



TRIBUNAL CONSTITUCIONAL DE CHILE
EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ESTUDIO SOBRE EL ACCESO INDIVIDUAL A LA JUSTICIA CONSTITUCIONAL

Adoptado por la Comisión de Venecia en su 85^{ta} Sesión Plenaria
(Venecia, 17 y 18 de diciembre de 2010)

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Prólogo

En respuesta al ofrecimiento hecho por la Ministra señora Marisol Peña, entonces miembro suplente ante la Comisión de Venecia en representación de Chile, en el 87º Plenario de la mencionada institución, de traducir al castellano del Estudio N° 538/2009 de la Comisión de Venecia, titulado “Study on individual access to constitutional Justice”, la Dirección de Estudios procedió a la traducción del precitado estudio.

En este trabajo participaron las pasantes Yeimi Flores y María de Esmarats, cuya labor fue coordinada y revisada tanto por quien suscribe como por la entonces abogada analista de esta unidad, Jaana Braz Rodrigues.

Se finalizó con la traducción en el mes de marzo de 2012 y fue entregada oficialmente una copia de ella a los participantes de la Conferencia en Cádiz en mayo de este año, para finalmente ser aprobada su publicación por la División de Justicia Constitucional de la Comisión de Venecia.

CRISTIÁN GARCÍA MECHSNER

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RESUMEN EJECUTIVO

1. Entre los Estados miembros y observadores de la Comisión de Venecia, muy pocos países no proporcionan por lo menos algún tipo de acceso individual para impugnar la constitucionalidad de una norma o acto individual. Estos son Argelia, Marruecos, los Países Bajos y Túnez (Francia ya no puede ser clasificada en este grupo después de su reciente reforma constitucional). Es posible distinguir entre el acceso individual directo, en el cual a los individuos se les da la posibilidad de impugnar la constitucionalidad de una norma determinada o actuar directamente, y el acceso individual indirecto, en el que la constitucionalidad sólo puede ser impugnada a través de los órganos del Estado. Muchos países tienen un sistema mixto, tanto con medios directos de acceso a la justicia constitucional como con medios indirectos.
2. En lo que respecta al acceso individual indirecto, varios órganos tienen derecho a impugnar la constitucionalidad de una norma. Entre ellos, los más comunes son los tribunales ordinarios a través de los procedimientos preliminares, así como los miembros del Parlamento en la medida en que actúan basándose en la petición de un individuo. Algunos países bajo revisión también otorgan derecho a impugnar ante el Tribunal Constitucional o el órgano equivalente al Defensor del Pueblo. La Comisión de Venecia considera que los defensores del pueblo, cuando existen, son elementos importantes de una sociedad democrática que protegen los derechos humanos. Por lo tanto, cuando los defensores del pueblo existen, se les debe dar la posibilidad de iniciar la revisión constitucional de los actos normativos en nombre de o en función de las personas.
3. El acceso individual indirecto a la justicia es una herramienta muy importante para garantizar el respeto de los derechos humanos individuales a nivel constitucional. Las opciones existentes son amplias y coexisten muchas posibilidades. Una de las ventajas del acceso individual indirecto es que los que presentan las quejas están generalmente bien informados y tienen los conocimientos jurídicos necesarios para formular una solicitud válida. También pueden servir como filtros para evitar la sobrecarga de los tribunales constitucionales, seleccionando las solicitudes con el fin de dejar a un lado las peticiones abusivas o repetitivas. Sin embargo, el acceso indirecto tiene una clara desventaja, ya que su eficacia depende en gran parte de la capacidad de estos organismos de identificar a los actos normativos potencial-

mente inconstitucionales y su voluntad de presentar las solicitudes ante el Tribunal Constitucional o los órganos equivalentes. Por lo tanto, la Comisión de Venecia ve una ventaja en la combinación del acceso indirecto y directo, creando así un equilibrio entre los diferentes mecanismos existentes.

4. En lo que respecta al acceso individual directo, existen varios modelos en los países estudiados: la acción popular, en el que cualquiera tiene derecho a tomar medidas contra una norma después de su promulgación, incluso si no hay un interés personal; la sugerencia individual, en la que el solicitante sólo sugiere que el Tribunal Constitucional controle la constitucionalidad de una norma, dejando la decisión de hacerlo a discreción del Tribunal; la quasi acción popular, en la que el solicitante no tiene por qué ser directamente afectado, sino que tiene que desafiar la norma en el marco de un caso específico, y, por último, el mecanismo de la queja individual directa, que existe en varias sub-formas. Entre estos mecanismos, la acción popular crea el riesgo evidente de la sobrecarga de la Corte Constitucional.
5. En algunos Estados Miembros del Consejo de Europa, dependiendo de las condiciones específicas y sus consecuencias, una denuncia individual ante el Tribunal Constitucional u órgano equivalente puede ser considerada por el Tribunal Europeo de Derechos Humanos como un remedio eficaz contra la violación de la Convención Europea de Derechos Humanos y, por lo tanto, puede ser vista como un filtro para los casos antes de llegar al Tribunal de Estrasburgo. Las estadísticas del Tribunal indican que los países en los que existe un mecanismo completo de amparo constitucional, hay un menor número de quejas (en proporción al número de su población) ante el Tribunal que en los demás que no cuentan con este mecanismo. Dichos mecanismos de denuncia, por lo tanto, ayudan a evitar sobrecargar a la Corte Europea de Derechos Humanos.
6. La Comisión de Venecia considera que, con respecto a los tipos de normas que pueden someterse a revisión constitucional, el Tribunal Constitucional sólo debe estar a cargo de verificar la constitucionalidad de preceptos legales, dejando, en principio, el control de los textos de rango infralegal a los tribunales ordinarios, con el fin de evitar su sobrecarga.
7. El procedimiento de revisión constitucional, por lo general, consta de una serie de requisitos formales y filtros para evitar la sobrecarga, así como el uso indebido de los recursos ante los tribunales. En primer lugar, con el fin de abrir el procedimiento, a menudo hay plazos para la presentación de solicitudes. Sin embargo, los plazos deben ser razonables y permitir la preparación de la reclamación por el propio individuo o para que éste encuentre un abogado. El Tribunal Constitucional también debe ser capaz de ampliar plazos sólo en casos excepcionales. Segundo, debe proporcionarse ayuda

legal gratuita cuando sea necesario. En tercer lugar, la Comisión de Venecia recomienda que las costas judiciales no sean excesivas y sólo se utilicen con el fin de disuadir las solicitudes abusivas, debiendo tomarse en cuenta la situación financiera del solicitante al momento de fijar las costas. En cuarto lugar, los fallos emitidos por el Tribunal Constitucional son definitivos, pudiendo reabrirse los casos sólo en circunstancias muy excepcionales (como una condena por el Tribunal Europeo de Derechos Humanos). En quinto lugar, el agotamiento de los recursos es necesario en países con un control concentrado de constitucionalidad para evitar la sobrecarga del Tribunal Constitucional. En sexto lugar, es necesario garantizar que el recurso disponible sea adecuado para reparar la queja del solicitante (por ejemplo, procedimientos acelerados en casos de excesiva duración de los procedimientos).

8. Entre los principios procesales aplicables a la revisión constitucional, el Tribunal Constitucional debe adoptar sus decisiones dentro de un plazo adecuado para respetar el derecho de acceso a la justicia constitucional. En los sistemas acusatorios, las partes en el procedimiento ante los tribunales ordinarios deben tener la posibilidad de presentar sus puntos de vista a nivel constitucional.
9. En cuanto a las medidas provisionales, la Comisión de Venecia está a favor de la posibilidad de suspender la aplicación de un acto individual y/o normativo, si la aplicación puede resultar en daños y perjuicios o violaciones que no puedan ser reparados una vez declarada la inconstitucionalidad del precepto. Especialmente para actos normativos, hay que tomar en cuenta que la falta de aplicación podría dar lugar a daños y violaciones que no se pueden reparar. Los jueces comunes, en general, se verán obligados a suspender el caso si se presenta ante el Tribunal Constitucional una cuestión de constitucionalidad de la ley aplicable a ese caso. En los casos de daño irreversible a los derechos individuales, la suspensión debería ser obligatoria.
10. Finalmente, el Tribunal Constitucional debe ser capaz de seguir analizando la petición, incluso después de que haya sido retirada, si hay un interés público en juego. Sin embargo, si el acto impugnado pierde su validez, no hay una visión compartida sobre la posibilidad de que el Tribunal Constitucional continúe (o no) los procedimientos. La simple discontinuación de un caso puede ser insuficiente para proteger los derechos humanos en casos de revisión concreta o denuncias particulares. Sin embargo, es controvertido si los tribunales constitucionales deben ser capaces de decidir si adjudican ellos mismos o si inician una acción de compensación pecuniaria por la violación de un derecho, con el objetivo de reparar la infracción a los derechos humanos individuales.
11. Para garantizar un adecuado equilibrio entre el interés al acceso individual a la justicia constitucional y el riesgo de sobrecargar al Tribunal Constitucional,

la Comisión de Venecia recomienda que los magistrados del Tribunal tengan el apoyo de asistentes capacitados y que su número sea determinado de acuerdo a la carga de la Corte. La sobrecarga de un Tribunal Constitucional también puede evitarse mediante una adecuada distribución de los casos a las Cámaras o Salas. Sin embargo, debe existir un mecanismo para preservar la coherencia de la jurisprudencia del Tribunal Constitucional.

12. Los efectos de la sentencia dictada por el Tribunal Constitucional también son muy variados. Los fallos pueden afectar únicamente a las partes, *inter partes*, o a todo el mundo, *erga omnes (ratione personae)*, o pueden tener distintos efectos con el tiempo (efecto *ratione temporis*).
13. De acuerdo con su efecto *ratione personae*, el fallo puede tener efecto sólo *inter partes* o *erga omnes*, siendo este último el resultado de la anulación de un acto normativo o haciéndolo inaplicable a casos futuros. En la mayoría de los países bajo revisión, cuando la constitucionalidad de una norma es impugnada, el Tribunal Constitucional tiene derecho a eliminarla del ordenamiento jurídico o a declarar al menos su inconstitucionalidad, dejando la decisión de promulgar una nueva ley al legislador. Sin embargo, en algunos países los poderes del Tribunal Constitucional son más limitados y el fallo sólo tiene efectos vinculantes para las partes en el caso. En los países que usan *common law*, con un examen de constitucionalidad difuso, el *stare decisis* también tiene una fuerte influencia más allá del caso individual, una vez que los precedentes de la Corte Suprema (o equivalente) son obligatorios para los tribunales inferiores, a menos que distingan el caso del precedente o revoquen un fallo con un razonamiento adecuado.
14. Las decisiones sobre la inconstitucionalidad de un acto normativo puede tener diferentes efectos temporales, ya sea *ex nunc*, cuando la invalidez se lleva a cabo desde el momento en que se emita el fallo, o *ex tunc*, cuando el acto se declara nulo desde el mismo momento de su adopción, que tiene consecuencias importantes para casos individuales. Sólo pocos países han introducido efectos *ex tunc* a fallos del Tribunal Constitucional y la mayoría de ellos tienen efectos atenuados para preservar la validez de las sentencias finales del Tribunal.

INTRODUCCIÓN

15. Por escrito de 21 de abril de 2009, el Representante Permanente de Alemania ante el Consejo de Europa, el Sr. Eberhard Kölsch, solicitó, a nombre del Gobierno alemán, una opinión sobre el acceso individual a la justicia constitucional. Señaló que “*un estudio podría ser una valiosa contribución a la promoción de los recursos nacionales para violaciones de los derechos humanos y, por lo tanto, puede ayudar fundamentalmente para garantizar la eficacia a largo plazo del Tribunal Europeo de Derechos Humanos*”. La Comisión invitó al Sr. Harutyunian, a la Sra. Nussberger y al Sr. Paczolay para actuar como relatores sobre este tema. El presente informe se ha elaborado en base a sus contribuciones y a las de los oficiales de enlace con los tribunales constitucionales y órganos equivalentes de los Estados miembros y observadores de la Comisión de Venecia, así como a las de los miembros que fueron llamados para verificar la exactitud de la información de sus propios sistemas legales.
16. El primer borrador de este informe (CDL [2010] 004) se discutió en la 9^a reunión del Consejo Conjunto de Justicia Constitucional de la Comisión de Venecia (Venecia, 1-2 de junio de 2010). La Comisión invitó a los oficiales de enlace a ofrecer sus comentarios sobre este texto y las respuestas a un cuestionario a finales de septiembre de 2010. La Comisión de Venecia agradece a los oficiales de enlace por su muy valiosa ayuda.
17. El presente informe fue aprobado por la Comisión en su 85^a reunión plenaria (Venecia, 17-18 de diciembre 2010).

OBSERVACIONES GENERALES

18. Un cambio fundamental en la importancia de la protección constitucional de los derechos humanos se ha producido en los últimos 60 años en Europa y en otras partes. El respeto a los derechos humanos es ahora considerado como parte esencial de cualquier sociedad democrática¹. Los mecanismos que permiten a las personas invocar, directa o indirectamente, los derechos que les fueron conferidos son, en consecuencia, cada vez más importantes.

¹ CCDL-STD(1995)015, La protección de derechos fundamentales por Cortes Constitucionales, Ciencia y Técnica de Democracia, no. 15.

19. Este proyecto de estudio ofrece una visión general de los mecanismos de este tipo que existen en los países miembros de la Comisión de Venecia y en los Estados observadores. Lo hace con el fin de contribuir no sólo a una mejor comprensión de la gran variedad de soluciones adoptadas, sino también para analizar los méritos de los diversos sistemas².
20. El proyecto de estudio se basa en las constituciones y textos legales contenidos en la base de datos CODICES de la Comisión de Venecia³. La Comisión de Venecia agradece a sus oficiales de enlace y a todos los miembros por su contribución al Boletín de jurisprudencia constitucional, a la base de datos, así como al actual estudio.
21. En este estudio se utilizan las siguientes definiciones⁴:
 - (i) **Jurisdicción constitucional** significa todas las entidades y los procedimientos judiciales que han sido creados con el fin de garantizar el orden constitucional de un Estado⁵;
 - (ii) **Revisión constitucional** significa la capacidad del tribunal para examinar si un acto legislativo o un acto de rango inferior se ajusta a la Constitución⁶ y, en casos de incompatibilidad, declararlo legalmente nulo⁷ o inaplicable;

² Este estudio no se refiere a la jerarquía entre la legislación de la Unión Europea y la legislación nacional de los Estados Miembros, aun cuando algunos elementos de revisión de la Corte de Justicia de la Unión Europea tienen características similares a los ejercidos por el Tribunal Constitucional.

³ CODICES puede ser pedido en CD-ROM o encontrado en línea en www.codices.coe.int. Sin embargo, algunos textos no se publican en CODICES: para San Marino, la versión revisada de la Declaración de Derechos de los Ciudadanos ha sido utilizada. Algunas traducciones se han realizado por la Secretaría, en particular de las disposiciones legales de Chile, Perú, Argentina, San Marino y Uruguay. Las leyes de Luxemburgo y Mónaco se han mantenido en su versión original en francés. Las referencias a los textos legales que han sido utilizados y que no están incluidos en CODICES se pueden encontrar en la bibliografía.

⁴ Estas definiciones sólo sirven como un guía para determinar el alcance de este estudio y no tienen el propósito de proporcionar una respuesta judicial a complicadas cuestiones terminológicas.

⁵ CDL-STD(1993)002, H. Steinberger, *Models of constitutional jurisdiction*, Science and Technique of Democracy, no. 2.

⁶ CDL-INF(2001)009, Decisiones de los tribunales constitucionales y órganos equivalentes y su ejecución. Cabe señalar que la cuestión del derecho comunitario como un criterio de revisión no se trata en este informe, ya que se aplica sólo a la mitad de los estados en cuestión.

⁷ A. Cavari, "Between Law and Politics: ConstitutionalReview of Legislation" Trabajo presentado en la reunión anual de la Asociación Derecho y Sociedad, Renaissance Hotel, Chicago, Illinois, 27 de mayo de 2004, en: + Legislación, consultado el 04 de mayo 2009, en: [http://www.allacademic.com/one/www/www/index.php?cmd=www-search&offset=0&limit=5&multi_search_mode=publication&multi_search_=](http://www.allacademic.com/one/www/www/index.php?cmd=www-search&offset=0&limit=5&multi_search_mode=publication&multi_search_)

- (iii) **Acceso individual a la justicia constitucional** significa los diversos mecanismos que permiten que las infracciones a los derechos individuales garantizados por la Constitución, ya sea por separado o conjuntamente con otros, sean llevadas ante un Tribunal Constitucional u órgano equivalente. Mecanismos de acceso son: directos o indirectos. Acceso indirecto se refiere a los mecanismos a través de los cuales las cuestiones individuales llegan al Tribunal Constitucional para su sentencia a través de un organismo intermediario. Acceso directo se refiere a la variedad de medios legales a través de los cuales una persona puede solicitarlo personalmente al Tribunal Constitucional, es decir, sin la intervención de terceros;
 - (iv) **Tribunal Constitucional** significa los tribunales constitucionales, cortes, consejos y, si no se especifica lo contrario, otros tribunales supremos que han sido identificados como cumpliendo las funciones de un tribunal constitucional⁸.
22. Muchos autores creen que una Constitución escrita es un requisito previo para la revisión constitucional⁹. En el marco del acceso individual a la justicia constitucional, esto significa que si no hay texto escrito al que se le da un estatuto específico (primacía), no habría necesidad –y ninguna posibilidad– de que cualquier órgano, así el Parlamento o un tribunal, distinga entre temas de legalidad y de constitucionalidad y, por lo tanto, revise los primeros teniendo a los segundos como parámetro, lo que podría conducir a la anulación de leyes ordinarias. Sin embargo, algunos países tienen –a menudo, además de una Constitución escrita– derecho constitucional no escrito o consuetudinario¹⁰ o principios que pueden servir como estándares de revisión, además de los tratados internacionales¹¹

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⁸ CDL-INF(2001)009 Fallos de los tribunales constitucionales y órganos equivalentes y su ejecución.

⁹ Véase, por ejemplo, J.-F.Flauss, “*Human Rights Act 1998: Kaléidoscope*”, in: Revue française de droit constitutionnel, no. 48 2001/4, P.U.F., Paris, p. 695 f., P. Pernthaler, *Allgemeine Staatslehre und Verfassungslehre*, 2nd rev. ed., Springer Verlag, Vienna, 1996, p. 174.

¹⁰ Korea: Tribunal Constitucional, “*Relocation of the Capital Case*”, no. 2004, Hun-Ma554-566 of 21.10.2004, CODICES: KOR-2004-3-003.

¹¹ Austria: principios fundamentales, un cambio que supondría una revisión total de la Constitución (artículo 44.3 de la Constitución) y que el Tribunal Constitucional utiliza incluso como un estándar para la revisión sustancial de las enmiendas constitucionales, véase la decisión del 11.10.2001, VfSlg. G12/00, CODICES: AUT-2001-3-005. El artículo 10.2 de la Constitución española y su importancia para la perspectiva de que conceda el amparo en los casos de violación de los derechos fundamentales.

y del derecho internacional consuetudinario. El Reino Unido, entre los miembros de la Comisión de Venecia y Estados observadores, es el único que no tiene una Constitución escrita formal o jerárquicamente distinguida¹². Como consecuencia, las leyes ordinarias no pueden ser revisadas en su compatibilidad o conformidad con una constitución escrita. Esto no quiere decir que la revisión constitucional no exista en el Reino Unido. Existe en dos formas: en primer lugar, con referencia a la legislación de la Unión Europea, los tribunales del Reino Unido están obligados a examinar la compatibilidad de la legislación del Reino Unido con la legislación de la U.E. y, cuando sea incompatible, no aplicar la ley del Reino Unido; y, en segundo lugar, desde la vigencia de la Ley de Derechos Humanos del Reino Unido de 1998, sus tribunales superiores están facultados para examinar la compatibilidad de la legislación del Reino Unido¹³ con los derechos humanos protegidos por la Convención Europea de Derechos Humanos de 1950¹⁴. En este último caso, esta forma limitada, secundaria, de la revisión constitucional proporcionada por la Ley de 1998 permite a los tribunales declarar las leyes ordinarias del Reino Unido incompatibles con los derechos humanos protegidos, aunque siguen siendo ley, por lo que el Parlamento del Reino Unido debe decidir si modifica o deroga la ley

¹² D. MAUS ha señalado que no es del todo adecuado describir al Reino Unido como un país sin una constitución escrita. De hecho, este país tiene normas constitucionales escritas. El hecho de que no haya Tribunal Constitucional es también de alguna manera alterado a través de la creación de la Corte Suprema y el *Constitutional Reform Act* aprobado en 2005, D. MAUS, “Le recours aux précedants étrangers et le dialogue des cours constitutionnelles”, 24 enero 2009, Conferencia Mundial de Justicia Constitucional, Ciudad del Cabo, accesible en http://www.venice.coe.int/WCCJ/Papers/AND_Maus_F.pdf, p. 6, consultado en agosto de 2010.

¹³ El control de la legislación basada en la Ley de Derechos Humanos se extiende a las legislaturas delegadas en Escocia, Gales e Irlanda del Norte. En el caso de estas legislaturas, la legislación que sea incompatible con derechos de la Convención puede ser considerada como *ultra vires*, fuera de la competencia del legislador en cuestión.

¹⁴ Sin embargo, la Ley de Derechos Humanos de 1998 en cierta medida ha tenido un valor supra-legislativo, ya que los tribunales están obligados a evaluar la compatibilidad de las disposiciones en cuestión con la Convención Europea de Derechos Humanos y hacer una declaración de incompatibilidad¹⁴ (vea Ley de Derechos Humanos de 1998 sección 4, en: [# PB2-11g3](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1), consultado el 11 de febrero de 2009). La protección judicial de los derechos fundamentales está ganando importancia en el Reino Unido y la declaración de incompatibilidad por la Corte puede tener un efecto persuasivo en el Parlamento, cuya soberanía formal sigue siendo indiscutible a través de este sistema. Además, la revisión de legalidad (revisión de actos administrativos individuales y generales en relación con las leyes del Parlamento, incluidos los derechos fundamentales) ha estado tomando cada vez más espacio desde la década de 1940 y el sistema de derecho común ofrece una serie de principios, algunos de los cuales se podría considerar como parte del “derecho constitucional no escrito”.

específica¹⁵. El Reino Unido también ha desarrollado un sistema avanzado de derecho administrativo, que se aplica a toda forma de decisiones ejecutivas, incluyendo la legislación secundaria, y este sistema ahora incluye la observancia de la obligación de proteger los derechos de la Convención.

23. Todos los demás Estados miembros y observadores de la Comisión de Venezuela¹⁶ basan su sistema legal en una Constitución escrita, o, como es el caso de Israel, en leyes fundamentales u otros documentos que tienen un rango semi-constitucional¹⁷ y se consideran “la ley suprema de la tierra”, la cima de la jerarquía normativa. Esta supremacía se manifiesta formalmente, en reglas específicas de creación de normas, por ejemplo a través de mayores quórum de aprobación; y/o materialmente, en el sentido que las normas constitucionales deben contener disposiciones de particular importancia para el funcionamiento del Estado y la protección del individuo. Tal documento escrito debe ser protegido con el fin de mantener su supremacía: no es suficiente simplemente declarar que todos los actos normativos en un país, especialmente las leyes, deben respetar la Constitución. La incapacidad o falta de voluntad para cumplir con esta obligación por parte del legislador o del ejecutivo debe ser sancionable en el sentido de que sus actos deben ser revisados y, posiblemente, invalidados si son inconstitucionales. El nivel de protección y las técnicas utilizadas para proteger la supremacía de la Cons-

¹⁵ D. Fontana, “Secondary Constitutional Review: American Lessons from the New British System of Constitutional Review”, en: http://www.allacademic.com/meta/p178285_index.html; A. Kavanagh, Constitutional Review Under The UK Human Rights Act, Cambridge University Press, Cambridge, 2009.

¹⁶ Desde las enmiendas de 2002 a la Declaración de Derechos de los Ciudadanos y de los principios fundamentales de la orden legal San Marino, San Marino también parece tener una Constitución escrita. Antes, la Declaración, junto con los Estatutos de 1600, difícilmente podría calificarse como una Constitución, pero sin embargo, ésta dio lugar a una revisión de la adecuación de ciertos actos normativos con los principios en ella contemplados; los tribunales ordinarios tenían que remitir la cuestión de compatibilidad al Consejo General Superior (Artículo 16 de la Declaración de Derechos de los Ciudadanos y de los principios fundamentales del orden legal San Marino). Las enmiendas de 2002 parecen dar a la Declaración un valor supra-legislativo aún más claro ya que no sólo un quórum especial para su revisión es necesario, sino que un “Collegio Garante” de la “constitucionalidad” –el uso de este término es otro indicio de la calidad del documento normativo en cuestión– de las normas es instituido. Este *Collegio Garante* evalúa la constitucionalidad de las leyes y otros actos con fuerza de ley, por iniciativa de los órganos del Estado y algunos también en un procedimiento prejudicial iniciado por un tribunal ordinario o una de las partes de un proceso. Vea <http://www.consigliograndeegenerale.sm/new/ricercaregg/vislegge.php3?action=visTestoLegge1&idlegge=6175&twidth=580&=, consultado el 20 de febrero de 2009>. Los jueces del Colegio también tienen el poder de entregar un fallo final en casos civiles, administrativos y penales como jueces únicos (vea <http://www.consigliograndeegenerale.sm/new/index.php3, Artículo 26>).

¹⁷ Vea http://www.knesset.gov.il/laws/special/eng/basic8_eng.htm

titución varía significativamente entre los Estados incluidos en este estudio. En algunos, ha tenido un impacto en este ámbito el desarrollo histórico del Estado y del orden constitucional, en vista de largos períodos de régimenes autoritarios o totalitarios, del momento de la promulgación de una nueva Constitución, o debido a la tradición jurídica de un Estado, en cuanto sistema de *common law* o de derecho civil.

24. En cuanto al acceso individual a la justicia constitucional, la revisión constitucional está exclusivamente, o por lo menos principalmente, centrada en los derechos humanos. Por lo tanto, como se establece en la Constitución francesa de 1791, para que sean relevantes desde el punto de vista del acceso individual, los textos constitucionales necesariamente deben expresar, ya sea como parte del texto o como un apéndice, una serie de derechos humanos definidos.
25. Con el fin de aclarar el marco general del análisis comparativo, es preciso hacer una serie de consideraciones preliminares sobre la revisión constitucional, sus antecedentes históricos y evolución, así como sobre los diferentes tipos de revisión constitucional (concentrado vs. difuso, *a priori* vs. *a posteriori*, abstracto vs. concreto) y las diferentes competencias de los tribunales constitucionales.
26. Aunque el presente informe trata de cubrir todos los Estados miembros y observadores de la Comisión de Venecia, se centra en sistemas especializados de revisión constitucional y ciertas recomendaciones hechas sólo son aplicables a estos sistemas.

1. Contexto histórico

27. Muchos autores han tratado de crear tipos idealizados de justicia constitucional a través de la clasificación de los sistemas jurídicos existentes, de acuerdo a la existencia de un Tribunal Constitucional, de sus aptitudes, su naturaleza y el momento cuando la revisión legal de los actos se lleva a cabo. Esto se efectúa frecuentemente mediante la descripción de lo que se dice que es, un “modelo americano”, que se opone a un “europeo” o “austriaco”, el cual a su vez, se presenta como algo distinto al modelo “francés” de revisión *a priori*. Este estudio evita poner énfasis en estos modelos idealizados, entre otras razones, porque varias Constituciones recientes a menudo contienen elementos de varios modelos. Se centra, en cambio, en una comparación, elemento por elemento, de las soluciones nacionales relacionadas con el acceso individual.
28. A principios del siglo XVIII, la idea de la revisión constitucional fue acreditada a la actividad del Consejo Privado de Gran Bretaña, que invalidaba actos de

las legislaturas coloniales si contradecían las leyes aprobadas por el Parlamento británico para las colonias o el *common law*. El primer Estado en introducir el control de constitucionalidad (y en usar el término “tribunal constitucional”) fue los Estados Unidos en el famoso caso de 1803 *Marbury vs. Madison*, que abrió para los ciudadanos el camino hacia el control constitucional. En los Estados Unidos post-colonial, el concepto de derecho natural y, por lo tanto, de la jerarquía legal, y la idea de un contrato social donde el ciudadano le puede exigir al gobierno que cumpla con sus obligaciones, estaba muy presente. En un plano más institucional, la amenaza de futuros conflictos institucionales y las desviaciones de un sistema de separación de poderes vertical mostró la necesidad de construir un marco para evitar estos enfrentamientos. La naturaleza de *common law* del sistema legal norteamericano, una herencia de su pasado como colonia británica, explica la introducción de un sistema difuso de revisión (ver más abajo), aunque la Corte Suprema de los Estados Unidos ha ampliado sus poderes a través de la práctica legal, de modo que ahora tiene una posición relativamente fuerte en el sistema de pesos y contrapesos.

29. En Europa, la Constitución alemana de 1849 (*Paulskirchenverfassung*) fue la primera en ofrecer de forma explícita la posibilidad de presentar amparos constitucionales en forma individual, §126 letra g¹⁸. Sin embargo, nunca entró en vigor. En Bélgica, Francia y Suiza, modelos similares también se discutieron, pero no fueron implementados. En Austria, en 1867, el artículo 3, letra b, de la *Staatsgrundgesetz über die Einrichtung eines Reichgerichtes* introdujo la competencia de la Reichsgericht (“tribunal del imperio”) para juzgar solicitudes de amparo de los ciudadanos respecto de violaciones de los derechos garantizados por la Constitución. El Tribunal Supremo de Noruega, en 1866, se declaró competente para el control de la constitucionalidad de leyes¹⁹ y la herencia de *Marbury vs. Madison* fue acogida por el Tribunal de Casación de Rumania en 1912²⁰.
30. En el siglo XX, el modelo kelseniano de revisión concentrada confirió a un único tribunal la competencia para eliminar actos inconstitucionales del or-

¹⁸ “Zur Zuständigkeit des Reichsgerichtsgehören... Klagen deutscher Staatsbürger wegen Verletzung der durch die Reichsverfassung ihnen gewährten Rechte”.

¹⁹ D. MAUS, *op. cit.*, p. 2. Vertambién E. HOLMOYVIK, “Why did the Norwegian Constitution of 1814 Become a Part of Positive Law in the Nineteenth Century?”, blogit.helsinki.fi/reuna/Holmoyvik-paper-Tartu.doc; K. M. BRUZELIUS, “Judicial Review within a Unified Country”, http://www.venice.coe.int/WCCJ/Papers/NOR_Bruzelius_E.pdf, consultado en septiembre de 2010.

²⁰ Vea G. CONAC, “Une antériorité roumaine: le contrôle juridictionnel de la constitutionnalité des lois”, *Mélanges Slobodan Milacic, Démocratie et liberté: tension, dialogue, confrontation*, Bruylant, Belgique, 2007.

denamiento jurídico, únicamente previa solicitud de un órgano constitucionalmente autorizado.

31. La configuración constitucional y, en particular, la práctica de los tribunales constitucionales después de la Segunda Guerra Mundial, refleja un cambio de paradigma hacia la protección de los derechos humanos individuales llevada a cabo por sólo uno de los poderes constitucionales (los tribunales o un Tribunal Constitucional independiente).
32. Casi todos los países de derecho civil han optado por darle el poder de revisión constitucional a un tribunal específico que esté en el ápice del sistema judicial, o que se encuentre fuera del sistema de justicia ordinaria. Es muy claro que esto desafía la autoridad del Parlamento y podría dar lugar al temor de un “gobierno de los jueces”; ya que los Tribunales Constitucionales pueden anular las leyes del Parlamento sin que sus miembros hayan sido elegidos directamente o tengan que rendir cuentas ante el electorado. Las excepciones a este principio general, sin embargo, están presentes en algunos países fuera de Europa: según el artículo 79 de la Constitución de Japón, el nombramiento de los jueces de la Corte Suprema de Justicia es revisado por el pueblo, después de su nombramiento en la primera elección general de miembros de la Cámara de Representantes. En el caso citado, si la mayoría de los votantes están a favor de la destitución de un juez, él o ella serán despedidos. Francia, los Países Bajos y el Reino Unido han sido tradicionalmente renuentes a introducir la revisión constitucional²¹. En el Reino Unido se aplica la doctrina de la soberanía parlamentaria, convirtiendo al Parlamento en la máxima autoridad legal en ese país, que puede crear o “ponerle fin” a la validez de cualquier ley. En general, los tribunales no pueden anular la legislación y ningún Parlamento puede aprobar leyes que Parlamentos futuros no puedan cambiar²². En los Países Bajos, donde rige el derecho civil, la revisión constitucional de las leyes del Parlamento por el Poder Judicial se prohíbe (artículo 120 de la Constitución). Sin embargo, el artículo 120 está siendo

²¹ Sin embargo, en Francia, antes de la reforma que introdujo el fallo preliminar prioritario en el año 2008, los jueces ordinarios, aunque no estuvieron autorizados a llevar a cabo un “control de constitucionalidad,” podían llevar a cabo un “control de convencionalidad,” es decir, establecían la conformidad de disposiciones legales nacionales a los tratados internacionales, tales como el Convenio Europeo de Derechos Humanos, para garantizar la protección de los derechos humanos.

²² <http://www.parliament.uk/about/how/sovereignty/>. Sin embargo, la Ley de Derechos Humanos de 1998 ha establecido que los tribunales deben evaluar la compatibilidad de la legislación con los derechos incluidos en el CEDH y pueden hacer una declaración de incompatibilidad, que puede ser seguida por un proceso de modificación de la legislación. Sin embargo, se trata de una cuestión exclusiva del Parlamento en cuanto a cómo y si la legislación es modificada. Véase más arriba, Ley de Derechos Humanos de 1998, sección 4.

discutido en la actualidad. Por otra parte, cabe señalar que disposiciones de aplicación directa (*self-executing*) de los tratados internacionales y decisiones de organizaciones internacionales pueden ser directamente contempladas en los procedimientos judiciales, en cuyo caso los tribunales están obligados a revisar la conformidad de la legislación nacional, incluyendo las leyes del Parlamento, con las disposiciones del derecho internacional, y retener en el caso específico la aplicación de la ley u otra legislación nacional que esté en violación del derecho internacional. Dado que muchas de las disposiciones del derecho internacional tienen su equivalente en el derecho constitucional holandés, hasta este punto, los Países Bajos pueden ser considerados como un sistema de revisión constitucional en el sentido material. Asimismo, Francia ha introducido una revisión *a posteriori* paralelamente a la ya existente revisión *a priori* de la constitucionalidad de las leyes, alejándose, por tanto, de su tradicional respeto de la rígida separación de poderes²³.

33. Los Estados de América Latina reflejan a menudo una fuerte influencia americana con la revisión difusa y una fuerte Corte Suprema de Justicia (por ejemplo, Brasil, México). Algunos han optado por un Tribunal Constitucional especializado (por ejemplo, Perú, Chile). La mayoría de los países de Magreb siguen el modelo francés, que existía antes de la reforma de 2008.

2. Revisión Difusa *vs.* Concentrada

34. El modelo más antiguo de revisión constitucional es el americano. Está caracterizado por el control difuso, incidental, que ofrece acceso directo a la justicia constitucional para los ciudadanos, ya que pueden plantear cuestiones de constitucionalidad ante los tribunales. Los tribunales ordinarios tienen el derecho a evaluar la constitucionalidad de cualquier norma jurídica o acto individual. Los jueces de estos tribunales pueden dejar de aplicar cualquier norma o acto que sostienen que es inconstitucional. Esto es una ventaja ya que los denunciantes no tienen que soportar largos procedimientos ante el Tribunal Constitucional. Sin embargo, esta ventaja debe ser contrastada con la posibilidad de que diferentes tribunales ordinarios tengan en cuenta las mismas cuestiones constitucionales y legales simultáneamente, lo que puede generar inconvenientes. Esto puede llevar a fallos contradictorios: a la incoherencia y la incertidumbre en la ley ya que los diferentes tribunales pueden interpretar la constitucionalidad de la misma norma de forma distinta. También puede dar lugar a procedimientos de apelación largos y costosos si las decisiones son apeladas ante la Corte Suprema. Si tales apelaciones no se hacen, la ley queda en un estado incierto, sin sentencia definitiva.

²³ Véase Ley Constitucional francesa de 23 de julio 2008.

tiva que provea una interpretación clara de la Constitución²⁴. Sin embargo, la revisión difusa sigue siendo una forma perfectamente válida de justicia constitucional²⁵.

35. Aunque reacio a la idea de introducir derechos de litigación como tales²⁶, Hans Kelsen inventó una alternativa al modelo difuso. En la Constitución austriaca de 1920 ha desarrollado el modelo de revisión concentrado²⁷. Este modelo tuvo un éxito extraordinario²⁸ en los países en transición a la democracia. Fue, por ejemplo, copiado por Alemania e Italia después de la Segunda Guerra Mundial, por España²⁹ y Portugal a finales de la década de 1970, y por casi todos los Estados del Centro y Este de Europa, lo que fue evidente sobre todo después de la caída del comunismo. En un sistema concentrado un tribunal independiente, a menudo fuera del sistema judicial ordinario, tiene la facultad de revisar la constitucionalidad de los actos normativos. Dicha revisión constitucional es llevada a cabo por un Tribunal Constitucional o una sola Corte Suprema que tiene, además, la jurisdicción de apelación ordinaria, pudiendo efectuarse a través del acceso indirecto o acceso directo. El primero se produce en el procedimiento ordinario. El juez (el juez ordinario), encargado del procedimiento, lo suspende si una cuestión de constitucionalidad surge³⁰ y luego emite una solicitud prejudicial al Tribunal

²⁴ M. Kau, *Bundesverfassungsgericht und US Supreme Court: Die Bedeutung des United States Supreme Court für die Errichtung und Fortentwicklung des Bundesverfassungsgerichts*, Springer, Berlin/Heidelberg, 2007, p.304 f. Además, el ejemplo de *Marbury vs. Madison* fue rápidamente seguido por Mónaco y Noruega.

²⁵ CDL(1998)059, Dictamen sobre la reforma de la Justicia Constitucional en Estonia.

²⁶ Kelsen, Hans, *La garantie juridictionnelle de la Constitution*, Revuede.Droit.Public, 1928, vol. 44, pp. 197-257. El recurso individual ante el Tribunal Constitucional de Austria, en los casos administrativos, ya estaba previsto por el artículo 144 de la primera versión de la Ley Federal Austríaca de Constitución (B-VG), BGBl. 1/1920. También el precursor del TC, la *Reichsgericht*, ya tenía tal poder. Sin embargo, el acceso directo para que el individuo impugne directamente las leyes y reglamentos ante el TC fue introducido en 1975 por la modificación de los Artículos 140 y 139 B-VG (Artículo 1.8 BVG BGBl. 302/1975).

²⁷ El primer Tribunal Constitucional, sin embargo, no fue establecido en Austria, sino en Checoslovaquia en febrero de 1920 (Ley Orgánica Constitucional no. 21/1920 Coll.). El Tribunal austriaco siguió unos meses más tarde, en octubre de 1920.

²⁸ Como dice L. Garlicki, “después de un período de gobierno autoritario, los tribunales existentes fueron incapaces de ofrecer garantías suficientes de independencia estructural y de assertividad intelectual”. (Vea L. Garlicki, “Constitutional courts versus supreme courts”, International Journal of Constitutional Law 2007 5(1), Oxford University Press, Oxford, en: <http://icon.oxfordjournals.org/cgi/content/full/5/1/44#FN59#FN59>, consultado el 11 de febrero 2009).

²⁹ Aunque España había tenido un Tribunal antes de 1978, establecido en la Constitución de 1931.

³⁰ El juez ordinario puede ser obligado a hacerlo a petición de una de las partes (por ejemplo, Bélgica) o sólo puede hacerlo cuando él o ella comparte las dudas planteadas por

Constitucional para resolver la cuestión. El segundo se produce cuando una denuncia individual se hace directamente ante el Tribunal Constitucional, por lo general después del agotamiento de los recursos judiciales. Dos ventajas principales se pueden ver en el modelo concentrado: i) una mayor unidad de jurisdicción, y ii) la seguridad jurídica, ya que no permite que fallos divergentes surjan sobre las mismas cuestiones de constitucionalidad, lo que haría la aplicación de un estatuto confuso.

36. La clasificación de un sistema legal como difuso o concentrado puede ser difícil. La naturaleza de un sistema viene determinada por las competencias materiales de uno o varios tribunales, que determinan si hay o no hay una sola institución que tiene derecho a decidir sobre las cuestiones constitucionales. Por lo tanto, este estudio divide a los sistemas legales de los Estados miembros de la Comisión de Venecia en tres tipos: en primer lugar, aquéllos que tienen una forma difusa de jurisdicción constitucional; en segundo lugar, aquéllos que tienen una jurisdicción concentrada; y en tercer lugar, los que tienen un tipo especial de jurisdicción constitucional³¹.
37. Los países cuyos sistemas de revisión constitucional son totalmente difusos son: Dinamarca, Finlandia, Islandia, Noruega y Suecia.
38. Por el contrario, la revisión concentrada existe en: Albania, Argelia, Andorra, Armenia, Austria, Azerbaiyán, Bélgica, Bielorrusia, Croacia, República Checa, Francia, Georgia, Alemania, Hungría, Italia, Corea del Sur, Letonia, Liechtenstein, Lituania, Luxemburgo, Moldavia, Montenegro, Polonia, Rumania, Rusia³², Serbia, Eslovaquia, Eslovenia, España, “la ex República Yugoslava de Macedonia”, Turquía y Ucrania. Los Consejos Constitucionales de Argelia, Francia, Marruecos y Túnez son también instituciones que se especializan en la revisión constitucional, aunque su enfoque difiere del de los tribunales constitucionales referidos.
39. La jurisdicción constitucional especial se puede encontrar en varios miembros de la Comisión de Venecia y Estados observadores. En mayor o menor grado, estos países tienen un sistema difuso de revisión, pero cada uno tiene

una parte o él o ella tiene dudas sobre la constitucionalidad de una disposición que se aplicará en el caso.

³¹ CDL-JU (2001)22, G. Brunner, “Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum”, informe para el seminario CoCoSem en Zakopane, Polonia, Octubre2001, p. 35 f.

³² Todas las referencias hechas a la Ley Constitucional Federal sobre el Tribunal Constitucional de la Federación Rusa se basan en el texto vigente en la actualidad. Sin embargo, una importante reforma se aprobó y entrará en vigor el 11 de febrero de 2011, lo que va a cambiar el número de los artículos referidos en este estudio y puede poner en duda parte de la información contenida aquí.

una Corte Suprema de Justicia (o incluso un “Tribunal Constitucional”³³), que tiene la capacidad de invalidar actos normativos o de fallar en casos (a veces incluso sobre el mérito del asunto) en vista de solicitud de un tribunal inferior. Brasil, por ejemplo, tiene un sistema mixto de control de constitucionalidad. Alemania, Andorra, Chile y Perú³⁴ tienen un Tribunal Constitucional o un tribunal con amplias facultades.

40. Argentina, Brasil, Canadá, Chipre³⁵, Estonia, Grecia, Irlanda, Israel³⁶, Japón³⁷, Malta, México, Mónaco, Portugal, San Marino, Sudáfrica³⁸, Suiza³⁹ y los EE.UU.

³³ Como en el caso de Andorra. En el caso de Portugal, el Tribunal Constitucional es una jurisdicción autónoma con competencias específicas, pero no hay un sistema generalizado de revisión difusa de constitucionalidad ejercida por los tribunales ordinarios. Estonia cuenta con una cámara especial en materia constitucional en el Tribunal Supremo (aunque los jueces ordinarios también pueden controlar la constitucionalidad) y Perú y Chile tienen Tribunales Constitucionales.

³⁴ H. Nogueira Alcalá, “*El recurso de protección en Chile*”, Anuario iberoamericano de justicia constitucional, no. 3, 1999, Madrid, 1999, en: <http://dialnet.unirioja.es/servlet/articulo?codigo=1976169>, consultado el 25 de febrero de 2009.

³⁵ De acuerdo con la Constitución de 1960, aún aplicable en Chipre, dos Cortes Supremas se han establecido: (a) el Supremo Tribunal Constitucional, y (b) el Tribunal Superior de Justicia. Debido a las circunstancias que surgieron en 1963, lo que supuso la parálisis de las autoridades judiciales, el Tribunal Supremo de Chipre fue establecido por la Administración de Justicia (Provisiones Misceláneas) Ley (33/64). Las dos Cortes Supremas fueron unidas a la actual Corte Suprema de Chipre, que tiene todos los poderes y la jurisdicción de ambos tribunales, de acuerdo con la administración de justicia (Provisiones Misceláneas) Ley de 1964. Así, actualmente el Tribunal Supremo de Chipre es también la Corte Suprema de Justicia Constitucional nacional (para decidir de forma preventiva las cuestiones de constitucionalidad de un proyecto de ley, cuando el Presidente de la República se lo ha pedido, adjudicar las preguntas de conflictos de poder o de competencia que surjan entre los órganos o autoridades de la República y decidir sobre la constitucionalidad de las leyes vigentes). También es el Tribunal Administrativo nacional con exclusiva jurisdicción de revisión. Como Tribunal Administrativo, el Tribunal Supremo, que consta de paneles de un solo ministro, sólo tiene jurisdicción de primera instancia, mientras que el panel que consiste de cinco ministros tiene jurisdicción de apelación y de última instancia.

³⁶ El Tribunal Supremo y el Tribunal Superior pueden declarar la inconstitucionalidad de una normativa o acto individual e indemnizar daños al demandante, ver <http://www.supremecourt.ie/supremecourt/slibrary3.nsf/pagecurrent/9034466B2045E5EC8025743200511625?open&document&l=en>, consultado el 9 de abril de 2009.

³⁷ H. Lee Hyun, Relator, Informe de los Tribunales Constitucionales de Asia, en: http://www.venice.coe.int/WCCJ/Papers/KOR_Kong%20Hyun%20Lee3_E.pdf, consultado el 10 de marzo de 2009.

³⁸ Si bien los tribunales ordinarios son competentes para ver asuntos constitucionales, el Tribunal Constitucional de Sudáfrica es el tribunal de última instancia en materia constitucional. El Tribunal Constitucional puede ser accedido directamente o por medio de la apelación de un tribunal inferior, y tiene jurisdicción exclusiva sobre una serie de cuestiones, entre ellas la confirmación de una declaración de invalidez constitucional de un acto normativo (ley) por un tribunal ordinario.

³⁹ La siguiente peculiaridad de la revisión constitucional en Suiza debe ser señalada: el artículo 190 de la Constitución Federal de la Confederación Suiza establece: “*El Supremo*

tienen un sistema difuso de revisión, aunque cada uno de ellos proveen sus tribunales supremos o constitucionales (como en el caso de Sudáfrica y Portugal –donde hay un Tribunal Constitucional–), con competencias especiales de revisión. Para este estudio, los procedimientos y las actividades de revisión de los tribunales supremos también serán examinados. Los Países Bajos tienen un sistema aún más difuso. No hay ni un tribunal especial ni un Tribunal Supremo con las competencias de revisión especial. Todos los tribunales de los Países Bajos tienen el poder (y deber) de revisión de la legislación nacional a la luz de las convenciones de derechos humanos y otros tratados de ejecución libre.

41. No es sorprendente que los sistemas difusos y concentrados rara vez existan en su forma pura. El *stare decisis*, por ejemplo, introduce un elemento de armonización en la interpretación judicial en los sistemas difusos. En sistemas concentrados, por el contrario, el Tribunal Constitucional está lejos de ser unánimemente reconocido como el único órgano competente para revisar e interpretar las leyes con referencia a su constitucionalidad.
42. El sistema portugués combina revisión concentrada y difusa. Allí, los tribunales ordinarios pueden negarse a aplicar una ley que consideran inconstitucional, pero esta inaplicabilidad sólo es válida en el caso concreto y la ley, como tal, sigue siendo válida. Sin embargo, una vez que una ley es declarada inconstitucional en tres ocasiones por los tribunales ordinarios, el departamento del Ministerio Público podrá solicitar al Tribunal Constitucional que anule la ley con alcance general.

3. Revisión abstracta *vs.* revisión en relación con un caso concreto⁴⁰

43. Cuando un Tribunal Constitucional lleva a cabo un control abstracto, examina una ley o reglamento específico, sin referencia a un caso específico o con-

Tribunal Federal y las autoridades judiciales aplicarán las leyes federales y el derecho internacional". Esto significa que el Tribunal Supremo Federal puede negar la aplicabilidad, en vista de su inconstitucionalidad, de leyes cantonales e intercantonales, de decretos federales, y de las ordenanzas de la Asamblea Federal, del Consejo Federal y de la Administración Federal. El Supremo Tribunal Federal puede cuestionar la constitucionalidad de una ley federal o del derecho internacional en sus consideraciones, pero no las puede revisar formalmente.

⁴⁰ La redacción es deliberadamente elegida para evitar confusiones terminológicas relacionadas con los diferentes significados del control abstracto/concreto en diferentes idiomas o culturas jurídicas. Se pueden distinguir aquellos para quienes el factor distintivo es el elemento que provoca una revisión (abstracta, sin relación con un caso, concreta, porque la persona se ve afectada en sus posiciones jurídicas). En segundo lugar, en terminología legal alemana, la revisión constitucional puede considerarse concreta si se lleva a cabo en procedimientos prejudiciales, donde las quejas constitucionales constituyen un tercer tipo independiente de revisión realizada por el Tribunal Constitucional, que no se le llama "concreta".

junto de procedimientos. Por lo que se ha dicho sobre la revisión difusa y sobre la revisión relacionada a un caso concreto, se concluye que la revisión normativa difusa está necesariamente relacionada con un caso específico. Sin embargo, la revisión concentrada puede ser tanto abstracta como relacionada con un caso específico⁴¹.

4. Revisión *a priori* vs. *a posteriori*

44. La revisión puede tener lugar antes o después de la promulgación de un acto normativo. La revisión abstracta puede tener lugar antes y después de su promulgación, mientras que la revisión en relación con un procedimiento específico, concreto, sólo es posible después de la promulgación de una ley general⁴².
45. La revisión abstracta llevada a cabo después de la adopción pero antes de la promulgación de una ley, es a menudo identificada con el modelo francés de revisión. En contraste, el modelo de revisión estadounidense es *a posteriori* e incidental, es decir, en relación a un caso concreto⁴³.
46. Una revisión *a priori* sólo puede ser iniciada por órganos específicos que tengan el poder de hacerlo y que estén establecidos en la Constitución o en cualquier ley que establezca un tribunal constitucional. No puede ser iniciada por individuos. En Sudáfrica, por ejemplo, el Presidente puede remitir al Tribunal Constitucional un proyecto de ley antes de que sea aprobado por el Parlamento. Entonces, puede evaluar su validez constitucional. Otros países que adoptan este método son: Francia (después de la votación de la ley, pero antes de su promulgación) y Canadá.

⁴¹ W. Sadurski argumenta que incluso si la revisión se refiere a un caso concreto, los Tribunales Constitucionales de Europa continental siguen consideraciones abstractas en la evaluación de la ley. A diferencia de, por ejemplo, la Corte Suprema estadounidense, las técnicas europeas de revisión se basan en la idea de Kelsen de la limpieza del ordenamiento jurídico. Por lo tanto, de acuerdo con Sadurski, los Tribunales Constitucionales no deben decidir sobre los méritos de cada caso. Versobretodo, W. Sadurski, *Constitutional Justice East and West: Democratic Legitimacy and Constitutional Courts in Post-Communist Europe in a Comparative Perspective*, Kluwer, 2002 y *Rights Before Courts: a Study of Constitutional Courts in Post-Communist States of Eastern and Central Europe*, Springer, 2005.

⁴² A menos que el acto normativo esté disfrazado como un acto individual.

⁴³ Una revisión *a priori* abstracta pone al Tribunal Constitucional en posición de un árbitro –típicamente entre el ejecutivo y el legislativo o de una minoría parlamentaria que tiene legitimación activa ante el Tribunal Constitucional– y generalmente se consideran políticamente sensibles. Vea Rosenfeld, “*Constitutional Adjudication in Europe and the United States: Paradoxes and Contrasts*”, reporte preparado para el Seimario UniDem 2003, en: CDL-STD(2003)037 Science and Technique of Democracy no. 37 (2003), T. Ginsburg, *Comparative Constitutional Review*, 2008.

47. Con la creciente importancia y protección de los derechos fundamentales, los legisladores nacionales deben decidir qué papel debe jugar la Constitución y, por consiguiente, los tribunales constitucionales: ¿deberían solamente proteger el orden objetivo constitucional (que también incluye la protección de los derechos fundamentales en el sentido de que se trata de parte del orden constitucional objetivo)? ¿O debería haber una garantía específica de los derechos fundamentales subjetivos atribuida a la persona por la Constitución? Hay una clara tendencia hacia la introducción de mecanismos que permitan la protección de los derechos individuales fundamentales a través del Tribunal Constitucional y, específicamente, mediante el acceso individual. El orden constitucional en sí debe ser protegido y casos individuales sirven a menudo como medio para aprender acerca de eventuales deficiencias y establecer una mejor aplicación de disposiciones constitucionales.

Un modelo contrario al kelseniano original, donde sólo los órganos constitucionales tenían derecho a dirigirse al Tribunal Constitucional, es aquél que proporciona los medios para que las personas cuestionen la constitucionalidad de un acto normativo o individual que puede perjudicar sus intereses.

48. Cualquier solicitante puede expresar sus dudas sobre la constitucionalidad de una normativa o acto individual durante el proceso. En los sistemas con un control difuso de constitucionalidad, es el juez ordinario el que decide sobre la constitucionalidad o inconstitucionalidad de una norma, aunque existen varias modalidades. Cuando el juez declara inconstitucional una disposición, ésta no se aplicará.
49. Un objetivo central de este estudio es el amparo constitucional y la revisión constitucional en la medida en que ésta se puede iniciar, directa o indirectamente, por una persona y no sólo por los órganos constitucionales. Sin embargo, debe tenerse en cuenta que el control abstracto *a priori* y *a posteriori* iniciado por un órgano constitucional, a menudo dirigido, en principio, a preservar el orden constitucional, puede suscitar cuestiones relativas a los derechos fundamentales y, por lo tanto, es de suma importancia para la protección de estos derechos.
50. Este estudio se divide en cuatro secciones. En la sección I, el acceso a la revisión constitucional es analizado y se identifican los diferentes actores que pueden iniciar el procedimiento de revisión constitucional, es decir, tanto individuos a través de acceso directo, como otros organismos en el caso de acceso indirecto. En la sección II, la naturaleza de los procedimientos en sí, los requerimientos y las distintas normas de procedimiento son analizados. En la sección III se analizan los efectos de la revisión constitucional sobre los actos normativos impugnados. Finalmente, en la sección IV se examinan otras dudas acerca de la revisión constitucional.

I. ACCESO A LA REVISIÓN CONSTITUCIONAL

51. Históricamente, el principal tipo de revisión constitucional se lleva a cabo por los jueces ordinarios, a través de la revisión incidental en los sistemas de revisión difusos.

La revisión incidental tiene lugar en cualquier etapa del procedimiento ordinario. Puede ser suscitada en el curso de cualquier tipo de procedimiento, al contrario de las quejas constitucionales específicas, que cuestionan la constitucionalidad de normas mediante la revisión incidental. Así, el acceso a la revisión constitucional es abierto a cualquier persona que tenga legitimación en los procedimientos ordinarios. La eficacia de este tipo de revisión se basa tanto en el conocimiento de sus derechos por parte del individuo, como en la capacidad del juez ordinario y su voluntad de investigar violaciones de los derechos fundamentales. Ambas condiciones no son completamente evidentes⁴⁴. Este sistema funciona bien cuando está bien arraigado en la cultura jurídica, tal como en los Estados Unidos, Canadá y en los países escandinavos.

52. Hay pocos países que no proporcionan ningún medio para que el individuo pueda cuestionar la constitucionalidad de una disposición de carácter general o individual, ni siquiera indirectamente a través de los procedimientos prejudiciales. Estos son Argelia, Marruecos, Países Bajos y Túnez. Francia pertenecía a este grupo de países, aunque el Consejo de Estado (*Conseil d'Etat*) podría examinar la constitucionalidad de cualquier ley inferior al nivel de Ley Orgánica. Sin embargo, una reciente reforma constitucional ha cambiado la posición de Francia. El nuevo artículo 61-1 de la Constitución, introducido en 2008, presenta una “cuestión prioritaria de constitucionalidad”. Esta reforma permite que cualquier persona pueda impugnar ante un juez ordinario la constitucionalidad de un acto legislativo que restrinja sus derechos y libertades garantizados por la Constitución. El juez decidirá si enviar o no la consulta al *Conseil d'Etat* o al Tribunal de Casación, los cuales, respectivamente, deciden sobre la conveniencia de remitir esta cuestión al Consejo Constitucional.

⁴⁴ Vea X. Philippe, “Le contrôle de constitutionnalité des droits fondamentaux dans les pays européens”, Actes du colloque international “L’effectivité des droits fondamentaux dans les pays de la communauté francophone”, Port-Louis (Île Maurice), 29-30 de septiembre, 1 octubre de 1993, p. 412.

53. Una vez que el acceso individual predominantemente desempeña la función de protección de los derechos fundamentales de la persona y, como tales derechos –con la excepción de los derechos políticos (por ejemplo, derecho a voto) y a veces también de los derechos sociales (por ejemplo, derecho a la seguridad social)– suelen ser conferidos a los ciudadanos y a los no ciudadanos por igual, las distintas disposiciones de acceso individual afectan a todos los miembros de la sociedad⁴⁵. Sin embargo, la protección de los no ciudadanos puede ser menos completa que la protección de los ciudadanos.
54. Los tribunales constitucionales pueden ser abordados por diferentes organismos o por individuos. Un método sencillo de clasificación distinguiría entre demandas de organismos públicos o constitucionales, incluidos los tribunales⁴⁶, y demandas de personas privadas, naturales o morales. En algunos estados, por ejemplo, Albania, Austria, Croacia, Hungría, Moldavia⁴⁷, o “la ex República Yugoslava de Macedonia”, el Tribunal Constitucional puede comenzar a revisar los procedimientos *proprio motu*. Sin embargo, este sistema de clasificación no es del todo satisfactorio. Ello se debe al hecho que la revisión *a priori* está normalmente abierta sólo a determinados órganos constitucionales y no a individuos, mientras que la revisión *a posteriori*, en cambio, cuando existe, puede ser iniciada por individuos y órganos constitucionales. Como se mencionó anteriormente, el presente estudio distingue entre el acceso **directo** e **indirecto**. Acceso indirecto significa que cualquier pregunta individual llega al Tribunal Constitucional para su adjudicación por medio de otro órgano, mientras que el acceso directo comprende todos los medios jurídicos concedidos a los individuos para impugnar directamente ante el Tribunal Constitucional, sin la intervención de terceros.

⁴⁵ De acuerdo con el artículo 125 de la Constitución de Rusia, “los ciudadanos” tienen derecho a solicitar al Tribunal Constitucional, pero el Tribunal Constitucional ha dado una interpretación amplia del término, incluyendo también a los extranjeros y los apátridas.

⁴⁶ El Tesauro sistemático de la Comisión de Venecia enumera *inter alia*, Jefes de Estado, órganos legislativos, órganos ejecutivos, órganos de autoridades federales o regionales, órganos de descentralización sectorial, órganos de gobierno autónomo locales, el fiscal, el defensor del pueblo. Además, existe una diferencia sistemática entre las referencias de un tribunal (especialmente en lo que se refiere a las cuestiones preliminares) y las reclamaciones de organismos públicos o privados. Ver CDL-JU(2008)031 Tesauro sistemático.

⁴⁷ El artículo 135 de la Constitución dispone que el Tribunal Constitucional ejerce su control sólo por encargo. Sin embargo, el artículo 72 del Código de la jurisdicción constitucional establece que el Tribunal puede revisar sus propios fallos *proprio motu*, pero no hay ningún texto o costumbre de iniciar procedimientos de revisión de actos normativos *proprio motu*.

Indirecto		Directo		
Defensor público	Procedimientos de fallos preliminares	Abstracto	Denuncia individual / relacionados a un caso concreto	En contra de actos individuales
Solicitud Preliminar			En contra de actos normativos	
Excepción/objeción de inconstitucionalidad				
	<i>Actio popularis</i>			
	Casi <i>actio popularis</i> /interés legal			
		Sugerencia individual		
			Queja normativa constitucional	
			Rusia: denuncia individual	
			Ucrania: solicitud constitucional/presentación	
				Amparo
				Revisión constitucional
				Denuncia de inconstitucionalidad completa

55. La clasificación seguida aquí, por lo tanto, explora dos cuestiones: primero, los actores involucrados en los casos de acceso indirecto a la revisión constitucional; segundo, el acceso directo de los individuos a la revisión constitucional. El tema de la revisión se estudia al igual que los derechos protegidos.

I.1. TIPOS DE ACCESO

I.1.1. Acceso indirecto

I.1.1.1. Tribunales ordinarios introduciendo procedimientos preliminares de decisión

Ver Tabla 1.1.20. Acceso individual indirecto: Solicitudes preliminares.

56. Los procedimientos de fallos prejudiciales se encuentran entre los tipos más comunes de acceso individual indirecto. Si un tribunal ordinario tiene dudas sobre si un acto normativo aplicable en un caso concreto viola la Cons-

titución, envía una cuestión prejudicial ante el Tribunal Constitucional. La ventaja de este procedimiento es que los tribunales ordinarios están bien informados y son capaces de hacer solicitudes válidas. Los tribunales ordinarios sirven como un primer filtro y pueden ayudar a minimizar el número de peticiones abusivas o repetitivas. Además, los procedimientos de fallos prejudiciales complementan la consideración abstracta de cualquier provisión, ya que facilitan la revisión derivada de situaciones concretas en las cuales un precepto es aplicado o debe serlo⁴⁸. Esta ventaja puede, en algunos sistemas judiciales, también tener sus inconvenientes. En primer lugar, la eficacia de los procedimientos prejudiciales depende fuertemente de la capacidad y la voluntad de los jueces ordinarios para identificar los actos normativos potencialmente inconstitucionales y presentar cuestiones prejudiciales al Tribunal Constitucional. En segundo lugar, se basa, en menor medida, en las personas que utilizan el trámite. Los procedimientos de fallos prejudiciales existen en muchos estados incluidos en este estudio, con la excepción de Portugal y Suiza⁴⁹. En Lituania, las cuestiones preliminares constituyen el único tipo de acceso individual a la Corte Constitucional. En Bielorrusia, cuando se ve un caso, las solicitudes preliminares constituyen el único tipo de acceso individual a la Corte Constitucional, aparte de la posibilidad de formular peticiones a diferentes organismos estatales. En los Estados con sistemas de control de constitucionalidad difuso, las cuestiones preliminares, sin embargo, son relativamente poco comunes, debido a que los tribunales ordinarios tienen la competencia para evaluar la constitucionalidad de la ley aplicable.

57. En muchos Estados (por ejemplo, Albania, Argelia, Andorra, Armenia, Bélgica, Bulgaria, Croacia, República Checa, Francia, Hungría, Lituania, Moldavia, Polonia, Eslovaquia, España, Turquía y Ucrania) las partes de un proceso ante un tribunal ordinario pueden sugerir que una cuestión preliminar se presente ante el Tribunal Constitucional. Estas sugerencias, que pueden ser rechazadas o aceptadas, no limitan la discreción del juez para plantear una cuestión preliminar.
58. Donde las partes pueden hacer tales sugerencias en el curso del procedimiento ordinario, éstas se pueden colocar en una posición fuerte. Las partes en estos procedimientos pueden contar con un recurso procesal –la “excepción de inconstitucionalidad”– cuando tengan dudas sobre la constitucionalidad

⁴⁸ CDL-INF(1996)010, Dictamen sobre el proyecto de ley sobre el Tribunal Constitucional de la República de Azerbaiyán.

⁴⁹ Vea *Bericht des Schweizerischen Bundesgericht für die VII. Konferenz der europäischen Verfassungsgerichte*, p. 17, en: <http://www.confcoconsteu.org/reports/Zwitserland-DE.pdf>, consultado el 2 de junio de 2009.

de una ley que se aplica en el procedimiento. Esta forma de excepción puede de ser presentada ante el juez ordinario. El juez estará obligado a considerar y justificar cualquier rechazo a remitir la cuestión al Tribunal Constitucional, el que sólo puede hacerse válidamente por un número limitado de motivos (por ejemplo, las objeciones son claramente infundadas, etc.⁵⁰). A pesar de que la decisión del juez ordinario es definitiva, existen límites procesales a su autonomía y a la de los tribunales ordinarios. Este tipo de acceso existe en algunos países, como Albania, Chile, Grecia, Hungría, Italia, Luxemburgo, Malta, Portugal y San Marino. En Sudáfrica, la autorización para apelar ante el Tribunal Constitucional sólo puede ser concedida por el propio Tribunal Constitucional, a pesar de que una declaración de que una ley no es válida debe ser confirmada por el Tribunal Constitucional y debe, en todo caso, ser sometida a ese Tribunal. (*Sic*) En otros casos, las partes pueden llevar su queja al Tribunal únicamente si el permiso para apelar se concede, o si se les concede el acceso directo.

59. La “excepción de inconstitucionalidad,” por lo tanto, puede ser considerada como un medio muy eficaz de lograr el acceso individual, si el tribunal ordinario debe enviar una cuestión preliminar, como es el caso, por ejemplo, en Rumania o Eslovenia.
60. En Albania, Andorra, Armenia, Austria⁵¹, Bélgica, Bielorrusia, Bosnia-Herzegovina, Croacia, República Checa, Georgia, Hungría, Italia, Liechtenstein, Lituania, Luxemburgo, Malta, Polonia, Eslovaquia, Eslovenia, Rumania, Rusia, España, “La primera República Yugoslava de Macedonia,” Turquía y Ucrania, todos los tribunales ordinarios son competentes para iniciar un procedimiento prejudicial presentando una cuestión ante el Tribunal Constitucional.
61. La presentación de cuestiones preliminares se puede limitar con el objetivo de elevar la calidad de las presentaciones. En Austria (leyes referentes), Azerbaiyán, Bielorrusia, Bulgaria, Grecia, Letonia, Moldavia, sólo los más altos tribunales están autorizados para presentarlas peticiones preliminares. En Chipre, sólo los tribunales que tienen jurisdicción en asuntos de familia pueden plantear cuestiones prejudiciales. En Rusia y Bielorrusia, los más altos tribunales también están autorizados a iniciar un procedimiento de revisión abstracta. En Francia, un sistema de dos niveles de filtro se ha puesto en marcha para el fallo preliminar de prioridades: en primer lugar, cualquier juez ordinario, a petición de una de las partes en el caso, puede referir

⁵⁰ En Francia, por ejemplo, el fallo preliminar de prioridades tiene que cumplir varios requisitos: la cuestión tiene que ser seria, tiene que ser nueva (una pregunta que el Consejo Constitucional no ha respondido aún) y debe ser aplicable al caso concreto.

⁵¹ Con la excepción de los tribunales de primera instancia.

la cuestión prejudicial al Tribunal Supremo, y después, el más alto tribunal puede llevar la cuestión ante el Consejo Constitucional.

62. Si bien esto es una herramienta eficaz para reducir el número de cuestiones preliminares y de acuerdo con la lógica del agotamiento de los recursos (el individuo debe seguir la secuencia normal de los tribunales), esto deja a las partes en un procedimiento en una situación potencialmente inconstitucional por un largo período de tiempo si los tribunales inferiores están obligados a aplicar la ley, incluso si tienen serias dudas sobre su constitucionalidad. **Desde el punto de vista de la protección de los derechos humanos es más conveniente y eficaz darle a los tribunales de todos los niveles, acceso al Tribunal Constitucional.** También hay otras alternativas. En Alemania, por ejemplo, todos los tribunales tienen que tomar en consideración todas las cuestiones de derecho constitucional y se ven obligados a plantear una cuestión prejudicial ante el Tribunal Constitucional si están convencidos de que determinada norma es inconstitucional –la simple duda no es suficiente-. Esto ayuda a ambos a reducir el número de cuestiones preliminares, sin prolongar innecesariamente situaciones inconstitucionales bastante obvias.

I.1.1.2. Defensor del Pueblo

Ver Tabla 1.1.19. Acceso indirecto: Defensor del Pueblo.

63. La mayoría de los miembros de la Comisión de Venecia y Estados observadores cuentan con una institución de defensor del pueblo (mediador, comisionado parlamentario, etc.), que suelen ser nombrados por los parlamentos nacionales⁵². Estos mediadores son independientes e imparciales. En muchos Estados, los defensores del pueblo son considerados como protectores de los derechos humanos que tratan de encontrar soluciones viables cuando se han producido violaciones de los derechos humanos.
64. Desde la perspectiva de la protección de los derechos humanos, la Comisión de Venecia recomienda que “*el mandato del Defensor del Pueblo o Defensor de los Derechos Humanos incluya la posibilidad de solicitarle al Tribunal Constitucional del país un juicio abstracto sobre cuestiones acerca de la constitucionalidad de leyes y reglamentos o actos administrativos generales que plantean cuestiones que afectan los derechos humanos y las libertades. El Defensor del Pueblo debe ser capaz de hacer esto a nombre propio o a propósito de una queja en particular, presentada ante la institución*”⁵³. Es la tarea principal de los tribunales or-

⁵² De acuerdo con los “Principios de París” de las instituciones nacionales de derechos humanos, Asamblea General las Naciones Unidas resolución 48/134 de 20.12.1993.

⁵³ CDL-AD(2007)020, Dictamen sobre la posible reforma de la institución del Defensor de Pueblo de 2007 en Kazajstán.

dinarios proveer remedios en contra de los actos ilegales. Sin embargo, cuando un Tribunal Constitucional también es competente para controlar la constitucionalidad de los actos individuales, parece lógico darle también al defensor del pueblo el derecho de presentar casos individuales ante el tribunal. En todo caso, como el acceso al Tribunal Constitucional *a través* de un Defensor del Pueblo sólo ofrece un acceso indirecto al mismo, este mecanismo no puede reemplazar el acceso directo, sino que debe ser visto como un proceso complementario. La decisión de elegir entre los diferentes mecanismos o decrear opciones paralelas dependerá de la cultura jurídica de cada país.

65. En muchos Estados el Defensor del Pueblo no tiene legitimidad para recurrir ante el Tribunal Constitucional y sólo podrá presentar informes al Parlamento, sugiriendo la impugnación, ante el Tribunal Constitucional, de la constitucionalidad de ciertas disposiciones legales, y facilitar la resolución de los conflictos entre la administración pública y un individuo (por ejemplo, Grecia, Lituania o la República de Corea)⁵⁴. En países como Francia o el Reino Unido, aunque el Defensor del Pueblo tiene competencia directa en la protección de los derechos de un individuo, no tiene legitimación ante los tribunales ordinarios. En Francia, el Defensor del Pueblo (Mediator de la República) tiene legitimación ante “cualquier órgano administrativo,” e incluso en los tribunales (con el fin de obtener documentos, etc.).
66. En los sistemas de revisión difusa, el Defensor del Pueblo, si ha sido investido con el poder de iniciar un procedimiento judicial, debe hacerlo en el tribunal ordinario competente –no en la Corte Suprema de Justicia (por ejemplo, el Defensor del Pueblo especializado en Finlandia)–. Brasil, aunque no es estrictamente un país con control difuso, modificó su legislación en 2009 y ahora el Defensor del Pueblo puede iniciar una acción legal ante el Poder Judicial para la protección de los derechos constitucionales.
67. En los sistemas de revisión constitucional concentrada el Defensor del Pueblo puede tener el poder de iniciar un procedimiento de revisión constitucional. Como ejemplo, los defensores del pueblo de Croacia, Estonia, Montenegro, Portugal, Eslovenia, España, y “la ex República Yugoslava de Macedonia” pueden iniciar dicho procedimiento, normalmente para proteger los derechos fundamentales, y pueden hacerlo sin que exista un caso concreto.
68. Los defensores del pueblo de Azerbaiyán, Ucrania y Perú tienen la potestad de iniciar la revisión de un acto normativo en relación a un caso concreto

⁵⁴ G. Kucska-Stadlmayer, “The Competences of European Ombudspersons - Description and Analysis of the Status Quo”, en: <http://www.ioi-europe.org/index2.html>

del cual estén conociendo actualmente. Similar facultad existe en Austria, a pesar de que se limita a la revisión de los actos administrativos en general. Por otra parte en Azerbaiyán, el Defensor del Pueblo está legitimado para iniciar la revisión de fallos judiciales inconstitucionales en los casos en que haya actuado. En Sudáfrica, el Defensor del Pueblo podrá acudir al Tribunal Constitucional y otros tribunales, para cumplir con su mandato de proteger al público contra cualquier acción ilegal estatal, pero no puede investigar la constitucionalidad de fallos judiciales.

69. En algunos de estos casos, la capacidad de los defensores del pueblo de iniciar un procedimiento de revisión da a los individuos la posibilidad de llegar a la Corte Constitucional, aunque de manera indirecta, en situaciones en las que normalmente no tendrían acceso a ella. El Defensor del Pueblo, por lo tanto, abre nuevos caminos de acceso.
70. A veces, el Defensor del Pueblo interviene en casos en que el individuo tiene la posibilidad de hacerlo por su cuenta, pero el Defensor del Pueblo, a través de su experiencia legal, ayuda a mejorar la calidad de las peticiones (vea por ejemplo, Bosnia y Herzegovina, Letonia⁵⁵, Rusia, Eslovenia⁵⁶). El Defensor del Pueblo español podrá presentar una demanda de *amparo* contra cualquier acto de las autoridades públicas, en nombre de cualquier (cualesquiera) persona(s) que, a su juicio, ha (hayan) sido afectada(s) por el acto impugnado, con el fin de incluirlos en el proceso de revisión. En estos casos, los derechos del Defensor del Pueblo, en principio, no van más allá de los derechos del individuo. Por el contrario, el Defensor del Pueblo eslovaco sólo indica si el demandante tiene la posibilidad de interponer un recurso de inconstitucionalidad, pero no inicia tal procedimiento⁵⁷.
71. Chile, que es uno de los dos Estados de América Latina que no tienen un Defensor del Pueblo (Uruguay es el segundo), actualmente está considerando

⁵⁵ Ley del Defensor del Pueblo, Sección 13: “En el desempeño de las funciones y tareas definidas por la presente Ley, el Defensor del Pueblo tiene derecho a: 8) presentar una solicitud con respecto a la iniciación de un procedimiento ante el Tribunal Constitucional si una institución que ha emitido el acto controvertido no ha rectificado las deficiencias establecidas, en el plazo fijado por el Defensor del Pueblo”.

