Individual Constitutional Complaint in Germany and Ukraine as a Tool of Human Rights Protection

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SUMMARY. *The development of constitutional review mechanisms is a crucial prerequisite for the effective protection of human rights and freedoms in a democratic state governed by the rule of law. The introduction of the individual constitutional complaint in Ukraine in 2016 was intended to enhance citizens' access to constitutional justice and bring national standards closer to European models. At the same time, the German constitutional complaint is one of the most influential and well-established mechanisms of constitutional review in Europe and offers a valuable point of comparison for assessing the effectiveness and limitations of the Ukrainian model.*

This article examines the legal nature, scope and procedural design of the individual constitutional complaint in Ukraine and compares it with the German Verfassungsbeschwerde. Special attention is paid to the admissibility criteria, the subject matter of review and the role of the Constitutional Court in correcting legislative defects and ensuring systemic protection of constitutional rights.

The study shows that despite the significant potential of the institution in Ukraine, its operation remains less effective than that of its German counterpart, primarily due to excessive procedural formalism, narrow legislative restrictions and limited accessibility for applicants. The comparison with the German model highlights structural challenges in Ukrainian legislation and provides a basis for identifying pathways to improve the national system of constitutional rights protection.

KEYWORDS: rule of law, constitutional justice, individual constitutional complaint, protection of human rights, comparative constitutional law.

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INTRODUCTION

Relevance. The constitutional complaint occupies a special place in contemporary systems of constitutional justice as a mechanism that ensures individual access to the constitutional review body for the protection of violated rights and freedoms. Despite the fact that Ukraine introduced the institution of the individual constitutional complaint in 2016 through the amendment of Articles 55 and 151-1 of the Constitution[2], the emerging practice of the Constitutional Court of Ukraine demonstrates that its current design does not yet ensure the level of effectiveness characteristic of established European models. In this regard, the experience of Germany, where the *Verfassungsbeschwerde* has functioned for more than seven decades and has become a benchmark for individual access to constitutional justice, provides a particularly valuable point of comparison.

A comparative examination of the Ukrainian and German systems makes it possible to identify both structural limitations inherent in Ukraine's constitutional complaint mechanism and the potential directions for its improvement. The German model illustrates how broad admissibility criteria, clearly defined procedural guarantees and a well-developed constitutional jurisprudence contribute to transforming the constitutional complaint into an effective instrument for protecting fundamental rights and maintaining the supremacy of the Constitution.

The purpose of this study is to conduct a comprehensive analysis of the legal nature, scope and procedural functioning of the individual constitutional complaint in Ukraine, to compare it with the German model and to formulate proposals for improving the national mechanism of constitutional rights protection.

The scientific novelty of this research lies in the systematic comparison of two models of constitutional justice, which makes it possible to reassess the Ukrainian institution not only as a means of restoring individual rights, but also as a potential catalyst for broader systemic developments in the field of constitutional review.

The object of the research is the institution of the individual constitutional complaint as a mechanism of constitutional justice in Ukraine and Germany.

Research method. This study employs a wide range of theoretical and empirical methods. The theoretical framework is based on the review of scientific literature, the comparative legal method, the historical method, systemic analysis, the method of abstraction, the alternative method and the method of generalisation. The comparative analysis of the Ukrainian and German models serves as an effective methodological tool for evaluating how different institutional arrangements influence the accessibility, efficiency and outcomes of constitutional complaints. This allows for evidence-based conclusions regarding possible reforms in Ukraine. The review of scientific literature provides the theoretical foundation for analysing

[2] Yurii Barabash et al., *Constitution of Ukraine: Scientific and Practical Commentary* (Kyiv: VAITE, 2024), 683 (in Ukrainian).

