

Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia

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ABSTRACT

This article focuses on the legal policy of constitutional complaints in judicial review. It compares the European model (Germany, Austria, Hungary) and Indonesia. These four countries have a legal policy in common, a constitutional court with a centralised court system and judicial review (abstract judicial review, concrete judicial review, and constitutional complaints), but the MKRI lack constitutional complaint. Three constitutional complaints policies in these courts can be used as a reference for the strengths and weaknesses of each judiciary on regulations and legal practices. However, Germany's constitutional complaints policy is better than Austria's and Hungary's. Its excellence is caused all ordinary court decisions as an object dispute; decisions are final and binding; individuals and organisations can submit this application and legal aid by the lawyers or professor of law in the oral hearing; the process only takes one month and is free of charge and the trial with or without an oral hearing. In the future, MKRI needs this authority with legal policy steps amending the MKRI Act, and the last step is an amendment to the 1945 Constitution.



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1. Introduction

The history modeled on the European constitutional courts began in 1920. Hans Kelsen had the idea and proposed that the institution be regulated in the Austrian Constitution on October 1, 1920, is the name "*Verfassungsgerichtshof*" or Austrian Constitutional Court (hereinafter the ACC)¹. Kelsen is a father of the pure theory of law and served as a member of the ACC until the beginning of 1930, after which he became a Professor of Law at the University of Cologne, Germany.² In Germany, Hans Kelsen debated the concept of "the

¹ Thomas Olechowski, "Hans Kelsen und die Bundesverfassung", *Austrian Law Journal* (2022), 28–38 <https://doi.org/10.25364/01.9>

² Jacob Giltaij, "Hermann Kantorowicz and Hans Kelsen: from debating legal sociology to constructing an international legal order", *History of European Ideas*, 48.1 (2022), 112–28 <https://doi.org/10.1080/01916599.2021.1898438>

guardian of the constitution" with Carl Schmitt. Kelsen's idea was that the constitutional court, while Schmitt, who had its authority was the President.³

Kelsen's idea did not come out of the blue. From 1867-1919, the institution's origin from the 1867 Constitution of the Austro-Hungarian Monarchy was established as an "imperial court – state court." It has powered on citizens' complaints regarding violations of "political rights" and does not have to review laws' constitutionality. Hence, in 1919, German-Austria Republic established a constitutional court with authority to review laws but limited judicial review adopted by State parliaments and could only be exercised upon the request of the State Government. Moreover, the Czechoslovak Republic's Constitutional Court was established a few months before the ACC but has not yet implemented its authorities. The ACC is considered the first court because it has directly implemented these authorities and has a permanent constitutional Justices, it is the pioneering role.⁴ It later became the judicial standard authorized for judicial review and inspiration for the establishment of constitutional courts in European countries, *Staatsgerichtshof* in Liechtenstein (1921), *Corte Costituzionale* in Italy (1948), *Bundesverfassungsgericht* or German Federal Constitutional Court in 1951 (hereinafter the GFCC), and *Alkotmánybíróság* in Hungary in 1989 (hereinafter the HCC), and others.⁵ Hence, the Indonesian Constitutional Court or Mahkamah Konstitusi Republik Indonesia (hereinafter the MKRI) also follows the European model with centralised institutions.

Currently, the constitutional courts function as the guardian of state ideology, sole interpreters of the constitution, and the protector of the citizen's fundamental rights and democracy by several authorities. Its popular authority is constitutional review. Accordingly, there are several mechanisms that constitutional courts widely use in various countries, including (i) abstract judicial review, (ii) concrete/specific judicial review (constitutional questions) by referral cases from ordinary Courts,⁶ and mixed elements judicial review first abstract, then concrete review; (iii) constitutional complaints.⁷ An abstract review examines legislative products in abstracto and strikes down act that infringes constitutional norms.⁸ In contrast, a concrete review is if ordinary court Justices find act validity and constitutional problems in real cases or litigation processes.⁹ It is closely related to the constitutional complaint, like two sides of a coin. Ordinary courts Justices submit concrete judicial review before making decisions, while constitutional complaints are submitted by individuals or legal entities after made decision.

³ Or Bassok, "The Schmitelsen court: The question of legitimacy", *German Law Journal*, 21.2 (2020), 131–62 <https://doi.org/10.1017/glj.2020.2>

⁴ Stephan G Hinghofer-szalkay, "The Austrian Constitutional Court : Kelsen ' s Creation and Federalism ' s Contribution ? 2 . *Federalism*, 17 (2017), 1–17 <https://doi.org/10.25518/1374-3864.1671>

⁵ Antoni Abat Ninet, "Kelsen versus Schmitt and the Role of the Sub-National Entities and Minorities in the Appointment of Constitutional Judges in Continental Systems", *ICL Journal*, 14.4 (2021), 523–43 <https://doi.org/10.1515/icl-2020-0015>

⁶ Sylvain Brouard , Christoph Hönnige, "Constitutional courts as veto players: Lessons from the United States, France and Germany", *European Journal of Political Research*, 56.3 (2017), 529–52 <https://doi.org/10.1111/1475-6765.12192>

⁷ Janneke Gerards, "Abstract and Concrete Reasonableness Review by the European Court of Human Rights", *European Convention on Human Rights Law Review*, 1.2 (2020), 218–47 <https://doi.org/10.1163/26663236-bja10005>

⁸ Stefan Thierse, "Lifting the veil of secrecy–dissenting opinions in the subnational constitutional courts of Germany", *Regional and Federal Studies*, 0.0 (2022), 1–25 <https://doi.org/10.1080/13597566.2022.2098723>

⁹ Donald P. Kommers, "German Constitutionalism: A Prolegomenon", *German Law Journal*, 20.4 (2019), 534–56 <https://doi.org/10.1017/glj.2019.46>

The object of reviewing this model is legal products made by the legislature, ordinary court decisions, and legal products from all branches of state power. The constitutional review is the authority of constitutional justice in overseeing or evaluating legislation products and is the most important factor in any changes to legislation. It is an ex-ante and ex-post review of treaties.¹⁰ In the perspective of a democratic rule of law, it is a legal instrument to control democracy-political dynamics¹¹ or judicialization of politics¹²; to invalidate statutes (legislation products)¹³ and harmonization of law in the constitution,¹⁴ including human rights law; protecting fundamental rights and establishing argument (right to justification)¹⁵ on new human rights issue outside regulated the constitution. This mechanism also protects fundamental rights carried out by the court to review/ assess laws in an abstract or concrete case. This mechanism also protects fundamental rights carried out by the court to review/ assess laws in an abstract or concrete case. In addition, it can accept individual complaints regarding ordinary court decisions, laws, and other objects of dispute.

Constitutional complaints are the extraordinary legal mechanism designed to strengthen the guarantee of citizens' rights against acts/ decisions by the government or all branches of state power. Similarly, Kommers emphasizes that constitutional complaints are open to individuals and entities vested with specific fundamental rights¹⁶. It is a complaint by individual citizens (including legal entities) against an alleged violation of his/ her fundamental rights by state authorities¹⁷, including act, administrative actions, and judicial decisions. Most frequently, the breach of the fundamental right stems from an incorrect interpretation or implementation of the relevant act or articles. Some reasons why the constitutional courts should have the authority to decide on fundamental rights protection by the constitutional complaint: the embodiment of the values of constitutionalism, the basis of fundamental rights protection, check and balances system, create good and clean governance¹⁸. The constitutional complaints are responsible for a judicial assessment of statutes and resolving disputes among government authorities. In practice, it is particularly important to analyze a variety of executive acts and court verdicts in individual cases.