⁵⁶ De acuerdo con el artículo 50.2 de la Ley del Tribunal Constitucional de Eslovenia, el defensor de los derechos humanos puede, en condiciones determinadas por esta ley, presentar un recurso de inconstitucionalidad en relación con un caso individual que él o ella está tratando. Además, el artículo 52.2 de la Ley del Tribunal Constitucional establece que el defensor de los derechos humanos puede presentar un recurso de inconstitucionalidad con el consentimiento de la persona cuyos derechos humanos o libertades fundamentales él o ella está protegiendo en el caso individual.

⁵⁷ Artículo 14 Ley del Defensor del Pueblo, en: <http://www.vop.gov.sk/act-on-the-public-defender-of-rights>, consultado el 28 de abril de 2009.

la posibilidad de incluir tres nuevos artículos en la Constitución y crear la institución del “*Defensor del Pueblo*”⁵⁸. Israel no tiene un Defensor del Pueblo, pero cualquier persona o entidad puede plantear cuestiones de inconstitucionalidad ante la Corte Suprema.

I.1.1.3. Otros organismos

72. En algunos países, el Ministerio Público tiene acceso al Tribunal Constitucional (por ejemplo, el artículo 101 de la Constitución de Armenia, el artículo 130 de la Constitución de Azerbaiyán, el artículo 150 de la Constitución de Bulgaria), lo que podría ser relevante para este estudio como una forma de acceso indirecto.
73. En algunos países (por ejemplo, en Albania, Andorra, Armenia, Austria, Bélgica⁵⁹, Croacia, República Checa, Francia, Portugal, Polonia, Letonia, España, Moldavia, Rumanía, Rusia, Turquía, Ucrania, etc.), un cierto número de miembros del Parlamento o algunos otros organismos o autoridades (como el Presidente, el Primer Ministro, etc.) también pueden impugnar actos normativos ante el Tribunal Constitucional. Bielorrusia, a modo de ejemplo, no tiene un Defensor del Pueblo. Las personas allí, que no tienen derecho a apelar directamente al Tribunal Constitucional, tienen acceso indirecto al mismo. Lo hacen llamando la atención sobre la inconstitucionalidad de estos actos a los organismos autorizados y las personas investidas con el derecho de remitir peticiones al Tribunal Constitucional (es decir, el Presidente de la República de Bielorrusia, las dos cámaras del Parlamento –la Cámara de representantes y el Consejo de la República– la Corte Suprema de la República de Bielorrusia, la Corte Suprema de Justicia Económica de la República de Bielorrusia y el Consejo de Ministros de la República de Bielorrusia).

I.1.2. Acceso directo

Ver Tabla 1.1.21. Acceso directo individual: Bases constitucionales y legales.

⁵⁸ Véase, en particular, *Segundo informe de las comisiones unidas de constitución, legislación y justicia y de derechos humanos, nacionalidad y ciudadanía recaído en el proyecto de reforma constitucional que crea el Defensor del Ciudadano*, en: <http://www.ombudsman.cl/pdf/informe2-ddhh.pdf>, y otros documentos por la Iniciativa chilena para establecer al Defensor del Pueblo.

⁵⁹ El Presidente del Parlamento puede impugnar actos normativos ante el Tribunal Constitucional a petición de dos tercios de los miembros (Artículo 2, 3º de la Ley Especial sobre el Tribunal Constitucional).

I.1.2.1. Revisión abstracta (Revisión no relacionada con un caso específico)

I.1.2.1.1. *ACTIO POPULARIS*

74. La *actio popularis* implica que toda persona tiene derecho a tomar medidas contra un acto normativo después de su promulgación, sin necesidad de probar que él o ella está actualmente y directamente afectado por la disposición. Como lo expresó Kelsen, la *actio popularis* es la más amplia garantía de una revisión constitucional integral, ya que cualquier persona lo puede solicitar al Tribunal Constitucional. Al hacerlo, se entiende que simplemente se está satisfaciendo el deber de cada ciudadano como guardián de la Constitución. El denunciante no tiene que ser una víctima de una violación de sus derechos fundamentales⁶⁰. La *actio popularis* desempeña un papel menor en Liechtenstein, donde varias condiciones deben cumplirse para poder presentar un *actio popularis*, Chile, Malta⁶¹ y Perú. Este instrumento también ha contribuido para aclarar el orden jurídico en Croacia, Georgia, Hungría⁶² y “la ex República Yugoslava de Macedonia”⁶³. En Sudáfrica, un individuo puede acercarse a la corte con el fin de defender el interés público. Sin embargo, Kelsen llegó a la conclusión de que la *actio popularis* no era un medio efectivo para lograr la revisión constitucional, ya que puede dar lugar a quejas abusivas⁶⁴. En Croacia, la *actio popularis* ha llevado a la sobre-carga de la Corte Constitucional, una cuestión sobre la cual la Comisión de Venecia también se ha pronunciado de manera crítica⁶⁵. La mayoría de los países no incluyen por lo tanto, la acción popular como un medio válido

⁶⁰ A. van Aaken, “*Making International Human Rights Protection More Effective: A Rational-Choice Approach to the Effectiveness of Ius Standi Provisions*”, Preprints of the Max Planck Institute for Research on Collective Goods Bonn 2005/16, Bonn, 2005, p. 14, en: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=802424#, consultado el 23 de febrero de 2009.

⁶¹ CDL-JU (2001)22, G. Brunner, “*Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum*”, informe del seminario CoCoSem en Zakopane, Polonia, octubre de 2001, p. 35 f.

⁶² Por ejemplo, en relación con los temas de pena de muerte. Veaen perspectivacomparativa, W. Sadurski; *Rights before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*, Springer.

⁶³ CDL-JU (2001)22, G. Brunner, “*Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum*”, informe del seminario CoCoSem en Zakopane, Polonia, octubre de 2001.

⁶⁴ H. Kelsen, cit. in: R. Ben Achour, “*Le contrôle de la constitutionnalité des lois: quelle procédure?*”, *Actes du colloque international “L’effectivité des droits fondamentaux dans les pays de la communauté francophone”*, Puerto-Louis (Isla Mauricio), 29-30 de septiembre, 1º de octubre de 1993, p. 401, en: <http://www.bibliotheque.refer.org/livre59/15905.pdf>, consultado el 7 febrero de 2009.

⁶⁵ CDL-AD(2008)030, Dictamen sobre el Proyecto de Ley sobre el Tribunal Constitucional de Montenegro.

para impugnar preceptos legales ante el Tribunal Constitucional. En Israel, las personas pueden peticionar ante el Tribunal Supremo, que sesiona como Tribunal Superior de Justicia, alegando que sus derechos constitucionales fueron violados. Además, varias organizaciones de derechos humanos o de otra naturaleza pueden presentar una petición como “demandantes públicos”, en pos del interés público general. Estos grupos no están obligados a mostrar un interés personal en la petición, a pesar de que pueden presentar una petición en nombre de los demandantes privados que se vieron afectados directamente por un acto normativo o gubernamental.

I.1.2.1.2. SUGERENCIA INDIVIDUAL⁶⁶

75. Una variante de la revisión abstracta en la que el individuo tiene un papel que desempeñar, es la posibilidad de la “sugerencia individual”, que deja un margen de discreción al Tribunal Constitucional. Las personas pueden acercarse al Tribunal Constitucional de una manera directa y sugerir que el Tribunal analice la constitucionalidad de un acto normativo. Sin embargo, el individuo no puede insistir en que el Tribunal Constitucional inicie el procedimiento. Es en realidad un caso en el cual el individuo puede “animar” al Tribunal para actuar *proprio motu*, una posibilidad que es bastante inusual. Sin embargo, algunos países, como Albania, Hungría y Polonia previenen esta posibilidad en algunos casos. En Montenegro y en Serbia la negación de la revisión debe seguir un procedimiento preliminar y su resolución debe ser motivada.

I.1.2.1.3. CUASI ACTIO POPULARIS (NECESIDAD DE DEMOSTRAR UN INTERÉS LEGÍTIMO)

76. La institución de una *cuasi actio popularis* ocupa una posición intermedia entre la acción popular meramente abstracta y la demanda constitucional normativa. Los reglamentos internos de *cuasi actio popularis* son más restrictivos y evitan así algunos de los problemas relacionados con la acción popular, ya que el solicitante tiene que demostrar que tiene cierto interés jurídico en la norma general. Las reglas de legitimación procesal están estrechamente relacionadas con las aplicables a la denuncia normativa constitucional, excepto por el hecho de que el solicitante no tiene que ser directamente afectado⁶⁷. Lo único que debe demostrarse que la provisión legal interfiere con sus derechos, intereses legales o situación jurídica⁶⁸. Este tipo de acceso a la corte constitucional existe, por ejemplo, en Grecia.

⁶⁶ El término utilizado por G. Brunner es “Anregung” (incitación). De hecho, parece que no hay forma común de denominación en los diferentes Estados, que van desde la “sugerencia” a la “propuesta”.

⁶⁷ Vea W. Sadurski, *op. cit.*, p. 6 f.

⁶⁸ Artículo 24 (2) Ley del Tribunal Constitucional.

I.1.2.2. Revisión de casos específicos: la denuncia individual

I.1.2.2.1. SOLAMENTE CONTRA ACTOS NORMATIVOS

I.1.2.2.1.1. QUEJA CONSTITUCIONAL NORMATIVA⁶⁹

77. A un individuo se le da el derecho de reclamar contra la violación de sus derechos fundamentales subjetivos provocada por un acto individual basado en una norma. Por lo tanto, la iniciativa para la revisión está relacionada con un caso concreto. Sin embargo, en sistemas que sólo contemplan la demanda normativa constitucional, el acto individual que aplica una norma no puede ser atacado ante el Tribunal Constitucional, y el subsecuente control por parte del Tribunal Constitucional no se refiere a la aplicación de la norma. Esto puede generar preocupaciones con respecto a la protección efectiva de los derechos fundamentales individuales, si sólo la aplicación de una ley constitucional o norma equivalente viola estos derechos. Quejas normativas existen (a menudo junto con otro tipo de quejas), por ejemplo, en Armenia, Austria, Bélgica⁷⁰, Georgia, Hungría, Polonia, Letonia, Luxemburgo, Rusia y Rumanía. Una forma limitada ha sido introducida en Estonia, donde ciertas resoluciones parlamentarias y decisiones presidenciales pueden ser impugnadas. Según el artículo 96 de la Ley Constitucional Federal de Rusia sobre el Tribunal Constitucional, los ciudadanos “*cuyos derechos y libertades han sido violados por la ley que se ha aplicado o se debe aplicar en un caso concreto*” pueden presentar una queja directamente ante el Tribunal Constitucional. Sin embargo, sobre este fundamento sólo es posible verificar la constitucionalidad de la ley en que se basa el acto individual, pero no la aplicación concreta de la ley en el caso individual. La denuncia individual rusa es, pues, una forma especial de control de norma concreta⁷¹. El sistema francés de la actualidad se acerca a la queja normativa constitucional, ya que al Consejo Constitucional se le permite controlar los actos legislativos, y esto es un control abstracto; si la norma es declarada inconstitucional, deja de existir en el ordenamiento jurídico francés.

⁶⁹ Término que se utiliza en alemán: Unechte Grundrechtsbeschwerde, Vea CDL-AD(2005)005; para. 22, S. R. Dürr, “*Individual Access to Constitutional Court in European Transitional Countries*”, en: B. Fort (ed.), *Democratising Access to Justice in Transitional Countries. Proceedings of the Workshop “Comparing Access to Justice in Asian and European Transitional Countries”*, Sang Choy International, Jakarta, 2006, p. 59.

⁷⁰ CDL-JU(2008)032 M.-Fr. Rigaux, “*Introduction of a Constitutional Review of Laws: Benefit, Purpose and Modalities*”, Report for the seminar on constitutional jurisdiction, Ramallah, 2008.

⁷¹ Vea Brunner, *Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum, Jahrbuch für Öffentliches Recht* 2002, p. 226.

I.1.2.2.1.2. DEMANDA CONSTITUCIONAL

78. En Ucrania, si una persona expone que aplicaciones divergentes de una ley podrían llevar, o han dado lugar, a una violación de sus derechos constitucionales, puede exigir una interpretación vinculante del Tribunal Constitucional. En tal caso, la interpretación de un acto normativo y no un acto individual está en cuestión. Por lo tanto, la petición constitucional materialmente cumple la función de una demanda normativa constitucional⁷².

I.1.2.2.2. CONTRA LOS ACTOS INDIVIDUALES: RECURSO PLENO DE CONSTITUCIONALIDAD

79. Con el creciente valor de la protección de los derechos humanos se puede observar una clara tendencia hacia la apertura de la revisión constitucional de cada uno de los actos administrativos y fallos judiciales a petición del individuo⁷³, ya que las violaciones de los derechos humanos son a menudo el resultado de la aplicación de actos individuales inconstitucionales basados en actos normativos constitucionales⁷⁴. La Comisión de Venecia está a favor del recurso pleno de constitucionalidad, no sólo porque se prevé la protección integral de los derechos constitucionales, sino también por el carácter subsidiario de las medidas previstas por el Tribunal Europeo de Derechos Humanos y la conveniencia de resolver cuestiones de derechos humanos a nivel nacional.

I.1.2.2.2.1. EL PAPEL DEL RECURSO PLENO DE CONSTITUCIONALIDAD

80. El recurso pleno de constitucionalidad, sin duda, ha facilitado un acceso individual más amplio a la justicia constitucional y es, por lo tanto, la protección más exhaustiva de los derechos individuales. Un individuo puede, a título subsidiario⁷⁵, reclamar en contra de cualquier acto de los poderes públicos que viola directa y actualmente sus derechos fundamentales. Más precisamente, una persona puede impugnar una ley general si se le aplica directamente, o impugnar un acto individual que le fue dirigido. Esta posibilidad existe, por ejemplo, en Albania, Andorra, Armenia, Austria, Azerbaiyán, Chipre⁷⁶, Bélgica, Bosnia y Herzegovina, Croacia, la República Checa, Georgia,

⁷² V. Skomorocha, Konstytucijnyj Sud Ukrayiny: dosvidiproblemy, PravoUkrajiny no. 1/1999, cit. en: CDL-JU (2001)22, G. Brunner, “Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum”, informe del seminario CoCoSem en Zakopane, Polonia, octubre de 2001, p. 34.

⁷³ CDL-AD (2004)24, Dictamen sobre el proyecto de reformas constitucionales en relación con el Tribunal Constitucional de Turquía.

⁷⁴ CDL-AD (2008)029, Dictamen sobre los proyectos de leyes que modifican y complementan 1) la Ley de Procedimientos Constitucionales y 2) la Ley sobre el Tribunal Constitucional de Kirguistán.

⁷⁵ La subsidiariedad significa que todos los demás recursos deben ser agotados.

Alemania, Letonia, Liechtenstein, Malta, Montenegro, Polonia, Serbia, Eslovenia, Sudáfrica, España⁷⁷, Suiza⁷⁸, la “ex República Yugoslava de Macedonia” y Eslovaquia. Se pueden encontrar diferentes condiciones y sub-formas para las quejas constitucionales. La más destacada es “la revisión constitucional”, en la cual a un individuo se le da un remedio contra fallos definitivos de los tribunales ordinarios, pero no contra actos administrativos individuales. Este es el caso de Albania, Bosnia y Herzegovina, Chile⁷⁹ y Malta⁸⁰. En Austria, por otro lado, sólo los actos individuales y sentencias administrativas de la Corte de Asilo pueden ser revisadas; las decisiones civiles o penales no⁸¹.

81. En procedimientos de recurso pleno de constitucionalidad, el Tribunal Constitucional no suele dictar una sentencia sobre el fondo del caso. Por el contrario, sólo tendrá en cuenta sus aspectos constitucionales (para más información, véanse los párrafos 206 y ss. abajo). Además, el tribunal, en principio, no revisará si toda la jerarquía de las normas se ha respetado (por ejemplo, revisión de la legalidad de un acto individual). La función del recurso pleno de constitucionalidad, en primera instancia, es proteger los derechos del individuo garantizados por la Constitución.

⁷⁶ Según el artículo 146(2), el requirente debe demostrar que un interés legítimo suyo, ya sea como persona o como miembro de una comunidad, es adverso y directamente afectado por una acción u omisión administrativa. El concepto de “interés” no es similar al concepto que se aplica en el derecho civil. Debe ser concreto y de carácter económico o moral. Para presentar el recurso, debe haber *legitimatio ad causum*, no admitiéndose una queja general de mala administración.

⁷⁷ Es importante tener en cuenta que la acción de *amparo* de España debe considerarse como un recurso pleno de constitucionalidad. Se lleva a cabo como un recurso de última instancia ante el Tribunal Constitucional. Sin embargo, no debe confundirse con los *recursos de amparo* vigentes en la mayoría de los países de América Latina (como Chile, Perú, Argentina y México), un tipo de recurso de inconstitucionalidad específico donde al individuo se le da una acción específica para defender sus derechos ante los tribunales ordinarios. También es importante tener en cuenta la reforma de 2007 adoptada en España, en la cual hay una condición de admisibilidad nueva para conceder el *amparo*, en el sentido que la cuestión planteada en el caso tenga que ser “constitucionalmente relevante”.

⁷⁸ El Tribunal Constitucional de Bielorrusia, en contra de una práctica anterior adoptada en la parte 4 del artículo 122 de la Constitución (véase la sentencia de 2 de marzo D-184/05 2005), ya no acepta demandas individuales.

⁷⁹ Contra ciertos tipos de resoluciones de los tribunales superiores (*auto acordados*).

⁸⁰ Es interesante notar que la petición constitucional también puede ser sometida en contra de violaciones potenciales de los derechos fundamentales.

⁸¹ Sin embargo, actos administrativos individuales pueden ser impugnados en paralelo a un recurso ante el Tribunal Supremo Administrativo: En primer lugar, el Tribunal Constitucional verifica si los derechos constitucionales han sido violados y, en caso negativo, refiere el caso al Tribunal Administrativo para la verificación de la eventual violación de leyes ordinarias. Esto fue visto por los austriacos como una laguna que hay que superar.

I.1.2.2.2. LAS DENUNCIAS INDIVIDUALES COMO UN “FILTRO” NACIONAL PARA LOS CASOS QUE LLEGAN AL TRIBUNAL EUROPEO DE DERECHOS HUMANOS

82. Un aspecto importante de las denuncias individuales ante el Tribunal Constitucional contra violaciones de los derechos humanos es la cuestión de si tales denuncias tienen que ser agotadas de acuerdo con el artículo 35.1 de la Convención Europea de los Derechos Humanos antes de que una persona pueda apelar ante el Tribunal Europeo de Derechos Humanos, como es el caso por ejemplo de denuncias de *amparo* ante el Tribunal Constitucional de España. La discusión de este tema es especialmente relevante en vista del alto número de casos que conoce el Tribunal (unos 120.000 casos en 2010) y la necesidad de resolver cuestiones de derechos humanos a nivel nacional antes de llegar al Tribunal de Estrasburgo como se pide en el párrafo 4 de la Declaración de Interlaken, que insiste en el carácter subsidiario del mecanismo de la Convención:

“4. La Conferencia recuerda que es responsabilidad, principalmente de los Estados Partes, asegurar el cumplimiento y aplicación de la Convención y, por lo tanto, pide a los Estados Partes que se comprometan a:

*...
d) asegurar; si fuere necesario, mediante la introducción de nuevos recursos legales, ya sea uno de carácter específico o un recurso interno general, que cualquier persona con una reclamación fundada sobre una violación de sus derechos y libertades reconocidos en la Convención, tenga a su disposición un recurso efectivo ante una autoridad nacional que proporcione una reparación adecuada, si fuere el caso; ...”⁸².*

83. En países donde existe un Tribunal Constitucional especializado, una denuncia individual ante ese tribunal parece una opción lógica para tal recurso porque, por lo general, dicha queja es subsidiaria a nivel nacional y sólo se produce después del agotamiento de recursos ante tribunales ordinarios. Es así que el último paso posible a nivel nacional se debe tomar antes de que la posibilidad de una demanda ante el Tribunal Europeo de Derechos Humanos entre en juego.

⁸² Reunión de la Conferencia de Alto Nivel en Interlaken, el 18 y 19 de febrero de 2010 a iniciativa de la Presidencia Suiza del Comité de Ministros del Consejo de Europa.

84. Parece evidente que otros tipos de acceso individual a los tribunales constitucional es analizados en este estudio uno deben ser considerados como un “recurso doméstico” efectivo: una *actio popularis* se dirige contra una norma en abstracto y normalmente no es un recurso adecuado contra una violación concreta de los derechos humanos. Asimismo, un recurso individual “normativo” –dirigido únicamente contra un acto normativo, pero no contra su aplicación en un caso concreto– no sería suficiente como un “filtro”⁸³ nacional, porque en la práctica, las violaciones de los derechos humanos son más frecuentemente el resultado de la aplicación de un acto inconstitucional individual que puede estar basado en una ley conforme a la Constitución, que de la aplicación “técnicamente correcta” de una ley inconstitucional –que puede ser impugnada a través de este tipo de recurso–. Así, un gran número de violaciones de los derechos humanos escaparían de una queja normativa y el efecto-filtro seguiría siendo marginal.
85. Un ejemplo interesante del intento de introducir ese recurso se refiere a Turquía. En vista del elevado número de casos de Turquía ante el Tribunal de Estrasburgo, el Tribunal Constitucional de Turquía propuso, en 2004, la introducción de una denuncia individual al Tribunal en relación con los derechos constitucionales, que también están cubiertos por el Convenio Europeo de Derechos Humanos. El memorándum explicativo de estas modificaciones dice explícitamente que “*la introducción del recurso de inconstitucionalidad se traducirá en una disminución considerable del número de archivados contra Turquía ante el Tribunal Europeo de Derechos Humanos*”. En septiembre de 2010 un paquete de reformas constitucionales fue aprobado por referéndum, incluyéndose en él la introducción de una forma de denuncia individual ante el Tribunal Constitucional. De acuerdo con el nuevo texto del artículo 148 de la Constitución turca, toda persona tiene derecho a presentar quejas individuales ante el Tribunal Constitucional en relación a los derechos constitucionales que también están cubiertos por el Convenio Europeo de Derechos Humanos. Se indica en este artículo que las normas procesales relativas a la forma de introducir la queja serán establecidas por una ley que se aprobará dentro de los próximos dos años.
86. En su dictamen sobre estas propuestas modificadorias, la Comisión de Venecia encontró que el proyecto de enmiendas se “*justifica y sigue las soluciones*

⁸³ Tal como es, por ejemplo, el caso de Hungría, donde no existe un mecanismo completo de denuncias individuales, pero la “única” queja normativa constitucional. El Tribunal Europeo de Derechos Humanos ha declarado que no es necesario presentar la solicitud al Tribunal Constitucional, antes de presentar el expediente ante el Tribunal Europeo, Tribunal de Derechos Humanos, *Weller vs. Hungría*, sentencia de 31 de marzo de 2009.

*ya conocidas en otros países europeos y que cumplen con las normas europeas*⁸⁴. Así, la Comisión reconoció que una queja individual efectiva en un Tribunal Constitucional puede ser un filtro nacional para los casos antes de llegar al Tribunal Europeo de Derechos Humanos⁸⁵. Esto también ha sido confirmado por un gran número de estudios e investigaciones sobre este tema, explicando, por ejemplo, por qué el número de presentaciones contra el Reino Unido, principalmente antes de la Ley de los Derechos Humanos de 1998, era mucho mayor que contra otros países, o mediante la comparación del número de denuncias presentadas en el Tribunal de Estrasburgo contra Francia, en comparación con Alemania o España⁸⁶.

87. Para constituir este tipo de filtro y para exigir su agotamiento en el sentido del artículo 35.1 de la Convención, un recurso nacional tiene que ser eficaz, en conformidad al artículo 13 de la Convención. La cuestión de cómo una denuncia individual tiene que ser concebida con el fin de ser un remedio eficaz es, sin embargo, muy compleja.
88. La respuesta varía de país a país. Incluso, para cualquier país, el recurso de inconstitucionalidad puede ser un remedio eficaz para algunas violaciones de la Convención, mientras que según la jurisprudencia del Tribunal de Estrasburgo, puede no ser eficaz para otras. En particular, debe hacerse una distinción entre casos de supuesta duración excesiva de procedimientos y violaciones de los “otros” derechos humanos.
89. Varios elementos han de tenerse en cuenta al determinar si un recurso es eficaz en el sentido del artículo 13. Cuando una persona tiene razones fundadas para considerarse víctima de una violación de un derecho garantizado por la Convención, debe contar con un recurso ante una autoridad nacional. Esta autoridad no necesariamente tiene que ser una autoridad judicial, sino que debe ser una que tenga competencias en la materia para decidir tales

⁸⁴ CDL-AD (2004) 024, Dictamen sobre el Proyecto de Enmienda Constitucional con respecto a la Corte Constitucional de Turquía. La Comisión de Venecia, sin embargo, se preguntó si la denuncia individual debe limitarse a los derechos constitucionales, que también estaban cubiertos por la Convención. Parecía que el propósito de esta limitación era excluir los derechos sociales del ámbito de aplicación de la queja individual. La cuestión de los derechos sociales parece ser la razón por la cual la Constitución de Austria no incluye una “carta de derechos” completa y por qué, en vez de eso, la Convención ha sido ratificada al nivel de derecho constitucional, permitiéndose así denuncias individuales ante el Tribunal Constitucional de Austria con base en los derechos contenidos en la Convención y sus Protocolos.

⁸⁵ Esta parte de la denuncia individual era parte de un paquete de reformas constitucionales aprobadas por referéndum el 12 de septiembre de 2010.

⁸⁶ Véase, entre otros, A. Stonesweet, H. Keller, *A Europe of Rights*, Oxford University Press, 2008; ver también Szymczak, *La Convention européenne des droits de l'homme et le jugeconstitutionnel national*, Bruylant, Bruxelles, 2007; D. AGNANOSTOU.

reclamos y remediarlos⁸⁷. Los Estados contratantes son libres para elegir el remedio que proporcionan y a veces, un conjunto de remedios ya existentes puede ser suficiente⁸⁸.

90. En el caso de una denuncia individual ante un tribunal constitucional, la naturaleza judicial de la autoridad nacional no debe ser discutida. Sin embargo, cabe preguntarse si en todos los casos los poderes de un Tribunal Constitucional serán suficientes. El tribunal debe estar en condiciones de brindar una reparación a través de una sentencia vinculante en el caso. Una sentencia simplemente declaratoria de inconstitucionalidad no será suficiente; la demanda debe ser “efectiva” tanto en la práctica como jurídicamente⁸⁹. Si la violación de un derecho de la Convención, así como de la Constitución, se refiere a una obligación positiva, el tribunal debe estar en condiciones de ordenarles a las autoridades estatales que adopten las medidas que no fueron tomadas en el caso específico. El tribunal tiene que ser obligado a revisar el caso, o al menos considerar las quejas presentadas. El tribunal también debe ser accesible: exigencias poco razonables en relación con los gastos o la representación podrían, por ejemplo, tornar el recurso “ineficaz”. Cuando las consecuencias de las medidas serán irreversibles, un Tribunal Constitucional debe estar en condiciones de impedir la ejecución de tales medidas⁹⁰.
91. En el marco de su Informe sobre la eficacia de los recursos nacionales con respecto a la excesiva duración de las sesiones⁹¹, la Comisión de Venecia discutió la remediación efectiva de las quejas constitucionales. Basado en la jurisprudencia del Tribunal Europeo de Derechos Humanos⁹², la Comisión concluyó que “[l]a obligación de organizar su sistema judicial de manera que cumpla con los requisitos del artículo 6.1 de la Convención también se aplica a un Tribunal Constitucional”⁹³ en sí mismo. Esto significa que si un país tiene la intención de introducir un proceso de queja individual a su tribunal constitucional, esto tiene que hacerse de una manera que no se prolongue excepcionalmente la duración total del procedimiento. En consecuencia, el tribunal

⁸⁷ El individuo también tiene que quejarse de la violación de un derecho de la Convención en los procedimientos nacionales. Si no lo hace, dará lugar a la constatación de la falta de agotamiento de los recursos internos por parte del Tribunal Europeo de Derechos Humanos, véase, por ejemplo, TEDH, *Debono vs. Malta*, no. 34539/02, decisión de 10 de junio de 2004.

⁸⁸ Ver TEDH, *Silver c. Reino Unido*, sentencia de 25 de marzo de 1983.

⁸⁹ Ver TEDH, *Iban c. Turquía*, sentencia de 27 de junio de 2000, párr. 58.

⁹⁰ Ver TEDH, *Conka c. Bélgica*, sentencia de 5 de febrero de 2002, párr. 79.

⁹¹ CDL-AD(2006)036rev, adoptada por la Comisión de Venecia en su 69^a Sesión Plenaria (Venecia, 15-16 de diciembre de 2006).

⁹² Ver TEDH, *Gast y Popp c. Alemania*, sentencia de 25 de febrero de 2005, párr. 75.

⁹³ CDL-AD(2006)036rev, párrafo 33.

tiene que tener la capacidad –y los recursos– para hacer frente eficazmente al aumento en la carga de trabajo en razón de los casos adicionales⁹⁴.

92. Un tema central en la discusión de los recursos contra la duración excesiva de los procedimientos es una distinción entre los recursos aceleratorios, es decir, aquellos que tienen un efecto positivo en la resolución de un caso en curso, y los recursos compensatorios. Aquí, la Comisión de Venecia encontró que “en los términos de la jurisprudencia del Tribunal de Justicia[de Estrasburgo], es una obligación de resultado la que requiere el artículo 13. Aun cuando ninguno de los recursos de los que dispone un individuo, por sí solos, podría satisfacer los requisitos del artículo 13, el total de recursos previstos en la legislación nacional puede ser considerado como “efectivo” en los términos de este artículo”⁹⁵. La Comisión encontró que, para ser eficaz, un remedio debería tener aspectos tanto aceleratorios⁹⁶ como compensatorios⁹⁷:

“182. En los casos donde el sistema jurídico nacional no contempla recursos aceleratorios (que es el caso de la mayoría de los sistemas jurídicos domésticos), el individuo no puede postular, ante sus propias autoridades, a una reparación equivalente a la que puede obtener en Estrasburgo; abí, el principio de subsidiariedad es deficiente.

⁹⁴ En cuanto a las dudas sobre la rapidez de una queja individual, ver TEDH, *Belinger c. Eslovenia*, no. 42320/98, decisión del 2 de octubre de 2001.

⁹⁵ Párrafo 137.

⁹⁶ Ver TEDH, *Slavicek c. Croacia*, no. 20862/02, decisión de 4 de julio de 2002: “De acuerdo con la nueva ley todo el que considere que el procedimiento relativo a la determinación de sus derechos y obligaciones civiles o de una infracción penal en su contra no se ha concluido en un plazo razonable puede presentar un recurso de inconstitucionalidad. El Tribunal Constitucional debe examinar tal queja y si la considera bien fundada debe establecer un plazo para la resolución del fondo del caso y también conceder una indemnización por la excesiva duración del procedimiento. El tribunal considera que este es un recurso que debe ser agotado por el solicitante a fin de cumplir con el artículo 35 §1 de la Convención”. Véase también TEDH, *Debono c. Malta*, no. 34539/02, decisión de 10 de junio de 2004; Tribunal de Derechos Humanos, *Andrášik c. Eslovaquia*, no. 57984/00, decisión de 22 de octubre de 2002 y TEDH, *González Fernández-Molina y otros c. España*, no. 64359/01, decisión de 8 de octubre de 2002.

⁹⁷ La indemnización tiene que estar en una relación razonable con lo que el solicitante hubiera obtenido de la Corte de Estrasburgo, véase TEDH, *Dubjakova c. Eslovaquia*, no. 67299/01, decisión de 10 de octubre de 2004: “aunque el importe concedido puede ser considerado como razonable, sin embargo, debe apreciarse a la luz de todas las circunstancias del caso. Éstas incluyen no sólo la duración del procedimiento en el caso específico, pero el valor de la concesión, juzgado a la luz de las condiciones de vida en el Estado en cuestión, y el hecho de que bajo el sistema de compensación nacional ésta será adjudicada y pagada, en general, más rápidamente de lo que sería el caso si el asunto se hubiera decidido por la Corte de [Estrasburgo] en virtud del artículo 41 de la Convención”.

Bajo estas circunstancias, el individuo puede alegar no haber perdido su condición de víctima, aún después de obtener (la mera) compensación pecuniaria en un procedimiento interno, e impugnar la necesidad de agotar los recursos internos en cuestión.

183. En conclusión, la Comisión de Venecia considera que, con el fin de cumplir plenamente con los requisitos del artículo 13 de la Convención en relación con el requisito de plazo razonable previsto en el artículo 6 §1 de la Convención, los Estados miembros del Consejo de Europa deben proporcionar, en primer lugar, recursos aceleratorios diseñados para evitar la ocurrencia de cualquier retraso (adicional) indebido en cualquier momento hasta que dichos procedimientos se concluyan.

184. Además, deben proporcionar recursos de compensación por el incumplimiento del requisito de tiempo razonable que puede haber ocurrido en el procedimiento (antes de la introducción de los remedios aceleratorios efectivos)”.

93. Por lo tanto, si un Estado pretende introducir un proceso de denuncia individual ante el Tribunal Constitucional, con el fin de proporcionar un recurso nacional o filtro para los casos que podría alcanzar el Tribunal de Estrasburgo, es decir, proporcionar un recurso efectivo en el sentido del artículo 13 de la Convención y para exigir su agotamiento en virtud del artículo 35.1, dicho proceso debe proporcionar reparación a través de una decisión vinculante al caso. El tribunal debe ser obligado a analizar el caso y no debe haber exigencias poco razonables en cuanto a los costos o representación.
94. Además, en los casos de supuesta duración excesiva del procedimiento, un recurso individual ante el Tribunal Constitucional deberá permitir hacer efectiva la pronta reanudación y conclusión del procedimiento ante los tribunales ordinarios, o liquidar el asunto sobre el fondo. En este tipo de casos, el Tribunal Constitucional debe ser capaz de proporcionar indemnización⁹⁸ equivalente a lo que el solicitante recibiría en el Tribunal de Estrasburgo.

⁹⁸ Ver a este respecto la sentencia *Cocchiarella* (TEDH, GC, *Cocchiarella c. Italia*, 29 de marzo de 2006, sobre todo los párrafos 76-80 y 93 a 97).

I.2. LOS ACTOS BAJO REVISIÓN

95. Los diferentes tipos de actos jurídicos pueden ser revisados de acuerdo a su compatibilidad con varios tipos de normas jurídicas de rango legal superior, ya sean actos individuales o jurídicos normativos.

Los actos individuales, aquí referidos, incluyen a los actos administrativos cuando un órgano administrativo⁹⁹ decida en un caso individual, y también a las decisiones judiciales terminativas.

Los actos normativos son los tratados internacionales¹⁰⁰, leyes y normas que tienen fuerza de ley, decretos y reglamentos de las normas del Ejecutivo y de los organismos autónomos locales¹⁰¹ que tienen un efecto vinculante general, es decir, sin destinatarios distintos o distinguibles.

96. En los Estados con sistemas de revisión concentrada es muy común que exista la revisión constitucional de leyes o actos equivalentes con fuerza de ley¹⁰². Esto es consistente con uno de los objetivos tradicionales vinculados a la introducción de la jurisdicción constitucional concentrada, es decir, la protección del orden constitucional. Además, la prevalencia de la revisión de los actos individuales aumenta a medida que más y más estados optan por el recurso pleno de constitucionalidad.
97. En los sistemas de revisión difusa, por lo general, cualquier acto normativo o individual que es relevante para un caso concreto, puede ser impugnado. Por lo tanto, el individuo puede cuestionar la constitucionalidad de cualquier ley que se deba aplicar en un proceso, cualquier decisión de un tribunal inferior y cualquier acto administrativo pertinente en virtud de la ley procesal aplicable. En Sudáfrica, un tribunal ordinario puede declarar un acto normativo (ley) inconstitucional, pero tal declaración debe ser confirmada por el Tribunal Constitucional antes de su ejecución.

⁹⁹ Todos los tipos de órganos administrativos constitucionalmente facultados para dictar tales actos pueden ser tomados en consideración, incluidos los órganos administrativos regionales o locales, a pesar de que algunos estados federales disponen de los tribunales constitucionales federales, que revisan los actos expedidos por las autoridades federadas en cuanto a su compatibilidad con la Constitución del Estado federado, por ejemplo Alemania.

¹⁰⁰ Si estos tienen un valor infraconstitucional.

¹⁰¹ Por ejemplo, de acuerdo con el artículo 100.1 de la Constitución de Armenia, las decisiones de los organismos autónomos locales son objeto de revisión constitucional.

¹⁰² General Report, XIIth Congress of the Conference of European Constitutional Courts (A. Alen, M. Melchior), Brussels, 2002, p. 7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009. Sin embargo, cabe señalar que en Suiza, el Tribunal Federal Supremo sólo puede revisar las leyes cantonales en cuanto a su conformidad con la Constitución federal.

98. En algunos Estados (por ejemplo, Bielorrusia, Bélgica, Brasil, Chile, Hungría, Liechtenstein, Perú, Polonia, Eslovenia, Sudáfrica y la “Ex República Yugoslava de Macedonia”), el Tribunal Constitucional puede resolver violaciones resultado de omisiones, a raíz de la solicitud de un individuo¹⁰³. En Bielorrusia, el Tribunal Constitucional analiza solicitudes en contra de lagunas en normas, y/o conflictos entre ciertos preceptos de la norma, las cuales han sido presentadas a la Corte Constitucional en el ejercicio del derecho constitucional de formular peticiones personales o colectivas ante los órganos estatales. Estas demandas no son quejas constitucionales y no implican la revisión de la constitucionalidad de un acto normativo legal por parte del Tribunal Constitucional.
99. La Comisión de Venecia advierte en contra de la sobrecarga de los tribunales constitucionales mediante la transferencia de la competencia de proteger, no sólo en contra de las infracciones de derechos constitucionales, sino también en contra de los errores en la interpretación y aplicación de normas que no signifiquen violaciones de la Constitución.

I.3. DERECHOS PROTEGIDOS

100. Todas las constituciones consideradas aquí contienen algunos derechos fundamentales o hacen referencia a un catálogo de derechos fundamentales a los que se les da *status* constitucional o, por lo menos, supra-legislativo. Aun así, no todos estos derechos sirven como estándares de revisión en todos los casos¹⁰⁴: Algunas partes de los catálogos de derechos tienen naturaleza programática, lo que significa que no se da un remedio a los individuos frente a la violación de estas normas programáticas u objetivos nacionales. Este es el caso de los derechos sociales en algunos países.

¹⁰³ Ello puede causar conflictos con el Parlamento, ya que la Corte Constitucional impone que lagunas sean llenadas y en qué margen deben serlo. En Portugal, reclamos individuales en contra de omisiones son excluidas, aunque la Corte Constitucional tenga el poder de realizar el control abstracto de omisiones (véase artículo 283 de la Constitución portuguesa). El Informe General detallado de la XIVa Conferencia de Cortes Constitucionales Europeas dedicado a este tópico ha sido publicado en un Boletín Especial de Jurisprudencia Constitucional de la Comisión de Venecia (2008) y puede ser consultado en http://www.lrkt.lt/conference/Pranesimai/XIV%20Congress%20General%20Report_LT.doc

¹⁰⁴ Por ejemplo, de acuerdo con el artículo 110 de la Constitución de la “Antigua Repùblica Yugoslava de Macedonia”, la jurisdicción de la Corte Constitucional comprende “*las libertades y derechos de los individuos y ciudadanos relacionadas con la libertad de convicción, de conciencia, pensamiento y expresión pública del pensamiento, asociación y actividad política, además de la prohibición de discriminación entre los ciudadanos basada en sexo, raza, religión o afiliación nacional, social o política*”.

101. Los Tratados Internacionales de Derechos Humanos¹⁰⁵ y, en particular, la Convención Europea de Derechos Humanos para los Estados miembros del Consejo de Europa, tienen diferentes rangos legales en los Estados incluidos en este estudio. Por ejemplo, en Austria, la Convención Europea de Derechos Humanos tiene valor constitucional. Igualmente, en Holanda, los Actos del Parlamento (distintos de otros actos legislativos) que no pueden ser revisados en cuanto a su constitucionalidad, pueden ser revisados a la luz de los tratados internacionales, incluida la Convención. En Bosnia y Herzegovina la Convención Europea de Derechos Humanos “*prevalecerá por encima de todas las otras leyes*”¹⁰⁶, lo que podría significar que está por encima de la Constitución¹⁰⁷. Hasta ahora, el Tribunal Constitucional de Bosnia no se ha pronunciado sobre esta cuestión¹⁰⁸. El Acto de Derechos Humanos del Reino Unido de 1998 y el Acto de la Convención Europea de Malta transpusieron el tratado internacional al derecho interno para permitir a los individuos invocar directamente estos derechos. En Francia, Italia¹⁰⁹, Liechtenstein, Eslovenia y la “ex República Yugoslava de Macedonia”¹¹⁰, la Convención Europea tiene un rango infraconstitucional pero supralegal. En Alemania, la Convención Europea y sus protocolos tienen el status de los estatutos federales alemanes (Gesetzesrang). Las cortes alemanas tienen que observar y aplicar la Convención en la interpretación del derecho nacional. En el nivel

¹⁰⁵ El artículo 16(2) de la Constitución portuguesa dispone: “*Las provisiones de esta Constitución y de preceptos legales sobre derechos fundamentales deben ser interpretadas y complementadas en consonancia con la Declaración Universal de Derechos Humanos*”. El estatus de un parámetro interpretativo en asuntos relacionados a los derechos humanos es, así, atribuido a la Declaración Universal de Derechos Humanos y no a la Convención Europea de Derechos Humanos. Al contrario de esta última, la Declaración Universal de Derechos Humanos no es un tratado internacional. En Portugal, la posición tomada tanto por la doctrina como por la jurisprudencia es en el sentido que los derechos fundamentales deben ser interpretados en consonancia con los variados instrumentos internacionales de derechos humanos, con la condición de que la preferencia dada a las reglas dispuestas en este último resulte en la primacía de las normas que resguardan un nivel superior de protección para los derechos fundamentales.

¹⁰⁶ Artículo II.2 Constitución

¹⁰⁷ Ver J. Marko, “*Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina: A First Balance*”, EuropeanDiversity and AutonomyPapers - EDAP (2004), 7, en: http://www.eurac.edu/documents/edap/2004_edap07.pdf, consultado el 3 de junio de 2009.

¹⁰⁸ CDL-AD(2008)027, Informe de Amicus curiae en los casos de Sejdi? y Finci v. Bosnia y Herzegovina (Documentos no. 27996/06 and 34836/06), pendientes ante la Corte Europea de Derechos Humanos.

¹⁰⁹ Ver decisiones no. 348 and 349/2007 de la Corte Constitucional italiana; después, ver la enmienda del 2001 al art. 117 de la Constitución italiana.

¹¹⁰ Ver I. Spirovski, “*Constitutional Validity of Human Rights Treaties in the Republic of Macedonia: The Norms and the Courts*”, Informe para la Conferencia Mundial sobre Justicia Constitucional, disponible en: http://www.venice.coe.int/WCCJ/Papers/MKD_Spirovski_E.pdf, consultado el 3 de junio de 2009.

del derecho constitucional, el texto de la Convención y la jurisprudencia del ECtHR sirven como ayuda interpretativa en la determinación del contenido y alcance de los derechos fundamentales y de los principios constitucionales fundamentales de la Ley Fundamental, en la medida que esto no restringe ni reduce la protección de los derechos fundamentales de los individuales consagrados en la Ley Fundamental (BVerfGE 111, 307). La apertura de la mayoría de las constituciones de Latinoamérica a las leyes internacionales y a los tratados de derechos humanos, como la Convención Americana de Derechos Humanos, a veces lleva a considerar que los tratados internacionales están por encima de sus constituciones (véase, por ejemplo, Colombia o Venezuela).

102. Los derechos protegidos no están necesariamente inscritos en la Constitución o diseñados para ser justiciables, sino que pueden ser producto de la creatividad jurisprudencial¹¹¹. La importancia fundamental de una disposición puede ser “descubierta” por la jurisprudencia. Aquí, el enfoque del Consejo Constitucional francés es particularmente destacable: amplió el círculo de derechos protegidos mediante la atribución de valor constitucional a textos que antes habían sido meramente declaratorios: la Declaración de Derechos del Hombre y del Ciudadano de 1789 y el preámbulo de la Constitución de 1946.

CONCLUSIONES PARCIALES DEL CAPÍTULO I

103. Entre los Estados miembros y Estados observadores de la Comisión de Venecia, muy pocos países no proporcionan al menos algún tipo de acceso individual para impugnar la constitucionalidad de una norma o acto individual. Estos son Argelia, Túnez y Marruecos (Francia ya no puede ser clasificada en este grupo después de su reciente reforma constitucional y la introducción de la cuestión prioritaria preliminar). En lo que se refiere al resto de los países, el sistema de revisión constitucional puede ser clasificado de acuerdo a los tipos de acceso. Es posible distinguir entre acceso individual directo, en el que los individuos tienen la posibilidad de impugnar la constitucionalidad de una norma determinada o actuar directamente, y el acceso individual indirecto, en el que la constitucionalidad puede impugnarse solamente a

¹¹¹ En varios países, el catálogo de derechos humanos no es taxativo, sino ilimitado, p. ej., de acuerdo con el artículo 42 de la Constitución de Armenia, los derechos fundamentales humanos y civiles y las libertades establecidas en la Constitución no deben excluir otros derechos y libertades, prescritos por leyes y tratados internacionales. De acuerdo con el artículo 55 de la Constitución rusa, el listado de derechos fundamentales y libertades en la Constitución no debe ser interpretado como una negativa o derogación de otros derechos humanos y civiles y libertades universalmente reconocidos.

través de los órganos del Estado. Muchos países tienen un sistema mixto, con medios directos e indirectos de acceso a la justicia constitucional.

104. En el marco del acceso individual indirecto, varios órganos tienen derecho a impugnar la constitucionalidad de una norma. Entre ellos, los más comunes son las cortes ordinarias, a través de los procedimientos preliminares, los defensores del pueblo y otros órganos constitucionales, como los diputados y los senadores.
105. El primer gran grupo de órganos que pueden impugnar la constitucionalidad son las cortes ordinarias, introduciendo solicitudes de procedimientos preliminares ante el Tribunal Constitucional o su órgano equivalente. Este tipo de procedimiento constituye uno de los métodos más comunes de acceso individual indirecto. Hay una gran variedad de modelos. Este tipo de control es bastante inusual en sistemas de control de constitucionalidad difuso, puesto que las cortes ordinarias están legitimadas para conducir el control ellas mismas. Hay un grupo de países en los que los individuos solicitan a la corte ordinaria que presente una cuestión preliminar al Tribunal Constitucional. También hay países en los que, una vez que el individuo plantea la excepción de constitucionalidad, el juez ordinario tiene que considerar y adoptar una decisión motivada en caso de que se dé una negativa a plantear una cuestión prejudicial ante el Tribunal Constitucional (por ejemplo, Albania, Brasil, Chile, Francia, Hungría, Italia, Luxemburgo, Malta y España). Otros países lo convierten en un requisito obligatorio para enviar la consulta en tales circunstancias (por ejemplo, Bélgica, República Checa, la “ex República Yugoslava de Macedonia”, Rumania y Eslovenia).
106. La mayoría de países de la Comisión de Venecia no otorgan legitimación activa a los defensores del pueblo. Aun así, entre los países que proporcionan esta posibilidad, el defensor del pueblo está legitimado para actuar tanto ante la corte ordinaria (por ejemplo, Finlandia) o directamente ante la Corte Constitucional (por ejemplo, Armenia, Austria, Azerbaiyán, Brasil, Croacia, República Checa, Estonia, Hungría, Portugal, España, Moldavia, Montenegro, Eslovenia, Eslovaquia, Bosnia y Herzegovina, Letonia, Polonia, Federación Rusa, la “ex República Yugoslava de Macedonia”, Perú, Ucrania, Rumania y Sudáfrica). También es importante destacar que, cuando el defensor del pueblo tiene legitimación ante el Tribunal Constitucional, el alcance de sus poderes puede estar limitado a la impugnación de una norma en el marco de un caso específico en el que está actuando. Aun así, el defensor del pueblo a veces tiene derecho a impugnar una norma en abstracto; este es el caso de Azerbaiyán, Estonia, Perú y Ucrania.

En estos sistemas, los defensores del pueblo proporcionan formas posibles de acceso a la justicia individual, aunque de forma indirecta. La Co-

misión de Venecia considera que los defensores del pueblo son elementos de una sociedad democrática que aseguran el respeto a los derechos humanos individuales. Por lo tanto, donde los defensores del pueblo existen, puede ser aconsejable darles la posibilidad de iniciar la revisión constitucional de actos normativos provocada por o en nombre de los particulares.

107. Finalmente, otros órganos, como la Fiscalía (por ejemplo Armenia, Azerbaiyán, Bulgaria, Moldavia, Portugal, Polonia, Rusia y Eslovaquia) o miembros del Parlamento que pueden impugnar la constitucionalidad de normas, pueden asegurar la compatibilidad del sistema legal con la Constitución.
108. El acceso indirecto a la justicia individual es, por lo tanto, una herramienta muy importante para asegurar el respeto de los derechos humanos individuales a nivel constitucional. Las opciones existentes son muy amplias y coexisten muchas posibilidades, pero hay un elemento positivo común: cuantos más mecanismos estén abiertos para garantizar el acceso a la justicia constitucional, mayor es la posibilidad de proteger mejor los derechos fundamentales. Una ventaja del acceso individual indirecto es que los órganos que formulan las quejas están generalmente bien informados y cuentan con los conocimientos jurídicos necesarios para formular una solicitud válida. También pueden servir como filtros para evitar sobrecargar las cortes constitucionales, seleccionando las solicitudes para dejar de lado las peticiones abusivas o repetitivas. Finalmente, el acceso indirecto juega un papel vital en la prevención de prolongar innecesariamente situaciones inconstitucionales obvias.

Aun así, el acceso indirecto tiene una clara desventaja, ya que su efectividad depende en gran medida de la capacidad de estos órganos para identificar actos normativos potencialmente inconstitucionales y su voluntad de presentar las solicitudes ante el Tribunal Constitucional u órganos equivalentes. Por consiguiente, la Comisión de Venecia ve una ventaja en combinar el acceso indirecto con una forma de acceso directo, equilibrando los diferentes mecanismos existentes.

109. En lo que se refiere al acceso individual directo, también hay otras muchas posibilidades y modelos en los países revisados: primero, la *actio popularis*, en la cual cualquiera tiene legitimidad para tomar acciones contra una norma después de su promulgación, aun cuando no exista un interés personal en ésta; en segundo lugar, hay una sugerencia individual, en la cual un solicitante puede sugerir al Tribunal Constitucional que tome acción en el control de constitucionalidad de una norma; en tercer lugar, la *quasi actio popularis*, en la cual no es necesario que el demandante sea directamente afectado, pero tiene que impugnar la norma en el marco de un caso específico; y finalmente, la queja individual directa, un mecanismo que existe en

varias formas. Entre estos mecanismos, la *actio popularis* crea un mayor riesgo de sobrecargar el tribunal constitucional. En los Estados del Consejo de Europa, algunos tribunales constitucionales ofrecen un mecanismo de queja individual directa en contra de los actos individuales. En estos países ha actuado como filtro limitando el número de casos presentados al Tribunal Europeo de Derechos Humanos¹¹². Se puede encontrar un sistema paralelo en los países latinoamericanos con el Tribunal Interamericano de Derechos Humanos. También es manifiesto que en los países en los cuales existen mecanismos de denuncia constitucional individual, el número de reclamos relativos a la violación de derechos humanos a la luz de la Convención Europea de Derechos Humanos son menos trascendentales que en los demás, lo que en definitiva evita sobrecargar el Tribunal Europeo de Derechos Humanos. Por consiguiente, debería existir la posibilidad de interponer quejas individuales ante un Tribunal Constitucional, así como obtener remedios de efectividad constitucional. Aún más, el Tribunal Constitucional o un tribunal equivalente debería poder proporcionar un remedio rápido y acelerar los procedimientos, así como ofrecer compensaciones en casos de procedimientos excesivamente largos.

¹¹² Ver a este respecto A. Stonesweet, H. Heller, “*An Europe of rights: The impact of the ECHR on National legal Systems*”, Oxford, OUP, 2008, sobretodo, capítulo 10.

II. PROCEDIMIENTOS DE REVISIÓN

II.1. CONDICIONES PARA LA INCOACIÓN DE PROCEDIMIENTOS (“FILTROS”)

110. Las disposiciones constitucionales o legales relativas a los distintos tipos de acceso así como los procedimientos constitucionales incluyen, como norma general, presupuestos procesales o condiciones que deben ser cumplidos por cualquier demandante o demanda. Si bien esto sirve para mitigar el número de casos en el Tribunal Constitucional, también existe el riesgo de que sean obstáculos que reduzcan excesivamente el acceso al Tribunal Constitucional.
111. De acuerdo con el tipo de demanda interpuesta ante el Tribunal Constitucional, hay diferentes condiciones procesales de admisión. Sin embargo, algunos requisitos se repiten en muchos casos: los plazos y la obligación de estar legalmente representado.

II.1.1. Plazos para “las solicitudes”

Ver 1.1.2. Tabla: Plazos para “las solicitudes”.

112. Existe una amplia variedad de plazos para los distintos tipos de “solicitudes”. Los plazos sirven a la seguridad jurídica, puesto que aseguran que después de un cierto período de tiempo la validez de un acto se convierte en inexpugnable. Si bien estos plazos no deberían ser demasiado largos, sí tienen que ser razonables para permitir la preparación de cualquier queja por parte de cualquier individuo o para permitir al abogado procesar la denuncia y defender los derechos individuales (puesto que en algunos países la representación legal es obligatoria para las quejas individuales). La Comisión de Venecia recomienda que con respecto a determinados actos individuales la corte pueda ampliar los plazos en casos en que el demandante no pueda cumplir con el plazo por razones no imputables a él o a su abogado, o por otras razones convincentes¹¹³.

¹¹³ Ej. Alemania, Ley de la Corte Constitucional Federal, artículo 93(2); Eslovenia, Ley de la Corte Constitucional, artículo 52(3).

II.1.2. Obligación de estar legalmente representado

Ver 1.1.3. Tabla: Obligación de estar legalmente representado.

113. La representación legal pretende ayudar al solicitante y aumentar la calidad de las quejas. Sin embargo, la representación legal tiene fuertes implicaciones financieras. Por lo tanto, especialmente si la representación legal es obligatoria, la denegación de asistencia financiera o de asistencia jurídica gratuita podría significar la denegación de acceso efectivo a un tribunal¹¹⁴. Por esto, debería proveerse a los “solicitantes” de asistencia jurídica gratuita cuando su situación material lo requiera para asegurar su acceso a la justicia constitucional.
114. La representación legal es obligatoria en Andorra, Azerbaiyán, Brasil, República Checa, Francia¹¹⁵, Italia, Luxemburgo, Mónaco, Polonia, Portugal, Eslovaquia, España y Suiza (si el individuo es “claramente incapaz” de representarse a sí mismo).
115. Tal obligación no existe en Albania, Armenia, Bélgica, Croacia, Estonia, Georgia, Hungría, Letonia, Liechtenstein, Polonia, Rumania, Rusia, Eslovenia, Sudáfrica¹¹⁶, Suecia, Suiza, la “Ex República Yugoslava de Macedonia” y Ucrania.

II.1.3. Las tasas judiciales

116. Las tasas judiciales por procedimientos ante el Tribunal Constitucional son excepcionales entre los Estados considerados en este estudio. Sin embargo, en los Estados Unidos¹¹⁷ hay una tasa de US\$300 por la presentación de una petición para conceder un *writ de certiorari* ante la Corte Suprema; en Rusia la cuota equivale a un salario mínimo; en Armenia a cinco; en Suiza a un mínimo de 200 CHF y un máximo de 5,000 CHF¹¹⁸, y en Austria la cuota se ci-

¹¹⁴ CDL-JU(2008)012, El uso de instrumentos internacionales para proteger derechos individuales, libertades e intereses legítimos a través de la legislación nacional y el derechos a la defensa jurídica en Bielorrusia: desafíos y panorama.

¹¹⁵ La asesoría jurídica es obligatoria para tramitar ante el Consejo Constitucional. Sin embargo, desde el punto de vista del juzgamiento preliminar prioritario, la obligación de representación legal depende del tipo de procedimiento. Si a la parte se permite actuar ante el juez ordinario sin abogado, entonces la parte puede suscitar el requerimiento preliminar prioritario.

¹¹⁶ En Sudáfrica no hay obligación de estar legalmente representado. En los términos de la Regla 4(11) de las Reglas de la Corte Constitucional, si el Registro de la Corte muestra que una parte no está representada, se debe remitir el litigante a un cuerpo o institución que quiera y esté en posición de asistirlo.

¹¹⁷ Regla 38 de la Corte Suprema de EEUU.

¹¹⁸ La Corte Suprema puede también abstenerse de la imposición de tasas (artículo 66 párrafo 1 de la Ley de la Suprema Corte). Ello es incluso la regla general si la Confederación,

fra actualmente en 220 Euros. En Israel, hay una tasa aproximada de US\$400 para presentar una petición ante la Corte Suprema, actuando como el Tribunal Superior de Justicia, pero el peticionario tiene derecho a presentar una solicitud, apoyada en circunstancias especiales, para recibir una exención o reducción de las tasas.

117. La Comisión de Venecia recomienda que **en vista del incremento de la protección integral de derechos humanos, las tasas judiciales para los particulares deberían ser relativamente bajas y que debería ser posible reducirlas de acuerdo con la situación financiera del solicitante**. Su objetivo principal debe ser refrenar el abuso evidente¹¹⁹.

II.1.4. Reapertura de casos

118. En principio, la decisión sobre constitucionalidad de un Tribunal Constitucionales definitiva. Por lo tanto, las quejas sobre la misma cuestión no serán aceptadas. Las situaciones típicas de reapertura de casos se dan, sin embargo, cuando aparecen nuevos hechos de los que las partes no habrían podido tener conocimiento¹²⁰, para corregir errores incurridos por el Tribunal Constitucional¹²¹, si la Constitución ha cambiado¹²² o, bajo ciertas condicio-

un cantón, una comuna, una organización que ejerce actividades de derecho público o un individuo actúan como reclamante, y si la disputa sometida a la Corte Suprema Federal no es de interés financiero y se relaciona con la actividad oficial de la entidad pública respectiva (artículo 66 párrafo 4 de la Ley de la Suprema Corte).

¹¹⁹ CDL(2008)065, Opinión en los proyectos de ley que enmiendan y suplementan (1) la ley de procedimientos constitucionales de Kirguistán y (2) la ley de la Corte Constitucional de Kirguistán, 2008.

¹²⁰ Ver, por ejemplo, artículo 34 de la Ley austriaca de la Corte Constitucional. Al contrario del *nova reperta* (hechos novedosos descubiertos), el *nova producta* –en el cual las partes traen argumentos a colación solamente después del cierre de los procedimientos (de primera instancia) aunque pudiesen haber estado conscientes de estos puntos– es generalmente excluido.

¹²¹ Ver Regla 44 de la Corte Suprema de EEUU. Nueva audiencia: “*1. Cualquier petición de nueva audiencia de cualquier juzgamiento o decisión de la Corte en el mérito debe ser archivada dentro de 25 días después de la entrada del juzgamiento o decisión, a menos que la Corte o un Juez acorte o extienda el tiempo*La revisión de una decisión del Tribunal federal puede ser cuestionada: a. si las disposiciones relativas a la composición del tribunal o al impedimento no han sido observadas; b. si el tribunal ha acordado a una parte ya sea más o, sin que la ley lo permita, otra cosa que aquella demandada, ya sea menos que aquello que la parte contraria ha reconocido deber; c. si el tribunal no ha discutido sobre ciertas conclusiones; d. si, por inadvertencia, el tribunal no ha tomado en consideración los hechos pertinentes que emanen del expediente”.

¹²² Artículo 68(14) de la Ley de la Corte Constitucional de Armenia: la Corte Constitucional puede reconsiderar cualquiera de sus decisiones mencionadas en el párrafo 1 de este artículo dentro de 7 años después de decidir la sustancia del caso con base en una

nes, cuando el Tribunal Europeo de Derechos Humanos ha decidido que ha habido una violación del ECHR que implica también una violación de la Constitución.

II.1.5. Abuso del derecho de apelación ante el Tribunal Constitucional

119. Las partes tienen la obligación de ejercer sus derechos procesales de *bona fide*¹²³. Cuando un solicitante abusa de esta obligación, se distorsiona la efectividad del Tribunal Constitucional. A pesar de que el procedimiento de denuncia individual es muy importante para la protección de los derechos humanos, este abuso es perjudicial para el orden constitucional protegido por los Tribunales Constitucionales. Por ejemplo, de acuerdo con el §9.4 de las Reglas de Procedimiento del Tribunal Constitucional de Rusia, si el solicitante repite una petición en una materia en la que el Tribunal Constitucional ya ha emitido una decisión, se le envía una copia de la decisión una vez más, informándole que la correspondencia entre ellos sobre esta materia se termina. Ulteriores quejas del mismo sujeto sobre la misma materia quedarán sin respuesta. Otros Estados han incluido la posibilidad de multar a los solicitantes abusivos¹²⁴.

II.1.6. Agotamiento de los recursos

Ver Tabla 1.1.4. Agotamiento de los recursos y excepciones.

120. El agotamiento de los recursos puede tener diferentes significados de acuerdo con el contexto específico; algunos códigos de procedimiento no permiten, por ejemplo, el acceso sistemático a los tribunales supremos ordinarios. Esta es una condición típica para presentar ante el Tribunal Constitucional una queja constitucional normativa o completa, ya que ello señala el carácter subsidiario de la queja (por ejemplo, Albania, Andorra, Armenia, Austria, Azerbaiyán, Brasil, Croacia, República Checa, Estonia, Alemania, Hungría, República de Corea, Letonia, Liechtenstein, Malta, Montenegro, Polonia,

apelación presentada según el procedimiento prescrito en esta Ley, si: a) el precepto constitucional aplicado al caso es cambiado, b) un nuevo entendimiento del precepto constitucional aplicado al caso ha emergido, lo cual puede ser base para una decisión distinta en el mismo caso y si el asunto tiene una importancia principio-lógica para el Derecho Constitucional.

¹²³ Ej. Armenia: artículo 48 de la Ley de la Corte Constitucional; Kazakstán: artículo 21 de la Ley del Consejo Constitucional.

¹²⁴ Por ejemplo, artículo 34.2 de la Ley del Tribunal Federal Constitucional de Alemania, multa hasta 2.600 euros si la interposición de un reclamo constitucional o de una queja en procedimientos que involucran el escrutinio de elecciones constituyen un abuso o si el requerimiento de una medida provisional es hecho de manera abusiva.

Portugal, Eslovaquia, Eslovenia, España, Suiza y la ex “República Yugoslava de Macedonia”).

121. En los Estados con revisión difusa no existe esta condición previa. Un particular puede impugnar un acto individual o normativo sobre la base de una violación de la Constitución en cualquier etapa del procedimiento.
122. En los casos en que la adhesión a esta norma puede causar un daño irreparable a la persona, generalmente no es necesario el agotamiento de los recursos (por ejemplo, Azerbaiyán, Croacia, la República Checa, Alemania, Letonia, Montenegro, Eslovaquia, Eslovenia, y Suiza).

II.1.7. Demandante afectado directa y actualmente por la violación

123. Este requisito existe en todos los Estados que permiten la revisión en relación a casos específicos. Si el sujeto no está agraviado en la actualidad de forma directa por un acto, su solicitud inicia una revisión abstracta. Sin embargo, estos requisitos se pueden clasificar de dos formas. En primer lugar, en lo que se refiere a la víctima, algunas leyes de procedimientos constitucionales (por ejemplo, las disposiciones permanentes en Sudáfrica) autorizan a cualquiera para actuar en nombre de la persona agraviada. Esto significa que mientras una acción aún está relacionada con un caso concreto, el solicitante no es una víctima directamente. Además, los representantes legales (parientes, tutores, pero también instituciones públicas¹²⁵) pueden actuar en nombre de una persona que carece de capacidad. En segundo lugar, algunas leyes contienen detalles sobre la naturaleza de la violación. En la mayoría de Estados, la violación de un derecho fundamental debe constituir una desventaja o menoscabo para el solicitante, afectándolo negativamente. Además, algunas leyes nacionales requieren que el daño sea suficientemente importante (por ejemplo, Eslovenia¹²⁶).

II.1.8. El demandante como un medio apropiado para reparar el perjuicio del querellante

124. Si se prevé que el procedimiento de revisión constitucional no cambiará实质icamente la situación del solicitante, la solicitud puede ser rechazada (por ejemplo, Alemania¹²⁷, Sudáfrica¹²⁸ o Francia¹²⁹). A veces es difícil llevar a cabo

¹²⁵ Ver por ejemplo artículo 59 de la Ley de la Corte Constitucional de Montenegro y artículo 38 de la Constitución sudafricana.

¹²⁶ Artículo 55 de la Ley de la Corte Constitucional.

¹²⁷ Un caso puede ser rechazado, si una demanda exitosa no alteraría la situación del solicitante. Sin embargo, en general, este requerimiento (llamado Rechtsschutzbedürfnis) es presumidamente satisfactorio.

esta evaluación durante los procedimientos preliminares; por consiguiente, dicha evaluación sólo debería llevar al rechazo de la revisión en los casos en que la decisión del Tribunal Constitucional será manifiestamente ineficaz como medio para proporcionar acceso efectivo a la justicia constitucional.

II.1.9. Forma escrita

125. Las peticiones dirigidas al Tribunal Constitucional deben hacerse por escrito y algunas veces cumplir con reglas muy estrictas (como es el caso de los Estados Unidos, donde en la Corte Suprema la extensión de la solicitud en términos de páginas e incluso del color de la cubierta del documento se determinan por las reglas de la corte). Estas normas persiguen los objetivos de transparencia y accesibilidad. Sin embargo, **debe darse la posibilidad al solicitante de corregir o completar un documento dentro de un cierto límite de tiempo** (ver más arriba) y sólo bajo condiciones específicas. Esto es especialmente importante cuando los requisitos formales son muy estrictos. Es aún más importante cuando la representación legal no es obligatoria (como es el caso de Croacia¹³⁰, Estonia¹³¹, Eslovenia¹³² y la “Ex República Yugoslava de Macedonia”). Esto evita la posibilidad de que una revisión sea denegada por razones formales a pesar de que la queja sigue existiendo.

II.1.10. Filtros en los procedimientos preliminares

Ver Tabla 1.1.5. Procedimientos preliminares.

126. Las cuestiones preliminares son llevadas al Tribunal Constitucional por un tribunal ordinario. Las regulaciones específicas relativas a la admisibilidad de una consulta existen en la mayoría de los Estados miembros y observadores de la Comisión de Venecia. Por ejemplo, en Andorra, Azerbaiyán, Bielorrusia, la República Checa, Georgia y Moldavia, el Tribunal Constitucional puede rechazar una petición preliminar sobre la base de errores de procedimiento o falta de competencia del Tribunal Constitucional. Mientras que en Albania, Estonia¹³³,

¹²⁸ Ver Decisión CCT 86/06 of 02/10/2007, en CODICES.

¹²⁹ Tal decisión no puede ser apelada.

¹³⁰ Ver artículo 19.2 de la Ley Constitucional de la Corte Constitucional de la República de Croacia.

¹³¹ §20 Ley Procedimental de la Corte de Revisión Constitucional.

¹³² Solamente cuando se formula una queja constitucional. Ver artículo 55(1) de la Ley de la Corte Constitucional.

¹³³ En Estonia no hay un “sistema de juzgamiento preliminar” como tal, de corte clara. A las cortes ordinarias no se permite someter una demanda preliminar ante la Sala de Revisión Constitucional de la Corte Suprema (sentencia de la <Sala de Revisión Constitucional de la Corte Suprema, de 1 de abril de 2004, No. 3-4-1-2-04, www.nc.ee/?id=407<

Hungría, Lituania y la ex “República Yugoslava de Macedonia”, el Tribunal Constitucional debe retransmitir la petición al tribunal ordinario con el fin de dar a éste último la oportunidad de reformular su pregunta¹³⁴. En otros Estados, como Alemania, esto no está permitido. Muchos tribunales constitucionales rechazarán una cuestión preliminar si la resolución del caso específico no depende de la decisión del Tribunal Constitucional (por ejemplo, Alemania, Polonia). En este sentido, el Tribunal Constitucional también observa el caso específico que se discute. El Tribunal Constitucional no debería estar sobrecargado de trabajo y si los tribunales ordinarios pueden iniciar procedimientos preliminares, deberían ser capaces de formular una consulta válida.

II.2. INTERVENCIÓN Y ACUMULACIÓN DE CASOS SIMILARES

Ver Tabla 1.1.6. Acumulación de casos similares.

- 127. En Armenia, Austria, Bélgica, la República Checa, Lituania¹³⁵, Portugal¹³⁶, Rusia, Eslovaquia, Eslovenia, Sudáfrica¹³⁷, la “Ex República Yugoslava de Macedonia” y los Estados Unidos, por ejemplo, las peticiones relativas a la misma cuestión pueden o deben ser tratadas en un solo procedimiento. En Israel, pocas peticiones relativas a una misma cuestión pueden presentarse en un solo procedimiento; los peticionarios pueden solicitar al Tribunal que acumule su presentación con otra diferente si ambas presentan reclamaciones similares. El Tribunal también está autorizado para instruir, previa solicitud, la acumulación de partes relevantes.
- 128. En Bélgica, Francia, Grecia y España cualquier persona que tenga un interés legítimo en la cuestión puede unirse a las actuaciones.
- 129. Por razones de economía procesal, las personas que tienen un interés legítimo en la cuestión deben tener derecho a intervenir en un caso pendiente¹³⁸. Si hay una gran cantidad de casos casi idénticos, el tribunal debería

[http://www.nc.ee/?id=407>](http://www.nc.ee/?id=407)), pero ellas tienen que decidir sobre la constitucionalidad por sí mismas, refiriéndose a la jurisprudencia constitucional de la Corte Suprema.

¹³⁴ Ver Informe General, XIº Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p.7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009.

¹³⁵ Artículo 41, Ley de la Corte Constitucional: “Una vez establecida la existencia de dos o más peticiones relacionadas a la conformidad de la misma norma legal con la Constitución o con las leyes, la Corte Constitucional puede juntarlas en un solo caso antes de iniciar el análisis jurídico”.

¹³⁶ En lo que dice respecto a solicitudes del Defensor del Pueblo y a la revisión constitucional.

¹³⁷ Ver Decisión CCT 24/08; CCT 52/08 de 21/01/2009, en CODICES.

¹³⁸ Ver por ejemplo decisión CCD-751 de 15.04.2008 de la Corte Constitucional de Armenia, relativa a qué personas naturales y legales afectadas por una ley tienen legitimidad para cuestionarla ante la Corte.

poder decidir uno o más casos paradigmáticos y simplificar el procedimiento por reclamaciones similares tanto en lo relativo a la admisibilidad como en lo relativo a la justificación legal.

II.3. NORMAS PROCESALES RELEVANTES ADICIONALES

II.3.1. Sistemas contradictorios

Ver Tabla 1.1.7. Sistemas contradictorios.

130. Diversas leyes sobre Tribunales Constitucionales (incluidas las de Armenia, Azerbaiyán, República Checa, Georgia, Rusia y San Marino) disponen que sus procedimientos son contradictorios. Al contrario de lo que ocurre en los procedimientos civiles y penales, no siempre es evidente quienes son las partes en este tipo de procedimientos. Un demandante impugna la constitucionalidad de un acto (general o individual). Cuando un acto general forma el asunto objeto de las actuaciones, el autor del acto podría verse como el acusado. Cuando un acto individual constituye el asunto objeto de las actuaciones, el autor original del acto podría ser el acusado. Igualmente, si el acto se presenta ante el Tribunal Constitucional a través de los procedimientos ordinarios, el acusado en estos procedimientos podría ser el demandado ante el Tribunal Constitucional.
131. La ventaja de utilizar un sistema contradictorio en los procedimientos constitucionales es que el tribunal puede tomar nota de diferentes puntos de vista y considerar la disputa en conflicto; sin embargo, esto es posible también en otras formas, por ejemplo, si se da a las partes del conflicto original así como a representantes de grupos de interés, expertos y representantes del ejecutivo y del legislativo, la oportunidad de presentar sus puntos de vista. Se debería determinar si el Tribunal Constitucional puede investigar de oficio para determinar la verdad y así contar con las herramientas que le permiten ir más allá de los argumentos esgrimidos por las partes¹³⁹.
132. Es importante que el demandante¹⁴⁰ o el iniciador de procedimientos¹⁴¹ no contradictorios tenga la posibilidad de dirigirse al Tribunal Constitucional. La Comisión de Venecia está a favor de las disposiciones alemana¹⁴² y es-

¹³⁹ CDL-AD (2001)005, Opinión en el Proyecto de ley de la Corte Constitucional de Azerbaiyán.

¹⁴⁰ CDL(1997)018rev, Opinión sobre la Ley de la Corte Constitucional de Ucrania, adoptada en la 31^a sesión de pleno de la Comisión.

¹⁴¹ H. Steinberger, op.cit.