the institution of individual constitutional complaint in Germany and Ukraine and enables the development of a critical understanding of existing doctrinal approaches relevant to the research objectives. The comparative legal method plays a central role, as it allows for the systematic comparison of the Ukrainian and German models of individual constitutional complaint, as well as for the examination of international, European and domestic case law. The historical method is employed to trace the evolution of the constitutional complaint in both legal systems and to reveal the development of the principle of legal certainty as a fundamental component of the rule of law. Through systemic analysis, the constitutional complaint is examined as an integral part of the broader mechanism of constitutional justice, allowing for the identification of its structural elements and the nature of its interaction with other institutions of human rights protection. The method of abstraction is used to isolate and conceptualise the fundamental principles underlying legal certainty and their relevance to the effectiveness of individual constitutional complaint procedures. Given the diversity of scholarly debates concerning the optimal model of constitutional complaint, the alternative method enables the comparison of competing theoretical approaches and the evaluation of their applicability within Ukrainian and German constitutional frameworks. The method of generalisation supports the identification of the essential features of the institution and the summarisation of common trends observable in both jurisdictions. Among the empirical methods, document analysis is employed, focusing on the constitutional and legislative foundations of the individual constitutional complaint in Germany and Ukraine. This ensures a consistent comparison of the structural and procedural features of both models. The comprehensive application of these methods ensured the depth of the study and allowed the author to formulate the author's vision of the prospects for improving the institution of constitutional complaint in Ukraine.

1. THEORETICAL AND LEGAL FOUNDATIONS OF THE CONSTITUTIONAL COMPLAINT

In legal doctrine, it is seen as an institution that combines the features of private law and public law protection, as well as a form of democratic participation of citizens in monitoring the compliance of laws with the Constitution. In a broad sense, a constitutional complaint is a request for the restoration of a violated right by removing an unconstitutional provision from the legal system. In a narrow sense, it is a procedure for verifying the constitutionality of a law or a part thereof that was applied in a particular court decision against the applicant.

A characteristic feature of constitutional complaint mechanisms is the requirement to exhaust all available ordinary remedies – including, in the Strasbourg system, all domestic remedies – before an individual application may be considered. This ensures that the facts and legal issues of the case are comprehensively examined by ordinary courts, which may

also determine whether a constitutional reference is necessary. At the same time, unlike preliminary reference procedures, the constitutional complaint does not involve external filtering stages, which increases the risk of constitutional courts becoming overloaded with applications[3].

Pursuant to Article 151-1[4] of the Constitution of Ukraine, the subject of a constitutional complaint is the law of Ukraine (its provisions) applied in the final court decision in the case of the person filing the complaint. Thus, a constitutional complaint is not aimed at reviewing court decisions, but at exercising regulatory control to ensure that the legal order is cleansed of provisions that contradict the Basic Law. V. Horodovenko emphasises that the effectiveness of a complaint is determined not so much by the formal adoption of decisions by the Court in cases, but by the actual restoration of violated rights and the ability to apply the decision as a single standard of protection[5].

The legal nature of the institution of constitutional complaint is mixed and includes jurisdictional, human rights and democratic elements. The jurisdictional component consists in the Constitutional Court's function of control over the constitutionality of laws (Articles 147-153 of the Constitution of Ukraine)[6]. The human rights dimension is manifested in the guarantee of effective judicial protection of fundamental human rights, which is in line with Articles 3, 8 and 55 of the Constitution of Ukraine, as well as with the European approach to the interpretation of the right to access to justice[7]. The democratic nature of the institution is manifested in the possibility of an individual to be an active subject of control over the activities of the legislator, which is in line with the principle of democracy enshrined in Article 5 of the Constitution of Ukraine.

The formation of the institution of constitutional complaint in Ukraine was the result of lengthy academic discussions and political transformations. Until 2016, the model of constitutional control remained closed, as the subjects of constitutional petitions were exclusively public authorities, which significantly limited the protection of human rights at the constitutional level.

The 2016 reform, implemented in accordance with the recommendations of the Venice Commission, introduced the institution of an individual constitutional complaint, significantly changing the conceptual model of constitutional justice in Ukraine. Following the

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[3] Michel Rosenfeld and András Sajó, eds., *The Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012), 717.

[4] *Constitution of Ukraine*, official text, as amended, accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text.