¹⁰ Mario Mendez, "Constitutional review of treaties: Lessons for comparative constitutional design and practice", *International Journal of Constitutional Law*, 15.1 (2017), 84–109 <https://doi.org/10.1093/icon/mox004>

¹¹ Muchamad Ali Safa'at, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations", *Constitutional Review*, 8.1 (2022), 113–50 <https://doi.org/10.31078/consrev815>

¹² Michael Hein, "Do constitutional entrenchment clauses matter? Constitutional review of constitutional amendments in Europe", *International Journal of Constitutional Law*, 18.1 (2020), 78–110 <https://doi.org/10.1093/icon/moaa002>

¹³ Andy Omara, "Enforcing Nonjusticiable Rights In Indonesia", *Constitutional Review*, 6.2 (2020), 311 <https://doi.org/10.31078/consrev625>

¹⁴ Herbert Küpper, "The Indonesian constitution read with German eyes", *Constitutional Review*, 7.1 (2021), 53–91 <https://doi.org/10.31078/consrev713>

¹⁵ Christoph Enders, "Social and Economic Rights in the German Basic Law? An Analysis with Respect to Jurisprudence of the Federal Constitutional Court", *Constitutional Review*, 6.2 (2020), 190 <https://doi.org/10.31078/consrev621>

¹⁶ Donald P. Kommers, "The Basic Law: A Fifty Year Assessment", *German Law Journal*, 20.4 (2019), 571–82 <https://doi.org/10.1017/glj.2019.48>

¹⁷ Georg Vanberg, "Constitutional Courts in Comparative Perspective: A Theoretical Assessment." *Annual Review of Political Science* 18 (2015): 167–85 <https://doi.org/10.1146/annurev-polisci-040113-161150>

¹⁸ Tanto Lailam, Putri Anggia, & Irwansyah Irwansyah, "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court", *Jurnal Konstitusi*, 19.3 (2022), 693 <https://doi.org/10.31078/jk1939>

The focused analysis of this article is the constitutional complaints policy against ordinary court decisions, and selected constitutional courts in Europe that have this authority are the GFCC (1951), the HCC (1989), and the ACC (January 1, 2014). Hence, some constitutional courts worldwide do not have the authority, including the MKRI (2003). It has been designed as the first judicial institution for abstract judicial review to correct “malfunctions” in a democratic government without constitutional complaint and concrete judicial review. Some researchers also discuss constitutional complaints, such as former Indonesian Constitutional Justice I Dewa Gede Palguna, the MKRI Researcher by Pan Muhammad Faiz¹⁹ and M Lutfi Chakim.²⁰ Another researcher Tanto Lailam,^{21,22} who focused on the authority of constitutional complaints in a general perspective and the design of authority proposals for the MKRI. Hence, Agnes Varadi,²³ discussed legal aid for this authority in the constitutional courts. The ACC was the first and oldest constitutional court in the world. At the same time, the GFCC serves as a role model of constitutional courts for continental European and Anglo-Saxon legal systems, including Indonesia. Furthermore, the HCC represented the new constitutional court in Europe with a constitutional complaint authority against ordinary court decisions.

The legal policy of constitutional courts in Europe might serve as a model for constitutional challenges against court decisions in Indonesia in the future. Especially constitutional complaints policy against ordinary court decisions that focus on the regulations and legal practices of the constitutional courts in Germany, Austria, and Hungary. It is different characteristics, an object of dispute, procedural admission process, even legal aid, fee, time of the law enforcement process, and analysis of cases. For this reason, this aims to elaborate on it and find the best constitutional complaints policy in European, its authority, and its performance in protecting constitutional rights violated by ordinary court decisions. At the same time, the Judicial review policy in Indonesia is limited, with only abstract judicial review and without constitutional complaint and concrete judicial review authority. Hence, many cases submitted to the MKRI were rejected on the legal arguments that they "did not have authority". Also, scholars have not discussed constitutional complaints against ordinary court decisions in Indonesia.

2. Research Method

This library's legal research focused on the regulation and practice of constitutional complaints against ordinary court decisions, especially in Germany, Austria, and Hungary model in Europe and Indonesia. The selected technique was normative legal research combining statutory and comparative legal approaches. Statutory research focuses on the constitution, constitutional courts acts, and procedural admission. Furthermore, a comparative legal approach was employed to examine the constitutional court's practice in

¹⁹ Pan Mohamad Faiz, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court", *Constitutional Review*, 2.1 (2016), 103 <https://doi.org/10.31078/consrev215>

²⁰ M. Lutfi Chakim, "A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions", *Constitutional Review*, 5.1 (2019), 096 <https://doi.org/10.31078/consrev514>

²¹ Lailam, Anggia, & Irwansyah.

²² Tanto Lailam, "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional (The Role of the German Federal Constitutional Court in Protecting of Fundamental Rights based on the Constitutional Complaint", *Jurnal HAM*, 13.1 (2022), 65–80. <http://dx.doi.org/10.30641/ham.2022.13.65-80>

²³ Ágnes Váradi, "Access to constitutional complaint procedures: A real chance? Remarks on the availability of legal aid in constitutional court procedures in Austria, Germany and Hungary", *Hungarian Journal of Legal Studies*, 61.4 (2020), 372–85 <https://doi.org/10.1556/2052.2021.00307>

carrying out these constitutional complaints, the cases handled, and their role in resolving these issues. Hence, the qualitative descriptive was applied in analyzing legal data with the following steps: (1) the legal data was systematized or organized based on the focus of the study, (2) the legal data were described and explained according to the theory of constitutional law, the constitutional, and fundamental rights values. (3) In the last step, the legal data were evaluated and analyzed for best practices in European constitutional courts and future legal policy in Indonesia.

3. Results and Discussion

3.1. *The Urgency of Constitutional Complaints in Judicial Review*

The GFCC was inaugurated in a solemn ceremony in Karlsruhe, held on September 28, 1951. In inaugural remarks, Chancellor Konrad Adenauer said the court should stand as a pillar of the Federal Republic of Germany and the supreme guardian of the Basic Law. It presented the court with both a challenge and an opportunity. The challenge was implementing liberal and democratic values in a political and legal culture skeptical of liberalism and democracy. The opportunity was to establish judicial review, and the constitutional complaint aimed to protect fundamental rights against infringements from the legislator. The GFCC has become important in protecting the Basic Law, realizing the rule of law, and modern democracy. Also, it fulfills one of the basic requirements of rights protected under the principles of new constitutionalism in Europe by the constitutional complaints power. It is the “guardian of the constitution” (*Hüter der Verfassung*) with the truly full power to develop the principle of democracy or the “watchdog” of good legislation, and the epicenter of democracy, the government system, and excellent performance to the protection of fundamental rights. According to Angelika Nußberger, the GFCC’s two senates were called the “chambers of the heart of the Republic.”²⁴ It is the world’s most powerful independent and impartial court, with extensive competencies and political impacts.²⁵

The ACC, established by the 1920 Constitution (*Österreich Bundes-Verfassungsgesetz 1920*), was the world’s first Court concentrating entirely on the review of laws for their constitutionality. Since August 2012, it has been located at Freyung, a square in the first district of Vienna, Austria. On the other hand, the HCC was established October 19, 1989, in Budapest. It had an important role in the new democracy: it was one of the guarantees of the rule of law by practicing constitutional review of laws and constitutional complaints.²⁶ Most petitions were aimed at individual complaints submitted. The court also performed ex-ante reviews, which had outstanding political and constitutional importance.

On the other hand, in Indonesia, The MKRI was established by a constitutional amendment process in 2001 (operating in 2003) during the democratic transition after 57 years of becoming an academic debate since 1945, marked by the fall of President

²⁴ Angelika Nußberger, *The European Court of Human Rights and the German Federal Constitutional Court*, access on https://www.cak.cz/assets/pro-advokaty/mezinarodni-vztahy/the-echr-and-the-german-constitutional-court_angelika-nussberger.pdf

²⁵ Dieter Grimm, "The role of fundamental rights after sixty-five years of constitutional jurisprudence in Germany", *International Journal of Constitutional Law*, 13.1 (2015), 9–29 <https://doi.org/10.1093/icon/mov005>

²⁶ Nóra Chronowski & Attila Vincze, "The Hungarian Constitutional Court and the Central European University case: Justice Delayed is Justice Denied", *European Constitutional Law Review*, 17.4 (2021), 688–706 <https://doi.org/10.1017/S1574019621000407>

Suharto's power and human rights abuses.²⁷ Butt, Crouch, and Dixon's argument said that the Court's establishment was the culmination of long-held aspirations and decades-long debates in favour of introducing constitutional review in Indonesia. After the 1999-2002 reformation era, the MKRI is one of the state institutions at the forefront of guarding the constitution and building the protection of fundamental rights in a modern judicial system. The court has almost the same functions in various other countries. It is an institution that oversees the constitution, democracy, checks and balances system between government power, and strengthens fundamental rights.