¹⁴² Artículo 94(3) de la Ley de la Corte Constitucional Federal: “Si la queja constitucional de inconstitucionalidad es dirigida en contra de una decisión de la corte, la Corte Constitucional Federal debe también dar a la parte a favor de la cual la decisión fue tomada, la oportunidad de manifestarse”.

pañola, según las cuales en los casos en que la demanda constitucional se dirige en contra de la decisión de un tribunal, el tribunal debería dar a la parte en cuyo favor se tomó la decisión la oportunidad de hacer una exposición¹⁴³. Por otro lado, los tribunales no necesitan ser escuchados en el caso de que su decisión esté siendo revisada, ya que sus juicios reflejan su posición, pero a veces son partes en los procedimientos preliminares (por ejemplo, Austria, Polonia, Eslovaquia y Eslovenia).

133. El carácter de contradictorio no requiere necesariamente que haya un procedimiento oral. Los procedimientos tienen lugar más frecuentemente de forma escrita, con cada parte presentando sus argumentos¹⁴⁴.

II.3.2. Publicidad del procedimiento

Ver Tabla 1.1.8. Procedimientos públicos y excepciones.

134. En general, los procedimientos orales son públicos. Incluso entonces el Tribunal Constitucional debería dar publicidad de ellos frente a los intereses públicos legítimos o frente a los intereses de las partes (por ejemplo, Albania, Armenia, Azerbaiyán, Bélgica, Bosnia y Herzegovina, Croacia, Chipre, República Checa, Dinamarca, Georgia, Israel, Italia, Liechtenstein, Lituania, Moldavia, Rusia, Serbia, Eslovenia, Sudáfrica, Suiza y la ex “República Yugoslava de Macedonia”).
135. **Desde la perspectiva de la protección de los derechos humanos son preferibles los procedimientos públicos, al menos en los casos relacionados con derechos individuales.** El Tribunal Europeo de Derechos Humanos ha señalado reiteradamente que el examen de un caso ante el Tribunal Constitucional se reconoce en el artículo 6.1 de la Convención Europea de Derechos Humanos si se trata de proporcionar un remedio efectivo. Sólo existe un margen de apreciación en la medida en que se refiere al alcance y medidas de implementación de este principio. Consiguientemente, **los procedimientos orales ante el Tribunal Constitucional deberían ser públicos, sujetos a restricciones sólo en los casos estrictamente definidos.**

¹⁴³ CDL-AD(2008)030 Opinión sobre el Proyecto de ley de la Corte Constitucional de la República de Montenegro; También en Albania, Andorra, Austria, Bielorrusia, Bélgica, Chipre, Alemania, Italia, Latvia, Rumania, y la “Antigua Yugoslava República de Macedonia”, las partes en un procedimiento ordinario pueden tornarse partes en el procedimiento de revisión. Ver Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p. 7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009, p. 26.

¹⁴⁴ CDL-AD(2004)035 Opinión sobre el Proyecto de Ley Federal Constitucional “Sobre Modificaciones y Enmiendas a la Ley Constitucional Federal de la Corte Constitucional de la Federación Rusa”.

II.3.3. Conducta en procedimientos orales

Ver Tabla 1.1.9. Procedimientos orales y excepciones.

136. La ventaja de los procedimientos orales es, de nuevo, el enfrentamiento más directo de puntos de vista y el hecho de que a veces es más fácil para una persona expresar su posición de forma oral, sin tener que cumplir con normas formales escritas aplicables a los procedimientos escritos. Por un lado, debido a que es importante que las partes tengan una posibilidad efectiva de exponer sus puntos de vista, los procedimientos orales requieren mucho tiempo. Siguiendo estas consideraciones, existen tres modelos en los Estados estudiados: i) los procedimientos son totalmente orales; o, ii) son totalmente basados en papel, por ejemplo, escritos; o, iii) son parcialmente orales y parcialmente escritos. En Albania, Austria, Azerbaiyán, República Checa, Israel, Italia, Alemania, Liechtenstein, Holanda, Eslovenia, Ucrania, la “Ex República Yugoslava de Macedonia” y los Estados Unidos, los procedimientos son orales, a menos que se decida lo contrario, lo que significa que tanto los procesos orales como los escritos pueden aplicarse si se considera más adecuado atendiendo a las circunstancias del caso. En Sudáfrica, el Tribunal Constitucional puede decidir una petición sólo sobre la base de presentaciones escritas y dará instrucciones en caso que se requieran argumentos orales. En la práctica, a menudo los tribunales constitucionales prescinden de los procedimientos orales (por ejemplo, Alemania¹⁴⁵ y Eslovenia). En Hungría y Portugal, sólo hay procedimientos escritos¹⁴⁶. Los procedimientos orales son la excepción en Suiza; la revisión se basa normalmente en los argumentos escritos establecidos por las partes.
137. En Estados con una revisión constitucional difusa no es extraño que los procedimientos sean a menudo orales, puesto que se aplican las normas de procedimiento ordinario (por ejemplo, Dinamarca). En Suecia, los procedimientos ante el Tribunal Supremo pueden ser orales, pero generalmente son escritos.
138. La Comisión de Venecia señala que es ampliamente aceptado el hecho de que un Tribunal Constitucional pueda suspender o limitar los procedi-

¹⁴⁵ R. Jaeger, S. Broß, “Die Beziehungen zwischen den Verfassungsgerichtshöfen und den übrigen einzelstaatlichen Rechtsprechungsorganen, einschließlich der diesbezüglichen Interferenz des Handelns der europäischen Rechtsprechungsorgane”, Informe de la XII Conferencia de Cortes Constitucionales Europeas, p. 22.

¹⁴⁶ En Portugal solo hay una excepción a esta regla, para casos en que a la Corte Constitucional se solicita la declaración de que una organización sostiene una ideología fascista: si la organización es abolida, un proceso con audiencias debe ser llevado a cabo.

mientos orales si esto resulta necesario para salvaguardar los intereses públicos o de las partes, tales como la eficacia procesal (tiempo y coste de las actuaciones)¹⁴⁷.

II.4. MEDIDAS CAUTELARES

II.4.1. Suspensión de la implementación

Ver Tabla 1.1.10. Suspensión de la implementación.

139. Suspender la implementación de un acto individual o normativo impugnado es la extensión necesaria del principio de garantía de que los particulares estén protegidos de sufrir daños irreparables. Es el Tribunal Constitucional el que debe decidir si impone tal suspensión (por ejemplo, Austria, Albania, Armenia, Bélgica, Bosnia Herzegovina, Croacia, Estonia, Francia¹⁴⁸, Georgia, Alemania, Israel, Liechtenstein, Polonia, Serbia, Eslovaquia, Eslovenia, España, Suiza, la “Ex República Yugoslava de Macedonia”, Turquía y los Estados Unidos). Algunos Estados, sin embargo, por el bien de la seguridad jurídica, no permiten la implementación de un acto que va a ser detenido o suspendido (por ejemplo, Argelia, Andorra, Azerbaiyán, Bielorrusia, Bulgaria, Chipre, República Checa, Francia, Hungría, Letonia, Luxemburgo, Moldavia, Montenegro, Portugal, Rumania¹⁴⁹, Rusia, Suecia y Ucrania). En Rusia, por el contrario, el Tribunal Constitucional puede sugerir a órganos relevantes la suspensión de la implementación de un acto impugnado. En Estados con una revisión constitucional difusa, es extraño suspender la implementación (por ejemplo, Dinamarca). En Sudáfrica, cuando se decide un asunto constitucional, un tribunal puede dar cualquier orden que sea justa y equitativa, incluyendo la dictación de una orden temporal. Esto puede, en su caso, incluir la suspensión de la implementación de un acto normativo (ley). En Lituania el acto impugnado sólo puede ser suspendido en los casos en que el Tribunal Constitucional recibe una petición del Presidente de la República para investigar si un acto del Gobierno es conforme con la Constitución y las leyes, o cuando recibe una resolución del Parlamento en la cual se le requiere investigar si una ley de la República de

¹⁴⁷ CDL-AD(2004)035, Opinión sobre el Proyecto de Ley Federal Constitucional “Sobre Modificaciones y Enmiendas a la Ley Constitucional Federal de la Corte Constitucional de la Federación Rusa”.

¹⁴⁸ En Francia, un acto legislativo puede ser considerado válido (revisión *a priori*) o puede ser abrogado (revisión *a posteriori*) con efecto *erga omnes*.

¹⁴⁹ Según una enmienda muy reciente a la Ley de organización y funcionamiento de la Corte Constitucional (por la Ley N° 177 del 2010), procedimientos ordinarios ya no deben ser suspendidos si la corte postulante remite la excepción de inconstitucionalidad a la Corte Constitucional.

Lituania u otro acto adoptado por el Parlamento, un decreto del Presidente de la República, o un acto del Gobierno es conforme con la Constitución y las leyes (Artículo 26, Ley del Tribunal Constitucional), pero este no es el caso cuando un tribunal ordinario dirige una solicitud preliminar al Tribunal Constitucional.

140. La Comisión de Venecia está a favor de la facultad de suspender la implementación de un acto individual o normativo impugnado, si la implementación pudiera resultar en ulteriores daños o violaciones que no puedan ser reparadas una vez se ha establecido la inconstitucionalidad del acto impugnado¹⁵⁰. Las condiciones para la suspensión no deberían ser demasiado estrictas¹⁵¹. Sin embargo, especialmente para la normativa, debe tenerse en cuenta el alcance según el cual la no implementación por sí misma resultaría en daños y violaciones que no podrán ser reparadas.

II.4.2. Suspensión de los procedimientos ordinarios

Ver Tabla 1.1.11. Suspensión de los procedimientos ordinarios.

141. Los procedimientos ordinarios pueden ser suspendidos cuando se han iniciado procedimientos judiciales preliminares. En Andorra, Austria, Armenia, Bélgica, Bielorrusia, Chipre, Croacia, República Checa, Francia, Hungría, Letonia, Liechtenstein, Lituania, Luxemburgo, Polonia, Rusia, Eslovenia, Eslovaquia, Turquía¹⁵², la “Ex República Yugoslava de Macedonia” y Ucrania, el tribunal mantiene sus procedimientos en cualquier caso. En Austria, la suspensión se refiere “*solo una acción tal (...) que no puede ser afectada por la decisión del CC o que finalmente no resuelve el problema y que no puede de retrasarse hasta la decisión del CC (Sección 62.3 del Acto del Tribunal*

¹⁵⁰ Ver, por ejemplo, CDL-AD(2004)024 Opinión sobre el proyecto de enmiendas constitucionales relativas a la Corte Constitucional de Turquía.

¹⁵¹ CDL-AD(2007)039, Comentarios sobre el Proyecto de Ley de la Corte Constitucional de la República Serbia.

¹⁵² En el caso de Turquía, el artículo 152 de la Constitución dispone que “*Si la corte que está tramitando el caso encuentra que la ley o decreto con fuerza de ley aplicable es inconstitucional, o si está convencida de la seriedad de una demanda de inconstitucionalidad presentada por una de las partes, debe postergar la consideración del caso hasta que la Corte Constitucional decida el tema. Si la corte no está convencida de la seriedad de la demanda de inconstitucionalidad, tal demanda, conjuntamente con el juicio de fondo, debe ser decidida por la autoridad competente de apelación. La Corte Constitucional debe decidir el asunto y hacer pública su decisión dentro de los cinco meses a partir del recibimiento de la contienda. Si la decisión no es alcanzada dentro de este período, la corte tramitadora debe concluir el caso bajo las provisiones legales existentes. Sin embargo, si la decisión de mérito del caso se vuelve definitiva, la corte tramitadora está obligada a acatarla*

Constitucional)¹⁵³. En Eslovenia, el tribunal ordinario está obligado a mantener los procedimientos ordinarios cuando el problema de constitucionalidad se refiere a una ley, pero en el caso de estatutos los tribunales ordinarios pueden usar la *exception illegalis*. La regulación croata sigue el mismo razonamiento: si el tribunal ordinario tiene dudas acerca de una ley que está a punto de aplicar, debe mantener los procedimientos; si las dudas se refieren a regulación administrativa, el tribunal aplica directamente la ley en la cual la regulación está basada y remite la regulación al Tribunal Constitucional. Por lo tanto, los procedimientos no se interrumpen si ello no es absolutamente necesario para resolver el caso en análisis. El tribunal ordinario de España puede presentar la duda una vez finalizado el procedimiento y antes de la deliberación del fallo; por consiguiente, el fallo está sujeto a la decisión del Tribunal Constitucional, incluso si los procedimientos ordinarios hubieran continuado si ya había dudas acerca de la constitucionalidad de una disposición. En Andorra, los procedimientos continúan, pero la posibilidad de emitir un fallo está limitada: se ha de establecer que la decisión del Tribunal Constitucional no tendrá efecto en el fallo del tribunal ordinario.

142. Los procedimientos ordinarios deberían suspenderse cuando las cuestiones preliminares del caso se elevan al Tribunal Constitucional. Esto se puede realizar *ipso iure* o por la decisión del tribunal competente. De todos modos se ha de asegurar que el juez ordinario no tenga que aplicar una ley que él cree inconstitucional o cuya constitucionalidad ha de ser decidida por el Tribunal Constitucional en relación con el mismo caso.

II.4.3. Otras medidas cautelares

Ver Tabla 1.1.12. Medidas cautelares.

143. El Tribunal Constitucional puede, en algunos Estados, ordenar a las autoridades públicas que tomen acciones positivas para asegurar que no se produzcan más daños al demandante (por ejemplo, Alemania, Malta, Liechtenstein, Sudáfrica, Suiza).

II.5. SUSPENSIÓN DE LOS PROCEDIMIENTOS

II.5.1. Suspensión si se retira la petición

144. En el caso de revisiones normativas, el Tribunal Constitucional no necesariamente paraliza los procedimientos si se retira una demanda. **Después de la retirada de una demanda, el tribunal debería poder continuar examinando el caso si éste es de interés público.** Eso es una expresión de la autonomía de los tribunales constitucionales y su función como guardianes de la Constitución, incluso aunque el demandante no siga siendo parte en el procedimiento.

145. Lo mismo es posible en relación a la revisión a raíz de un recurso de constitucionalidad pleno. Si el Tribunal Constitucional tiene poder para iniciar una revisión del acto normativo, en el que subyace una decisión individual o un acto, incluso si la denuncia individual se retira, el Tribunal Constitucional puede tener la posibilidad de continuar la revisión del acto normativo. Para los actos normativos, algunas leyes de los tribunales constitucionales imponen un cese de los procedimientos si la petición se retira (por ejemplo, Andorra, Austria¹⁵⁴, República Checa, Polonia, Hungría, Rusia, Serbia, Suiza, la “Ex República Yugoslava de Macedonia”, Ucrania).
146. Para actos individuales, los procedimientos generalmente requieren que el demandante continúe su petición para que el tribunal tenga jurisdicción (por ejemplo, Austria, Montenegro, Eslovenia). Sin embargo, el Tribunal Constitucional de Eslovaquia tiene la facultad de rechazar que un recurso constitucional pleno sea retirado. En Portugal, el panorama que se da es que una vez que la petición se ha presentado, el peticionario no tiene el poder de retirarla, por consiguiente, una petición no puede retirarse.

II.5.2. Suspensión si el acto deja de ser válido

147. No hay una visión compartida acerca de si el Tribunal Constitucional puede continuar con los procedimientos de revisión cuando el acto bajo consideración deja de ser válido. En algunos Estados, el tribunal termina la revisión de forma inmediata (por ejemplo, Andorra, Austria, República Checa¹⁵⁵, Bielorrusia, Francia, Montenegro¹⁵⁶, Portugal, Eslovaquia¹⁵⁷, Suiza, la “Ex República Yugoslava de Macedonia” y Ucrania). En otros Estados, el tribunal continua con el control y declara inconstitucional el acto; tal control puede ser íntegramente discrecional por parte del tribunal (por ejemplo, Liechtenstein y Serbia) o puede estar limitado sólo a ciertas circunstancias (por ejemplo, Portugal y Rusia, dónde se permite continuar con la revisión cuando es necesario para evitar violaciones de derechos humanos). En Lituania, la an-

¹⁵³ Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p.7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009, p. 37.

¹⁵⁴ Sin embargo, según los artículos 139.2 y 140.2 de la Constitución Federal, el procedimiento de revisión de normas iniciado *ex officio* por la CC a propósito de otros procedimientos pendientes ante ella, debe continuar, aunque la parte en el procedimiento que causó la norma esté satisfecha.

¹⁵⁵ Artículo 67 Ley de la Corte Constitucional.

¹⁵⁶ Artículo 65 Ley de la Corte Constitucional.

¹⁵⁷ La Corte Constitucional de Eslovaquia ha recientemente admitido por primera vez y contrariamente a su práctica anterior en este asunto, la posibilidad de que las cortes ordinarias impugnen un acto normativo que ya no es parte válida del sistema jurídico, pero sigue siendo aplicable a un caso específico.

lación de un acto jurídico en disputa será motivo para adoptar una decisión para rechazar los procedimientos legales instituidos (artículo 69.4 de la Ley del Tribunal Constitucional), pero de acuerdo con la jurisprudencia del Tribunal, en estos casos, cuando un tribunal ordinario que investiga un caso se dirige al Tribunal Constitucional por dudas que tiene acerca de la conformidad a la Constitución de la ley o de otro acto jurídico (otro acto jurídico de mayor rango) aplicable al caso, el Tribunal Constitucional tiene un deber de investigar la solicitud del tribunal sin tener en cuenta el hecho de si la ley u otro texto legal cuestionado es válido (véase, por ejemplo, la Decisión de 27 de marzo de 2009; parte I del razonamiento del tribunal, punto 8).

148. La mera suspensión del caso puede ser un medio insuficiente para garantizar la protección de los derechos humanos en casos de revisión concreta o quejas individuales. Es sin embargo controvertido si el Tribunal Constitucional debiera estar habilitado para otorgar compensaciones pecuniarias por la violación de un derecho con el objetivo de reparar la violación de los derechos humanos individuales.

II.6. LÍMITES DE TIEMPO PARA TOMAR LA DECISIÓN

149. En el caso de que existan límites de tiempo establecidos para la adopción de decisiones, éstos no deberían ser demasiado cortos, para proporcionar al Tribunal Constitucional la oportunidad de examinar el caso completamente, y no deberían ser demasiado largos como para obstaculizarla efectividad de la protección de derechos humanos vía justicia constitucional. Desde la perspectiva de la efectividad de la justicia constitucional, los límites de tiempo son a menudo imposibles de prever, con lo que el Tribunal Constitucional debería poder extender los mencionados plazos de tiempo en casos excepcionales¹⁵⁸.

CONCLUSIONES PARCIALES DEL CAPÍTULO II

150. Normalmente los procedimientos de revisión constitucional respetan varias condiciones. Primeramente, en cuanto a la apertura de procedimientos, a menudo hay límites de tiempo para la presentación de solicitudes para evitar sobrecargar el tribunal. Éstos deberían ser razonables y permitir la preparación de la queja por parte del particular o proporcionar tiempo suficiente

¹⁵⁸ Ej. Armenia: la Ley de la Corte Constitucional, en casos de control tanto abstracto como concreto, dispone que la Corte Constitucional adopte la decisión antes de los 6 meses posteriores al registro de la apelación y mediante una decisión fundamentada, la Corte Constitucional puede extender el límite de tiempo para el examen del caso, pero por no más de tres meses.

te al abogado para recibir instrucciones. El Tribunal Constitucional debería también poder extender los plazos en casos excepcionales. En segundo lugar, debería proporcionarse asistencia jurídica gratuita cuando sea necesario. En tercer lugar, la Comisión de Venecia recomienda que las tasas de los tribunales no sean excesivas y que debieran usarse sólo para disuadir quejas abusivas. Debe tenerse en cuenta la situación financiera del demandante para fijar las tasas. En cuarto lugar, las decisiones emitidas por el tribunal son definitivas y sólo deberían reexaminarse en circunstancias excepcionales (por ejemplo, por condena del Tribunal Europeo de Derechos Humanos). En quinto lugar, para asegurar la efectividad del acceso individual a la justicia constitucional, las partes deben actuar de *bona fide*, evitando solicitudes abusivas y actuando sólo después de haber agotado otros remedios posibles. El agotamiento de remedios es necesario en países con un control de constitucionalidad concentrado para evitar sobrecargar el Tribunal Constitucional. En sexto lugar, debería asegurarse que el remedio disponible sea apropiado para remediar el agravio al demandante. Entre los principios procesales aplicables en la revisión constitucional, hay sistemas contradictorios, en los cuales se da a las partes de los procedimientos anteriores la oportunidad de presentar sus puntos de vista. El Tribunal Constitucional también debería poder adoptar sus decisiones de una manera oportuna y sin dilaciones indebidas, respetando los límites de tiempo correctos, no debería ser permitido poner en peligro la efectividad de los procedimientos.

151. En lo que a las medidas cautelares se refiere, la Comisión de Venecia está a favor del reconocimiento de la facultad para suspender la implementación de un acto individual y/o normativo impugnado, si ella pudiera resultar en ulteriores daños o en violaciones que no puedan ser reparadas si se declara la inconstitucionalidad de una disposición.
152. Finalmente, el Tribunal Constitucional debería estar facultado para continuar analizando una petición, aun cuando ésta sea retirada, para proteger el interés público. Sin embargo, en casos en que el acto impugnado pierde su validez, no hay consenso acerca de si el Tribunal Constitucional debería o no continuar su análisis. Es importante señalar, no obstante, que la mera suspensión de un caso puede no ser suficiente para asegurar la efectiva protección de los derechos humanos en casos de revisión concreta o de quejas individuales y que son necesarios mecanismos de compensación.

III. DECISIÓN

153. Cuando el Tribunal Constitucional decide sobre asuntos presentados por personas particulares, sus decisiones afectan ciertamente a la posición legal de las personas individuales ya sea de forma directa o, en el caso de la abstracta *actio popularis*, de forma potencial. De hecho, la cuestión no es sólo si el Tribunal Constitucional decide a favor del denunciante o no; el ámbito del efecto de la decisión así como la posible retroactividad de una decisión determina si el perjuicio con el que el individuo se enfrenta puede ser efectivamente eliminado (III.1).
154. La decisión puede tener distintas consecuencias. Puede tener efectos en un círculo específico de personas o en todos (ver más abajo). La decisión puede tener efectos inmediatos o puede tener efectos retroactivos (ver más abajo). Más aún, el Tribunal Constitucional o un órgano equivalente pueden tener la facultad de anular o derogar la disposición impugnada, pero ésta última también puede mantener sus efectos y puede disponerse que sólo sea interpretada de una manera específica (ver III.4 más abajo).

III.1. EL ALCANCE DE LA REVISIÓN

155. Una vez que el Tribunal Constitucional ha admitido una petición (entera o una parte), no existe la posibilidad de reducir el alcance de la revisión. El Tribunal Constitucional debe, en cualquier caso, responder a todas las cuestiones que se hayan planteado y que hayan sido declaradas admisibles¹⁵⁹. No puede negar u omitir la respuesta. Sin embargo, ¿puede ir más allá de la solicitud? ¿Qué razonamiento justifica tal extensión?
156. En algunos Estados, la revisión por parte del Tribunal Constitucional está limitada a la petición original (la revisión *ultra petitur* está excluida), este es el caso de Andorra¹⁶⁰, Bélgica¹⁶¹, la República Checa, Francia en el contexto

¹⁵⁹ Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p.7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009.

¹⁶⁰ Artículo 7 de la Ley Calificada de la Corte Constitucional: “3. La decisión o sentencia que determina un caso declarado admisible, no puede contener consideraciones diferentes de aquellas presentadas por las partes en sus respectivas demandas”.

¹⁶¹ C.A. n° 12/86 del 25 de marzo de 1986, 3.B.1

de una revisión *a posteriori*, Georgia¹⁶², Hungría, Luxemburgo, Montenegro¹⁶³, Polonia¹⁶⁴, Rusia y Suiza¹⁶⁵. El Tribunal Constitucional puede invalidar un acto sólo en la medida en que esto se haya pedido y con referencia a la disposición o principio constitucional mencionado en la remisión. Esto es a menudo problemático puesto que las peticiones formuladas de forma inexperta no establecen claramente las bases sobre las cuales se impugna un acto, o el acto impugnado en sí mismo y, consiguientemente, tienen pocas posibilidades de triunfar¹⁶⁶.

157. De ello se desprende que el Tribunal Constitucional tiene dos posibilidades para extender su revisión más allá de los términos explícitos en los que fue formulada la solicitud: puede, por un lado, revisar otras disposiciones referentes a su constitucionalidad y, por otro lado, puede ampliar el círculo de disposiciones constitucional es u otras disposiciones de rango superior que sirvan como estándares de revisión. El enfoque más restrictivo consistiría en limitar el control a las cuestiones de fondo; un enfoque más amplio sería incluir la posibilidad de revisar también el procedimiento.

III.1.1. La extensión de las normas en revisión

Ver 1.1.13. Tabla: La extensión de las normas en revisión.

158. En relación con las solicitudes de revisión de actos normativos, el Tribunal Constitucional puede decidir revisar la constitucionalidad no sólo de una disposición impugnada sino también, bajo ciertas condiciones, de una ley o

¹⁶² Artículo 26 Ley Orgánica de la Corte Constitucional: “*La Corte Constitucional no está autorizada a discutir la conformidad con la Constitución de una ley o acto normativo en su totalidad, si el demandante o autor de la presentación alega la inconstitucionalidad de solamente un precepto particular de la ley o acto normativo*”.

¹⁶³ Artículo 55 de la Ley de la Corte Constitucional: “*La Corte Constitucional debe decidir solamente sobre la violación de derechos humanos o libertades invocadas en la queja constitucional*”.

¹⁶⁴ Artículo 66 de la Ley del Tribunal Constitucional: “*El Tribunal debe, durante el juzgamiento, atenerse a los límites de la solicitud, cuestión legal o queja*”.

¹⁶⁵ Artículo 107 de la Ley de Juzicatura Federal: “*El Tribunal federal no puede ir más allá de las conclusiones de las partes*”.

¹⁶⁶ Por ejemplo, la Corte Suprema de Estados Unidos interpreta los términos de una petición y conduce el control no solamente con base en las cuestiones explícitamente estatuidas, sino también en aquellas implícitas en la petición: “*Solamente las cuestiones expuestas en la petición, o claramente abí incluidas, serán consideradas por la Corte*”. En Portugal, para evitar problemas advenidos de peticiones mal tramitadas, el Relator tiene el poder de invitar al peticionario que todavía no lo ha hecho, para especificar la decisión impugnada, la regla o principio constitucional que considera infringido (aunque ello no limita a la Corte, ver 4.1.1.3.), e identificar el documento del expediente en el cual él originalmente suscita la cuestión de inconstitucionalidad o legalidad.

acto, y puede decidir revisar otros actos normativos relacionados (por ejemplo, Argelia, Austria¹⁶⁷, Bielorrusia, Brasil, Croacia, República Checa, Estonia¹⁶⁸, Francia en el contexto de una revisión previa, Hungría, Liechtenstein, Lituania¹⁶⁹, Serbia, Eslovaquia, Eslovenia, Sudáfrica, la “Ex República Yugoslava de Macedonia” y Turquía y, en menor medida, en Alemania¹⁷⁰, Italia¹⁷¹, Moldavia, Rumania, España y Ucrania). De este modo, el tribunal combina la función subjetiva y objetiva de la revisión constitucional: el tribunal toma la solicitud original como una ocasión para una revisión más general que lleva a aclarar el orden constitucional y, potencialmente, puede llevar a la eliminación de más disposiciones que violen derechos fundamentales subjetivos. La solución que prevé el artículo 87 de la Ley Rusa sobre el Tribunal Constitucional merece ser mencionada. Según ésta, la decisión de que una disposición es inconstitucional es la base para la anulación de todas las otras normas que se basan, reproducen o contienen las mismas disposiciones que el precepto inconstitucional.

¹⁶⁷ Artículo 140.3 Constitución Federal.

¹⁶⁸ Ej. Sentencia de la Corte Suprema No 3-4-1-7-08, disponible en: <http://www.nc.ee/?id=1037>.

¹⁶⁹ La Corte sostiene que “*La Corte Constitucional, habiendo establecido que los preceptos de una ley la consonancia con la Constitución la cual no es cuestionada por el peticionario, pero por la cual las relaciones sociales reguladas por la ley disputada interfieren con el conflicto constitucional, debe decidir en ese sentido*” (Sentencias de 9 de noviembre de 2001, 14 de enero de 2002, 19 de junio de 2002, 27 de junio de 2007, 3 de marzo de 2009, 2 de septiembre de 2009).

¹⁷⁰ La Corte puede hacerlo con base en el Artículo 78 frase 2 de la Ley de la Corte Constitucional Federal, aplicable al control abstracto de estatutos.

¹⁷¹ En Italia, la CC ha desarrollado una amplia gama de las llamadas “decisiones interpretativas”, muy comúnmente rechazando demandas que impugnan la constitucionalidad de una norma legal o acto, con base en la incorrecta interpretación de la ley adoptada por el juez *a quo*. La Corte Constitucional ha establecido entonces que una interpretación distinta del precepto legal lo hacía constitucional (estas son las “*sentenze interpretative di rigetto*”). Decisiones interpretativas son formalmente vinculantes solamente para el juez *a quo*, pero no para el resto de las cortes y jueces. Los jueces que no quieren seguir la interpretación establecida por la Corte Constitucional, no pueden aplicar, sin embargo, la misma interpretación que la Corte Constitucional ya consideró inconstitucional. Ellos deben presentar un nuevo requerimiento preliminar a la Corte Constitucional, explicando su interpretación distinta de la misma norma. La CC debe, en estos casos, decidir si esta nueva interpretación propuesta por el juez *a quo* es válida y constitucional y, si lo es, emite una “*sentenze interpretative di accoglimento*” (una sentencia interpretativa aceptando la conformidad con la Constitución). Cuando la CC rechaza la interpretación propuesta por el juez *a quo*, dicta una decisión exhortativa al Parlamento, para que el legislador tenga una directriz y sugerencias para rendir la legislación en clara conformidad con la Constitución (y excluir posibles interpretaciones inconstitucionales). Si la Corte considera que el juez *a quo* tenía razón y el precepto legal presentado es inconstitucional, el precepto ya no es válido. La CC puede entonces “llenar” la laguna por sí misma (*sentenze additive*) o proveer al juez *a quo* de un principio general aplicable al caso específico (*sentenze additive di principio*).

159. Si se interpreta en sentido estricto, la cuestión es incluso más acuciante en lo que al recurso de constitucionalidad pleno contra actos individuales se refiere. El Tribunal Constitucional debería tener sólo la facultad para invalidar el acto individual; debería estar prohibido eliminar el acto normativo que sirvió de base para el acto individual, aun cuando este acto sea inconstitucional y la violación impugnada en el recurso de constitucionalidad pleno sea producto de la aplicación correcta de un acto normativo inconstitucional. Así, el acto normativo sigue siendo válido, exponiéndose a otros sujetos a violaciones de sus derechos fundamentales¹⁷².
160. Sin embargo, esta situación es la excepción (por ejemplo, en Suiza el denunciante¹⁷³ no puede dar lugar a la apertura de procedimientos de revisión normativa).
161. En Estonia, Liechtenstein y Lituania, el Tribunal Constitucional debe anular el acto normativo en el mismo procedimiento; en Alemania el Tribunal Constitucional puede anular el acto normativo; en Austria¹⁷⁴, la República Checa y en España, el Tribunal Constitucional está obligado a abrir un segundo procedimiento para la revisión constitucional; en Croacia, Eslovenia y en la “Ex República Yugoslava de Macedonia”¹⁷⁵, esto es facultativo. Es importante tener en cuenta que en Austria la ley sólo puede ser invalidada en su totalidad si esto no va en contra de los intereses del demandante.

III.1.2. Ampliación del círculo de agravios

162. A menudo los demandantes individuales tienen dificultades para establecer con precisión los motivos en los cuales basan su denuncia. En vistas de admitir un número mayor de denuncias a pesar de estos errores, el Tribunal Constitucional debería emitir decisiones en bases constitucionales distintas a las mencionadas en la demanda¹⁷⁶ (por ejemplo, Albania, Austria, Bélgica, Bulgaria, República Checa, Estonia¹⁷⁷, Portugal, Rusia, Eslovenia y España).

¹⁷² La situación opuesta también es crítica, cuando en el marco de la queja normativa constitucional, la Corte Constitucional no tiene la posibilidad de fundar la constitucionalidad del acto individual adoptado con base en aquella norma.

¹⁷³ La queja sólo puede ser dirigida en contra de las leyes cantonales.

¹⁷⁴ En Austria, la Corte Constitucional abre por sí misma un nuevo procedimiento de revisión del acto normativo y suspende el proceso que sigue a la queja constitucional. Después de decidir el procedimiento abstracto, retoma el caso concreto.

¹⁷⁵ Ver artículo 56 y 14 de las Reglas de Procedimiento de la Corte Constitucional.

¹⁷⁶ Ver Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p.7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009.

¹⁷⁷ Ej. Sentencia de la Corte Suprema No 3-4-1-11-08, disponible en: <http://www.nc.ee/?id=455>.

Por otra parte, el demandante no está obligado a nombrar las disposiciones exactas de la Norma Fundamental, pero la norma violada tiene que ser identificable en su demanda. Este requerimiento se ejerce de forma más estricta en relación con quejas presentadas con asesoramiento legal que con las presentadas por personas legas en Derecho.

163. Para llegar a una decisión, el Tribunal Constitucional debe identificar los contenidos de una disposición impugnada. En este caso, se pueden prever dos posibilidades: o bien el Tribunal Constitucional remite a la interpretación de los tribunales ordinarios, o bien da su propia interpretación.
164. A raíz de una cuestión previa, ninguno de los tribunales constitucional es considerados en este estudio está “*estrictamente obligado por la interpretación sobre la regulación revisada por parte del tribunal referido*”¹⁷⁸ (véase, por ejemplo, Estonia¹⁷⁹), con la excepción de Portugal, dónde el Tribunal Constitucional ha manifestado constantemente que en revisiones de constitucionalidad concretas, su revisión está limitada por la interpretación de la norma en consideración dada por el tribunal referente. Los Tribunales Constitucionales austriaco, belga y español aplicarán, en principio, la interpretación contenida en la remisión de un tribunal, excepto si otra interpretación pudiera ser conforme a la Constitución. En vista a la interpretación y la aplicación de una norma legal potencialmente inconstitucional, el Tribunal Constitucional Federal de Alemania está obligado a seguir las decisiones de los tribunales ordinarios a menos que haya errores en las decisiones que –aparte de la prohibición de arbitrariedad– estén basadas en una visión fundamentalmente errónea sobre el significado y alcance de un derecho fundamental¹⁸⁰. Además de esto, el Tribunal Constitucional alemán está legitimado para solicitar a los tribunales federales y regionales superiores que presenten información sobre la manera que utilizan para interpretar la norma relevante y sobre las razones dadas para justificar sus interpretaciones¹⁸¹.
165. De hecho, la técnica de “*réserve d’interprétation*” o “*verfassungskonforme Auslegung*” (“poder para asegurar la constitucionalidad a través de una interpretación específica”), mediante la cual el Tribunal Constitucional impo-

¹⁷⁸ A. Alen, M. Melchior, Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, Bruselas, 2002, p. 7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009.

¹⁷⁹ §14 Acto de Procedimiento de la Corte Constitucional de Revisión: “(1) Una vez auditado un asunto, la Corte Suprema no debe estar vinculada al razonamiento de un requerimiento, juzgamiento o sentencia de corte”.

¹⁸⁰ BVerfG, 1 BvR 1804/03 del 12/07/2004, §50.

¹⁸¹ Artículo 82 Ley de la Corte Constitucional Federal. De acuerdo con el artículo 82.4, frase 1, esto se aplica no solamente a las cortes supremas federales, sino también a las cortes supremas de los Länder.

ne a todos los demás órganos estatales aplicar un acto normativo sólo según una interpretación específica que el Tribunal Constitucional ha entendido constitucional, ayuda a preservar los actos normativos incluso cuando una o varias interpretaciones inconstitucionales fueran posibles¹⁸², pero no es efectivo si los tribunales ordinarios y los órganos administrativos no siguen esta interpretación¹⁸³. Una disposición legal explícita –o constitucional– que obligue a todos los otros órganos estatales, incluyendo los tribunales, a seguir la interpretación constitucional establecida por el Tribunal Constitucional proporciona un importante elemento de claridad en las relaciones entre el Tribunal Constitucional y los tribunales ordinarios, y puede servir como base para que los individuales reclamen sus derechos ante los tribunales.

166. Para superar el problema de la no aplicación de la decisión del Tribunal Constitucional, el Tribunal Constitucional italiano tomó el enfoque opuesto y desarrolló el concepto de “*diritto vivente*” (derecho viviente). El juez constitucional interpreta una disposición legal impugnada como es “normalmente” interpretada por los tribunales ordinarios y decide acerca de la inconstitucionalidad de la ley sobre la base de esta interpretación común, incluso si la disposición pudiera ser interpretada también de una manera constitucional. Por lo tanto, una ley que ha sido constantemente interpretada de una forma inconstitucional es anulada y el Parlamento está llamado a adoptar una nueva ley que (ojalá) no pueda ser o que menos probablemente sea interpretada en una manera inconstitucional. El Tribunal Constitucional de la República de Armenia también declara la inconstitucionalidad de una norma impugnada sobre la base de la interpretación dada comúnmente a la ley en su aplicación.

III.2. EFECTOS RATIONE PERSONAE

167. Un atributo típico de los Tribunales Constitucionales, de acuerdo con el modelo europeo, es el efecto *erga omnes* de sus decisiones. El efecto *erga omnes* de las decisiones significa que vinculan a todo el mundo, en oposición a las decisiones que sólo tienen efecto entre las partes de la disputa legal concreta (efecto *inter partes*). Mientras que las decisiones en virtud de una queja contra un acto individual usualmente tienen efecto *inter partes*, el razonamiento legal usado puede tener también impacto en otros casos. En Alemania, por ejemplo, estas razones (y no puramente el *obiter dicta*) son vinculantes para todos los órganos estatales, incluidos los tribunales.

¹⁸² Ver CCT 1/00 en CODICES.

¹⁸³ Ver X. Samuel, “Les réserves d’interprétation émises par le Conseil Constitutionnel”, en: http://www.conseilconstitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/reserves.pdf, consultado el 4 de junio de 2009.

El alcance de las decisiones cuando un acto normativo ha sido impugnado puede variar y depende en su mayoría de la preferencia del legislador.

Ver Tabla 1.1.14. Efecto *erga omnes*.

168. Las decisiones también pueden tener efectos distintos dependiendo si el Tribunal Constitucional encuentra una disposición constitucional o inconstitucional.

Ver Tabla 1.1.15. Confirmación de constitucionalidad.

III.2.1. Revisión de actos normativos

169. El ejemplo más obvio del efecto *erga omnes* se da si el Tribunal Constitucional declara inconstitucional un acto normativo o lo invalida. En este último caso, el acto normativo se elimina del ordenamiento jurídico y no puede volver a ser aplicado por nadie. Si un Tribunal (Constitucional) considera inconstitucional un acto normativo, varias posibilidades entran en juego: puede estar obligado a invalidar el acto con efectos *erga omnes*; también puede declarar inconstitucional el acto, dejarlo sin aplicación, pero abstenerse (o no ser competente) para eliminarlo del ordenamiento jurídico. En la mayoría de países examinados en el presente estudio, la revisión de un acto normativo puede conllevar una decisión vinculante para todo el mundo.
170. Es necesaria una visión matizada cuando se consideran los procedimientos preliminares de decisión. En primer lugar, las excepciones de inconstitucionalidad y las cuestiones previas inician la revisión de un acto normativo. No es cuestionado el hecho de que una decisión referente a una excepción de inconstitucionalidad tiene efecto vinculante entre las partes y que el tribunal ordinario está obligado a aplicar la decisión del Tribunal Constitucional en el caso concreto¹⁸⁴. En muchos Estados, la decisión del Tribunal Constitucional va más allá de esta declaración de inconstitucionalidad *inter partes* y alcanza el acto normativo impugnado. Así, el legislador combinó la idea de la protección de los derechos fundamentales subjetivos y la de la revisión objetiva constitucional. Este es el caso, por ejemplo, de Albania, Andorra, Bulgaria, Grecia, Italia, Lituania, Rumanía, San Marino, la “Ex República Yugoslava de Macedonia o Sudáfrica¹⁸⁵. En países de *common law*, el efecto

¹⁸⁴ Ver, por ejemplo, artículo 57 de la Ley Calificada andorrana de la Corte Constitucional: “2. La decisión de la Corte Constitucional es vinculante para la corte que le presentó el asunto. [...]”.

¹⁸⁵ En Sudáfrica, si un acto normativo (estatuto) es considerado por una corte como inconsistente con la Constitución, éste es declarado inválido en ese ámbito y, una vez que esta declaración de invalidez es confirmada por la Corte Constitucional, el acto normativo (estatuto) ya no se aplica para ninguna persona.

vinculante de la decisión del Tribunal Supremo es inherente al sistema de precedentes.

171. En Bélgica, Luxemburgo y Chipre, sin embargo, el efecto de una decisión del Tribunal Constitucional está expresamente limitado al caso concreto. En Turquía, el tribunal conocedor del asunto sólo tiene que esperar la decisión del Tribunal Constitucional y aplicarla si su decisión se toma dentro de cinco meses. De lo contrario, tiene que aplicar la ley impugnada. En Portugal, aun cuando la legislación sobre el Tribunal Constitucional establece que los efectos de las decisiones se limitan al caso presentado, si el Tribunal Constitucional ha emitido tres decisiones sobre el mismo asunto, puede decidir abrir un procedimiento de revisión abstracta del acto normativo impugnado y quizás invalidarlo¹⁸⁶.
172. En los países en los cuales una decisión de inconstitucionalidad ha sido tomada a raíz de una queja normativa constitucional o de un recurso de inconstitucionalidad pleno en contra de un acto normativo, ésta tendrá efectos *erga omnes* (por ejemplo, Argelia, Armenia, Austria, Azerbaiyán, Bosnia y Herzegovina, República Checa, Estonia¹⁸⁷, Francia, Alemania, Hungría, Letonia, Liechtenstein, Polonia, Eslovenia, Suiza, Rumania, Rusia, Sudáfrica, España y la ex “República Yugoslava de Macedonia”).

¹⁸⁶ En Portugal, la existencia de tres decisiones de la Corte Constitucional, dictadas en sede de control concreto de constitucionalidad, en el cual una determinada norma es considerada inconstitucional, es una mera precondición para la iniciación de un control autónomo –esta vez de tipo abstracto– de la constitucionalidad de la regla en cuestión. Una vez que el nuevo control es autónomo, nada impide que la nueva decisión, ahora tomada por el Pleno de trece jueces, sea diferente de las decisiones anteriores, dictadas por salas de cinco jueces, en el ámbito de Secciones individuales de la Corte Constitucional. Ver Sentencia no. 221/2009 de 5 de mayo de 2009, en la cual el representante de la Fiscalía en la Corte Constitucional solicitó a la Corte la declaración, con fuerza vinculante general, de inconstitucionalidad de una regla contenida en una Ley Ejecutiva sobre el cobro de valores relativos a la provisión de atención de salud en un establecimiento o servicio perteneciente al Sistema Público de Salud, cuando la parte interesada no había presentado una tarjeta de usuario del Sistema Público de Salud y no había, en el plazo dispuesto en la Ley Ejecutiva, proveído evidencia o de que poseía tal tarjeta, o de que la había solicitado ante el departamento competente. La Corte Constitucional ya había sostenido la interpretación en el sentido de la inconstitucionalidad material de dicha regla a propósito de tres casos concretos controlados. Sin embargo, en la Sentencia no. 221/2009 el Pleno decidió no declarar su inconstitucionalidad. Es importante añadir que la Fiscalía posee la competencia para requerir el proceso de uniformización de jurisprudencia, pero este proceso puede también ser iniciado por cualquiera de los jueces de la Corte Constitucional individualmente, por sí mismos. El requerimiento no puede ser hecho por un individuo privado.

¹⁸⁷ Solamente si la decisión ha sido tomada por la Corte Suprema. Si las cortes ordinarias deciden que una norma es inconstitucional, ello tiene efecto vinculante solamente entre partes, si bien, en estos casos, un procedimiento automático ante la Corte Suprema es iniciado (y tiene efecto *erga omnes*).

173. En Estados con sistemas de revisión difusa o mixta, existen dos posiciones diametralmente opuestas. Por una parte, las decisiones pueden tener un efecto *erga omnes* real o un alcance general similar. El efecto *erga omnes* existe en Brasil y México¹⁸⁸, donde el Tribunal Constitucional podrá declarar inconstitucional una ley después de cinco decisiones consecutivas relativas al mismo acto general. Además, la institución de precedentes en los Estados de *common law* hace que las decisiones del Tribunal Constitucional sean vinculantes para los tribunales inferiores. Por consiguiente, la declaración de inaplicabilidad de una ley debido a su inconstitucionalidad, por ejemplo, será aplicada por todos los tribunales inferiores, excepto si “distinguen” casos futuros explicando por qué el presente caso es diferente del precedente (por ejemplo en Canadá¹⁸⁹, Estados Unidos¹⁹⁰, Perú o México). En Islandia, el *stare decisis* no está inscrito en la Constitución, pero es una costumbre constitucional. En Brasil, no es sólo que el sistema de precedentes cree un cierto efecto general de las decisiones, sino que los tribunales pueden además sugerir cambios legislativos.
174. Por otra parte, en Argentina, Chile, Dinamarca, Finlandia, Japón, Noruega y Suecia, el Tribunal Constitucional o el Tribunal Supremo se limita a declarar la inaplicabilidad de un acto normativo en un caso concreto. No hay una garantía formal de unidad de práctica legal por parte de los tribunales. Por lo tanto, es necesario que haya una coherencia informal fuerte dentro del sistema de tribunales, especialmente mediante la disposición de información y la voluntad de seguir ciertas directrices para evitar la incertidumbre legal por decisiones tomadas de forma inconsistente.
175. Otro grupo de decisiones relativas a actos normativos que no necesariamente tienen efectos *erga omnes* son las declaraciones de inconstitucionalidad (ver abajo “Mantenimiento de la validez de un acto impugnado”).
176. Incluso el rechazo de una solicitud que tiene efecto *inter partes* puede tener un gran impacto en la práctica, puesto que los futuros solicitantes potenciales (especialmente, tribunales ordinarios) siguen la decisión del Tribunal Constitucional y pueden prever si su solicitud será exitosa o no¹⁹¹.

¹⁸⁸ T. Ginsberg, “Comparative Constitutional Review”, Instituto de Estados Unidos para Proyectos por la Paz, http://www.usip.org/ruleoflaw/projects/tg_memo_on_constitutional_review.pdf, consultado el 2 de marzo de 2009.

¹⁸⁹ <http://www.er.uqam.ca/nobel/r31400/jur2515/ndecours/jur2515chap7-2007.pdf>, consultado el 2 de marzo de 2009.

¹⁹⁰ Ver “The Court and Constitutional Interpretation”, en: <http://www.supremecourtus.gov/about/constitutional.pdf>, consultado el 4 de mayo de 2009.

¹⁹¹ R. Jaeger, S. Broß, op. cit., p. 26 f

177. Lo mismo ocurre con las decisiones de confirmación de constitucionalidad (ver Tabla 1.1.15. Confirmación de constitucionalidad). En efecto, el alcance de los efectos de decisiones en las cuales el Tribunal Constitucional confirma la constitucionalidad, esto es, cuando rechaza invalidar un acto normativo o individual, varía. Hay dos motivos opuestos: primero, en Austria, Rumania, España y Suiza, por ejemplo, el Tribunal Constitucional no aceptará ninguna denuncia ulterior con respecto al mismo estatuto, a la misma disposición presentada por la misma persona. La decisión, en consecuencia, sólo previene al mismo denunciante de presentar el mismo caso otra vez, pero otros denunciantes podrían presentar su caso ante el Tribunal Constitucional. En este sentido, la decisión tiene solamente efecto *inter partes*¹⁹². Por otra parte, las decisiones que confirman la compatibilidad con la Constitución pueden tener efecto *erga omnes*. El juez ordinario en Perú no debe considerar las cuestiones de inconstitucionalidad que se presenten por una parte si éstas se refieren a una norma cuya constitucionalidad ha sido afirmada por el Tribunal Constitucional en una decisión previa. Igualmente, en Andorra, Armenia, Bélgica, República Checa, Alemania¹⁹³, Moldavia, Serbia y Lituania, las decisiones de constitucionalidad no pueden impugnarse. Esto significa que la cuestión ya no puede plantearse o, por lo menos, no por un cierto período de tiempo, como es el caso en Armenia y Turquía. Lo mismo ocurre en Francia desde la reforma de 2008, pero en algunos casos se podría reabrir en caso de evolución de las circunstancias fácticas o legales (de este modo podría debilitarse el efecto *erga omnes*).
178. Las normas aplicables en Eslovenia y la “Ex República Yugoslava de Macedonia¹⁹⁴” toman una posición intermedia, puesto que el Tribunal Constitucional no se ocupará de una consulta de nuevo si no hay razones para creer que la fallará de modo diferente esta vez. *A contrario*, si existen dudas razonables, admitirá la demanda.
179. Finalmente, el *stare decisis* existe en sistemas en los que no hay una revisión concentrada. Chipre¹⁹⁵, México, Perú¹⁹⁶, Sudáfrica y los Estados Unidos apli-

¹⁹² G. Kucska-Stadlmayer, “Die Beziehungen zwischen den Verfassungsgerichtshöfen und den übrigeneinzelstaatlichen Rechtsprechungsorganen, einschließlich der diesbezüglichen Interferenz des Handelns der europäischen Rechtsprechungsorgane”, Informe de la XII Conferencia de Cortes Constitucionales Europeas, 2002, p. 23.

¹⁹³ Sin embargo, la cuestión de constitucionalidad de un estatuto puede ser suscitada nuevamente ante la Corte Constitucional Federal si se constata un cambio sustancial en la situación fáctica o legal en relación al momento de dictación de la primera decisión.

¹⁹⁴ Ver Art.28 Reglas de Procedimiento de la Corte Constitucional.

¹⁹⁵ La *ratio decidendi* de un caso del que derivan sentencias de la Corte Suprema en el ejercicio de su jurisdicción de apelación o de su jurisdicción originaria (ejercida por el pleno de la corte), es vinculante para las cortes jerárquicamente subordinadas.

can la doctrina del precedente, que asegura un grado mayor de coherencia en las decisiones de los tribunales y se acerca al efecto *erga omnes* en los sistemas de derecho civil. Un tribunal inferior puede a veces rechazar aplicar la *ratio decidendi* (razonamiento) de las decisiones de los tribunales superiores, pero tiene que explicar por qué el caso presente difiere del caso precedente para justificar su nueva decisión. No obstante el principio de *stare decisis*, los tribunales superiores de los países del *common law*, como Estados Unidos y el Reino Unido (desde 1966), pueden rechazar su propia decisión con el acuerdo mayoritario de los jueces y con el adecuado razonamiento. En algunos Estados con revisión concentrada¹⁹⁷, el Tribunal Constitucional está obligado por sus propios precedentes, pero puede rechazarlos con la decisión razonada de una cierta mayoría de sus miembros (por ejemplo, Andorra¹⁹⁸).

¹⁹⁶ Artículo VI del Código de Proceso Constitucional (p.t.): “*Los Jueces interpretan y aplican las leyes o toda norma con rango de ley y los reglamentos según los preceptos y principios constitucionales, conforme a la interpretación de los mismos que resulte de las resoluciones dictadas por el Tribunal Constitucional*”. Artículo VII: “*Las sentencias del Tribunal Constitucional que adquieren la autoridad de cosa juzgada constituyen precedente vinculante cuando así lo exprese la sentencia, precisando el extremo de su efecto normativo. Cuando el Tribunal Constitucional resuelva apartándose del precedente, debe expresar los fundamentos de hecho y de derecho que sustentan la sentencia y las razones por las cuales se aparta del precedente*”.

¹⁹⁷ En Lituania, donde el sistema de control es concentrado, existen, no obstante, ciertas particularidades relativas al principio del *stare decisis*. Según la jurisprudencia de la Corte Constitucional, ésta está vinculada por sus precedentes y por la doctrina constitucional que ha formulado y que sustancia dichos precedentes. Es posible apartarse de los precedentes de la Corte Constitucional creados durante la adopción de decisiones en casos de justicia constitucional, y nuevos precedentes pueden ser creados, solamente en casos en los cuales son inevitables y objetivamente necesarios, constitucionalmente fundados y razonables. La mencionada necesidad de reinterpretar determinadas previsiones de la doctrina constitucional oficial para que ésta sea corregida, puede ser determinada solamente por las circunstancias, tales como la necesidad de aumentar las posibilidades para la implementación de derechos personales innatos y adquiridos e intereses legítimos, la necesidad de mejor defender y proteger los valores consagrados en la Constitución. Sentencia de la Corte Constitucional de 24 de octubre de 2007.

¹⁹⁸ Artículo 3 de la Ley Calificada de la Corte Constitucional: “*1. La Corte Constitucional está sometida solamente a la Constitución y a esta Ley. Los precedentes sentados por la Corte Constitucional vinculan a la Corte en su subsecuente interpretación de la Constitución; sin embargo, ellos pueden ser enmendados por una decisión fundamentada tomada por una mayoría absoluta de sus miembros. 2. Para los propósitos del párrafo anterior, un precedente se presume existente cuando por lo menos dos casos idénticos hayan sido resueltos con la misma decisión, basados en la misma doctrina*”.

III.2.2. Revisión de actos individuales

180. Por lo general, la decisión fruto de una queja constitucional completa que impugna un acto individual afecta solamente al caso o situación con base en la cual se inició el procedimiento¹⁹⁹. La cuestión del alcance de una decisión del Tribunal Constitucional plantea problemas fundamentales en relación al rol y la efectividad de las quejas constitucionales. Sólo vincula al denunciante y al órgano judicial o administrativo cuyo acto se impugnó, y posiblemente también a los órganos públicos interesados en la cuestión concreta, también para el futuro, siempre que la situación concreta del origen del caso no haya cambiado (por ejemplo, Austria). En Alemania, incluso las decisiones sobre actos individuales vinculan a todos los órganos estatales²⁰⁰.
181. Se pueden distinguir tres casos. O el Tribunal Constitucional decide en la substancia, o se anula un acto individual, o solo ordena que un procedimiento se reabra o que se cambie un acto administrativo, sin anular el acto.
182. El Tribunal Constitucional puede pronunciarse sobre el fondo de un caso en Armenia, Brasil, Canadá, Chipre²⁰¹, Estonia, Islandia, Irlanda, Japón, Eslovenia, Suiza, Sudáfrica, España, la “Ex República Yugoslava de Macedonia” y los Estados Unidos. Sin embargo, en la mayoría de estos Estados, esto no es la norma, y el Tribunal Constitucional puede decidir enviar el caso de vuelta a un tribunal inferior para que tome una decisión sobre el fondo²⁰².
183. Si el Tribunal Constitucional anula una decisión final de un tribunal, normalmente ordena que el caso se reabra (por ejemplo, Andorra, Bosnia y Herzegovina, Croacia, República Checa, Alemania, Hungría, Letonia, Liechtenstein, Portugal, Rusia, Eslovaquia, Eslovenia, Suiza y la República de Corea). Igualmente, si el tribunal suspende un acto administrativo individual, la ausencia de un acto administrativo normalmente obliga a los órganos administrativos a aprobar un nuevo acto.

¹⁹⁹ Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p. 7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009., p. 45.

²⁰⁰ R.Jaeger, S. Broß, op. Cit., p. 27.

²⁰¹ En el ejercicio de su autoridad administrativa, la Corte Suprema puede confirmar una decisión administrativa o declararla nula e inválida. No le compete enmendar o modificar la decisión del órgano administrativo. La Corte no tiene el poder de reconsiderar los méritos de decisiones administrativas y sustituirlos con sus propias decisiones. Tal acto violaría la estricta separación de poderes resguardada por la Constitución. La toma de decisiones en el ámbito de la administración recae enteramente en la competencia de la rama ejecutiva del gobierno. El control tiene por objetivo verificar la legalidad de los actos u omisiones de la administración, y no evaluar su acierto desde el punto de vista jurídico.

²⁰² CDL-INF(2001)009, Decisiones de cortes constitucionales y órganos equivalentes y su ejecución.

184. Si el Tribunal Constitucional sólo envía el caso al tribunal ordinario superior para que se reabran los procedimientos sin en realidad anular la decisión inconstitucional (por ejemplo, Azerbaiyán), se plantea la delicada cuestión en torno a si el tribunal ordinario superior seguirá las órdenes pasadas por el Tribunal Constitucional. En el caso de Serbia²⁰³, donde el Tribunal Constitucional suspende los procedimientos para dar tiempo al órgano administrativo o judicial para rectificar potencialmente la situación inconstitucional, la efectividad de la regulación depende en gran medida de la voluntad de estos órganos para seguir tales instrucciones.
185. Mientras que algunos tribunales constitucionales pueden realmente dar órdenes sobre cómo debe actuar el órgano pertinente para estar conforme a la Constitución y para ejecutar la decisión de forma correcta (por ejemplo, República Checa²⁰⁴, Alemania, Malta, Eslovaquia²⁰⁵, Eslovenia, España²⁰⁶ y Ucrania²⁰⁷), en otros países no existe un poder como éste para indicar y ordenar acciones positivas.
186. Como se señaló anteriormente, el Tribunal Constitucional puede ejercer la revisión, ya sea abriendo un nuevo procedimiento o decidiendo, en el mismo procedimiento, la cuestión de constitucionalidad de un acto normativo en el cual el acto individual impugnado estaba basado; esta (segunda) decisión tendrá efecto *erga omnes*. Pero además, la decisión sobre un acto individual puede tener un efecto que no se limite al caso planteado: en Montenegro, cuando el Tribunal Constitucional decide sobre un acto individual en el cual los derechos de varias personas fueron violados, pero sólo uno o algunos de ellos se quejan ante el Tribunal Constitucional, la decisión se extiende a todas las personas agraviadas. Además, en algunos Estados, el Tribunal Constitucional puede declarar que los futuros actos judiciales o administrativos comparables con el que se ha anulado por el Tribunal Constitucional, serán inconstitucionales. Por lo tanto, incluso cuando decide sobre un caso individual, el Tribunal Constitucional da instrucciones generales acerca de cómo los tribunales o los órganos administrativos u otros órganos pueden comportarse para actuar de acuerdo con la Constitución.

²⁰³ Artículo 55 Ley de la Corte Constitucional.

²⁰⁴ Artículo 82 b) Ley de la Corte Constitucional.

²⁰⁵ Artículo 127 (2) de la Constitución.

²⁰⁶ Artículo 55 1 c Ley Orgánica de la Corte Constitucional.

²⁰⁷ Artículo 70 de la Ley de la Corte Constitucional.

III.3. EFECTOS *RATIONE TEMPORIS*

III.3.1. Invalidación *ex tunc* o *ex nunx* de un acto

Ver Tabla 1.1.16. Efecto *ex tunc* o *ex nunc* de la decisión del Tribunal Constitucional.

187. Las decisiones relativas a la inconstitucionalidad de un acto normativo pueden tener diferentes efectos temporales. La doctrina de nulidad (“*Nichtigkeitslebre*”) se opone a la doctrina de la “invalidez” (“*Vernichtbarkeitslebre*”). Esto crea un dilema, que requiere elegir entre la coherencia dogmática (si se considera que el acto inconstitucional nunca ha formado parte del ordenamiento jurídico) y la seguridad jurídica (continuando la validez de actos basados en el acto derogado antes de la entrada en vigor de la decisión del Tribunal Constitucional²⁰⁸). Ninguno de los países revisados en este estudio ha optado por la solución anterior sin dejar un cierto espacio para maniobrar al Tribunal Constitucional, porque la anulación de un acto normativo importante en el cual se basan muchos actos individuales podría tener enormes consecuencias. La elección entre anulación y derogación también tiene efectos en la celeridad de los particulares para presentar una queja en contra de un acto normativo. Si el tribunal invalida la norma con efecto futuro, el caso del demandante no se solucionará mediante la eliminación de la norma general inconstitucional. Por consiguiente, para proveer un incentivo a los particulares para reclamar en contra de actos normativos, algunos Estados prevén un efecto retroactivo de la decisión, aplicándose únicamente al caso del denunciante (el llamado “*Premium for the catcher*”²⁰⁹). Por ejemplo, en Hungría, la decisión del Tribunal, a pesar de su mero efecto derogatorio, se aplica al caso de la demanda individual.
188. Sólo unos pocos países introdujeron el efecto *ex tunc* en las decisiones del Tribunal Constitucional, como Andorra, Bélgica, Alemania (con el poder de decidir si el efecto debería ser *ex tunc* o *ex nunc*), Hungría, Italia, Polonia, Portugal, Rusia, Eslovenia y la ex “República Yugoslava de Macedonia”).

²⁰⁸ Las regulaciones albanesa y rusa son notables en ese sentido, pues disponen explícitamente que la Corte Constitucional puede ordenar el efecto inmediato de su decisión, aún antes de su publicación, si ello fuere necesario para proteger los derechos constitucionales del individuo.

²⁰⁹ El término existe en la doctrina austriaca (“*Ergreiferprämie*”). Para la traducción, ver CDL(2008)065, Opinión sobre el proyecto de ley que enmienda y suplementa (1) la ley de procedimientos constitucionales de Kirguistán y (2) la ley de la Corte Constitucional de Kirguistán, 2008.

189. Entre estos países, sólo Andorra, Armenia, Bélgica, Letonia, Rusia, Eslovenia²¹⁰, Suiza y España prevén un efecto *ex tunc* extenso, con algunas excepciones, que deben especificarse por el Tribunal Constitucional, mientras que todos los otros Estados (por ejemplo, Alemania²¹¹, Italia, Portugal) restringen la declaración de una nulidad preexistente a actos que no sean sentencias judiciales firmes.
190. El efecto *ex nunc* se ha introducido en Albania, Argelia, Armenia, Austria, Bielorrusia, Brasil, Chile, Croacia, República Checa²¹², Francia, Estonia, Georgia, Hungría, Corea del Sur, Letonia, Liechtenstein, Lituania, Luxemburgo, Moldavia, Rumania, Rusia, San Marino, Serbia, Eslovaquia, Eslovenia²¹³, la ex “República Yugoslava de Macedonia”, México y Ucrania.
191. Aquí de nuevo la mayoría de los Estados pueden, hasta cierto punto, tomar medidas para atenuar el efecto derogatorio.

III.3.2. Atenuación de las invalidaciones y de sus efectos temporales

192. Tanto las decisiones *ex tunc* como las *ex nunc* requieren, a veces, de atenuación. Una posibilidad es permitir al Tribunal Constitucional decidir cuándo la decisión entra en vigor (ya sea en el pasado, como un camino intermedio entre la nulidad y la derogación, o en algún momento en el futuro, o ambos). La otra posibilidad es recurrir a técnicas de interpretación (autoritaria) que combinan la adecuada protección de la Constitución y la coherencia del ordenamiento jurídico en que no todas las disposiciones se eliminan inmediatamente del ordenamiento jurídico. En Sudáfrica, un tribunal que declare la invalidez de un acto normativo (estatuto) sobre la base de inconsistencia con la Constitución puede dar una orden en relación con el alcance de su efecto retroactivo.

²¹⁰ Cuando la Corte Constitucional anula un reglamento o acto general dictado en el ejercicio de la autoridad pública por inconstitucionalidad o ilegalidad. En Eslovenia, la anulación tiene efecto *ex tunc*. Art. 45(2) de la Ley de la Corte Constitucional.

²¹¹ Conforme a los artículos 79.1 y 79.2 de la Ley de la Corte Constitucional Federal, las decisiones finales basadas en un estatuto que ha sido declarado nulo e inválido siguen inafectadas aunque un precepto o ley sea declarado nulo e inválido *ex tunc*. Solamente en el caso de una condena final, pueden los nuevos procedimientos ser instituidos en conformidad a los preceptos del Código de Procedimiento Penal.

²¹² En el caso de la República Checa, la CC nunca ha establecido efectos *ex tunc*, pero la doctrina constitucional no excluye que la ley pueda permitir esta posibilidad, ver Wagnerová, E., Dostál, M., Langásek, T., Pospíšil, I.: Zákon o Ústavnímsoudou s komentásem [The Act on the Constitutional Court with Commentary], ASPI, Praha 2007, p. 206.

²¹³ Cuando la Corte Constitucional abroga ya sea una ley inconstitucional, ya sea una regulación o acto general dictado en el ejercicio de la autoridad pública inconstitucional o ilegal, la abrogación tiene efecto *ex nunc*. Arts. 43 y 45(3) de la Ley de la Corte Constitucional.

193. Las decisiones *ex tunc* no afectan a las decisiones judiciales definitivas. En la mayoría de los Estados con decisiones constitucionales retroactivas se ha dado prioridad a la seguridad jurídica relativa a las decisiones finales de los tribunales.
194. Efecto *ex tunc* de los casos penales. La reapertura de causas penales es muy común, incluso en los países donde las decisiones del Tribunal Constitucional tienen efecto derogatorio, si ello puede dar lugar a una pena más favorable (por ejemplo, Albania, República Checa, Hungría, Italia, Corea del Sur, Moldavia, Portugal, Rumania, Eslovenia, España, Sudáfrica, México y Uruguay). En Sudáfrica, se estableció un nuevo motivo para revisar una sentencia cuando ésta haya sido dictada en conformidad con un acto normativo inconstitucional²¹⁴. En Portugal, las decisiones del Tribunal Constitucional pueden tener efecto retroactivo cuando la norma declarada inconstitucional o ilegal trata de asuntos criminales, asuntos disciplinarios, o infracciones administrativas, y su contenido es menos favorable al acusado²¹⁵. En la República Checa, sólo se puede reabrir un proceso penal cuando el fallo aún no se ha aplicado²¹⁶, mientras que en Eslovenia los procedimientos penales pueden reabrirse incluso después de un fallo definitivo, si el estatuto en el cual se basaba la condena ha sido anulado o derogado.
195. Retraso específico de la nulidad. Casi todos los Estados tienen regulaciones específicas relativas a la entrada en vigor y el posible efecto retroactivo de las decisiones del Tribunal Constitucional. En Albania, las decisiones entran en vigor en el día de la declaración si esto es necesario para proteger los derechos fundamentales del individuo. Algunos Estados que aplican el principio del efecto derogatorio prevén la retroactividad para reparar o prevenir un daño (por ejemplo, Armenia, Azerbaiyán, Eslovenia). Serbia y la “Ex República Yugoslava de Macedonia” tienen disposiciones según las cuales los particulares pueden requerir la reapertura de procedimientos en todos los casos en los que una decisión definitiva se basó en un acto normativo invalidado. De una manera más restrictiva, se ha introducido el “*Premium for the catcher*” (efecto retroactivo sólo en el caso presente) en Armenia²¹⁷,

²¹⁴ Ver RSA-2009-2-009, CCT 98/08; 15/07/2009 en CODICES.

²¹⁵ Un ejemplo de ello es la Sentencia no. 232/2004 de 31 de marzo de 2004, en la cual, con fuerza vinculante general, la Corte declara la inconstitucionalidad de reglas relativas a penas accesoriales que involucran la deportación de ciudadanos extranjeros que son responsables por menores de edad con nacionalidad portuguesa y que residen en territorio portugués. Sin embargo, la corte determinó los efectos de la inconstitucionalidad de dichas normas de manera que no se excluyeran los casos en los cuales las sentencias que incluyen penas accesoriales de deportación ya hubiesen sido decididos, pero no ejecutados al momento de la publicación de la Sentencia no. 232/2004.

²¹⁶ Sección 71 de la Ley de la CC.

Austria, Hungría y, con moderaciones, en Liechtenstein. En Israel, una decisión entra en vigor el día que señale el Tribunal Supremo, sin embargo, el tribunal puede suspender la declaración de inconstitucionalidad si lo estima necesario. Esta práctica se da usualmente en casos en los cuales el Tribunal desea conceder al legislador o al Ejecutivo tiempo para corregir el estatuto o la práctica gubernamental en cuestión.

196. En lo que a la continuación de la validez de una disposición se refiere, se deben distinguir muchos casos. En Estados con una revisión constitucional difusa no se puede invalidar el acto normativo impugnado, pero éste deviene inaplicable (por ejemplo, Dinamarca, Finlandia, Islandia, Malta, Noruega, Suecia). En Malta, por ejemplo, el Tribunal Constitucional presenta su decisión al legislador, que es libre para cambiar la legislación de conformidad con la Constitución, o no hacerlo²¹⁸.
197. En Estados con un control concentrado, como por ejemplo Andorra, Francia, Alemania, Polonia, Portugal, Eslovenia y Sudáfrica, los Tribunales Constitucionales tienen la capacidad para declarar la incompatibilidad de una norma con la Constitución. La disposición deviene inaplicable pero no nula y el legislador tiene que cambiarla para ponerla en consonancia con la Constitución dentro de un plazo específico de tiempo. En Alemania esta opción se escoge en particular en casos relacionados con el principio de igualdad. El Tribunal Constitucional da, a veces, directivas concretas para la aplicación de la ley durante el período transitorio acordado con el legislador para cambiarla²¹⁹.
198. El mismo resultado se logra en Estados cuyos Tribunales Constitucional es adoptan decisiones con efecto *ex nunc* si el tribunal puede suspender su entrada en vigor (por ejemplo, Austria, Azerbaiyán, Hungría, Letonia, Liechtenstein²²⁰, Lituania²²¹, Polonia, Eslovenia, Sudáfrica²²² y Suiza²²³).

²¹⁷ CDL-AD(2006)017, Opinión sobre las Enmiendas a la Ley de la Corte Constitucional de Armenia.

²¹⁸ Artículo 242 del Código de Organización y Proceso Civil.

²¹⁹ R. Jaeger, S. Broß, op. cit., p. 26.

²²⁰ Ver H. Wille, Informe Nacional para la XIV Conferencia de Cortes Constitucionales Europeas, p. 17, en: http://www.lrkt.lt/conference/Pranesimai/Q_Liechtenstein_D.doc#_Toc198870236.

²²¹ Decisión de la CC de 19 de enero de 2005.

²²² Ver RSA-2008-2-007, CCT 19/07, 02/06/2008, en CODICES.

²²³ Relativo a leyes y decretos cantonales.

III.4. EFECTOS *RATIONE MATERIAE*: REPARACIÓN E INDEMNIZACIÓN POR DAÑOS

Ver Tabla 1.1.17. Capacidad de los tribunales constitucionales para atribuir indemnización por daños.

199. La mayoría de los tribunales constitucionales objeto de análisis no tienen capacidad para otorgar indemnización por daños a un sujeto cuyos derechos han sido violados a causa de un individuo o de un acto normativo. Sin embargo, a menudo la decisión del Tribunal Constitucional conducirá a la reapertura de un caso particular (si un acto individual fue atacado o en el caso de “recompensas para el receptor” en relación con quejas normativas), y una corte ordinaria inferior podrá decidir entonces conceder indemnización por daños de acuerdo con las normas procesales aplicables (por ejemplo, Chipre²²⁴).
200. En los Estados de *common law*, la indemnización por daños forma parte del derecho de responsabilidad civil; si una autoridad pública infringe derechos individuales, el sujeto afectado tiene derecho a la reparación.
201. En los Estados con revisión difusa, los individuos pueden, en los procedimientos ordinarios, bajo ciertas condiciones, presentar una demanda de indemnización contra una autoridad estatal cuya actuación haya violado derechos individuales. En Sudáfrica, para el otorgamiento de “daños constitucionales”, basados únicamente en la infracción de un derecho constitucional, se determinó la competencia del Tribunal Constitucional, bajo su jurisdicción, para conceder una “reparación adecuada”²²⁵.

CONCLUSIONES PARCIALES DEL CAPÍTULO III

202. En cuanto a las decisiones de los tribunales constitucionales, cabe señalar que estos tribunales, en la mayoría de los sistemas estudiados, tienen cierto margen de apreciación con respecto a cómo llevan a cabo las revisiones. A veces pueden extender el número de normas cuya constitucionalidad se evalúa o incluso aplicar un amplio número de normas como estándares de revisión

²²⁴ Cuando la Corte anula una decisión tomada por una autoridad pública, ello tiene efecto retroactivamente. El artículo 146.5 de la Constitución impone un deber específico para las autoridades del Estado de acatar sentencias y órdenes de la Corte en el ejercicio de su actividad administrativa. El deber constitucional que impone el artículo 146.5 a la autoridad administrativa es el de restaurar la situación que existía antes de la decisión judicialmente anulada. Así, para sostener una acción civil de daños bajo las previsiones del párrafo 6 del artículo 146, el daño debe resultar del acto inválido, de la decisión u omisión contraria a la restauración de la legalidad.

²²⁵ Ver RSA-1997-2-006, CCT14/96, 05/06/1997, en CODICES.

en el marco de su control de constitucionalidad. Esto es particularmente común en los países que contemplan recursos individuales plenos. En la mayoría de estos países, se considera que el Tribunal Constitucional está en mejor posición para identificar claramente el bloque de constitucionalidad que ha de ser examinado para decidir acerca de la constitucionalidad de una norma o acto específico. Una disposición legislativa, o incluso constitucional, que estableciera la vinculación de todos los órganos estatales, incluso de los tribunales inferiores, a la interpretación del Tribunal Constitucional proporcionaría un importante elemento de claridad en las relaciones entre el Tribunal Constitucional y los tribunales ordinarios.