[5] Volodymyr Horodovenko, "The Effectiveness of Constitutional Complaint as a Legal Remedy in Light of New Developments in ECtHR Case Law", *Bulletin of the Constitutional Court of Ukraine* no. 6 (2019): 118–127 (in Ukrainian).

[6] *Constitution of Ukraine*, official text, as amended, accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/254к/96-вр#Text.

[7] Bundesrepublik Deutschland, *Gesetz über das Bundesverfassungsgericht (BVerfGG)*, BGBl. I, 12 March 1951.

amendments to the Constitution and the adoption of the new Law on the Constitutional Court of Ukraine in 2017[8], the Ukrainian model was adapted to European standards and acquired features inherent in the Polish, Spanish and German constitutional justice systems.

The peculiarity of the Ukrainian institution is its orientation towards the Polish model, in accordance with which, a complaint concerns only the provision that was applied in the final court decision. This approach has helped to strike a balance between real access to constitutional justice for citizens and preventing an excessive workload for the Constitutional Court. At the same time, it contributed to the formation of a system of individual influence on the legislative process through the mechanism of judicial control, which is in line with the European trends of the development of constitutional complaints as a means of controlling the quality of legislation.

Despite the relatively short period of its existence, the institution of constitutional complaint in Ukraine demonstrates significant potential in the field of human rights protection and development of the legal system. Its effectiveness is largely determined by the practice of the Constitutional Court of Ukraine, which sets standards for the application of constitutional norms as well as the level of legal culture and awareness of citizens.

Another important step is to improve the regulatory framework for the constitutional complaints procedure, which is designed to eliminate procedural barriers and ensure the implementation of the principle of the supremacy of the Constitution (Article 8). Consequently, a constitutional complaint in Ukraine is a multifunctional instrument of constitutional control that combines judicial, human rights and democratic mechanisms. Its nature reflects the European legal tradition and its further development depends on the formation of a sustainable practice of the Constitutional Court, improvement of legislation and deeper integration into the European constitutional space.

2. THE ROLE OF THE CONSTITUTIONAL COMPLAINT IN THE SYSTEM OF HUMAN RIGHTS PROTECTION

The institution of constitutional complaint is central to the modern system of constitutional and legal protection of human rights, providing direct, individual access to constitutional justice. Its emergence marked a transition from a predominantly institutional model of control under which state bodies were the initiators, to a mixed model that recognises the right of an individual to initiate a review of the constitutionality of a provision that was applied in his or her case. This approach is in line with the European tradition, where constitutional complaints have long been a leading instrument for the protection of fundamental rights, as evidenced by the experience of Germany, Austria, Spain and other continental European countries.

[8] Law of Ukraine "On the Constitutional Court of Ukraine", No. 2136-VIII (July 13, 2017), accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/2136-19#Text (in Ukrainian).

According to German constitutional practice, more than 96% of the proceedings of the Federal Constitutional Court are individual complaints, which indicates their key role in ensuring constitutional control[9]. The introduction of the institution of constitutional complaint in Ukraine in 2016 naturally strengthened the role of the principle of the rule of the Constitution and was a response to the need for an effective legal remedy, as noted by V. Lemak and O. Petryshyn, emphasising that human rights cannot depend on the position of state bodies and legal certainty is a prerequisite for the functioning of a democratic state governed by the rule of law[10].

The constitutional complaint has become a mechanism for eliminating unconstitutional norms from the legal order, which ensures not only the restoration of the applicant's rights but also the purification of the regulatory system. The peculiarity of the institution lies in the structural combination of human rights and regulatory components. As I. Mahnovskyi notes, a constitutional complaint is both a direct form of appeal and a legal guarantee, since its content is aimed at challenging the very norm that violates the applicant's right through specific law application and the subsidiary nature of the complaint requires exhaustion of all other remedies[11]. That is why the institution acts as the last line of national defence before a possible appeal to the ECtHR, which is consistent with the principle of subsidiarity and international standards. It merits attention that the interaction of the constitutional complaint institution with the European legal space is complex.

