



How to lodge a constitutional complaint

I. General Remarks

Any person may lodge a constitutional complaint claiming that one of his or her fundamental rights or one of the rights laid down in Art. 20(4), Art. 33, Art. 38, Art. 101, Art. 103 and Art. 104 of the Basic Law (*Grundgesetz* – GG) has been violated by public authority (Art. 93(1) no. 4a GG).

The Federal Constitutional Court may find an act of public authority to be unconstitutional, void a law, or reverse a judicial decision that violates the Constitution and remand the matter to a competent court.

The Federal Constitutional Court cannot issue any other decisions on account of a constitutional complaint. It cannot, for instance, award damages or initiate criminal prosecution. In principle, a specific action on the part of the legislature cannot be claimed by means of a constitutional complaint.

If a court decision is challenged by a constitutional complaint, it does not undergo complete judicial review, since review is limited to potential violations of constitutional law. Even if the procedure, the finding and legal assessment of the facts of the case, the interpretation of a law or its application to the individual case may have been erroneous, that alone does not imply a violation of fundamental rights.

II. Form and Content of the Constitutional Complaint

The constitutional complaint must be submitted in writing in German, and it must state reasons (§ 23(1) and § 92 of the Federal Constitutional Court Act, *Bundesverfassungsgerichtsgesetz* – BVerfGG). The reasons stated must, at the very least, include the following information:

1. The act of public authority (court decision, administrative act, law) which the constitutional complaint challenges must be precisely specified (if court decisions and administrative acts are challenged, their date, their file reference and the day on which they were pronounced or received should be given).
2. The fundamental right or equivalent right allegedly violated by the challenged act of public authority must be named, or at least specified in terms of its legal content.
3. It must be stated in detail in what respects the fundamental rights violation is claimed. To this end, the challenged court decisions (and all documents to which reference is made), administrative acts etc. must be submitted, or it must be possible to determine their full content, including the reasons, from the constitutional complaint alone. References to the complainant's own briefs from other proceedings or to further documents are not sufficient.
4. Apart from the challenged decisions, other documents from the initial proceedings (e.g. relevant briefs, minutes of hearings, expert opinions) without the knowledge of which it cannot be assessed whether the challenges raised in the constitutional complaint are valid must be submitted (as explained under 3. above), or their content must be described.

5. If the constitutional complaint challenges court and/or administrative decisions, the reasons stated must show that all legal remedies, applications and complaints have been exhausted in proceedings before the regular courts to avert the claimed fundamental rights violation. To this end, the applications made in the proceedings before the regular courts and other briefs from these proceedings must be attached (as explained under 3. above), or their content must be described.

6. Briefs and other documents submitted to the Federal Constitutional Court become part of the court files, and thus, they are generally not returned. Therefore, please only send briefs and duplicates that can remain in the files. Please do not submit more than one copy of the brief unless you are asked to do so.

III. Other Preconditions for Admissibility

1. Time Limit

Constitutional complaints against court and administrative decisions must be lodged within one month in order to be admissible (§ 93(1) first sentence BVerfGG). The complete reasoning of the complaint must also be submitted within this period (§ 93(1) first sentence BVerfGG). If information that must be provided according to the minimum requirements for substantiating the constitutional complaint (see II. above) is submitted after the expiration of the time limit, the constitutional complaint remains inadmissible. The Court cannot extend the time limit.

If this time limit has not been complied with through no fault of the complainant, upon application filed within two weeks of the removal of the cause for non-compliance, reinstatement into the former procedural position and an opportunity to lodge the constitutional complaint again may be granted. Reasons for the request shall be stated and their factual basis substantiated by *prima facie* evidence. Fault on the part of the complainant's authorised representative shall be deemed equal to fault on the part of the complainant (§ 93(2) BVerfGG).

2. Exhaustion of Legal Remedies

a) General Remarks

In principle, recourse to the Federal Constitutional Court is only admissible once all other legal remedies have been exhausted, and if, additionally, all other options of recourse available to correct or prevent the violation of the Constitution that is claimed have been exhausted. The constitutional complaint is inadmissible if and so far as there is or has been another possibility of redressing the fundamental rights violation, or of achieving the same practical end without recourse to the Federal Constitutional Court.

Thus, before lodging a constitutional complaint, the complainant must use any available legal remedies (e.g. appeals on points of fact and law, appeals on points of law, complaints and complaints against denial of leave to appeal). However, it is not required to lodge a constitutional complaint with the Constitutional Court of the respective *Land* (state). The possibilities of averting the claimed fundamental rights violation in proceedings before the regular courts include, in particular, the sufficient statement of all relevant facts, suitable motions for admission of evidence, applications for reinstatement into the complainant's former procedural position if a time limit has not been complied with through no fault of the complainant.

b) Special Characteristics of Constitutional Complaints Seeking Remedy for a Violation of the Right to be Heard

