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**The international aspects of
constitutional complaint**

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The international aspects of constitutional complaint

1. Introduction - Historical precedents

The constitutional complaint is not a product of modern constitutional democracies. Its forerunner was already found in the statutes of Aragon between the 13th and 16th century, as well as in Germany in the 15th century. The Swiss constitution, which was adopted in 1874, introduced a special constitutional complaint. Austria also applied it from 1868, which was enforced by the Reichsgericht. The Bavarian Constitution and the Judiciary Act institutionalized the initial version of constitutional complaint in 1818.¹

Despite these historical precedents, the protection of human rights, and indirectly, the importance of constitutional complaint was grown after the tragedy of World War II. Human rights declarations were passed on international level, and the European Union also emphasized the importance of them. Therefore, the countries of Europe, where a constitutional court had been developed, created the power of constitutional complaint.² The protection of fundamental human rights and freedoms is a determining function of a majority of these bodies, therefore, the constitutional courts have to insure that basic rights are protected.³

In this study I work up the international aspects of constitutional complaint, what kind of regulations shall be applicable in some countries, like Austria, Germany, Spain and Slovenia, but I also analyse the Mexican practice.

2. 1. Austria (*Individualantrag-Bescheidbeschwerde*)

The constitutional complaint was provided fundamentally in the Federal Constitutional Law (*Bundes-Verfassungsgesetz*). However, it was applicable only against administrative actions until 1975. After then, it can be particularly directed against the decisions of Independent Administrative Tribunals, and - from 2008 - the Asylum Court. The latter institution was newly established.⁴ On the other hand, when a court violates the basic rights of the applicant, constitutional complaint cannot be proposed.⁵

According to the Constitution, anybody can file a constitutional complaint, who alleges to have infringement in his or her constitutionally guaranteed rights directly by an illegal ordinance, an unconstitutional law, an illegal pronouncement on the republication of a law (treaty), or an unlawful treaty.⁶ This complaint could be filed only after exhaustion of all remedies⁷, within a period of six weeks after service of the ruling issued by the last instance of appeal.⁸ Basically, the appeal has no suspensive effect⁹, however, this provision could be overwritten¹⁰.

¹ Arne Marjan MAVČIČ: *Individual complaint as a domestic remedy to be exhausted or effective within the meaning of ECHR. Comparative and Slovenian Aspect*. 2011, 4.

² With the exception of the Corte Costituzionale (the Italian Constitutional Court): see Louis FAVOREU: *Les cours constitutionnelles*. In: Péter PACZOLAY: *Constitutional jurisdiction, interpretation of the constitution* (in Hungarian). Rejtjel Kiadó, Budapest, 2003, 99; and it cannot be also found in France: the French system introduced the preventive review of rules, therefore, the French Constitutional Council does not recognise the right of individuals to access directly to specific constitutional review bodies. In: MAVČIČ (2011) *ibid.*, 4.

³ MAVČIČ (2011) *ibid.*, 7.

⁴ Ronald FABER: *The Austrian Constitutional Court - An Overview*. *ICL Journal*, Vol. 1., 2008/1., 51.

⁵ LENKOVICS Barnabás: *A "valódi" alkotmányjogi panasz és elbírálásának főbb jellemzői. Alkotmánybírósági Szemle*, 2011/2. szám, 65.

⁶ Federal Constitutional Act of Austria, Articles 139, 140, 140a, 144.

⁷ FABER (2008) *ibid.*, 51.

⁸ Constitutional Court Act of Austria, 82. § (1)

⁹ Constitutional Court Act of Austria, 85. § (1)

¹⁰ Constitutional Court Act of Austria, 85. § (2): Upon request of applicant, however, the Constitutional Court is to issue a court order in favour of the suspensive effect, unless it would be contrary to mandatory public interest

In Austria, when a complaint arrives at the Verfassungsgericht before the deadline expired, and the proposal has not been rejected, the President of the Constitutional Court shall schedule a hearing.¹¹ This is a special provision in the Austrian regulation: in Hungary, the Constitutional Court does not conduct a hearing to judge a constitutional complaint. However, the Verfassungsgericht can refuse, by order, the proposal, if the complaint does not sufficiently seem to be successful or if the decision cannot be expected to clarify a constitutional problem.¹² If the Constitutional Court concludes that a decision infringed one of the basic rights, the result of the judgement of the Court shall be the declaration of the contested statute or other law null and void. The decision has to specify whether applicant's human rights have been violated by the challenged ruling, statute or treaty.¹³ After the publication of this decision, the unconstitutional norm cannot be applied.¹⁴ In the case of unconstitutionality of administrative actions, the judicial body declares it invalid.