The constitutional complaints mechanism are *Verfassungsbeschwerde* in Germany, *Bescheidbeschwerde* in Austria, and *Alkotmányjogi panasz* in Hungary. In this mechanism, every citizen (not just certain public authorities) has access to this type of proceeding, and the usage of this instrument is far more significant than the other powers²⁸. Subsequently, the analysis of the authority and performance of a constitutional complaint was conducted by answering several matters, such as why an ordinary court decision becomes the object of dispute, arrangement, terms of application, time of completion, legal aid, and time costs incurred.

First, the ordinary court decision is an object dispute. In the Continental European legal system, priority is given to law as a product of legislators instead of "judge-made law". The legal system makes the constitution the supreme law of the land, which contains fundamental human rights values. Consequently, the courts can review legal products by state powers against the constitution. The German, Austrian, and Hungarian legal systems gave individuals and organizations the right to challenge all legal products on the pretext of being contrary to the constitution and the fundamental rights, both laws as legislative products, ordinary court decisions as judicial products, international treaties, European law, and others. Hence, in Germany, the European Courts' decision can be reviewed by the GFCC, and the implications for German citizens' obligation can be canceled and decided to void with the German Basic Law (for example, the Court of Justice of the European Union (CJEU)). It means that there is a guarantee that all legal products from all branches of state institutions may not conflict with the constitution and human rights.

There is a legal reason why the ordinary court decision in Europe became an object of constitutional complaints and why many parties questioned the ordinary court's decision with permanent legal force. The answers are the ordinary courts (civil, criminal, administrative, business law and other) cases decisions contain violations of the constitution and fundamental rights of citizens regulated in the constitution. Hence the ordinary court's decision is the application based on the specifics law (for example, in business law), and the ordinary court Justices do not analyze to decide the dispute based on the point of protection of constitutional rights and constitutional values.

On the other hand, the idea behind the MKRI and judicial review authority is to solve significant problems and improve the dilapidated legal system in Indonesia, the multi-interpretational 1945 Constitution, and many laws that deviate and oppress the people. However, there is a lack of constitutional complaints against court decisions. It is a lagging authority in Indonesia's judicial review system. Based on the results of the Judicial Commission's research, there are still many complaints from justice seekers and the

²⁷ Simon Butt, "Judicial Reasoning and Review in the Indonesian Supreme Court", *Asian Journal of Law and Society*, 6, August 2018 (2019), 67–97 <https://doi.org/10.1017/als.2018.26>

²⁸ Chakim.

community about the quality of Justice decisions, such as unfairness and violation of human rights. The fundamental problem in the courts' decisions is the judicial mafia. Supreme Court Justice 2000 - 2018 Artidjo Alkostar saw that this judicial mafia destroys the legal system and democratizes forms of violation of universal human rights, only the dignity of the judiciary (contempt of Court), creating a situation in the form of public distrust of the law²⁹. Eman Suparman argues: "in fact, a legal case made manipulated, both civil and criminal cases, starting from the process of investigation, prosecution to correctional institutions, until decisions. Ultimately, it is a power game that determines the law, both money and political power.³⁰ In the last case, two Supreme Court Justices Sudrajad Dimiyati and Gazalba Saleh, lawyers, and some Supreme Court staff were arrested by the Corruption Eradication Commission for being involved in a bribery case worth in the litigation process. Judicial mafia transactions in the form of case brokering, case fabrication, bribery, and extortion by law enforcement officials, which impact judicial court decisions, mean insulting human dignity³¹ and fairness of the ordinary courts Justice decisions.

Second, the regulation of constitutional complaints. It was adopted in Germany by the GFCC Act 1951 (Gesetz über das Bundesverfassungsgerichts 16 März 1951) and became the most frequent application from 1951 – now. It was regulated in the Germany Basic Law on the amendment of the Constitution in 1969, Article 93 (1) no. 4a and 4b of the German Basic Law. Several types of object disputes are ordinary court decisions and legislative and executive products. Ordinary courts include civil courts, criminal courts, administrative courts, social courts, labour courts, finance courts, state constitutional courts, disciplinary courts, professional disciplinary tribunals, and patent courts. Hence, the object disputes of legislative and executive products, namely: laws, ordinances (directly), and omissions on the part of the legislator. In addition, other sovereign acts of European Union authorities; the highest German federal, 16 states, and municipal authorities; and other general objects of legal challenges.³²

Before 2008, the ACC did not have constitutional complaint authority against administrative tribunal decisions or other courts, only complaints against an Administrative Authority (until 2013) based on Art. 144 B-VG (case classification B). However, since July 1, 2008, the ACC has had the authority to decide on a complaint against the Asylum Court decision because the decision violates the rights guaranteed by the Austrian constitution (case classification U). In 2012, amendments to the Administrative Court Act (effective January 1, 2014) established a new regime of effective judicial protection in matters relating to public administration. The system of administrative appeals, i.e., the possibility of challenging administrative decisions before a higher administrative authority was moved, and 11 administrative courts were created. The Federal Administrative Court (appeal) can review the administrative court decision, and constitutional complaints can be submitted to the ACC after all legal mechanisms are finished but unsuccessful. Authority of complaints against decisions of the administrative courts based on Art. 144 Austria

²⁹ Artidjo Alkostar, "Masalah Mafia Peradilan dan Penanggulangannya", *Jurnal Hukum IUS QUIA IUSTUM*, 9.21 (2002), 1–8. <https://doi.org/10.20885/iustum.vol9.iss21.art1>

³⁰ Eman Suparman, "Menolak Mafia Peradilan: Menjaga Integritas Hakim-Menyelaraskan Perbuatan dan Naruninya", *Jurnal Hukum & Peradilan*, 47.1 (2017), <http://dx.doi.org/10.21143/jhp.vol47.no1.136>

³¹ Alkostar.

³² Lailam.

Constitution and sections 82 to 88a ACC Act, “filings are made when people who feel that their rights have been violated through an Administrative Court decision can file a lawsuit with the ACC (case classification E).” It amends that the previous articles stipulate that Court decisions are not the object of a constitutional complaint, even though they violate human rights and the constitution. On the other hand, the ACC does not authorize reviewing Civil and Criminal Court decisions.

In Hungary, the constitutional complaint is regulated by Art. 24 (2.d) of the Hungary Constitution "The HCC has a constitutional complaint authority to review the conformity with the Fundamental Law of any judicial decisions.³³ It is three types of proceeding, namely: (i) a person or organization impacted by a specific case may file a constitutional complaint under Article 26 (1) of the ACC if their basic rights have been violated because of the application of unconstitutional legislation and no other legal remedy is available. (ii) there is no judicial ruling, and the infringement of rights granted by the Fundamental Law happens immediately. The legal standard is based on Art.26(2) of the HCC Act. (iii) the type of constitutional complaints the petitioner challenges a judicial decision based on Art.27 of the HCC Act. The judgment is annulled when the court determines that a judicial decision³⁴ violates the Fundamental Law.³⁵

Third, procedural admission. Chapter 15 of the GFCC Act regulates the law enforcement procedure based on Article 90 (1), according to which any person claiming a violation of one of his/her fundamental rights or one of his/her rights under Art 20(4), Art 33, Art 38, Art 101, Art. 103, or Article 104 of the German Basic Law. Art.27 of the HCC Act regulated that persons or organizations affected by judicial decisions contrary to the Fundamental law may submit this mechanism. Art 82(3a) of the ACC Act states that if an administrative court decision violates the constitution and prejudices a fundamental right, an application can be submitted by at least one person. The phrase “person” in GFCC, ACC, and HCC means every physical person or legal person, including citizens and foreigners. For example, applicants from Bangladesh and Nepal lodged climate change cases in the GFCC.