203. Los efectos de las decisiones tomadas por el Tribunal Constitucional también son muy variados. La decisión puede afectar un número diferente de personas dependiendo del efecto *inter partes* o *erga omnes* (efecto *ratione personae*) o puede tener efectos temporales diferentes (efecto *ratione temporis*) o incluso resolver diferentes tipos de problemas (efecto *ratione materiae*).
204. Conforme a los efectos *ratione personae*, la decisión puede tener efectos sólo *inter partes* o efectos *erga omnes*, que resultan en la invalidación de un acto normativo o en su inaplicabilidad. En la mayoría de los Estados, cuando se impugna la constitucionalidad de una norma, el Tribunal Constitucional está legitimado para eliminarla del ordenamiento jurídico. Sin embargo, en algunos Estados los poderes del Tribunal Constitucional (o de los tribunales ordinarios en el caso de los países escandinavos) son más limitados y la decisión sólo tiene efecto vinculante para las partes del caso (por ejemplo, Andorra, Argentina, Chile, Bélgica, Chipre²²⁶, Dinamarca, Finlandia, Japón, Luxemburgo, Noruega, Suecia o Portugal). En los Estados de *common law*, con una revisión constitucional difusa, el *stare decisis* también tiene una fuerte influencia y la tiene más allá del caso individual, ya que los precedentes emitidos por el Tribunal Supremo (o equivalente) vinculan a los tribunales inferiores (por ejemplo, Estados Unidos, México, Sudáfrica o el Reino Unido). Sin embargo, los precedentes pueden revocarse cuando sea necesario, con el adecuado razonamiento.
205. Las decisiones referentes a la inconstitucionalidad de un acto normativo pueden tener diferentes efectos temporales, bien *ex nunc*, cuando la invalidez

²²⁶ Una decisión de la Corte que confirma un acto o decisión administrativa *opera in personam*, estableciendo la fuerza de cosa juzgada entre el demandante y la administración. Una sentencia de la Corte que anula un acto administrativo o decisión *opera erga omnes*. Cuando una medida administrativa ha sido declarada nula e inválida, la administración tiene la obligación de reconsiderar el asunto bajo la luz de la sentencia de la Corte Suprema, llegando a una nueva decisión. Ésta puede ser objeto de control judicial en sede de recurso ante la Corte Suprema.

se da desde el momento en que se emite la decisión, o *ex tunc*, en cuyo caso el acto se declara nulo desde el momento de su adopción, hecho que tiene importantes consecuencias para los casos individuales. Sólo relativamente pocos países han introducido el efecto *ex tunc* en las decisiones del Tribunal Constitucional (por ejemplo, Armenia, Andorra, Bélgica, Estonia, Hungría, Letonia, Italia, Polonia, Portugal, Eslovenia, Suiza, Sudáfrica, España y la ex “República Yugoslava de Macedonia”), atenuando sus efectos.

206. Además, una decisión emitida por el Tribunal Constitucional debe tener, a fin de ser considerada un remedio efectivo de acuerdo con la jurisprudencia del Tribunal Europeo de Derechos Humanos, la capacidad de remediar una violación de derechos humanos individuales. Sin embargo, muy a menudo la decisión del Tribunal Constitucional dará lugar a la reapertura de un caso individual por parte de los tribunales ordinarios, en vez de que se conceda la indemnización por daños por parte del propio Tribunal Constitucional²²⁷.

²²⁷ Conforme establecido por el ECtHR en la sentencia Cochiarella v. Italy (ECtHR, GC, 29 de marzo de 2006), “*También es claro que para países donde ya existen violaciones a lo largo de los procedimientos, un remedio diseñado solamente para acelerar los procedimientos –si bien deseable en el futuro– puede no ser adecuado para reparar una situación en la cual éstos claramente ya hayan sido demasiado largos. Distintos tipos de remedios pueden reparar la violación adecuadamente. La Corte ya lo ha afirmado respecto de procedimientos penales, en los cuales consideró satisfactorio que a lo largo de ellos el tema hubiese sido tomado en cuenta, reduciéndose la sentencia de manera expresa y mesurada*” (ver Beck v. Norway, no.26390/95, §27, 26 de junio de 2001). A mayor abundamiento, algunos estados, como Austria, Croacia, España, Polonia y Eslovaquia, han entendido la situación perfectamente eligiendo combinar dos tipos de remedios; uno designado para acelerar el procedimiento, y otro para costear la compensación (ver, por ejemplo, Holzinger (no. 1), antes citado, §22; Slavisek v. Croacia (dic.), no. 20862/02, ECHR 2002-VII; Fernández-Molina González y Otros v. España (dic.), no. 64359/01,ECHR 2002-IX; Michalak v. Polonia (dic.), no. 24549/03, 1 de marzo de 2005; y Andrásik y Otros v. Eslovaquia (dic.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 y 60226/00, ECHR 2002-IX) (párrafos 76-77).

IV. OTRAS CUESTIONES

IV.1. DELIMITACIÓN DE LA JURISDICCIÓN ENTRE LOS TRIBUNALES CONSTITUCIONALES Y LOS TRIBUNALES ORDINARIOS

207. En el caso de la violación de derechos fundamentales, la reparación debería ser accesible tan pronto como sea posible. En este sentido, es relevante la cuestión de la relación entre los tribunales ordinarios y el Tribunal Constitucional. En primer lugar, son los tribunales ordinarios los que están en la línea de frente, aplicando leyes ordinarias (y constitucionales). Su rol es asegurar que la primacía de la Constitución no sea subestimada. Los tribunales ordinarios son los primeros en detectar si la aplicación de una ley plantea un problema constitucional. Su comprensión del contenido de las previsiones constitucionales determinará la calidad global de la protección que se ofrece al orden constitucional. Es aquí donde la cuestión se vuelve relevante para el particular, en la protección de derechos fundamentales. Hay distintas modalidades sobre el reparto de competencias y la valoración social del Tribunal Constitucional y de los tribunales ordinarios, que tienen repercusión en las relaciones de los tribunales. Además, la competencia y voluntad de los tribunales ordinarios para examinar cuestiones de constitucionalidad es importante para el sujeto agraviado ya que las violaciones pueden dirigirse más rápido, ya sea en los procedimientos ordinarios (en sistemas difusos o de tipo especial) o bien mediante una cuestión preliminar.
208. Hay varios conjuntos de problemas referentes a la relación entre los tribunales ordinarios y el Tribunal Constitucional. Primero, la cuestión de la competencia: ¿en qué medida los tribunales constitucionales interfieren en la jurisdicción de los tribunales ordinarios? En segundo lugar, la cuestión de la interpretación, que es doble: ¿se refiere el Tribunal Constitucional a las interpretaciones de los tribunales ordinarios? y ¿aplican los tribunales ordinarios las decisiones y el razonamiento del Tribunal Constitucional?

IV.1.1. Las competencias de revisión

209. *“Los sistemas que dividen la autoridad legal entre un Tribunal Constitucional y un Tribunal Supremo se enfrentan a problemas de coordinación cuando se trata de distribuir la jurisdicción y de resolver inconsistencias”*

*en la decisión*²²⁸. Como señala L. Garlicki, las tensiones entre los tribunales constitucionales y los tribunales supremos son inevitables en un sistema de jurisdicción constitucional concentrada: los tribunales constitucionales especializados que se colocan generalmente fuera del sistema judicial ordinario deben interpretar los términos vagos usados en la Constitución, en cuanto órganos competentes para precisar los principios constitucionales. El hecho de que un Tribunal Constitucional sea competente para revisar no sólo de forma abstracta sino también incidental y que sus interpretaciones toquen casi todas las ramas jurídicas, infringe el rol tradicional de los tribunales ordinarios para interpretar “sus” leyes y limita su ámbito de actuación al aplicar una disposición. Cuando los tribunales constitucionales interfieren en casos concretos, evalúan la aplicación y la interpretación de los estatutos por parte de los tribunales ordinarios.

210. Teóricamente, al menos, la relación entre el Tribunal Constitucional y los tribunales ordinarios es menos conflictiva cuando se trata de quejas normativas constitucionales que de quejas individuales plenas²²⁹, ya que el Tribunal Constitucional no revisa de forma directa la aplicación de un acto normativo por parte del tribunal ordinario. Sin embargo, incluso en Estados con quejas normativas constitucionales pueden surgir tensiones. En Hungría, el Tribunal Constitucional puede, hasta cierto punto, expresarse sobre la aplicación de un acto normativo usando la técnica del *diritto vivente* (ver más arriba) para interpretar la ley en análisis. Por lo tanto, si considera que la ley es inconstitucional, esto puede darse por una interpretación inconstitucional constante por parte de los tribunales ordinarios²³⁰ y el Tribunal Constitucional “aparece como una cuarta instancia de jurisdicción supervisando las decisiones de las jurisdicciones ordinarias”²³¹.
211. Como señala la Comisión de Venecia, “*algunos Tribunales Constitucionales que han implementado la revisión de quejas constitucionales se han enfrentado al problema de la interferencia con tribunales ordinarios. La posibilidad de revisar las decisiones de los tribunales ordinarios puede crear tensiones, e incluso conflictos entre los tribunales ordinarios y el Tribunal Constitucional. Por lo tanto, parece necesario evitar una solución que conciba el Tribunal Constitucional como un ‘Súper Tribunal Supremo’. Su relación con los tribunales ‘ordinarios’ superiores (Tribunal de*

²²⁸ T. Ginsberg, “*Análisis Económico y el Diseño de las Cortes Constitucionales*”, Encuestas Teóricas en Derecho 3 (2007), cit. en: Sadurski, op. cit., p. 19.

²²⁹ Ver W. Sadurski, op. cit., p. 7ff.

²³⁰ H. Schwartz, “*El Esfuerzo por Justicia Constitucional en la Europa Post-Comunismo*”, Chicago University Press, Chicago, 2000.

²³¹ L. Favoreu cit. en: H. Schwartz, op. cit., p. 25.

*Casación) tiene que estar determinada en términos claros*²³². El Tribunal Constitucional sólo debería observar cuestiones constitucionales, dejando la interpretación de la ley ordinaria a los tribunales generales. La identificación de los asuntos constitucionales puede, sin embargo, ser difícil en relación con el derecho a un juicio justo, en el cual cualquier violación procesal por parte de los tribunales ordinarios podría ser vista como una violación del derecho a un juicio justo. Parece apropiada una cierta moderación del Tribunal Constitucional, no sólo para evitar su sobrecarga, pero también por respeto a la jurisdicción de los tribunales ordinarios.

IV.1.2. Fuerza vinculante de los razonamientos jurídicos

212. La parte del razonamiento o argumentación jurídica de un fallo es donde el tribunal da forma a su decisión, no sólo donde se reflejan las “razones”, sino también donde se dan las indicaciones para la futura posición de un tribunal en relación a una cuestión específica (*“obiter dicta”*). Con frecuencia los Tribunales Constitucionales dan interpretaciones de disposiciones constitucionales y legales en la parte del razonamiento. En Estados en los cuales los Tribunales Supremos aceptan informalmente la interpretación del Tribunal Constitucional en relación a disposiciones constitucionales, que es cada vez más el caso (lealtad institucional entre los órganos constitucionales²³³), se garantiza la uniformidad de la demanda. Sin embargo, la cuestión de la fuerza vinculante formal de la *ratio decidendi* de las decisiones de un Tribunal Constitucional en relación a los tribunales ordinarios se presentó²³⁴ en varios países. En la República Checa, el Tribunal Constitucional está a favor de una fuerza vinculante en general y argumentó que la fundamentación de la decisión en realidad contiene la interpretación de la Constitución, y por ello tiene que ser aplicada por los tribunales ordinarios en el futuro. No obstante, cortes ordinarias frecuentemente “se niegan a decidir en

²³² CDL-AD(2004)024, Opinión sobre el Proyecto de Enmiendas Constitucionales relativas a la Corte Constitucional de Turquía.

²³³ CDL-JU(2009)001, S. Bross, *“Reflexiones sobre la Ejecución de las Decisiones de la Corte Constitucional en un Estado Democrático bajo el Imperio del Derecho con Base en la Situación del Derecho Constitucional en la República Federal de Alemania”* Baku, 2008.

²³⁴ L. Garlicki, *“Cortes Constitucionales versus cortes supremas”*, International Journal of Constitutional Law 2007 5(1), Oxford University Press, Oxford, en: <http://icon.oxfordjournals.org/cgi/content/full/5/1/44#FN59#FN59>, consultado el 11 de febrero de 2009. Ver también A. Alen and M. Melchior, *“Las relaciones entre las Cortes Constitucionales y las demás cortes nacionales, incluyendo la interferencia en este área de la acción de las Cortes Europeas”*, Informe General, Conferencia de Cortes Constitucionales Europeas, XII Congreso, Bruselas, Egmont Palace, 14-16 de mayo de 2002, p. 48, disponible en <http://www.confcoconsteu.org/en/common/home.html>, consultado en 21 de septiembre de 2010.

*conformidad*²³⁵ con la interpretación de la Corte Constitucional. Esto, sin embargo, se ha superado generalmente hoy en día, ya que los tribunales ordinarios han llegado a respetar las decisiones del Tribunal Constitucional. En Hungría un problema que se plantea es la revisión por parte del Tribunal Constitucional de las decisiones normativas del Tribunal Supremo; estas decisiones se emiten para asegurar la unidad de la interpretación judicial de la ley. Esta competencia del Tribunal Constitucional –después de años de indecisión– fue pronunciada por el propio tribunal en 2005²³⁶. En Austria las decisiones de un tribunal no pueden ser impugnadas ante el Tribunal Constitucional²³⁷. Conflictos similares surgen en Polonia²³⁸.

213. En los sistemas de *common law*, la parte dispositiva (la *ratio decidendi*) es la única parte del fallo que puede constituir un precedente vinculante, mientras que la parte del razonamiento (*obiter dicta*) sólo tiene poder de persuasión²³⁹.

IV.1.3. Obligación de presentar una solicitud preliminar

214. Si la cuestión no se encuentra claramente regulada en la Constitución, los tribunales constitucionales a menudo luchan para imponer una remisión preceptiva a los tribunales ordinarios, referente a la constitucionalidad de un acto normativo que debería ser aplicado en un caso pendiente, pues ello fortalece su rol unificador²⁴⁰. Entre aquellos Estados en los que es posible presentar cuestiones preliminares, se pueden distinguir dos grupos:
215. En primer lugar, Estados en los cuales los tribunales ordinarios no tienen facultades discrecionales. Tan pronto como detectan problemas que podrían crear dudas referentes a la constitucionalidad de una disposición que necesitan aplicar en un caso dado, los tribunales estarían obligados a introducir una cuestión preliminar ante el Tribunal Constitucional (Albania, Austria, Bélgica, Bosnia y Herzegovina, Letonia, Lituania, Moldavia, la “Ex República Yugoslava de Macedonia” y Rumania). Además, en Austria se da una inter-

²³⁵ P. Holländer, “El Rol de la Corte Constitucional Checa: Aplicación de la Constitución en Decisiones de Cortes Ordinarias”, Parker Sch. J.Eur. L 4 (1997), cit. en: W. Sadurski, op. cit., p. 22 f.

²³⁶ CDL-JU(2008)040, P. Paczolay, “La Jurisdicción de la Corte Constitucional húngara”, informe para el seminario “Modelos de jurisdicción constitucional”, Ramallah, 2008.

²³⁷ G. Kucksko-Stadlmayer, Beziehungen, op. cit., p. 27.

²³⁸ Ver resolución de la Corte Suprema polaca de 17 de diciembre de 2009, IIIPZP 2/09.

²³⁹ Ver U.S. Central Green Co. V. Estados Unidos (99-859) 531 U.S. 425, en:<http://www.law.cornell.edu/supct/html/99-859.ZS.html>, consultado el 4 de mayo de 2009.

²⁴⁰ Informe General, XII Congreso de la Conferencia de Cortes Constitucionales Europeas, (A. Alen, M. Melchior), Bruselas, 2002, p. 7, en: <http://www.confcoconsteu.org/en/common/home.html>, consultado el 23 de febrero de 2009.

pretación amplia al círculo de leyes que “podrían ser aplicadas” en un caso concreto: el Tribunal Constitucional solamente rechazará una cuestión preliminar si es inconcebible que una disposición pudiera ser necesaria para la resolución del procedimiento en cuestión²⁴¹.

216. En Bulgaria, la República Checa, Alemania, Hungría, Italia²⁴², Luxemburgo, Malta, Rusia, Eslovaquia, Eslovenia o Turquía, los jueces ordinarios pueden remitir una cuestión preliminar al Tribunal Constitucional sólo si están convencidos de la inconstitucionalidad de un acto normativo y de la inexistencia de una interpretación que permitiera una aplicación constitucional de la ley. Este es particularmente el caso cuando las partes en los procedimientos plantean una excepción de constitucionalidad. Sin embargo, la Comisión de Venecia señala que, *cuando no existe un acceso individual directo a los Tribunales Constitucionales, limitar las cuestiones preliminares a circunstancias en las que un juez ordinario esté convencido de la inconstitucionalidad de una disposición sería un umbral de condición demasiado alto; una duda sería debería ser suficiente*²⁴³. Referente a Estonia, de acuerdo con el Artículo 9, párrafo 1, del Acto de Procedimiento de Revisión Constitucional del Tribunal, “*si el tribunal de primera instancia o el tribunal de apelación no ha aplicado, sobre la adjudicación de un asunto, ninguna legislación relevante de aplicación general o ningún acuerdo internacional declarándolo en conflicto con la Constitución, o si el tribunal de primera instancia o el tribunal de apelación ha declarado, sobre la adjudicación de un asunto, la negativa para constatar que un instrumento de legislación de aplicación general está en conflicto con la Constitución, tendría que transmitir el fallo o sentencia correspondiente al Tribunal Supremo*”.
217. Otra cuestión se refiere al poder discrecional de un tribunal para decidir si una excepción de constitucionalidad planteada por una de las partes en un procedimiento ordinario tiene que ser remitida al Tribunal Constitucional o no. En Argelia, Andorra²⁴⁴, Armenia, Bélgica, Bielorrusia, Francia, Hungría,

²⁴¹ G. Kucska-Stadlmayer, Beziehungen, op. cit., p. 25 y siguientes.

²⁴² Ver L. Garlicki, op. cit., y W. Sadurski, op. cit.

²⁴³ CDL-INF(2001)28, Opinión Interina en el Proyecto de Ley sobre la Corte Constitucional de la República de Azerbaiyán.

²⁴⁴ El artículo 2 de la Ley sobre Procedimientos Judiciales Transitorios establece un procedimiento contradictorio sumario, previo a la decisión tomada por la corte ordinaria, relativa a la sumisión del requerimiento preliminar al Tribunal Constitucional. Cuando el Tribunal Constitucional, por sí mismo, se refiere a la cuestión preliminar *propio motu*, o cuando recibe el requerimiento de una de las partes en el proceso, el Tribunal debe seguir el artículo 53.3. de la Ley del Tribunal Constitucional y el artículo 2 de la Ley sobre Procedimientos Judiciales Transitorios. De acuerdo a estos dos preceptos, el tribunal ordinario dicta una decisión que contiene el fundamento legal y el contexto del requerimiento preliminar a ser sometido al Tribunal Constitucional. Las partes en los

Italia, Luxemburgo, Malta, Polonia, Eslovaquia, España, Rumania, Turquía y Ucrania, la decisión del juez ordinario de no plantear una cuestión preliminar después que el litigante lo haya requerido pone de manifiesto su autonomía en cuanto que la negativa tiene que ser razonada, pero no puede ser apelada (a menos que haya una falta de razonamiento u otro error formal²⁴⁵). Sin embargo, la negativa no impide necesariamente el derecho del peticionario a demandar la negativa de una cuestión preliminar en todas las instancias (la ley de San Marino lo expresa claramente). En Uruguay, por otra parte, existe una queja en contra de la negativa del tribunal, y en Rumania, el juez ordinario está obligado a plantear la cuestión preliminar ante el Tribunal Constitucional por requerimiento de una de las partes. En Francia, desde que entró en vigor la reforma del fallo preliminar prioritario en 2010, los jueces ordinarios remiten la cuestión preliminar ante el Consejo Constitucional solo si tienen serias dudas acerca de la constitucionalidad de la norma. En caso de que el asunto sea urgente, el juez ordinario puede fallar sobre el asunto incluso si el Consejo Constitucional aún no ha dado una respuesta a la cuestión preliminar planteada.

IV.2. EL PROBLEMA DEL ACCESO INDIVIDUAL DIRECTO Y LA SOBRECARGA DEL TRIBUNAL CONSTITUCIONAL

- 218. El dilema entre sobrecargar el Tribunal Constitucional y proveer una protección eficiente de los derechos humanos se ha abordado de diversas maneras: algunos Estados optaron por no introducirla queja individual desde el principio; otros definieron filtros para solicitudes que se consideren poco serias, “manifestamente” o “más probablemente” sin éxito.
- 219. Todos los filtros descritos arriba sirven al propósito de reducir la carga de trabajo del Tribunal Constitucional. Además, los cambios en la organización así como una mayor selectividad pueden servir al desahogo o alivio de la carga de trabajo del tribunal.

procedimientos y el Fiscal pueden presentar sus consideraciones y entonces, la corte ordinaria decide si someter o no el requerimiento preliminar tal como estaba anunciado en su primera decisión, o si someterlo con modificaciones.

²⁴⁵ En Turquía, sin embargo, si durante una audiencia la corte ordinaria no está convencida de la seriedad de la demanda de inconstitucionalidad de la norma aplicada, esta demanda, del mismo modo que la decisión final, puede ser apelada por las partes del caso. De acuerdo con el artículo 152 de la Constitución turca, “*Si una corte que está tramitando el caso, descubre que la ley o el decreto con fuerza de ley aplicable es inconstitucional, o si está convencida de la seriedad de la demanda de inconstitucionalidad presentada por una de las partes, puede postergar la consideración del caso hasta que la Corte Constitucional decida el asunto. Si la corte no está convencida de la seriedad de la demanda de inconstitucionalidad, ésta, del mismo modo que el asunto principal, debe ser decidida por la autoridad competente en sede de apelación*”.

IV.2.1. *Writs of certiorari* y selección de casos por parte de los Tribunales Constitucionales

220. Aunque la jurisdicción de las cuestiones constitucionales en los tribunales federales inferiores y en los tribunales estatales de los Estados Unidos ordinariamente no es discrecional, la Corte Suprema de los Estados Unidos²⁴⁶ no está obligada a revisar todos los casos que se le presentan, sino que puede escoger las cuestiones que considere relevantes para proteger el orden constitucional o para desarrollar la jurisprudencia. Mientras que la carga de trabajo es disminuida de acuerdo con el grado de selección de la Corte Suprema, su discreción en seleccionar los casos elimina una protección individual sistemática. Por otra parte, la ausencia de *certiorari* o de un equivalente, junto con una carga de trabajo inmanejable, necesariamente conducirá a la creación de mecanismos similares (por ejemplo, un manejo muy extenso de los requisitos de admisibilidad) como un acto de “autodefensa” por parte del propio Tribunal Constitucional. El uso de tales mecanismos normalmente será clandestino y será negado por los usuarios. Por lo tanto, si la carga de trabajo se convierte en inaguantable, se podría proporcionar una forma de seleccionar los casos que merecen un análisis completo por parte de un Tribunal Constitucional. La introducción de *certiorari*, por ejemplo, está en discusión actualmente en el Parlamento esloveno. En otros países –por ejemplo, Alemania– la discusión se centra en si el Tribunal debería usar algún tipo de discreción. La cuestión requiere una deliberación mayor. Debería tenerse en cuenta la cuestión de la efectividad del remedio legal (con vistas a la función de filtrado de la queja constitucional *vis-à-vis* el Tribunal Europeo de Derechos Humanos).
221. En cualquier caso, se debe dar a los tribunales constitucionales las herramientas para prevenir quejas poco serias, abusivas o repetitivas.
222. Por ejemplo, las leyes del Tribunal Constitucional alemán²⁴⁷, húngaro²⁴⁸, esloveno²⁴⁹ y español²⁵⁰ permiten un control preliminar del recurso de constitucionalidad.

²⁴⁶ Sentencia 10 U.S. Supreme Court Rules: “Control en un *writ of certiorari* no es un asunto de derecho, pero de discrecionalidad jurídica. Una petición de *writ of certiorari* será concedida solamente por razones imperiosas”.

²⁴⁷ Artículo 93 de la Ley de la Corte Constitucional Federal (procedimiento de aceptación de quejas constitucionales).

²⁴⁸ Ver, por ejemplo, artículo 23 de la Ley de la Corte Constitucional: “I. El Presidente de la Corte Constitucional debe reenviar la moción presentada por una parte no legitimada para ello al órgano legitimado, mientras una moción obviamente infundada debe ser rechazada por el Presidente de la Corte Constitucional”.

²⁴⁹ Artículo 55 b Ley de la Corte Constitucional: “(2) La queja constitucional es admisible: –si existe una violación de derechos humanos o libertades fundamentales que tenga serias consecuencias para el requirente; o –si se refiere a una cuestión constitucional importante, que exceda la importancia del caso concreto”.

cionalidad pleno. Una queja será rechazada si no contiene cuestiones que sean significantes en términos de constitucionalidad. En Sudáfrica, el Tribunal Constitucional escuchará una demanda de acceso directo o una apelación si se plantea una cuestión constitucional, y es de interés de la justicia que el tribunal la conozca. En Israel, un equipo de tres jueces podrá declinar una petición si considera que carece de fundamento²⁵¹. Averiguar acerca de los intereses de la justicia implica un número de subconsultas, entre las que se incluyen: las previsiones de éxito; el interés del público en la materia; y si el Tribunal Supremo ha tenido la oportunidad de expresar su parecer en la materia²⁵².

223. Muy a menudo, un conjunto pequeño de jueces es seleccionado para examinar demandas y denegar la revisión si la demanda no tiene perspectivas de éxito (por ejemplo, Austria, Alemania, Eslovenia). Esto conlleva una reducción inmediata de la carga de trabajo en los tribunales constitucionales y los procedimientos requieren un menor grado de formalidad²⁵³. En este sentido, la práctica alemana es singular: las demandas que en un primer momento no se identifican como quejas constitucionales se colocan en un “registro general” y no directamente en el registro de procedimientos. Entonces, se contacta con los denunciantes por medio de una carta informal comunicándoles la posibilidad de requerir que la denuncia sea tratada por el Tribunal Constitucional. Si el denunciante insiste en obtener una decisión del tribunal, la demanda se colocará en el registro de procedimientos; si no, se mantiene en el registro general²⁵⁴. Como consecuencia de ello, muchas demandas pueden ser tratadas sin rechazar las quejas y sin necesidad de involucrar un juez en esta etapa del procedimiento. Además de esto, las quejas individuales requieren de la aceptación por parte de una cámara de tres jueces (o del Senado), en virtud del §93 de la Ley Federal del Tribunal Constitucional. La cámara tiene derecho a decidir sobre el caso de acuerdo con el §93 c (1), si está claramente justificado y la cuestión consti-

²⁵⁰ Ver la Ley de la Corte Constitucional del 2007 enmendada.

²⁵¹ Artículo 5 de las Regulaciones de Procedimientos Judiciales de la Alta Corte.

²⁵² La Sección 167(3) de la Constitución dispone que la Corte Constitucional puede decidir solamente cuestiones constitucionales y asuntos relacionados a las decisiones de cuestiones constitucionales. La Corte por sí misma tiene la palabra final sobre si una cuestión es una cuestión constitucional.

²⁵³ Ver, por ejemplo, artículo 93 d.1 de la Ley de la Corte Constitucional Federal alemana: “*1. La decisión consonante con los Artículos 93 b y c supra debe ser tomada sin procedimientos orales. Esta decisión no puede ser impugnada. El rechazo de la queja constitucional no necesita razones*”.

²⁵⁴ Merkblatt über die Verfassungsbeschwerde zum Bundesverfassungsgericht, en: http://www.bundesverfassungsgericht.de/organisation/vb_merkblatt.html, consultado el 8 de junio de 2009.

tucional que determina el caso ha sido decidida, en principio, por uno de los Senados.

IV.2.2. Organización del Tribunal Constitucional

IV.2.2.1. Más personal

224. La Comisión de Venecia recomienda que los jueces sean apoyados por asistentes cualificados; su número debería determinarse en función de la carga de trabajo del tribunal²⁵⁵. *“Dependiendo del número y de la calificación del personal, el secretariado del tribunal puede realizar un primer examen preliminar para eliminar, en la medida de lo posible, quejas manifiestamente inadmisibles. Sin embargo, como la función jurisdiccional no puede delegarse al secretariado, su opinión puede ser sólo consultiva”*²⁵⁶. De hecho, el personal que presta servicios permanentes o por un largo período permite la construcción de una memoria institucional que conduzca a una mayor consistencia y continuidad en la jurisprudencia del tribunal; una cuestión más pertinente para los sistemas civiles que para los sistemas de *common law*.

IV.2.2.2. Salas más pequeñas

225. Un método útil para aliviar la carga de trabajo del tribunal puede ser la creación de grupos de jueces más pequeños cuando decidan sobre cuestiones iniciadas por uno de los tipos de acceso individual, en los cuales el pleno solo actúa si es necesario decidir acerca de cuestiones nuevas o importantes. Es importante que la ley que establezca el Tribunal Constitucional contemple la posibilidad de que una cuestión sea decidida por el pleno en el caso de que existan decisiones conflictivas entre las salas; si no, está en peligro la unidad de la jurisprudencia del Tribunal Constitucional²⁵⁷. Es necesario que haya leyes claras para evitar cualquier posibilidad de parcialidad en el reparto de los casos entre las salas o en la composición de los grupos. Aquí solo se describen los órganos relevantes (pleno, grupos, salas) que deciden cuestiones relacionadas con el acceso individual. El Tribunal Constitucional decide cuestiones relacionadas con el acceso individual en Pleno en Albania, Armenia, Chipre, Grecia, Letonia, Liechtenstein,

²⁵⁵ CDL-AD(2008)030, Opinión sobre el Proyecto de Ley de la Corte Constitucional de Montenegro.

²⁵⁶ CDL-STD(1995)015, La Protección de derechos fundamentales por la Corte Constitucional, Ciencia y Técnica de la Democracia no. 15, 1995, ver, sin embargo, la práctica alemana presentada supra.

²⁵⁷ CDL-AD(2004)024, Opinión en el proyecto de enmiendas constitucionales sobre la Corte Constitucional de Turquía.

Rumania, Eslovenia, la ex “República Yugoslava de Macedonia” y Ucrania. 8 a 11 jueces sesionan en Alemania²⁵⁸, Rusia y Sudáfrica; 3 o 6 en Croacia²⁵⁹ y España; 5 jueces en Austria, Bosnia y Herzegovina, Dinamarca, Estonia, Luxemburgo, Mónaco, Noruega, Polonia y Suiza; y 3 o 4 jueces en Georgia²⁶⁰, República Checa, Hungría, Malta, Eslovaquia y Suiza. En Portugal, cuando el Tribunal Constitucional no está en Pleno, sus salas están compuestas por 1, 3 o 5 jueces. En Israel, el Tribunal Supremo sesiona normalmente en grupos de 3 jueces, a menos que el Presidente del Tribunal Supremo o el Presidente en ejercicio crean necesario, antes de la vista oral, aumentar el grupo en cualquier número impar de jueces. Es más, cada grupo tiene poder para decidir sobre su propio aumento o expansión.

CONCLUSIONES PARCIALES DEL CAPÍTULO IV

226. La competencia del Tribunal Constitucional y los efectos de sus decisiones plantea cuestiones acerca de la relación entre los tribunales constitucionales y los tribunales ordinarios, ya que estos últimos están encargados de la aplicación de las leyes y al mismo tiempo de respetar la supremacía de la Constitución. Además, la competencia y la voluntad de los tribunales ordinarios de examinar cuestiones de constitucionalidad es importante para la persona agraviada, pues las violaciones pueden abordarse más rápidamente, ya sea en el procedimiento ordinario (en el sistema difuso o en el sistema especial) o mediante una cuestión preliminar. Algunas tensiones entre los tribunales constitucionales y los tribunales supremos parecen inevitables en un sistema de jurisdicción constitucional concentrada. También parece que la relación entre el Tribunal Constitucional y los tribunales ordinarios es menos conflictiva en relación a quejas de normativa constitucional que a recursos constitucionales plenos. Con el objetivo de evitar tensiones y conflictos de competencias, la Comisión de Venecia recomienda evitar una solución en la cual el Tribunal Constitucional actúe como un “Super-Tribunal Supremo” interfiriendo en la normal aplicación de la ley por parte de los tribunales or-

²⁵⁸ La Corte Constitucional Federal se conforma por dos salas autónomas de igual rango, con ocho miembros cada (Artículo 2.1 y 2.2 de la Ley de la Corte Constitucional Federal). Cada una de las dos salas por sí mismas representan la “Corte Constitucional Federal”. En los procedimientos ante la Corte Constitucional, el Pleno, o sea, todos los 16 jueces, solo decide si en un punto legal, una sala pretende divergir de una opinión jurídica contenida en una decisión de otra sala (Artículo 16). En cada sala, existen varias cámaras con tres miembros cada (Artículo 15 a. 1), las cuales actúan en procedimientos de queja constitucional y en procedimientos que involucran el control concreto de estatutos.

²⁵⁹ Las cámaras deciden los casos constitucionales unánimemente; la Corte Constitucional también decide en sesión plenaria en casos de control abstracto, y si no se logra una decisión unánime en la queja constitucional.

²⁶⁰ En el caso de Georgia, 4 jueces toman asiento en los cuadros de la Corte Constitucional.

dinarios y que debería solamente conocer de asuntos constitucionales, restringiendo su ámbito *ratione materiae*, evitando, también, su propia sobrecarga. Sin embargo, el riesgo de sobrecargar el tribunal debe ser equilibrado con la necesidad de asegurar el efectivo acceso individual a la justicia constitucional. La protección de los derechos humanos requiere que todos los tribunales ordinarios tengan acceso a los procedimientos constitucionales, en lugar de reducir remedios efectivos a través de una selección demasiado estricta de solicitudes que plantean asuntos constitucionales. Por lo tanto, los tribunales ordinarios deberían tener un cierto grado de discrecionalidad. Cuando estén convencidos de la inconstitucionalidad de una disposición, tendrían que poder solicitar decisiones preliminares para impugnar la norma en cuestión ante el Tribunal Constitucional. Si no existe acceso individual directo, las dudas serias deberían ser suficientes para un procedimiento de control previo ante el tribunal constitucional.

227. Con el fin de asegurar un balance adecuado entre el interés del acceso individual a la justicia constitucional y las competencias limitadas del Tribunal Constitucional y el riesgo de que éste devenga sobrecargado, la Comisión de Venecia recomienda que los jueces constitucionales estén apoyados por asistentes cualificados y su número debería ser determinado en función de la carga de trabajo del tribunal. El correcto funcionamiento del tribunal debe ser también asegurado mediante una distribución apropiada de jueces en las cámaras, el cual es un método útil para aliviar la carga de trabajo del tribunal pero debería existir un mecanismo para preservar la unidad de la jurisprudencia del Tribunal Constitucional.

V. ANEXO - Tables

1.1.1. Table 1 summarising the types of access

Countries	Type of constitutional review (if individual access)	Ombudsman (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	<i>Actio popularis</i>	<i>Quasi actio popularis / legal interest</i>	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint
Albania	Concentrated		Y	Y						Y		
Algeria	No individual access											
Andorra	Concentrate		Y	Y			Y				Y	
Argentina	Special				Y							
Armenia	Concentrated	Y	Y	Y			Y					
Austria	Concentrated	Y	Y									Y ²⁶¹
Azerbaijan	Concentrated	Y	Y									Y
Belarus	No		Y									
Belgium	Concentrated		Y	Y			Y					Y
Bosnia and Herzegovina	Concentrated		Y									Y
Bulgaria	Concentrated	Y	Y									
Canada	Special											
Chile	Special		Y	Y	Y							
Croatia	Concentrated		Y		Y							Y
Cyprus	Special		Y	Y								Y ²⁶²
Czech Republic	Concentrated	Y	Y									Y

²⁶¹ Only against individual administrative acts.

²⁶² This control takes place in the framework of an administrative process.

Countries	Type of constitutional review (if individual access)	Ombudsman (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	<i>Actio popularis</i>	<i>Quasi actio popularis / legal interest</i>	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint
Denmark	Diffuse											
Estonia	Special	Y	Y ²⁶³	Y								
Finland	Diffuse											
France	Concentrated			Y				Y				
Georgia	Concentrated		Y		Y ²⁶⁴			Y				
Germany	Concentrated		Y									Y
Greece	Special		Y	Y ²⁶⁵		Y						
Hungary	Concentrated		Y	Y	Y			Y				
Iceland	Diffuse											
Ireland	Special											
Israel	Special											
Italy	Concentrated		Y	Y								
Japan	Special											
Kazakhstan			Y									
Korea, Republic	Concentrated		Y									Y
Latvia				Y				Y				
Liechtenstein	Concentrated	Y	Y					Y				
Lithuania	Concentrated		Y									
Luxembourg	Concentrated		Y	Y				Y				
Malta	Concentrated		Y	Y								
Mexico	Concentrated		Y	Y	Y							Y
Moldova	Special			Y								
Monaco	Concentrated		Y									

²⁶³ After having decided, ordinary courts may submit decisions to the Supreme Court.²⁶⁴ Only concerning a violation of fundamental rights through the normative act; see Article 89 Constitution.²⁶⁵ Article 48 Law establishing a Special Highest Court is narrow: Conflicting interpretations of all three high courts are a condition.

Countries	Type of constitutional review (if individual access)	Ombudsman (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	<i>Actio popularis</i>	<i>Quasi actio popularis / legal interest</i>	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint
Montenegro	Special							Y ²⁶⁶				
Morocco	No											
Netherlands	No individual access											
Norway	Special											
Palestinian National Authority	Diffuse											
Peru												
Poland	Concentrated		Y	Y				Y				
Portugal	Concentrated	Y						Y				
Romania	Special	Y	Y	Y				Y				
Russian Federation	Concentrated	Y	Y	Y								
San Marino	Concentrated	Y	Y						Y			
Serbia	Concentrated		Y	Y								
Slovakia	Concentrated	Y ²⁶⁷	Y	Y								Y
Slovenia	Concentrated		Y									Y
South Africa	Concentrated					Y						Y
Spain	Diffuse ²⁶⁸	Y	Y	Y								Y

²⁶⁶ Only concerning laws; administrative regulations and individual acts can be attacked at the Tribunal Suprême in its administrative formation concerning their illegality.

²⁶⁷ The application by the Ombudsman in Slovakia may not necessarily be related to a specific case. Article 130.f of the Constitution states that the law may be challenged by the Ombudsman only if further application of it could represent a threat to fundamental rights and freedoms or human rights and fundamental freedoms.

²⁶⁸ All courts are able to hear matters concerning constitutional issues but the Constitutional Court is the highest Court on matters involving constitutional issues and is the only court able to issue a declaration of the constitutional invalidity of a Statute or norm with the force of a law and to assess the constitutionality of a Bill or Act referred to the Court by the President or the legislature respectively.

Countries	Type of constitutional review (if individual access)	Ombudsman (in relation to concrete case)	Preliminary request	Exception/objection of unconstitutionality	<i>Actio popularis</i>	<i>Quasi actio popularis / legal interest</i>	Individual suggestion	Normative constitutional complaint	Russian individual complaint	Constitutional petition	Constitutional revision	Full constitutional complaint
Sweden	Diffuse											
Switzerland	Diffuse											Y
“The former Yugoslav Republic of Macedonia”	Concentrated	Y	Y		Y							Y ²⁶⁹
Tunisia	No											Y
Turkey	Concentrated ²⁷⁰											
Ukraine	Concentrated	Y	Y									
United Kingdom	Concentrated ²⁷¹	Y										Y
Uruguay	Special Concentrated											

²⁶⁹ Only concerning some fundamental rights.

²⁷⁰ According to the new constitutional reform package adopted in 2010, the mechanism of constitutional individual complaint has been introduced. However, the precise modalities are to be developed yet by legislation. In this respect, an Ombudsman has been introduced, but he/she will not have the power to bring cases before the Constitutional Court.

²⁷¹ The Parliamentary Commissioner for Administration, which is the formal title of the UK Ombudsman, is very effective in many ways, often as an alternative to judicial review in administrative law, but it is difficult to classify him/her as a form of constitutional review.

1.1.2. Table: Time-limits for applications

Time limit	State	Relevant constitutional or legal provision
8 days	Malta (constitutional revision)	<p>Article 4 Legal Notice 35 of 1993 entitled Regulations Regarding Practices and Procedures of the Court</p> <p>The application to appeal (in the Constitutional Court) shall be made within eight working days from the date of the decision appealed from</p>
10 days	Estonia (normative constitutional complaint)	<p>§. 19. Constitutional Review Court Procedure Act</p> <p>A complaint against a resolution of the Riigikogu, the Board of the Riigikogu or a decision of the President of the Republic may be filed with the Supreme Court within 10 days after the date of entering into force of the resolution or decision.</p>
15 days	Andorra (amparo)	<p>Article 88 (1) Qualified Law on the Constitutional Court</p> <p>The appeal for protection is introduced by a document within 15 working days of the date of service of the decision appealed against.</p> <p><u>Article 82.1</u> Qualified Law on the Constitutional Court</p> <p>1. Where a natural or legal person files a claim based on the existence of an individual subjective right with one of the aforementioned bodies and that body declines jurisdiction because it considers that jurisdiction belongs to another body, the person concerned submits the same claim to the latter body within no more than 15 working days from the date of notification of the decision. Where the second body declares that it does not have jurisdiction the applicant may introduce a negative dispute over jurisdiction before the Constitutional Court.</p> <p><u>Article 95.</u> Qualified Law on the Constitutional Court</p> <p>1. Provisions, resolutions and measures of the General Council without statutory force which infringe the rights described in Article 85 of this Law may be challenged by the persons concerned by an appeal for protection.</p> <p>2. The document challenging the rule in question and the appeal for protection must be produced within 15 working days of the date of notification or, where applicable, publication of the provision, resolution or measure, in accordance with the general requirements of Article 36 of this Law.</p>
	South Africa (appeal against decision of an ordinary court)	<p>Rule 19(2) Rules of the Constitutional Court</p> <p>A litigant who is aggrieved by the decision of [an ordinary] court and who wishes to appeal against it directly to the [Constitutional] Court on a constitutional matter shall, within 15 days of the order against which the appeal is sought to be brought... lodge with the Registrar an application for leave to appeal.</p>
3 months/ 30 days or 20 days depending on the act	Spain (full constitutional complaint)	<p>Articles 42 to 44 Organic Law on the Constitutional Court</p> <p>The time-limit for lodging a writ of amparo will be:</p> <ul style="list-style-type: none"> - 3 months for any decisions or non legal acts taken by the <i>Cortes Generales</i> or Assemblies of the <i>Comunidades Autonomas</i> - 30 days for the acts or omission of a judicial organ - twenty days from the date of notification of the ruling given in the judicial proceedings for any legal act, omissions or any other activity taken by the Government or its bodies or the civil servants.
4 weeks	Liechtenstein (full constitutional complaint)	<p>Art. 15 4) Constitutional Court Act</p> <p>The complaint may be lodged within four weeks of service of the decision or order in the last instance or of effectiveness of the immediate violation (paragraph 3).</p>

Time limit	State	Relevant constitutional or legal provision
30 days	Croatia (full constitutional complaint)	<p>Article 64 Constitutional Act on the Constitutional Court</p> <p>The constitutional complaint may be submitted during the term of 30 days from the day the decision was received". Article 66: "(1) The Constitutional Court shall permit restitution into the previous state to the person who for the justified reasons has omitted the term for submission of the constitutional complaint, if during the term of 15 days after the cessation of the reason which has caused the omission he submits the proposal for restitution into the previous state and at the same time submits the constitutional complaint (2) After the expiration of three months from the day of omission, the restitution into the previous state may not be sought.</p>
	Montenegro	<p>Draft Law on the Constitutional Court</p> <p>Article 60</p> <p>Constitutional complaint may be submitted within 30 days from the date on which an individual act violating human right or freedom guaranteed by the Constitution was delivered.</p>
	Switzerland	<p>Article 100 Federal Judicature Act</p> <p>1 Le recours contre une décision doit être déposé devant le Tribunal fédéral dans les 30 jours qui suivent la notification de l'expédition complète.</p> <p>Article 101</p> <p>Le recours contre un acte normatif doit être déposé devant le Tribunal fédéral dans les 30 jours qui suivent sa publication selon le droit cantonal. Le recours contre un acte normatif doit être déposé devant le Tribunal fédéral dans les 30 jours qui suivent sa publication selon le droit cantonal.</p>
1 month	Germany (full constitutional complaint)	<p>Article 93 Law on the Federal Constitutional Court:</p> <p>1. A complaint of unconstitutionality shall be lodged and substantiated within one month. This time-limit shall commence with the service or informal notification of the complete decision, if this is to be effected <i>ex officio</i> in accordance with the relevant procedural provisions. In other instances, the time-limit shall commence when the decision is proclaimed or, if it is not to be proclaimed, when it is otherwise communicated to the complainant; if the complainant does not receive a copy of the complete decision, the time-limit pursuant to the first sentence above shall be suspended by the complainant requesting, either in writing or by making a statement recorded at the court office, a copy of the complete decision. The suspension shall continue until the complete decision is served on the complainant by the court or <i>ex officio</i> or by a party to the proceedings.</p>
6 weeks	Austria (full constitutional complaint)	<p>Article 82 Federal Law on the Constitutional Court</p> <p>1. A complaint against an administrative decree in pursuance of Article 144, subparagraph 1 of the B-VG can be lodged only after all administrative remedies have been exhausted, within six weeks following service of the decree delivered at last instance.</p>
60 days	Bosnia & Herzegovina	<p>Article 16 of the Rules of Constitutional Court of Bosnia and Herzegovina</p> <p>1. The Court shall examine an appeal only if all effective remedies that are available under the law against a judgment or decision challenged by the appeal are exhausted and if the appeal is filed within a time-limit of 60 days as from the date on which the decision on the last effective remedy used by the appellant was served on him/her.</p>

Time limit	State	Relevant constitutional or legal provision
	Czech Republic (full constitutional complaint)	Art. 72 Constitutional Court Act (3) A constitutional complaint may be submitted within 60 days of the delivery of the decision in the final procedure provided by law to the complainant for the protection of his rights; "procedures" are understood to mean ordinary remedial procedures, extraordinary remedial procedures, with the exception of a petition for rehearing, and other procedures for the protection of rights with the assertion of which is associated the institution of a judicial, administrative, or other legal proceeding.
	Hungary (normative constitutional complaint)	Article 48 Act on the Constitutional Court 2. The constitutional complaint may be submitted within sixty days after the receipt of the final decision.
	Poland (Ombudsperson)	Article 51 Constitutional Tribunal Act 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings. Provisions of Article 33 shall apply accordingly. 2. The Commissioner for Citizens' Rights may, within the period of 60 days from the receipt of information, give notice of his/her participation in the proceedings.
2 months	Slovenia (full constitutional complaint)	Article 52 Constitutional Court Act (1) A constitutional complaint is lodged within 60 days of the day the individual act against which a constitutional complaint is admissible is served. (3) In especially well founded cases the Constitutional Court may exceptionally decide on a constitutional complaint which has been lodged after the expiry of the time limit referred to in the first paragraph of this article.
	“The Former Yugoslav Republic of Macedonia” (full constitutional complaint)	Article 51 Rules of Procedure of the Constitutional Court Any citizen considering that an individual act or action has infringed his or her right or freedom, as provided in Article 110.3 of the Constitution of the Republic of Macedonia, he or she may lodge an application for protection of human rights and freedoms by the Constitutional Court within 2 months from the date of notification of the final or legally binding individual act, or from the date on which he or she became aware of the activity undertaken creating such an infringement, but not later than 5 years from the date of the activity's being undertaken.
2 months	Slovakia	Article 53 Law on the Organisation of the Constitutional Court 3. A complaint may be filed within a period of two months from the day on which the decision becomes final or from the day when the measure is announced or other encroachment is communicated. In the case of a measure or other encroachment, this period shall be counted from the day when the complainant could have learned of the measure or other encroachment.
75 days	Cyprus (constitutional revision)	Article 146 Constitution 3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

Time limit	State	Relevant constitutional or legal provision
3 months	United States (writ of <i>certiorari</i>)	<p>The time limit for presenting a constitutional claim in the United States in the first instance varies depending on the form of the claim and the court in which it is brought (federal court versus state court). Ordinarily, a petition for <i>certiorari</i> to the U.S. Supreme Court is to be filed within 3 months. U.S. Supreme Court Rule 13. Review on <i>Certiorari</i>: Time for Petitioning</p> <p>1. Unless otherwise provided by law, a petition for a writ of <i>certiorari</i> to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of <i>certiorari</i> seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.</p>
	Azerbaijan (against denial of access to courts)	<p>Article 34.4 Law on the Constitutional Court</p> <p>Complaints can be submitted to Constitutional Court in following cases: 34.4.2. Within three months from the moment of violation of complainant's right to apply to court</p>
6 months	Poland (normative constitutional complaint)	<p>Article 46 Constitutional Tribunal Act</p> <p>1. Constitutional claim, further referred to as the "claim" can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the plaintiff, the final decision or other final judgment.</p>
	Albania (constitutional revision)	<p>Article 30 Law on the Organisation and Functioning of the Constitutional Court</p> <p>If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court after all the other legal means in protection of such rights have been exhausted. Under such a case, the deadline for lodging the application is 6 (six) months from the date on which the decision of the relevant authority is announced.</p>
	Azerbaijan (full constitutional complaint)	<p>Article 34.4 Law on the Constitutional Court</p> <p>Complaints can be submitted to Constitutional Court in following cases: 34.4.1. After exhaustion of all remedies within six months from the moment of entrance of the decision of the court of last instance into force;</p>
	Armenia (normative complaint)	<p>Article 69 Law on the Constitutional Court: "5. In cases determined in this Article the appeals can be submitted to the Constitutional Court by the constitutional natural and legal persons no later than six months after the exhaustion of the opportunities of appeal of the judicial act ruled against those".</p>
	Belgium (Normative constitutional complaint)	<p>Article 3 Special Law on the Court</p> <p>1. Without prejudice to paragraph 2 and to Article 4, an action for annulment, in full or in part, of a statute, decree or rule referred to in Article 134 of the Constitution shall not be admissible unless it is brought within six months of the publication of the statute, decree or rule referred to in Article 134 of the Constitution.</p>
1 year	Latvia (normative constitutional complaint)	<p>Article 19.2 Law on the Constitutional Court</p> <p>4. A constitutional claim may be submitted to the Constitutional Court within six months from the date of the decision of the last institution becoming effective</p>

Time limit	State	Relevant constitutional or legal provision
2 years	Germany (against normative acts)	Article 93 Law on the Federal Constitutional Court 3. If the constitutional complaint is directed against a law or some sovereign act against which legal action is not admissible, the constitutional complaint may be lodged only within one year of the law entering into force or the sovereign act being announced.
5 years	Albania (if no legal remedy is provided)	Article 30 Law on the Organisation and Functioning of the Constitutional Court 2. The application of persons regarding the violation of a constitutional right is to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them.
	Peru (<i>actio popularis</i>)	Article 87 Code of Constitutional Procedure (p.t.) The delay for lodging the <i>actio popularis</i> is five years from the day following the publication of the norm. (El plazo para interponer la demanda de acción popular prescribe a los cinco años contados desde el día siguiente de publicación de la norma).

1.1.3. Table: Obligation to be legally represented

State	Relevant constitutional or legal provision
Albania	Article 24 Law on the Organisation and Functioning of the Constitutional Court: Parties to the constitutional case may represent themselves or may appoint a person to represent them as provided by this Law.
Andorra	Article 35.1 Qualified Law of the Constitutional Tribunal 1. The proceedings set forth in Article 6 of this Law are always introduced upon application by a party. Unless the applicant is the Attorney General's Department or a court it shall be represented and defended by a lawyer who is a member of the Andorran Bar. The interests of the Andorran State are represented and defended before the Constitutional Court by the Andorran lawyers attached to the Government Legal Service, without prejudice to the Government's right, where necessary, to secure the services of other lawyers.
Armenia	Article 46 Law on the Constitutional Court: 1. Parties may appear before the Constitutional Court personally as well as through their representatives.
Austria	Article 17 Federal Law on the Constitutional Court: 2. Actions in accordance with Article 37, applications in accordance with Articles 46, 48, 50, 57, 62 and 66 and complaints which are not covered by Article 24, subparagraph 1 shall be submitted by a duly authorised lawyer.
Azerbaijan	Article 35.1. Law on the Constitutional Court: The following documents shall be enclosed to petition, application or complaint submitted to Constitutional Court: 35.1.2. Letter of attorney or other document, confirming the authorities of the representative except the cases when representation is implemented <i>ex officio</i> as well as copies of documents confirming the right of a person to speak at Constitutional Court as a representative;

State	Relevant constitutional or legal provision
Belgium	<p>Art. 5 of the Special Law on the Court Actions for annulment shall be instituted before the Court by means of a petition which, as the case may be, is signed by the Prime Minister, by a member of the Government designated by that Government, by the president of a legislative assembly, or by a party with a justifiable interest or its lawyer; Art. 75 The Court may appoint a lawyer <i>ex officio</i>. This appointment shall be considered null and void if the party concerned chooses its own legal adviser.</p>
Croatia	<p>Article 24 Constitutional Act on the Constitutional Court (1) Participants may undertake actions in the proceedings in person or through a representative.</p>
Czech Republic	<p>Article 30 Constitutional Court Act: (1) A natural or a legal person who is a party or a secondary party to a proceeding before the Court must be represented by an attorney to the extent provided for in special statutes and enactments.</p>
Georgia	<p>Article 30 Organic Law on the Constitutional Court 1.The parties shall have the right to entrust the protection of their interests to a lawyer or other person having a high level of legal education at every stage of the proceedings.</p>
Germany	<p>Article 22 Law on the Federal Constitutional Court: 1. The parties may be represented at any stage of the proceedings by an attorney registered with a German court or a lecturer of law at a German institution of higher education; in the oral pleadings before the Federal Constitutional Court they must be represented in this manner.</p>
Hungary	<p>Article 19 Act on the Constitutional Court: Unless otherwise provided by this Act or the Rules of the Constitutional Court, the provisions of the Civil Procedure Code shall be applied in issues concerning legal assistance, the ensuring of the use of the native-tongue during the proceedings and the exclusion of judges.</p>
Italy	<p>Section 20 Law on the composition and procedures of the Constitutional Court At all hearings before the Constitutional Court the parties may only be represented by lawyers authorised to appear before the Court of Cassation.</p>
Latvia	<p>Article 23 Law on the Constitutional Court 1. Participant in the case –the applicant as well as the institution or official who issued the disputable act– may perform procedural actions at the Constitutional Court himself/herself or be represented by his/her respective representative.</p>
Liechtenstein	<p>Article 41 Constitutional Court Act 1) The parties may lodge individual complaints (article 15) themselves and participate in the hearings, or they may choose to be represented by lawyers who are listed in the Register of Lawyers or who are otherwise admitted to practice in the Principality of Liechtenstein by law or by authorisation of the Government.</p>
Luxemburg	<p>Article 11 Law on the Constitutional Court The parties shall be allowed to make submissions to and plead before the Constitutional Court through any lawyer registered on List I of the roll of lawyers drawn up each year by the Bar Councils.</p>
Monaco	<p>Article 29 Ordonnance sur l'organisation et le fonctionnement du Tribunal suprême: Les parties se présentent à l'audience par le ministère d'un avocat-défenseur.</p>

State	Relevant constitutional or legal provision
Poland	<p>Article 48 Constitutional Tribunal Act</p> <p>1. The complaint or claim on the judgment refusing further consideration of the complaint shall be drawn up by an advocate or legal counsel unless the person making the complaint is a judge, prosecutor, notary public, professor or doctor habilitated of legal science.</p>
Portugal	<p>Article 83 Law on the Constitutional Court</p> <p>1. In appeals made to the Constitutional Court, the appointment of a lawyer is obligatory, without prejudicing the ruling in n.º 3.</p>
Romania	<p>Article 30 Law on the Organisation and Functioning of the Constitutional Court</p> <p>5. The parties may be represented by lawyers having the right to plead before the High Court of Cassation and Justice</p>
Russian Federation	<p>Article 53 Federal Constitutional Law on the Constitutional Court</p> <p>The parties may also be represented by lawyers or persons with an academic degree in law, whose powers are confirmed by relevant documents.</p>
Slovakia	<p>Article 20 Law on the Organisation of the Constitutional Court</p> <p>(1) An application must be signed by the applicant (applicants) or his/her (their) representative.</p> <p>(2) An application on commencing proceedings shall be supported by an empowerment enabling the applicant to be represented by an advocate, unless otherwise provided by this law. This empowerment shall expressly state that it was issued for the purpose of representation before the Constitutional Court.</p>
Slovenia	<p>Article 24.a Constitutional Court Act</p> <p>(1) If a participant in proceedings before the Constitutional Court is represented by an authorised representative, he must submit an authorisation which is provided especially for proceedings before the Constitutional Court.</p> <p>(2) An authorised representative who is not a lawyer must have a special authorisation to transfer the authorisation in proceedings before the Constitutional Court to another person. Article 50</p> <p>(3) If a complainant in a constitutional complaint procedure is represented by an authorised representative, he must submit an authorisation which is given especially for the constitutional complaint procedure. The authorisation must be given after the individual act against which the constitutional complaint is lodged has been served. The second paragraph of Article 24a of this Act applies regarding the transfer of such authorisation.</p>
Spain	<p>Article 49 Organic Law on the Constitutional Court</p> <p>2. The application shall be accompanied by:</p> <p>a. The document mandating the representative of the applicant for protection;</p>
South Africa	<p>Rule 11 Rules of the Constitutional Court</p> <p>(a) If it appears to the Registrar [of the Constitutional Court] that a party is unrepresented, he or she shall refer such party to [an] appropriate body or institution that may be willing and in a position to assist such party.</p>
Switzerland	<p>Article 41 Federal Judicature Act</p> <p>5. When a party is clearly unable to act for himself, the Court may ask him to appoint a representative.</p>

1.1.4. Table: Exhaustion of remedies and exceptions

State	Exhaustion of remedies - relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies - relevant constitutional or legal provisions
Albania	<p>Article 131 Constitution</p> <p>The Constitutional Court decides on: f. the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.</p>	
Andorra	<p>Article 94 Qualified Law on the Constitutional Court</p> <p>2. When no further appeal can be lodged nor is there any further means in defending the constitutional right infringed, the person who has suffered the infringement of the constitutional right to jurisdiction may lodge an appeal for protection before the Constitutional Court within fifteen working days of the day after notification of the last resolution of refusal or of the date on which he had knowledge of the judicial decision which violated the constitutional right to jurisdiction.</p>	
Armenia	<p>Article 69 Law on the Constitutional Court</p> <p>1. The appeals on the cases described in this Article (hereinafter individual appeals) can be brought by those natural and legal persons who were participants at the courts of general jurisdiction and in specialised courts, in relation of who the law was implemented by a judicial act, who exhausted all the remedies of judicial protection and who believe that the provision of the Law applied for the particular case contradicts the Constitution.</p>	
Austria	<p>Article 144 Constitution</p> <p>The complaint can only be filed after all other stages of legal remedy have been exhausted.</p>	
Azerbaijan	<p>Article 34.4 Law on the Constitutional Court</p> <p>Complaints can be submitted to Constitutional Court in following cases:</p> <p>34.4.1. After exhaustion of all remedies within six months from the moment of entrance of the decision of the court of last instance into force;</p>	<p>Article 34.5. Law on the Constitutional Court</p> <p>If the legal protection of constitutional rights by means of courts of general jurisdiction cannot prevent the imposing of serious and irreplaceable damage to complainant then application can be submitted directly to Constitutional Court.</p>

State	Exhaustion of remedies - relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies - relevant constitutional or legal provisions
Croatia	<p>Article 62 Constitutional Act on the Constitutional Court:</p> <p>(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted.</p> <p>(3) "In matters in which an administrative dispute is provided, respective a revision in civil or extra-litigation procedure, remedies are exhausted after the decision has been rendered upon these legal remedies".</p>	<p>Article 63 Constitutional Act on the Constitutional Court:</p> <p>(1) The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.</p> <p>(2) If the decision is passed to adopt the constitutional complaint for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court of justice within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such deadline for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette Narodne novine.</p>
Czech Republic	<p>Article 75 Constitutional Court Act:</p> <p>(1) A constitutional complaint is inadmissible if the complainant failed to exhaust all procedures afforded him by law for the protection of his rights (§72 para. 3); that does not apply to extraordinary remedial procedures which the body that decides thereupon has discretionary authority to reject as inadmissible (§72 para. 4).</p>	<p>Article 75 Constitutional Court Act:</p> <p>(1) A constitutional complaint is inadmissible if the complainant failed to exhaust all procedures afforded him by law for the protection of his rights (§72 para. 3); that does not apply to extraordinary remedial procedures which the body that decides thereupon has discretionary authority to reject as inadmissible (§72 para. 4).</p> <p>(2) The Constitutional Court shall not reject a constitutional complaint, even though it does not satisfy the condition stated in the preceding paragraph, if:</p> <ul style="list-style-type: none"> a) the significance of the complaint extends substantially beyond the personal interests of the complainant, so long as it was submitted within one year of the day

State	Exhaustion of remedies - relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies - relevant constitutional or legal provisions
		when the events which are the subject of the constitutional complaint took place, or b) the proceeding in an already filed remedial procedure under paragraph 1 is being considerably delayed, which delay gives rise to or may give rise to serious and unavoidable detriment to the complainant.
Germany	Law on the Federal Constitutional Court, Article 90.2 1st phrase: If legal action against the violation is admissible, the constitutional complaint may not be lodged until all remedies have been exhausted.	Law on the Federal Constitutional Court Article 90.2 2nd phrase: However, the Federal Constitutional Court may decide immediately on a complaint of unconstitutionality lodged before all remedies have been exhausted if it is of general relevance or if recourse to other courts first would entail a serious and unavoidable disadvantage for the complainant.
Hungary	Article 48 Act on the Constitutional Court 1. Anybody aggrieved by the application of an unconstitutional legal rule who has exhausted all other legal remedies or has no other remedy available, may submit a constitutional complaint to the Constitutional Court because of the violation of his/her constitutional rights.	
Korea, Republic	(1) Any person who claims that his basic right which is guaranteed by the Constitution has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint, except the judgments of the ordinary courts, with the Constitutional Court: Provided, that if any relief process is provided by other laws, no one may file a constitutional complaint without having exhausted all such processes.	
Latvia	Article 19.2 Law on the Constitutional Court 2. The constitutional claim shall be submitted only after exhausting the ordinary legal remedies (a claim to a higher institution or official, a claim or application to a court of general jurisdiction etc.) or if there are no other means	Article 19.2 Law on the Constitutional Court 3. If the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim, the Constitutional Court may reach a decision to review the claim (application) before all the other legal means have been exhausted.

State	Exhaustion of remedies - relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies - relevant constitutional or legal provisions
Liechtenstein	<p>Article 15 Constitutional Court Act</p> <p>1) The Constitutional Court shall decide on complaints to the extent that the complainant claims a violation, by a final decision or order in the last instance issued by a public authority, of one of his constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint</p>	
Malta	<p>Article 4 European Convention Act</p> <p>Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other ordinary law.</p>	
Montenegro	<p>Article 58 Draft Law on the Constitutional Court</p> <p>Constitutional complaints may be lodged against an individual act of state authority, local self-government authority or organisation vested with public powers, for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.</p>	<p>Article 58 Draft Law on the Constitutional Court</p> <p>All effective legal remedies referred to in paragraph 1 above shall be deemed exhausted within the meaning of this Law, if the complainant in the dispute exhausted all ordinary and extraordinary legal remedies prescribed by law.</p>
Poland	<p>Article 47 Constitutional Tribunal Act</p> <p>1. The complaint shall, apart from the requirements referring to the procedural letters, include the following:</p> <p>1) a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given ultimate decision in respect of freedoms or rights or obligations determined in the Constitution and which is challenged by the person making the complaint for the confirmation of non-conformity to the Constitution,</p>	
Portugal	<p>Article 70 Law on the Constitutional Court</p> <p>5. Decisions subject to obligatory ordinary appeal, according to the terms of the respective procedural law, may not be admitted for appeal to the Constitutional Court.</p>	

State	Exhaustion of remedies - relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies - relevant constitutional or legal provisions
Slovakia	<p>Article 53 Law on the Organisation of the Constitutional Court</p> <p>1. The complaint shall not be admissible until the complainant has exhausted all remedies or other legal means which are effectively provided by the law to protect his/her fundamental rights or freedoms and for the application of which the complainant is entitled to apply under specific regulations.</p>	<p>Article 53 Law on the Organisation of the Constitutional Court</p> <p>2. The Constitutional Court shall not reject a complaint even if the condition under subsection 1 has not been met, so long as the complainant can prove s/he has failed to satisfy the aforesaid condition due to reasons worthy of special consideration.</p>
Slovenia	<p>Article 51 Constitutional Court Act</p> <p>(1) A constitutional complaint may be lodged only after all legal remedies have been exhausted.</p>	<p>Article 51 Constitutional Court Act</p> <p>(2) Before all extraordinary legal remedies have been exhausted, the Constitutional Court may exceptionally decide on a constitutional complaint if the alleged violation is manifestly obvious and if irreparable consequences for the complainant would result from the implementation of the individual act.</p>
Spain	<p>Organic Law on the Constitutional Court Art. 43.1</p> <p><i>"Las violaciones de los derechos y libertades antes referidos originados por disposiciones, actos, jurídicos, omisiones o simples vías de hecho del Gobierno o de sus autoridades o funcionarios, o de los órganos ejecutivos colegiados de las Comunidades Autónomas o de sus autoridades o funcionarios o agentes, podrán dar lugar al recurso de amparo una vez que se haya agotado la vía judicial procedente".</i></p> <p>Article 44</p> <p>1. <i>Las violaciones de los derechos y libertades susceptibles de amparo constitucional, que tuvieran su origen inmediato y directo en un acto u omisión de un órgano judicial, podrán dar lugar a este recurso siempre que se cumplan los requisitos siguientes:</i></p> <p>a) <i>Que se hayan agotado todos los medios de impugnación previstos por las normas procesales para el caso concreto dentro de la vía judicial.</i></p>	

State	Exhaustion of remedies - relevant constitutional or legal provisions	Exception to the precondition of exhaustion of remedies - relevant constitutional or legal provisions
Switzerland	Article 86 Federal Judicature Act 1. Le recours est directement recevable contre les actes normatifs cantonaux qui ne peuvent faire l'objet d'un recours cantonal. 2. Lorsque le droit cantonal prévoit un recours contre les actes normatifs, l'art. 86 est applicable.	Article 94 Federal Judicature Act Le recours est recevable si, sans en avoir le droit, la juridiction saisie s'abstient de rendre une décision sujette à recours ou tarde à la faire.
"The Former Yugoslav Republic of Macedonia"	Article 51 Rules of Procedure of the Constitutional Court Any citizen considering that an individual act or action has infringed his or her right or freedom, as provided in Article 110.3 of the Constitution of the Republic of Macedonia, he or she may lodge an application for protection of human rights and freedoms by the Constitutional Court within 2 months from the date of notification of the final or legally binding individual act [...]	
Turkey	Article 148 of the Constitution (as amended in 2010) Constitutional complaints shall be deemed inadmissible if the complainants have not exhausted regular legal remedies (means of redress) afforded by the law for the protection of their rights.	