The power of constitutional complaint is referred to be as a special administrative jurisdiction (Sonderverwaltungsgerichtsbarkeit), which is one of the most burdensome aspect of the Constitutional Court's work: it makes 90% of its caseload.¹⁵ In order to alleviate this excessive caseload, the Verfassungsgericht can refuse to hear a case in a simplified procedure if the complaint cannot be successful or it does not concern constitutional provisions; and according to the Verfassungsgericht, the resolution of an administrative authority did not infringe a constitutionally guaranteed right, and it can be ascertained that the Supreme Administrative Court has competence in the concrete case, on appeal by the appellant - within two weeks after having been served the decision of the Constitutional Court¹⁶ -, the latter body can judge the complaint.¹⁷ Approximately, four fifths of all complaints are refused on these grounds.¹⁸ Therefore, the Administrative Court and the Constitutional Court complement each other.

2. 2. Germany (*Verfassungsbeschwerde*)

In the beginning, the opinions concerning the constitutional complaint was controversial in Germany. There were lots of disputes and deliberations concerning this competence¹⁹, and the initial version of the Basic Law for the Federal Republic of Germany, which came into effect in 1949, did not include the rules of constitutional complaint. This competence was introduced by the Federal Constitutional Court Act, in 1951. In 1969, the amendment of the Basic Law brought the rules of constitutional complaint²⁰, which quickly developed into the most important power of the Bundesverfassungsgericht. In this competence, the Constitutional Court functions like an administrative court and a "Super-Supreme Court".

and after consideration of all interests affected, whether the implementation or the use of the license by a third party, as granted by a ruling, would constitute an unreasonable disadvantage for the applicant. After any considerable change in the circumstances relevant for the decision in favour of the suspensive effect of the complaint the case shall be decided a new upon request of applicant, of the authority or of any other party involved.

¹¹ Constitutional Court Act of Austria, 84. § (1)

¹² Federal Constitutional Act of Austria, Article 144 (2)

¹³ Constitutional Court Act of Austria, 87. § (1)

¹⁴ Federal Constitutional Act of Austria, Article 140 (7)

¹⁵ FABER (2008) *ibid.*, 51.

¹⁶ Constitutional Court Act of Austria, 87. § (3)

¹⁷ Federal Constitutional Act of Austria, Article 144 (3)

¹⁸ FABER (2008) *ibid.*, 52.

¹⁹ On the deliberations referring the forthcoming Basic Law, see Martin BOROWSKI: The Beginnings of Germany's Federal Constitutional Court. *Ratio Juris*, Vol. 16., No 2, 2003, 168-170.

²⁰ Basic Law for the Federal Republic of Germany (Grundgesetz), Article 93 (1) 4a-4b.

According to the Federal Constitutional Court Act, any individual claiming an infringement of one of his or her constitutionally guaranteed basic rights by a public authority can file a constitutional complaint to the Constitutional Court.²¹ This public authority may be the judiciary (with judicial decisions), the legislative (with statutes which violate the human rights) or the executive power (with the actions of administrative authorities).²² During the proceeding, the Federal Constitutional Court Act gives the bodies, whose act or omission caused the violation of basic rights - the federal or Land constitutional organ, the minister, the federal or Land authorities -, the opportunity to submit a statement within a specified period of time. This rule can be also applied when the complainant challenges a judicial decision. In this case, the Constitutional Court gives the party in whose favour the decision was taken to propose a statement²³.