The constitutional complaints must be submitted in German texts in Germany and Austrian, the Magyar language in Hungaria. At the very least, the reasons must include the following information: (a) the applicant considers that the ordinary court’s decision is contrary to the constitution and detrimental to fundamental rights, and legal remedy has already been exhausted by the petitioner, or no possibility for legal remedy is available for him/her; (b) the ordinary court decision or other contested acts and other dispute of constitutional complaint challenges must be precisely specified (time and date, file of cases) and submitted with the application; (c) the fundamental rights or equivalent rights allegedly violated by the challenged act of public authority must be clear or at least specified in terms of its legal content, as must the reasons for the dispute’s petitions, including an explanation of why the object of the dispute violates fundamental rights; (d) other documents from the initial proceedings (e.g., relevant briefs, minutes of hearings,

³³ Zoltán Szente, "The Political Orientation of the Members of the Hungarian Constitutional Court between 2010 and 2014", *Constitutional Studies*, 1.1 (2016), 123–49 <https://constitutionalstudies.wisc.edu/index.php/cs/article/view/8>

³⁴ Mária Éva Földes, "The Role of Constitutional Courts in Promoting Healthcare Equity: Lessons from Hungary", *Constitutional Review*, 6.2 (2020), 282 <https://doi.org/10.31078/consrev624>

³⁵ Pablo Castillo-Ortiz, "The illiberal abuse of constitutional courts in Europe", *European Constitutional Law Review*, 15.1 (2019), 48–72 <https://doi.org/10.1017/S1574019619000026>

expert opinions) must be submitted in addition to the challenging decisions; (e) if the constitutional complaint challenges court or administrative decisions, the stated reasons must show that all legal remedies and complaints applications have been exhausted before the regular Courts to avert the claimed fundamental rights violation; (f) briefs and other documents submitted to the courts become part of the court files; thus, they are generally not returned; and (g) most complaints are without the aid of a lawyer or professor of law at a University (Germany, Hungary) or by a lawyer (Austria).

Fourth, the hearing and decision. In GFCC, based on Art 93d (1), trials on the constitutional complaint mechanism are carried out "without an oral hearing" and cannot be appealed. The decisions are called "orders," not judgments. Hence, the trial in the ACC can be held by oral hearing by inviting the disputing parties (Art.19(1)) but can also make decisions in closed sessions without oral hearings (Art.19(4)). On the other hand, in the HCC, according to the provisions of Art.57 of the HCC Act, the constitutional court may invite the parties, the applicant (obligation to attend), state organs (government, legislature), and public institutions, European Union or international organs, ordinary courts/other courts, experts. Decisions on the GFCC, the ACC, and the HCC are final and binding and cannot be appealed to any court. Its nature is *Erga Omnes*, which is binding on the parties and the public.

Fifth, legal aid, the charge fee, and the processing time of law enforcement. The GFCC and HCC have a similarity regulating no obligation for a lawyer in application and meeting (specifically oral hearing).³⁶ Art 22 of the GFCC Act regulates that the applicants can be represented by a lawyer or professor of law at a German university or Member State of the European Union universities, especially in the oral hearing process. However, the GFCC can be decided without oral hearing in this mechanism. Austria has different regulations, file preparation, application, and meeting by a lawyer (Art 17 (2) of the ACC Act). Hence, in the GFCC, based on the Art.34 of the GFCC Act, this application shall be free of charge. Similarly, in the HCC Act 2011, specifically Art. 54 (1), proceedings are free of charge. On the other hand, in Austria, the constitutional complaint application will be charged, based on the Art.17a ACC Act payable for requests which amount to 240 Euros. The related time process of law enforcement in GFCC is just one month. In the ACC, it takes six weeks, and in the HCC takes 60 days.

3.2. Comparative Framework and Analysis Constitutional Complaints in Judicial Review

In the GFCC, ACC, and HCC, constitutional complaints against court decisions are the most popular legal mechanisms and are widely used to seek constitutional rights that have been violated. The following details a comparison of cases of constitutional complaints with objects of court decisions and other objects:

Table 1.

Total Object Disputes of the Constitutional Complaints

No.	Object Disputes	The GFCC		The ACC		The HCC	
		2020	2021	2020	2021	2020	2021
1.	Ordinary courts decisions	4.462	4.016	4.590	4,588	1074	1102
2.	Act and other objects	732	1043	88	26	119	217

Sources: *Bundesverfassungsgericht* reports of 2020 and 2021, *Verfassungsgerichtshof* reports of 2020 and 2021, and *Alkotmánybíróság* reports of 2020 and 2021

³⁶ Váradi.

The number of cases above shows that the complaints mechanism against ordinary court decisions is a popular mechanism that individual applicants widely use to fight for constitutional rights guaranteed by the constitution. Based on data for 2020 and 2021, the ACC and GFCC decided on many cases, with an average of 4000 cases from more than 6000 applications, but some application was dismissed before trial. In the HCC, more than 1000 cases per year. In Germany, the GFCC gave many requests for translations of decisions in English, French, and other languages. It is the most powerful constitutional Court in the world and the most original institution in the German legal system. Meanwhile, Andreas Voßkuhle (President of GFCC 2010-2020) stated that: “over the last few decades, interest in the study of GFCC jurisprudence has increased rapidly among academics and political actors from many countries (a Continental of Europe and Anglo-Saxon legal traditions).³⁷ Since 2020, it has been reported that the successful proceeding rate of constitutional applications is very low. Below is a table of successful applications in 2020 and 2021 according to the distribution of the GFCC objects of ordinary court decisions:

Table.2
Successful Complaints in 2020 and 2021

No	Constitutional Complaint decisions	2020		2021	
		Proceedings	Successful	Proceedings	Successful
1.	Civil Courts	1.702	27	1.645	17
2.	Criminal Courts	1.215	35	1.141	29
3.	Administrative Courts	810	20	613	11
4.	Social Courts	426	6	344	1
5.	Labour Courts	127	3	95	0
6.	Finance Courts	131	0	112	1
7.	State Constitutional Courts	34	0	42	0
8.	Disciplinary Court, professional disciplinary tribunals	15	1	20	0
9.	Patent Courts	2	0	4	0
Total/ Procentage		4.462 (100%)	92 (2,06%)	4.016 (100%)	59 (1,46%)

Based on the data of 2020 successful applications, 92 cases (2,06%) from the total number of applications of the ordinary court decision. Also, in 2021 the successful applications were 59 cases (1,46%) from total cases of 4.016 (100%). Many applications failed because of the applicant's unclear legal arguments, why the object dispute violated the constitution and the fundamental rights of citizens. Another reason is, of course, making the draft application very easy and not asking for help from a lawyer or professor of law who is an expert in the field of legal disputes at the GFCC. Most complaints fail either because they do not substantiate a violation of a fundamental right or because they do not meet the strict subsidiarity requirements. Regarding the successful applications in the ACC and HCC, in the annual reports no detailed information on how many applications were successful.

The interest of this study is mainly in decisions characterized by landmark decisions or decisions that have implications for the wider community (e.g., Europe). It establishes new precedents that establish an important new legal principle or concept or changes the interpretation of existing law. A landmark decision changes an entire area of the law

³⁷ Andreas Voßkuhle, "Foreword by The President of The German Constitutional Court", Jürgen Bröhmer, *Landmark Decisions of the Federal Constitutional Court of Germany in the Area of Fundamental Rights* (Germany, Konrad-Adenauer-Stiftung, 2017); www.kas.de

during a period of legal importance, usually settling a significant matter and decision. It creates an essential new legal principle, concept, or constitutional interpretation that affects the existing law and legal system³⁸. In judicial practice in Austria, Germany, and Hungary, there are interesting cases to study in 2020-2021.