1.1.5. Table: Preliminary ruling procedures

State	Relevant constitutional or legal provision
Albania	Article 69 Law on the Organisation and Functioning of the Constitutional Court 1. When the Constitutional Court concludes that the file referred to it is not complete and in conformity with the above provision, it shall send it back to the original court. The latter should complete the file within one month from the date on which it receives the file.
Andorra	Article 100 (2) Constitution The Tribunal Constitucional may not admit the transaction of the request without further appeal. If the request is admitted judgment shall be passed within the maximum period of two months. Article 52 Qualified Law on the Constitutional Tribunal In the exercise of their judicial functions, the Batles (judges of first instance), the Court of Batles, the Tribunal de Corts (criminal court) and the Higher Court of Andorra are entitled to apply for interlocutory proceedings to be opened in respect of laws, legislative decrees

State	Relevant constitutional or legal provision
	<p>and regulations having statutory force on the ground that they are unconstitutional, irrespective of the date on which they entered into force.</p>
Article 53	
	<p>1. An application for judicial review by the Constitutional Court of the constitutionality of such a law or regulation is admissible where, at any stage in ordinary judicial proceedings, the court hearing the proceedings considers on its own initiative or on the initiative of one of the parties that one of the laws and regulations mentioned in the preceding Article which the court must apply in resolving the principal case or any step whatsoever taken therein is contrary to the Constitution.</p> <p>2. This view that the law or regulation in question is unconstitutional must be based on the following factors: it must be impossible to interpret the law and regulation in question in a way which is consistent with the Constitution; the court must provide a reasoned explanation of the need to apply the law or regulation in resolving the main case or the step in question; and the law or regulation must not have been declared constitutional in any resolution or decision taken by the Constitutional Court, as provided for in Article 44.3 of this Law.</p> <p>3. Before filing the document introducing the action provided for in the first paragraph of this Article with the Constitutional Court the court in question must consult the parties and the Attorney General's Department where it is represented in the proceedings. When the parties have been heard the court, on its sole responsibility, issues a decree containing its decision whether or not to lodge the application. No appeal may be made against the decision taken in that decree; where the decision is negative, however, the application may where appropriate be renewed during subsequent stages of the proceedings.</p>
Article 54	
	<p>Where the applicable law or regulation regarded as contrary to the Constitution entered into force prior to the Constitution the court may choose between bringing the matter before the Constitutional Court and declaring at the appropriate point in the proceedings that the laws or regulations are repealed. In any event a declaration that the law or regulation is repealed does not mean that the law or regulation enacted prior to the Constitution is null and void, but simply states that it is without force and the reasons why this is so.</p>
Article 55	
	<p>1. Once the court has agreed to refer the matter to the Constitutional Court as provided for in the preceding provisions it must draw up a separate certificate setting out the steps taken for that purpose and submit to the Constitutional Court a document to which are attached that first document and a statement of the reasons for its doubts as to the constitutionality of the law or regulation in question and also the constitutional provisions which it considers have been infringed, like the formalities required by Article 36 of this Law.</p> <p>2. The main case or interlocutory matter, as appropriate, follows its course until the judgment or resolution stage, at which point the procedure is frozen until the Constitutional Court has pronounced the decree resolving the matter or decision. If the step which led to the proceedings being brought before the Constitutional Court concerns the setting aside of actions, no decision on the principal cause may be taken until the Constitutional Court has taken its decision.</p>
Article 56	
	<p>1. Upon receiving the document and the separate certificate provided for in the preceding Article, the Constitutional Court issues a reasoned decree declaring the action on the ground of unconstitutionality admissible or inadmissible. The action by way of petition (<i>súplica</i>) mentioned in Article 39.2 of this Law is available against a decree declaring the action inadmissible.</p>

State	Relevant constitutional or legal provision
	<p>2. When the action has been declared admissible and the proceedings have commenced, the parties thereto are the court which brought the action, the body which laid down the law or regulation referred to the Constitutional Court and the Attorney General's Department. The parties to the judicial proceedings in question may appear as joint assistants.</p> <p>3. Where the challenge concerns laws and regulations which predate the Constitution the General Council shall be a party to the proceedings irrespective of which body enacted the laws.</p> <p>Article 57</p> <p>1. The investigation of the interlocutory proceedings until a decision is taken follows the same procedures as those provided for in connection with a direct action on the grounds of unconstitutionality.</p> <p>2. The decision of the Constitutional Court is binding on the court which referred the matter to it. In this case, however, the principle laid down in Article 8.2 of this Law that a decision dismissing an action challenging the constitutionality of a provision is temporarily inapplicable, which is binding on the court, is precluded, so that the court can hear and determine the main case.</p> <p>Article 58</p> <p>1. Decisions dismissing the alleged unconstitutionality produce the same effects as those produced by decisions issued in direct actions.</p> <p>2. Decisions declaring the law or regulation referred to the Constitutional Court unconstitutional in whole or in part take effect on the date on which they are published in the Official Gazette of the Principality of Andorra. Save in cases of favourable retroactive application, the existing effects produced by this law or regulation before they were declared null and void endure until new laws and regulations have been created to regulate the pre-existing legal situations.</p>
Belgium	<p>Art. 100 of the Special Law on the Court</p> <p>The Constitutional Court in full session may join actions for annulment or preliminary questions relating to one and the same regulation to be ruled on in one and the same judgment. In this circumstance, the cases will be investigated by the bench that was seized of the first case.</p> <p>The registrar shall notify the parties of the decision to join cases.</p> <p>Where two or more cases are joined, the judges-rapporteurs shall be those who in accordance with Article 68 were appointed to the case of which the Court was first seized.</p>
Estonia	<p>§63 Constitutional Review Court Procedure Act</p> <p>(1) If a request is not in compliance with the requirements of this Act, the Supreme Court shall set a term for elimination of deficiencies. If the person filing the request fails to eliminate the deficiencies within a specified term, the Supreme Court shall return the request without a hearing.</p>
France	<p>Constitution</p> <p>Article 61-1.</p> <p><i>If, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d'Etat or by the Cour de Cassation to the Constitutional Council, within a determined period.</i></p> <p><i>An Institutional Act shall determine the conditions for the application of the present article.</i></p> <p>Article 62.</p> <p>A provision declared unconstitutional on the basis of article 61 shall be neither promulgated nor implemented.</p>

State	Relevant constitutional or legal provision
	<p>A provision declared unconstitutional on the basis of article 61-1 shall be repealed as of the publication of the said decision of the Constitutional Council or as of a subsequent date determined by said decision. The Constitutional Council shall determine the conditions and the limits according to which the effects produced by the provision shall be liable to challenge.</p> <p>No appeal shall lie from the decisions of the Constitutional Council. They shall be binding on public authorities and on all administrative authorities and all courts.</p>
Lithuania	<p>Article 69 Law on the Constitutional Court</p> <p>1. By a decision, the Constitutional Court shall refuse to consider petitions to investigate the compliance of a legal act with the Constitution; if:</p> <ol style="list-style-type: none"> 1) The petition was filed by an institution or person who does not have the right to apply to the Constitutional Court; 2) The consideration of the petition does not fall under the jurisdiction of the Constitutional Court; 3) the compliance of the legal act with the Constitution specified in the petition has already been investigated by the Constitutional Court and the ruling on this issue adopted by the Constitutional Court is still in force; 4) the constitutional Court has already commenced the investigation of a case concerning the same issue; 5) The petition is grounded on non-legal reasoning. <p>Article 70 Law on the Constitutional Court</p> <p>In the case that a petition or appendices thereof fail to comply with the provisions set forth in Articles 66 and 67, the Chairperson of the Constitutional Court shall return the petition to the petitioner on his own initiative or on the initiative of a judge.</p> <p>The return of a petition shall not take away the right to appeal to the Constitutional Court according to the general procedure after abolishing reasons thereof.</p>
Georgia	<p>Article 17 Law on the Constitutional Legal Proceedings</p> <p>1. An authorized employee of the Constitutional Court shall register a constitutional claim or a constitutional submission lodged with the Constitutional Court, after having examined the formal (and not substantive) aspects of the case materials. If an inessential formal inaccuracy is revealed, a constitutional claim or a constitutional submission shall be registered with the consent of the Secretary to the Constitutional Court and the claimant, author of the constitutional submission or their representatives shall be given fifteen days to redeem the inaccuracy. If within of this term inaccuracy was not corrected, a registration of a claim and a submission shall be invalidated. In case of the refusal to register, the claimant, author of the constitutional submission or their representatives shall be entitled to apply to the Secretary of the Constitutional Court, the latter being authorized to reach a final decision. (29.12.2006 N4216)</p>
“The Former Yugoslav Republic of Macedonia”	<p>Article 17 of the Law on the Courts</p> <p>(1) The court submits an initiative for commencing a procedure on assessing the compliance of the Law with the Constitution, when during procedure their accordance turns out to be questionable, for which it notifies the court of higher instance and the Supreme Court of Republic of Macedonia.</p> <p>(2) When the court finds that the Law that is to be applied in the specific case is not in accordance with the Constitution, and the constitutional provisions cannot be directly applied, will stay the procedure until the Constitutional Court delivers a decision.</p> <p>(3) The party has a right to an appeal against the decision for stay of the procedure. The procedure upon the appeal is urgent.</p>

1.1.6. Table: Joinder of similar cases

State	Relevant constitutional or legal provision
Andorra	<p>Article 34.3 Qualified Law on the Constitutional Tribunal 3. Without prejudice to the first paragraph of this article, the Court may decide at any stage of the proceedings to join a number of cases on the ground that the subject matter is the same or similar. Where this occurs the judge to whom the case was first allocated acts as reporter.</p>
Armenia	<p>Article 39 Law on the Constitutional Court Before the start of the case review only the cases referring to the same issue can be combined by the decision of the Constitutional Court.</p>
Czech Republic	<p>Article 63 Constitutional Court Act Where an issue is not covered by this Statute, in proceedings before it the Court shall apply the relevant provisions of the Code of Civil Procedure, as well as other enactments issued for the implementation thereof. Section 112 of the Act 99/1963 Coll., Civil Procedure Code, The court can join cases to joint proceedings in the interest of proceedings' effectiveness, provided the proceedings were initiated and relate to the same matter or to the same participants. Art. 35 Constitutional Court Act (2) A petition shall also be inadmissible in instances when the Court has already taken some action in the same matter; if one is submitted by an authorised petitioner, he has the right to take part, as a secondary party, in the proceeding concerning the earlier submitted petition". Article 76: "(1) The complainant and the state body or other public authority, against the encroachment of which the constitutional complaint is directed, shall be parties to the proceeding on the constitutional complaint. (2) Other parties to a prior proceeding, the contested decision of which gives rise to the complaint, shall be secondary parties. If the complaint concerns a criminal proceeding, the parties to that proceeding shall be secondary parties. (3) The Court may grant the status of a secondary party to other persons who demonstrate a legal interest in the outcome of the proceeding.</p>
Germany	<p>Article 66 Law on the Federal Constitutional Court The Federal Constitutional Court may combine independent proceedings and separate combined ones.</p>
Greece	<p>Article 13 Law establishing a Special Highest Court 1. Any person wishing to intervene and having a lawful interest in the case may be joined to the proceedings before the Court.</p>
Lithuania	<p>Article 41 Law on the Constitutional Court Upon establishing that there are two or more petitions concerning the compliance of the same legal act with the Constitution or laws, the Constitutional Court may join them into one case before beginning the judicial consideration. In this case the Constitutional Court shall adopt a reasoned decision.</p>
Portugal	<p>Article 64 Law on the Constitutional Court 1. When a request has been admitted, any others with the same object that are also admitted are included in the file concerning the first. Article 74 - (Extension of appeal) 1. The appeal filed by the Public Prosecutor's Office has an effect on all those who have legitimacy to appeal. 2. The appeal filed by an interested party in the cases envisaged in sub-paragraphs a), c), d), e), g), h) and i) in n.º1 of article 70 can be used by all other interested parties. 3. The appeal filed by an interested party, in the cases envisaged in</p>

State	Relevant constitutional or legal provision
	<p>sub-paragraphs b) and f) of n.^o1 of article 70 can be used by others according to the terms and limits established in the law regulating the case in which the decision has been made.</p> <p>4. There can be no subordinate appeal nor may any other party adhere to the appeal already made to the Constitutional Court.</p>
Russian Federation	<p>Article 48 Federal Constitutional Law on the Constitutional Court</p> <p>The consideration of each case shall be the subject of a special session. The Constitutional Court of the Russian Federation may merge in one proceeding petitions pertaining to one and the same subject.</p>
Slovakia	<p>Article 31.a Law on the Organisation of the Constitutional Court</p> <p>If this Law does not stipulate otherwise and if the nature of the subject-matter does not exclude it, the provisions of the Code of Civil Procedure or Code of Criminal Procedure shall be used as appropriate for proceedings before the Constitutional Court.</p> <p>Article 112 of the Act 99/1963 Coll., Civil Procedure Code,</p> <p>The court can join cases into joint proceedings in the interest of efficiency of proceedings, provided the proceedings have been initiated and relate to the same matter or to the same participants.</p>
Slovenia	<p>Article 48 The Rules of Procedure of the Constitutional Court</p> <p>If in their applications more than one applicant requests the review of the constitutionality or legality of the same provisions or provisions related in terms of content of a law, regulation, or general act issued for the exercise of public authority, the Constitutional Court may, upon the proposal of the judge rapporteur, decide by an order to join all applications for joint consideration and deciding on their constitutionality or legality.</p>
South Africa	<p>Rule 29 of the Rules of the Constitutional Court makes rule 6(14) of the Uniform Rules of Court applicable, which in turn provides for the application of Rule 11 of the Uniform Rules of Court.</p> <p>Rule (11): Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions...</p>
Spain	<p>Article 47 Organic Law on the Constitutional Court: 1. Persons who benefited by the decision, act or circumstance that led to the appeal or persons with a legitimate interest therein may appear in the proceedings for constitutional protection as a defendant or additional party.</p>
“The Former Yugoslav Republic of Macedonia”	<p>Article 21 Rules of Procedure of the Constitutional Court</p> <p>If during the course of the proceedings, it is found that a number of participants with separate petitions have requested the assessment of the constitutionality of the same provisions of the same law, other regulation or general act, all petitions will be attached to the first petition submitted, and for all of them a single procedure is conducted and a single decision is made.</p> <p>If there are a number of files in the Court for several separate petitions for the assessment of the constitutionality of the same law or the constitutionality and legality of the same regulation or general act, all files created later may be attached to the first file created, a single procedure may be carried out for all of them and a single decision made.</p>
United States of America	<p>The federal rules of civil procedure provide for the joinder of claims and parties in the federal courts, including in cases raising constitutional questions.</p> <p>Rule 12 U.S. Supreme Court Rules</p> <p>4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of <i>certiorari</i>; or any two or more may join in a petition. A party not shown on the</p>

State	Relevant constitutional or legal provision
	<p>petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of <i>certiorari</i> to the same court and involve identical or closely related questions, a single petition for a writ of <i>certiorari</i> covering all the judgments suffices.</p>

1.1.7. Table: Adversary systems

State	Relevant constitutional or legal provision
Andorra	<p>Article 87 Qualified law on the Constitutional Court 2. The respondents and assistants in the appeal for protection are the defendants and assistants in the earlier proceedings. Article 56.2 Qualified law on the Constitutional Court When the action has been declared admissible and the proceedings have commenced, the parties thereto are the court which brought the action, the body which laid down the law or regulation referred to the Constitutional Court and the Attorney General's Department. The parties to the judicial proceedings in question may appear as joint assistants.</p>
Belgium	<p>Art. 76 Special Law on the Court §1. The registrar shall notify actions for annulment instituted by the Council of Ministers to the governments of the Communities and Regions and to the presidents of the legislative assemblies. §2. The registrar shall notify actions for annulment instituted by the government of a Community or Region to the Council of Ministers, to the other governments, and to the presidents of the legislative assemblies. §3. The registrar shall notify actions for annulment instituted by the president of a legislative assembly to the Council of Ministers, to the governments of the Communities and Regions, and to the presidents of the other legislative assemblies. §4. The registrar shall notify actions for annulment instituted by an individual interested party to the Council of Ministers, to the governments of the Communities and Regions, and to the presidents of the legislative assemblies. Art. 77 The registrar shall notify referral decisions to the Council of Ministers, to the governments of the Communities and Regions, to the presidents of the legislative assemblies, and to the parties in the lawsuit before the court of law that took the referral decision. Art. 85 Within 45 days after receipt of the notifications sent by the registrar by virtue of Articles 76, 77 and 78, the Council of Ministers, the Governments, the presidents of the legislative assemblies and the persons to whom said notifications are addressed may make a written submission to the Court. Where the case involves an action for annulment, those submissions may contain new grounds. After that, the parties shall no longer be able to adduce new grounds.</p>
Armenia	<p>Article 19 Law on the Constitutional Court The Constitutional Court clarifies all the circumstances of the case in ex-officio without limiting itself with the motions, suggestions, evidences and other materials of the case brought by the participant of the Constitutional Court trial.</p>

State	Relevant constitutional or legal provision
Azerbaijan	Article 28.1. Law on the Constitutional Court: "Constitutional proceedings shall be held on the basis of principles of legal equality of parties and adversary".
Czech Republic	Article 28 Constitutional Court Act: "(1) The petitioner and those specified by this Statute shall be parties to a proceeding".
Cyprus	<p>Article 146 of the Constitution</p> <p>Under paragraph 1 of this Article the Supreme Constitutional Court (now the Supreme Court) <i>"shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or Administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person"</i>.</p>
France	<p>Article 23-10 de la Loi organique n° 2009-1523 du 10 décembre 2009 relative à l'application de l'article 61-1 de la Constitution.</p> <p><i>"Le Conseil constitutionnel statue dans un délai de trois mois à compter de sa saisine. Les parties sont mises à même de présenter contradictoirement leurs observations. L'audience est publique, sauf dans les cas exceptionnels définis par le règlement intérieur du Conseil constitutionnel".</i></p>
Georgia	<p>Article 2 Organic Law on the Constitutional Court</p> <p>1. The Constitutional Court shall perform its activity based on the principles of legality, collegiality, publicity, equality of parties and adversarial nature of the proceedings, independence, immunity and irrevocability of the members of the Constitutional Court for the whole term of their office.</p> <p>Article 1, Law on the Constitutional Legal Proceedings</p> <p>1. The constitutional legal proceedings shall be conducted on the basis of equality of parties before the Constitution and the Court and adversarial nature of the proceedings.</p>
Germany	<p>Even though the principle of judicial investigation applies, Articles 26 and 94 of the Law on the Federal Constitutional Court are relevant:</p> <p>Articles 26 Law on the Federal Constitutional Court</p> <p>1. The Federal Constitutional Court shall take evidence as needed to establish the truth. It may charge a member of the court with this outside the oral pleadings or ask another court to do so with regard to specific facts and persons.</p> <p>...</p> <p>Article 94 Law on the Federal Constitutional Court</p> <p>1. The Federal Constitutional Court shall give the federal or Land constitutional organ whose act or omission is complained of in the constitutional complaint an opportunity to make a statement within a specified period.</p> <p>2. If the act or omission was committed by a minister or a federal or Land authority, the competent minister shall be given an opportunity to make a statement.</p> <p>3. If the constitutional complaint of unconstitutionality is directed against a court decision, the Federal Constitutional Court shall also give the party in whose favour the decision was taken an opportunity to make a statement.</p> <p>4. If the constitutional complaint is lodged directly or indirectly against a law, Article 77 above shall apply mutatis mutandis.</p> <p>5. The constitutional organs named in paragraphs 1, 2 and 4 above may join the proceedings. The Federal Constitutional Court may dispense with oral pleadings if they are not expected to advance the proceedings any further and if the constitutional organs which are entitled to make a statement and have joined the proceedings waive oral proceedings.</p>

State	Relevant constitutional or legal provision
Greece	Article 49 Law establishing a Special Highest Court: "1. With the exception of the applicants, the parties to the proceedings before the Special Court shall be all the parties in the case which prompted the referral to the Special Court for a preliminary ruling to resolve the dispute".
Liechtenstein	Article 18 Constitutional Court Act 3) In the proceedings, the Government shall be given the opportunity to give a statement within a period to be determined.
Lithuania	Article 31 Law on the Constitutional Court The following persons shall be considered parties to the case: the petitioner - the State institution ²⁷² , the group of Members of the Seimas who are granted by law the right to apply to the Constitutional Court with a petition to investigate the compliance of a legal act with the Constitution or laws or to present a conclusion, and their representatives; the party concerned - the State institution which has adopted the legal act whose compliance with the Constitution and laws is under investigation and its representative; the Member of the Seimas or other State official, the compliance of whose actions with the Constitution must be investigated due to impeachment proceedings which have been instituted against them in the Seimas and his representative; the President of the Republic, when a conclusion is presented concerning his state of health and his representative. The parties to the case shall have equal procedural rights. They shall have the right to get familiar with the material of the case, make extractions, duplicates, and copies from it, declare removals, provide evidence, participate in the investigation of evidence, give questions to other parties to the case, as well as to witnesses and experts, make requests, give explanations, provide their own arguments and reasoning, object to requests, arguments and reasoning of other persons participating in the case.
Luxembourg	Article 11 Law on the Constitutional Court The parties shall be allowed to make submissions to and plead before the Constitutional Court through any lawyer registered on List I of the roll of lawyers drawn up each year by the Bar Councils.
Poland	Article 27 Constitutional Tribunal Act The participants in the proceedings before the Tribunal shall be: 1) a subject who submitted an application or complaint concerning constitutional infringement; 2) an organ which issued an act included in the application or complaint concerning constitutional infringement; 2a) the court, which has presented a question of law to the Constitutional Tribunal, provided that it has notified participation in proceedings initiated as the result of that legal question and has appointed amongst the judges of that court its authorised representative
Romania	Article 29 Law on the Organisation and Functioning of the Constitutional Court 4. The case shall be referred to the Constitutional Court by the court before which the exception of unconstitutionality has been raised through an interlocutory judgment which shall include the parties viewpoints concerning the exception, and the opinion of the Instance on the exception, and shall be accompanied by the evidence provided by the parties. In case the exception has been raised by the court, <i>ex officio</i> , the interlocutory judgment shall be motivated, and shall also mention the parties' arguments as well as the necessary

²⁷² *inter alia* the ordinary court.

State	Relevant constitutional or legal provision
	<p>evidence. Together with the interlocutory judgment, the court shall communicate to the Constitutional Court the names of the parties involved in the court proceedings including the data which are necessary to be summoned.</p>
Article 16	
	<p>1. In case a submission has been made by one of the Presidents of the two Chambers of Parliament, by the Members of Parliament, by the Government, by the High Court of Cassation and Justice, or by the Advocate of the People, the Court shall communicate the act on the case thus received to the President of Romania, on the day of its registration.</p> <p>2. If the submission has been made by the President of Romania, by the Members of Parliament, by the High Court of Cassation and Justice, or by the Ombudsman, the Constitutional Court shall communicate such to the Presidents of the two Chambers of Parliament and the Government within twenty-four hours from the registration, also specifying the date when the debates are to take place.</p>
	<p>3. If the submission has been made by one of the Presidents of the two Chambers of Parliament, the Constitutional Court shall communicate such to the President of the other Chamber and to the Government, as well as to the Advocate of the People, and if the submission has been made by the Government, the Court shall communicate it to the Presidents of the two Chambers of Parliament, as well as to the Advocate of the People, the provisions under paragraph 2 above being applied accordingly.</p>
Article 17	
	<p>1. The Presidents of the two Chambers of Parliament, the Government and the Advocate of the People can present their point of view in writing, by the date of the debates.</p> <p>2. The Government's point of view shall be presented under the signature of the Prime-Minister only.</p>
Article 24	
	<p>1. The Constitutional Court shall decide on the constitutionality of the treaties or other international agreements before their ratification by Parliament, when a case is submitted to the Court by one of the Presidents of the two Chambers, by a number of at least fifty Deputies or at least twenty-five Senators.</p>
	<p>2. If the submission is made by one of the Presidents of the two Chambers of Parliament, the Constitutional Court shall communicate the act on the respective case to the President of Romania, to the President of the other Chamber, and to the Government.</p>
	<p>3. When a case is submitted to the Court by Members of Parliament, the act on the case shall be registered at the Senate or at the Chamber of Deputies, as the case may be, and sent to the Constitutional Court on the same day when it was received by the Secretary General of the respective Chamber.</p>
	<p>4. The Constitutional Court shall communicate the act on the case to the President of Romania, to the Presidents of the two Chambers of Parliament, and to the Government.</p>
Article 25	
	<p>The President of Romania, the Presidents of the two Chambers of Parliament and the Government may present their point of view in writing, by the date of the debates in the plenum of the Constitutional Court.</p>
Article 27	
	<p>1. The Constitutional Court shall decide on the constitutionality of the standing orders of Parliament, when a case is submitted to the Court by one of the Presidents of the two Chambers, by a parliamentary group or by a number of at least fifty Deputies or at least twenty-five Senators.</p> <p>2. In case the submission has been made by Members of Parliament, the act relating to it shall be sent to the Constitutional Court by the Secretary General of the Chamber to which</p>

State	Relevant constitutional or legal provision
	<p>they belong, on the same day when it was handed in, and the Constitutional Court shall inform the Presidents of the two Chambers of Parliament within twenty-four hours from the registration, specifying the date when the debate is to take place.</p> <p>3. The Presidents of the two Chambers of Parliament can notify the viewpoints of the Standing Bureau, by the date of the debates.</p>
Russia	<p>Article 35 Federal Constitutional Law on the Constitutional Court of the Russian Federation The parties shall enjoy equal rights and opportunities while asserting their positions in the session of the Constitutional Court of the Russian Federation on the adversarial basis.</p>
San Marino	<p>Article 14 Qualified law on the organisation of the Collegio Garante: "1. The discussion is oral and respects the principle of adversariality. (<i>La discussione è orale e si svolge nel rispetto del principio del contraddittorio</i>)", in: http://www.consigliograndeegenerale.sm/new/index.php3, viewed on: 20/02/2009</p>
Serbia	<p>Article 29 Law on the Constitutional Court Article 31 Participant in proceedings is entitled to present and explain his/her position and reasons during the procedure, as well as to answer the claims and reasons of other participants in the procedure.</p>
Slovakia	<p>Article 21 Law on the Organisation of the Constitutional Court 1. The parties to the proceedings are the applicant, the entity against which the application is directed, as well as the persons specified by this Law.</p>
Slovenia	<p>Article 56 Constitutional Court Act (2) In the instances referred to in the preceding paragraph, the constitutional complaint is sent to the persons who participated in the proceedings in which the challenged individual act was issued by which their rights, obligations, or legal entitlements were decided, in order for them to make statements within a determined period of time.</p>
South Africa	<p>Rule 11 Rules of the Constitutional Court (3) Any person opposing the granting of an order sought in the notice of motion shall... notify the Registrar in writing of his or her intention to oppose the application [and] lodge his or her answering affidavit.</p>
Spain	<p>Article 51 Organic Law on the Constitutional Court 1. Where an application for protection is admitted, the Division shall urgently request the body or authority with which the decision, act or circumstance originated or the judge or court that heard the previous proceedings, to provide it with the court records or the supporting documents within a period of not more than ten days. 2. The body, authority, judge or court shall immediately acknowledge receipt of the request, shall dispatch the documents within the prescribed period and shall notify the persons who were parties to the former proceedings so that they may appear in the constitutional proceedings within ten days.</p>
Switzerland	<p>Article 56 Federal Judicature Act 1. Les parties ont le droit d'assister à l'administration des preuves et de prendre connaissance des pièces produites. 2. Si la sauvegarde d'intérêts publics ou privés prépondérants l'exige, le Tribunal fédéral prend connaissance d'un moyen de preuve hors de la présence des parties ou des parties adverses.</p>
"The Former Yugoslav Republic of Macedonia"	<p>Article 13 Rules of Procedure of the Constitutional Court The petitioner and the body having enacted or issued the impugned act are participants in the proceedings before the Constitutional Court.</p>

State	Relevant constitutional or legal provision
	<p>Article 18 paragraph 4 of the Rules of Procedure of the Constitutional Court During the preliminary proceedings, the judge and the member of the legal staff may call any participant in the proceedings and other interested persons, to a consultative interview and ask them for the necessary information and explanations, and, if necessary, forward the petition to the body that issued the impugned act.</p> <p>Article 19 of the Rules of Procedure of the Constitutional Court The decision to initiate proceedings is notified to the entity that issued the impugned regulation or other common act and a time-limit for an answer is fixed, this being no longer than 30 days.</p> <p>Article 53 of the Rules Procedure of the Constitutional Court The application for the protection of freedoms and rights is communicated for a reply to the entity having issued the individual act, or the entity which has undertaken an action infringing rights and freedoms, within 3 days from the date on which the application is lodged. The time-limit for providing an answer is 15 days.</p>
United States	<p>Rule 8 of the Federal Rules of Civil Procedure provides that a claimant's complaint shall assert a "short and plain statement of the claim showing that the pleader is entitled to relief," and that the opposing party must "state in short and plain terms its defenses to each claim asserted against it" and "admit or deny the allegations asserted against it by an opposing party".</p> <p>U.S. Supreme Court Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs 1. A brief in opposition to a petition for a writ of <i>certiorari</i> may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.</p>

1.1.8. Table: Public proceedings and exceptions

State	Relevant constitutional or legal provision
Albania	Article 21 Law on the Organisation and Functioning of the Constitutional Court: " 1.Cases are heard at the Constitutional Court in open plenary sessions. 2. The Constitutional Court may bar the public from attending all or part of a session, in order to protect public morals, public order, national security and the right to private life or personal rights".
Armenia	Article 22 Law on the Constitutional Court: "1. The court hearing is open for public with the exceptions provided in the Part 3 of this article. 3. By a majority vote, the Constitutional Court may decide to hold a session or part of a session in the absence of the media and the public for the interest of community morals, public order and state security, and for the privacy of the parties and the case".
Azerbaijan	Article 27.1. Law on the Constitutional Court: "Proceedings of cases in Constitutional Court shall be public. The hearing of a case <i>in camera</i> shall be admissible only when Constitutional Court assumes that public sessions can become a reason of disclosure of the state, professional or commercial secret or when it reveals the necessity to protect private or family life of citizens".
Belgium	Article 104 Special Law on the Court The Court's hearings shall be public, unless a public hearing would jeopardise public order or morality; in such cases, the Court may so declare by a reasoned judgment.

State	Relevant constitutional or legal provision
Bosnia and Herzegovina	<p>Article 11 Rules on the Constitutional Court: “1. The work of the Constitutional Court shall be public”.</p> <p>Article 12 of the Rules of Constitutional Court of Bosnia and Herzegovina “1. The public shall be excluded from the working sessions of the Constitutional Court, including the deliberation and voting sessions. 2. The public may also be excluded when the Constitutional Court deliberates and takes decisions about issues deemed to be confidential in accordance with the law and when this is required by reasons related to the protection of morality, public order, national security, the right to privacy or personal rights. 3. The exclusion of the public referred to in paragraph 2 of this Article shall not apply to parties to the proceedings”.</p>
Croatia	<p>Article 21 Constitutional Act on the Constitutional Court: “If there exist reasons to exclude the public from the proceedings, a judge of the Constitutional Court shall note it in his/her report”.</p>
Cyprus	<p>Article 134 Constitution: “1. The sittings of the Supreme Constitutional Court for the hearing of all proceedings shall be public but the Court may hear any proceedings in the presence only of the parties, if any, and the officers of the Court if it considers that such a course will be in the interest of the orderly conduct of the proceedings or if the security of the Republic or public morals so require”.</p>
Czech Republic	<p>Article 45 Constitutional Court Act: “(1) Oral hearings before the Court shall be public; the Court may limit attendance by the public or may exclude the public altogether only if such is required by important interests of the state or of the parties to the proceeding, or by morality”.</p>
Denmark	<p>§65 Constitution: “(1) In the administration of justice all proceedings shall to the widest possible extent be public and oral”.</p>
Georgia	<p>Article 27 Organic Law on the Constitutional Court</p> <p>2. A sitting of the Constitutional Court or a part of it may be closed to the public on the initiative of the Court or by agreement of the parties for the protection of personal information or of professional, commercial or state secrets.</p>
Germany	<p>Article 17 Law on the Federal Constitutional Court</p> <p>Unless this Law contains provisions to the contrary, the provisions of Titles 14 to 16 of the Law on the Constitution of Courts shall apply mutatis mutandis with regard to admission of the public, police powers in court, the language of the court, deliberations and voting. [In its Article 169, the Law on the Constitution of Courts provides that the proceedings before the court of decision including the pronouncement of judgements and order are public.]</p>
Italy	<p>Section 15 Law on the composition and procedure of the Constitutional Court</p> <p>Hearings of the Constitutional Court shall be held in public, but the President may order a hearing behind closed doors when a public hearing might threaten the security of the State, public order or morality, or when the conduct of the members of the public present in court is likely to interfere with the due process of law.</p>
Latvia	<p>Article 27 Law on the Constitutional Court</p> <p>1. Sessions of the Constitutional Court shall be open except in cases when this is contrary to the interests of protecting state secrets, commercial secrets as well as protecting the inviolability of the private life of a person.</p>
Liechtenstein	<p>Article 47 Constitutional Court Act</p> <p>1) Subject to the following provisions, the hearings before the Constitutional Court shall be public.</p>

State	Relevant constitutional or legal provision
	2) The public shall be excluded in cases in which they are excluded by the provisions of the Rules of Civil and Criminal Procedure or if the Court rules to exclude the public due to legitimate interests of a party or in the interests of public security and order.
Lithuania	<p>Article 18 Law on the Constitutional Court</p> <p>Constitutional Court sittings shall be open, and may be attended by persons who are of age as well as by representatives of the press and other public mass media. The Constitutional Court may announce closed sittings provided that this is necessary for the safeguarding of a State, professional, commercial or other secret which is protected by law, or the security of a citizen or public morality.</p>
Moldova	<p>Article 13 Code of constitutional jurisdiction</p> <p>1) The hearings in the Constitutional Court are public, except the cases when the publicity will damage state security or public order.</p>
Poland	<p>Article 23 Constitutional Tribunal Act</p> <p>Hearings of the Tribunal shall be public unless particular provisions provide otherwise. The Presiding Judge of the bench in a given case may dispense with its public nature for reasons of security of the State or protection of State secrets.</p> <p>Article 59</p> <p>2. The Tribunal may, at a sitting in camera, examine a complaint concerning constitutional infringements if, from the pleadings submitted by the participants in the proceedings in writing, it results without dispute that the normative act, on the basis of which a court or organ of public administration has made a final decision in respect of freedoms or rights or obligations of the person making the complaint, is in non-conformity to the Constitution. The decision given in this procedure shall be subject to publication.</p>
Romania	<p>Article 12 Law on the Organisation and Operation of the Constitutional Court</p> <p>1. The sessions of judgment shall be public, unless, for good reason, the Court decides otherwise.</p>
Russian Federation	<p>Article 54 Federal Law on the Constitutional Court</p> <p>The sessions of the Constitutional Court of the Russian Federation shall be open except for the events stipulated by the present Federal Constitutional Law.</p> <p>Article 55</p> <p>The Constitutional Court of the Russian Federation shall set a session in camera when it is necessary to preserve secrets protected by the law, to ensure safety of citizens, to protect social moral.</p>
Serbia	<p>Article 3 Law on the Constitutional Court</p> <p>The work of the Constitutional Court is public. Publicity is guaranteed by public hearings in procedures before the Constitutional Court, publication of its decisions, release of communiqués to the public information media and in other manner. The Constitutional Court may exclude the public, only for the purpose of protecting the interests of national security, public order and morality in a democratic society, as well as for the purpose of protecting the interests of juveniles and the privacy of participants in a procedure.</p> <p>Article 37</p> <p>c) Public Hearing</p> <p>Constitutional Court shall hold a public hearing in the procedure for assessing constitutionality and legality, in the procedure for deciding on electoral disputes, as well as in proceedings for prohibition of work of a political party, trade union organisation, citizens' association or religious community.</p> <p>Constitutional court can decide not to hold a public hearing in procedure for assessing the constitutionality and legality: if it deems that the matter was sufficiently clarified in</p>

State	Relevant constitutional or legal provision
	<p>the course of procedure and that, on the basis of evidence collected, it can decide even without holding a public hearing; if it has already decided on the same matter and new evidence for making a different decision on the matter have not been provided, as well as if there are conditions for discontinuation of procedure.</p>
Slovakia	<p>Article 30 Law on the Organisation of the Constitutional Court 4. Oral hearings in matters in accordance with Articles 125, 126, 127a, 129.4 of the Constitution shall be held in public. Oral hearings in other matters shall also be held in public unless the Constitutional Court, because of important considerations, excludes the public from participating in the entire hearing or part thereof. 5. The public character of oral hearings shall be governed, mutatis mutandis, by the provisions of procedural codes (Code of Civil Procedure, Code of Criminal Procedure).</p>
Slovenia	<p>Article 35 Constitutional Court Act (1) The Constitutional Court considers a case at a closed session or a public hearing. A majority of all Constitutional Court judges must be present at the closed session or public hearing. Article 37 The Constitutional Court may exclude the public from a hearing or a part thereof when so required in order to protect morals, public order, national security, the right to privacy, or personality rights. Article 57 If a constitutional complaint is accepted, as a general rule it is considered by the Constitutional Court at a closed session, or a public hearing may be held.</p>
South Africa	<p>Article 34 Constitution of the Republic of South Africa Everyone has the right to have any dispute that can be resolved by the application of law decided on in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.</p>
Switzerland	<p>Article 59 Federal Judicature Act 1 Les éventuels débats ainsi que les délibérations et votes en audience ont lieu en séance publique. 2 Le Tribunal fédéral peut ordonner le huis clos total ou partiel si la sécurité, l'ordre public ou les bonnes moeurs sont menacés, ou si l'intérêt d'une personne en cause le justifie. 3 Le Tribunal fédéral met le dispositif des arrêts qui n'ont pas été prononcés lors d'une séance publique à la disposition du public pendant 30 jours à compter de la notification.</p>
“The Former Yugoslav Republic of Macedonia”	<p>Article 85 Rules of Procedure of the Constitutional Court The public can be excluded from the public hearings, meetings and preparatory meetings of the Court, if this is required in the interests of country's security and defence, the protection of state, official or business secrets, for the protection of the public morality and in other justified cases defined by the Court.</p>
Turkey	<p>Article 148 and 149 of the Constitution The Constitutional Court; a) In principle, examines cases on the basis of documents in the case file. However, when it deems necessary, it may call on those concerned and those having knowledge relevant to the case, to present oral explanations. b) Several High Ranking Officials in Turkey are tried for offences relating to their functions by the Constitutional Court in its capacity as the “Supreme Court”. During such trials, oral testimony and right to defence is recognized. c) In lawsuits on whether to permanently dissolve a political party or not, the Constitutional Court shall hear the defence of the chairman of the party whose dissolution is in process or of a proxy appointed by the chairman, after the Chief Public Prosecutor of the Republic.</p>

1.1.9. Table: Oral proceedings and exceptions

State	Relevant constitutional or legal provision
Albania	Article 23 Law on the Organisation and Functioning of the Constitutional Court: "The case is presented orally at the plenary session, or through the relevant documents, according to the nature of the case".
Austria	Article 19 Federal Law on the Constitutional Court: " 1. Judgments of the Constitutional Court, apart from those delivered under Article 10 and Article 36c, shall be delivered after an oral hearing in public to which the applicant, the opposing party and any parties which may be interested in any respect shall be summoned. 3. Upon application by the reporting judge, the Court, sitting in private without a fuller procedure being necessary and without an oral hearing, may 1. refuse to examine a complaint as provided for in Article 144, subparagraph 2 of the B-VG. 2. reject an application upon the following procedural grounds: a. the Constitutional Court clearly has no jurisdiction to deal with it, b. the statutory time-limit has not been observed, c. the defect is not covered by the formal requirements, d. the case has become definitive, and e. the applicant is no entitled to bring the application 3. discontinue the proceedings on the ground that the application has been withdrawn or that the claim has been satisfied (Article 86). 4. The Constitutional Court may dispense with an oral hearing where it is apparent from the written submissions of the parties to the constitutional proceedings and the documents submitted to the Constitutional Court that no further light can be expected to be shed on the dispute in an oral discussion. In addition, upon application by the reporting judge, the Court, sitting in private and without an oral hearing, may 1. dismiss a complaint where there has clearly been no breach of a constitutionally guaranteed right; 2. settle any dispute where the legal problem has been raised in sufficiently clear terms in a previous judgment of the Constitutional Court; 3. allow a complaint which led to an judgment overruling an unlawful regulation, an unconstitutional law or an illegal treaty".
Azerbaijan	Article 27.2. Law on the Constitutional Court: "Proceedings at Constitutional Court shall be oral. In case of consent by parties and interested subjects, Plenum of Constitutional Court can hold written proceedings via procedure provided for by Rules of Procedure of Constitutional Court".
Belgium	Article 106 Special Law on the Court Only those parties who have lodged an application or filed a memorial, and their lawyers, shall be admitted to the hearing and such persons shall be limited to oral statements.
Czech Republic	Article 44 Constitutional Court Act: "(1) In matters dealt with by the Court under Article 87 para. 1 or 2 of the Constitution, if the petition was not rejected by preliminary ruling without an oral hearing and without the parties being present, an oral hearing shall be held. (2) Unless this Statute provides otherwise, with the consent of the parties, the Court may dispense with an oral hearing if further clarification of the matter cannot be expected from such a hearing".
Denmark	§65 Constitution: "(1) In the administration of justice all proceedings shall to the widest possible extent be public and oral".
Germany	Article 25 Law on the Federal Constitutional Court: "1. In the absence of provisions to the contrary, the Federal Constitutional Court shall decide on the basis of oral pleadings, unless all parties expressly waive them". Art.94: "5. The constitutional organs named in paragraphs 1, 2 and 4 above may join the proceedings. The Federal Constitutional Court may dispense with oral pleadings if they are not expected to advance the proceedings any further and if the constitutional organs which are entitled to make a statement and have joined the proceedings waive oral proceedings". Article 93d: ". The decision in accordance

State	Relevant constitutional or legal provision
	with Articles 93 b and c above shall be taken without oral proceedings. This decision cannot be challenged. The refusal to accept the constitutional complaint does not require reasons".
Georgia	Article 27 Organic Law on the Constitutional Court 1. The issue of admission a case for consideration on the merits shall be considered without oral hearing. The Constitutional Court shall be authorized to consider a case with oral hearing, if elucidation of the circumstances related to the adoption of a case for consideration of the merits is impossible otherwise. 2. The Constitutional Court shall be authorized to consider the merits of a case without oral hearing on the basis of a written demand of a claimant or/and a respondent.
Liechtenstein	Article 46 Constitutional Court Act 2) All parties and defendant authorities shall be summoned to the hearings. Absences shall not stand in the way of hearings and decisions. Article 47 3) An oral final hearing shall be omitted if the case is to be ruled upon in a closed meeting or if the Court, upon receiving the report of the rapporteur, does not believe an oral hearing is necessary to hear the pleadings of the parties.
Lithuania	Article 44 Law on the Constitutional Court 1. A case shall be investigated in a Constitutional Court hearing only once the parties to the case have been notified of this. 2. Absence of the parties in a Court hearing shall not be an obstacle for consideration of the case, passing a ruling or conclusion, and adopting other decisions. 3. While considering a case, the Constitutional Court must directly investigate evidence: it must listen to the explanations of the parties to the case (...) 5. Only parties to the case, their representatives, witnesses, experts and invited specialists or officials may speak in the Court on the issue. 6. In cases where no party or their representatives who have been summoned come to the Court hearing, the judicial hearing shall be held in a free form.
Poland	Article 59 Constitutional Court Act 1. The Tribunal shall, at a hearing, examine applications in cases specified in Article 2.2. The Tribunal may, at a sitting in camera, examine a complaint concerning constitutional infringements if, from the pleadings submitted by the participants in the proceedings in writing, it results without dispute that the normative act, on the basis of which a court or organ of public administration has made a final decision in respect of freedoms or rights or obligations of the person making the complaint, is in non-conformity to the Constitution. The decision given in this procedure shall be subject to publication.
Russian Federation	Article 62 Federal Constitutional Law on the Constitutional Court In conformity with the procedure established by the decision of the Constitutional Court of the Russian Federation the presiding Judge shall propose to the parties to give explanations on the merits of the question under consideration and to adduce legal arguments to prove their position.
Serbia	Article 31 Law on the Constitutional Court Participant in proceedings is entitled to present and explain his/her position and reasons during the procedure, as well as to answer the claims and reasons of other participants in the procedure Article 38 Law on the Constitutional Court All participants in proceedings are summoned to public hearing, in order to express their positions and provide necessary information.

State	Relevant constitutional or legal provision
Slovakia	<p>Article 30 Law on the Organisation of the Constitutional Court</p> <ol style="list-style-type: none"> 1. Matters examined by the Constitutional Court in accordance with Articles 125, 125a, 126, 127, 127a, 129.4 and 129.5 of the Constitution are conducted by oral hearing. 2. The Constitutional Court may, with the consent of the parties to proceedings, waive the oral hearing if there are reasonable grounds to believe that it would not bring any clarification of the examined case 3. The right to attend oral hearings applies to the parties to proceedings and their representatives.
Slovenia	<p>Article 36 Constitutional Court Act</p> <p>(1) The Constitutional Court invites to public hearings the participants in proceedings, representatives, and persons authorised by the participants in proceedings, as well as other persons whose presence at the public hearing is deemed necessary.</p>
South Africa	<p>Rule 11(4) Rules of the Constitutional Court</p> <p>When an application is placed before the Chief Justice... he or she shall give directions as to how the application shall be dealt with and, in particular, as to whether it shall be set down for hearing or whether it shall be dealt with on the basis of written argument.</p>
Spain	<p>Article 52 Organic Law on the Constitutional Court</p> <ol style="list-style-type: none"> 1. On receipt of the court records and on expiry of the notification period, the Division shall transmit the records to the originator of the appeal for protection, the parties who appeared in the proceedings, the Government Advocate in cases involving the public Administration, and the Office of the Public Prosecutor. The hearing shall take place within a period applicable to all parties of not more than twenty days during which pertinent arguments may be put forward. 2. <i>Presentadas las alegaciones o transcurrido el plazo otorgado para efectuarlas, la Sala podrá deferir la resolución del recurso, cuando para su resolución sea aplicable doctrina consolidada del Tribunal Constitucional, a una de sus Secciones o señalar día para la vista, en su caso, o deliberación y votación.</i> 3. <i>La Sala, o en su caso la Sección, pronunciará la sentencia que proceda en el plazo de 10 días a partir del día señalado para la vista o deliberación.</i>
Switzerland	<p>Article 57 Federal Judicature Act</p> <p>Le président de la cour peut ordonner des débats.</p>
United States	<p>U.S. Supreme Court Rule 28</p> <ol style="list-style-type: none"> 1. Oral argument should emphasise and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favoured. 2. The petitioner or appellant shall open and may conclude the argument. [...] 3. Unless the Court directs otherwise, each side is allowed one-half hour for argument.

1.1.10. Table: Suspension of implementation

State	Relevant constitutional or legal provision
Albania	<p>Article 45 Law on the Organisation and Functioning of the Constitutional Court</p> <p>1. The Constitutional Court, of its own motion or at the request of either of the parties, when it considers that the implementation of the law or normative act at issue may have consequences on state, social or individual interests, upon the decision of the meeting of judges or at the plenary hearing, may decide to suspend the relevant law or normative act. The suspension lasts until the final decision of the Constitutional Court is enforced.</p>
Andorra	<p>Article 88 (1) Qualified Law on the Constitutional Court</p> <p>The appellant asks the Court to set the decision aside and also, where applicable, to suspend its effects, by reiterating the claim for judicial protection of the right in question, the breach of which shall be presented in the same terms as before the ordinary court.</p> <p>Article 4.2 Qualified Law on the Constitutional Court</p> <p>The jurisdiction of the Constitutional Court takes priority over that of the ordinary courts. A case which has been brought before the Constitutional Court cannot at the same time be examined by another court. Where the Constitutional Court declares admissible a case which has first been brought before an ordinary court that court ceases to deal with it.</p>
Armenia	<p>Article 34 of the Law “On the Constitutional Court” of the Republic of Armenia</p> <p>1. By the initiative of the applicant or the Constitutional Court, after the case is admitted, the Constitutional Court shall suspend the application of the legal act, the constitutionality of which is challenged, if the absence of such decision on suspension can cause irretrievable or harmful consequences to the applicant or the society.</p> <p>2. The decision on suspension of the arguable legal act gets into force after its publication. The public is immediately informed on that by the means of Mass Media and the Public Television and Radio release the relevant information.</p>
Austria	<p>Article 85 Federal Law on the Constitutional Court</p> <p>1. The complaint shall not have suspensory effect.</p> <p>2. Upon application by the appellant the Constitutional Court, by its decision, shall confer suspensory effect on the complaint, provided that there are no pressing reasons in the public interest why it should not do so and that, after all the conflicting legal interests concerned have been taken into consideration, the appellant would sustain disproportionate harm as a result of the implementation or exercise by a third party of the right conferred by the administrative decree. Where the conditions which determined the decision as to the suspensory effect of the complaint have fundamentally changed the Court will have to give a fresh decision upon application by the appellant, the administrative authority (Article 83, subparagraph 1) or any persons interested on any other basis.</p>
Belgium	<p>Article 19 Special Law on the Court</p> <p>At the request of the applicant, the Court may, by a reasoned decision, suspend in full or in part a statute, decree or rule referred to in Article 134 of the Constitution against which an action for annulment has been brought.</p> <p>Article 20</p> <p>Without prejudice to Article 16 ter of the Special Law on Institutional Reforms of 8 August 1980 and Article 5 ter of the Special Law of 12 January 1989 on the Brussels institutions, the decision to suspend may be made only where:</p> <p>1. serious grounds are invoked and provided the immediate enforcement of the statute, decree or rule referred to in Article 134 of the Constitution against which the action has been brought is likely to occasion serious damage which is not readily redressable;</p>

State	Relevant constitutional or legal provision
	2. the action is brought against a provision which is identical or similar to a provision which has already been annulled by the Constitutional Court and which was enacted by the same legislator.
Croatia	<p>Article 45 Constitutional Law on the Constitutional Court</p> <p>The Constitutional Court may, until the final decision, temporarily suspend the execution of the individual decisions or actions undertaken on the grounds of the law or the other regulation, the constitutionality respective the legality of which is being reviewed, if their execution might cause grave and irreparable consequences". Article 67 Constitutional Act on the Constitutional Court: "(1) The constitutional complaint, as a rule, does not prevent the application of the disputed act. (2) The Constitutional Court may, on the proposal of the applicant, postpone the execution of court of justice decision until the decision is made, if the execution would cause to the applicant such damage, which could hardly be repaired, and the postponement is not contrary to the public interest nor would the postponement cause to anyone greater damage.</p>
Czech Republic	<p>Article 79 Constitutional Court Act</p> <p>(1) Constitutional complaints shall not have suspensive effect. A petition under Article 73 para. 1, appealing from a decision dissolving a political party or disallowing its activities, shall have suspenseful effect. (2) Upon a motion of the complainant, the Court may suspend the enforceability of a contested decision, if such would not be inconsistent with important public interests and so long as the complainant would suffer, due to the enforcement of the decision or the exercise of the right granted to a third person by the decision, a disproportionately greater detriment than that which other persons would suffer while enforceability is suspended". Article 80: "(1) If a constitutional complaint is directed at some encroachment of a public authority other than a decision by it, then in order to avert threatened serious harm or detriment, in order to forestall a threatened intervention by force, or from some other weighty public interest, the Court may enjoin the public authority from continuing in its actions ("provisional measures").</p>
Denmark	<p>§63 Constitution</p> <p>(1) The courts of justice shall be empowered to decide any question relating to the scope of the executive's authority; though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority.</p>
Estonia	<p>§12 Constitutional Review Court Act</p> <p>On the basis of a reasoned application of a participant of the proceedings or on its own motion the Supreme Court may suspend the entry into force of a contested legislation of general application or a provision thereof or of an international agreement, until the entry into force of the Supreme Court judgment.</p>
France	<p>Article 62 Constitution</p> <p>A provision declared unconstitutional on the basis of article 61 shall be neither promulgated nor implemented.</p> <p>A provision declared unconstitutional on the basis of article 61-1 shall be repealed as of the publication of the said decision of the Constitutional Council or as of a subsequent date determined by said decision. The Constitutional Council shall determine the conditions and the limits according to which the effects produced by the provision shall be liable to challenge.</p> <p>No appeal shall lie from the decisions of the Constitutional Council. They shall be binding on public authorities and on all administrative authorities and all courts.</p>

State	Relevant constitutional or legal provision
Georgia	<p>Article 25 Law on the Constitutional Court</p> <p>5. If the Constitutional Court considers that the effects of the normative act are causing irreparable harm to one party it shall suspend the action of the disputed act before taking a final decision.</p>
Germany	<p>Article 93d Law on the Federal Constitutional Court</p> <p>2. As long as and in so far as the panel has not decided on the acceptance of the complaint of unconstitutionality, the chamber may take all decisions involving the complaint proceedings. A temporary injunction wholly or partly suspending the application of a law may only be issued by the panel; Article 32 (7) above shall remain unaffected. The panel shall also decide in the cases described in Article 32 (3) above.</p> <p>Article 32 Law on the Federal Constitutional Court</p> <p>1. In a dispute the Federal Constitutional Court may deal with a matter provisionally by means of a temporary injunction if this is urgently needed to avert serious detriment, to ward off imminent force or for any other important reason for the common weal.</p> <p>2. The temporary injunction may be issued without oral pleadings. In particularly urgent instances, the Federal Constitutional Court need not give the parties to the principal proceedings, the parties entitled to join them or the parties entitled to make a statement an opportunity to make a statement.</p> <p>3. If the temporary injunction is issued or refused by an order, a protest may be lodged. This shall not apply to the complainant in proceedings on a complaint of unconstitutionality. The Federal Constitutional Court shall decide on the protest after oral pleadings. These must be held within two weeks of receiving the reasons for the protest.</p> <p>4. A protest against a temporary injunction shall not have any suspensive effect. The Federal Constitutional Court may stay the execution of the temporary injunction.</p> <p>5. The Federal Constitutional Court may announce the decision on the temporary injunction or the protest without giving reasons. In this case the reasons shall be transmitted separately to the parties involved.</p> <p>6. The temporary injunction shall cease to have effect after six months. It may be renewed with a majority of two thirds of the votes.</p> <p>7. If a panel does not have a quorum, a temporary injunction may be issued in particularly urgent cases if at least three judges are present and the decision is taken unanimously. It shall cease to have effect after one month. If it is confirmed by the panel, it shall cease to have effect six months after the date of issue.</p>
Greece	<p>Article 50 Law establishing a Special Highest Court</p> <p>3. Any court which has pending before it a case requiring the application of the provisions of a law concerning which litigation is pending before the Special Court as provided in Article 48, shall, after learning of such litigation by any means whatsoever, of its own motion refrain from delivering a final judgment until the Special Court has ruled.</p>
Latvia	<p>Article 19.2 Law on the Constitutional Court</p> <p>5. Submitting of the constitutional claim does not suspend the execution of the court decision, with an exception of cases when the Constitutional Court has ruled otherwise</p>
Liechtenstein	<p>Article 52 Constitutional Court Act</p> <p>1) Petitions to the Constitutional Court shall not suspend the act complained of.</p> <p>2) Upon application of the party, the chairman may rule that individual complaints (article 15) shall suspend the act complained of, unless compelling public interests counter-vail and if the execution would result in a disproportionate burden upon the complainant.</p>

State	Relevant constitutional or legal provision
Lithuania	<p>Article 106 paragraph 4 Constitution of the Republic off Lithuania</p> <p>The presentation by the President of the Republic for the Constitutional Court or the resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act.</p>
Montenegro	<p>Article 63 Draft Law on the Constitutional Court Constitutional complaint shall not preclude implementation of the individual act against which it was lodged.</p>
Poland	<p>Article 50 Constitutional Tribunal Act</p> <p>1. The Tribunal may issue a preliminary decision to suspend or stop the enforcement of the judgment in the case to which the complaint refers if the enforcement of the said judgment, decision or another ruling might result in irreversible consequences linked with great detriment to the person making the complaint or where a vital public interest or another vital interest of the person making the complaint speaks in favour thereof.</p>
Russia	<p>Article 42 Federal Constitutional Law on the Constitutional Court</p> <p>In the events of urgency the Constitutional Court of the Russian Federation may propose to the respective bodies and officials that they suspend the disputed act, the process of entry of the contested international treaty of the Russian Federation into force until the Constitutional Court of the Russian Federation has completed the consideration of the case.</p>
Serbia	<p>Article 56 Law on the Constitutional Court</p> <p>In the course of procedure, until the issuing of a final decision, the Constitutional Court may suspend the enforcement of an individual act or action taken on the basis of the general act whose constitutionality or legality are being assessed, where such enforcement could cause irreversible detrimental consequences.</p>
Slovakia	<p>Article 52 Law on the Organisation of the Constitutional Court</p> <p>1. The filing of a complaint shall not have any suspensive effect.</p> <p>2. The Constitutional Court may decide on an interim measure based on the complainant's motion on interim measure and it may suspend the execution of the challenged final decision, measure or other encroachment so long as this does not conflict with important public interest, and so long as the execution of the challenged decision, measure or other encroachment entails the complainant greater damage than that which other persons might incur if the enforceability is suspended; in particular the Court shall impose on the authority which in the complainant's opinion has violated his/her fundamental rights or freedoms the duty temporarily to desist from execution of the final decision, measure, or other encroachment, and the Constitutional Court shall impose the duty on third parties temporarily to desist from applying their rights, as recognized by means of a final decision, measure, or other encroachment.</p> <p>3. The interim measure shall expire at the latest with the day when the decision on merit becomes final, unless the Constitutional Court decides to annul the interim measure earlier.</p> <p>4. The interim measure may be quashed without any motion, should the reasons lapse for which it was imposed.</p>
Slovenia	<p>Article 39 Constitutional Court Act</p> <p>(1) Until a final decision, the Constitutional Court may suspend in whole or in part the implementation of a law, other regulation, or general act issued for the exercise of public authority if difficult to remedy harmful consequences could result from the implementation thereof.</p> <p>(3) If the Constitutional Court suspends the implementation of a regulation or general act issued for the exercise of public authority, it may at the same time decide in what manner the decision is to be implemented.</p>

State	Relevant constitutional or legal provision
	<p>Article 58 If a constitutional complaint is accepted, the panel or the Constitutional Court may suspend the implementation of the individual act which is challenged by the constitutional complaint at a closed session if difficult to remedy harmful consequences could result from the implementation thereof.</p>
South Africa	<p>Article 172(2)(b) Constitution of the Republic of South Africa A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief... Article 172(1)(b) Constitution of the Republic of South Africa When deciding on a constitutional matter within its power, a court may make any order that is just and equitable.</p>
Spain	<p>Article 56 Organic Law on the Constitutional Court</p> <ol style="list-style-type: none"> 1. <i>La interposición del recurso de amparo no suspenderá los efectos del acto o sentencia impugnados.</i> 2. <i>Ello no obstante, cuando la ejecución del acto o sentencia impugnados produzca un perjuicio al recurrente que pudiera hacer perder al amparo su finalidad, la Sala, o la Sección en el supuesto del artículo 52.2, de oficio o a instancia del recurrente, podrá disponer la suspensión, total o parcial, de sus efectos, siempre y cuando la suspensión no ocasioné perturbación grave a un interés constitucionalmente protegido, ni a los derechos fundamentales o libertades de otra persona.</i> 3. <i>Asimismo, la Sala o la Sección podrá adoptar cualesquiera medidas cautelares y resoluciones provisionales previstas en el ordenamiento, que, por su naturaleza, puedan aplicarse en el proceso de amparo y tiendan a evitar que el recurso pierda su finalidad.</i> 4. <i>La suspensión u otra medida cautelar podrá pedirse en cualquier tiempo, antes de haberse pronunciado la sentencia o decidirse el amparo de otro modo. El incidente de suspensión se sustanciará con audiencia de las partes y del Ministerio Fiscal, por un plazo común que no excederá de tres días y con el informe de las autoridades responsables de la ejecución, si la Sala o la Sección lo creyera necesario. La Sala o la Sección podrá condicionar la denegación de la suspensión en el caso de que pudiera seguirse perturbación grave de los derechos de un tercero, a la constitución de caución suficiente para responder de los daños o perjuicios que pudieran originarse.</i> 5. <i>La Sala o la Sección podrá condicionar la suspensión de la ejecución y la adopción de las medidas cautelares a la satisfacción por el interesado de la oportuna fianza suficiente para responder de los daños y perjuicios que pudieren originarse. Su fijación y determinación podrá delegarse en el órgano jurisdiccional de instancia.</i> 6. <i>En supuestos de urgencia excepcional, la adopción de la suspensión y de las medidas cautelares y provisionales podrá efectuarse en la resolución de la admisión a trámite. Dicha adopción podrá ser impugnada en el plazo de cinco días desde su notificación, por el Ministerio Fiscal y demás partes personadas. La Sala o la Sección resolverá el incidente mediante auto no susceptible de recurso alguno.</i>
Switzerland	<p>Article 103 Federal Judicature Act</p> <ol style="list-style-type: none"> 1. En règle générale, le recours n'a pas d'effet suspensif. 3. Le juge instructeur peut, d'office ou sur requête d'une partie, statuer différemment sur l'effet suspensif.
"The Former Yugoslav Republic of Macedonia"	<p>Article 57 Rules of Procedure of the Constitutional Court During the proceedings, the Constitutional Court may pass a resolution to suspend the execution of the individual act or action until a final judgment has been adopted.</p>

State	Relevant constitutional or legal provision
	<p>Article 27 Rules of Procedure of the Constitutional Court “The Constitutional Court may, during the procedure, until the adoption of a final decision, take a resolution ordering the suspension of the execution of certain acts or activities which are undertaken on the basis of a law, other regulation or a general act whose constitutionality or legality is being assessed, if the consequences arising from its execution could not be easily eliminated”.</p>
Turkey	<p>There is no explicit legal regulation yet, but the Constitutional Court decided in 1993 that it may suspend the application of the challenged legal act if the absence of such suspension can cause irreparable and harmful consequences and if the act challenged seems manifestly unconstitutional. It could be considered that the Constitutional Court will extend this considerations to the newly created individual constitutional complaint.</p>
United States	<p>U.S. Supreme Court Rule 23 2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment.</p>

1.1.11. Table: Stay of ordinary proceedings

State	Relevant constitutional or legal provision
Albania	<p>Article 68 Law on the Organisation and Functioning of the Constitutional Court 1. When a court of any instance or a trial judge considers during the trial <i>ex officio</i> or at the request of either party involved that a certain law is unconstitutional and if there is a direct link between the law and the solution of the case at hand, that particular law shall not be applied in the case at hand and after suspending the trial the judge shall refer the file to the Constitutional Court, which on its side should deliver its verdict as to the constitutionality of the said law.</p>
Andorra	<p>Article 4 Qualified Law on the Constitutional Court: “2. The jurisdiction of the Constitutional Court takes priority over that of the ordinary courts. A case which has been brought before the Constitutional Court cannot at the same time be examined by another court. Where the Constitutional Court declares admissible a case which has first been brought before an ordinary court that court ceases to deal with it”. Article 55.2 Qualified Law on the Constitutional Court 2. The main case or interlocutory matter, as appropriate, follows its course until the judgment or resolution stage, at which point the procedure is frozen until the Constitutional Court has pronounced the decree resolving the matter or decision. If the step which led to the proceedings being brought before the Constitutional Court concerns the setting aside of actions, no decision on the principal cause may be taken until the Constitutional Court has taken its decision.</p>
Armenia	<p>Article 71 Law on the Constitutional Court: “2. Before applying to Constitutional Court the courts must and the Chief Prosecutor has the right to suspend the given case until the decision of the Constitutional Court gets into force”.</p>
Belgium	<p>Art. 30 of the Special Law on the Court A decision to refer a question to the Constitutional Court for a preliminary ruling shall have the effect of suspending the proceedings and the time limits for proceedings and</p>

State	Relevant constitutional or legal provision
	limitation periods from the date of that decision until the date on which the ruling of the Constitutional Court is notified to the court of law that posed the preliminary question. A copy of the ruling shall be sent to the parties.
Chile	Article 94 Constitution [The Chamber] shall be competent to decide on the suspension of the proceeding in which the action of inapplicability due to unconstitutionality originated.
Croatia	Article 37 Constitutional Law on the Constitutional Court: "(1) If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, are not in accordance with the Constitution, it shall stop the proceedings and present a request with the Constitutional Court to review the constitutionality of the law, or some of its provisions".
France	<p>Article 23-3 de la Loi organique n° 2009-1523 du 10 décembre 2009 relative à l'application de l'article 61-1 de la Constitution.</p> <p><i>"Lorsque la question est transmise, la juridiction sursoit à statuer jusqu'à réception de la décision du Conseil d'État ou de la Cour de cassation ou, s'il a été saisi, du Conseil constitutionnel. Le cours de l'instruction n'est pas suspendu et la juridiction peut prendre les mesures provisoires ou conservatoires nécessaires.</i></p> <p><i>Toutefois, il n'est sursis à statuer ni lorsqu'une personne est privée de liberté à raison de l'instance, ni lorsque l'instance a pour objet de mettre fin à une mesure privative de liberté.</i></p> <p><i>La juridiction peut également statuer sans attendre la décision relative à la question prioritaire de constitutionnalité si la loi ou le règlement prévoit qu'elle statue dans un délai déterminé ou en urgence. Si la juridiction de première instance statue sans attendre et s'il est formé appel de sa décision, la juridiction d'appel sursoit à statuer. Elle peut toutefois ne pas surseoir si elle est elle-même tenue de se prononcer dans un délai déterminé ou en urgence.</i></p> <p><i>En outre, lorsque le sursis à statuer risquerait d'entraîner des conséquences irrémédiables ou manifestement excessives pour les droits d'une partie, la juridiction qui décide de transmettre la question peut statuer sur les points qui doivent être immédiatement tranchés.</i></p> <p><i>Si un pourvoi en cassation a été introduit alors que les juges du fond se sont prononcés sans attendre la décision du Conseil d'État ou de la Cour de cassation ou, s'il a été saisi, celle du Conseil constitutionnel, il est sursis à toute décision sur le pourvoi tant qu'il n'a pas été statué sur la question prioritaire de constitutionnalité. Il en va autrement quand l'intéressé est privé de liberté à raison de l'instance et que la loi prévoit que la Cour de cassation statue dans un délai déterminé".</i></p>
Germany	Article 100 Constitution (1) Where a court considers that a law on whose validity its ruling depends is unconstitutional it shall stay the proceedings and, if it holds the constitution of a Land to be violated, seek a ruling from the Land court with jurisdiction for constitutional disputes or, where it holds this Basic Law to be violated, from the Federal Constitutional Court.
Georgia	Article 19 Organic Law of Georgia on the Constitutional Court 2. if, while considering a particular case, a court of general jurisdiction concludes, that there is a sufficient ground to deem the law or other normative act, applicable by the court while adjudicating upon the case, fully or partially incompatible with the Constitution, the court shall suspend the consideration of the case and apply to the Constitutional Court. The consideration of the case shall be resumed after a judgment on the issue is adopted by the Constitutional Court. (12.02.02 N° 1264)

State	Relevant constitutional or legal provision
Greece	<p>Article 48 Law establishing a Special Highest Court</p> <p>[...]The case shall furthermore remain pending before the court requesting the preliminary ruling which, upon delivery of the Special Court's ruling, shall try the case again at the request of one of the parties or of its own motion, it being compelled to abide by the ruling of the Special Court which shall be transmitted to it by the Registrar of the Special Court.</p>
Hungary	<p>Article 38 Act on the Constitutional Court</p> <p>1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.</p>
Italy	<p>Section 23 Law on the composition and procedures of the Constitutional Court</p> <p>If the case cannot be tried without first resolving the question of constitutionality, or if the trial court does not consider that the question of constitutionality raised is groundless, it shall issue an order referring the matter immediately to the Constitutional Court, setting out the terms and the reasons for raising the question of constitutionality, and shall suspend trial proceedings.</p>
Latvia	<p>Article 19.2 Law on the Constitutional Court</p> <p>3. [...] Initiating a case at the Constitutional Court means the civil, criminal or administrative case shall not be reviewed at the court of general jurisdiction to the time of announcement of a Constitutional Court Judgment;</p>
Liechtenstein	<p>Article 18 1) Constitutional Court Act: "The Constitutional Court shall decide on the constitutionality of laws or individual legislative provisions: b) on application of a court, if and to the extent that the court has to apply a law or individual provisions thereof (on the basis of precedent) that it believes to be unconstitutional in a matter pending before it and the court has decided to interrupt the proceedings to request a ruling by the Constitutional Court".</p>
Lithuania	<p>Article 67 Law on the Constitutional Court of the Republic of Lithuania</p> <p>Provided that there are grounds to consider that a law or other legal act, which shall be applicable in a concrete case, fails to conform with the Constitution, the court (judge) shall suspend the examination of said case and, with regard to the competence of the Constitutional Court, shall appeal to it with a petition to decide whether the said law or other legal act is in conformity with the Constitution.</p>
Luxemburg	<p>Article 7 Law on the Organisation of the Constitutional Court</p> <p>The decision to put a preliminary question to the Constitutional Court suspends the proceedings and all procedural time limits or limitation periods from the date of the decision up to the date on which the referring court receives the Constitutional Court's ruling on the preliminary question.</p>
Russian Federation	<p>Article 98 Federal Law on the Constitutional Court</p> <p>The Constitutional Court of the Russian Federation having taken up the complaint on the violation by the law of the constitutional rights and freedoms of citizens for the consideration shall notify about that the court or other body which considers the case in which the appealed law has been applied or ought to be applied. Such notification does not entail the suspension of the proceedings on the case.</p> <p>The court or other body which considers the case in which the appealed law has been applied or ought to be applied may suspend the proceedings pending the passing of the judgment of the Constitutional Court of the Russian Federation.</p> <p>Article 103</p> <p>Consequences of the Submission of Requests</p>

State	Relevant constitutional or legal provision
	During the period from the time when the court hands down a decision to petition the Constitutional Court of the Russian Federation and until the adoption of a ruling by the Constitutional Court of the Russian Federation, proceedings on the case or the implementation of the decision handed down by the court on the case shall be suspended.
Slovenia	<p>Article 156 Constitution If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision.</p> <p>Article 23 Constitutional Court Act</p> <p>(1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality.</p> <p>(2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality.</p> <p>(3) If by a request the Supreme Court initiates proceedings for the review of the constitutionality of a law or part thereof, a court which should apply such law or part thereof in deciding may stay proceedings until the final decision of the Constitutional Court without having to initiate proceedings for the review of the constitutionality of such law or part thereof by a separate request.</p>
South Africa	<p>Section 172(2)(b) Constitution of the Republic of South Africa A court which makes an order of constitutional invalidity... may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.</p>
Spain	<p>Article 35 Organic Law on the Constitutional Court <i>2. El órgano judicial sólo podrá plantear la cuestión una vez concluido el procedimiento y dentro del plazo para dictar sentencia, o la resolución jurisdiccional que procediese, y deberá concretar la ley o norma con fuerza de ley cuya constitucionalidad se cuestiona, el precepto constitucional que se supone infringido y especificar o justificar en qué medida la decisión del proceso depende de la validez de la norma en cuestión. Antes de adoptar mediante auto su decisión definitiva, el órgano judicial oirá a las partes y al Ministerio Fiscal para que en el plazo común e improrrogable de 10 días puedan alegar lo que deseen sobre la pertinencia de plantear la cuestión de inconstitucionalidad, o sobre el fondo de esta; seguidamente y sin más trámite, el juez resolverá en el plazo de tres días. Dicho auto no será susceptible de recurso de ninguna clase. No obstante, la cuestión de inconstitucionalidad podrá ser intentada de nuevo en las sucesivas instancias o grados en tanto no se llegue a sentencia firme.</i></p>
“The Former Yugoslav Republic of Macedonia”	<p>Article 17 Law on the Courts When the court finds that the Law that is to be applied in the specific case is not in accordance with the Constitution, and the constitutional provisions cannot be directly applied, will stay the procedure until the Constitutional Court delivers a decision. The party has a right to an appeal against the decision for stay of the procedure</p>
Ukraine	<p>Article 83 Law on the Constitutional Court When, in the process of examination of cases under general court procedure, a dispute concerning the constitutionality of norms of a law which is being applied by the court arises, the examination of the case shall be suspended.</p>

1.1.12. Table: Injunctive measures

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

State	Relevant constitutional or legal provision
	<p>(4) An order by which the implementation of a regulation or general act issued for the exercise of public authority is suspended must include a statement of reasons.</p> <p>(5) The order referred to in the preceding paragraph is published in the Official Gazette of the Republic of Slovenia as well as in the official publication in which the respective regulation or general act issued for the exercise of public authority was published. Such suspension takes effect the day following the publication of the order in the Official Gazette of the Republic of Slovenia, and in case of a public announcement of the order, the day of its announcement.</p> <p>Article 58</p> <p>If a constitutional complaint is accepted, the panel or the Constitutional Court may suspend the implementation of the individual act which is challenged by the constitutional complaint at a closed session if difficult to remedy harmful consequences could result from the implementation thereof.</p>
Switzerland	<p>Article 104 Federal Judicature Act</p> <p>Le juge instructeur peut, d'office ou sur requête d'une partie, ordonner les mesures provisoires nécessaires au maintien de l'état de fait ou à la sauvegarde d'intérêts menacés.</p>

1.1.13. Table: Extension of norms under review

State	Relevant constitutional or legal provision
Armenia	<p>Article 68 of the Law On the Constitutional Court of the Republic of Armenia</p> <p>9. While determining the constitutionality of any general act mentioned in Paragraph 1 of Article 100 of the Constitution the Constitutional Court together with the challenged provision of the act finds out the constitutionality of any other provision of the act from the perspective of systematic interrelation of those. If the findings of the Court prove that other provisions of the act are interrelated with the challenged provisions and are not in conformity with the Constitution, the Constitutional Court can determine those provisions also invalid and unconstitutional.</p>
Croatia	<p>Article 38 of the Constitutional Act on the Constitutional Court:</p> <p>(2)"The Constitutional Court itself may decide to institute proceedings to review the constitutionality of the law and the review of constitutionality and legality of other regulations"</p> <p>Article 71 Constitutional Act on the Constitutional Court</p> <p>(1) The Chamber, respective the Session of the Constitutional Court shall examine only the violations of constitutional rights which are stated in the constitutional complaint". But: Article 74: "If ascertained that the constitutional right of the applicant has been violated not only by the disputed, but also by some other act brought in this matter, the Constitutional Court shall repeal by the decision, as a whole or in part, and this act as well.</p>
Liechtenstein	<p>Article 19 Constitutional Court Act</p> <p>1) If the Constitutional Court finds that a law or individual provisions thereof are incompatible with the Constitution, it shall annul the law or the relevant provisions. If further provisions of the law that are directly connected therewith are incompatible with the Constitution for the same reasons, the Constitutional Court may also annul them <i>ex officio</i> without an application.</p>

State	Relevant constitutional or legal provision
Moldova	<p>Article 6 Code of constitutional jurisdiction</p> <p>3) During the constitutional control of contested act Constitutional Court can adopt a decision concerning other normative acts which constitutionality depend fully or partially on constitutionality of the contested act.</p>
Serbia	<p>Article 54 Law on the Constitutional Court</p> <p>In the procedure of assessing constitutionality and legality, the Constitutional Court is not constrained by the request of the authorised propounder, or initiator.</p>
Slovenia	<p>Article 30 Constitutional Court Act</p> <p>In deciding on the constitutionality and legality of a regulation or general act issued for the exercise of public authority, the Constitutional Court is not bound by the proposal of a request or petition. The Constitutional Court may also review the constitutionality and legality of other provisions of the same or other regulation or general act issued for the exercise of public authority for which a review of constitutionality or legality has not been proposed, if such provisions are mutually related or if such is necessary to resolve the case.</p> <p>Article 59</p> <p>(1) By a decision the Constitutional Court either dismisses a constitutional complaint as unfounded or grants such and in whole or in part annuls or abrogates the individual act, and remands the case to the authority competent to decide thereon.</p> <p>(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act...</p>
“The Former Yugoslav Republic of Macedonia”	<p>Article 14 Rules of Procedure of the Constitutional Court: During the examination of the constitutionality of a law or of the constitutionality and legality of a regulation or other common act, the Constitutional Court may also assess the constitutionality and legality of a regulation or other general act that is not challenged in the petition.</p>
Turkey	<p>Article 29 of the Law on the Organisation and Trial Proceedings of the Constitutional Court:</p> <p>The Constitutional Court may extend the scope of norms under review only in exceptional cases where the annulment of the originally challenged norms renders another norm and/ or part of the norm meaningless or inapplicable; norms may also be omitted from the text with due reasoning.</p>
Ukraine	<p>Article 61 Law on the Constitutional Court: If consideration of the case arising from constitutional claim or constitutional petition reveals the non-conformity with the Constitution of Ukraine of legal acts (their separate parts) other than those for which an examination has been opened and which influences the adoption of a decision or the providing of an opinion in the case, the Constitutional Court of Ukraine recognises such legal acts (their separate parts) as unconstitutional.</p>

1.1.14. Table: Erga omnes effect

State	Relevant constitutional or legal provision
Albania	Article 132 (1) Constitution: "The decisions of the Constitutional Court have general binding force and are final".
Argentina	No precedent; decisions concern only concrete case, even by Supreme Court; however, precedent is informally established in practice.
Armenia	Article 61 Law on the Constitutional Court 5. The decisions of the Constitutional Court on the substance of the case are mandatory for all the state and local self-government bodies, their officials as well as for the natural and legal persons in the whole territory of the Republic of Armenia. 6. The procedural decisions of the Constitutional Court are mandatory for all the participants of the case and other addressees of those. Article 69 Law on the Constitutional Court 12. In cases defined by this Article if the Constitutional Court decision finds the challenged provision unconstitutional and annuls it, the final judicial act shall be revisited in the order prescribed by Law.
Austria	Article 139 Constitution (6) If an ordinance has been rescinded on the score of illegality or if the Constitutional Court has pursuant to para. 4 above pronounced an ordinance to be contrary to law, all courts and administrative authorities are bound by the Court's decision, the ordinance shall however continue to apply to the circumstances effected before the rescission, the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to para. 5 above, the ordinance shall apply to all the circumstances effected, the case in point excepted, till the expiry of this deadline. Article 140 (7) If a law has been rescinded on the score of unconstitutionality or if the Constitutional Court has pursuant to para. 4 above pronounced a law to be unconstitutional, all courts and administrative authorities are bound by the Court's decision. The law shall however continue to apply to the circumstances effected before the rescission the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to para. 5 above, the law shall apply to all the circumstances effected, the case in point excepted till the expiry of this deadline.
Azerbaijan	Article 66 Law on the Constitutional Court. Legal Force of Resolutions of Constitutional Court 66.1. According to Article 130.9 of the Constitution of Azerbaijan Republic, the resolutions of Constitutional Court shall have binding force through out the territory of Azerbaijan Republic.
Belgium	Article 9 Special Law on the Court 1. Judgments of annulment delivered by the Constitutional Court shall have force of res judicata commencing from their publication in the Moniteur belge. 2. Judgments delivered by the Constitutional Court which dismiss an action for annulment shall be binding on the courts in respect of questions of law settled by such judgments. Article 28 The court which raised the preliminary issue, and any other court called upon to rule on the same matter, shall, in settling the dispute which gave rise to the questions referred to in Article 26, comply with the ruling of the Constitutional Court.