These provisions serve as a protection of fundamental basic rights. In the opinion of the Federal Constitutional Court, the human rights compose a comprehensive system of values. These rights can be enforced not only against the state, but they bind the legislature, the judiciary and the executive as directly applicable law.²⁴

It is a special rule, that - similarly to Austria - legal entities can also lodge constitutional complaint²⁵, but the municipalities and the associations of municipalities can only claim that federal or Land law violates their autonomy declared in Article 28 in the Basic Law. However, the constitutional complaint cannot be filed to the Federal Constitutional Court, if Land law permits the applicant to lodge his or her complaint against the violation of right to self-government with the Land constitutional court.²⁶ It follows from this that constitutional complaint appears on the federal and also on provincial levels in Germany.²⁷

Concerning the constitutional complaint, time periods have significant importance. With reference to legal remedy, two categories can be distinguished:

1. If legal remedy to other courts exists, the constitutional complaint can only be proposed after all remedies have been exhausted.²⁸ The complaint shall be lodged and substantiated within one month. If complainants were unable to comply with this time limit through no fault of their own, they shall, upon application, be granted reinstatement into their former procedural position. This application can be proposed within two weeks of the cause for their non-compliance ending.²⁹
2. If the constitutional complaint challenges a law or another sovereign act against which legal remedy is not possible, the proposal may only be filed within one year of the law coming into force or the sovereign act being issued.³⁰

It is another condition that it shall be admitted in the complaint, in so far as it has general constitutional significance, it is appropriate in order to enforce the constitutionally guaranteed basic rights, and because of this, the complainant would suffer severe disadvantage, if the Constitutional Court refuse to decide on the complaint.³¹ These are the criteria of the reception of a constitutional complaint.

²¹ Federal Constitutional Court Act (BVerfGG), 90. § (1)

²² Rudolf STREINZ: The Role of the German Federal Constitutional Court Law and Politics. *Ritsumeikan Law Review*, No 31, 2014, 98.

²³ Federal Constitutional Court Act (BVerfGG), 94. § (1)-(4)

²⁴ Basic Law for the Federal Republic of Germany (GG), Article 1 (3)

²⁵ MAVČIČ (2011) *ibid.*, 6.

²⁶ Federal Constitutional Court Act (BVerfGG), 91. §

²⁷ MAVČIČ (2011) *ibid.*, 4.; Federal Constitutional Court Act (BVerfGG), 90. § (3)

²⁸ Federal Constitutional Court Act (BVerfGG), 90. § (2)

²⁹ Federal Constitutional Court Act (BVerfGG), 93. § (1)-(2)

³⁰ Federal Constitutional Court Act (BVerfGG), 93. § (3)

³¹ Federal Constitutional Court Act (BVerfGG), 93a. § (2)

As every German citizen, whose one of the constitutional rights was violated, can file a complaint to the Federal Constitutional Court. This became the most burdensome review power of the judicial body: lots of them are unsuccessful (97-99%). Because of this fact, to ease this burden of both senates, and to focus on the more important cases, the legislation developed the Preliminary Examination Committees to filter the complaints. The aim, to protect the fundamental human rights, however, has not been forgotten.³² The system of preliminary selection of constitutional complaints became the most highly developed in Germany.³³ The Chamber of the Senate can refuse to admit a proposal - and the Chamber shall not give reasons for the rejection. If the complaint is clearly well-founded - the conditions of reception are realized -, the Chamber may grant it, and convey the complaint to the Senate, which organ will make the final decision. Before making these decisions, the organ does not issue an oral hearing. The Senate decides, whether a law is incompatible with the Basic Law or with other federal law, or it is void.³⁴

If the Bundesverfassungsgericht finds the constitutional complaint well-founded, therefore the Court grant it, the legal consequence will be the same as in Austria. The Constitutional Court shall declare which provision of the Basic Law was infringed. If the complaint challenges a judicial decision, the Court shall reverse the contested decision, and oblige the competent court to decide the case on the grounds of the decision of the Constitutional Court. Finally, if a statute was regarded unconstitutional, that law shall be voided.³⁵

In Germany, the majority of constitutional complaints are filed against judicial decision of federal courts (third-instance judgements). This is the fact, why the Court is called as "Super-Supreme Court". It follows from this that the Federal Constitutional Court became the most important court in the German judicial system. The Constitutional Court can prescribe, how the courts have to interpret the rules of the Basic Law on the basis of the same principle. Hereby, the Bundesverfassungsgericht can influence the whole German law.

