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## **Models of citizens' access to constitutional justice**

Within the European continental legal family there are different models of constitutional justice. They can be distinguished according to several criteria:

- depending on the state body exercising control – a specialized jurisdiction or the general courts.
- depending on the type of control – abstract or case-by-case.
- depending on the timing of the scrutiny – preliminary or subsequent.
- depending on the procedural legitimacy – referral only by public authorities or also by other subjects, including citizens.

The protection of fundamental rights makes the constitutional court not only a legal arbiter between the authorities, but also a guardian of individual rights. The first attempts to do so began in the second half of the 19th century in countries of the German legal family. In the second half of the 20th century, because of the development of the idea of the rule of law, this practice expanded into most European countries. Thus, constitutional justice is increasingly being 'opened up' to citizens, using different models of access to it.

*Citizens' access to constitutional justice is indirect and direct.* In the first model, state bodies, including courts, or public organizations, such as the Bar Association, can bring cases before the constitutional court. In the second model, citizens have the right to a constitutional complaint to the constitutional court.

### *1. Models of constitutional review with direct citizen access to constitutional justice:*

#### *1.1. Actio popularis*

This model provides the widest access to constitutional jurisdiction because any citizen can challenge a law and likely other regulations. The act need not

affect the applicant personally and directly. In this way, any citizen can claim constitutional protection, i.e., it is not necessary to prove a personal legal interest. However, this is the main disadvantage of this model – it often leads to abuse of the right of direct access to the constitutional court, which overloads it with numerous, and unfounded, complaints. For this reason, *actio popularis* is not widely used, and some states that have adopted it limit its application. For example, not any person, but only certain organizations acting in the public interest, are entitled to bring actions on behalf of individuals.

### *1.2. Normative constitutional complaint*

This model stands between abstract constitutional review and classical rights protection. A condition for the admissibility of a complaint is that the person has a legal interest in filing it, i.e., that he is directly affected by the individual act on which the rule contrary to the constitution reflects. In these cases, citizens and possibly legal entities can directly challenge an existing rule, although the personal motivation for bringing the complaint before the constitutional court comes from the content of the individual act implementing it. The protection of constitutional order, which includes the protection of fundamental rights, thus comes to the fore. This model seeks not to make the constitutional court the court of last resort in a particular case; it reduces the overload and hence the considerable delay of constitutional proceedings. However, a statutory constitutional complaint is not an effective remedy if it is not a regulation that is unconstitutional, but its application.

### *1.3. Substantive constitutional complaint*

A substantive complaint allows citizens to challenge any act – normative or individual – of the public authority that is alleged to violate constitutionally recognized rights. This model greatly expands the gateway to constitutional justice because it foregrounds unconstitutional impairment of rights, including by misapplication of a constitutionally compliant statute. The expansion of the scope

of constitutional review, however, results in an increased number of cases. This circumstance requires the introduction of different conditions for the admissibility of a constitutional complaint. In some countries, it relates only to an alleged violation of fundamental rights, or a part thereof, and not to any violation of the constitution. The advantage of this model is that judicial and administrative acts, including those not subject to judicial review, are directly subject to constitutional review. Its weaknesses are that review is *ex post facto* and this increases the likelihood of conflict between constitutional jurisdiction and the ordinary courts; it requires the creation of more 'filters' and special administration for the admissibility of constitutional complaints.

Based on the models described, the national legal framework gives specificity to access to constitutional justice.

## *2. Constitutional Framework of Access to Constitutional Justice in the Republic of Bulgaria.*

The Constitution adopted in 1991 introduced for the first time in Bulgaria a constitutional review of laws. The constitutional court acts on the initiative on state bodies – 1/5 of the deputies, the president, the government, the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General, and in certain cases also local self-government bodies. Two amendments to the constitution expanded this circle to include the Ombudsman and the Supreme Bar Council.

The right of the ombudsman and the Supreme Bar Council to appeal to the Constitutional Court is limited in two ways compared to other subjects: in scope and in entities. The Ombudsman and the Supreme Bar Council can challenge laws, but not international treaties. Furthermore, the violation must concern the rights and freedoms of citizens, but not the rights of legal entities.

A specific role in the referral to the Constitutional Court is assigned to the two Supreme Courts. Their chambers, when they find the applicable law

inconsistent with the constitution, suspend the proceedings and refer the matter to the constitutional court. Thus, in individual cases, abstract constitutional review is combined with concrete review. In this way, the decisions of the Constitutional Court also contribute to the protection of citizens' rights.

The scope of constitutional review in Bulgaria is broad. It covers both normative and individual acts: laws and decisions of the Parliament, international treaties to which the Republic of Bulgaria is a party, presidential decrees, adjudication of jurisdictional disputes, etc.

### *3. Opportunities for expanding citizens' access to constitutional justice in the Republic of Bulgaria.*

The Bulgarian Parliament is currently debating a bill to amend the Constitution. It includes provisions to extend access to the constitutional court.

One suggestion is that any court should be able to ask the constitutional court to find that a provision of a statute applicable in a particular case is unconstitutional. The positive aspects of this proposal are the following: it significantly expands the possibilities of referral to the Constitutional Court on issues that affect the rights of citizens; it ensures a professional assessment of the requests for referral to the Constitutional Court; it resolves the question of the constitutionality of the applicable law before the entry into force of the judicial act in the concrete case.

The other proposal is to introduce a constitutional complaint. However, it is not clear from its wording whether a normative constitutional complaint or an *actio popularis* is meant, i.e., what is the role of the legal interest for the possibility to refer a matter to the constitutional court and how its decision would affect the final judicial act. There is no provision for the constitutional court to sit in separate chambers, which would create insurmountable problems even when considering the questions of admissibility of the applications.

In my opinion, the discussion on the proposed provisions, which has so far been lacking, should answer two main questions: first, how to really improve the protection of citizens' fundamental rights and second, how to do this by developing the existing model of constitutional justice in our country. This could be achieved by giving any court the right, at the request of a litigant or on its own initiative, to refer a case to the Constitutional Court seeking a resolution that a law applicable in a particular case is unconstitutional. This solution has several positive aspects and few disadvantages: it ends disputes about the unconstitutionality of the law before the ruling on the specific case; it allows the court to continue the proceedings in the part that does not concern the subject of the constitutional proceedings; it tolerably increases the number of cases before the constitutional court without blocking its activity.

Improving the protection of fundamental rights is the most effective means of including the citizens and bringing them closer to the constitution. That is why today's discussion is useful and important not only for participants. I wish success to the Balkan Constitutional Forum! It is a good example of dialogue and cooperation between the institutions of the Balkan states.