State	Relevant constitutional or legal provision
Bosnia and Herzegovina	<p>Article 63 Rules of the Constitutional Court</p> <p>2. In a decision establishing incompatibility under Article VI.3 (a) and VI.3 (c), the Constitutional Court may quash the general act or some of its provisions, partially or entirely.</p> <p>Article 64</p> <p>1. In a decision granting an appeal, the Constitutional Court shall quash the challenged decision and refer the case back to the court or to the body which took that decision, for renewed proceedings. If the law regulating the competence for acting in the respective legal matter was amended prior to taking of a decision by the Constitutional Court, the court or the body which took the quashed decision is obligated to refer the case to the competent court or body without delay.</p>
Brazil	<p>Article 52 Constitution</p> <p>It is exclusively the competence of the Federal Senate:</p> <p>X - to stop the application, in full or in part, of a law declared unconstitutional by final decision of the Supreme Federal Court.</p> <p>Article 103-A. The Supreme Federal Court shall have the power to, by own initiative or by provocation, by means of a decision taken by two thirds of their members, after reiterated decisions about constitutional matter, approve summary which, after publication in official gazette, shall have binding effect over the other bodies of the Judiciary Power and over the direct and indirect public administration, at federal, State and municipal levels, as well as proceed to their revision or cancelling, in the manner provided for in law.</p>
Bulgaria	<p>Article 22 Constitutional Court Act</p> <p>1. With its decision the Court shall rule only on the motion as presented. It shall not be limited to the indicated grounds for non-conformity with the Constitution.</p> <p>2. Acts which have been declared unconstitutional shall not be implemented.</p> <p>3. When an act has been issued by an incompetent organ the Constitutional Court shall declare it null and void.</p> <p>4. The legal effects which have occurred on the basis of the act set out in paragraph 2 shall be resolved by the organ which has issued it.</p>
Canada	<p>Section 52 of the Supreme Court Act.</p> <p>The Court shall have and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada, and the judgment of the Court is, in all cases, final and conclusive.</p> <p>Only decisions of Supreme Court have <i>erga omnes</i> effect; see http://www.er.uqam.ca/nobel/r31400/jur2515/ndeccours/jur2515chap7-2007.pdf</p>
Croatia	<p>Constitutional Act on the Constitutional Court</p> <p>Article 31</p> <p>(1) The decisions and the rulings of the Constitutional Court are obligatory and every individual or legal person shall obey them.</p> <p>(2) All bodies of the central government and the local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.</p>
Czech Republic	<p>Article 89 Constitution.</p> <p>(2) Enforceable decisions of the Constitutional Court are binding on all authorities and persons.</p> <p>Constitutional Court Act</p> <p>Article 82</p> <p>(3) If it grants the constitutional complaint of a natural or legal person under Article 87 para. 1, lit. d) of the Constitution, the Court shall:</p>

State	Relevant constitutional or legal provision
	<p>a) annul the contested decision of the public authority, or b) if a constitutionally guaranteed fundamental right or basic freedom was infringed as the result of an encroachment by a public authority other than a decision, enjoin the authority from continuing to infringe this right or freedom and order it, to the extent possible, to restore the situation that existed prior to the infringement.</p>
France	<p>Article 62. A provision declared unconstitutional on the basis of article 61 shall be neither promulgated nor implemented. A provision declared unconstitutional on the basis of article 61-1 shall be repealed as of the publication of the said decision of the Constitutional Council or as of a subsequent date determined by said decision. The Constitutional Council shall determine the conditions and the limits according to which the effects produced by the provision shall be liable to challenge. No appeal shall lie from the decisions of the Constitutional Council. They shall be binding on public authorities and on all administrative authorities and all courts.</p>
Germany	<p>Article 94 Constitution (2) The constitution and procedure of the Federal Constitutional Court shall be governed by a federal law which shall specify the cases in which its decisions have the force of law. Article 31 Law on the Federal Constitutional Court 1. The decisions of the Federal Constitutional Court shall be binding upon federal and Land constitutional organs as well as on all courts and authorities. 2. In cases pursuant to Article 13 (6), (11), (12) and (14) above decisions of the Federal Constitutional Court shall have the force of law. This shall also apply in cases pursuant to Article 13 (8a) [constitutional complaint] above if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law or to be null and void. If a law is declared to be compatible or incompatible with the Basic Law or other federal law or to be null and void, the decision shall be published in the Federal Law Gazette by the Federal Ministry of Justice. The above shall apply mutatis mutandis to decisions in cases pursuant to Article 13 (12) and (14) above. Article 79 Law on the Federal Constitutional Court 1. New proceedings may be instituted in accordance with the provisions of the Code of Criminal Procedure against a final conviction based on a rule which has been declared incompatible with the Basic Law or null and void in accordance with Article 78 above or on the interpretation of a rule which the Federal Constitutional Court has declared incompatible with the Basic Law. 2. In all other respects, subject to the provisions of Article 95 (2) below or a specific statutory provision, final decisions based on a rule declared null and void pursuant to Article 78 above shall remain unaffected. The execution of such decision shall not be admissible. Where enforcement is to be effected in accordance with the provisions of the Code of Civil Procedure the provisions of Article 767 of the Code shall apply mutatis mutandis. Claims on account of unjustified benefit shall be excluded. Article 95 Law on the Federal Constitutional Court 1. If the constitutional complaint is upheld, the decision shall state which provision of the Basic Law has been infringed and by which act or omission. The Federal Constitutional Court may at the same time declare that any repetition of the act or omission against which the complaint was directed will infringe the Basic Law. 2. If a constitutional complaint against a decision is upheld, the Federal Constitutional Court shall quash the decision and in cases pursuant to the first sentence of Article 90 (2) above it shall refer the matter back to a competent court.</p>

State	Relevant constitutional or legal provision
	3. If a constitutional complaint against a law is upheld, the law shall be declared null and void. The same shall apply if a constitutional complaint pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law.
Greece	Article 51 Law on the Special Highest Court 1. A decision by the Special Court resolving a dispute concerning assessment of the constitutionality of a law or its interpretation shall have force <i>erga omnes</i> as from its delivery in open court, subject to paragraph 4 of this article.
Hungary	Article 32A Constitution (2) The Constitutional Court shall annul the statutes and other legal norms that it finds to be unconstitutional. Article 27 Law on the Constitutional Court 1. The decision of the Constitutional Court may not be appealed. 2. The decisions of the Constitutional Court shall be binding on everybody.
Ireland	Article 34 (3) Constitution 6º The decision of the Supreme Court shall in all cases be final and conclusive. 4º No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.
Italy	Article 136 Constitution When the Court declares the constitutional illegitimacy of a law or enactment having the force of law, the law ceases to have effect from the day following the publication of the decision. Article 30, cl. 3 of the Law on the composition and procedures of the Constitutional Court (Law no. 87/1953): Laws declared unconstitutional cannot find application starting from the day following publication of the decision
Korea, Republic	Constitutional Court Act Article 47 (Effect of Decision of Unconstitutionality) (1) Any decision that statutes are unconstitutional shall bind the ordinary courts, other state agencies and local governments.
Liechtenstein	Article 17 Law on the Constitutional Court 1) If the Constitutional Court finds a violation, by the decision or order of a public authority complained of, of one of the complainant's constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint (article 15 paragraph 2), the Constitutional Court shall annul such decision or order and, if applicable, shall call upon the responsible authority to decide the matter anew. Article 19 Law on the State Court 1) If the Constitutional Court finds that a law or individual provisions thereof are incompatible with the Constitution, it shall annul the law or the relevant provisions. If further provisions of the law that are directly connected therewith are incompatible with the Constitution for the same reasons, the Constitutional Court may also annul them <i>ex officio</i> without an application. Article 54 The decisions of the Constitutional Court shall be binding upon all authorities of the country and of the municipalities as well as upon all courts. In cases according to articles 19, 21 and 23, the judgment of the Constitutional Court shall be universally binding.

State	Relevant constitutional or legal provision
Lithuania	<p>Article 72 Law on the Constitutional Court Rulings adopted by the Constitutional Court shall have the power of law and shall be binding to all governmental institutions, companies, firms, and organisations as well as to officials and citizens.</p>
Luxembourg	<p>Article 15 Law on the organisation of the Constitutional Court: The referring court and any other court called on to deal with the same case shall abide by the Constitutional Court's ruling when determining the case.</p>
Malta	<p>Article 242 Code of Organisation and Civil Procedure When a court, by a judgment which has become <i>res judicata</i>, declares any provision of any law to run counter to any provision of the Constitution of Malta or to any human right or fundamental freedom set out in the First Schedule to the European Convention act, or to be ultra vires, the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives, who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House.</p>
Mexico	<p>As for judgments by ordinary courts: Art.107 Constitution I. Judgment will always be such that it only will be concerned with particular parties, limited to relief and protection in special cases for those who are making the complaint, without making a general declaration with respect to the law or act that motivates the complaint. Article 192²⁷³ The jurisprudence established by the Supreme Court of Justice, either sitting in plenary or in chambers, is obligatory for these in relation to what the plenary decrees, and also to the unitary and collegial circuit tribunals, the district courts, the military tribunals and courts under common authority of the States and the federal district, and local and federal administrative tribunals and labour tribunals. The resolutions shall constitute jurisprudence if what is declared in the resolutions is upheld in five consecutive enforceable sentences, that they are approved of by at least eight judges if it concerns the jurisprudence of the plenary and four judges in the case of jurisprudence of the chambers.</p>
Moldova	<p>There is no explicit provision on erga omnes effect, but according to Article 140 Constitution (1) Laws and other regulations or parts thereof become null and void from the moment that the Constitutional Court passes the appropriate decisions to that effect.</p>

²⁷³ Articulo 192.- la jurisprudencia que establezca la suprema corte de justicia, funcionando en pleno o en salas, es obligatoria para estas en tratandose de lasque decrete el pleno, y ademas para los tribunales unitarios y colegiados de circuito, los juzgados de distritos los tribunales militares y judiciales del orden comun de los estados y del distrito federal; y tribunales administrativos y del trabajo, locales o federales.

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

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

State	Relevant constitutional or legal provision
Montenegro	<p>Article 151 Constitution The decision of the Constitutional Court shall be generally binding and enforceable. Article 62 Draft Law on the Constitutional Court If a human right or freedom guaranteed by the Constitution of more persons was violated by an individual act, and only some of them lodged constitutional complaint, the decision of the Constitutional Court shall also relate to persons who did not lodge the constitutional complaint, provided that they are in the same legal situation.</p>
Peru	<p>As for procedures before ordinary courts: Article 14 Organic Law on the Judicial Power²⁷⁴ In all these cases the judges shall limit themselves to declaring the inapplicability of the legal norm due to unconstitutionality, for the concrete case, without affecting its legal force, which is controlled in the form established by the Constitution. Article 35 of Law no. 26.435²⁷⁵ The sentences passed in unconstitutionality proceedings shall have authority of res judicata, shall bind all public powers and shall produce general effects from the day following their publication. Article VII Constitutional Procedure Code (p.t.)²⁷⁶ The sentences of the Constitutional Tribunal which have authority of res judicata shall constitute binding precedent if the sentence specifying the scope of its normative effects so states. If the Constitutional Tribunal decides to diverge from the precedent, it must specify the factual and legal bases that underlie the sentence and the reasons why it diverges from the precedent. Article 2²⁷⁷ If the threat to or violation of acts that have their basis in the application of a directly applicable unconstitutional norm is invoked, the sentence declaring the request admissible shall declare in addition the inapplicability of the specified norm.</p>
Poland	<p>Article 190 Constitution: 1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final. 4. A judgment of the Constitutional Tribunal on the nonconformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally</p>

²⁷⁴ Ley orgánica del poder judicial
Artículo 14

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

²⁷⁵ Artículo 35 de la ley n° 26.435,
las sentencias recaídas en los procesos de inconstitucionalidad tienen autoridad de cosa juzgada, vinculan a todos los poderes públicos y producen efectos generales desde el día siguiente a la fecha de su publicación.

²⁷⁶ Las sentencias del Tribunal Constitucional que adquieren la autoridad de cosa juzgada constituyen precedente vinculante cuando así lo exprese la sentencia, precisando el extremo de su efecto normativo. Cuando el Tribunal Constitucional resuelva apartándose del precedente, debe expresar los fundamentos de hecho y de derecho que sustentan la sentencia y las razones por las cuales se aparta del precedente.

²⁷⁷ Article 2 Código procesal constitucional:
Cuando se invoque la amenaza o violación de actos que tienen como sustento la aplicación de una norma autoaplicativa incompatible con la Constitución, la sentencia que declare fundada la demanda dispondrá, además, la inaplicabilidad de la citada norma.

State	Relevant constitutional or legal provision
	<p>effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.</p> <p>Article 71 Constitutional Tribunal Act</p> <p>2. Where the Tribunal decides that the normative act ceases to have effect after the day of the publication of the judicial decision confirming its non-conformity to the Constitution, ratified international agreement or statutes, it shall, in the judicial decision, determine the date the act shall cease to have effect.</p>
Portugal	<p>Article 281 Constitution</p> <p>General review of constitutionality and legality:</p> <p>3. The Constitutional Court also has jurisdiction to review and give generally binding rulings on the unconstitutionality or illegality of a legal rule, the application of which it has held to be unconstitutional or illegal in three appeals.</p> <p>Article 80 law on the Constitutional Court:</p> <p>1. The decision on the appeal determines res judicata regarding the question of unconstitutionality or illegality.</p> <p>2. Should the Constitutional Court judge the appeal to be founded, even if only partially, the proceedings drop back to the court from which they came, so that this same court, depending on the case, can change the decision or have it changed in agreement with the judgment on the question of unconstitutionality or illegality.</p> <p>3. In the case of a judgment of unconstitutionality or legality on the rule applied in the decision appealed, or refused application, being founded on a particular interpretation of this same rule, this should be applied with the same interpretation in the case in question.</p>
Romania	<p>Article 147 Constitution</p> <p>(1) Any provisions of the laws and ordinances in force, as well as any of the regulations which are held as unconstitutional, shall cease their legal effects within 45 days from publication of the decision rendered by the Constitutional Court where Parliament or Government, as may be applicable, have failed, in the meantime, to bring these unconstitutional provisions into accord with those of the Constitution. For this limited length of time the provisions declared unconstitutional shall be suspended as of right.</p> <p>(2) In cases related to laws declared unconstitutional before their promulgation, Parliament must reconsider those provisions concerned in order to bring such into line with the decision rendered by the Constitutional Court.</p> <p>(3) If a treaty or international agreement has been declared constitutional according to Article 146 subparagraph b), such may no longer be demurred against via an objection of unconstitutionality. Any treaty or international agreement held as unconstitutional cannot be ratified.</p> <p>(4) Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, decisions shall be generally binding and take effect only for the future.</p> <p>Article 29 (3) Law on the Organisation and Operation of the Constitutional Court</p> <p>Legal provisions whose constitutionality has been found by prior decision of the Constitutional Court cannot be challenged by an exception of unconstitutionality".</p> <p>Article 31 Law on the Organisation and Functioning of the Constitutional Court</p> <p>The decision by which the unconstitutionality of a law or of a Government ordinance which is in force, or of provisions thereof, is decided shall be final and binding "decision dismissing the objection of unconstitutionality is not effective erga omnes, but only inter</p>

State	Relevant constitutional or legal provision
	partes, which allows other legal subjects as well to raise an identical objection, in anticipation that the Constitutional Court may decide to change its jurisprudence and eventually admit the objection of unconstitutionality. ²⁷⁸
Russian Federation	<p>Article 6 Federal Constitutional Law on the Constitutional Court</p> <p>The decisions of the Constitutional Court of the Russian Federation shall be obligatory throughout the territory of the Russian Federation for all representative, executive, and judicial organs of State Government, organs of local government, enterprises, agencies, organisations, officials, citizens and their associations.</p> <p>Art. 79</p> <p>Legal Force of Decisions</p> <p>Decisions of the Constitutional Court of the Russian Federation shall be final, not subject to appeal and shall enter into force without delay after their announcement. Decisions of the Constitutional Court of the Russian Federation shall be directly effective and not require confirmation by other bodies or officials. The legal force of a decree of the Constitutional Court of the Russian Federation declaring an act unconstitutional may not be overcome by the repeat adoption of the same act. Acts or certain of their provisions declared unconstitutional shall lose force; international agreements of the Russian Federation which have not entered into force shall not be subject to introduction into force or application. Decisions of courts and other bodies based on acts declared unconstitutional shall not be enforced and must be reviewed where established by federal law. In the event that the declaration of a normative act as unconstitutional has created a gap in legal regulation, the Constitution of the Russian Federation shall be directly applied.</p>
San Marino	<p>Qualified law on the organisation of the <i>Collegio Garante</i> (p.t.)</p> <p>Article 13²⁷⁹</p> <p>The declaration of inadmissibility of the request by the judge <i>a quo</i> doesn't preclude to lodge again a request concerning the same question before other instances or in other proceedings.</p> <p>Article 14²⁸⁰</p> <p>4. The decision of acceptance and of rejection are adopted with sentences. In the case of an acceptance, the <i>Collegio Garante</i> will declare the impugned provisions illegitimate.</p> <p>6. Within five days after their deposit, the decisions following requests submitted incidentally are transmitted, with the restitution of the files, to the judicial authority before which the proceeding is pending.</p>
Serbia	<p>Article 7 Law on the Constitutional Court</p> <p>Decisions of the Constitutional Court are final, enforceable and universally binding.</p>

²⁷⁸ CDL-JU(2004)021, I. Vida, "The obligatory force of decisions of the Constitutional Court for other courts as stabilising factor", report for the Conference on the "Role of the Constitutional Court in the Maintenance of the Stability and Development of the Constitution", Moscow, 2004

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

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

State	Relevant constitutional or legal provision
Slovakia	<p>Article 127(2) Constitution If the Constitutional Court grants a complaint, it shall hold in its decision that the rights or freedoms according to section 1 have been violated by a final decision, measure or other encroachment and it shall annul that decision, measure or other encroachment</p> <p>Article 56 Law on the Organisation of the Constitutional Court</p> <p>(1) Should the Constitutional Court grant the complaint, in its decision the Court shall state which fundamental right or freedom or which provision of the Constitution, constitutional law or international treaty has been violated, and also shall specify the final decision, measure or other encroachment due to which the fundamental right or freedom has been violated.</p> <p>(2) Should the fundamental right or freedom be violated by a decision or measure, the Constitutional Court shall annul that decision or measure. The Constitutional Court shall also annul any other encroachment that has violated a fundamental right or freedom, should the nature of the encroachment make annulling possible.</p> <p>(3) If the Constitutional Court grants the complaint, it may:</p> <ul style="list-style-type: none"> a) order that the authority, violating the fundamental right or freedom through its inactivity, shall proceed further according to procedural codes, b) refer the case back for further proceedings, c) prohibit continued violation of the fundamental right or freedom or d) order the authority which has violated the fundamental right or freedom to restore the state of affair prior to the violation of the fundamental right or freedom. <p>(4) The Constitutional Court may also afford just satisfaction to that party whose fundamental right or freedom has been violated.</p> <p>(5) Should the Constitutional Court decide to afford just satisfaction, the authority which has violated a fundamental right or freedom must render it to the complainant within two months from the day on which the decision of the Constitutional Court becomes final.</p> <p>(6) If the final decision, measure or other encroachment is annulled or if the case is referred back by the Constitutional Court for further proceedings, the authority who has issued the decision, decided on the measure or caused some other encroachment must rehear the case and to decide on the case again. In such proceedings or procedure the authority shall be bound by the Constitutional Court's legal opinion.</p> <p>(7) The authority which has issued a decision in a case, decided on a measure or carried out some other encroachment, shall be bound by the decision under subsection 3 which is enforceable on its delivery.</p>
Slovenia	<p>Article 1 Constitutional Court Act</p> <p>(3) The decisions of the Constitutional Court are binding.</p> <p>Article 59</p> <p>(1) By a decision the Constitutional Court either dismisses a constitutional complaint as unfounded or grants such and in whole or in part annuls or abrogates the individual act, and remands the case to the authority competent to decide thereon.</p> <p>(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act.</p>
South Africa	<p>Article 165(5) Constitution of the Republic of South Africa An order or decision issued by a court binds all persons to whom and all organs of state to which it applies.</p>

State	Relevant constitutional or legal provision
Spain	<p>Art. 164.1 of the Constitution Las sentencias del Tribunal Constitucional se publicarán en el Boletín Oficial del Estado con los votos particulares si los hubiere. Tienen el valor de cosa juzgada a partir del día Article 38 Organic Law on the Constitutional Court</p> <p>1. Judgments handed down in unconstitutionality proceedings shall have the force of res judicata, shall be binding on all public authorities and shall have consequences of a general nature from the date of their publication in the “Official State Gazette”.</p> <p>Article 55</p> <p>1. A judgment granting protection shall contain one or more of the following pronouncements:</p> <p>c. Full restoration of the applicant's right or freedom and adoption, where appropriate, of measures conducive to its preservation.</p> <p>2. <i>En el supuesto de que el recurso de amparo debiera ser estimado porque, a juicio de la Sala o, en su caso, la Sección, la ley aplicada lesione derechos fundamentales o libertades públicas, se elevará la cuestión al Pleno con suspensión del plazo para dictar sentencia, de conformidad con lo prevenido en los artículos 35 y siguientes.</i></p>
“The former Yugoslav Republic of Macedonia”	<p>Article 112 par. 3 Constitution Decisions of the Constitutional Court of the Republic of Macedonia are final and enforceable Article 86 Rules of Procedure of the Constitutional Court</p> <p>Decisions of the Constitutional Court are executed by the organ that passed the law, other regulation or general act that is annulled or repealed by a decision of the Court. Decisions upon petitions for protection of freedoms and rights guaranteed by the Constitution shall be executed by the organ or organisation that adopted the individual act annulled by the Court or by the organ or organisation that undertook the activity prohibited by the decision of the Constitutional Court.</p>
Turkey	<p>Article 153 in fine Constitution All annulment decisions are binding for all legal and natural persons. Therefore, there is an erga omnes effect.</p>
United States of America	<p>Decisions of the Supreme Court interpreting the U.S. Constitution bind all courts, and decisions of higher federal courts are binding upon lower courts in the same jurisdiction. Under the principle of stare decisis, prior decisions by the same court are generally given authoritative weight by that court, although courts may decide to diverge from their own prior decisions in light of, inter alia, changes in relevant circumstances or related areas of law. Courts may also “distinguish” a decision by a superior court or a prior decision of the same court by showing that the circumstances of the case differ from the precedent.</p>
Uruguay	<p>Article 259 Constitution (p.t.)²⁸¹ The judgment of the Supreme Court of Justice shall refer exclusively to the concrete case and shall only take effect in the proceedings in which it is being passed. General Code of Procedure Article 520 (p.t.)²⁸²</p>

²⁸¹ Artículo 259

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

²⁸² Artículo 520

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

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

State	Relevant constitutional or legal provision
	Sentence. The sentence shall limit itself to the declaration of constitutionality or unconstitutionality of the impugned dispositions and shall only take effect in the concrete case in relation to which it is passed. There shall be no recourse against it.

1.1.15 Table: Confirmation of constitutionality

State	Relevant constitutional or legal provision
Andorra	Article 44 Qualified Law on the Constitutional Court: "3. Where these laws and regulations are declared compatible with the Constitution they cannot subsequently be challenged on the ground that they infringe the same constitutional provisions".
Armenia	Article 32 Law on the Constitutional Court 4) the issue raised in the appeal has been subject to a prior decision of the Constitutional Court in cases determined by Articles 76, 78-80 of this Law and any new factual circumstances (not known to the applicant before the adoption of the Constitutional Court Decision for some independent reasons or not appeared at the case hearing) regarding that issue are not presented in the application;
Belgium	Article 9 (2) Special Law on the Court Judgments delivered by the Constitutional Court which dismiss an action for annulment shall be binding on the courts in respect of questions of law settled by such judgments.
Czech Republic	Article 35 Constitutional Court Act: "(1) A petition instituting a proceeding is inadmissible if it relates to a matter upon which the Court has already passed judgment and in other instances provided for by this Statute. (2) A petition shall also be inadmissible in instances when the Court has already taken some action in the same matter; if one is submitted by an authorised petitioner, he has the right to take part, as a secondary party, in the proceeding concerning the earlier submitted petition".
Germany	Article 31 Law on the Federal Constitutional Court: "2. In cases pursuant to Article 13 (6), (11), (12) and (14) above decisions of the Federal Constitutional Court shall have the force of law. This shall also apply in cases pursuant to Article 13 (8a) above if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law or to be null and void".
Georgia	Article 18. A constitutional claim or a constitutional submission shall not be admitted for the consideration if: d. all the issues referred to in it, have already been adjudicated upon by the Constitutional Court, except the circumstances provided for in article 211 of the Organic Law of Georgia on the Constitutional Court of Georgia. Article 211. Organic Law on the Constitutional Court of Georgia 1. If the Board of the Constitutional Court is satisfied that its position is different from the practice of the constitutional court concerning a constitutional claim or a submission, the case should be referred to the Plenum of the Constitutional Court.
Lithuania	Article 69 Law on the Constitutional Court By a decision, the Constitutional Court shall refuse to consider petitions for the examination of the constitutionality of a legal act if: 4. the Constitutional Court has already initiated the examination of a case concerning the same issue

State	Relevant constitutional or legal provision
Luxemburg	<p>Article 6 Law on the Organisation of the Constitutional Court The court shall not be required to refer the matter to the Constitutional Court if, in its view: c. the Constitutional Court has already ruled on a question submitted to it concerning the same matter.</p>
Peru	<p>Article 6 Constitutional Procedure Code (p.t.)²⁸³ The Judges cannot refrain from applying a norm whose constitutionality has been confirmed in a proceeding on unconstitutionality or an <i>actio popularis</i> proceeding.</p>
Romania	<p>Article 29(3) Law on the Organisation and Operation of the Constitutional Court Legal provisions whose constitutionality has been found by prior decision of the Constitutional Court cannot be challenged by an exception of unconstitutionality". "decision dismissing the objection of unconstitutionality is not effective <i>erga omnes</i>, but only <i>inter partes</i>, which allows other legal subjects as well to raise an identical objection, in anticipation that the Constitutional Court may decide to change its jurisprudence and eventually admit the objection of unconstitutionality.²⁸⁴ Legal provisions whose unconstitutionality has been found by prior decision of the Constitutional Court cannot form the object of an exception</p>
Russian Federation	<p>Article 43 Federal Constitutional Law on the Constitutional Court The Constitutional Court of the Russian Federation shall take decision to dismiss the petition in the events where: 3. the Constitutional Court of the Russian Federation has issued a ruling on the object of the petition, that ruling retaining its force.</p>
Serbia	<p>Article 53 Law on the Constitutional Court Where the Constitutional Court finds there are grounds to commence a procedure on the basis of an initiative, it shall commence the procedure by a ruling. Where the constitutionality and legality are being challenged by an initiative, except for the laws and statute of an autonomous province or local self-government unit, or individual provisions of that act regulating questions on which the Constitutional Court has already assumed a position or where during the preliminary procedure the legal situation has been determined in full and the data collected provide a reliable foundation for determination, the Constitutional Court determines the matter without issuing a ruling on commencement of procedure. Where the Constitutional Court finds there are no grounds to initiate on initiative, it will not accept the initiative.</p>
Spain	<p>Article 38 Organic Law on the Constitutional Court 2. Where judgments entailing dismissal of applications are handed down in actions of unconstitutionality, the question may not be raised subsequently through the same channels if it is based on infringement of an identical constitutional precept. Article 50 1. The appeal for constitutional protection is submitted to a decision of admissibility. The Section, by unanimous vote, shall agree the admission of the appeal in whole or in part by non-reasoned order (<i>providencia</i>), only where the following requirements concur: a) The application fulfils the requirements set on articles 41 to 46 and 49.</p>

²⁸³ Article 6 Código procesal constitucional

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

²⁸⁴ [CDL-JU\(2004\)021](#), I. Vida, "The obligatory force of decisions of the Constitutional Court for other courts as stabilising factor", report for the Conference on the "Role of the Constitutional Court in the Maintenance of the Stability and Development of the Constitution", Moscow, 2004.

State	Relevant constitutional or legal provision
	<p>b) That the case in appeal justifies a decision about the content by the Constitutional Court because of its special constitutional significance (especial transcendencia constitucional), which shall be seen in terms of its relevance for the interpretation and application of the Constitution, or for the effectiveness thereof, and for determining the content or scope of fundamental rights.</p> <p>2. When the admissibility, even if majority was obtained, does not reach unanimity, the Section shall transfer the decision to the Chamber for its judgment.</p> <p>3. Non-reasoned orders of rejection, taken by the Sections or the Chambers, shall specify the requirements breach and shall be notified to the appellant and the Public Prosecutor Office. These non-reasoned orders can be appealed only by the Public Prosecutor Office within the term of three days. This appeal shall be settled by a reasoned order (auto), which can not be contested.</p> <p>4. When the application for constitutional protection contains one or more irregularities that may be corrected, the Court shall proceed as provided in article 49.4; if the irregularities are not corrected within the prescribed period, the Section shall reject the application through a non-reasoned order without appeal.</p>
Turkey	<p>Article 152 Constitution</p> <p>No allegation of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after the publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.</p>

1.1.16. Table: Ex nunc or ex tunc effect of the Constitutional Court's decision

State	Relevant constitutional or legal provision
Albania	<p>Article 132 Constitution</p> <p>(2)The decisions of the Constitutional Court enter into force on the day of their publication in the Official Journal, unless the Constitutional Court has decided that the law or normative act be invalidated on another date".</p> <p>Article 26 Law on the Organisation and Functioning of the Constitutional Court</p> <p>1. Decisions of the Constitutional Court are final. They are published in the Official Gazette and enter into force on the day of their publication. The Court may decide that its decision shall enter into force on the day of its proclamation when the decision concerns the protection of the constitutional rights of the person".</p> <p>Article 76</p> <p>Legal effects of the decisions of the Constitutional Court</p> <p>1. The decision of the Constitutional Court annulling a law or normative act as incompatible with the Constitution or international agreements will as a rule take legal effect from the date of its entry into force.</p> <p>2. The decision may be retroactive only where:</p> <ul style="list-style-type: none"> a. it concerns a criminal sentence which is being executed, if this is directly related to the implementation of the annulled law or normative act, b. it concerns a case under review by the courts, unless their decision is final, c. it concerns a law or normative act that has not been implemented.
Andorra	<p>Article 8 Qualified Law on the Constitutional Court</p> <p>1. Where the constitutionality of a general legal law or regulation in its entirety, or of certain provisions thereof, is challenged and the Court finds that there is only one</p>

State	Relevant constitutional or legal provision
	<p>interpretation which is compatible with the Constitution and one or more other interpretations which are incompatible therewith, it declares that the law or regulation in question is temporarily inapplicable until the organ which issued it has corrected the unconstitutional elements. The new law or regulation issued corrects the previous law or regulation although it remains subject to the general system of checking for constitutionality.</p> <p>Article 44</p> <p>2. Any laws and regulations declared unconstitutional are null and void.</p> <p>Article 58.2</p> <p>2. Decisions declaring the law or regulation referred to the Constitutional Court unconstitutional in whole or in part take effect on the date on which they are published in the Official Gazette of the Principality of Andorra. Save in cases of favourable retroactive application, the existing effects produced by this law or regulation before they were declared null and void endure until new laws and regulations have been created to regulate the pre-existing legal situations.</p>
Armenia	<p>Article 102 Constitution</p> <p>The decisions and conclusions of the Constitutional Court shall be final and shall come into force following the publication thereof.</p> <p>Article 68 Law on the Constitutional Court</p> <p>10. In case of making a decision on determining the challenged act fully or partially invalid and unconstitutional the act is annulled after the Constitutional Court decision enters into force, except for the cases described in Parts 12 and 13 of this Article. 12. The Constitutional Court can decide to validate the influence of the decisions mentioned in Point 2 of Part 8 of this Article on the relations that started before those decisions got into force if the absence of such decision of the Court can cause irretrievable consequences for the state or the public</p> <p>The administrative and judicial acts that were adopted and implemented on the basis of the general acts that were annulled and found unconstitutional (together with those acts that were providing the implementation of the former) by the decision defined in the Paragraph 1 of this Article within three years before the Constitutional Court decision got into force shall be revisited by the administrative and judicial bodies that adopted those in the procedure stipulated by Law.</p>
Austria	<p>Article 140 Constitution:</p> <p>(5) The judgment by the Constitutional Court which rescinds a law as unconstitutional imposes on the Federal Chancellor or the competent Governor the obligation to publish the rescission without delay. This applies analogously in the case of a pronouncement pursuant to para. 4 above. The rescission enters into force on the day of publication if the Court does not set a deadline for the rescission. This deadline may not exceed eighteen months.</p> <p>(6) If a law is rescinded as unconstitutional by a judgment of the Constitutional Court, the legal provisions rescinded by the law which the Court has pronounced unconstitutional become effective again unless the judgment pronounces otherwise, on the day of entry into force of the rescission. The publication on the rescission of the law shall also announce whether and which legal provisions again enter into force.</p> <p>(7) If a law has been rescinded on the score of unconstitutionality or if the Constitutional Court has pursuant to para. 4 above pronounced a law to be unconstitutional, all courts and administrative authorities are bound by the Court's decision. The law shall however continue to apply to the circumstances effected before the rescission the case in point excepted, unless the Court in its rescissory judgment decides otherwise. If the Court has in its rescissory judgment set a deadline pursuant to para. 5 above, the law shall apply to all the circumstances effected, the case in point excepted till the expiry of this deadline.</p>

State	Relevant constitutional or legal provision
Azerbaijan	<p>Article 130 X Constitution: “Laws and other acts, individual provisions of these documents, intergovernmental agreements of the Azerbaijan Republic cease to be valid in term specified in the decision of Constitutional Court of the Azerbaijan Republic”.</p> <p>Article 67 law on the Constitutional Court.</p> <p>67.0 Resolutions of Constitutional Court shall enter into legal force at the following periods of time:</p> <p>67.1 Resolution adopted on the matters specified by Articles 130.3.1-7, 130.5 and 130.7 of the Constitution of Azerbaijan Republic shall enter into force from the date specified in the resolution itself</p>
Belgium	<p>Article 8 Special Law on the Court</p> <p>If the application is well-founded, the Constitutional Court shall annul, in full or in part, the statute, decree or rule referred to in Article 134 of the Constitution against which the action has been brought.</p> <p>If it deems necessary, the Court shall, by means of a general provision, stipulate those effects of the annulled provision which are to be regarded as definitive or maintained provisionally, for a period of time which it shall determine.</p>
Bosnia and Herzegovina	<p>Article 63 Rules of the Constitutional Court</p> <p>1. The Constitutional Court shall, in the decision granting a request, decide on its legal effect (<i>ex tunc, ex nunc</i>).</p> <p>3. The quashed general act or its quashed provisions shall cease to be in force on the first day following the date of publication of the decision in the Official Gazette of Bosnia and Herzegovina.</p> <p>4. Exceptionally, the Constitutional Court may by its decision establishing the incompatibility under Article VI.3 (a) and VI. 3 (c) of the Constitution, grant a time-limit for harmonisation, which shall not exceed six months.</p> <p>5. If the established incompatibility is not removed within the time-limit referred to in paragraph 4 of this Article, the Constitutional Court shall, by a further decision, declare that the incompatible provisions cease to be in force.</p> <p>6. The incompatible provisions shall cease to be in force on the first day following the date of publication of the decision referred to in paragraph 4 of this article in the Official Gazette of Bosnia and Herzegovina.</p>
Chile	<p>Article 94 Constitution (p.t.)²⁸⁵</p> <p>There shall be no recourse against the resolutions of the Constitutional Tribunal, without prejudicing the Tribunal's possibility to rectify, in conformity with the law, the factual errors it has incurred.</p> <p>When dealing with a draft law or draft decree, the dispositions that the Tribunal declares unconstitutional cannot become a law.</p>

²⁸⁵ Artículo 94. Contra las resoluciones del Tribunal Constitucional no procederá recurso alguno, sin perjuicio de que puede, el mismo Tribunal, conforme a la ley, rectificar los errores de hecho en que hubiere incurrido. Las disposiciones que el Tribunal declare inconstitucionales no podrán convertirse en ley en el proyecto o decreto con fuerza de ley de que se trate. En el caso del no. 16º del artículo 93, el decreto supremo impugnado quedará sin efecto de pleno derecho, con el solo mérito de la sentencia del Tribunal que acoja el reclamo. No obstante, el precepto declarado inconstitucional en conformidad a lo dispuesto en los numerales 2, 4 ó 7 del artículo 93, se entenderá derogado desde la publicación en el Diario Oficial de la sentencia que acoja el reclamo, la que no producirá efecto retroactivo. <http://www.gobiernodechile.cl/viewEstado.aspx?idArticulo=24065>

State	Relevant constitutional or legal provision
	<p>In the case of Article 93 no. 16, the impugned supreme decree will stay without effect in the sentence of the Tribunal which admits the claim. However, the precept that is declared unconstitutional in conformity with Article 93 no. 2, 4 or 7, will be derogated from the publication of the sentence in the in the Official Diary, without producing retroactive effect.</p>
Croatia	<p>Article 130 Constitution The Constitutional Court of Croatia shall repeal a law if it finds to be unconstitutional. The Constitutional Court of Croatia shall repeal or annul any other regulation if it finds it to be unconstitutional or illegal.</p> <p>Article 55 Constitutional Law on the Constitutional Court</p> <p>(1) The Constitutional Court shall repeal a law, or some of its provisions, if it finds that it is not in accordance with the Constitution; or another regulation, or some of its provisions, if it finds that it is not in accordance with the Constitution and the law.</p> <p>(2) The repealed law or other regulation, or their repealed separate provisions, shall lose legal force on the day of publication of the Constitutional Court decision in the Official Gazette Narodne novine, unless the Constitutional Court sets another term.</p> <p>(3) The Constitutional Court may annul a regulation, or its separate provisions, taking into account all the circumstances important for the protection of constitutionality and legality, and especially bearing in mind how seriously it violates the Constitution or the law, and the interest of legal security:</p> <ul style="list-style-type: none"> -if it violates the human rights and fundamental freedoms guaranteed by the Constitution, -if, without grounds, it places some individuals, groups or associations in a more or a less privileged position.
Czech Republic	<p>Article 89(1) Constitution Decisions of the Constitutional Court are enforceable as soon as they are announced in the manner provided for by statute, unless the Constitutional Court decides otherwise concerning enforcement.</p> <p>Constitutional Court Act</p> <p>Article 58 Constitutional Court Act</p> <p>(1) Judgments under Article 57 para. 1, lit. a) are enforceable on the day they are published in the Collection of Laws, unless the Court decides otherwise.</p> <p>(3) Other judgments are enforceable upon the personal delivery of a copy of the final written version of it to each party.</p> <p>Article 70</p> <p>(1) If, after holding a proceeding, the Court comes to the conclusion that a statute, or individual provisions thereof, conflict with a constitutional act, or that some other enactment, or individual provisions thereof, conflict with a constitutional act or a statute, it shall declare in its judgment that such statute or other type of enactment, or individual provisions thereof, shall be annulled on the day specified in the judgment.</p> <p>Article 71</p> <p>(1) If, on the basis of a statute or some other enactment which the Court has annulled, a court in a criminal proceeding has passed a judgment which has acquired legal effect but has not yet been enforced, the invalidation of this statute or other enactment shall constitute grounds for reopening the proceeding in accordance with the provisions of the law on criminal judicial proceedings.</p> <p>(2) Other legally effective decisions issued on the basis of a statute, or some other enactment, which has been annulled remain unaffected; however, rights and duties arising from such decisions may not be enforced</p>
Estonia	<p>Constitutional Review Court Procedure Act §15 (preliminary ruling procedure)</p>

State	Relevant constitutional or legal provision
	<p>(1) Upon adjudicating a matter the Supreme Court may:</p> <p>2) declare legislation of general application or a provision thereof, which has entered into force, invalid;</p> <p>3) declare an international agreement, which has entered into force or has not entered into force or a provision thereof, unconstitutional;</p> <p>§. 24. (normative constitutional complaint)</p> <p>(1) Upon adjudicating a matter the Supreme Court may:</p> <p>1) repeal a resolution of the Riigikogu or the Board of the Riigikogu or a decision of the President of the Republic or a part thereof;</p>
Georgia	<p>Article 89(2) Constitution: “The judgment of the Constitutional Court shall be final. A normative act or a part thereof recognised as unconstitutional shall cease to have legal effect from the moment of the promulgation of the respective judgment of the Constitutional Court”.</p> <p>Article 23 Law on the Constitutional Court</p> <p>If a petition or application concerning the issues envisaged in Article 19 points a and e and Article 20 of the present Law is allowed this shall cause the normative act or part of it to be abrogated as unconstitutional from the moment the corresponding judgment of the Constitutional Court is published.</p> <p>Article 20. Organic Law on the Constitutional Court of Georgia</p> <p>Recognition of a law or other normative act as unconstitutional shall not imply annulment of the sentences and decisions as adopted earlier by the court on the basis of the act in question, it shall cause only the suspension of their enforcement in accordance with the procedure established by procedural legislation.</p> <p>Article 23. Organic Law on the Constitutional Court of Georgia</p> <p>1. Upholding a constitutional claim concerning the issues provided for by subparagraphs “a” and “e” of the first paragraph of Article 19 of the present Law, as well as ascertainment of unconstitutionality of a normative act or a part thereof in the case, provided for by the second paragraph of the same Article, shall result in recognition of invalidation of the normative act or the part thereof from the moment of the promulgation of the respective judgment of the Constitutional Court. Article 23 Law on the Constitutional Court</p>
Germany	<p>Article 31 Law on the Federal Constitutional Court</p> <p>2. In cases pursuant to Article 13 (6), (11), (12) and (14) above decisions of the Federal Constitutional Court shall have the force of law. This shall also apply in cases pursuant to Article 13 (8a) above if the Federal Constitutional Court declares a law to be compatible or incompatible with the Basic Law or to be null and void. If a law is declared to be compatible or incompatible with the Basic Law or other federal law or to be null and void, the decision shall be published in the Federal Law Gazette by the Federal Ministry of Justice. The above shall apply mutatis mutandis to decisions in cases pursuant to Article 13 (12) and (14) above.</p> <p>Article 95 Law on the Federal Constitutional Court</p> <p>3. If a constitutional complaint against a law is upheld, the law shall be declared null and void. The same shall apply if a constitutional complaint pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law.</p>
Greece	<p>Article 100 (4) Constitution</p> <p>[...] Provisions of a statute declared unconstitutional shall be invalid as of the date of publication of the respective judgment, or as of the date specified by the ruling.</p> <p>Article 51 Law on the Special Highest Court</p>

State	Relevant constitutional or legal provision
	<p>1. A decision by the Special Court resolving a dispute concerning assessment of the constitutionality of a law or its interpretation shall have force <i>erga omnes</i> as from its delivery in open court, subject to paragraph 4 of this article.</p> <p>4. The Special Court may decide, by reasoned decision with effect <i>erga omnes</i>, that the provisions held unconstitutional are invalid even in respect of the period up to the publication of the decision.</p> <p>5. Where a decision retroactively declaring a law unconstitutional is taken in accordance with paragraph 4 above, an application for review may be made in respect of any irrevocable judicial decision taken during that period and founded on provisions held unconstitutional. Such application may be made by any party within six months as from the publication of the Special Court's decision. For the remainder, the ordinary procedure before the court in question shall be upheld, and it shall disregard the provision declared unconstitutional.</p> <p>6. The revocation of administrative acts which are founded on statutory provisions held unconstitutional and which have been performed during the period of retroactivity of the Special Court's decision shall be mandatory within six months following publication of the decision.</p>
Hungary	<p>Article 42 Act on the Constitutional Court</p> <p>1. In the case provided in Article 40, the legal rule or its provisions and the other legal means of State control or its provision shall be considered as repealed, on the day of the publication of the decision.</p> <p>Article 43</p> <p>1. Any legal rule or other legal means of State control which has been annulled by the decision of the Constitutional Court shall not be applied from the day of the publication of the relevant decision in the Official Gazette.</p> <p>2. The annulment of a legal rule or other legal means of State control shall –except for the case provided in section 3– affect neither the legal relationships which have developed prior to the publication of the decision nor the rights and duties which derived from them.</p> <p>3. The Constitutional Court shall order the revision of any criminal proceedings concluded by a final decision (without appeal) on the basis of an unconstitutional legal rule or other legal means of State control, if the convict has not yet been relieved of the detrimental consequences, and the nullity of the provision applied in the proceedings would result in the reduction or the putting aside of the punishment or measure, or in the release from, or the limitation of responsibility.</p> <p>4. The Constitutional Court may determine the date of the abrogation of the unconstitutional legal rule or its applicability in the given case differently from the provision of Article 42, section 1 and Article 43, sections 1 et 2, if justified by a particularly important interest of legal security or of the person who initiated the procedure.</p>
Italy	<p>Article 136 Constitution</p> <p>When the Court declares the constitutional illegitimacy of a law or enactment having the force of law, the law ceases to have effect from the day following the publication of the decision. Article 30, cl. 3 of the Law on the composition and procedures of the Constitutional Court (Law no. 87/1953):</p> <p>Laws declared unconstitutional cannot find application starting from the day following publication of the decision</p>
Korea, Republic	<p>Constitutional Court Act</p> <p>Article 47</p>

State	Relevant constitutional or legal provision
	<p>(2) Any statute or provision thereof decided as unconstitutional shall lose its effect from the day on which the decision is made: Provided, That the statutes or provisions thereof relating to criminal penalties shall lose their effect retroactively.</p> <p>(3) In case referred to in the proviso of paragraph (2), the retrial may be allowed with respect to a conviction based on the statutes or provisions thereof decided as unconstitutional.</p>
Latvia	<p>Article 32 Law on the Constitutional Court</p> <p>3. Any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.</p>
Liechtenstein	<p>Article 19 Constitutional Court Act</p> <p>3) The judgment on annulment and determination of unconstitutionality shall be published by the Government in the Liechtenstein Legal Gazette without delay. The annulment shall take effect with this publication, unless the Constitutional Court specifies a deadline of at most one year for this purpose; this shall not apply to the case being adjudicated.</p>
Lithuania	<p>Article 107.1 of the Constitution</p> <p>A law (of a part thereof) of the Republic of Lithuania or other act (or a part thereof) of the Seimas, act of the President of the Republic, act (of a part thereof) of the Government may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question (or a part thereof) is in conflict with the Constitution of the Republic of Lithuania.</p> <p>Article 72 Law on the Constitutional Court</p> <p>3. All State institutions as well as their officials must revoke substatutory acts or provisions thereof which they have adopted and which are based on an act which has been recognised as unconstitutional.</p> <p>4. Decisions based on legal acts which have been recognised as being in conflict with the Constitution or laws must not be executed if they had not been executed prior to the appropriate Constitutional Court ruling went into effect.</p>
Mexico	<p>Art.107 Constitution</p> <p>Concerning rulings by the Supreme Court</p> <p>The declaration of invalidity of the resolutions to which sections I and II refer will not have retroactive effects, except in penal matters, in which the general principles and legal dispositions that are applicable in these matters will rule.</p>
Moldova	<p>Article 140 Constitution</p> <p>(1) Laws and other regulations or parts thereof become null and void from the moment that the Constitutional Court passes the appropriate decisions to that effect.</p>
Montenegro	<p>Art. 152 Constitution</p> <p>When the Constitutional Court establishes that the law is not in conformity with the Constitution and confirmed and published international agreements, that is, that other regulation is not in conformity with the Constitution and the law, that law and other regulation shall cease to be valid on the date of publication of the decision of the Constitutional Court.</p> <p>The law or other regulation, i.e. their individual provisions that were found inconsistent with the Constitution or the law by the decision of the Constitutional Court, shall not be applied to the relations that have occurred prior to the publication of the Constitutional Court decision, if they have not been solved by an absolute ruling by that date.</p>

State	Relevant constitutional or legal provision
Peru	<p>Article 204 Constitution (p.t.)²⁸⁶</p> <p>The sentence of the Tribunal that declares the unconstitutionality of a norm shall be published in the Official Diary. The day following publication, the norm shall lose effect.</p> <p>The sentence of the Tribunal declaring total or partial unconstitutionality shall not have retroactive effect.</p> <p>Article 35 of Law N° 26.435</p> <p>The sentences passed in unconstitutionality proceedings shall have authority of <i>res judicata</i>, shall bind all public powers and shall produce general effects from the day following their publication.</p>
Poland	<p>Article 190(3) Constitution</p> <p>A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.</p> <p>4. A judgment of the Constitutional Tribunal on the nonconformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.</p> <p>Article 71(2) Constitutional Tribunal Act</p> <p>Where the Tribunal decides that the normative act ceases to have effect after the day of the publication of the judicial decision confirming its non-conformity to the Constitution, ratified international agreement or statutes, it shall, in the judicial decision, determine the date the act shall cease to have effect.</p>
Portugal	<p>Article 282 Constitution</p> <p>1. A generally binding ruling of unconstitutionality or illegality shall be given effect from the date when the provision ruled unconstitutional or illegal came into force and shall require that any provisions that may have been revoked shall be reinstated, with retroactive effect.</p> <p>2. However, where unconstitutionality or illegality derives from contravention of a constitutional or legal provision that has been subsequently made, the ruling shall be given effect only from the date when that provision came into force.</p> <p>3. Cases already decided shall hold good, except if the Constitutional Court rules otherwise in respect of a legal rule relating to penal or disciplinary matters or an illegal act under a regulatory ordinance or a provision that is disadvantageous to the accused.</p> <p>4. When required in the interests of legal certainty, or for reasons of equity or public interest of exceptional importance, which shall be justified if requested, the Constitutional Court may prescribe effects of unconstitutionality or illegality that are more restrictive than those specified in paragraphs 1 and 2.</p>

²⁸⁶ Artículo 204º. La sentencia del Tribunal que declara la inconstitucionalidad de una norma se publica en el diario oficial. Al día siguiente de la publicación, dicha norma queda sin efecto. No tiene efecto retroactivo la sentencia del Tribunal que declara inconstitucional, en todo o en parte, una norma legal.

State	Relevant constitutional or legal provision
Romania	<p>Article 147 Constitution</p> <p>(1) The provisions of the laws and ordinances in force, as well as those of the standing orders, which are found to be unconstitutional, shall cease their legal effects within forty-five days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the provisions of the Constitution. For this limited length of time the provisions found to be unconstitutional shall be suspended <i>de jure</i>.</p> <p>(4) Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, decisions shall be generally binding and effective only for the future.</p> <p>Article 322 (10) of the Civil Procedure Code</p> <p>The revision of a definitive court decision can be requested in the following situations:</p> <p>[...]</p> <p>10. when, after the court decision had become definitive, the Constitutional Court decided upon the exception of unconstitutionality raised within that case, stating the unconstitutionality of the law, Government ordinance or a certain provision thereof which has been the subject matter of that exception, or the unconstitutionality of other provisions from the challenged normative act, which, necessarily and obviously, cannot be dissociated from the provisions mentioned in the submission of unconstitutionality".</p> <p>Article 4082 (1) (2) of the Criminal Procedure Code:</p> <p>(1) The definitive decisions rendered in the cases where the Constitutional Court admitted an exception of unconstitutionality can be revised, if the decision rendered in the court case was grounded on the legal provision which has been stated as unconstitutional or on other legal provisions of the challenged normative act, which, necessarily and obviously, cannot be dissociated from the provisions mentioned in the submission of unconstitutionality.</p> <p>(2) The revision request can be filed within 3 months from the day when the decision of the Constitutional Court was published in the Official Monitor of Romania, Part I.</p>
Russian Federation	<p>Article 75 Federal Constitutional Law on the Constitutional Court of the Russian Federation</p> <p>The decision of the Constitutional Court of the Russian Federation, stated in an individual document, shall, depending on the nature of the question under consideration, contain the following data:</p> <p>11. statement on the final and binding nature of the decision;</p> <p>12. procedure for the entry into force of the decision, as well as the procedure, dates and specifics of its execution and promulgation.</p> <p>Article 79</p> <p>The decision of the Constitutional Court of the Russian Federation shall be final, may not be appealed and shall come into force immediately upon announcement.</p>
Serbia	<p>Article 168 Constitution</p> <p>The Law or other general acts which is not in compliance with the Constitution or the Law shall cease to be effective on the day of publication of the Constitutional Court decision in the official journal.</p> <p>Article 58 Law on the Constitutional Court</p> <p>When the Constitutional Court establishes that a law, statute of an autonomous province or local self-government unit, other general act or collective contract do not comply with the Constitution, generally accepted rules of international law and ratified international agreement, such law, statute of autonomous province or local self-government unit, other general act or collective contract shall cease to be valid on the day the Constitutional Court decision is published in the "Official Gazette of the Republic of Serbia".</p>

State	Relevant constitutional or legal provision
	<p>Article 59 When the Constitutional Court determines the manner of rectifying the consequences which arose due to the implementation of a general act which is not in compliance with the Constitution or law, the decision of the Constitutional Court has legal effect from the date of its publication in the Official Gazette of the Republic of Serbia.</p> <p>Article 60 Laws and other acts for which it has been established by a Constitutional Court decision that they do not comply with the Constitution, generally accepted rules of international law, ratified international agreements or law, cannot apply to relations that arose before the day of publication of the Constitutional Court decisions, if they were not finally resolved by that date. General act passed for the purpose of enforcement of laws and other general acts for which it is established, by a Constitutional Court decision, that they are not in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law, shall not apply from the day of publication of the Constitutional Court decision, if the decision implies that these general acts are incompatible with the Constitution, generally accepted rules of international law, ratified international agreements or law. Enforcement of finally binding individual acts passed on the basis of regulations that can no longer apply, cannot be allowed or implemented, and if the enforcement is initiated, it shall be discontinued.</p> <p>Article 61 Everyone whose right has been violated by a final or legally-binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law is entitled to demand from the competent authority a revision of that individual act Proposals for revision of a final or legally-binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law may be submitted within six months from the date of the publication of the decision in the Official Gazette of the Republic of Serbia, unless more than two years have passed between the delivery of the individual act and the submittal of the proposal or initiative for initiating a procedure.</p>
Slovakia	<p>Article 125 Constitution of Slovak Republic (3) If the Constitutional Court holds by its decision that there is inconformity between the legal regulations stated in section 1, the respective regulations, their parts or some of their provisions shall lose force. The authorities which issued these legal regulations shall be obliged, six months from the promulgation of the decision of the Constitutional Court, to harmonize them with the Constitution, with the constitutional laws and with international treaties promulgated in the manner laid down by law, and if this regards regulations stated in section 1.b and 1.c also with other laws, and if this regards regulations stated in paragraph 1 letter d) also with government regulations and with generally binding legal regulations of Ministries and other central state administration authorities. If they fail to do so, these regulations, their parts or their provisions shall lose validity after six months following the promulgation of the decision. (6) A decision of the Constitutional Court issued pursuant to sections 1, 2 and 5 shall be promulgated in the manner laid down for the promulgation of laws. The final decision of the Constitutional Court is generally binding.</p> <p>Article 41b Law on the Organisation of the Constitutional Court (1) If a court has issued a judgement in criminal proceedings on the basis of a legal regulation which later lost its force under Article 125 of the Constitution, and though that</p>

State	Relevant constitutional or legal provision
	<p>judgement has become final, but it has not been executed, than the loss of force of that legal regulation or part thereof or some of its provisions, becomes a reason for a re-trial according to the provisions of the Code of Criminal Procedure.</p> <p>(2) Other final decisions, issued in civil or administrative proceedings on the basis of a legal regulation which lost its force in full, in part or in certain provisions remain unaffected; obligations imposed by these decisions cannot be subject to enforcement.</p>
Slovenia	<p>Article 43 Constitutional Court Act</p> <p>The Constitutional Court may in whole or in part abrogate a law which is not in conformity with the Constitution. Such abrogation takes effect the day following the publication of the decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court.</p> <p>Article 44</p> <p>The abrogation of a law or a part thereof by the Constitutional Court applies to relations that had been established before the day such abrogation took effect, if by that day such relations had not been finally decided.</p> <p>Article 45</p> <p>(1) The Constitutional Court annuls or abrogates regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful.</p> <p>(2) The Constitutional Court annuls regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful when it determines that it is necessary to remedy harmful consequences arising from such unconstitutionality or unlawfulness. Annulment has retroactive effect.</p> <p>(3) In other instances, the Constitutional Court abrogates regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful. Abrogation takes effect the day following the publication of the Constitutional Court decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court. In instances of abrogation, Article 44 of this Act is applied mutatis mutandis.</p> <p>Article 59</p> <p>(1) By a decision the Constitutional Court either dismisses a constitutional complaint as unfounded or grants such and in whole or in part annuls or abrogates the individual act, and remands the case to the authority competent to decide thereon.</p> <p>(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act.</p>
South Africa	<p>Article 172(1)(b) Constitution of the Republic of South Africa</p> <p>When deciding a constitutional matter within its power, a court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency and may make any order that is just and equitable, including an order limiting the retrospective effect of the declaration of invalidity.</p>
Spain	<p>Article 161 Constitution</p> <p>The Constitutional Court has jurisdiction over the whole of Spanish territory and is competent to hear:</p> <p>a) appeals against the alleged unconstitutionality of laws and regulations having the force of law. A declaration of unconstitutionality of a legal provision with the force of law, interpreted by jurisprudence, shall also affect the latter, although the sentence or sentences handed down shall not lose their status of <i>res judicata</i>.</p>

State	Relevant constitutional or legal provision
	<p>Article 40 Organic Law on the Constitutional Court</p> <p>1. Judgements that declare the unconstitutionality of laws, regulations or enactments having the force of law shall not provide grounds for review of proceedings concluded by means of a judgement having force of <i>res judicata</i> in which unconstitutional laws, regulations or enactments were applied, save in the case of criminal proceedings or administrative litigation concerning a sanction procedure where the invalidity of the rule applied would entail a reduction of the penalty or sanction or exclusion, exemption or limitation of liability.</p>
<p>“The former Yugoslav Republic of Macedonia”</p>	<p>Article 56 Rules of Procedure of the Constitutional Court</p> <p>In its judgment regarding the application for protection of freedoms and rights, the Constitutional Court shall determine whether there is an infringement and in consequence, it will annul the individual act, prohibit the action causing the infringement or dismiss the application.</p> <p>Article 79</p> <p>The judgment of the Constitutional Court of the Republic of Macedonia revoking or repealing a law, regulation or other common act produces legal effects from the day of its publication in the Official Gazette of the Republic of Macedonia.</p> <p>Article 80</p> <p>The execution of legally binding individual acts passed on the basis of a law, regulation or other common act that is revoked by a judgment of the Court cannot be allowed, nor implemented, and if such execution has commenced, it will be cancelled.</p> <p>Article 81</p> <p>Anyone whose rights have been infringed by a final or legally binding individual act adopted on the basis of a law, regulation or other common act which has been revoked by a judgment of the Constitutional Court has the right to request the competent organ to revoke that individual act, within 6 months from the date of publication of the judgment of the Court in the Official Gazette of the Republic of Macedonia.</p>
<p>Turkey</p>	<p>Article 153</p> <p>Laws, decrees having the force of law or the Rules of Procedure of the Turkish Grand National Assembly or provisions thereof, shall cease to have effect from the date of the publication in the official Gazette of the annulment decision shall come into effect. That date shall not be more than one year from the date of publication of the decision in the Official Gazette of the annulment decision. Where necessary, the Constitutional Court may also decide on the date on which the annulment decision shall come into effect. That date shall not be more than one year from the date of publication of the decision in the Official Gazette. Annulment decisions cannot be applied retroactively.</p>
<p>Uruguay</p>	<p>General Code of Procedure (p.t.)²⁸⁷</p> <p>Article 521</p> <p>The declaration of unconstitutionality leaves the legal norm affected by the declaration inapplicable in the proceedings in which the unconstitutionality has been pronounced.</p>

²⁸⁷ Artículo 521 Efectos del fallo. La declaración de inconstitucionalidad hace inaplicable la norma legal afectada por ella, en los procedimientos en que se haya pronunciado.

Si hubiere sido solicitada por vía de acción o principal, la sentencia tendrá eficacia para impedir la aplicación de las normas declaradas inconstitucionales contra quien hubiere promovido la declaración y obtenido la sentencia, pudiendo hacerla valer como excepción en cualquier procedimiento jurisdiccional, inclusive el anulatorio ante el Tribunal de lo Contencioso Administrativo <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=>

State	Relevant constitutional or legal provision
	If it has been demanded through an action or in main proceedings, the sentence shall be effective to hinder the application of the norms declared unconstitutional against the person who had promoted the declaration and obtained the sentence. This person may invoke the decision in any judicial proceeding including the proceeding for annulment before the Tribunal of administrative disputes.

1.1.17. Table: Capacity of constitutional courts to attribute damages

State	Relevant constitutional or legal provision
Andorra	Article 92.2 Qualified Law on the Constitutional Tribunal Where the appeal is allowed in whole the judgment appealed against and all its effects are set aside and the Court declares that there has been a breach of a constitutional right and takes the measures necessary to restore the right to the appellant. Where the breach is materially irreparable the Court determines the nature of the liability incurred by the person responsible for the breach so that damages can be claimed before an ordinary court. ²⁸⁸
Chile	Autonomous rule of the Supreme Court of 24 June 1992 (p.t.) ²⁸⁹ 11. The Court of Appeals as well as the Supreme Court may, if they deem it appropriate, impose a condemnation for damages.
Croatia	Article 31 of the Constitutional Act on the Constitutional Court: (5) "The Constitutional Court may determine the manner in which its decision, respective its ruling shall be executed". Article 63 Constitutional Act on the Constitutional Court (3) In the decision in paragraph 2 of this Article, the Constitutional Court shall determine appropriate compensation for the applicant for the violation of his/her constitutional right committed by the court of justice by not deciding within a reasonable time about his/her rights and obligations, or about the suspicions or accusations of a criminal offence. The compensation shall be paid from the state budget within a term of three months from the date when the applicant lodged a request for its payment.
Latvia	Law on the Constitutional Court Article 26 - The procedure for reviewing cases 1. The procedure for reviewing cases is provided for by this Law and the Rules of Procedure of the Constitutional Court. Envisaging of procedural terms and procedural sanctions-fines shall be carried out in accordance with the rules of the Civil Procedure.
Monaco	Ordonnance no. 2.984 du 16/04/1963 sur l'organisation et le fonctionnement du Tribunal Suprême Article 35. Lorsque le recours en annulation prévu au paragraphe B, chiffre 1, de l'article 90 de la Constitution comporte une demande en indemnité, le Tribunal Suprême, s'il prononce l'annulation statue, dans la même décision sur le sort de ladite demande, sous réserve de la possibilité d'ordonner toutes les mesures d'instruction utiles prévues à l'article 32.

²⁸⁸ The Constitutional Tribunal has recently granted a compensation of some thousands of Euros in a case of excessive length of proceedings.

²⁸⁹ Auto acordado de la Corte Suprema, de 24 de junio de 1992, sobre tramitacion del recurso de protección de garantías constitucionales

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

State	Relevant constitutional or legal provision
Poland	<p>Article 77 Constitution</p> <p>1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.</p>
Slovakia	<p>Article 127(3) Constitution</p> <p>The Constitutional Court may, by the decision by which it grants a complaint, afford just satisfaction to a person whose rights have been violated according to section 1.</p>
Slovenia	<p>Article 46 Constitutional Court Act</p> <p>(1) Any person who suffers harmful consequences due to a regulation or general act issued for the exercise of public authority which has been annulled, is entitled to request that such consequences be remedied. If such consequences occurred as a result of an individual act adopted on the basis of the annulled regulation or general act issued for the exercise of public authority, entitled persons have the right to request that the authority which decided in the first instance change or annul such individual act.</p> <p>(2) Entitled persons may request a change or annulment of the individual act referred to in the preceding paragraph within three months of the day of the publication of the Constitutional Court decision, provided no more than one year elapsed from the service of the individual act to the lodging of the petition or request.</p> <p>(3) If the consequences occurred directly on the basis of a regulation or other general act issued for the exercise of public authority which was annulled by the Constitutional Court, the authority which issued such regulation or general act issued for the exercise of public authority is required to remedy such consequences. The entitled person lodges a request within the periods of time referred to in the preceding paragraph of this article.</p> <p>(4) If such consequences cannot be remedied in accordance with the preceding paragraphs, the entitled person may claim compensation in a court of law.</p>
South Africa	<p>Article 172(1) Constitution of the Republic of South Africa</p> <p>When deciding a constitutional matter within its power, a court ... may make any order that is just and equitable...</p> <p>Article 38 Constitution of the Republic of South Africa</p> <p>Anyone has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief...</p>
Spain	<p>Article 58 Organic Law on the Constitutional Court</p> <p>1. Jurisdiction to rule on claims for damages consequent on the granting or refusal of a stay shall lie with the judges or courts, with which the sureties shall be deposited.</p> <p>2. Claims for damages settled arising as a result of interlocutory matters shall be submitted within a year following the date of publication of the judgment of the Constitutional Court.</p>
“The former Yugoslav Republic of Macedonia”	<p>Article 81 Rules of Procedure of the Constitutional Court</p> <p>If the consequences of applying the law, regulation or the common act revoked by a judgment of the Constitutional Court cannot be eliminated by changing the individual act with respect to paragraph 1 of this article, the Court may determine the consequences to be eliminated by a return to the previous conditions, through compensation for damage or other means.</p>
United States	<p>U.S. Supreme Court Rule 42, Interest and Damages</p> <p>1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court</p>

State	Relevant constitutional or legal provision
	<p>of the United States is allowed at the interest rate authorised by law. 2. When a petition for a writ of <i>certiorari</i>, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.</p>

1.1.18. Table: Authorisation to put a preliminary request

State	Relevant constitutional or legal provision
Andorra	<p>Article 53 Qualified Law on the Constitutional Tribunal</p> <p>1. An application for judicial review by the Constitutional Court of the constitutionality of such a law or regulation is admissible where, at any stage in ordinary judicial proceedings, the court hearing the proceedings considers on its own initiative or on the initiative of one of the parties that one of the laws and regulations mentioned in the preceding Article which the court must apply in resolving the principal case or any step whatsoever taken therein is contrary to the Constitution.</p> <p>2. This view that the law or regulation in question is unconstitutional must be based on the following factors: it must be impossible to interpret the law and regulation in question in a way which is consistent with the Constitution; the court must provide a reasoned explanation of the need to apply the law or regulation in resolving the main case or the step in question; and the law or regulation must not have been declared constitutional in any resolution or decision taken by the Constitutional Court, as provided for in Article 44.3 of this Law.</p> <p>3. Before filing the document introducing the action provided for in the first paragraph of this Article with the Constitutional Court the court in question must consult the parties and the Attorney General's Department where it is represented in the proceedings. When the parties have been heard the court, on its sole responsibility, issues a decree containing its decision whether or not to lodge the application. No appeal may be made against the decision taken in that decree; where the decision is negative, however, the application may where appropriate be renewed during subsequent stages of the proceedings.</p> <p>Article 54 Qualified Law on the Constitutional Tribunal</p> <p>Where the applicable law or regulation regarded as contrary to the Constitution entered into force prior to the Constitution the court may choose between bringing the matter before the Constitutional Court and declaring at the appropriate point in the proceedings that the laws or regulations are repealed. In any event a declaration that the law or regulation is repealed does not mean that the law or regulation enacted prior to the Constitution is null and void, but simply states that it is without force and the reasons why this is so.</p> <p>Article 36 Qualified Law on the Constitutional Tribunal</p> <p>1. Constitutional proceedings are filed at the seat of the Constitutional Court within the time limits prescribed by this Law and are introduced by a document of claim containing:</p> <p>c. The legal basis for the claim.</p> <p>Article 37 Qualified Law on the Constitutional Tribunal</p> <p>1. Where one of the formalities specified in the preceding Article is not observed the application is declared inadmissible, without prejudice to the Court's right to require the applicant to remedy the formal defect within not more than six days.</p>

State	Relevant constitutional or legal provision
Armenia	<p>2. The inadmissibility of the claim also occurs through manifest non competence of the Constitutional Tribunal, through dealing with a case which has acquired the character of a device and through the manifest lack of constitutional content of the infraction denounced.</p> <p>Article 71 of the Law On the Constitutional Court of the Republic of Armenia</p> <p>1. In cases determined by this Article the Courts and the Chief Prosecutor appeal to the Constitutional Court if they find that the legal acts of general nature (or its provision(s)), which are under the jurisdiction of the Constitutional Court according to Paragraph 1 of Article 100 of the Constitution and which shall be implemented for the case under their review, contradict the Constitution.</p> <p>2. Before applying to the Constitutional Court the courts must and the Chief Prosecutor has the right to suspend the given case until the decision of the Constitutional Court gets into force.</p> <p>3. The Courts may apply to the Constitutional Court after taking the case under its review before making a decision on the substance of the given case and the Chief Prosecutor can apply after taking the case under its review before sending it to the relevant Court by the procedure prescribed by Law.</p> <p>4. In case of suspension of the case review the Courts and the Chief Prosecutor can submit the appeals for the cases determined by this Article within three days after such suspension. The appeal to the Constitutional Court is formulated in a relevant decision of the Court or the Chief Prosecutor.</p> <p>5. In the applications prescribed by Paragraph 1 of this Article the Court and the Chief Prosecutor shall justify their statements on the unconstitutionality of the provisions of the challenged general act as well as the fact that solution of the given case may be possible only by the implementation of the challenged provision.</p>
Austria	<p>Article 89 Constitution</p> <p>(2) Should a court have scruples against the application of an ordinance on the ground of it being contrary to law, it shall file an application with the Constitutional Court for rescission of this ordinance. Should the Supreme Court or a court of second instance competent to give judgment have scruples against the application of a law on the ground of its being unconstitutional, it shall file an application with the Constitutional Court for rescission of this law.</p> <p>Article 139</p> <p>(1) The Constitutional Court pronounces on application by a court or an independent administrative tribunal whether ordinances issued by a Federal or Land authority are contrary to law, but <i>ex officio</i> in so far as the Court would have to apply such an ordinance in a pending suit.</p> <p>Article 140</p> <p>(1)The Constitutional Court pronounces on application by the Administrative Court, the Supreme Court, a competent appellate court or an independent administrative tribunal whether a Federal or Land law is unconstitutional, but <i>ex officio</i> in so far as the Court would have to apply such a law in a pending suit.</p> <p>"The Constitutional Court pronounces on application of the Supreme Court, a competent appellate court, an independent administrative tribunal, the Asylum Court, the Administrative Court or the Federal Tender Office whether a Federal or a Land law is unconstitutional, but <i>ex officio</i> in so far as the Court would have to apply such a law in a pending suit".</p>
Belgium	<p>Article 26 Special Law on the Court</p> <p>2. Where such a question is raised before a court, it shall refer the matter to the Constitutional Court for a ruling.</p>

State	Relevant constitutional or legal provision
	<p>However, a court shall not be required to do so:</p> <ol style="list-style-type: none"> 1. where it cannot hear the case on grounds of lack of jurisdiction or inadmissibility, except where those grounds are derived from provisions which are themselves the subject of the request for a preliminary ruling; 2. where the Constitutional Court has already ruled on a question or an application having the same subject matter.
Bulgaria	Art. 150 (2) Constitution
Croatia	<p>Article 37 of the Constitutional Act on the Constitutional Court</p> <p>“(1) If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, are not in accordance with the Constitution, it shall stop the proceedings and present a request with the Constitutional Court to review the constitutionality of the law, or some of its provisions”.</p>
Cyprus	1964, Attorney General of the Republic vs. Mustafa Ibrahim et al: Only courts having jurisdiction in family issues can refer preliminary questions.
France	<p>Article 23-1 de la loi organique n° 2009-1523 du 10 décembre 2009 relative à l’application de l’article 61-1 de la Constitution.</p> <p><i>“Devant les juridictions relevant du Conseil d’État ou de la Cour de cassation, le moyen tiré de ce qu’une disposition législative porte atteinte aux droits et libertés garantis par la Constitution est, à peine d’irrecevabilité, présenté dans un écrit distinct et motivé. Un tel moyen peut être soulevé pour la première fois en cause d’appel. Il ne peut être relevé d’office.</i></p> <p>Devant une juridiction relevant de la Cour de cassation, lorsque le ministère public n'est pas partie à l'instance, l'affaire lui est communiquée dès que le moyen est soulevé afin qu'il puisse faire connaître son avis.</p> <p><i>Si le moyen est soulevé au cours de l'instruction pénale, la juridiction d'instruction du second degré en est saisie.</i></p> <p>Le moyen ne peut être soulevé devant la cour d'assises. En cas d'appel d'un arrêt rendu par la cour d'assises en premier ressort, il peut être soulevé dans un écrit accompagnant la déclaration d'appel. Cet écrit est immédiatement transmis à la Cour de cassation”.</p>
Germany	<p>Article 100 of the Basic Law - Compatibility of legislation and constitutional law</p> <p>(1) Where a court considers that a law on whose validity its ruling depends is unconstitutional it shall stay the proceedings and, if it holds the constitution of a Land to be violated, seek a ruling from the Land court with jurisdiction for constitutional disputes or, where it holds this Basic Law to be violated, from the Federal Constitutional Court. This shall also apply where this Basic Law is held to be violated by Land law or where a Land law is held to be incompatible with a federal law.</p>
Georgia	<p>Article 19 Organic Law of Georgia on the Constitutional Court of Georgia</p> <p>2. if, while considering a particular case, a court of general jurisdiction concludes, that there is a sufficient ground to deem the law or other normative act, applicable by the court while adjudicating upon the case, fully or partially incompatible with the Constitution, the court shall suspend the consideration of the case and apply to the Constitutional Court. The consideration of the case shall be resumed after a judgment on the issue is adopted by the Constitutional Court. (12.02.02 N° 1264)</p>
Greece	<p>Article 100 Constitution</p> <p>5. When a chamber or department of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors judges a provision of a statute enacted by Parliament to be contrary to the Constitution, it shall compulsorily refer the question to</p>

State	Relevant constitutional or legal provision
	the respective plenum, unless this has been judged by a previous decision of the plenum or of the Special Highest Court of the present article. The plenum shall be assembled into judicial formation and shall decide definitively, as specified by law. This regulation shall apply analogously also in the elaboration of regulatory decrees by the Supreme Administrative Court.
Hungary	Article 38 Constitutional Court Act 1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply. 2. In a petition, anybody considering a legal rule to be applied in his/her pending process unconstitutional, may initiate the action of the judge provided in section 1.
Lithuania	Article 106 of Constitution The Government, not less than 1/5 of all the Members of the Seimas, and the courts, shall have the right to apply to the Constitutional Court concerning the acts specified in the First Paragraph of Article 105. Not less than 1/5 of all the Members of the Seimas and the courts shall have the right to apply to the Constitutional Court concerning the conformity of acts of the President of the Republic with the Constitution and the laws. Not less than 1/5 of all the Members of the Seimas, the courts, as well as the President of the Republic, shall have the right to apply to the Constitutional Court concerning the conformity of acts of the Government with the Constitution and the laws. Article 67 Law on the Constitutional Court 2. The Supreme Court of Lithuania, the Court of Appeals of Lithuania, and district and area courts shall appeal to the Constitutional Court pursuant to a decision <...>
Luxemburg	Article 6 Law on the organisation of the Constitutional Court If a court considers that an issue concerning a law's conformity with the Constitution arises and that a ruling on the matter is necessary for it to deliver its judgment, it must raise the matter of its own motion after asking the parties to submit any observations.
Malta	Article 46 Constitution (3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious
Moldova	Article 135 Constitution (1) The Constitutional Court shall: g) solve the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice
Poland	Article 193 Constitution Article 3 Constitutional Tribunal Act Any court may refer a question of law to the Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or a statute if the answer to this question of law determines the matter pending before the court.
Romania	Article 148 Constitution (1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out