Firstly, the decisions of the Constitutional Court of Ukraine must comply with the standards of the European Convention on Human Rights and the established case-law of the ECHR, which, as rightly noted by M. Gultai and T. Fedorenko, requires the integration of international legal positions into national constitutional justice[12].

Secondly, in the categories of cases where it is possible to remedy the violation by declaring the law unconstitutional, the ECtHR considers an individual constitutional complaint as an effective national remedy. Accordingly, its exhaustion is a prerequisite for filing an application with the European Court of Human Rights. An essential aspect is the ability of a constitutional complaint to contribute to the improvement of legislation.

Thus, a constitutional complaint performs a systemic function in the mechanism of protection of constitutional rights, providing individual protection, shaping law-enforcement standards, harmonising national legislation with ECHR standards and promoting

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[9] Vasyl Lemak and Oleksandr Petryshyn, "Constitutional Complaint in Ukraine: Issues of the Implementation Mechanism", *Bulletin of the National Academy of Legal Sciences of Ukraine* 2, no. 89 (2017): 79–88 (in Ukrainian).

[10] *Ibid*.

[11] Ihor Mahnovskyi, "The Institution of Constitutional Complaint as a Legal Guarantee of Human Rights in Ukraine", *Bulletin of Luhansk State University of Internal Affairs named after E. O. Didorenko* 1, no. 97 (2022): 13–22 (in Ukrainian).

[12] Mykola Hultai and Tetiana Fedorenko, "Unification of International and National Human Rights Standards: The Institution of Constitutional Complaint", *Bulletin of the Constitutional Court of Ukraine* no. 3 (2018): 162–174 (in Ukrainian).

democratic control over the legislator; hence, it strengthens the overall effectiveness of constitutional justice.

3. NORMATIVE CONSTITUTIONAL COMPLAINT IN UKRAINE VERSUS FULL INDIVIDUAL CONSTITUTIONAL COMPLAINT IN GERMANY

In the legal systems of Germany and Ukraine, the institution of preliminary examination of constitutional complaints has a similar organisational model, but differs significantly in its content, admissibility criteria and legal effect. In Ukraine, according to the Law "On the Constitutional Court of Ukraine",[13] the preliminary review is carried out by a panel of three judges, which checks the complaint for compliance with formal requirements and decides whether to open or refuse to open proceedings.

The vast majority of complaints are returned at this stage: in 2024, over 53% of complaints were declared inadmissible. This situation is due to the fact that Article 62 of the Law establishes a wide range of formal grounds for rejection from failure to meet deadlines and the absence of a final court decision, to improperly executed complaints and appeals against an act that is not subject to constitutional control. Notwithstanding, the practice of reviewing complaints has also revealed a number of systemic problems. The procedural aspects of a constitutional complaint pose significant obstacles to the effective protection of citizens' rights. Thus, in 2024, the Constitutional Court of Ukraine received 429 constitutional complaints, of which 401 were from individuals and 28 were from legal entities.[14]

Of the 401 complaints from citizens, 397 were filed by a single subject of the right of submission and 4 were collective complaints filed by 494 subjects of the right of submission. At the same time, 212 complaints were returned to 305 subjects of the right of submission, which is 53% of the total number of complaints filed. According to the statistics of the Court's activities in 2024, more than half of the complaints were returned to the applicants as procedurally inadmissible, which indicates the complexity of the procedure and the lack of legal awareness of citizens.

Unlike Ukraine, where the institution of constitutional complaints is still in its infancy, the German model is characterised by a much higher volume of complaints and well-established procedural practice. Thus, according to the Jahresbericht 2024 of the Federal Constitutional Court of Germany, in 2024, the Court received 4,640 new proceedings.[15] The vast majority of them were individual constitutional complaints (*Verfassungsbeschwerde*), which

[13] Law of Ukraine "On the Constitutional Court of Ukraine", No. 2136-VIII (July 13, 2017), accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/2136-19#Text. (in Ukrainian).

[14] "Information on the Number of Constitutional Complaints Submitted to the Court", Constitutional Court of Ukraine, accessed 25 October 2025, https://ccu.gov.ua/storinka/informaciya-shchodo-kilkosti-konstytuciynyh.