In Germany, these cases on the European Central Bank (ECB) asset or Public Sector Purchase Program (hereinafter the PSPP case), its judgement No.2 BvR 859/15 inter alia) and asylum proceedings case (decision No. 2 BvR 890/20). *First*, the PSPP case. The GFCC delivered a landmark ruling on May 5, 2020, of constitutional significance with implications for the specific policy areas concerned and in the wider context of Member States' cooperation in the European Union (EU) and European integration, including European Monetary Union.³⁹ The constitutional complaint related to the Court of Justice of the European Union (CJEU) decision⁴⁰ on December 11, 2018 (Weiss and Others, C-493/17). For the first time, it held that a measure of a European Union institution is not in line (unconstitutional) with the European order of competencies and thus not binding on Germany. It decided that the Bundesbank (German Central Bank) may no longer participate in bond purchases or increase the monthly purchase pace after a transitional period of no more than three months unless the ECB Governing Council demonstrates that the PSPP satisfies the principle of proportionality. The PSPP was inconsistent with case law and with Article 5 TEU – Balancing-stage of proportionality unsuitable for motive control⁴¹. The PSPP controversial decision⁴² sent shock waves⁴³ and negative reactions⁴⁴ throughout the European Union (inside and outside Germany) and set “a bomb under the EU legal order”⁴⁵, and gave impacted risks destabilizing judicial dialogue.

The GFCC's main critique is the lack of an EU law proportionality assessment concerning the ECB's PSPP. Before assessing this ECB action, the GFCC first had to get the contrary CJEU judgment out of the way⁴⁶. Its judgment may be seen as a thorn in the eyes of the Court of Justice and the EU as a whole, but if responded to adequately could

³⁸ Faiz.

³⁹ Andrew James Perkins, "The Legal and Economic Questions posed by the German Constitutional Court's decision in the Public Sector Purchase Programme (PSPP) Case", *Athens Journal of Law*, 7.3 (2021), 399–412 <https://doi.org/10.30958/ajl.7-3-7>

⁴⁰ Georgios Anagnostaras, "Activating Ultra Vires Review: The German Federal Constitutional Court Decides Weiss", *European Papers - A Journal on Law and Integration*, 6.1 (2021), 801–29 <https://doi.org/10.15166/2499-8249/488>

⁴¹ Niels Petersen & Konstantin Chatziathanasiou, "Balancing competences? Proportionality as an instrument to regulate the exercise of competences after the PSPP judgment of the Bundesverfassungsgericht", *European Constitutional Law Review*, 17.2 (2021), 314–34 <https://doi.org/10.1017/S1574019621000201>

⁴² Lars P Feld & Volker Wieland, "The German Federal Constitutional Court Ruling and the European Central Bank's Strategy", *Journal of Financial Regulation*, 7.2 (2021), 217–53 <https://doi.org/10.1093/jfr/fjab006>

⁴³ Niels Petersen, "Karlsruhe's Lochner moment? A rational choice perspective on the German federal constitutional court's relationship to the CJEU after the PSPP decision", *German Law Journal*, 21.5 (2020), 995–1005 <https://doi.org/10.1017/glj.2020.54>

⁴⁴ Matthias Goldmann, "The European economic constitution after the PSPP judgment: Towards integrative liberalism?", *German Law Journal*, 21.5 (2020), 1058–77 <https://doi.org/10.1017/glj.2020.64>

⁴⁵ Dieter Grimm, "A long time coming", *German Law Journal*, 21.5 (2020), 944–49 <https://doi.org/10.1017/glj.2020.55>

⁴⁶ Franz C. Mayer, "To boldly go where no court has gone before. The German federal constitutional court's ultra vires decision of May 5, 2020", *German Law Journal*, 21.5 (2020), 1023–31 <https://doi.org/10.1017/glj.2020.58>

help to reform these weaknesses of the EU constitutional legal order for the better.⁴⁷ It has an obligation and responsibility to “continuously monitor the execution of the European integration agenda” (Integrations program) for violations by the EU institutions and a violation of the individual right to democracy⁴⁸. It consistently developed a doctrinal tool to guide its role as guardian of the national constitutional order and the democratic principle. It is enforced when constitutional control of monetary policy measures is required⁴⁹.

The second case is the asylum proceedings case. The GFCC decision No. 2 BvR 890/20, it decided by the First Chamber of the Second Senate. This case is about a complaint from an Afghanistan immigrant in Germany; this case began the provocative poster of the National Democratic Party "Stop the invasion: Migration kills! Resist now". Based on the provocative poster, the complainant filed a lawsuit to the Giessen Administrative Court, a request to interpret the poster's intent. The result was rejected, and the ordinary courts Justices stated that the poster's wording was partly an accurate representation of reality. Hence, the complainant applies a constitutional complaint to the GFCC. As a result, on July 1, 2021, the GFCC decided that void the Giessen Administrative Court decision of April 29, 2020 - 4 K 2860/17.GIA violates the complainant's right under Article 101, paragraph 1, sentence 2 of the Basic Law, which is equivalent to a fundamental right. The state of Hesse must reimburse the complainant for his necessary expenses for the constitutional complaint proceedings.

In 2021, the ACC decided on several interesting cases, namely: *First*, the access to information case. The ACC decided on a constitutional complaint issue related to the right to access information (Judgment of March 4, 2021, E 4037/2020) without an oral hearing, submitted by an individual accompanied by the Korn Law Office (*Korn Rechtsanwälte*), which questioned the Federal Administrative Court decision (case number Z W274 2227645-1/3E) on October 1, 2020. This case concerns conflicts of information confidentiality and disclosure – access to information on the continuation of remuneration payments to former Austrian Members of the National Council. The Law on the Obligation to Provide Information (*Auskunftspflichtgesetz*) provides the possibility of weighing these interests, as appropriate, and achieving an appropriate balance of positions on the fundamental rights involved.

Undoubtedly, the activities of Members of the National Council, including their remuneration, are of sufficient interest to the public. Former elected officials who have no income are entitled to further remuneration payments. The Federal Administrative Court ruled that the matter was part of the confidentiality of information, so access to the continuation of remuneration payments was not allowed. However, the ACC then decided that what was decided by the Federal Court was contrary to the constitution, and the European Convention of Human Rights Art. 10 explains that the state is not obliged to provide information or guarantee access to information. However, in this case, the criteria

⁴⁷ Annegret Engel, Julian Nowag, & Xavier Groussot, "Is This Completely M.A.D.? Three Views on the Ruling of the German FCC on 5th May 2020", *SSRN Electronic Journal*, May, 2020 <https://doi.org/10.2139/ssrn.3650180>

⁴⁸ Isabel Feichtner, "The German constitutional court's PSPP judgment: Impediment and impetus for the democratization of Europe", *German Law Journal*, 21.5 (2020), 1090–1103 <https://doi.org/10.1017/glj.2020.60>

⁴⁹ Teresa Violante, "Bring back the politics: The PspP ruling in its institutional context", *German Law Journal*, 21.5 (2020), 1045–57 <https://doi.org/10.1017/glj.2020.63>

for the right to information must be met by the state to guarantee the interest of public transparency, and the court decision is contrary to the principle of proportionality.

Second, the UE citizen in the Austrian case. The ACC decided case No. E 2546/2020-27 on June 22, 2021, regarding international protection for an EU Citizen in Austria without an oral hearing. The complainant is an individual from the Republic of Lithuania, represented by Anton Fischer and Clemens Lahner, Attorney at the Law office. It is against the ordinary court decision by the Federal Administrative Court of June 16, 2020, ZG311 2221582-1/9E is rejected on an asylum application. The ACC upheld the Court's decision because Lithuania has been part of the EU countries since May 1, 2004, and is safe. In Hungary, *first*, practices of religion case. The HCC decision 3049/2020 related to the constitutional complaint against judgment No.23.Szk.11.933/2018/5 of the Miskolc District Court, which questions the conflict between the breach of peace versus the practice of religion. In its decision, the HCC rejected the request because freedom of religion may not violate the comfort and peace of society. In customs and traditions of civilization, it is recognized that carrying religious practices out loud affects the sacredness of worship and is permissible. However, in this case, it caused the right to public convenience to be disrupted, so the HCC stated that the court decision was constitutional. *Second*, in 2021, the HCC resolved case No.3067/2021, which questioned the complaint against the ruling No.12.Pkf.20.301/2020/3 of the Szekszárd Regional Court and the ruling No.5.Pk.50.023/2020 of the Paks District Court on implementation of keeping contacts. In its decision, HCC stated that the decisions of the two courts were contrary to the principle of proportionality. The applicant is a father whose right to a fair trial and to have a family and stay in touch have been violated due to the application of the Law during the Covid-19 pandemic.