2. 3. Spain (*Recurso de amparo constitucional*)

The Spanish Constitutional Court developed later than the Austrian or German constitutional courts. After General Francisco Franco's dictatorship, in 1978, it was necessary to create the constitutional protections in the country. During the democratical transition, one of these protections was the Constitutional Court.³⁶

One of the most characteristic power of the Tribunal Constitucional is the constitutional complaint, which is called in Spanish *recurso de amparo*. According to the Constitution, the Constitutional Court has jurisdiction over the whole Spanish territory and is entitled to hear individual appeals for protection against infringement of the rights and freedoms.³⁷ This right consists of an appeal along the lines of the German constitutional complaint.³⁸ Any individual or body corporate with a legitimate interest can lodge this appeal, as well as the Defender of the People (the ombudsman, in Spanish: *Defensor del Pueblo*) and the Public Prosecutor Office.³⁹

³² Martin BOROWSKI: The Beginnings of Germany's Federal Constitutional Court. *Ratio Juris*, Vol. 16., No 2, 2003, 174.

³³ MAVČIČ (2011) *ibid.*, 5.

³⁴ Federal Constitutional Court Act (BVerfGG), 93b-93c-93d. §

³⁵ Federal Constitutional Court Act (BVerfGG), 95. §

³⁶ Enrique GUILLÉN LÓPEZ: Judicial Review in Spain: The Constitutional Court. *Loyola of Los Angeles Law Review*, Vol. 41: 529, 2008, 530.

³⁷ Spanish Constitution, Article 161 (1) b)

³⁸ GUILLÉN LÓPEZ (2008) *ibid.*, 540. In the opinion of Roman Herzog, the Spanish Constitutional Court is the child of the Austrian and German Constitutional Court.

³⁹ Spanish Constitution, Article 162 (1) b)

The organic law on the Constitutional Court⁴⁰ includes the rules of *amparo* in detail. The *amparo* is available against violations of the rights and freedoms⁴¹ from provisions, legal enactments, omissions or flagrantly illegal actions (in Spanish: *vía de hecho*) 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.⁴² However, the complaint cannot be filed on the ground of infringement of economic and social rights (e. g. proprietary rights), as well as against statutes. Nevertheless, the decisions or enactments without the force of law taken by the Legislature or by the legislative assemblies of the autonomies or their organs, which infringe one of the rights and freedoms, can be subject of legal action. In this case, the *amparo* can be applied within a period of three months following the final decision.⁴³ If the executive power or administrative authorities violate the constitutionally guaranteed rights with provisions, legal enactments, omissions or illegal actions, the complainant can turn to the Tribunal Constitucional within twenty days from the date of notification of the ruling after the exhaustion of the relevant legal remedies. *Amparo* can be also filed against judicial decision with the same conditions which were specified, but the deadline is different. It is thirty days from the date of notification of the judicial decision.⁴⁴

The full panel of the Court (*Pleno*) hears the cases where laws alleged to violate constitutionally guaranteed basic rights. In turn, the Constitutional Court is divided into two Chambers (*Salas*). The main task of the Chambers is to hear the individual complaints (the *recursos de amparo*)⁴⁵. When it is appropriate, the *amparo* appeals are heard by the Sections (*Secciones*).

This review power burdens the work of the Court - thousands of protection appeals arrive at the judicial body, but only a few are processed and even fewer are adjudicated.⁴⁶ Therefore a filter process was adopted from 1988: the Section decides whether the complaint is admissible or not. During this preliminary process, the Section examines whether the application fulfils the requirements of reception and the special constitutional significance⁴⁷ exists (*especial trascendencia constitucional*). The Section makes its decision with unanimous vote. If majority is obtained, but the vote did not reach unanimity, the Section has to submit the decision to the Chamber for its judgement.⁴⁸

When the application for protection is admitted, the Chamber urgently request the body, which violated the fundamental basic rights, to dispatch the documents which originated during the former procedure, and invite the parties of the process, to the constitutional proceedings within ten days.⁴⁹ After the expiration of this deadline, the Chamber schedules a hearing or deliberation. The Chamber or - in certain cases - the Section has to judge the case within ten days from the hearing or the deliberation.⁵⁰

The Tribunal Constitucional can pass the following judgements: granting of protection (*otorgamiento de amparo*), or denial of protection (*denegación de amparo*).⁵¹ The judgement granting protection has to contain at least one of these pronouncements:

⁴⁰ In Spanish: Ley orgánica del Tribunal Constitucional.