[15] Federal Constitutional Court of Germany, *Jahresbericht 2024* [Annual Report 2024] (Karlsruhe: Bundesverfassungsgericht, 2024): 46.

traditionally constitute the bulk of applications to the Court. At the same time, the vast majority of complaints filed are declared inadmissible at the preliminary stage, which indicates a high level of filtering and strict admissibility criteria in the German procedure.

For this reason, the Ukrainian model of preliminary review actually functions as a formalised filter that focuses more on the procedural perfection of the submission than on the substance of the constitutional right violated. In contrast, in Germany, the preliminary examination is carried out by the Chambers (Kammern) of the Federal Constitutional Court, as regulated by § 15a of the Federal Constitutional Court Act (BVerfGG).[16] As in Ukraine, the Chamber consists of three judges, but its activity is aimed at a substantive assessment of the constitutional significance of the complaint.

The German legal model stipulates that the Chamber's decision must be unanimous; in the absence of unanimity, the case is referred to the eight-judge Senate. Unlike the Ukrainian panel, the FCC Chamber may reject a complaint without giving reasons, but its decision is based on substantive admissibility criteria set out in §93a BVerfGG.[17] This provision establishes two material grounds for accepting a complaint for consideration: the existence of general constitutional significance or the likelihood of serious irreparable harm to the applicant if the complaint is rejected.

The essence of this direction of activity of the secretariats (administrative offices) of constitutional review bodies has been most accurately described, in my view, by the German scholar and former Director of the Federal Constitutional Court of Germany, E. L. Barnstedt. She notes that the primary purpose of the preliminary examination of applications is to determine whether they meet the minimum requirements necessary for the Court to adopt a decision. If these requirements are not fulfilled, the Secretariat informs the applicant of the relevant rules and procedures, drawing attention to them and enabling, where possible, the correction of such deficiencies.[18]

Both systems of constitutional justice are based on the principle of subsidiarity even though the meaning of this principle differs in the two countries. In Ukraine, subsidiarity means that a complaint may be filed only after a final court decision has been obtained in which the challenged legal provision has been applied. This approach stems from Article 151-1 of the Constitution of Ukraine, which limits the subject matter of an appeal to the law or its individual provisions.

Consequently, an unlawful or arbitrary court decision, even one that is clearly contrary to the Constitution, cannot be the subject of a constitutional appeal. In Germany, the principle of subsidiarity means that after going through all the judicial instances, a citizen can ap-

[16] Federal Ministry of Justice, „Act on the Federal Constitutional Court (BVerfGG)", English translation, Gesetze im Internet, accessed 25 October 2025, https://www.gesetze-im-internet.de/englisch_bverfgg/index.html.

[17] *Ibid*.

[18] Maryna Itavniichuk et al., *The Constitutional Complaint in the Practice of an Attorney* (Kharkiv: Faktor, 2019), 20 (in Ukrainian).

peal against any act of public authority – a court decision, an administrative act, a law or an inaction of a legislator. This possibility directly stems from Article 93 of the German Basic Law, which guarantees individuals and legal entities the right to *Verfassungsbeschwerde* in respect of any violation of their fundamental rights.[19] This is what significantly distinguishes the German model from the Ukrainian one.[20]

Across the German and Ukrainian legal systems do not allow for collective constitutional complaints, on the basis that such an institution is by its nature individual. Nevertheless, it should be noted that in Germany, complaints from different individuals may be joined when they concern the same legal issue, whereas in Ukraine even joint complaints are narrowly regulated and procedurally restricted. Interim measures are an important element of both systems.

Article 78[21] of the Law of Ukraine "On the Constitutional Court of Ukraine" provides for the possibility of issuing an interim order, which allows for the temporary suspension of a law or its provisions in case of a threat of imminent harm to the applicant's rights. However, this tool is purely regulatory in nature and is rarely used.

Instead, in Germany, §32 BVerfGG regulates the institution of an interim order (einstweilige Anordnung), which can block the effect of any act of public authority, including a court decision or administrative act.[22] In order to apply it, the Federal Constitutional Court balances the consequences by assessing the possible harm from the application or non-application of the interim measure. This makes the German model much more flexible and focused on real protection of the individual.