A constitutional complaint challenging an autonomous and new violation of the right to be heard (Art. 103(1) GG) by a decision of a court of last instance is only admissible if the complainant has first lodged a complaint seeking remedy for a violation of the right to be heard (*Anhoerungsruege*) and thereby sought remedy before the competent regular court (cf. in particular § 321a of the Code of Civil Procedure, *Zivilprozessordnung* – ZPO; § 152a of the Code of Administrative Court Procedure, *Verwaltungsgerichtsordnung* – VwGO; § 178a of the Social Courts Act, *Sozialgerichtsgesetz* – SGG; § 78a of the Labour Courts Act, *Arbeitsgerichtsgesetz* – ArbGG; § 44 of the Act on Proceedings in Family Matters and Matters of Non-Contentious Jurisdiction, *Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit* – FamFG; § 133a of the Finance Courts Code, *Finanzgerichtsordnung* – FGO; §§ 33a and 356a of the Code of Criminal Procedure, *Strafprozessordnung* – StPO). Not lodging a complaint seeking remedy for a violation of the right to be heard that is not clearly without prospects of success can lead to the inadmissibility of the constitutional complaint not only with respect to the claimed violation of the right to be heard, but also with respect to other challenges, if the complaint seeking remedy for a violation of the right to be heard could have remedied these. However, lodging a complaint seeking remedy for a violation of the right to be heard that is clearly without prospects of success is not relevant for the date when the period for lodging a constitutional complaint begins to run. If there are doubts about the necessity and the prospects of success of the complaint seeking remedy for a violation of the right to be heard, the complainant may, however, lodge such a complaint with the regular court at the same time as lodging the constitutional complaint in order to comply with the time limit.

c) Constitutional Complaints Against Statutes

Laws, regulations and bylaws may only in exceptional cases be directly challenged by a constitutional complaint. This is only possible if they affect the person concerned individually, presently and directly. In this case, the constitutional complaint must be lodged within one year of the statute entering into force (§ 93(3) BVerfGG).

As a general rule, however, statutes need to be executed, i.e. need to be applied in an individual case by an administrative or court decision against which the persons concerned must exhaust all legal remedies available before the competent courts. Therefore, a constitutional complaint is usually only admissible after the decision of the court of last instance (§ 90(2) BVerfGG).

IV. Representation

The persons concerned may lodge the constitutional complaint themselves. At any stage of the proceedings, the parties may be represented by a lawyer or by a professor of law at a state or state-recognised higher education institution of a Member State of the European Union, another Contracting State to the Agreement on the European Economic Area or Switzerland who is qualified to hold judicial office as an authorised representative (§ 22(1) first sentence BVerfGG). The Federal Constitutional Court may permit another person to act as adviser to a party if it deems

this relevant in exceptional cases (§ 22(1) fourth sentence BVerfGG). The power of attorney shall be granted in writing and must expressly be granted for the proceedings in question before the Federal Constitutional Court (§ 22(2) BVerfGG) and must clearly specify the acts of public authority challenged by the constitutional complaint.

V. Admission Procedure

The constitutional complaint shall be subject to admission for decision (§ 93a(1) BVerfGG).

It shall be admitted for decision in so far as it has general constitutional significance. As a rule, a constitutional complaint will not have general constitutional significance if the constitutional issues raised by it have already been decided by the Federal Constitutional Court. Further, it has to be admitted if it is appropriate to enforce the rights referred to in § 90(1) BVerfGG; this may also be the case if the complainant would suffer a particularly severe disadvantage if the Federal Constitutional Court refused to decide on the complaint (§ 93a(2) BVerfGG).

Refusal to admit the constitutional complaint for decision may be decided by a Chamber, which consists of three Justices, by unanimous vote. This decision does not require reasons to be given, and it cannot be appealed (§ 93d(1) BVerfGG).

VI. Court Fees

Proceedings before the Federal Constitutional Court are free of charge. The Court may, however, charge the complainant or an authorised representative a fee of up to EUR 2,600 if the lodging of the constitutional complaint constitutes an abuse of rights (§ 34(2) BVerfGG).

VII. Withdrawal of Applications

It is, in principle, possible to withdraw a constitutional complaint as a whole, or particular challenges as part of a constitutional complaint, or an application for a temporary injunction at any time, until the Federal Constitutional Court has decided. A fee (see VI. above) shall not be charged in this case.

VIII. General Register

Submissions to the Federal Constitutional Court containing neither a specific request nor the assertion of a claim falling within the jurisdiction of the Federal Constitutional Court shall be recorded in the General Register and treated as matters of judicial administration.

In addition, constitutional complaints whose admission for decision (§ 93a BVerfGG) is out of the question, since they are clearly inadmissible or, with due regard to the jurisprudence of the Federal Constitutional Court, clearly have no prospects of success, may also be recorded in the General Register (see V. above).

If, after information on the legal situation has been provided, a judicial decision is requested, the constitutional complaint shall be transferred to the Register of Proceedings and dealt with accordingly (§ 64(2) of the Rules of Procedure of the Federal Constitutional Court, *Geschäftsordnung des Bundesverfassungsgerichts* – GOBVerfG).

- GG = Basic Law for the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*) in the revised version published in the Federal Law Gazette (*Bundesgesetzblatt – BGBL*), Part III, no. 100-1), most recently amended by the Act of 19 december 2022 (BGBL I p. 2478).
- BVerfGG = Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) in the version published on 11 August 1993 (BGBL I p. 1473), most recently amended by Article 4 of the Act of 20 November 2019 (BGBL I p. 1724).
- GOBVerfG = Rules of Procedure of the Federal Constitutional Court (*Geschäftsordnung des Bundesverfassungsgerichts*) of 19 November 2014 (BGBL 2015 I p. 286).

(version: March 2023)