3.3. The Model of Constitutional Complaints Regulation in Judicial Review

The ACC and GFCC are referred to Adhoc Committee of the People's Consultative Assembly (*Panitia Adhoc Badan Pekerja Majelis Permusyawaratan Rakyat*) when the idea of establishing the MKRI model with the dramatic change⁵⁰ in the reformation era. The best practices of the GFCC can give good learning to the MKRI. It had chosen as a comparison for several reasons: (1) constitutional complaints are a component of a judicial review, which Indonesia, Germany, Austria, and Hungary follow in the same model of court and civil law traditions; (2) The GFCC authorities was mentioned and discussed during the meetings when the idea of establishing the MKRI⁵¹. The problem is why the 1945 Constitution drafters did not give constitutional complaint authority to MKRI, whereas if the Adhoc Committee refers to the GFCC, it should adopt the authority of constitutional complaints because it in Germany and Austria has enormous implications for the protection of citizens' constitutional rights. Based on Friedman's theory, the key components of the legal order are legal substance (rules), legal procedures (way of settlement disputes), legal structures (courts), and legal culture (attitudes).⁵²

⁵⁰ Wen Chen Chang, "Asian exceptionalism? Reflections on "Judicial review in the contemporary world": Afterword to the foreword by Doreen Lustig and J. H. H. Weiler", *International Journal of Constitutional Law*, 17.1 (2019), 31–39 <https://doi.org/10.1093/icon/moz023>

⁵¹ I Dewa Gede Palguna, "Constitutional Complaint and the Protection of Citizens the Constitutional Rights", *Constitutional Review*, 3.1 (2017), 1 <https://doi.org/10.31078/consrev311>

⁵² Lawrence M. Friedman, "Coming of Age: Law and Society Enters an Exclusive Club", *Annual Review of Law and Social Science*, 1.1 (2005), 1–16 <https://doi.org/10.1146/annurev.lawsocsci.1.041604.115951>

Similar opinion from the Indonesian scholar I Gusti Ayu Ketut Rachmi Handayani, three elements of the Indonesian legal system legal structure (law enforcement institutions), legal substance includes rules and legal norms (legislative acts and court's decision); and legal culture is a human attitude toward the law and legal system, beliefs, judgments, and expectations of the legal community.⁵³ Explain below *First*, a legal substance. Based on the German legal policy experience, the constitutional complaint authority added by the GFCC Act 1951 operated from 1951 - 1969 (18 years) without constitutional problems. Subsequently, it was changed later in a 1969 amendment of the Basic Law on May 23, 1949. On the other hand, the addition of constitutional complaint authority against administrative court decisions in Austria after 94 years since the ACC was established (1920-2014). Suppose referring to the two countries, the legal policy in the MKRI by revising the MKRI Act 24/2003. Hence, this authority is regulated in the 1945 constitution at the amendment constitution momentum. House of Representatives (Dewan Perwakilan Rakyat), President, and Constitutional Justices must have the same awareness, paradigm, and constitutional commitment. However, its authority aims to strengthen the protection of citizens' fundamental rights, strengthen the values of constitutionalism and democracy, strengthen the checks and balances system, and realise good and clean governance.

Second, legal procedure. Second, legal procedure. It is related to dispute resolution, what objects can be submitted, and whether there are any appeals against this legal mechanism. Based on the experiences of Germany, Austria and Hungary, the objects of dispute include the interpretation of the Constitution and laws which give rise to differences (text and content are not connected); decisions of general courts (criminal and civil, administrative courts, and others); application of international agreements that are different from national law.

Third, legal structure. It relates to which judiciary can mandate constitutional complaints with thousands of cases annually. In Indonesia, there are academics debate related to it. Former Constitutional Justice Hamdan Zoelva stated that the MKRI is not the only institution that can review it because if it's a problem, the "law" has been accommodated with the authority of abstract judicial review. Hence, if the subject matter is government policy that violates the law (*onreghmatig overheidsdaad*) and provisions under the law, it can be processed in the general court, which leads to the Indonesian Supreme Court. Also, if the subject matter is an administrative case, the claim can be submitted to the Administrative Court. This opinion is not correct because the MKRI has several times refused to include the understanding of constitutional complaints within the scope of abstract judicial review, namely Victor Santoso (2019)⁵⁴ and Simanjuntak applications (2022).⁵⁵ In addition, in the European legal policy model, the object of disputes under this authority that are often submitted to constitutional courts in Europe are court decisions that violate human rights, including decisions of the Supreme Court and administrative courts.

⁵³ I Gusti Ayu Ketut Rachmi Handayani, "The Influence of Structure, Substance and Culture to the Forest of Law Enforcement in Indonesia", *International Journal of Business, Economics and Law*, 1 (2012), 104–7. <https://www.ijbel.com/wp-content/uploads/2014/06/The-Influence-Of-Structure-Substance-And-Culture-To-The-Forest-Law-Enforcement-In-Indonesia-Dr.-I-Gusti-Ayu-Ketut-Rachmi-Handayani.pdf>

⁵⁴ MKRI decision No. 28/PUU-XVII/2019 Reviewing Law No.48/ 2009 on Judicial Power

⁵⁵ MKRI decision No.103/PUU-XX/2022 Reviewing Law No.7/ 2020 on Third revision of the MKRI Law No.24/2003

In Germany, Austria, and Hungary is Constitutional Court. It is the right institution to resolve constitutional complaints against ordinary court decisions, its position as the guardian of the Constitution, and the guardian of the fundamental rights of citizens. The constitutional courts are seen as authoritative and powerful in the European model. Ordinary courts Justices are bound to the decisions of the constitutional courts. Moreover, members of the legislature whose products (laws) are tested and annulled at the constitutional courts feel that they have lost their ability to draw up a legislative system.

Fourth, legal culture. The legal culture in Germany and Austria is very strong, and legal policies in the form of laws always solve human rights problems. All state powers, the president and the federal government, the legislature, the senate, and the judiciary are subject to the provisions of constitutional complaints regulated in the Act. A strong legislative culture supports the practice in Germany and Austria in this legislative system, and the laws formed by parliament aim to build a good constitutional civilisation. In addition, the legislators are responsible for forming good Acts in the legislative culture. If the Acts are contrary to the 1945 Constitution, legislators feel their self-esteem and shame fall. Besides that, the public considers them to have no credibility and intellectuality as representatives of the people. Also, legislators safeguard the Constitution in the tradition of civil law systems such as Germany and Austria.