⁴¹ Spanish Constitution, Articles 14-30

⁴² Organic Law on the Constitutional Court, Article 41, (2)

⁴³ Organic Law on the Constitutional Court, Article 42

⁴⁴ Organic Law on the Constitutional Court, Articles 43-44

⁴⁵ GUILLÉN LÓPEZ (2008) *ibid.*, 538.

⁴⁶ GUILLÉN LÓPEZ (2008) *ibid.*, 549-550.

⁴⁷ This requirement is very similar to *rilevanza* - the significant importance of the constitutional case - in Italy.

This is also a filter, but it is applied there by concrete judicial review.

⁴⁸ Organic Law on the Constitutional Court, Article 50 (1)-(2)

⁴⁹ Organic Law on the Constitutional Court, Article 51

⁵⁰ Organic Law on the Constitutional Court, Article 52

⁵¹ Organic Law on the Constitutional Court, Article 53

1. declaration of nullity of the decision, law or resolution that prevented the full exercise of protected rights and freedoms;
2. recognition of the public right or freedom in the light of the constitutional provision relating to its substance;
3. full restoration of the complainant's right or freedom.⁵²

It follows from the foregoing that the *amparo* insures that the courts apply the principles of the Tribunal Constitucional.

2. 4. Slovenia

In Slovenia, the Legislature established the Constitutional Court in 1963, which had the power of constitutional complaint. This institution was available when the self-government rights and other basic rights and freedoms had been infringed by an individual or by the State. However, the protection of fundamental rights and freedoms did not made significant progress. Moreover, the constitutional complaint was removed from the powers of the Constitutional Court from 1974.

A new era of constitutional jurisdiction set in 1991, when the new Constitution of the Republic of Slovenia was adopted. The Constitution declared the constitutional basic rights and freedoms, and reformed the powers of the Constitutional Court. The constitutional complaint remained combined with the *actio popularis*.⁵³ This is a legacy of the ancien régime.

According to the Constitution, the Constitutional Court decides on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts⁵⁴ derived from authorities. The ombudsman for human rights can also lodge a complaint in connection with an individual case that he is dealing with.⁵⁵ The complaint can only be proposed, if legal remedies have been exhausted. A constitutional complaint has to be lodged within 60 days.⁵⁶

The Court decides to accept a constitutional complaint if the alleged infringement is manifestly obvious and if irreparable consequences for the claimant would result from the application of the law⁵⁷. A panel of three Constitutional Court judges decides whether the complaint is admissible or not. If the infringement of constitutional rights or freedoms did not cause serious consequences for the applicant, the panel considers the proposal inadmissible.⁵⁸ This filter proceeding was introduced by an amendment of the Constitutional Court Act in 2007, which means that a complaint is inadmissible in instances of small-claim disputes.⁵⁹

The Constitutional Court can reject or accept the complaint. These decisions have to be made unanimously. If the proposal is accepted, the panel or the Court suspends the implementation the challenged law in a closed session.⁶⁰

By a decision the Constitutional Court either dismisses the complaint as unfounded or grants it. Arne Mavčič distinguishes four types of decisions of the Constitutional Court⁶¹:

1. Denies the complaint for the reason that it is unfounded.

⁵² Organic Law on the Constitutional Court, Article 55 (1)

⁵³ MAVČIČ (2011) *ibid.*, 15-16.

⁵⁴ Constitutional Court Act of Slovenia, Article 21 (1)

⁵⁵ Constitutional Court Act of Slovenia, Article 50

⁵⁶ Constitutional Court Act of Slovenia, Article 52 (1)

⁵⁷ Constitution of Slovenia, Article 160; Constitutional Court Act of Slovenia, Article 51

⁵⁸ Constitutional Court Act of Slovenia, Article 54 (1); Article 55a (1)

⁵⁹ MAVČIČ (2011) *ibid.*, 22.

⁶⁰ Constitutional Court Act of Slovenia, Article 58

⁶¹ MAVČIČ (2011) *ibid.*, 20.

2. Partially or entirely declares null and void the contested law or omission, or returns the case to the body which has jurisdiction, for a new decision on the grounds of the opinion of the Constitutional Court.
3. Annul or invalidate unconstitutional regulations or general acts which served as a basis of the resolution of the public authority.
4. If the Court has already decided on the same constitutional matter and granted the complaint, a decision by which it grants the proposal, in whole or in part abrogates or annuls the individual act, and remands the case to the authority competent to decide thereon, is issued by a panel, which may in such instances also decide in accordance with Article 60 of the Constitutional Court Act.

