus.gov/ctrules/2007rulesofthecourt.pdf>

Uruguay

Constitution <http://www.parlamento.gub.uy/constituciones/const004.htm>

General Code of Procedure

<http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=>