The legal policy of constitutional complaints against ordinary court decisions in Europe must adapt to the legal policy needs of the Indonesian judicial review system. The three European models of constitutional courts can be used as a reference for the strengths and weaknesses of each judiciary. However, Germany's constitutional complaints model is better than Austria's and Hungary's. It has excellences are all ordinary court decisions become objects of disputes; decisions are final and binding; this application can be submitted by individuals (ordinary people), organisations, and the lawyers or professors of law in the oral hearing; the process only takes one month and is free of charge; the process of trial with or without an oral hearing. In addition, it has received international recognition regarding its role and has become the best model in the world, primarily for protecting fundamental rights. It is one of the most powerful and admired courts globally. Many foreign countries have been inspired by the Basic Law and the court's jurisprudential innovations. It has even defined the positive counter-model to the United States Supreme Court,⁵⁶ confrontational with European Union (EU) law,⁵⁷ and the most advanced and established constitutional court system. It is a strong judicial actor at the national and European levels, and several decisions made EU law into a benchmark⁵⁸ or set aside⁵⁹ the role of the CJEU in protecting European human rights level.⁶⁰ President of GFCC 2010-

⁵⁶ Michaela Hailbronner, "Rethinking the rise of the German Constitutional Court: From anti-Nazism to value formalism", *International Journal of Constitutional Law*, 12.3 (2014), 626–49 <https://doi.org/10.1093/icon/mou047>

⁵⁷ Tímea Drinóczi, "Constitutional identity in Europe: The identity of the constitution. A regional approach", *German Law Journal*, 21.2 (2020), 105–30 <https://doi.org/10.1017/glj.2020.1>

⁵⁸ Matej Avbelj, "The Federal Constitutional Court Rules for a Bright Future of Constitutional Pluralism", *German Law Journal*, 21.S1 (2020), 27–30 <https://doi.org/10.1017/glj.2020.13>

⁵⁹ Dana Burchardt, "Backlash against the Court of Justice of the EU? The Recent Jurisprudence of the German Constitutional Court on EU Fundamental Rights as a Standard of Review", *German Law Journal*, 21.S1 (2020), 1–18 <https://doi.org/10.1017/glj.2020.16>

⁶⁰ Paul Friedl, "A New European Fundamental Rights Court: The German Constitutional Court on the Right to Be Forgotten; A New European Fundamental Rights Court: The German Constitutional Court on the Right

2020 Andreas Voßkuhle opinion that the GFCC is a mediator between the German Basic Law and the European legal system.⁶¹ The German model is an ideal reference for Indonesia. It can be followed in the proposal of constitutional complaints against the ordinary court's decision for the judicial review system in the MKRI.

4. Conclusion

The legal policy of constitutional complaints in judicial review compares the European model (Germany, Austria, Hungary) and Indonesia. These four countries have a constitutional court with a centralized court system and judicial review in common, but the MKRI lack constitutional complaint power. This legal mechanism is the most popular medium to violate fundamental rights violations by the government or ordinary/administrative courts in the GFCC, ACC, and HCC. Thousands of cases resolved each annually bring major changes to the efforts to protect constitutional rights carried out by the constitutional courts, especially the GFCC, which has received much recognition as a model constitutional court from the countries of the Continental European and Anglo-Saxon system. The GFCC constitutional complaints model is better than Austria's and Hungary's. Its excellence is (i) all ordinary court decisions as an object of dispute, (ii) the ordinary court decisions are final and binding, and there are no further legal remedies, (iii) individuals and organizations can submit this application and legal aid by the Lawyer or Professor of Law in the oral hearing, (iv) the law enforcement process only takes one month and is free of charge, and (v) process of trial with or without an oral hearing. For submitting constitutional complaint proposals against decisions at the MKRI, ideally through amendments to the 1945 Constitution, but if referring to the German and Austrian experiences, it was first granted through amendments to the MKRI Act. However, this policy requires the support of a good political culture in the legislation process and adherence to the constitution.

References

- Abat Ninet, Antoni, "Kelsen versus Schmitt and the Role of the Sub-National Entities and Minorities in the Appointment of Constitutional Judges in Continental Systems", *ICL Journal*, 14.4 (2021), 523–43 <https://doi.org/10.1515/icl-2020-0015>
- Alkostar, Artidjo, "Masalah Mafia Peradilan dan Penanggulangannya", *Jurnal Hukum IUS QUIA IUSTUM*, 9.21 (2002), 1–8 <https://doi.org/10.20885/iustum.vol9.iss21.art1>
- Anagnostaras, Georgios, "Activating Ultra Vires Review: The German Federal Constitutional Court Decides Weiss", *European Papers - A Journal on Law and Integration*, 6.1 (2021), 801–29 <https://doi.org/10.15166/2499-8249/488>
- Avbelj, Matej, "The Federal Constitutional Court Rules for a Bright Future of Constitutional Pluralism", *German Law Journal*, 21.S1 (2020), 27–30 <https://doi.org/10.1017/glj.2020.13>
- Bassok, Or, "The Schmitelsen court: The question of legitimacy", *German Law Journal*, 21.2 (2020), 131–62 <https://doi.org/10.1017/glj.2020.2>

to Be Forgotten", *European Papers* www.europeanpapers.eu ISSN, 5.1 (2020), 447–60 <https://doi.org/10.15166/2499-8249/343>

⁶¹ Andreas Voßkuhle, "Multilevel cooperation of the European constitutional courts: Der europäische verfassungsgerichtsverbund", *European Constitutional Law Review*, 6.2 (2010), 175–98 <https://doi.org/10.1017/S1574019610200020>

- Bröhmer, Jürgen, *Landmark Decisions of the Federal Constitutional Court of Germany in the Area of Fundamental Rights* (Germany, Konrad-Adenauer-Stiftung, 2017) www.kas.de
- Brouard, Sylvain, & Christoph Hönnige, "Constitutional courts as veto players: Lessons from the United States, France and Germany", *European Journal of Political Research*, 56.3 (2017), 529–52 <https://doi.org/10.1111/1475-6765.12192>
- Burchardt, Dana, "Backlash against the Court of Justice of the EU? The Recent Jurisprudence of the German Constitutional Court on EU Fundamental Rights as a Standard of Review", *German Law Journal*, 21.S1 (2020), 1–18 <https://doi.org/10.1017/glj.2020.16>
- Butt, Simon, "Judicial Reasoning and Review in the Indonesian Supreme Court", *Asian Journal of Law and Society*, 6.August 2018 (2019), 67–97 <https://doi.org/10.1017/als.2018.26>
- Castillo-Ortiz, Pablo, "The illiberal abuse of constitutional courts in Europe", *European Constitutional Law Review*, 15.1 (2019), 48–72 <https://doi.org/10.1017/S1574019619000026>
- Chakim, M. Lutfi, "A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions", *Constitutional Review*, 5.1 (2019), 096 <https://doi.org/10.31078/consrev514>
- Chang, Wen Chen, "Asian exceptionalism? Reflections on “Judicial review in the contemporary world”: Afterword to the foreword by Doreen Lustig and J. H. H. Weiler", *International Journal of Constitutional Law*, 17.1 (2019), 31–39 <https://doi.org/10.1093/icon/moz023>
- Chronowski, Nóra, & Attila Vincze, "The Hungarian Constitutional Court and the Central European University case: Justice Delayed is Justice Denied", *European Constitutional Law Review*, 17.4 (2021), 688–706 <https://doi.org/10.1017/S1574019621000407>
- Drinóczi, Tímea, "Constitutional identity in Europe: The identity of the constitution. A regional approach", *German Law Journal*, 21.2 (2020), 105–30 <https://doi.org/10.1017/glj.2020.1>
- Enders, Christoph, "Social and Economic Rights in the German Basic Law? An Analysis with Respect to Jurisprudence of the Federal Constitutional Court", *Constitutional Review*, 6.2 (2020), 190 <https://doi.org/10.31078/consrev621>
- Engel, Annegret, Julian Nowag, & Xavier Groussot, "Is This Completely M.A.D.? Three Views on the Ruling of the German FCC on 5th May 2020", *SSRN Electronic Journal*, May, 2020 <https://doi.org/10.2139/ssrn.3650180>
- Éva Földes, Mária, "The Role of Constitutional Courts in Promoting Healthcare Equity: Lessons from Hungary", *Constitutional Review*, 6.2 (2020), 282 <https://doi.org/10.31078/consrev624>
- Faiz, Pan Mohamad, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court", *Constitutional Review*, 2.1 (2016), 103 <https://doi.org/10.31078/consrev215>