When the Constitutional Court grants the proposal, and declares the individual act null and void, the Court also decides on removing the consequences that have already been caused by the annulled act. The body having jurisdiction executes the decision of the Constitutional Court, if there is no such body, the Court appoints one.

Despite the amendment of the Constitutional Court Act, just a broad individual access to the constitutional review can guarantee the protection of constitutional human rights and freedoms, can accelerate the democratisation of any legal order, and promotes the state governed by the rule of law at the same time.⁶²

2. 5. Mexico⁶³

The protection of human rights originates from Mexico, because the *amparo* proceeding was established in this country - particularly in the state of Yucatán - in 1841. The Constitution of Yucatán of 1841 was mostly influenced by the judicial review which was developed in the United States.

Mexico implied the *amparo* procedure in its constitution 1847 - which served as a model of the *amparo* established in Spain - with the revision provided by Mariano Otero. One of the most important principle, which was called later Otero-formula, declared that judicial decisions in *amparo* proceedings only bind the parties in the case (this is *inter partes* effect). This principle effected the contemporary constitutional law of Mexico. The judgements pronounced in *amparo* procedures concern the parties who took part of the proceeding in the specific case concerned in the complaint.⁶⁴

In 1882, Ignacio Vallarta introduced the so-called "*jurisprudencia*" as an exemption of the Otero-formula. This principle means whenever the Supreme Court of Mexico passes five consecutive decisions in its constitutional practice with a qualified majority of eight votes (out of eleven), the decision is binding all the other courts.⁶⁵ The principle of *jurisprudencia*, however, does not comprise the administrative authorities. It does not lead to an *erga omnes* effect in any comprehensive sense, because the *inter partes* effect is a characteristic feature in Mexico (and in other countries in Latin America).

Axel Tschentscher and Caroline Lehner distinguishes five functions of *amparo* in Mexico:

1. Protection of individuals against state acts or omissions, which also concerns the protection of personal liberty (*amparo libertad*).

⁶² MAVČIČ (2011) *ibid.*, 24.

⁶³ During the working up, I took into consideration: Axel TSCHENTSCHER - Caroline LEHNER: The Latin American Model of Constitutional Jurisdiction: Amparo and Judicial Review. *Research Paper No. 2296004 at ssm.com*

⁶⁴ Constitution of Mexico, Article 107, Number II, Section 1

⁶⁵ Amparo Law (Ley de amparo - LA-MX), Article 222

2. The complaint can be filed against unconstitutional statutes (*amparo contra leyes*) either through direct action (*acción de inconstitucionalidad*) or against judicial decisions which are based on unconstitutional rule (*recurso de inconstitucionalidad*).
3. Overturning a judicial decision (*amparo de casación*), which is not the same as the *recurso de inconstitucionalidad*, because in this case the Supreme Court does not examine the constitutionality of a provision, therefore this is not a judicial review.
4. Reviewing the acts of the government or administrative authorities with regard to their conformity with constitutional rights (*amparo administrativo*).
5. The fifth function of *amparo* is very special which protects the farmers (*amparo agrario*) against land reforms.

The importance of these functions are different: in the course of time, the last two functions have become less, the other three functions are more important.

After the proceedings, the Supreme Court may grant or deny the *amparo* depending on whether the complainant proved or not that the contested rule infringed his or her constitutionally guaranteed basic right. When the Court grants the complaint, can remand, modify *ex novo* or void the challenged law.

The aim of *amparo* proceeding is reinstating the complainant as the same position as he or she was before the violation of his or her human rights.

3. Conclusion

The protection of human rights by a constitutional court became more important in the second half of the 20th century. In this respect, the constitutional courts have the power of judging constitutional complaints in most of European countries - where the law of the European Union also produce influence. In the Spanish-speaking countries, the *amparo* proceeding was introduced. It is a similarity that in time, more and more complaint have been filed to the constitutional courts, therefore this power became the most burdensome competence. Although there are some differences between the constitutional complaint and the *amparo* procedure, the basis of them are same: the effective protection of constitutional basic rights.

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