State	Relevant constitutional or legal provision
	<p>by means of a law adopted in the joint sitting of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.</p> <p>(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.</p> <p>(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.</p> <p>(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.</p> <p>(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval.</p>
Russia	<p>Article 125 Constitution</p> <p>1. The Constitutional Court of the Russian Federation shall consist of 19 members.</p> <p>2. The Constitutional Court of the Russian Federation, on the request of the President of the Russian Federation, the Council of the Federation, the State Duma, one fifth of the deputies of a chamber of the Federal Assembly, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Higher Court of Arbitration of the Russian Federation, legislative and executive bodies of the subjects of the Russian Federation, shall adjudicate in cases concerning the compatibility with the Constitution of the Russian Federation of: [...]</p> <p>Article 101 Federal Constitutional Law on the Constitutional Court of the Russian Federation</p> <p>The court while considering the case in any instance, having arrived at the conclusion about non-conformity with the Constitution of the Russian Federation of the law which has been applied or ought to be applied in a specific case, shall petition the Constitutional Court of the Russian Federation with an inquiry to verify the constitutionality of the aforementioned law</p>
Slovakia	<p>Article 130 Constitution</p> <p>(1) The Constitutional Court shall commence proceedings upon an application submitted by: d) any court</p>
Slovenia	<p>Article 156 Constitution</p> <p>If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision.</p> <p>Article 23 Constitutional Court Act</p> <p>(1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality.</p> <p>(2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality.</p> <p>(3) If by a request the Supreme Court initiates proceedings for the review of the constitutionality of a law or part thereof, a court which should apply such law or part thereof in deciding may stay proceedings until the final decision of the Constitutional Court without having to initiate proceedings for the review of the constitutionality of such law or part thereof by a separate request.</p>

State	Relevant constitutional or legal provision
Spain	<p>Article 163 Constitution</p> <p>If a judicial body considers, in some action, that a regulation with the status of law which is applicable thereto and upon the validity of which the judgment depends, may be contrary to the Constitution, it may bring the matter before the Constitutional Court in the circumstances, manner and subject to the consequences to be laid down by law, which shall in no case be suspensive.</p> <p>Article 35 Law on the Constitutional Court</p> <p>1. Where a judge or a court, proprio motu or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.</p>
Turkey	<p>Article 152 Constitution</p> <p>If a court which is trying a case, finds that the law or the decree having the force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on the issue.</p> <p>If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgment shall be decided upon by the competent authority of appeal. The Constitutional Court shall decide on the matter and make public its judgment within five months of receiving the contention.</p> <p>If no decision is reached within this period, the trial court shall conclude the case under existing legal provisions. However, if the decision on the merits of the case becomes final, the trial court is obliged to comply with it.</p> <p>Law on the Organisation and Trial Proceedings of the Constitutional Court</p> <p>Article 28</p> <p>If a court which is trying a case:</p> <ol style="list-style-type: none"> 1. finds that provisions of a law or law-amending ordinance to be applied in this case are unconstitutional, this decision together with its reasons, or 2. is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, a decision explaining the claims and defences of the parties concerned in relation to this subject•matter and its own views which led to this conviction, the contents of the file together with certified copies of documents relating to this case are sent by the court concerned to the presidency of the Constitutional Court.
Ukraine	<p>Article 40 Law on the Constitutional Court</p> <p>Subjects of the right to a constitutional claim for adopting a decision by the Constitutional Court of Ukraine in cases provided for by subsection one, Article 13 of this Law are: [...] the Supreme Court of Ukraine [...]</p> <p>Article 83</p> <p>When, in the process of examination of cases under general court procedure, a dispute develops concerning the constitutionality of norms of a law which is being applied by the court, the examination of the case is suspended. Under such circumstances, a constitutional examination of the case is opened and the case is considered by the Constitutional Court of Ukraine immediately.</p>

CONSTITUTIONAL AND LEGAL BASES FOR INDIRECT AND DIRECT INDIVIDUAL ACCESS

1.1.19. Table: Indirect access: Ombudsman

State	Relevant constitutional or legal provision
Albania	<p>Law on the Organisation and Functioning of the Constitutional Court Article 49</p> <p>1. A case before the Constitutional Court on the review of the compatibility of laws or other normative acts with the Constitution or international agreements may be initiated by an application of the President of the Republic, the Prime Minister, not less than one fifth of the deputies of the Assembly or the Chairman of the High State Control.</p> <p>2. This right extends, when it is demonstrated that the case concerns their interests, to the People's Advocate, local authorities, religious institutions, political parties and other organisations.</p>
Algeria	No individual access
Andorra	The Ombudsman has no power to apply to the Constitutional Court
Argentina	<p>Constitution Section 86</p> <p>The Ombudsman is an independent body created within the sphere of the National Congress operating with full autonomy without receiving instructions from any authority. The mission of the Ombudsman is the defence and protection of human rights and other rights, guarantees and interests sheltered under this Constitution and the laws, in the face of deeds, acts or omissions of the Administration; as well as the control of public administrative functions.</p> <p>The Ombudsman has capacity to be a party in a lawsuit. He is appointed and removed by Congress with the vote of two-thirds of the members present of each House. He has the immunities and privileges of legislators. He shall hold office for the term of five years and may only be re-appointed on one occasion.</p> <p>The organisation and operation of this body shall be ruled by a special law.</p> <p>Law 24.379 (p.t.) Article 14²⁹⁰</p> <p>The Public Defender can initiate and continue, <i>ex officio</i> or at the request of an interested person, investigations conducting to the elucidation of the acts, deeds and omissions by the national public administration and its agents that, through the illegitimate, faulty, irregular, abusive, arbitrary, discriminatory, negligent, strongly unfavourable or inopportune exercise of their functions, including those acts, deeds and omissions that could affect diffuse or collective interests.</p> <p>Article 18²⁹¹</p> <p>Every natural or juristic person that considers itself affected by the acts, deeds and omissions provided for in article 14 may petition to the Public Defender.</p>

²⁹⁰ Artículo 14.-Actuación. Forma y alcance. El Defensor del Pueblo puede iniciar y proseguir de oficio o a petición del interesado cualquier investigación conducente al esclarecimiento de los actos, hechos u omisiones de la administración pública nacional y sus agentes, que impliquen el ejercicio ilegítimo, defectuoso, irregular, abusivo, arbitrario, discriminatorio, negligente, gravemente inconveniente o inoportuno de sus funciones, incluyendo aquellos capaces de afectar los intereses difusos o colectivos. <http://www.defensor.gov.ar/institucion/ley-sp.htm>

²⁹¹ Artículo 18 Legitimación. Puede dirigirse al Defensor del Pueblo toda persona física o jurídica que se considere afectada por los actos, hechos u omisiones previstos en el artículo 14. <http://www.defensor.gov.ar/institucion/ley-sp.htm>

State	Relevant constitutional or legal provision
Armenia	<p>Constitution Article 100 The Constitutional Court shall, in conformity with the procedure defined by law: 1) determine the compliance of the laws, resolutions of the National Assembly, decrees and orders of the President of the Republic, decisions of the Prime Minister and bodies of the local self-government with the Constitution;</p> <p>Article 101 In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court the application to the Constitutional Court may be filed by: 8) the Human Rights' Defender - on the issue of compliance of normative acts listed in clause 1 of Article 100 of the Constitution with the provisions of Chapter 2 of the Constitution;</p> <p>Article 68 Law on the Constitutional Court 1. In regard to cases determined by Point 1 of Article 100 of the Constitution the constitutionality of the general acts as well as individual acts mentioned in that Point can be challenged, except for the cases of the appeals brought by the Ombudsmen. The Ombudsmen can challenge only the constitutionality of general acts.</p>
Austria	<p>Constitution Article 148e On application by the ombudsman board the Constitutional Court pronounces on the illegality of ordinances by a Federal authority.</p>
Azerbaijan	<p>Constitution Article 130 VII. Ombudsman of Azerbaijan Republic in accordance with the procedure provided for by the laws of the Republic of Azerbaijan for solving the matters indicated in items 1-7, para III of the given Article shall apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person had been violated by legislative acts in force, normative acts of executive power, municipalities as well as the court decisions.</p> <p>Law on the Constitutional Court Article 32. Petitions</p> <p>32.1. Petition can be submitted to Constitutional Court by [...] Ombudsman of Azerbaijan Republic on the matters provided for by Article 130.7 of the Constitution of Azerbaijan Republic.</p> <p>32.2. Petitions by Ombudsman of Azerbaijan Republic on the matter provided for by Article 130.3.4 of the Constitution of Azerbaijan Republic can be examined by Constitutional Court in following cases:</p> <p>32.2.1. If the normative legal act which should have been applied was not applied by a court;</p> <p>32.2.2. If normative legal act which should not have been applied was applied by a court;</p> <p>32.2.3. If normative legal act was not properly interpreted by a court;</p> <p>32.3. Petition envisaged in Article 32.2. of the present law can be submitted within 6 months from the moment of entrance of the relevant court act into legal force.</p>
Belarus	No Ombudsperson
Belgium	The Ombudsperson has no power to apply to the Constitutional Court
Bosnia and Herzegovina	The Ombudsperson has no power to apply to the Constitutional Court
Brazil	

State	Relevant constitutional or legal provision
Bulgaria	<p>Law on the Ombudsman Article 19</p> <p>(1) The Ombudsman shall:</p> <ol style="list-style-type: none"> 1. receive and consider complaints and signals regarding violations of rights and freedoms by the state and municipal authorities and their administrations as well as by persons assigned with the provision of public services; 2. make examinations upon the complaints and signals received; 3. reply in writing to the person, who has lodged the complaint or signal, within one month; if the case requires a more thorough examination, this term shall be three months; 4. make proposals and recommendations for reinstatement of the violated rights and freedoms before the respective authorities, their administrations, and persons under item 1; 5. mediate between the administrative authorities and the persons concerned for overcoming the violations admitted and shall reconcile their positions; 6. make proposals and recommendations for eliminating the reasons and conditions, which create prerequisites for violation of rights and freedoms; 7. notify the authorities, listed under article 150 of the Constitution, for approaching the Constitutional Court, when he/she is of the opinion that it is necessary the Constitution to be interpreted or a law to be declared unconstitutional;
Canada	The Ombudsperson has no power to apply to the Supreme Court
Chile	No Ombudsperson
Croatia	<p>Constitutional Act on the Constitutional Court Article 35</p> <p>The request by which the proceedings before the Constitutional Court are instituted may be presented by:</p> <ul style="list-style-type: none"> - the People's Ombudsman in proceedings provided by Article 92 of the Constitution of the Republic of Croatia.
Cyprus	The Ombudsperson has no power to apply to the Supreme Constitutional Court
Czech Republic	<p>Constitutional Court Act Article 64</p> <p>(2) A petition, under Article 87 para. 1, lit. b) of the Constitution, proposing the annulment of some other enactment, or individual provisions thereof, may be submitted by:</p> <ul style="list-style-type: none"> f) the Public Protector of Rights ["Ombudsman"];
Denmark	Ombudsperson has no power to appeal to the Supreme Court
Estonia	<p>Article 142 Constitution</p> <p>If the Legal Chancellor considers that a legal act issued by the state legislature or executive or by a local government is in conflict with the Constitution or a law, he or she shall propose to the body which has adopted that act to bring the act into accordance with the Constitution or law within twenty days.</p> <p>If the act is not brought into accordance with the Constitution or law within twenty days, the Legal Chancellor shall apply to the National Court to declare the act null and void.</p> <p>Chancellor of Justice Act²⁹²</p> <p>§15</p> <p>Everyone has the right of recourse to the Chancellor of Justice to review the conformity of an Act or other legislation of general application with the Constitution or the law.</p>

²⁹² See <http://www.legaltext.ee/text/en/X30041K6.htm>

State	Relevant constitutional or legal provision
	<p>§18 (1) If a body which passed legislation of general application has not brought the legislation or a provision thereof into conformity with the Constitution or the law within twenty days after the date of receipt of a proposal of the Chancellor of Justice, the Chancellor of Justice shall propose to the Supreme Court that the legislation of general application or a provision thereof be repealed.</p> <p>§19 (1) Everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by way of filing a petition to request verification whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties (hereinafter agency under supervision) adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration.</p> <p>§35(15) (1) If conciliation proceedings are terminated or the Chancellor of Justice has stated failure to reach an agreement, the petitioner has, within thirty days as of the receipt of the notice, the right of recourse to a court or to an authority conducting pre-trial proceedings as provided by law for the protection of his or her rights.</p> <p>Constitutional Review Court Procedure Act</p> <p>§4. (1) The Supreme Court shall review the constitutionality of legislation of general application or international treaties on the basis of a reasoned request, court judgment or court ruling. (2) A request may be filed with the Supreme Court by the President of the Republic, the Legal Chancellor and a local government council. (3) A court shall initiate proceedings by delivering its judgment or ruling to the Supreme Court.</p> <p>§6 (1) The Legal Chancellor may file a request to the Supreme Court that it 1) declare legislation of general application or a provision thereof passed by the legislative or executive power or a local government, which has entered into force, invalid; 2) to declare an Act, which has been proclaimed but has not yet entered into force, unconstitutional; 3) to declare legislation of general application passed by the executive or a local government body, which has not entered into force, unconstitutional; 4) to declare an international agreement entered into by the Republic of Estonia or a provision thereof unconstitutional; 5) to repeal a resolution of the Riigikogu concerning submission of a draft Act or other national issue to a referendum, if the draft Act to be submitted to a referendum, except draft Acts amending the Constitution, or other national issues are in conflict with the Constitution or if upon deciding to hold a referendum the Riigikogu has materially violated the prescribed procedure. (2) The Legal Chancellor shall file a request referred to in clause 5 of subsection (1) within 14 days as of the receipt of pertinent resolution of the Riigikogu.</p>
Finland	The Ombudsperson has no power to apply to the courts
France	The Ombudsperson has no power to apply to the Constitutional Council
Georgia	Organic Law on the Public Defender of Georgia Article 21

State	Relevant constitutional or legal provision
	<p>Following the results of the examination, the Public Defender of Georgia shall be authorised: to bring out a suit at the Constitutional Court of Georgia in a case where a referendum is not held, despite the request of the electorate; if he considers that the holding of a referendum contradicts the provisions of paragraph 2 of Article 74 of the Constitution of Georgia, or in the case where any legal act or any provision of this act violates human rights and fundamental freedoms recognised by Chapter 2 of the Constitution of Georgia;</p> <p>Organic Law on the Constitutional Court</p> <p>Article 36</p> <p>1. The following shall have the right to lodge a constitutional claim to the Constitutional Court concerning constitutionality of holding a referendum:</p> <p>b. the Public Defender of Georgia, if notwithstanding the electors' request a referendum is not called;</p> <p>c. not less than one fifth of the members of the Parliament of Georgia, the Public Defender of Georgia, if they believe that the holding a referendum contradicts the requirements of Article 74.2 of the Constitution of Georgia.</p> <p>Article 39</p> <p>1. The following shall have the right to lodge a constitutional claim on constitutionality of a normative act or a particular provisions thereof:</p> <p>b) The Public Defender of Georgia, if he/she believes that human rights and freedoms, recognised by Chapter Two of the Constitution of Georgia, are infringed upon.</p>
Germany	No Ombudsperson at federal level
Greece	<p>Law 3094/2003²⁹³</p> <p>The Ombudsperson has no power to apply to the Special Highest Court</p>
Hungary	<p>Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, article 22</p> <p>The Parliamentary Commissioner for Civil Rights may make a motion to the Constitutional Court for:</p> <p>a) The ex post facts examination of the unconstitutionality of a statutory instrument or any other legal means of government control;</p> <p>b) The examination of whether a statutory instrument or any other legal means of government control conflicts with an international agreement;</p> <p>c) (repealed)</p> <p>d) the termination of unconstitutionality manifesting itself in an omission;</p> <p>e) the interpretation of the provisions of the Constitution.</p>
Iceland	The Ombudsperson has no power to apply to the Constitutional Court
Ireland	The Ombudsperson has no power to apply to the Constitutional Court
Italy	No Ombudsperson at national level
Japan	The Ombudsperson has no power to apply to the Supreme Court
Kazakhstan	The Ombudsperson has no power to apply to the Constitutional Court
Korea, Republic	The Ombudsperson has no power to apply to the Constitutional Court
Latvia	<p>Ombudsman Law</p> <p>Section 13</p> <p>In the performance of the functions and tasks specified by this Law, the Ombudsman has the right:</p>

²⁹³ http://www.synigoros.gr/en_law.htm

State	Relevant constitutional or legal provision
	8) to submit an application regarding the initiation of proceedings in the Constitutional Court if an institution that has issued the disputable act has not rectified the established deficiencies within the time limit specified by the Ombudsman; 9) upon termination of a verification procedure and establishment of a violation, to defend the rights and interests of a private individual in court, if that is necessary in the public interest; 10) upon termination of a verification procedure and establishment of a violation, to apply to a court in such civil cases, where the nature of the action is related to a violation of the prohibition of differential treatment;
Liechtenstein	The Council and Complaints Office has no power to accede to the Constitutional Court
Lithuania	Law on the Seimas Ombudsman Article 19. Rights of the Seimas Ombudsman 1. When performing his duties, the Seimas Ombudsman shall have the right to: 11) propose to the Seimas to apply to the Constitutional Court regarding the conformity of legal acts with the Constitution and laws of the Republic of Lithuania;
Luxembourg	The Ombudsperson has no power to apply to the Constitutional Court
Malta	The Ombudsperson has no power to apply to the Constitutional Court
Mexico	
Moldova	Constitutional Jurisdiction Act ²⁹⁴ Article 38 1. The Constitutional Court shall exercise the constitutional jurisdiction upon appeal of the following subjects: i. Ombudsman; These limitations concern other subjects and only for cases expressly mentioned in the law.
Monaco	No Ombudsman
Montenegro	Constitution Article 81 The protector of human rights and liberties of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and liberties. The protector of human rights and liberties shall exercise duties on the basis of the Constitution, the law and the confirmed international agreements, observing also the principles of justice and fairness. The protector of human rights and liberties shall be appointed for the period of six years and can be dismissed in cases envisaged by the law. Law on the Protector of Human Rights and Freedoms Article 26 The Protector may propose the initiation of proceedings before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of the legislation and general enactment relating to human rights and freedoms.
Morocco	The Ombudsperson has no power to apply to the Constitutional Court
Netherlands	The Ombudsperson has no power to apply to any Court
Norway	The Ombudsperson has no power to apply to the Constitutional Court
Peru	Public Defender has no power to apply to the Constitutional Court

²⁹⁴ http://www.constcourt.md/index_en.html

State	Relevant constitutional or legal provision
Poland	<p>Constitution Article 80 In accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority.</p> <p>Constitutional Tribunal Act Article 27 The participants in the proceedings before the Tribunal shall be: 8) the Commissioner for Citizens' Rights where he/she has given notice of his/her participation in the proceedings in relation to complaints concerning constitutional infringements.</p> <p>Article 51 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings. Provisions of Article 33 shall apply accordingly. 2. The Commissioner for Citizens' Rights may, within the period of 60 days from the receipt of information, give notice of his/her participation in the proceedings.</p> <p>Article 52 1. The participants in the proceedings before the Tribunal shall be: the person making the complaint, the organ which promulgated the challenged normative act and the Public Prosecutor-General; the Commissioner of the Citizens' Rights shall also be the participant in the proceedings when he/she has given notice of his/her participation therein.</p> <p>Act of 15 July 1987 on the Commissioner for Civil Rights Protection Article 16. 1. In connection with the cases examined, the Commissioner can present to the relevant agencies, organisations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve. 2. The Commissioner may also: 1) approach the relevant agencies with proposals for legislative initiative, or for issuing or amending other legal acts concerning the liberties and rights of a human and a citizen, 2) approach the Constitutional Tribunal with motions mentioned in Art. 188 of the Constitution, 3) report participation in the proceedings before the Constitutional Tribunal in the cases of constitutional complaints and take part in those proceedings, 4) request the Supreme Court to issue a resolution aimed at explaining legal provisions that raise doubts in practice, or application of has resulted in conflicting judicial decisions.</p>
Portugal	<p>Constitution Article 281 General review of constitutionality and legality 2. The following persons are entitled to request the Constitutional Court to make generally binding rulings on questions of unconstitutionality and illegality: d. The Ombudsman; Law n.º 9/91 Statute of the Ombudsman Article 20 3 - The Ombudsman may request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions, in accordance with article 281, paragraph 1 and paragraph 2, sub-paragraph (d), of the Constitution. 4 - The Ombudsman may request the Constitutional Court to rule on cases of unconstitutionality due to a legislative omission, in accordance with article 283, paragraph 1, of the Constitution.</p>

State	Relevant constitutional or legal provision
Romania	<p>Constitution Article 144 The Constitutional Court shall have the following powers: [...] d) to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or of commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People; Law on the Advocate of the People²⁹⁵ Article 13 Law no. 35/1997 on Ombudsman The Advocate of the People shall have the following duties: b) receives and distributes complaints lodged by persons aggrieved by public administration authorities through violations of their civic rights and freedoms, and decides on these complaints; d) submits points of view, at the request of the Constitutional Court; e) can file submission to the Constitutional Court on the unconstitutionality of laws, before their promulgation; f) submits directly to the Constitutional Court exception of unconstitutionality of laws and ordinances; Article 14 (1) The Ombudsman exercises his duties <i>ex officio</i> or upon complaints lodged by aggrieved persons as provided under Article 13 (b).</p>
Russian Federation	<p>Federal Constitutional Law "On the Representative under human rights in the Russian Federation" Article 29 1. By results of consideration of the complaint the Representative has the right: 5) to address in the Constitutional Court of the Russian Federation with the complaint to infringement of constitutional laws and freedom of citizens the law which is applied or subject to application in a concrete case.</p>
San Marino	No Ombudsman as yet, but plans to introduce one.
Serbia	<p>Draft Law on Ombudsman²⁹⁶ Article 16 The Ombudsman shall have the power to initiate proceedings before the Constitutional Court for the assessment of legality and constitutionality of laws, other regulations and general acts which govern issues related to the freedoms and rights of citizens.</p>
Slovakia	<p>Constitution Article130.1.f The Constitutional Court shall commence the proceedings upon an application submitted by the Public Defender of Rights in matter of conformity of legal regulations according to Article 125.1 of the Constitution of the Slovak Republic, if further application of the regulation could represent a threat to fundamental rights and freedoms or human rights and fundamental freedoms, as arise from an international treaty that has been ratified by the Slovak Republic and published in the way specified by law Article 151a (1) The Public Defender of Rights is an independent body which in the scope and in manner laid down by law shall protect the fundamental rights and freedoms of natural persons and legal persons in proceedings before public administrative and other bodies, if their proceedings, decision-making or inactivity is inconsistent with the legal order.</p>

²⁹⁵ <http://www.avp.ro/indexen.html>²⁹⁶ [http://www.venice.coe.int/docs/2004/CDL\(2004\)113-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)113-e.pdf)

State	Relevant constitutional or legal provision
Slovenia	<p>Article 23.a Constitutional Court Act</p> <p>(1) The procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority can be initiated by a request submitted by:</p> <ul style="list-style-type: none"> - the ombudsman for human rights if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms. <p>Article 50</p> <p>(2) The ombudsman for human rights may, under the conditions determined by this Act, lodge a constitutional complaint in connection with an individual case that he is dealing with.</p> <p>Article 52</p> <p>(2) The ombudsman for human rights lodges a constitutional complaint with the consent of the person whose human rights or fundamental freedoms he is protecting in the individual case.</p>
South Africa	<p>Constitution of the Republic of South Africa</p> <p>Art. 182: Functions of Public Protector</p> <p>(1) The Public Protector has the power, as regulated by national legislation-</p> <ul style="list-style-type: none"> (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; (b) to report on that conduct; and (c) to take appropriate remedial action. <p>(2) The Public Protector has the additional powers and functions prescribed by national legislation.</p> <p>(3) The Public Protector may not investigate court decisions.</p> <p>(4) The Public Protector must be accessible to all persons and communities.</p> <p>(5) An report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.</p> <p>Art. 183: Tenure</p> <p>The Public Protector is appointed for a non-renewable period of seven years.</p> <p>Public Protector Act, no. 23 of 1994</p> <p>Public Protector may apply to the Constitutional Court or any other court</p>
Spain	<p>Constitution</p> <p>Article 162</p> <p>1. The following are eligible to:</p> <ul style="list-style-type: none"> a) lodge an appeal against unconstitutionality: the President of the Government, the Defender of the People, fifty Deputies, fifty Senators, the executive corporate bodies of the Autonomous Communities and, when applicable, their Assemblies; b) lodge an individual appeal for protection ("recurso de amparo"): any individual or corporate body with a legitimate interest, as well as the Defender of the People and the Office of the Public Prosecutor. <p>2. In all other cases, the organic law shall determine which persons and agencies are eligible.</p> <p>Organic Law on the Constitutional Court</p> <p>Article 32</p> <p>1. The following have standing to bring an action of unconstitutionality against Statutes of Autonomy and other State laws, organic or of any character whatsoever, against regu-</p>

State	Relevant constitutional or legal provision
	<p>lations and enactments of the State or Autonomous Communities having the force of law, and against international treaties and the Rules of Procedure of the Houses and the Cortes Generales:</p> <p>b. the Defender of the People (Defensor del Pueblo);</p> <p>Article 46</p> <p>1. The following shall have standing to lodge an appeal for constitutional protection:</p> <p>a. In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor;</p> <p>b. In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor.</p> <p>2. Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.</p>
Sweden	The Ombudsperson has no power to apply to the courts
Switzerland	No Ombudsperson at federal level
"The former Yugoslav Republic of Macedonia"	<p>Law on the Ombudsman²⁹⁷</p> <p>Article 13</p> <p>The procedure for protection of the constitutional and legal rights of citizens before the Ombudsman shall be initiated by putting forward a submission.</p> <p>Anyone may put forward a submission to the Ombudsman when he assesses that his constitutional and legal freedoms and rights have been infringed or when the principle of non-discrimination and adequate and equitable representation of community members in the bodies set out in Article 2 of this Law has been breached.</p> <p>The Ombudsman may initiate a procedure on his own initiative if he assesses that the constitutional and legal rights of citizens, stipulated in Article 2 of this Law, have been infringed.</p> <p>Article 30</p> <p>The Ombudsman may submit a proposal to the Constitutional Court of the Republic of Macedonia for evaluation of the constitutionality of the laws and the constitutionality and legality of the other regulations or general acts.</p>
Tunisia	Ombudsperson has no power to apply to the Constitutional Court
Turkey	According to the 2010 constitutional reform package, an Ombudsperson will be created. However, he/she will not have the power to bring a case before the Constitutional Court.
Ukraine	<p>Article 150 Constitution</p> <p>The authority of the Constitutional Court of Ukraine comprises:</p> <p>1) deciding on issues of conformity with the Constitution of Ukraine (constitutionality) of the following:</p> <p>laws and other legal acts of the Verkhovna Rada of Ukraine;</p> <p>acts of the President of Ukraine;</p> <p>acts of the Cabinet of Ministers of Ukraine;</p> <p>legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea.</p> <p>These issues are considered on the appeals of:</p> <p>the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine;</p>

²⁹⁷ <http://www.unhcr.org/refworld/type,LEGISLATION,,MKD,3fcf36dc4,0.html>

State	Relevant constitutional or legal provision
	<p>Law of Ukraine on the Constitutional Court of Ukraine</p> <p>Article 13</p> <p>The Constitutional Court of Ukraine adopts decisions and provides conclusions in cases concerning:</p> <ul style="list-style-type: none"> 1. constitutionality of laws and the other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Supreme Rada of the Autonomous Republic of Crimea; 4. official interpretation of the Constitution and laws of Ukraine. <p>Article 40</p> <p>Subjects of the right to a constitutional claim for adopting a decision by the Constitutional Court of Ukraine in cases provided for by subsection one, Article 13 of this Law are: the President of Ukraine, no fewer than forty-five National Deputies of Ukraine (a National Deputy's signature may not be recalled), the Supreme Court of Ukraine, the Authorised Representative of the Verkhovna Rada of Ukraine on Human Rights and the Supreme Rada of the Autonomous Republic of Crimea.</p> <p>Article 41</p> <p>Subjects of the right to a constitutional claim for providing opinions by the Constitutional Court of Ukraine in the cases provided for by subsections two, three and four of Article 13 of this Law are:</p> <ul style="list-style-type: none"> - under subsection four, the President of Ukraine, no fewer than forty-five National Deputies of Ukraine (a National Deputy's signature may not be recalled), the Authorised Representative of the <i>Verkhovna Rada</i> of Ukraine on Human Rights, the Supreme Court of Ukraine, the Cabinet of Ministers of Ukraine, the other State power authorities, the Supreme Rada of the Autonomous Republic of Crimea and local self-government authorities. <p>Article 82</p> <p>The grounds for raising the issue of opening the examination of a case concerning the conformity of current legislative norms to the principles and norms of the Constitution of Ukraine as to the rights and freedoms of individuals and citizens are:</p> <ol style="list-style-type: none"> 1. the existence of disputable questions concerning the constitutionality of laws and other legal acts adopted and promulgated in the prescribed order; 2. the development of disputable questions concerning the constitutionality of legal acts revealed in the process of general court procedure; 3. the development of disputable questions concerning the constitutionality of legal acts revealed by executive power authorities in process of their implementation and by the Authorised Representative of the Verkhovna Rada of Ukraine on Human Rights in the process of his/her activity.
United Kingdom	<p>Parliamentary Commissioner Act 1967²⁹⁸</p> <p>Article 6</p> <p>(1) A complaint under this Act may be made by any individual, or by any body of persons whether incorporated or not, not being:</p> <ul style="list-style-type: none"> (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; <p>Article 10</p>

²⁹⁸ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1967/cukpga_19670013_en_1

State	Relevant constitutional or legal provision
	(3) If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case. The Parliamentary Commissioner for Administration has no power to apply to the courts.
United States of America	No Ombudsperson.
Uruguay	No Ombudsperson

1.1.20. Table: Indirect individual access: Preliminary requests

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

State	Relevant constitutional or legal provision
	<p>Article 53</p> <p>1. An application for judicial review by the Constitutional Court of the constitutionality of such a law or regulation is admissible where, at any stage in ordinary judicial proceedings, the court hearing the proceedings considers on its own initiative or on the initiative of one of the parties that one of the laws and regulations mentioned in the preceding Article which the court must apply in resolving the principal case or any step whatsoever taken therein is contrary to the Constitution.</p> <p>2. This view that the law or regulation in question is unconstitutional must be based on the following factors: it must be impossible to interpret the law and regulation in question in a way which is consistent with the Constitution; the court must provide a reasoned explanation of the need to apply the law or regulation in resolving the main case or the step in question; and the law or regulation must not have been declared constitutional in any resolution or decision taken by the Constitutional Court, as provided for in Article 44.3 of this Law.</p> <p>3. Before filing the document introducing the action provided for in the first paragraph of this Article with the Constitutional Court the court in question must consult the parties and the Attorney General's Department where it is represented in the proceedings. When the parties have been heard the court, on its sole responsibility, issues a decree containing its decision whether or not to lodge the application. No appeal may be made against the decision taken in that decree; where the decision is negative, however, the application may where appropriate be renewed during subsequent stages of the proceedings.</p> <p>Article 54</p> <p>Where the applicable law or regulation regarded as contrary to the Constitution entered into force prior to the Constitution the court may choose between bringing the matter before the Constitutional Court and declaring at the appropriate point in the proceedings that the laws or regulations are repealed. In any event a declaration that the law or regulation is repealed does not mean that the law or regulation enacted prior to the Constitution is null and void, but simply states that it is without force and the reasons why this is so.</p>
Argentina	No preliminary ruling procedure
Armenia	<p>Constitution Article 101</p> <p>In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court the application to the Constitutional Court may be filed by:</p> <p>7) courts and the Prosecutor General on the issue of constitutionality of provisions of normative acts related to specific cases within their proceedings;</p> <p>Law on the Constitutional Court Article 71</p> <p>1. In cases determined by this Article the Courts and the Chief Prosecutor appeal to the Constitutional Court if they find that the legal acts of general nature (or its provision(s)), which are under the jurisdiction of the Constitutional Court according to Point 1 of Article 100 of the Constitution and which shall be implemented for the case under their review, contradict the Constitution.</p>
Austria	<p>Constitution Article 139</p> <p>(1)The Constitutional Court pronounces on application by a court or an independent administrative tribunal whether ordinances issued by a Federal or Land authority are contrary to law, but <i>ex officio</i> in so far as the Court would have to apply such an ordinance in a pending suit.</p>

State	Relevant constitutional or legal provision
	<p>Article 140 "The Constitutional Court pronounces on application of the Supreme Court, a competent appellate court, an independent administrative tribunal, the Asylum Court, the Administrative Court or the Federal Tender Office whether a Federal or a Land law is unconstitutional, but <i>ex officio</i> in so far as the Court would have to apply such a law in a pending suit".</p>
Azerbaijan	<p>Constitution Article 130 VI. In accordance with the procedure provided for by the laws of Azerbaijan Republic the courts may file the Constitutional Court of Azerbaijan Republic a request on interpretation of the Constitution and the laws of Azerbaijan Republic as regards the matters concerning the implementation of human rights and freedoms. Law on the Constitutional Court Article 33 33.1. Applications can be submitted to Constitutional Court by the Milli Majlis of Azerbaijan Republic on the matters provided for by Article 104.3 of the Constitution of Azerbaijan Republic and by courts of Azerbaijan Republic on the matters provided for by Article 130.6 of the Constitution of Azerbaijan Republic.</p>
Belarus	<p>Constitution Article 112. If, during the hearing of a specific case, a court concludes that an enforceable enactment is contrary to the Constitution, it shall make a ruling in accordance with the Constitution and raise, under the established procedure, the issue of whether the enforceable enactment in question should be deemed unconstitutional.</p>
Belgium	<p>Constitution Article 142 There is for all Belgium a Constitutional Court, the composition, competences and functioning of which are established by the law. This Court rules by means of judgments on: 1º those conflicts referred to in Article 141; 2º the violation of Articles 10, 11 and 24 by a law, a federate law or a rule as referred to in Article 134; 3º the violation of constitutional articles that the law determines by a law, a federate law or by a rule as referred to in Article 134. A matter may be referred to the Court by any authority designated by the law, by any person that can prove an interest or, pre-judicially, by any court.</p>
Bosnia and Herzegovina	<p>Constitution Article VI: Constitutional Court 3 Jurisdiction. c The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.</p>
Brazil	No preliminary ruling procedure
Bulgaria	<p>Constitution Article 150</p>

State	Relevant constitutional or legal provision
	2. Should it find a discrepancy between a law and the Constitution, the Supreme Court of Cassation or the Supreme Administrative Court shall suspend the proceedings on a case and shall refer the matter to the Constitutional Court. Any portion of a law which is not ruled unconstitutional shall remain in force.
Canada	No preliminary ruling procedure
Chile	No preliminary ruling procedure
Croatia	Article 37 Constitutional Act on the Constitutional Court (1) If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, are not in accordance with the Constitution, it shall stop the proceedings and present a request with the Constitutional Court to review the constitutionality of the law, or some of its provisions.
Czech Republic	Constitution Article 95 (1) In making their decisions, judges are bound by statutes and treaties which form a part of the legal order; they are authorised to judge whether enactments other than statutes are in conformity with statutes or with such treaties. (2) Should a court come to the conclusion that a statute which should be applied in the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional Court.
Denmark	No preliminary ruling procedure
Estonia	Constitutional Review Court Procedure Act §. 4. (1) The Supreme Court shall review the constitutionality of legislation of general application or international treaties on the basis of a reasoned request, court judgment or court ruling. (3) A court shall initiate proceedings by delivering its judgment or ruling to the Supreme Court. §. 9. Constitutional review on the basis of court judgment or ruling (1) If a court of first or second instance has, upon adjudication of a case, not applied a pertinent legislation of general application or an international agreement, declaring it unconstitutional, it shall deliver the judgment or ruling to the Supreme Court. (2) The court shall append to its judgment or ruling to be delivered to the Supreme Court the text of the legislation of general application or international agreement or pertinent extracts thereof, which it has declared unconstitutional in the conclusion of the judgment or ruling.
Finland	No preliminary ruling procedure
France	Article 61-1 Constitution <i>If, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d'État or by the Cour de Cassation to the Constitutional Council, within a determined period.</i> <i>An Institutional Act shall determine the conditions for the application of the present article.</i> Loi organique n°2009-1523 du 10 décembre 2009 relative à l'application de l'article 61-1 de la Constitution. <i>"Toute juridiction relevant du Conseil d'État ou de la Cour de cassation peut être saisie d'une question prioritaire de constitutionnalité. Seule la cour d'assises ne peut en être</i>

State	Relevant constitutional or legal provision
	<p><i>saisie. Toutefois, en matière criminelle, la question peut être posée soit avant, devant le juge d'instruction, soit après, à l'occasion d'un appel ou d'un pourvoi en cassation.</i></p> <p><i>La question prioritaire de constitutionnalité doit être soulevée par écrit. L'écrit doit être motivé. Il doit toujours être distinct des autres conclusions qui sont produites dans l'instance.</i></p> <p><i>Les critères pour que le Conseil constitutionnel soit saisi de la question prioritaire de constitutionnalité sont détaillés par la loi organique du 10 décembre 2009 relative à l'article 61-1 de la Constitution. Ils sont au nombre de trois:</i></p> <ul style="list-style-type: none"> <i>- la disposition législative critiquée est applicable au litige ou à la procédure, ou constitue le fondement des poursuites;</i> <i>- la disposition législative critiquée n'a pas déjà été déclarée conforme à la Constitution par le Conseil constitutionnel;</i> <i>- la question est nouvelle ou présente un caractère sérieux".</i>
Georgia	<p>Organic Law on the Constitutional Court Article 19</p> <p>2. if, while considering a particular case, a court of general jurisdiction concludes, that there is a sufficient ground to deem the law or other normative act, applicable by the court while adjudicating upon the case, fully or partially incompatible with the Constitution, the court shall suspend the consideration of the case and apply to the Constitutional Court. The consideration of the case shall be resumed after a judgment on the issue is adopted by the Constitutional Court. (12.02.02 N° 1264) Law on the Constitutional Court</p>
Germany	<p>Constitution Article 100</p> <p>(1) Where a court considers that a law on whose validity its ruling depends is unconstitutional it shall stay the proceedings and, if it holds the constitution of a Land to be violated, seek a ruling from the Land court with jurisdiction for constitutional disputes or, where it holds this Basic Law to be violated, from the Federal Constitutional Court. This shall also apply where this Basic Law is held to be violated by Land law or where a Land law is held to be incompatible with a federal law.</p> <p>(2) Where in the course of litigation doubt exists whether a rule of international law is an integral part of federal law and whether such rule directly establishes rights and obligations for the individual (Article 25), the court shall seek a ruling from the Federal Constitutional Court.</p>
Greece	<p>Constitution Article 100</p> <p>5. When a chamber or department of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors judges a provision of a statute enacted by Parliament to be contrary to the Constitution, it shall compulsorily refer the question to the respective plenum, unless this has been judged by a previous decision of the plenum or of the Special Highest Court of the present article. The plenum shall be assembled into judicial formation and shall decide definitively, as specified by law. This regulation shall apply analogously also in the elaboration of regulatory decrees by the Supreme Administrative Court.</p> <p>Law no. 345 establishing the Special Highest Court Article 7</p> <p>Cases within the jurisdiction of the Special Court shall be brought:</p> <ul style="list-style-type: none"> b. by another court's reference of a preliminary question.

State	Relevant constitutional or legal provision
Hungary	<p>Act no. XXXII on the Constitutional Court Article 38</p> <p>1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.</p>
Iceland	No preliminary ruling procedure
Ireland	No preliminary ruling procedure
Israel	No preliminary ruling procedure
Italy	<p>Provisions governing the review of constitutionality and guaranteeing the independence of the Constitutional Court Section 1</p> <p>Questions of constitutionality regarding an Act of Parliament or a central government statutory measure having the force of law raised by a court or by a party to judicial proceedings or not deemed by a court of law to be manifestly groundless, shall be referred to the Constitutional Court for a decision.</p> <p>Law on the composition and procedures of the Constitutional Court Section 23</p> <p>If the case cannot be tried without first resolving the question of constitutionality, or if the trial court does not consider that the question of constitutionality raised is groundless, it shall issue an order referring the matter immediately to the Constitutional Court, setting out the terms and the reasons for raising the question of constitutionality, and shall suspend trial proceedings.</p> <p>A court before which a case is being tried may also refer a question of constitutionality <i>ex officio</i> by means of a court order setting out the information required under a) and b) above, and the measures referred to in the subsection above.</p> <p>Supplementary Provisions Governing Constitutional Court Proceedings 7 October 2008 as subsequently amended (Official Gazette No. 261 of 7 November 2008) Section 1</p> <p>The order with which a judge sitting alone or jointly, before which the case is pending decision, refers a matter to the Constitutional Court for a ruling shall be filed with the Court together with all the documents from the case-file and evidence of service as provided by Section 23 of Law No. 87 of 11 March 1953.</p>
Japan	No preliminary ruling procedure
Kazakhstan	<p>Article 78 Constitution</p> <p>1. The courts shall have no right to apply laws and other regulatory legal acts infringing on the rights and liberties of an individual and a citizen established by the Constitution. If a court finds that a law or other regulatory legal act subject to application infringes on the rights and liberties of an individual and a citizen it shall suspend legal proceedings and address the Constitutional Council with a proposal to declare that law unconstitutional.</p>
Korea, Republic	<p>Constitutional Court Act Article 2 (Jurisdiction)</p> <p>The Constitutional Court shall have jurisdiction over the following issues</p> <p>1. Constitutionality of statutes upon the request of the ordinary courts; Article 41 (Request for Adjudication on the Constitutionality of Statutes)</p>

State	Relevant constitutional or legal provision
	<p>(1) When the issue of whether or not statutes are constitutional is relevant to the judgment of the original case, the ordinary court (including the military court; hereinafter the same shall apply) shall request to the Constitutional Court, <i>ex officio</i> or by decision upon a motion by the party, an adjudication on the constitutionality of statutes.</p>
Latvia	<p>Law on the Constitutional Court Article 17</p> <p>The following shall have the right to submit an application to initiate a case regarding compliance of laws and international agreements signed or entered into by Latvia -even before the Saeima has confirmed the agreement-with the Constitution, compliance of other normative acts or their parts with the legal norms (acts) of higher legal force (Clauses 1-3 of Article 16), as well as compliance of national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution (Clause 6 of Article 16):</p> <p>9. a court, when reviewing an administrative, civil or criminal case;</p>
Liechtenstein	<p>Constitutional Court Act Article 18</p> <p>1) The Constitutional Court shall decide on the constitutionality of laws or individual legislative provisions:</p> <p>b) on application of a court, if and to the extent that the court has to apply a law or individual provisions thereof (on the basis of precedent) that it believes to be unconstitutional in a matter pending before it and the court has decided to interrupt the proceedings to request a ruling by the Constitutional Court;</p> <p>Article 20</p> <p>1) The Constitutional Court shall decide on the compliance of ordinances or individual provisions thereof with the Constitution, laws, and international treaties:</p> <p>a) on application of a court or of a municipal authority, if and to the extent that the court or municipal authority has to apply an ordinance or individual provisions thereof (on the basis of precedent) that it believes to be incompatible with the Constitution, a law, or an international treaty in a matter pending before it and the court or municipal authority has decided to interrupt the proceedings to request a ruling by the Constitutional Court;</p> <p>Article 22</p> <p>1) The Constitutional Court shall decide on the constitutionality of international treaties or individual provisions thereof:</p> <p>a) on application of a court or an administrative authority, if and to the extent that the court or administrative authority has to apply an international treaty or individual provisions thereof (on the basis of precedent) that it believes to be unconstitutional in a matter pending before it and the court or administrative authority has decided to interrupt the proceedings to request a ruling by the Constitutional Court;</p>
Lithuania	<p>Constitution Article 106</p> <p>The Government, no less than one-fifth of the members of the Seimas, and the courts shall have the right to address the Constitutional Court concerning legal acts specified in part 1 of Article 105.</p> <p>Law on the Constitutional Court of the Republic of Lithuania Article 67</p> <p>Provided that there are grounds to consider that a law or other legal act, which shall be applicable in a concrete case, fails to conform with the Constitution, the court (judge) shall suspend the examination of said case and, with regard to the competence of the</p>

State	Relevant constitutional or legal provision
	Constitutional Court, shall appeal to it with a petition to decide whether the said law or other legal act is in conformity with the Constitution. The Supreme Court of Lithuania, the Court of Appeals of Lithuania, and district and area courts shall appeal to the Constitutional Court pursuant to a decision.
Luxembourg	<p>Law on the Organisation of the Constitutional Court Article 6</p> <p>If a court considers that an issue concerning a law's conformity with the Constitution arises and that a ruling on the matter is necessary for it to deliver its judgment, it must raise the matter of its own motion after asking the parties to submit any observations.</p>
Malta	<p>Constitution Article 95</p> <p>(2) One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine -</p> <ul style="list-style-type: none"> (d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under section 46 of this Constitution; (e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under section 46 of this Constitution; European Convention Act <p>Article 4</p> <p>3. If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection 4 of this section, the court in which the question arose shall dispose of the question in accordance with that decision.</p>
Mexico	<p>Article 105 Constitution</p> <p>The Supreme Court of Justice of the Nation will get to know, in the terms that the regulating law specifies, about the following affairs:</p> <p>III. By itself or by petition of the appropriate unitary circuit tribunal, or the Attorney General of the Republic, it may get to know about cases of appeal of sentences of district judges in those cases in which the Federation took part, and in which their interest and importance merit its participation.</p>
Moldova	<p>Constitution Article 135</p> <p>(1) The Constitutional Court shall:</p> <ul style="list-style-type: none"> g) solve the pleas of unconstitutionality of legal acts, as claimed by the Supreme Court of Justice; <p>Code constitutional jurisdiction</p> <p>This Code provides also the right of the Economical Court to request a control of constitutionality, but in article 4 of the same act exception of unconstitutionality can be introduced only by the Supreme Court. Theoretically the Economic court will have formally the possibility to challenge the constitutionality directly but this do not happened in practice.</p>
Monaco	No preliminary ruling procedure

State	Relevant constitutional or legal provision
Montenegro	<p>Constitution Article 150</p> <p>The procedure before the Constitutional Court for the assessment of constitutionality and legality may be initiated by the court, other state authority, local self-government authority and five Members of the Parliament.</p> <p>Draft law on the Constitutional Court²⁹⁹</p> <p>Article 43</p> <p>Proceedings for review of constitutionality and legality of general acts shall be initiated by a petition submitted by the petitioner referred to in Article 150 paragraph 2 of the Constitution and when the Constitutional Court institutes proceedings on the basis of an initiative submitted or on its own by an order.</p>
Morocco	No preliminary ruling procedure
Netherlands	No preliminary ruling procedure
Norway	No preliminary ruling procedure
Peru	No preliminary ruling procedure
Poland	<p>Constitution Article 193</p> <p>Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.</p> <p>Constitutional Tribunal Act</p> <p>Article 3</p> <p>Any court may refer a question of law to the Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or a statute if the answer to this question of law determines the matter pending before the court.</p>
Portugal	No preliminary ruling procedure
Romania	<p>Law on the Organisation and Operation of the Constitutional Court Article 29</p> <p>(1) The Constitutional Court shall decide upon the exceptions raised before the courts of law or of commercial arbitration referring to the unconstitutionality of laws and ordinances which are in force, or any provision thereof, where such is in connection with the judgment of the case at any stage of trial proceedings and regardless of its object.</p> <p>2. The exception can be raised at the request of either party or <i>ex officio</i>, by the court of law or of commercial arbitration hearing the case. Likewise, the prosecutor is entitled to raise this exception before the court in cases where he participates in trial proceedings.</p>
Russian Federation	<p>Constitution Article 125</p> <p>4. The Constitutional Court of the Russian Federation, upon complaints about violations of the constitutional rights and freedoms of citizens and upon requests of the courts, shall verify the conformity with the Constitution of any law which is applied or shall be applied in a concrete case in a way established by federal law.</p> <p>Federal Constitutional Law on the Constitutional Court of the Russian Federation Article 101</p> <p>The court while considering the case in any instance, having arrived at the conclusion about non-conformity with the Constitution of the Russian Federation of the law which</p>

²⁹⁹ CDL(2008)073 Draft Law on the Constitutional Court of Montenegro.

State	Relevant constitutional or legal provision
	has been applied or ought to be applied in a specific case, shall petition the Constitutional Court of the Russian Federation with an inquiry to verify the constitutionality of the aforementioned law.
San Marino	<p>Qualified Law of 25 April 2003 Article 13(5) (p.t.)³⁰⁰ The declaration of inadmissibility of the request by the judge doesn't forestall new requests concerning the same question before other instances or in other proceedings.</p>
Serbia	No preliminary ruling procedure
Slovakia	<p>Constitution Article 130 (1) The Constitutional Court shall commence the proceedings upon an application submitted by: d) any court; Article 144 Constitution (2) If a court is of the opinion that an other generally-binding legal regulation, its part, or its particular provision which concerns the pending case, is not in conformity with the Constitution, constitutional law, international treaty pursuant to Article 7.5 or an ordinary law, it shall suspend the proceedings and shall submit a an application for commencement of proceedings according to Article 125.1. The legal opinion of the Constitutional Court of the Slovak Republic contained in the decision shall be binding for that court. Article 18 Law on the Organisation of the Constitutional Court 1. The Constitutional Court shall open proceedings on a petition that has been filed by: d. a court, in a matter if its jurisdiction; Article 37 Law on the Organisation of the Constitutional Court 1. If the persons specified in Article 18, paragraph 1, letters a to f come to the conclusion that a regulation of lower legal force is in conflict with a regulation of higher legal force or international treaty they may file a petition with the Constitutional Court to proceedings. (1) The Constitutional Court shall commence proceedings upon an application submitted by: d) any court in relation to its decision-making</p>
Slovenia	<p>Article 156 Constitution If a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision. Article 23.a Constitutional Court Act (1) The procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority can be initiated by a request submitted by: - the National Assembly; - one third of the deputies; - the National Council; - the Government; - the ombudsman for human rights if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms;</p>

³⁰⁰ La dichiarazione di inammissibilità dell'istanza da parte del giudice *a quo* non impedisce la riproposizione del medesimo negli altri gradi o in procedimenti diversi.

State	Relevant constitutional or legal provision
	<ul style="list-style-type: none"> - the information commissioner, provided that a question of constitutionality or legality arises in connection with a procedure he is conducting; - the Bank of Slovenia or the Court of Audit, provided that a question of constitutionality or legality arises in connection with a procedure they are conducting; - the State Attorney General, provided that a question of constitutionality arises in connection with a case the State Prosecutor's Office is conducting; - representative bodies of local communities, provided that the constitutional position or constitutional rights of a local community are interfered with; - representative associations of local communities, provided that the rights of local communities are threatened; - national representative trade unions for an individual activity or profession, provided that the rights of workers are threatened. <p>Article 23</p> <p>(1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality.</p> <p>(2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality.</p>
South Africa	No preliminary request procedure
Spain	<p>Constitution</p> <p>Article 163</p> <p>If a judicial body considers, in some action, that a regulation with the status of law which is applicable thereto and upon the validity of which the judgment depends, may be contrary to the Constitution, it may bring the matter before the Constitutional Court in the circumstances, manner and subject to the consequences to be laid down by law, which shall in no case be suspensive.</p> <p>Organic Law on the Constitutional Court</p> <p>Article 35</p> <p>1. Where a judge or a court, proprio motu or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.</p> <p>Article 46</p> <p>1. The following shall have standing to lodge an appeal for constitutional protection:</p> <ol style="list-style-type: none"> In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor; In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor. <p>2. Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.</p>
Sweden	No preliminary ruling procedure
Switzerland	No preliminary ruling procedure

State	Relevant constitutional or legal provision
“The former Yugoslav Republic of Macedonia”	<p>Article 17 of the Law on the Courts</p> <p>1) The court submits an initiative for commencing a procedure on assessing the compliance of the Law with the Constitution, when during procedure their accordance turns out to be questionable, for which it notifies the court of higher instance and the Supreme Court of Republic of Macedonia.</p> <p>(2) When the court finds that the Law that is to be applied in the specific case is not in accordance with the Constitution, and the constitutional provisions cannot be directly applied, will stay the procedure until the Constitutional Court delivers a decision.</p> <p>(3) The party has a right to an appeal against the decision for stay of the procedure. The procedure upon the appeal is urgent.</p>
Tunisia	No preliminary ruling procedure
Turkey	<p>Constitution Article 152</p> <p>If a court which is trying a case finds that the law or the decree having force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue.</p> <p>If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgement shall be decided upon by the competent authority of appeal.</p> <p>Law on the Organisation and Trial Proceedings of the Constitutional Court Article 28</p> <p>If a court which is trying a case:</p> <p>1. finds that provisions of a law or law-amending ordinance to be applied in this case are unconstitutional, this decision together with its reasons, or</p> <p>2. is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, a decision explaining the claims and defences of the parties concerned in relation to this subject-matter and its own views which led to this conviction, the contents of the file together with certified copies of documents relating to this case are sent by the court concerned to the presidency of the Constitutional Court.</p>
Ukraine	<p>Law on the Constitutional Court Article 83</p> <p>When, in the process of examination of cases under general court procedure, a dispute develops concerning the constitutionality of norms of a law which is being applied by the court, the examination of the case is suspended.</p> <p>Under such circumstances, a constitutional examination of the case is opened and the case is considered by the Constitutional Court of Ukraine immediately.</p>
United Kingdom	No preliminary ruling procedure
United States of America	<p>§1254 US Code³⁰¹</p> <p>Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:</p> <p>(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.</p>

³⁰¹ <http://www4.law.cornell.edu/uscode/28/1254.html>

State	Relevant constitutional or legal provision
	<p>U.S. Supreme Court Rules</p> <p>Rule 11. <i>Certiorari</i> to a United States Court of Appeals Before Judgment</p> <p>A petition for a writ of <i>certiorari</i> to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. §2101(e).</p> <p>Rule 19. Procedure on a Certified Question</p> <p>1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.</p> <p>2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. §1254(2).</p>
Uruguay	<p>Article 258³⁰² (p.t.)</p> <p>The Judge or Tribunal that cognises in any ordinary judicial proceeding, or the Tribunal of Administrative Disputes, within their jurisdiction and before administering justice, may request <i>ex officio</i> the declaration of unconstitutionality and inapplicability of a law.</p> <p>In this case and in the case of number 2, the proceedings are suspended and the proceeding is elevated to the Supreme Court of Justice.</p> <p>General Code of Proceedings (p.t.)³⁰³</p> <p>Article 262</p> <p>The complaint can be lodged against the resolution that denies recourse of cassation, an appeal or the exception of unconstitutionality so that the competent superior confirms or revokes the denying resolution.</p>

³⁰² Artículo 258.- La declaración de inconstitucionalidad de una ley y la inaplicabilidad de las disposiciones afectadas por aquélla, podrán solicitarse por todo aquel que se considere lesionado en su interés directo, personal y legítimo:

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

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

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

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

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

³⁰³ El recurso de queja procede contra las resoluciones que denieguen un recurso de casación, de apelación o la excepción de inconstitucionalidad a fin que el superior que corresponda confirme o revoque la resolución denegatoria.

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

1.1.21. Table: Direct individual access: Constitutional and legal bases

State	Constitution	Laws
Albania	<p>Article 131 The Constitutional Court decides on: f. the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.</p> <p>Article 134 1. The Constitutional Court initiates a proceeding only on the request of: g. individuals. 2. The subjects contemplated in subparagraphs dh, e, è, f and g of paragraph 1 of this article may make a request only for issues related to their interests.</p>	<p>Law on the Organisation and Functioning of the Constitutional Court Article 30 2. The application of persons regarding the violation of a constitutional right are to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them. If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court after all the other legal means in protection of such rights have been exhausted.</p> <p>Article 68 1. When a court of any instance or a trial judge considers during the trial <i>ex officio</i> or at the request of either party involved that a certain law is unconstitutional and if there is a direct link between the law and the solution of the case at hand, that particular law shall not be applied in the case at hand and after suspending the trial the judge shall refer the file to the Constitutional Court, which on its side should deliver its verdict as to the constitutionality of the said law.</p>
Algeria	No direct individual access	No direct individual access
Andorra	<p>Constitution Article 10 1. All persons shall have the right to jurisdiction and to have a ruling founded in the law, and to a due trial before an impartial tribunal established by law.</p> <p>Article 41 1. The rights and freedoms recognised in Chapters 111 and IV are protected by regular courts through urgent and preferential proceedings regulated by law, which in any case shall be transacted in two instances. 2. A law shall create an exceptional Procedure of Appeal before the Tribunal Constitutional against the acts of the public authorities which may violate the essential contents of the rights mentioned in</p>	<p>Qualified Law on the Constitutional Court Article 86 Except in the situations described in articles 95 and 96 of this Law, the appeal for protection shall be brought against decisions of the final instance of the ordinary courts dismissing applications during the urgent priority procedure provided for in article 41.1 of the Constitution.</p> <p>Article 87 1. The respondents or assistants in the proceedings mentioned in the preceding article have <i>locus standi</i> to bring an appeal for protection.</p> <p>Article 94 2. When no further appeal can be lodged nor is there any further means in defending the constitutional right infringed, the</p>

State	Constitution	Laws
	<p>the paragraph above, with the exception of the case provided for in article 22.</p> <p>Article 100</p> <p>1. If, in the course of litigation, a court has reasoned and founded doubts about the constitutionality of a law or a legislative decree, the application of which is relevant to its decision, it shall request in writing the decision of the Tribunal Constitucional about the validity of the rule affected.</p> <p>2. The Tribunal Constitucional may not admit the transaction of the request without further appeal. If the request is admitted judgment shall be passed within the maximum period of two months.</p> <p>See articles 52 to 58 of the Qualified Law on the Constitutional Court already cited above.</p> <p>Article 85</p> <p>By the appeal for protection the Constitutional Court, in its capacity as supreme judicial authority, guarantees the rights recognized in Chapters III and IV of Title II of the Constitution other than the right laid down in article 22.</p> <p>Article 86</p> <p>Except in the situations described in articles 95 and 96 of this Law, the appeal for protection shall be brought against decisions of the final instance of the ordinary courts dismissing applications during the urgent priority procedure provided for in article 41.1 of the Constitution.</p> <p>There two proceedings:</p> <p>Through the “ampara” remedy (articles 85 and 86 of the Law cited) and in the case of a conflict of competences: (Article 69.2, 78 and 82 of the Law)</p>	<p>person who has suffered the infringement of the constitutional right to jurisdiction may lodge an appeal for protection before the Constitutional Court within fifteen working days of the day after notification of the last resolution of refusal or of the date on which he had knowledge of the judicial decision which violated the constitutional right to jurisdiction.</p>
Argentina	<p>Section 116</p> <p>The Supreme Court and the lower courts of the Nation are empowered to hear and</p>	<p>Law on The Organisation of the National Judiciary³⁰⁴ (p.t.)</p> <p>Article 20³⁰⁵</p>

³⁰⁴ <http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116333/norma.htm>

³⁰⁵ Article 20. Los Juzgados de Sección conocen en primera instancia, de todas las causas que se expresan en el artículo 100 [= Section 116 today] de la Constitución, sin incluir en ellas las exceptuadas en el artículo 101 de la misma Constitución, de las contenciosas administrativas y demás que interesen al Fisco Nacional, mas en las de contrabando, lo harán, por ahora, tanto en el territorio de la Provincia de Buenos Aires, cuanto en el resto de la República, ajustándose a las respectivas leyes y disposiciones dictadas y vigente en ellas.
<http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116333/norma.htm>

State	Constitution	Laws
	<p>decide all cases arising under the Constitution and the laws of the Nation, with the exception made in Section 75, subsection 12, and under the treaties made with foreign nations; all cases concerning ambassadors, public ministers and foreign consuls; cases related to admiralty and maritime jurisdiction; matters in which the Nation shall be a party; actions arising between two or more provinces, between one province and the inhabitants of another province, between the inhabitants of different provinces, and between one province or the inhabitants thereof against a foreign state or citizen.</p> <p>Section 117</p> <p>In the aforementioned cases the Supreme Court shall have appellate jurisdiction, with such regulations and exceptions as Congress may prescribe; but in all matters concerning foreign ambassadors, ministers and consuls, and in those in which a province shall be a party, the Court shall have original and exclusive jurisdiction.</p>	<p>The Section Courts shall sit in first instance concerning all cases provided for in article 100 of the Constitution [=section 116 today], without including the exceptions mentioned in article 101 of the Constitution [=Section 117] [...]</p> <p>Article 21³⁰⁶</p> <p>As established by the Constitution and the national laws, it [The Section Court] may sit as appeals court concerning the judgements and resolutions of the inferior Provincial Courts, except if the affected person prefers to petition the Superior Provincial Court or Tribunal.</p> <p>Article 22³⁰⁷</p> <p>In all matters mentioned in the two previous articles, the ordinary appeal or plea of nullity to the Supreme Court are open.</p>
Armenia	<p>Article 101</p> <p>In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court the application to the Constitutional Court may be filed by:</p> <p>6) every person in a specific case when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the constitutionality of a law provision applied by the act in question is being challenged;</p>	<p>Law on the Constitutional Court</p> <p>Article 25</p> <p>The bodies and persons determined by Article 101 of the Constitution can appeal to the Constitutional Court in the order prescribed by the Constitution and this Law. Moreover, in cases determined in the Point 6 of Article 101 legal persons are also eligible to appeal to the Constitutional Court according to the Article 42.1 of the Constitution.</p> <p>Article 69</p> <p>1. The appeals on the cases described in this Article (hereinafter individual appeals) can be brought by those natural and legal persons who were participants at the courts of general jurisdiction and in specialised courts, in relation of who</p>

³⁰⁶ Article 21. Puede conocer en grado de apelación de los fallos y resoluciones de los Juzgados inferiores de Provincia, en los casos regidos por la Constitución y Leyes Nacionales, siempre que el agraviado no prefiera concurrir al Juzgado o Tribunal Superior de la Provincia.

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

³⁰⁷ Art. 22. En todas las causas mencionadas en los dos artículos precedentes, habrá los ordinarios recursos de apelación o nulidad para ante la Corte Suprema.

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

State	Constitution	Laws
		<p>the law was implemented by a judicial act, who exhausted all the remedies of judicial protection and who believe that the provision of the Law applied for the particular case contradicts the Constitution.</p> <p>2. The individual appeals can be submitted regarding the constitutionality of provisions of Laws adopted by the National Assembly and on referendum.</p>
Austria	<p>Article 139.</p> <p>(1) The Constitutional Court pronounces on application by a court or an independent administrative tribunal whether ordinances issued by a Federal or Land authority are contrary to law, but <i>ex officio</i> in so far as the Court would have to apply such an ordinance in a pending suit. It also pronounces on application by the Federal Government whether ordinances issued by a Land authority are contrary to law and likewise on application by the municipality concerned whether ordinances issued by a municipal affairs supervisory authority in accordance with Article 119a para. 6 are contrary to law. It pronounces furthermore whether ordinances are contrary to law when an application alleges direct infringement of personal rights through such illegality in so far as the ordinance has become operative for the applicant without the delivery of a judicial decision or the issue of a ruling; Art. 89 para. 3 applies analogously to such applications.</p> <p>Article 140</p> <p>"The Constitutional Court pronounces on application of the Supreme Court, a competent appellate court, an independent administrative tribunal, the Asylum Court, the Administrative Court or the Federal Tender Office whether a Federal or a Land law is unconstitutional, but <i>ex officio</i> in so far as the Court would have to apply such a law in a pending suit. It pronounces also on applications by the Federal Government whether Land laws are unconstitutional and likewise on applications by a Land Government, by one third of the National Council's members, or by one third of the Federal Council's</p>	<p>Federal Law on the Constitutional Court Article 82</p> <p>1. A complaint against an administrative decree in pursuance of Article 144, subparagraph 1 of the B-VG can be lodged only after all administrative remedies have been exhausted, within six weeks following service of the decree delivered at last instance.</p>

State	Constitution	Laws
	<p>members whether Federal laws are unconstitutional. A Land constitutional law can provide that such a right of application as regards the unconstitutionality of Land laws lies with one third of the Diet's members. The Court pronounces furthermore whether laws are unconstitutional when an application alleges direct infringement of personal rights through such unconstitutionality in so far as the law has become operative for the applicant without the delivery of a judicial decision or the issue of a(n administrative) ruling; Art. 89.3. applies analogously to such applications".</p> <p>Article 144.</p> <p>(1) The Constitutional Court pronounces on rulings by administrative authorities including the independent administrative tribunals in so far as the appellant alleges an infringement by the ruling of a constitutionally guaranteed right or the infringement of personal rights on the score of an illegal ordinance, an unconstitutional law, or an unlawful treaty. The complaint can only be filed after all other stages of legal remedy have been exhausted.</p>	
Azerbaijan	<p>Article 130.</p> <p>II. Constitutional Court of the Azerbaijan Republic based on inquiry of the President of the Azerbaijan Republic, Milli Majlis of the Azerbaijan Republic, Cabinet of Ministers of the Azerbaijan Republic, Supreme Court of the Azerbaijan Republic, Procurator's Office of the Azerbaijan Republic, Ali Majlis of Nakhichevan Autonomous Republic takes decisions regarding the following:</p> <p>1. correspondence of laws of the Azerbaijan Republic, decrees and orders of the President of the Azerbaijan Republic, decrees of Milli Majlis of the Azerbaijan Republic, decrees and orders of Cabinet of Ministers of the Azerbaijan Republic, normative-legal acts of central bodies of executive power to Constitution of the Azerbaijan Republic;</p> <p>2. correspondence of decrees of the President of the Azerbaijan Republic, decrees</p>	<p>Law on the Constitutional Court</p> <p>Article 34. Complaints</p> <p>34.1. Any person who alleges that his/her rights and freedoms have been violated by the normative legal act of the Legislative and Executive, act of municipality and courts may submit complaint to Constitutional Court to resolve matters provided for by Article 130.3.1-7 of the Constitution of Azerbaijan Republic in order to restore his/her human rights and freedoms.</p> <p>34.2. Complaints on the matters provided for by Article 130.3.4 of the Constitution of Azerbaijan Republic can be examined by Constitutional Court in following cases:</p> <p>34.2.1. If the normative legal act which should have been applied was not applied by a court;</p> <p>34.2.2. If normative legal act which should not have been applied was applied by a court;</p>

State	Constitution	Laws
	<p>of Cabinet of Ministers of the Azerbaijan Republic, normative-legal acts of central bodies of executive power to the laws of the Azerbaijan Republic;</p> <p>3. correspondence of decrees of Cabinet of Ministers of the Azerbaijan Republic and normative-legal acts of central bodies of executive power to decrees of the President of the Azerbaijan Republic;</p> <p>4. in cases envisaged by law, correspondence of decisions of Supreme Court of the Azerbaijan Republic to Constitution and laws of the Azerbaijan Republic;</p> <p>5. correspondence of acts of municipalities to Constitution of the Azerbaijan Republic, laws of the Azerbaijan Republic, decrees of the President of the Azerbaijan Republic, decrees of Cabinet of Ministers of the Azerbaijan Republic (in Nakhichevan Autonomous Republic - also to Constitution and laws of Nakhichevan Autonomous Republic and decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic);</p> <p>6. correspondence of interstate agreements of the Azerbaijan Republic, which have not yet become valid, to Constitution of the Azerbaijan Republic; correspondence of intergovernmental agreements of the Azerbaijan Republic to Constitution and laws of the Azerbaijan Republic;</p> <p>7. correspondence of Constitution and laws of Nakhichevan Autonomous Republic, decrees of Ali Majlis of Nakhichevan Autonomous Republic, decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic to Constitution of the Azerbaijan Republic; correspondence of laws of Nakhichevan Autonomous Republic, decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic to laws of the Azerbaijan Republic; correspondence of decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic to decrees of the President of the Azerbaijan Republic and decrees of Cabinet of Ministers of the Azerbaijan Republic;</p> <p>V. Everyone claiming to be the victim of a violation of his/her rights and freedoms by</p>	<p>34.2.3. If normative legal act was not properly interpreted by a court;</p> <p>34.3. In cases provided for by Article 34.2 of the present law the examination of facts of the case examined by the Supreme Court of Azerbaijan Republic shall be inadmissible.</p>

State	Constitution	Laws
	<p>the decisions of legislative, executive and judiciary, municipal acts set forth in the items 1-7 of the Para III of this Article may appeal, in accordance with the procedure provided for by law, to the Constitutional Court of the Republic of Azerbaijan with the view of the restoration of violated human rights and freedoms.</p>	
Belgium	<p>Article 142 There is for all Belgium a Constitutional Court, the composition, competences and functioning of which are established by the law. This Court rules by means of judgments on: 1º those conflicts referred to in Article 141; 2º the violation of Articles 10, 11 and 24 by a law, a federate law or a rule as referred to in Article 134; 3º the violation of constitutional articles that the law determines by a law, a federate law or by a rule as referred to in Article 134. A matter may be referred to the Court by any authority designated by the law, by any person that can prove an interest or, pre-judicially, by any court.</p>	<p>Special Law on the Court Article 2 The actions referred to in Article 1 may be brought: 1. by the Council of Ministers, by the government of a Community or a Region; 2. by any natural or legal person who has a justifiable interest; or 3. by the presidents of the legislative assemblies, at the request of two-thirds of the membership.</p>
Bosnia and Herzegovina	<p>VI.3 Jurisdiction. ... b. The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.</p>	<p>Rules of the Constitutional Court Article 15 1. The participants to the proceedings shall be as follows: b. the parties to the proceedings that ended in a judgment/decision challenged and the court or body that rendered the challenged judgment/decision (Article VI.3 (b) of the Constitution);</p>
Brazil	<p>Article 5³⁰⁸ LXVIII - <i>habeas corpus</i> shall be granted whenever a person suffers or is in danger of suffering violence or coercion against his freedom of locomotion, on account of illegal actions or abuse of power; LXIX - a writ of <i>mandamus</i> shall be issued to protect a clear and perfect right, not covered by <i>habeas corpus</i> or <i>habeas data</i>,</p>	<p>Law no. 10,259 of 2001 allowed extraordinary appeals to decisions issued by judges at special higher courts to be forwarded to the Supreme Court</p>

³⁰⁸ <http://www.v-brazil.com/government/laws/>

State	Constitution	Laws
	<p>whenever the party responsible for the illegal actions or abuse of power is a public official or an agent of a corporate legal entity exercising duties of the Government;</p> <p>LXX - a collective writ of <i>mandamus</i> may be filed by:</p> <ul style="list-style-type: none"> a) a political party represented in the National Congress; b) a union, a professional association or an association legally constituted and in operation for at least one year, to defend the interests of its members or associates; <p>LXXI - a writ of injunction shall be granted whenever the absence of a regulatory provision disables the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty and citizenship;</p> <p>LXXII - <i>habeas</i> data shall be granted:</p> <ul style="list-style-type: none"> a) to ensure the knowledge of information related to the person of the petitioner, contained in records or databanks of government agencies or of agencies of a public character; b) for the correction of data, when the petitioner does not prefer to do so through a confidential process, either judicial or administrative; <p>LXXIII - any citizen is a legitimate party to file a people's legal action with a view to nullifying an act injurious to the public property or to the property of an entity in which the State participates, to the administrative morality, to the environment and to the historic and cultural heritage, and the author shall, save in the case of proven bad faith, be exempt from judicial costs and from the burden of defeat;</p> <p>Article 102.</p> <p>The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence: I - to institute legal proceeding and trial, in the first instance, of:</p> <ul style="list-style-type: none"> a) direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal law or normative act; 	

State	Constitution	Laws
	<p>Text in purple added by CA 3, 17 March 1993. This CA created the declaratory actions of constitutionality.</p> <p>b) in common criminal offenses, the President of the Republic, the Vice-President, the members of the National Congress, its own Justices and the Attorney-General of the Republic;</p> <p>c) in common criminal offenses and crimes of malversation, the Ministers of State, except as provided in Article 52, I, the Commanders of Navy, Army and Air Force and the members of the Superior Courts, those of the Federal Court of Accounts and the heads of permanent diplomatic missions;</p> <p>Text in purple added by CA 23, September 2nd 1999, which created the positions of Commanders of Navy, Army and Air Force. See comments to Article 84, XIII.</p> <p>d) <i>habeas corpus</i>, when the petitioner is any one of the persons referred to in the preceding subitems; the writ of mandamus and <i>habeas data</i> against acts of the President of the Republic, of the Directing Boards of the Chamber of Deputies and of the Federal Senate, of the Federal Court of Accounts, of the Attorney-General of the Republic and of the Supreme Federal Court itself;</p> <p>i) <i>habeas corpus</i>, when the constraining party is a Superior Court or the petitioner is a court, authority or employee whose acts are directly subject to the jurisdiction of the Supreme Federal Court, or in the case of a crime, subject to the same jurisdiction in one sole instance;</p> <p>p) petitions of provisional remedy in direct actions of unconstitutionality;</p> <p>II - to judge on ordinary appeal:</p> <p>a) <i>habeas corpus</i>, writs of mandamus, <i>habeas data</i> and writs of injunction decided in a sole instance by the Superior Courts, in the event of a denial;</p> <p>b) political crimes;</p> <p>III - to judge, on extraordinary appeal, cases decided in a sole or last instance, when the decision appealed:</p> <p>a) is contrary to a provision of this Constitution;</p>	

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

State	Constitution	Laws
		<p>Section 37.1 Subject to sections 39 and 42, an appeal to the Court lies with leave of the Federal Court of Appeal from a final judgment of the Federal Court of Appeal where, in its opinion, the question involved in the appeal is one that ought to be submitted to the Court for decision.</p> <p>Section 38 Subject to sections 39 and 42, an appeal to the Supreme Court lies on a question of law alone with leave of that Court, from a final judgment of the Federal Court or of a court of a province other than the highest court of final resort therein, the judges of which are appointed by the Governor General, pronounced in a judicial proceeding where an appeal lies to the Federal Court of Appeal or to that highest court of final resort, if the consent in writing of the parties or their solicitors, verified by affidavit, is filed with the Registrar of the Supreme Court and with the registrar, clerk or prothonotary of the court from which the appeal is to be taken.</p> <p>Section 39 No appeal to the Court lies under section 37, 37.1 or 38 from a judgment in a criminal cause, in proceedings for or on:</p> <ul style="list-style-type: none"> a) a writ of <i>habeas corpus</i>, <i>certiorari</i> or prohibition arising out of a criminal charge; or b) a writ of <i>habeas corpus</i> arising out of a claim for extradition made under a treaty. <p>Section 40</p> <p>1. Subject to subsection 3, an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any</p>

State	Constitution	Laws
		<p>issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court.</p> <p>3. No appeal to the Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.</p> <p>4. Whenever the Court has granted leave to appeal, the Court or a judge may, notwithstanding anything in this Act, extend the time within which the appeal may be allowed.</p> <p>Section 41</p> <p>Notwithstanding anything in this Act, the Court has jurisdiction as provided in any other Act conferring jurisdiction.</p> <p>Section 42</p> <p>1. No appeal lies to the Court from a judgment or order made in the exercise of judicial discretion except in proceedings in the nature of a suit or proceeding in equity originating elsewhere than in the Province of Quebec and except in <i>mandamus</i> proceedings.</p> <p>2. This section does not apply to an appeal under section 40.</p> <p>Section 52</p> <p>The Court shall have and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada, and the judgment of the Court is, in all cases, final and conclusive.</p>
Chile	<p>Article 19 (p.t.)³⁰⁹</p> <p>The Constitution protects the right of every person:</p>	<p>Autonomous rule of the Supreme Court on the implementation of the <i>recurso de protección</i>³¹⁰ (p.t.)</p>

³⁰⁹ <https://www.presidencia.cl/documentos/Constituci%F3n%20Pol%EDtica.pdf>

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

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	<p>21°. To perform any economic activity that is not contrary to morality, public order or national security and respects the legal norms which regulate it.³¹¹</p> <p>Article 20³¹²</p> <p>Anyone who through arbitrary or illegal acts or omissions suffers deprivation, perturbation in or threats to the legitimate exercise of his rights and guarantees established in the articles 19 No. 1°, 2°, 3° fourth indent, 4°, 5°, 6°, 9° final indent, 11°, 12°, 13°, 15°, 16° as concerns the right to free labour and the right to be freely elected and employed, and as concerns what has been established in the fourth indent, 19°, 21°, 22°, 23°, 24°, y 25°, may approach the Court of Appeals in his own name or through a third person; the Court of Appeals shall immediately adopt measures it deems necessary to re-establish the rule of law and to ensure the due protection</p>	<p>1. The recourse or action of protection can be lodged at the Appeals Court within whose jurisdiction the act or the arbitrary or illegal omission causing deprivation, perturbation in or threats to the legitimate exercise of the respective constitutional guarantees, within an unsuspensible respite of thirty days after the execution of the act or the occurrence of the omission, or, according to the nature of these, after notice or certain knowledge of the act or omission, which will be determined in the provisional procedure.</p> <p>2. The recourse may be lodged on paper or even by telegraph or telefax by the affected person or by another person having legal capacity in his name even if that person does not have a special mandate. The Tribunal will examine if the recourse has been lodged within the respites and if facts are being brought forward that could</p>

2. El recurso se interpondrá por el afectado o por cualquiera otra persona en su nombre, capaz de parecer en juicio, aunque no tenga para ello mandato especial, por escrito en papel simple y aún por telégrafo o télex. Presentado el recurso, el Tribunal examinará en cuenta si ha sido interpuesto en tiempo y si se mencionan hechos que puedan constituir la vulneración de garantías de las indicadas en el artículo 20 de la Constitución Política de la República. Si su presentación es extemporánea o no se señalan hechos que puedan constituir vulneración a garantías de las mencionadas en la referida disposición constitucional, lo declarará inadmisible desde luego por resolución fundada, la que sólo será susceptible del recurso de reposición ante el mismo tribunal, el que deberá interponerse dentro de tercero día.