Special attention should be paid to the organisation of the office work of the Federal Constitutional Court of Germany, in particular, the work of the General Register, regulated by § 63 and § 65 of the Rules of Court (BVerfGGO)[23]: §63 stipulates that all applications that do not constitute a constitutional complaint or do not fall under another type of proceedings shall be entered into the General Register. This allows the Court to record all forms of citizens' appeals without overloading its jurisdictional activities, §65 establishes the rules of access to the materials of the General Register, defines the limits of familiarisation and guarantees the confidentiality of information. The Ukrainian legislation does not contain a similar institution, which deprives the Constitutional Court of Ukraine of an important tool

[19] Basic Law for the Federal Republic of Germany (Grundgesetz), English translation, *Gesetze im Internet*, accessed 25 October 2025, https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

[20] In the German model, not only the norm is checked, but also the decision itself, its content, logic and impact on the fundamental rights of the individual.

[21] Law of Ukraine "On the Constitutional Court of Ukraine", No. 2136-VIII (July 13, 2017), accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/2136-19#Text. (in Ukrainian).

[22] Federal Ministry of Justice, „Act on the Federal Constitutional Court (BVerfGG)", English translation, Gesetze im Internet, accessed 25 October 2025, https://www.gesetze-im-internet.de/englisch_bverfgg/index.html.

[23] Bundesverfassungsgericht, „Geschäftsordnung des Bundesverfassungsgerichts (BVerfGGO)", (Berlin: Bundesministerium der Justiz, 2015), accessed 25 October 2025, https://www.gesetze-im-internet.de/bverfgg_2015/BVerfGGO_2015.pdf.

for organisational filtering of appeals.

Overall, it can be argued that although the Ukrainian and German models have outwardly similar procedural elements, their functional nature is fundamentally different. The Ukrainian model is normatively limited, formalised and does not allow for appeals against unlawful judicial or administrative acts, while the German system provides full and effective individual constitutional protection, focused on the content and actual extent of the violation of rights rather than formal filing requirements.

In the constitutional justice systems of Germany and Ukraine, the procedure for filing and preliminary examination of a constitutional complaint has certain external similarities, but its content and actual human rights potential differ significantly. In Ukraine, a constitutional complaint must be filed exclusively in writing and contain all the elements expressly provided for in Article 57[24] of the Law "On the Constitutional Court of Ukraine", which actually serves as an instruction on the form and content of the complaint. The handwritten signature of the applicant or his/her representative is mandatory and any deviations from the formal requirements automatically result in the return of the complaint in accordance with Article 62 of the Law.

In practice, it is the rigidity of these formal criteria that explains the high percentage of inadmissible applications. The documents received by the Court are registered by the registry, distributed among the judges and submitted for preliminary review by a panel of three judges. This panel focuses primarily on the formal compliance of the complaint with the law, rather than on the substance of the potential violation of constitutional rights.

In Germany, a written form of appeal is also mandatory, but the applicant's handwritten signature is not required, as full electronic submission is allowed. All applications to the Federal Constitutional Court are first received by the unit responsible for their registration and initial assessment. Pursuant to §63 of the Rules of Court (BVerfGGO)[25], these applications, if they do not correspond to any of the statutory types of proceedings, are placed in the General Register.

The principle of subsidiarity applies in both countries, but its content differs significantly. In Ukraine, it means that the applicant must have a final court decision in which the law in question was applied. Only the law or its individual provisions can be the subject of a complaint, which is directly enshrined in Article 151-1 of the Constitution of Ukraine. As a result, even an obviously illegal, arbitrary or unconstitutional court decision cannot be appealed to the Constitutional Court if the violation does not follow from the provision of law that the court applied. This is the main drawback of the Ukrainian model: it is limitedly

[24] Law of Ukraine "On the Constitutional Court of Ukraine", No. 2136-VIII (July 13, 2017), accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/2136-19#Text. (in Ukrainian).