- Feichtner, Isabel, "The German constitutional court's PSPP judgment: Impediment and impetus for the democratization of Europe", *German Law Journal*, 21.5 (2020), 1090–1103 <https://doi.org/10.1017/glj.2020.60>
- Feld, Lars P, & Volker Wieland, "The German Federal Constitutional Court Ruling and the European Central Bank's Strategy", *Journal of Financial Regulation*, 7.2 (2021), 217–53 <https://doi.org/10.1093/jfr/fjab006>
- Friedl, Paul, "A New European Fundamental Rights Court: The German Constitutional Court on the Right to Be Forgotten ", *European Papers* www.europeanpapers.eu ISSN, 5.1 (2020), 447–60 <https://doi.org/10.15166/2499-8249/343>
- Friedman, Lawrence M., "Coming of Age: Law and Society Enters an Exclusive Club", *Annual Review of Law and Social Science*, 1.1 (2005), 1–16 <https://doi.org/10.1146/annurev.lawsocsci.1.041604.115951>
- Gerards, Janneke, "Abstract and Concrete Reasonableness Review by the European Court of Human Rights", *European Convention on Human Rights Law Review*, 1.2 (2020), 218–47 <https://doi.org/10.1163/26663236-bja10005>
- Giltaij, Jacob, "Hermann Kantorowicz and Hans Kelsen: from debating legal sociology to constructing an international legal order", *History of European Ideas*, 48.1 (2022), 112–28 <https://doi.org/10.1080/01916599.2021.1898438>
- Goldmann, Matthias, "The European economic constitution after the PSPP judgment: Towards integrative liberalism?", *German Law Journal*, 21.5 (2020), 1058–77 <https://doi.org/10.1017/glj.2020.64>
- Grimm, Dieter, "A long time coming", *German Law Journal*, 21.5 (2020), 944–49 <https://doi.org/10.1017/glj.2020.55>
- Grimm, Dieter, "The role of fundamental rights after sixty-five years of constitutional jurisprudence in Germany", *International Journal of Constitutional Law*, 13.1 (2015), 9–29 <https://doi.org/10.1093/icon/mov005>
- Hailbronner, Michaela, "Rethinking the rise of the German Constitutional Court: From anti-Nazism to value formalism", *International Journal of Constitutional Law*, 12.3 (2014), 626–49 <https://doi.org/10.1093/icon/mou047>
- Hein, Michael, "Do constitutional entrenchment clauses matter? Constitutional review of constitutional amendments in Europe", *International Journal of Constitutional Law*, 18.1 (2020), 78–110 <https://doi.org/10.1093/icon/moaa002>
- Hinghofer-szalkay, Stephan G, Stephan G Hinghofer-szalkay Post-doctoral, 3 Karl-franzens-universität Graz, "The Austrian Constitutional Court : Kelsen ' s Creation and Federalism ' s Contribution ? 2 . Federalism in Austria : Key principles and their role in the rise of constitutional adjudication", 17 (2017), 1–17 <https://doi.org/10.25518/1374-3864.1671>
- Kommers, Donald P., "German Constitutionalism: A Prolegomenon", *German Law Journal*, 20.4 (2019), 534–56 <https://doi.org/10.1017/glj.2019.46>
- Kommers, Donald P, "The Basic Law: A Fifty Year Assessment", *German Law Journal*, 20.4 (2019), 571–82 <https://doi.org/10.1017/glj.2019.48>
- Küpper, Herbert, "The Indonesian constitution read with German eyes", *Constitutional*

- Review*, 7.1 (2021), 53–91 <https://doi.org/10.31078/consrev713>
- Lailam, Tanto, "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional (The Role of the German Federal Constitutional Court in Protecting of Fundamental Rights based on the Constitutional Complaint", *Jurnal HAM*, 13.1 (2022), 65–80. <http://dx.doi.org/10.30641/ham.2022.13.65-80>
- Lailam, Tanto, Putri Anggia, & Irwansyah Irwansyah, "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court", *Jurnal Konstitusi*, 19.3 (2022), 693 <https://doi.org/10.31078/jk1939>
- Mayer, Franz C., "To boldly go where no court has gone before. The German federal constitutional court's ultra vires decision of May 5, 2020", *German Law Journal*, 21.5 (2020), 1023–31 <https://doi.org/10.1017/glj.2020.58>
- Mendez, Mario, "Constitutional review of treaties: Lessons for comparative constitutional design and practice", *International Journal of Constitutional Law*, 15.1 (2017), 84–109 <https://doi.org/10.1093/icon/mox004>
- Nussberger, Angelika, The European Court of Human Rights and the German Federal Constitutional Court1, access on https://www.cak.cz/assets/pro-advokaty/mezinarodni-vztahy/the-echr-and-the-german-constitutional-court_angelika-nussberger.pdf
- Olechowski, Thomas, "Hans Kelsen und die Bundesverfassung", *Austrian Law Journal* (2022), 28–38 <https://doi.org/10.25364/01.9>
- Omara, Andy, "Enforcing Nonjusticiable Rights In Indonesia", *Constitutional Review*, 6.2 (2020), 311 <https://doi.org/10.31078/consrev625>
- Palguna, I Dewa Gede, "Constitutional Complaint and the Protection of Citizens the Constitutional Rights", *Constitutional Review*, 3.1 (2017), 1 <https://doi.org/10.31078/consrev311>
- Perkins, Andrew James, "The Legal and Economic Questions posed by the German Constitutional Court's decision in the Public Sector Purchase Programme (PSPP) Case", *Athens Journal of Law*, 7.3 (2021), 399–412 <https://doi.org/10.30958/ajl.7-3-7>
- Petersen, Niels, "Karlsruhe's Lochner moment? A rational choice perspective on the German federal constitutional court's relationship to the CJEU after the PSPP decision", *German Law Journal*, 21.5 (2020), 995–1005 <https://doi.org/10.1017/glj.2020.54>
- Petersen, Niels, & Konstantin Chatziathanasiou, "Balancing competences? Proportionality as an instrument to regulate the exercise of competences after the PSPP judgment of the Bundesverfassungsgericht", *European Constitutional Law Review*, 17.2 (2021), 314–34 <https://doi.org/10.1017/S1574019621000201>
- Rachmi Handayani, I Gusti Ayu Ketut., "The Influence of Structure, Substance and Culture to the Forest of Law Enforcement in Indonesia", *International Journal of Business, Economics and Law*, 1 (2012), 104–7. <https://www.ijbel.com/wp-content/uploads/2014/06/The-Influence-Of-Structure-Substance-And-Culture-To-The-Forest-Law-Enforcement-In-Indonesia-Dr.-I-Gusti-Ayu-Ketut-Rachmi-Handayani.pdf>

- Safa'at, Muchamad Ali, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations", *Constitutional Review*, 8.1 (2022), 113–50 <https://doi.org/10.31078/consrev815>
- Suparman, Eman "Menolak Mafia Peradilan: Menjaga Integritas Hakim-Menyelaraskan Perbuatan dan Naruninya", *Jurnal Hukum & Peradilan*, 47.1 (2017), <http://dx.doi.org/10.21143/jhp.vol47.no1.136>
- Szente, Zoltán, "The Political Orientation of the Members of the Hungarian Constitutional Court between 2010 and 2014", *Constitutional Studies*, 1.1 (2016), 123–49 <https://constitutionalstudies.wisc.edu/index.php/cs/article/view/8>
- Thierse, Stefan, "Lifting the veil of secrecy—dissenting opinions in the subnational constitutional courts of Germany", *Regional and Federal Studies*, 0.0 (2022), 1–25 <https://doi.org/10.1080/13597566.2022.2098723>
- Vanberg, Georg, "Constitutional Courts in Comparative Perspective: A Theoretical Assessment." *Annual Review of Political Science* 18 (2015): 167–85. <https://doi.org/10.1146/annurev-polisci-040113-161150>
- Váradi, Ágnes, "Access to constitutional complaint procedures: A real chance? Remarks on the availability of legal aid in constitutional court procedures in Austria, Germany and Hungary", *Hungarian Journal of Legal Studies*, 61.4 (2020), 372–85 <https://doi.org/10.1556/2052.2021.00307>
- Violante, Teresa, "Bring back the politics: The PspP ruling in its institutional context", *German Law Journal*, 21.5 (2020), 1045–57 <https://doi.org/10.1017/glj.2020.63>
- Voßkuhle, Andreas, "Multilevel cooperation of the European constitutional courts: Der europäische verfassungsgerichtsverbund", *European Constitutional Law Review*, 6.2 (2010), 175–98 <https://doi.org/10.1017/S1574019610200020>