5. Para mejor acierto del fallo se podrán decretar todas las diligencias que el Tribunal estime necesarias. La Corte apreciará de acuerdo con las reglas de la sana crítica los antecedentes que se acompañen al recurso y los demás que se agreguen durante su tramitación. La sentencia que se dicte, ya sea que lo acoja, rechace o declare inadmisible el recurso, será apelable ante la Corte Suprema.

http://www.justicia.cl/documentos/docs_auto1.html

http://www.minsal.cl/juridico/CIRCULAR_35_07.doc

³¹¹ La Constitución asegura a todas las personas: El derecho a desarrollar cualquiera actividad económica que no sea contraria a la moral, al orden público o a la seguridad nacional, respetando las normas legales que la regulen.

³¹² El que por causa de actos u omisiones arbitrarios o ilegales sufra privación, perturbación o amenaza en el legítimo ejercicio de los derechos y garantías establecidos en el artículo 19, números 1°, 2°, 3° inciso cuarto, 4°, 5°, 6°, 9° inciso final, 11°, 12°, 13°, 15°, 16° en lo relativo a la libertad de trabajo y al derecho a su libre elección y libre contratación, y a lo establecido en el inciso cuarto, 19°, 21°, 22°, 23°, 24°, y 25° podrá ocurrir por sí o por cualquiera a su nombre, a la Corte de Apelaciones respectiva, la que adoptará de inmediato las providencias que juzgue necesarias para restablecer el imperio del derecho y asegurar la debida protección del afectado, sin perjuicio de los demás derechos que pueda hacer valer ante la autoridad o los tribunales correspondientes.

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

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	<p>of the person concerned, without prejudice to the additional rights he might claim before the relevant authority or tribunal. The request for protection applies also in the case of no. 8 of Article 19 when the right to live in an environment free of contamination has been affected by an arbitrary or unlawful action imputable to an authority or a specific person.</p> <p>Article 21³¹³</p> <p>Every individual who is under arrest, detention or imprisonment in breach of the laws or the Constitution may approach the administrative body indicated by the law so that the latter may order that the legal formalities be complied with and may immediately adopt the measures deemed necessary to reinstate the rule of law and ensure due protection of the affected individual.</p> <p>Article 93³¹⁴</p> <p>The Constitutional Tribunal is competent to:</p>	<p>constitute a violation of the guarantees indicated in article 20 of the Political Constitution of the Republic. If the recourse is extemporaneous or if no facts are being brought forward that could constitute a violation of the guarantees mentioned in the indicated constitutional provision, the Tribunal will declare the recourse inadmissible in the place of giving a reasoned resolution; against the declaration of inadmissibility only a recourse of reposition can be lodged before the same tribunal within three days.</p> <p>5. For greater exactitude of the judgement, the Tribunal may take all measures it deems necessary.</p> <p>The Court will appreciate with sanity and reason the previous facts of the case and the ones that add to it during the proceedings. –The subsequent decision, may it accept or repeal the recourse or declare it inadmissible, can be appealed at the Supreme Court.</p>

³¹³ Todo individuo que se hallare arrestado, detenido o preso con infracción de lo dispuesto en la Constitución o en las leyes, podrá ocurrir por sí, o por cualquiera a su nombre, a la magistratura que señale la ley, a fin de que ésta ordene se guarden las formalidades legales y adopte de inmediato las providencias que juzgue necesarias para restablecer el imperio del derecho y asegurar la debida protección del afectado.

³¹⁴ Artículo 93. Son atribuciones del Tribunal Constitucional:

1º Ejercer el control de constitucionalidad de las leyes que interpreten algún precepto de la Constitución, de las leyes orgánicas constitucionales y de las normas de un tratado que versen sobre materias propias de estas últimas, antes de su promulgación;

2º Resolver sobre las cuestiones de constitucionalidad de los autos acordados dictados por la Corte Suprema, las Cortes de Apelaciones y el Tribunal Calificador de Elecciones;

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

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

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

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

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	<p>2º Decide on the questions of unconstitutionality of autonomous rules of the Supreme Court, the Appellate Court and the Election Tribunal;</p> <p>6º Decide, at the four fifth's majority of its members, on the inapplicability of a legal provision whose application in any proceeding before an ordinary or special tribunal would be contrary to the Constitution;</p> <p>7º Decide, at the four fifth's majority of its members, on the unconstitutionality of a legal provision that has been declared inapplicable in conformity with the previous article; the question can be lodged by any of the parties or by the judge who decides on the matter.</p> <p>In the case of number 2º, the Tribunal shall cognise on the matter at the request of the President of the Republic, of any of the Chambers or of ten of their members. Also, any person who is party to a pending proceeding before an ordinary or special tribunal or from the first action in a penal proceeding may formulate a request to the Tribunal, if he is affected in his fundamental constitutional rights by the respective autonomous rule.</p> <p>In the case of number 6º, the question may be lodged by any of the parties or by the judge that decides on the matter.</p> <p>In the case of number 7º, once a provisional judgement declaring the inapplicability of a legal provision has been delivered in conformity with number 6º of this article, a public action can be taken to</p>	<p>Law N° 18.971³¹⁵</p> <p>Any person can bring a charge against infractions against article 19 number 21 of the Political Constitution of Chile.</p>

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

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

³¹⁵ Cualquier persona podrá denunciar las infracciones al artículo 19, número 21, de la Constitución Política de la República de Chile.

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

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	<p>request the declaration of unconstitutionality of the Tribunal, without prejudice to the latter's right to declare the provision unconstitutional <i>ex officio</i>. The respective organic constitutional law will establish the requisites for admissibility in the case of public action, and to regulate the proceeding that will need to be followed in order to act <i>ex officio</i>.</p>	
Croatia	<p>Article 128 The Constitutional Court of the Republic of Croatia shall:</p> <ul style="list-style-type: none"> - <i>decide on the conformity of laws with the Constitution;</i> - <i>decide on the conformity of other regulations with the Constitution and laws;</i> - <i>may decide on constitutionality of laws and constitutionality of laws and other regulations which have lost their legal force, provided that from the moment of losing the legal force until the submission of a request or a proposal to institute the proceedings not more than one year has passed;</i> - <i>decide on constitutional complaints against the individual decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia; (...)"</i> <p>Article 131 <i>The procedure and conditions for the election of judges of the Constitutional Court of the Republic of Croatia and the termination of their office, conditions and time-limits for instituting proceedings for the assessment of the constitutionality and legality, procedure and legal effects of its decisions, protection of human rights and fundamental freedoms guaranteed by the Constitution, and other issues important for the performance of duties and work of the Constitutional Court of the Republic of Croatia, shall be regulated by the Constitutional Act.</i></p>	<p>Constitutional Act on the Constitutional Court Article 38 (1) Every individual or legal person has the right to propose the institution of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations. Article 40 (1) The proposal to institute proceedings to review the constitutionality of the law or the constitutionality and legality of other regulations contains, as a rule, the same as the request. (2) The Constitutional Court shall institute proceedings within a term of one year after the proposal has been lodged. Article 62 (1) Everyone may lodge a constitutional complaint with the Constitutional Court if he deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right).</p>

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

State	Constitution	Laws
		<p>a party, of a measure, or of some other encroachment by a public authority (hereinafter “action by a public authority”). Article 74</p> <p>A complainant may submit, together with his constitutional complaint, a petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, if the complainant alleges it to be in conflict with a constitutional act, or with a statute, where the complaint concerns some other enactment. [to be combined with Art. 78]</p>
Denmark	<p>§60.</p> <p>(1). The High Court of the Realm shall try such actions as may be brought by the King or the Folketing against Ministers.</p> <p>(2) With the consent of the Folketing, the King may also cause other persons to be tried before the High Court of the Realm for crimes which he may deem to be particularly dangerous to the State.</p>	<p>Administration of Justice Act Section 371</p> <p>1. Appeals may not be lodged against judgments pronounced by a High Court as court of second instance. The Board of Appeal may, however, permit an examination in a court of third instance if the case concerns a fundamental principle.</p> <p>2. An application for the permission referred to in the second sentence of subsection (1) above must be submitted to the Board of Appeal within 8 weeks of pronouncement of the judgment concerned. The Board of Appeal may, however, exceptionally, grant such permission if the application is submitted later, provided it is within one year of pronouncement of the judgment.</p>
Estonia	<p>Article 152</p> <p>If any law or another legal act is in conflict with the Constitution, it shall not be applied by the Court in trying a case.</p> <p>If any law or other legal act is in conflict with the provisions and spirit of the Constitution, it shall be declared null and void by the National Court.</p>	<p>Constitutional Review Court Procedure Act §. 16.</p> <p>A person who finds that a resolution of the Riigikogu violates his or her rights may file with the Supreme Court a request for the repeal of the resolution of the Riigikogu. §. 18.</p> <p>A person who finds that a decision of the President of the Republic concerning appointment to or release from office of an official violates his or her rights, may file with the Supreme Court a request for the repeal of the decision of the President of the Republic.</p>

State	Constitution	Laws
Finland	<p>Section 106</p> <p>If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.</p>	<p>Supreme Court Act Article 3</p> <p>The Supreme Court shall examine and decide as the final instance</p> <ol style="list-style-type: none"> 1. all litigation which according to law or special decrees may have been brought before the judicial department of the Senate of Finland; 2. appeals against the decisions and actions of authorities, which until now have been subject to appeal to the judicial department of the Senate; 3. appeals against the judgments and decisions of the Land Court; 4. charges for misconduct in office committed by the President or a member of a court of appeal in the performance of his duties; and 5. applications for the restoration of lapsed time and for the annulment of a final judgement.
France		—
Georgia	<p>Article 89</p> <p>1. The Constitutional Court of Georgia on the basis of a constitutional claim or a submission of the President of Georgia, the Government, not less than one fifth of the members of the Parliament, a court, the higher representative bodies the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, the Public Defender or a citizen in accordance with a procedure established by the Organic Law shall:</p> <p>a. adjudicate upon the constitutionality of a Constitutional Agreement, law, normative acts of the President and the Government, the normative acts of the higher state bodies of the Autonomous Republic Abkhazia and the Autonomous Republic of Ajara (changes are added by the Constitutional Laws of Georgia of 20 April 2000 and 30 March 2001);</p> <p>f. consider on the basis of a constitutional claim of a citizen constitutionality of normative acts in terms of the issues of Chapter Two of the Constitution;</p>	<p>Law on the Constitutional Legal Proceedings Chapter One Principles of constitutional proceedings Article 1</p> <p>1. Constitutional proceedings before the Court shall be conducted in conformity with the equality of the parties and the adversarial principle.</p> <p>2. Individuals and bodies listed in paragraph 1 of Articles 33, 34, 35, 36, 37, 38, 39, 40 and 41 and in Article 42 of Georgia's Organic Law on the Constitutional Court of Georgia shall have equal rights to address the Constitutional Court directly.</p> <p>Organic Law on the Constitutional Court Article 39</p> <p>1. The following shall have the right to lodge a constitutional claim on constitutionality of a normative act or a particular provisions thereof:</p> <p>a) Citizens of Georgia, other individuals residing in Georgia and legal entities of Georgia, if they believe that their rights and freedoms recognised by Chapter Two of the Constitution of Georgia are infringed or may be directly infringed upon;</p>

State	Constitution	Laws
Germany	<p>Article 93 (1) The Federal Constitutional Court shall rule: 4a. on constitutional complaints which may be filed by anybody claiming that one of their basic rights or one of their rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been violated by public authority;</p> <p>Article 94 (2) The constitution and procedure of the Federal Constitutional Court shall be governed by a federal law which shall specify the cases in which its decisions have the force of law. Such law may make a complaint of unconstitutionality conditional upon the exhaustion of all other legal remedies and provide for a special admissibility procedure.</p>	<p>Law on the Federal Constitutional Court Article 13 The Federal Constitutional Court shall decide in the cases determined by the Basic Law, to wit 8a. on constitutional complaints (Article 93 (1) (4 a) and (4 b) of the Basic Law), Article 90 1. Any person who claims that one of his basic rights or one of his rights under paragraph 4 of Article 20, Articles 33, 38, 101, 103 and 104 of the Basic Law has been violated by public authority may lodge a constitutional complaint with the Federal Constitutional Court. Article 95 Law on the Federal Constitutional Court 1. If the constitutional complaint is upheld, the decision shall state which provision of the Basic Law has been infringed and by which act or omission. The Federal Constitutional Court may at the same time declare that any repetition of the act or omission against which the complaint was directed will infringe the Basic Law. 2. If a constitutional complaint against a decision is upheld, the Federal Constitutional Court shall quash the decision and in cases pursuant to the first sentence of Article 90 (2) above it shall refer the matter back to a competent court. 3. If a constitutional complaint against a law is upheld, the law shall be declared null and void. The same shall apply if a constitutional complaint pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law.</p>
Greece	<p>Article 100 1. A Special Highest Court shall be established, the jurisdiction of which shall comprise: d) Settlement of any conflict between the courts and the administrative authorities, or between the Supreme Administrative Court and the ordinary administrative courts on one hand and the civil and criminal courts on the other, or between the Court of Auditors and any other court.</p>	<p>Law no. 345 establishing the Special Highest Court Article 48 Disputes concerning assessment of the constitutionality of a law or its interpretation 1. Where conflicting judgments have been delivered by the Council of State, the Supreme Court or the Comptrollers Council as to the assessment of the constitutionality of a law or its interpretation, the</p>

State	Constitution	Laws
	<p>e) Settlement of controversies on whether the content of a statute enacted by Parliament is contrary to the Constitution, or on the interpretation of provisions of such statute when conflicting judgments have been pronounced by the Supreme Administrative Court, the Supreme Civil and Criminal Court or the Court of Auditors.</p>	<p>Special Court shall resolve the conflict at the request of:</p> <ul style="list-style-type: none"> b. any person having a lawful interest. 2. Should the Council of State, the Supreme Court or the Comptrollers Council wish to deliver a decision concerning assessment of the constitutionality of a law or its interpretation and conflicting with a previous decision of another of these authorities which has been invoked by one of the parties or is known to the authority so wishing, it shall refer to the Special Court by preliminary ruling.
Hungary	<p>Article 32/A.</p> <p>(1) The Constitutional Court shall review the constitutionality of laws and perform the tasks assigned to its jurisdiction by statute.</p> <p>(2) The Constitutional Court shall annul the statutes and other legal norms that it finds to be unconstitutional.</p> <p>(3) Everyone has the right to initiate proceedings of the Constitutional Court in the cases specified by statute.</p>	<p>Act no. XXXII on the Constitutional Court Article 1</p> <p>The competence of the Constitutional Court shall comprise the following:</p> <ul style="list-style-type: none"> b. the examination of the unconstitutionality of legal rules as well as other legal means of State control; d. the adjudication of constitutional complaints submitted because of alleged violations of constitutional rights; e. the elimination of unconstitutionality manifesting itself in omission; <p>Article 21</p> <p>2. The procedure provided in Article 1, point b may be initiated by anyone.</p> <p>4. The procedure provided in Article 1, points d and e may be initiated by anyone.</p> <p>Article 38</p> <p>1. A judge shall initiate the proceedings of the Constitutional Court while suspending the judicial process if he/she in the course of any pending case, he/she considers unconstitutional the legal rule or other legal means of the State control which he/she needs to apply.</p> <p>2. In a petition, anybody considering a legal rule to be applied in his/her pending process unconstitutional, may initiate the action of the judge provided in section 1.</p> <p>Article 48</p> <p>1. Anybody aggrieved by the application of an unconstitutional legal rule who has exhausted all other legal remedies or has no other remedy available, may submit a constitutional complaint to the Constitutional Court because of the violation of his/her constitutional rights.</p>

State	Constitution	Laws
Iceland		<p>Law No. 91/1991 on Procedure in Civil Cases as amended by Law No. 38/1994</p> <p>Article 143</p> <p>3. Anyone who considers that a district court judge, in his capacity as such, has performed a breach against him has the right to present an accusation against him by complaint appeal to the Supreme Court, who may issue an admonition to the judge or impose on him by judgement the penalty of a fine to the State.</p> <p>Part XXV</p> <p>Appeals to a higher court</p> <p>Article 151</p> <p>[1. Parties are permitted to make an appeal to the Supreme Court against a district court judgement, subject to the limitations following from other provisions of this Law. In an appeal, a reconsideration of decrees and decisions made in a district court may be sought.</p> <p>3. A judgement can be appealed against so that it will be materially changed or confirmed, it will be quashed and the case sent to the district court or dismissed from the district court.</p> <p>4. Both or all parties are permitted to appeal against a judgement. The case shall then be heard in unison before the Supreme Court.</p> <p>5. The right to appeal a case may not be assigned, either verbally or silently, until a judgement has been rendered in the district court.]¹</p> <p>1 Law No. 38/1994, Article 5</p>
Ireland	<p>Article 15</p> <p>4. 2° Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid.</p> <p>Article 34</p> <p>3. 2° Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions</p>	<p>VF LO reply:</p> <p>Order 84, Rule 20(4) of the Rules of the Superior Courts provides that leave to apply for judicial review shall not be granted unless the applicant has sufficient interest in the matter to which the application relates. It is submitted by Hogan and Morgan that this formulation of locus standi applies to all remedies, including challenges to the validity of a law on the basis of unconstitutionality³¹⁶.</p>

³¹⁶ Hogan, Gerard & Morgan, David Gwynn, *Administration Law in Ireland*, 3rd Ed., Roundhall, Sweet & Maxwell, Dublin, 1998, p. 740.

State	Constitution	Laws
Israel	<p>of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.</p> <p>3º The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.</p> <p>4º No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.</p>	<p>Basic Law: The Judiciary³¹⁷</p> <p>Article 15</p> <p>(b) The Supreme Court shall hear appeals against judgments and other decisions of the District Courts.</p> <p>(d) Without prejudice to the generality of the provisions of subsection</p> <p>(c), the Supreme Court sitting as a High Court of Justice shall be competent -</p> <p>(2) to order State and local authorities and the officials and bodies thereof, and other persons carrying out public functions under law, to do or refrain from doing any act in the lawful exercise of their functions or, if they were improperly elected or appointed, to refrain from acting;</p> <p>(3) to order courts (batei mishpat and batei din) and bodies and persons having judicial or quasi-judicial powers under law, other than courts dealt with by this Law and other than religious courts (batei din), to hear, refrain from hearing, or continue hearing a particular matter or to void a proceeding improperly taken or a decision improperly given;</p> <p>(4) to order religious courts (batei din) to hear a particular matter within their jurisdiction or to refrain from hearing or continue hearing a particular matter not</p>

³¹⁷ http://www.knesset.gov.il/laws/special/eng/basic8_eng.htm

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

State	Constitution	Laws
		<p>irrelevant or groundless must include adequate reasons.</p> <p>The same claim may be filed again at the beginning of proceedings at each subsequent instance.</p>
Japan	<p>Article 81</p> <p>The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.</p>	
Kazakhstan	No direct individual access	No direct individual access
Korea, Republic	<p>Article 111</p> <p>The Constitutional Court shall have jurisdiction over the following matters:</p> <p>5. Constitutional complaint as prescribed by Act.</p>	<p>Constitutional Court Act</p> <p>Article 2 (Jurisdiction)</p> <p>The Constitutional Court shall have jurisdiction over the following issues:</p> <p>5. Constitutional complaint.</p> <p>Article 41 (Request for Adjudication on the Constitutionality of Statutes)</p> <p>(1) When the issue of whether or not statutes are constitutional is relevant to the judgment of the original case, the ordinary court (including the military court; hereinafter the same shall apply) shall request to the Constitutional Court, <i>ex officio</i> or by decision upon a motion by the party, an adjudication on the constitutionality of statutes.</p> <p>Article 68 (Causes for Request)</p> <p>(1) Any person who claims that his basic right which is guaranteed by the Constitution has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint, except the judgments of the ordinary courts, with the Constitutional Court: Provided, That if any relief process is provided by other laws, no one may file a constitutional complaint without having exhausted all such processes.</p> <p>(2) If the motion made under Article 41 (1) for adjudication on constitutionality of statutes is rejected, the party may file a constitutional complaint with the Constitutional Court. In this case, the party may not repeatedly move to request for adjudication on the constitutionality of statutes for the same reason in the procedure of the case concerned.</p>

State	Constitution	Laws
Latvia	<p>Article 85</p> <p>In Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid.</p>	<p>Law on the Constitutional Court</p> <p>Article 19.2</p> <p>1. Any person, who holds that his/her fundamental rights, established by the Constitution, have been violated by applying a normative act, which is not in compliance with the legal norm of higher legal force, may submit a claim (an application) to the Constitutional Court.</p>
Liechtenstein	<p>Article 43</p> <p>The right of complaint is guaranteed. Any citizen shall be entitled to lodge a complaint regarding any action or procedure on the part of a public authority which is contrary to the Constitution, the law or the official regulations and detrimental to his rights or interests. Such complaint shall be addressed to that authority which is immediately superior to the authority concerned and may, if necessary, be pursued to the highest authority, except when the right of recourse may be barred by a legal restriction. If a complaint thus submitted is rejected by the superior authority, the latter shall be bound to declare to the complaining party the reasons for its decision.</p> <p>Article 104</p> <p>1) A State Court shall be established by a special law as a court of public law to protect rights accorded by the Constitution, to decide in conflicts of jurisdiction between the law courts and the administrative authorities and to act as a disciplinary court for members of the Government.</p>	<p>Constitutional Court Act</p> <p>Article 15</p> <p>1) The Constitutional Court shall decide on complaints to the extent that the complainant claims a violation, by a final decision or order in the last instance issued by a public authority, of one of his constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint</p> <p>3) Moreover, the Constitutional Court shall decide on complaints to the extent that the complainant claims an immediate violation, by a law, an ordinance, or an international treaty, of one of his constitutionally guaranteed rights or of one of his rights guaranteed by international conventions for which the lawmaking power has explicitly recognised an individual right of complaint (paragraph 2), and the legal provision in question has become effective for the complainant without a decision or order having been issued by a public authority.</p> <p>Article 20</p> <p>1) The Constitutional Court shall decide on the compliance of ordinances or individual provisions thereof with the Constitution, laws, and international treaties:</p> <p>c) on application of at least 100 citizens eligible to vote, if such application is submitted with one month after publication of the ordinance in the Liechtenstein Legal Gazette.</p>
Lithuania	No direct individual access	No direct individual access

State	Constitution	Laws
Luxembourg	<p>Article 95^{ter}</p> <p>(1) The Constitutional Court decides, by way of arrêt, on the conformity of the laws with the Constitution.</p> <p>(2) The Constitutional Court is seized, in a prejudicial manner, pursuant to the modalities to be determined by the law, by any court to decide on the conformity of the laws, save the laws approving treaties, to the Constitution.</p>	<p>Law on the Organisation of the Constitutional Court</p> <p>Article 6</p> <p>When a party raises a question concerning a law's conformity with the Constitution before an ordinary court or an administrative court, that court shall refer the matter to the Constitutional Court.</p> <p>The court shall not be required to refer the matter to the Constitutional Court if, in its view:</p> <ul style="list-style-type: none"> a. a decision on the matter raised is not necessary for it to deliver its judgment; b. the constitutionality issue is without foundation; c. the Constitutional Court has already ruled on a question submitted to it concerning the same matter.
Malta	<p>46.</p> <p>(1) Subject to the provisions of subsections (6) and (7) of this section, any person who alleges that any of the provisions of sections 33 to 45 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.</p> <p>(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 33 to 45 (inclusive) to the protection of which the person concerned is entitled: Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.</p>	<p>European Convention Act</p> <p>Article 4</p> <p>1. Any person who alleges that any of the Human Rights and Fundamental Freedoms, has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.</p> <p>2. The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection 1 of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled</p>

State	Constitution	Laws
	<p>(3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection (4) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.</p> <p>(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.</p> <p>(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.</p> <p>Article 95</p> <p>(2) One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine -</p> <ul style="list-style-type: none"> (c) appeals from decisions of the Civil Court, First Hall, under section 46 of this Constitution; (d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under section 46 of this Constitution; (e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under section 46 of this Constitution; and (f) any question decided by a court of original jurisdiction in Malta together with any of the questions referred to in the foregoing paragraphs of this subsection 	

State	Constitution	Laws
	<p>on which an appeal has been made to the Constitutional Court:</p> <p>Provided that nothing in this paragraph shall preclude an appeal being brought separately before the Court of Appeal in accordance with any law for the time being in force in Malta.</p> <p>(3) Notwithstanding the provisions of subsection (2) of this section, if any such question as is referred to in paragraph (d) or (e) of that subsection arises for the first time in proceedings in a court of appellate jurisdiction, that court shall refer the question to the court which gave the original decision, unless in its opinion the raising of the question is merely frivolous or vexatious, and that court shall give its decision on any such question and, subject to any appeal in accordance with the provisions of subsection (2) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.</p> <p>Article 116</p> <p>A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of Sections 33 to 45 of this Constitution shall pertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action.</p>	
Mexico	<p>Article 103</p> <p>The courts of the Federation will resolve all questions that arise:</p> <p>I. About laws or acts of authority that violate individual guarantees.</p>	<p>Organic Law on the Judicial Power of the Federation (p.t.)</p> <p>Article 10³¹⁸</p> <p>The Supreme Court of Justice will decide in the Plenary:</p>

³¹⁸ Artículo 10. La Suprema Corte de Justicia conocerá funcionando en Pleno:
 II. Del recurso de revisión contra sentencias pronunciadas en la audiencia constitucional por los jueces de distrito o los tribunales unitarios de circuito, en los siguientes casos:
 a) Cuando subsista en el recurso el problema de constitucionalidad de normas generales, si en la demanda de amparo se hubiese impugnado una ley federal, local, del Distrito Federal, o un tratado internacional, por estimarlos directamente violatorios de un precepto de la Constitución Política de los Estados Unidos Mexicanos;
 b) Cuando se ejerza la facultad de atracción contenida en el segundo párrafo del inciso b) de la fracción VIII del artículo 107 de la Constitución Política de los Estados Unidos Mexicanos, para conocer de un amparo en revisión que por su interés y trascendencia así lo amerite, y III. Del recurso

State	Constitution	Laws
	<p>Article 105 The Supreme Court of Justice of the Nation will get to know, in the terms that the regulating law specifies, about the following affairs:</p> <p>III. By itself or by petition of the appropriate unitary circuit tribunal, or the Attorney General of the Republic, it may get to know about cases of appeal of sentences of district judges in those cases in which the Federation took part, and in which their interest and importance merit its participation.</p> <p>Article 107 All questions that Article 103 discusses will be subject to the proceedings and forms of judicial order, that the law determines, according to the following bases:</p> <p>I. Judicial relief always will follow to the aggrieved party.</p> <p>II. Judgment will always be such that it only will be concerned with particular parties, limited to relief and protection in special cases for those who are making the complaint, without making a general declaration with respect to the law or act that motivates the complaint.</p> <p>VIII. Against judgments that district judges or Unitary Circuit Tribunals pronounce in cases of relief, there will be review. Of these, the Supreme Court of Justice will hear:</p> <p>a) When the petition for relief has been challenged, because it directly violates this Constitution, federal, states, or local laws, international treaties, regulations dispatched by the President of the Republic in accordance with section I of Article 89 of this Constitution and regulations of state and local law made by the governors of the States or by the Federal District where the problem of constitutionality remains;</p>	<p>II. On the appeal of revision against sentences passed in the constitutional hearing by district judges or unitary circuit courts in the following cases:</p> <ul style="list-style-type: none"> a. If the problem of unconstitutionality of general norms subsists in the appeal of revision, if in the writ of amparo a federal or local law or a law of a federal district or an international treaty was impugned because they were deemed to directly violate the Political Constitution of the United Mexican States; b. If it makes use of its right to seize pending cases in view of deciding on a writ of amparo that it deems particularly interesting and having important implications for future legal action, as provided for in article 107 fraction VIII indent b) of the Political Constitution of the United Mexican States. <p>III. On the claim of revision against decisions following a writ of direct amparo challenging the constitutionality of a federal, local, or district law or of an international treaty issued by a collegial circuit tribunal, or if the decision on the violation required a direct interpretation of a precept of the Political Constitution of the United Mexican States, the revision will limit itself to the questions that are properly constitutional.</p>

de revisión contra sentencias que en amparo directo pronuncien los tribunales colegiados de circuito, cuando habiéndose impugnado la inconstitucionalidad de una ley federal, local, del Distrito Federal o de un tratado internacional, o cuando en los conceptos de violación se haya planteado la interpretación directa de un precepto de la Constitución Política de los Estados Unidos Mexicanos, dichas sentencias decidan u omitan decidir sobre tales materias, debiendo limitarse en estos casos la materia del recurso a la decisión de las cuestiones propiamente constitucionales.

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

State	Constitution	Laws
	<p>b) In the cases understood to be under Sections II and III of Article 103 of this Constitution.</p> <p>The Supreme Court of Justice, upon its initiative or upon petition may be by the corresponding Collected Circuit Tribunal, or the Attorney General of the Republic may hear cases of relief in review of which their interest and implications for future legal action merit.</p> <p>In the cases not foreseen in the previous paragraphs, the cases of relief will come before Collected Circuit Tribunals, and their judgments will have no recourse.</p> <p>IX. The resolutions that the Collected Circuit Tribunals give in cases of direct judicial relief have no appeal, unless they decide about the unconstitutionality of a law or establish a direct interpretation of a precept of the Constitution. Such resolutions, will be brought before the Supreme Court of Justice, and conform to general standards, that may establish criteria of importance and precedent. Only on these bases will they be reviewed by the Supreme Court of Justice, which will limit the matters of appeal exclusively to decision on the questions that are properly constitutional.</p>	
Moldova	No direct individual access	No direct individual access
Monaco	<p>Article 90³¹⁹</p> <p>A.- En matière constitutionnelle, le Tribunal Suprême statue souverainement:</p> <p>l°) sur la conformité du règlement intérieur du Conseil National aux dispositions constitutionnelles et, le cas échéant, législatives, dans les conditions prévues à l'article 61;</p> <p>2°) sur les recours en annulation, en appréciation de validité et en indemnité ayant pour objet une atteinte aux libertés et droits consacrés par le Titre III de la Constitution, et qui ne sont pas visés au paragraphe B du présent article.</p> <p>B.- En matière administrative, le Tribunal Suprême statue souverainement:</p>	<p>Decree n; 2.984 on the organisation and functioning of the Supreme Tribunal³²⁰</p> <p>Le tribunal peut être saisi par toute personne, physique ou morale ayant qualité et justifiant d'un intérêt, en matière administrative comme en matière constitutionnelle. Ainsi notamment, toute loi peut être annulée, pour inconstitutionnalité, à l'initiative d'un justiciable, personne physique ou morale, monégasque ou étranger.</p>

³¹⁹ <http://www.conseil-national.mc/constitution.php>

³²⁰ <http://www.legimonaco.mc/305//legismc.nsf>

State	Constitution	Laws
	<p>l°) sur les recours en annulation pour excès de pouvoir formés contre les décisions des diverses autorités administratives et les ordonnances souveraines prises pour l'exécution des lois, ainsi que sur l'octroi des indemnités qui en résultent;</p> <p>2°) sur les recours en cassation formés contre les décisions des juridictions administratives statuant en dernier ressort;</p> <p>3°) sur les recours en interprétation et les recours en appréciation de validité des décisions des diverses autorités administratives et des ordonnances souveraines prises pour l'exécution des lois.</p>	
Montenegro	<p>Article 149</p> <p>The Constitutional Court shall decide on the following:</p> <p>3) Constitutional appeal due to the violation of human rights and liberties granted by the Constitution, after all other efficient legal remedies have been exhausted</p> <p>Article 150</p> <p>Any person may file an initiative to start the procedure for the assessment of constitutionality and legality.</p>	<p>Draft law on the Constitutional Court³²¹</p> <p>Article 58</p> <p>Constitutional complaints may be lodged against an individual act of state authority, local self-government authority or organisation vested with public powers, for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.</p> <p>Article 59</p> <p>Constitutional complaints may be lodged by anyone who believes that his human right and freedom guaranteed by the Constitution was violated by an individual act of state authority, local self-government authority or organisation vested with public powers.</p> <p>Constitutional complaint may also be lodged by another natural person or a state authority or organisation in charge of the monitoring and realisation of human rights and freedoms on behalf of the person referred to in paragraph 1 above on the basis of his authorisation.</p>
Morocco	No direct individual access	No direct individual access
Netherlands	<p>Article 94</p> <p>Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions.</p>	<p>Judiciary Organisation Act</p> <p>Article 95</p> <p>1. The Court of Cassation shall take cognisance of appeals in cassation against the procedures of the courts of appeal and the district and sub-district courts and</p>

³²¹ CDL(2008)073 Draft Law on the Constitutional Court of Montenegro.

State	Constitution	Laws
	Article 120 The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.	against their judgements, whether lodged by the parties concerned or by the procurator general at the Supreme Court “in the interests of the law”. Article 99 1. The Court of Cassation shall quash procedures and judgements: 2. where they violate the law, with the exception of the law of other States. Council of State Act Article 30b The Administrative Jurisdiction Division is charged with trying the disputes referred to it by law.
Norway	Article 88 The Supreme Court pronounces judgment in the final instance. Nevertheless, limitations on the right to bring a case before the Supreme Court may be prescribed by law.	Civil Procedure Act §355 The court decisions which can be made subject of an independent appeal are judgments and such orders, for which it is specifically provided that they may be the subject of appeal. In connection with an appeal against a judgment or order a party may also appeal against preceding orders relating to the handling of the case. Criminal Procedure Act §306 Appeals against judgments of the District Court (herredsretten) or the City Court (byretten) or the High Court (lagmannsretten) may be brought by the parties to court of appeal indicated in Sections 6 to 8.
Peru	Article 138 ³²² (p.t.) The power to administer justice emanates from the people and is exercised by the Judicial Power through its hierarchical	Organic law on the judicial power (p.t.) Article 14 - Supremacy of the constitutional norm and diffuse control of the Constitution ³²³

³²² La potestad de administrar justicia emana del pueblo y se ejerce por el Poder Judicial a través de sus órganos jerárquicos con arreglo a la Constitución y a las leyes.

En todo proceso, de existir incompatibilidad entre una norma constitucional y una norma legal, los jueces prefieren la primera. Igualmente, prefieren la norma legal sobre toda otra norma de rango inferior.

<http://www.tc.gob.pe/legconperu/constitucion.html>

³²³ Ley orgánica del poder judicial

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

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

State	Constitution	Laws
	<p>organs and in conformity with the Constitution and the laws.</p> <p>If, in any proceeding, there is incompatibility between a constitutional norm and a legal norm, the judges shall give priority to the first. Likewise, they shall give priority to the legal norm over all other norms of inferior value.</p> <p>Article 144³²⁴</p> <p>The Plenary of the Supreme Court is the highest deliberating organ of the Judicial Power.</p> <p>Article 200³²⁵ The Constitution guarantees the exercise of:</p> <ol style="list-style-type: none"> 1. The claim of <i>habeas corpus</i>, which can be lodged in relation to an action or omission by any authority, civil servant or person, which violates or threatens individual liberty or the associated constitutional rights. 2. The writ of <i>amparo</i>, which can be lodged against the action or omission by any authority, civil servant or person, which violates or threatens the other rights provided for in the Constitution, with the exception of those indicated in the following indent. The writ may not be lodged against legal norms or judicial resolutions that respected the regular procedure. 	<p>In conformity with art. 236 of the Constitution, when the competent magistrates, when deciding on the merits of the question, find in their interpretation that there is an incompatibility of a constitutional provision and one with force of a law, they shall resolve the case in conformity with the constitutional provision.</p> <p>These judgements shall be referred to the Constitutional and Social Chamber of the Supreme Court for consultation, if they are not being impugned. Likewise, judgements at second instance in which the same precept is being applied shall be referred to the Chamber, even if against these judgements no appeal for cassation may be lodged.</p> <p>In all those cases the magistrates only declare the inapplicability due to unconstitutionality of the legal norm in the concrete case, without affecting its validity, which is controlled according to the form and procedure established by the Constitution.</p> <p>Concerning norms of lower rank, the same principle applies, but without necessity of referral for consultation, without prejudice to the procedure applying for popular action.</p>

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

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

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

³²⁴ La Sala Plena de la Corte Suprema es el órgano máximo de deliberación del Poder Judicial.

³²⁵ Son garantías constitucionales:

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

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

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

State	Constitution	Laws
	<p>The claim of <i>habeas</i> data which can be lodged against the action or omission by any authority, civil servant or person, which violates or threatens the rights provided for in Article 2 indents 5) and 6) of the Constitution.</p> <p>5. The popular action, which can be lodged in view of an infraction of the Constitution or the law, against regulations, administrative norms and resolutions and decrees of general character, no matter which authority these acts or omissions emanate from.</p> <p>6. The claim of performance of duty, which may be lodged against any authority or civil servant refusing to attack a legal norm or an administrative act, without prejudice to the legal responsibilities.</p> <p>An organic law shall regulate the exercise of these guarantees and the effect of the declaration of unconstitutionality or illegality of the norm.</p>	<p>Organic Law on the Constitutional Tribunal Article 5³²⁶</p> <p>The Tribunal shall be constituted of two Chambers of three members each to cognise, in last instance, concerning resolutions denying <i>habeas corpus</i>, <i>amparo</i>, <i>habeas</i> data and claim of performance of duty, initiated before the respective judges. The resolutions require three conform votes.</p> <p>Code of constitutional procedure Article VI. Diffuse control and constitutional interpretation³²⁷</p> <p>When there is an incompatibility between a constitutional norm and another norm of lower rank, the judge must give priority to the former if this is necessary to resolve the controversy and if it is not possible to interpret the lower norm in conformity with the Constitution.</p>

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

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

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

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

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

³²⁶ Para conocer, en última y definitiva instancia, las resoluciones denegatorias de los procesos de amparo, *hábeas corpus*, *habeas* data y de cumplimiento, iniciadas ante los jueces respectivos, el Tribunal está constituido por dos Salas, con tres miembros cada una. Las resoluciones requieren tres votos conformes.

³²⁷ Código procesal constitucional

Artículo VI. Control Difuso e Interpretación Constitucional

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

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

Artículo 75. Finalidad

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

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

State	Constitution	Laws
	<p>The right to lodge writs of <i>habeas corpus</i> or of <i>amparo</i> cannot be suspended during the effectiveness of exceptional regimes as referred to in Article 137 of the Constitution. When claims of this nature are being lodged against restricted rights, the competent jurisdictional organ shall examine the reasonability and the proportionality of the restricting act. The judge shall not be entitled to question the declaration of state of emergency or if state of siege.</p> <p>Article 202³²⁸</p> <p>The Constitutional Tribunal is entitled to: To cognise, in first and last instance, on claims of unconstitutionality. To cognise, in last instance, concerning resolutions denying <i>habeas corpus</i>, <i>amparo</i>, <i>habeas data</i> and claim of performance of duty.</p>	<p>The judges cannot refrain from applying a norm whose constitutionality has been confirmed in a proceeding on unconstitutionality or in a proceeding following a popular action.</p> <p>Article 75. Finality The aim of the proceeding following a popular action and of the proceeding on unconstitutionality is the protection of the Constitution against infractions against its normative hierarchy or rank. This infraction can be direct or indirect, total or partial, and touch formal or material aspects.</p> <p>Article 76. Admissibility of the popular action³²⁹ Popular action can be initiated against regulations, administrative norms and resolutions of general character, no matter which authority they emanate from, if they infringe the Constitution or the law, or if they have not been enacted or published as prescribed by the Constitution or the law applicable.</p> <p>Article 84. Legitimation³³⁰ The popular action can be filed by any person.</p> <p>Law 23506 on <i>amparo</i> and <i>habeas corpus</i></p> <p>Article 3³³¹ The claims can be lodged even if the violation or threat emanates from a norm which is incompatible with the Constitution. In this case, the inapplicability of the norm shall be pronounced in the same proceeding.</p> <p>Article 4³³²</p>

³²⁸ Corresponde al Tribunal Constitucional: 1. Conocer, en última y definitiva instancia, las resoluciones denegatorias de *hábeas corpus*, *amparo*, *hábeas data*, y acción de cumplimiento.

³²⁹ Procedencia de la demanda de acción popular

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

³³⁰ La demanda de acción popular puede ser interpuesta por cualquier persona.

³³¹ Las acciones de garantía proceden aun en el caso que la violación o amenaza se base en una norma que sea incompatible con la Constitución. En este supuesto, la inaplicación de la norma se apreciará en el mismo procedimiento.

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

³³² Si se ejerce la acción a causa de la violación de un derecho constitucional por omisión de un acto debido, el fallo ordenará el cumplimiento incondicional e inmediato de dicho acto.

State	Constitution	Laws
		<p>If the claim is being lodged because of the violation of a constitutional right through omission where an action was due, the judgement will order the immediate and unconditional fulfilment of the act.</p> <p>Article 5³³³</p> <p>The claims are also admissible if a judicial authority passes a resolution or any other act of disposal outside of a proceeding in its competence, that violates a constitutional right.</p>
Poland	<p>Article 79</p> <p>1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.</p> <p>2. The provisions of para. 1 above shall not relate to the rights specified in Article 56.</p>	<p>Constitutional Tribunal Act</p> <p>Article 27</p> <p>The participants in the proceedings before the Tribunal shall be:</p> <p>1) a subject who submitted an application or complaint concerning constitutional infringement;</p> <p>Article 46</p> <p>1. Constitutional claim, further referred to as the “claim” can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the plaintiff, the final decision or other final judgement.</p> <p>2. The Tribunal shall consider a complaint on the principles and in accordance with the procedure provided for the consideration of a application for the confirmation of conformity of statutes to the Constitution and of other normative acts to the Constitutions and statutes.</p>
Portugal	<p>Article 20</p> <p>Access to law and effective judicial protection</p> <p>1. Everyone is guaranteed access to law and to the courts in order to defend his or her rights and legally protected interests; justice shall not be denied to a person for lack of financial resources.</p> <p>Article 280</p> <p>1. The Constitutional Court has jurisdiction to hear appeals against any of the following court decisions:</p>	<p>Law on the Constitutional Court</p> <p>Article 70 - (Decisions that may be appealed)</p> <p>1. An appeal may be made to the Constitutional Court, in section, regarding the following court decisions:</p> <p>a) Those rejecting the application of a rule on the grounds of unconstitutionality;</p> <p>b) Those applying a rule the unconstitutionality of which has been raised during the proceedings;</p>

³³³ Las acciones de garantía también son pertinentes si una autoridad judicial, fuera de un procedimiento que es de su competencia, emite una resolución o cualquier disposición que lesione un derecho constitucional.

State	Constitution	Laws
	<p>a. Decisions refusing to apply a legal rule on the ground of unconstitutionality;</p> <p>b. Decisions applying a legal rule, the constitutionality of which was challenged during the proceedings.</p> <p>2. The Constitutional Court also has jurisdiction to hear appeals against any of the following court decisions:</p> <p>a. Decisions refusing to apply a legislative provision on the ground of illegality arising from contravention of some superior law;</p> <p>b. Decisions refusing to apply a provision of a regional legislative instrument on the ground of illegality arising from contravention of the statute of an autonomous region or the general law of the Republic;</p> <p>c. Decisions refusing to apply a provision of an instrument made by an organ with supreme authority on the ground of illegality arising from contravention of the statute of an autonomous region;</p> <p>d. Decisions applying a provision, the legality of which was challenged during the proceedings on any of the grounds specified in sub-paragraphs (a), (b) or (c).</p> <p>3. Where a court refuses to apply a provision of an international convention, any legislation or a regulatory decree, any appeal under paragraph 1(a) or 2(a) must be brought by the Public Prosecution.</p> <p>4. An appeal under paragraph (1)(b) or (2)(d) may be brought only by the party who raised the question of unconstitutionality or illegality; the law shall prescribe the requirements and procedure with respect to the bringing of these appeals.</p>	<p>c) Those rejecting the application of a rule which is included in a legislative act based on the grounds of its illegality in violating a law of reinforced value;</p> <p>d) Those rejecting the application of a rule appearing in regional legislation based on grounds of its illegality in violating the statute of an autonomous region or the general law of the Republic;</p> <p>e) Those rejecting the application of a rule issued by an organ of supreme national authority with grounds based on its illegality in violating the statute of an autonomous region;</p> <p>f) Those rejecting the application of a rule the illegality of which has been raised during the proceedings based on any of the grounds mentioned in sub-paragraphs c), d) and e);</p> <p>g) Those rejecting the application of a rule which has previously been judged unconstitutional or illegal by the actual Constitutional Court;</p> <p>h) Those rejecting the application of a rule which has previously been judged unconstitutional by the Constitutional Committee according to the exact terms in which it has been submitted for examination by the Constitutional Court;</p> <p>i) Those rejecting the application of a rule appearing in a legislative act on the grounds that it contradicts an international convention, or that apply it contrary to what has been previously decided on the matter by the Constitutional Court.</p> <p>Article 72 - (Legitimacy to appeal)</p> <p>1. The following may appeal to the Constitutional Court:</p> <p>a) The Public Prosecutor's Office;</p> <p>b) Persons who, in agreement with the law regulating the case in which the decision was passed, have legitimacy to file an appeal.</p> <p>2. The appeals envisaged in sub-paragraphs b) and f) of n.^o 1 of article 70 may only be filed by the party that has raised the question of unconstitutionality or illegality in a way that is procedurally appropriate before the court that gave the decision</p>

State	Constitution	Laws
		<p>appealed against in terms of the latter being obliged to know it.</p> <p>3. The appeal is obligatory for the Public Prosecutor's Office when the rule that was refused application, due to unconstitutionality or illegality, appears in an international convention, legislative act or regulamentary decree, or when the cases envisaged in subparagraphs g), h) and i) of no. 1 of Article 70 are verified, with the exception of the ruling in the following number.</p> <p>4. The Public Prosecutor's Office may abstain from filing an appeal on decisions taken, within the guidelines already established, for the issue in question in the case law of the Constitutional Court.</p>
Romania	<p>Article 144</p> <p>The Constitutional Court shall have the following powers:</p> <p>d) to decide on exceptions of unconstitutionality of laws and Government ordinances which are raised before the courts of law or commercial arbitration; a plea of unconstitutionality may also be brought up directly by the Ombudsman.</p>	<p>Law on the Organisation and Operation of the Constitutional Court</p> <p>Article 23</p> <p>1. The Constitutional Court shall pronounce upon the exceptions raised before Instances referring to the unconstitutionality of laws and statutory orders.</p> <p>2. If, in the course of a judgement, the Instance finds, <i>ex officio</i>, or one of the parties pleads the unconstitutionality of a provision under a law or statutory order on which the judgment of the cause depends, the exception raised shall be sent to the Constitutional Court, in order to pronounce upon the constitutionality of that provision.</p>
Russian Federation	<p>Article 125</p> <p>4. The Constitutional Court of the Russian Federation, upon complaints about violations of the constitutional rights and freedoms of citizens and upon requests of the courts, shall verify the conformity with the Constitution of any law which is applied or shall be applied in a concrete case in a way established by federal law.</p>	<p>Federal Constitutional Law on the Constitutional Court</p> <p>Article 3</p> <p>To protect the foundations of the constitutional system and the basic rights and freedoms of individuals and citizens, and to ensure the supremacy and direct action of the Constitution of the Russian Federation on the entire territory of the Russian Federation, the Constitutional Court of the Russian Federation:</p> <p>3. shall, at complaints on the violation of constitutional rights and freedoms of citizens and at inquiries of courts, verify the constitutionality of a law that has been applied or ought to be applied in a specific case;</p>

State	Constitution	Laws
		<p>Article 96 The right to petition the Constitutional Court with the individual or collective complaint on the violation of the constitutional rights and freedoms shall be vested in the citizens, whose rights and freedoms have been violated by the law that has been applied or ought to be applied in a specific case, and in the associations of citizens, as well as in other bodies and persons, envisaged in the federal law. Enclosed with the complaint, apart from the documents listed in Article 38 of the present Federal Constitutional Law shall be the copy of the official document confirming the application or the possibility of the application of the appealed law in the decision of the specific case. The official or the body that considered the case shall produce the copy of the aforementioned document to the petitioner at his request.</p>
San Marino	<p>Declaration of Citizens' Rights and of the fundamental principles of the San Marino- se legal order³³⁴ (p.t.) Article 16 The <i>Collegio Garante</i>: a. Verifies, upon direct request of at least twenty Councillors, of the Congress of State, of five communities, of a number of citizens entitled to vote representing a minimum of 1,5% of the electorate as arises from the last and definitive annual</p>	<p>Qualified Law of 25 April 2003 (p.t.)³³⁵ Article 11 The constitutional review as provided for by article 16 of the Declaration of Rights may be direct or incidental in cases pending before the judicial organs. Article 13 Constitutional review can be requested incidentally in relation to cases pending before the jurisdictional organs of the Republic by the parties or by the [Public</p>

³³⁴ Il Collegio Garante:

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

<http://www.consigliograndeegenerale.sm/new/ricercaleggi/vislegge.php3?action=visTestoLegge1&i dlegge=6175&twid th=580&>

³³⁵ 1. La verifica di legittimità costituzionale di cui all'articolo 16 della Dichiarazione dei Diritti può avvenire in via diretta ovvero incidentale nell'ambito dei giudizi pendenti avanti agli organi giudiziari.
2. La verifica di legittimità costituzionale può essere richiesta in via incidentale, nell'ambito di giudizi pendenti presso gli organi giurisdizionali della Repubblica, dalle parti o dal Procuratore del Fisco, con apposita istanza scritta, ovvero d'ufficio dal Giudice, mediante ordinanza motivata.
<http://www.consigliograndeegenerale.sm/new/index.php3>

State	Constitution	Laws
	<p>revision of the electoral lists, as well as concerning cases pending before Tribunals of the Republic, upon request by the judges or by the parties to the case, the compatibility of laws and normative acts having the force of law with the fundamental principles of the present law or with the ones recalled by the present law.</p>	<p>Prosecutor in administrative matters]. The request must be lodged in written form, or, if the Judge acts <i>ex officio</i>, through a motivated ordinance.</p>
Serbia	<p>Article 168 A proceeding of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The procedure may also be instituted by the Constitutional Court. Any legal or natural person shall have the right to an initiative to institute a proceedings of assessing the constitutionality and legality. The Constitutional Court may assess the compliance of the Law and other general acts with the Constitution, compliance of general acts with the Law, even when they ceased to be effective, if the proceedings of assessing the constitutionality has been instituted within no more than six months since they ceased to be effective.</p> <p>Article 168 A proceedings of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The procedure may also be instituted by the Constitutional Court. Any legal or natural person shall have the right to an initiative to institute a proceedings of assessing the constitutionality and legality.</p> <p>Article 170 A constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.</p>	<p>(Draft) Law on the Constitutional Court Article 57 Constitutional complaints may be uttered against individual acts or actions of state authorities or organisations vested with public authority whereby are breached or denied human and minority rights and liberties guaranteed by the Constitution, when other legal remedies have been exhausted or are not prescribed or where the right to their judicial protection has been excluded by law. Constitutional complaints may also be uttered where all legal remedies have not been exhausted, in cases where the complainant's right to a trial in a reasonable time was breached.</p> <p>Article 58 Constitutional complaints may be uttered by all persons who believe that their human or minority rights and liberties guaranteed by the Constitution have been breached or denied by an individual act or action of a state authority or organisation vested with public authority. Constitutional complaints may on behalf of the persons referred to in §1 of this Article and on the basis of their written authorisation also be uttered by natural or legal persons authorised by them in writing, as well as state and other authorities in charge of the overseeing and exercise of human and minority rights and liberties.</p>

State	Constitution	Laws
Slovakia	<p>Article 127 Constitution The Constitutional Court shall decide on complaints of natural persons or legal persons if they claim the violation of their fundamental rights or freedoms, or human rights and fundamental freedoms set forth in an international treaty which has been ratified by the Slovak Republic and promulgated in the manner laid down by law, unless another court decides on the protection of these rights and freedoms.</p> <p>Article 130 Constitution 1) The Constitutional Court shall commence the proceedings upon an application submitted by: h) any person whose rights shall be adjudicated as defined in Article 127 and Article 127a..</p>	<p>Law on the Organisation of the Constitutional Court Article 18 1. The Constitutional Court shall commence proceedings upon an application submitted by g) any person whose rights shall be adjudicated as defined in Article 127 and Article 127a.. Article 49 A constitutional complaint may be filed by a natural person or a legal person (hereinafter "the complainant") claiming that their fundamental rights and freedoms have been violated by a final decision, measure or by other encroachment, unless another court decides on the protection of these rights and freedoms.</p>
Slovenia	<p>Article 160 of the Constitution The Constitutional Court decides: [...] on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts; [...] Article 162 (Proceedings before the Constitutional Court) Proceedings before the Constitutional Court shall be regulated by law. The law determines who may require the initiation of proceedings before the Constitutional Court. Anyone who demonstrates legal interest may request the initiation of proceedings before the Constitutional Court. The Constitutional Court decides by a majority vote of all its judges unless otherwise provided for individual cases by the Constitution or law. The Constitutional Court may decide whether to initiate proceedings following a constitutional complaint with fewer judges as provided by law.</p>	<p>Constitutional Court Act Article 24 (1) Anyone who demonstrates legal interest may lodge a petition that the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority be initiated. (2) Legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner directly interferes with his rights, legal interests, or legal position. Article 50 (1) Due to a violation of human rights or fundamental freedoms, a constitutional complaint may, under the conditions determined by this Act, be lodged against individual acts by which state authorities, local community authorities, or bearers of public authority decided the rights, obligations, or legal entitlements of individuals or legal entities.</p>
South Africa	<p>Article 167 (3) The Constitutional Court (a) is the highest court in all constitutional matters;</p>	<p>Rules of the Court 18 Direct access 1. An application for direct access as contemplated in section 167 (6) (a) of the</p>

State	Constitution	Laws
	<p>(b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and</p> <p>(c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.</p> <p>(6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court-</p> <ul style="list-style-type: none"> (a) to bring a matter directly to the Constitutional Court; or (b) to appeal directly to the Constitutional Court from any other court. <p>Article 172</p> <p>(1) When deciding a constitutional matter within its power, a court-</p> <ul style="list-style-type: none"> (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and (b) may make any order that is just and equitable, including- <ul style="list-style-type: none"> (i) an order limiting the retrospective effect of the declaration of invalidity; and (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect. <p>(2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.</p>	<p>Constitution shall be brought on notice of motion, which shall be supported by an affidavit, which shall set forth the facts upon which the applicant relies for relief.</p> <p>19 Appeals</p> <p>1. The procedure set out in this rule shall be followed in an application for leave to appeal to the Court where a decision on a constitutional matter, other than an order of constitutional invalidity under Section 172 (2) (a) of the Constitution, has been given by any court including the Supreme Court of Appeal, and irrespective of whether the President has refused leave or special leave to appeal.</p>
Spain	<p>Article 53</p> <p>1. The rights and liberties recognised in Chapter Two of the present Title are binding on all public authorities. The exercise of such rights and liberties, which shall be protected in accordance with the provisions of Article 161, 1a), may be regulated only by law which shall, in any case, respect their essential content.</p> <p>2. Any citizen may assert his claim to the protection of the liberties and rights</p>	<p>Organic Law on the Constitutional Court</p> <p>Article 35</p> <p>1. Where a judge or a court, proprio motu or at the request of a party, considers that an enactment having the force of law which is applicable to a case and on which the validity of the ruling depends may be contrary to the Constitution, the judge or court shall raise the question before the Constitutional Court in accordance with the provisions of this Law.</p>

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	<p>recognised in Article 14 and in Section 1 of Chapter Two, by means of -a preferential and summary procedure in the Ordinary Courts and, when appropriate, by submitting an individual appeal for protection (“recurso de amparo”) to the Constitutional Court. This latter procedure shall be applicable to conscientious objection as recognised in Article 30.</p> <p>3. The substantive legislation, judicial practice and actions of the public authorities shall be based on the acknowledgement, respect and protection of the principles recognised in Chapter Three. The latter may only be invoked in the Ordinary Courts in the context of the legal provisions by which they are developed.</p> <p>Article 161</p> <p>The Constitutional Court has jurisdiction over the whole of Spanish territory and is competent to hear:</p> <ul style="list-style-type: none"> a) appeals against the alleged unconstitutionality of laws and regulations having the force of law. A declaration of unconstitutionality of a legal provision with the force of law, interpreted by jurisprudence, shall also affect the latter, although the sentence or sentences handed down shall not lose their status of res judicata. b) individual appeals for protection (“recursos de amparo”) against violation of the rights and liberties contained in Article 53.2 of the Constitution, in the circumstances and manner to be laid down by law; <p>Article 162</p> <ul style="list-style-type: none"> 1. The following are eligible to: b) lodge an individual appeal for protection (“recurso de amparo”): any individual or corporate body with a legitimate interest, as well as the Defender of the People and the Office of the Public Prosecutor. 2. In all other cases, the organic law shall determine which persons and agencies are eligible. 	<p>Article 41</p> <p>1. The rights and freedoms recognised in Articles 14 to 29 of the Constitution shall be secured by constitutional protection (amparo constitucional) in the circumstances and form laid down by this Law, without prejudice to the general guardianship thereof entrusted to the courts of law. The same protection shall be accorded to conscientious objection as recognised in Article 30 of the Constitution.</p> <p>2. The appeal for constitutional protection shall be available to all citizens, in accordance with the provisions of this Law, against violations of the rights and freedoms referred to in the previous paragraph resulting from provisions, legal enactments or common assault by the public authorities of the State, the Autonomous Communities and other territorial, corporate or institutional public bodies, as well as by their officials or agents.</p> <p>3. For the purposes of constitutional protection, no claims may be asserted other than those designed to restore or preserve the rights or freedoms for which the action has been brought.</p> <p>Article 42</p> <p>Decisions or enactments without the force of law taken by the Cortés or any of its organs or by the legislative assemblies of the Autonomous Communities or their organs, which violate the rights and freedoms protected by the Constitution, may be the subject of legal action within a period of three months following the time when, in accordance with the rules of procedure of the Houses or the assemblies, they shall be without appeal.</p> <p>Article 43</p> <p>1. The above-mentioned violations of rights and freedoms resulting from provisions, legal enactments or common assault by the Government, its authorities, or its officials or by the collegiate executive bodies of the Autonomous Communities or their authorities, officials or agents, may provide grounds for an appeal for protection when the relevant judicial</p>

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		<p>remedy has been exhausted, in accordance with Article 53.2 of the Constitution.</p> <p>3. Such an appeal may be based solely on an infringement, by a non-appealable decision, of the constitutional precepts recognising protected rights and freedoms.</p> <p>Article 44</p> <p>1. Violations of constitutionally protected rights and freedoms that are the immediate and direct result of an act or omission by a judicial body may give grounds for such an appeal provided that the following conditions are met:</p> <p>[...]</p> <p>Article 46</p> <p>1. The following shall have standing to lodge an appeal for constitutional protection:</p> <ul style="list-style-type: none"> a. In the case of Articles 42 and 45, the person directly affected, the Defender of the People and the Office of the Public Prosecutor; b. In the case of Articles 43 and 44, the parties to the corresponding judicial proceedings, the Defender of the People and the Office of the Public Prosecutor. <p>2. Where the appeal is brought by the Defender of the People or the Office of the Public Prosecutor, the Division of the Court with authority to hear the case for constitutional protection shall inform any potentially injured persons of whom it has knowledge and shall order publication of the notice of appeal in the "Official State Gazette" so that other interested parties may come forward. Such publication shall have preferential status.</p> <p>Article 47</p> <p>1. Persons who benefited by the decision, act or circumstance that led to the appeal or persons with a legitimate interest therein may appear in the proceedings for constitutional protection as a defendant or additional party.</p> <p>2. The Office of the Public Prosecutor shall intervene in all protection proceedings in defence of legality, citizens' rights and the public interest under the custodianship of the law.</p>

State	Constitution	Laws
Sweden	<p>Chapter 11 Article 14 Constitution (according to the new wording to be in force since 2011)</p> <p>If a court or other public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision may not be applied. In the event of judicial review particular account should be taken of the circumstances that Parliament is the principal representative of the people and that constitutional law takes precedence over ordinary law".</p> <p>Chapter 12, Article 10 of the Constitution establishes an analogue provision applicable to other public bodies concerning the same obligation to perform "judicial review" in their decision making in administrative cases.</p>	
Switzerland	<p>Article 189 Constitutional Jurisdiction</p> <p>1 The Federal Supreme Court shall have jurisdiction over:</p> <ul style="list-style-type: none"> a. Complaints about violations of constitutional rights; <p>2 For the decision of certain disputes, the statute may attribute jurisdiction to other federal authorities.</p>	<p>Federal Judicature Act³³⁶</p> <p>Article 82</p> <p>Le Tribunal fédéral connaît des recours:</p> <ul style="list-style-type: none"> a. contre les décisions rendues dans des causes de droit public; b. contre les actes normatifs cantonaux; c. qui concernent le droit de vote des citoyens ainsi que les élections et votations populaires. <p>Article 86</p> <p>1. Le recours est recevable contre les décisions:</p> <ul style="list-style-type: none"> a. du Tribunal administratif fédéral; b. du Tribunal pénal fédéral; c. de l'Autorité indépendante d'examen des plaintes en matière de radio-télévision; d. des autorités cantonales de dernière instance, pour autant que le recours devant le Tribunal administratif fédéral ne soit pas ouvert. <p>2. Les cantons instituent des tribunaux supérieurs qui statuent comme autorités précédant immédiatement le Tribunal fédéral, sauf dans les cas où une autre loi fédérale prévoit qu'une décision d'une</p>

³³⁶ <http://www.admin.ch/ch/d/sr/1/173.110.de.pdf>

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		<p>autre autorité judiciaire peut faire l'objet d'un recours devant le Tribunal fédéral.</p> <p>Article 113</p> <p>Le Tribunal fédéral connaît des recours constitutionnels contre les décisions des autorités cantonales de dernière instance qui ne peuvent faire l'objet d'aucun recours selon les articles 72 à 89.</p> <p>Article 115</p> <p>A qualité pour former un recours constitutionnel quiconque:</p> <ul style="list-style-type: none"> a. a pris part à la procédure devant l'autorité précédente ou a été privé de la possibilité de le faire et b. a un intérêt juridique à l'annulation ou à la modification de la décision attaquée. <p>Article 116</p> <p>Le recours constitutionnel peut être formé pour violation des droits constitutionnels.</p>
<p>“The former Yugoslav Republic of Macedonia”</p>	<p>Article 110 The Constitutional Court of the Republic of Macedonia: [...]</p> <p>- protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation; [...]</p>	<p>Rules of Procedure Article 11 Proceedings for assessing the constitutionality of a law and the constitutionality and legality of a regulation or other common act are initiated by a decision of the Constitutional Court upon the submission of a petition to the Court.</p> <p>Article 12 Anyone can submit a petition for initiating proceedings for assessing the constitutionality of law or the constitutionality and legality of a regulation or other common act.</p> <p>Article 28 The Constitutional Court will refuse the petition: <ul style="list-style-type: none"> - if it is not competent to decide upon the request; - if it has already dealt with the same matter, and there are no grounds for reaching a different judgment; and - if there are other procedural obstacles to deciding on the petition. </p> <p>Article 51 Any citizen considering that an individual act or action has infringed his or her right or freedom, as provided in Article 110.3 of the Constitution of the Republic of</p>

State	Constitution	Laws
		Macedonia, he or she may lodge an application for protection by the Constitutional Court within 2 months from the date of notification of the final or legally binding individual act, or from the date on which he or she became aware of the activity undertaken creating such an infringement, but not later than 5 years from the date of the activity's being undertaken.
Tunisia	No direct individual access	No direct individual access
Turkey	<p>Article 148 of the Constitution (as amended in 2010)</p> <p>Everybody has the right to make an individual complaint to the Constitutional Court in case of an infringement, by the public power, of one of his/her fundamental rights or freedoms which are also covered by the European Convention on the Protection of Human Rights.</p>	No direct individual access
Ukraine	<p>Article 55</p> <p>Human and citizens' rights and freedoms are protected by the court.</p> <p>Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers. Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the <i>Verkhovna Rada</i> of Ukraine.</p> <p>After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.</p> <p>Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.</p> <p>Article 150</p> <p>The authority of the Constitutional Court of Ukraine comprises:</p> <p>2) the official interpretation of the Constitution of Ukraine and the laws of Ukraine;</p>	<p>Law on the Constitutional Court of Ukraine</p> <p>Article 13</p> <p>The Constitutional Court of Ukraine adopts decisions and provides conclusions in cases concerning:</p> <p>4. official interpretation of the Constitution and laws of Ukraine.</p> <p>Article 42</p> <p>The constitutional petition is a written petition to the Constitutional Court of Ukraine on the necessity of an official interpretation of the Constitution of Ukraine and the laws of Ukraine in order to secure implementation or protecting the constitutional rights and freedoms of the individual and citizen as well as the rights of a legal entity.</p> <p>The constitutional petition sets forth:</p> <p>3. articles (their separate provisions) of the Constitution of Ukraine or the Law of Ukraine, the interpretation of which will be made by the Constitutional Court of Ukraine;</p> <p>4. rationale of the necessity of an official interpretation of the statements of the Constitution of Ukraine or the laws of Ukraine; [...]</p> <p>Article 43</p> <p>Subjects of the right to a constitutional petition for providing opinion by the</p>

State	Constitution	Laws
United Kingdom		<p>Constitutional Court of Ukraine in the cases foreseen by subsection 4 of Article 13 of this Law are the citizens of Ukraine, aliens, stateless persons and legal entities.</p> <p>Human Rights Act 1998³³⁷</p> <p>4 Declaration of incompatibility</p> <p>(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.</p> <p>(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.</p> <p>(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.</p> <p>(4) If the court is satisfied-</p> <ul style="list-style-type: none"> (a) that the provision is incompatible with a Convention right, and (b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility. <p>(6) A declaration under this section ("a declaration of incompatibility")-</p> <ul style="list-style-type: none"> (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and (b) is not binding on the parties to the proceedings in which it is made. <p>6 Acts of public authorities</p> <p>(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.</p> <p>7 Proceedings</p> <p>(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may-</p> <ul style="list-style-type: none"> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

³³⁷ http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1#pb2-l1g3

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United States of America	<p>Art. 3, Sec. 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,</p> <p>Art. 6: This Constitution... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.</p>	<p>(b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.</p> <p>(2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.</p> <p>(3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.</p> <p>8 Judicial remedies</p> <p>(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.</p> <p>§1251 U.S. Code</p> <p>(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.</p> <p>(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.</p> <p>§1254 US Code³³⁸</p> <p>Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:</p> <p>(1) By writ of <i>certiorari</i> granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;</p> <p>(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.</p>

³³⁸ <http://www4.law.cornell.edu/uscode/28/1254.html>

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		<p>U.S. Supreme Court Rules³³⁹</p> <p>Rule 10. Considerations Governing Review on <i>Certiorari</i></p> <p>Review on a writ of <i>certiorari</i> is not a matter of right, but of judicial discretion. A petition for a writ of <i>certiorari</i> will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:</p> <ul style="list-style-type: none"> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. <p>A petition for a writ of <i>certiorari</i> is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.</p> <p>Rule 18. Appeal from a United States District Court</p> <ol style="list-style-type: none"> 1. When a direct appeal from a decision of a United States district court is authorised by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law

³³⁹ <http://www.supremecourtus.gov/ctrules/2007rulesofthecourt.pdf>

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		<p>after entry of the judgment sought to be reviewed.</p> <p>Rule 20. Procedure on a Petition for an Extraordinary Writ</p> <p>1. Issuance by the Court of an extraordinary writ authorised by 28 U. S. C. §1651(a) is not a matter of right, but of discretion sparingly exercised.</p> <p style="text-align: center;">***</p> <p><u>Concerning constitutional challenges to federal actions for equitable relief</u> may be implied directly under the U.S. Constitution or brought under 5 U.S.C. §§701-706, which provide in relevant part as follows:</p> <p>“§702. Right of review</p> <p>A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein</p> <p>(1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or</p> <p>(2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought”.</p> <p>§705. Relief pending review</p>

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		<p>When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for <i>certiorari</i> or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.</p> <p>§706. Scope of review</p> <p>To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall-</p> <ul style="list-style-type: none"> (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be- <ul style="list-style-type: none"> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (B) contrary to constitutional right, power, privilege, or immunity; <p>...</p> <p>In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of pre-judicial error".</p> <p><u>Damages actions alleging violations of certain constitutional protections by federal government agents</u> may be brought under the implied cause of action recognized by the Supreme Court in <i>Bivens v. Six Unknown Named Agents</i>, 403 U.S. 388 (1971).</p> <p><u>Constitutional challenges to the actions of state officials for equitable relief, or for damages in certain circumstances</u>, may</p>

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		be brought under 42 U.S.C. §1983, which provides: "Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia".
Uruguay	Article 258 ³⁴⁰ (p.t.) The declaration of unconstitutionality of a law and of the inapplicability of the acts affected by the law can be requested by	General Code of Procedure (p.t.) ³⁴¹ Article 509 The declaration of unconstitutionality and the inapplicability of the provisions

³⁴⁰ Artículo 258. La declaración de inconstitucionalidad de una ley y la inaplicabilidad de las disposiciones afectadas por aquélla, podrán solicitarse por todo aquel que se considere lesionado en su interés directo, personal y legítimo:

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

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

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

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

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

³⁴¹ Artículo 509.

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

Artículo 510.

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

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

State	Constitution	Laws
	<p>every person who considers that his direct, personal and legitimate interest has been violated:</p> <ol style="list-style-type: none"> 1. By entering an action before the Supreme Court of Justice. 2. Through an exception of unconstitutionality, which can be filed in any ordinary judicial proceeding. <p>The Judge or Tribunal that cognises in any ordinary judicial proceeding, or the Tribunal of Administrative Disputes, within their jurisdiction and before administering justice, may request <i>ex officio</i> the declaration of unconstitutionality and inapplicability of a law.</p> <p>In this case and in the case of number 2, the proceedings are suspended and the proceeding is elevated to the Supreme Court of Justice.</p>	<p>affected by the former may be requested</p> <p>1º By everyone who considers that his personal, legitimate and direct interest has been violated.</p> <p>2º <i>Ex officio</i>, by the tribunal that decides in any jurisdictional proceeding.</p> <p>The Supreme Court of Justice, in the matters brought before it, shall pronounce itself in its decision on the question of unconstitutionality.</p> <p>Article 510</p> <p>If the declaration of unconstitutionality is requested by the persons referred to in number 1 of the previous article, it can be put</p> <ol style="list-style-type: none"> 1. Through an action, if there is no pending proceeding. In this case, it shall be lodged directly with the Supreme Court of Justice. 2. As an exception which shall be lodged before the tribunal that decides on the matter.

TRIBUNAL CONSTITUCIONAL

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