[25] Bundesverfassungsgericht, „Geschäftsordnung des Bundesverfassungsgerichts (BVerfGGO)" (Berlin: Bundesministerium der Justiz, 2015), accessed 25 October 2025, https://www.gesetze-im-internet.de/bverfgg o_2015/BVerfGGO_2015.pdf.

normative, i.e. it allows for review of the norm, but not its application.

Germany takes the opposite approach. According to Article 93 of the German Basic Law, a constitutional complaint may challenge any act of public authority, including court decisions, administrative acts, legislative regulations or legislative inaction. The German *Verfassungsbeschwerde* is a full constitutional complaint that covers both statutory and individual acts, allowing an individual to protect himself or herself from unlawful or arbitrary interference by any public authority. That is why in Germany, not only the content of the norm is checked but also the content of a particular decision, its impact on human rights and compliance with the Basic Law.

Interim measures also show a difference between the models. In Ukraine, Article 78 of the Law of Ukraine "On the Constitutional Court of Ukraine" allows the court to temporarily suspend a law or its individual provisions if there is a threat of imminent harm. However, this tool is rarely used and is purely regulatory in nature. In Germany, §32 BVerfGG allows the Federal Constitutional Court to issue temporary rulings that can suspend any act of public authority, including judicial and administrative decisions.[26] The court balances the consequences by assessing whether the refusal of interim protection would cause serious harm to the applicant's rights. This makes the German mechanism much more effective since it prevents real harm before the final decision is made.

Ultimately, the difference between the Ukrainian and German models is fundamental. Ukraine applies a limited normative constitutional complaint, focused on formal requirements and control only over the law, which deprives the applicant of the opportunity to challenge unlawful judicial or administrative decisions. Germany applies a full individual constitutional complaint, which covers all possible forms of state interference and assesses them in terms of actual human rights violations. This is the fundamental problem with the Ukrainian model and the reason for its significantly lower effectiveness compared to the German model.

From the point of view of actual protection of individual constitutional rights, the Ukrainian model of constitutional complaint is fundamentally inconsistent with the German model. In Ukraine, only the constitutionality of a legal provision applied in a final court decision can be the subject of an appeal, while the decision itself, its content, logic and consequences for individual rights cannot be subject to review. This means that even an obviously illegal, arbitrary or unconstitutional court decision cannot be corrected through a constitutional complaint, if the legal provision applied by the court does not formally contradict the Constitution.

In Germany, the situation is fundamentally different, as the *Verfassungsbeschwerde* constitutes a fully developed individual remedy that enables applicants to challenge any act of public authority, including a statute, an administrative act, a judicial decision or even legislative omission. This model ensures genuine, rather than merely formal, protection of

[26] Federal Ministry of Justice, „Act on the Federal Constitutional Court (BVerfGG)", English translation, Gesetze im Internet, accessed 25 October 2025, https://www.gesetze-im-internet.de/englisch_bverfgg/index.html.

fundamental rights, because the Federal Constitutional Court examines not only the constitutionality of the legal provision but also its application and the actual consequences for the individual concerned. Consequently, whereas the Ukrainian model is confined to limited normative review, the German model provides comprehensive individual constitutional protection that covers all possible forms of interference with fundamental rights.

The problem of protecting constitutional rights outside the institution of constitutional complaints in Ukraine is that the current model of constitutional control does not create a full-fledged mechanism of individual human rights protection. Since the complaint in Ukraine is limited to normative and allows for reviewing only the constitutionality of the law, not acts of its application, a significant number of violations of fundamental rights actually fall outside the field of constitutional jurisdiction. Judicial decisions, administrative acts, inaction of the authorities or other individual forms of interference with human rights remain outside the competence of the Constitutional Court, even if they contradict the Constitution or international human rights standards.

As a result, the protection of rights is shifted to the ordinary judicial system, which is often unable to provide an adequate level of constitutional argumentation or correct systemic errors. In contrast, the German model of *Verfassungsbeschwerde* provides for the possibility of appealing any act of public authority, making the Federal Constitutional Court the final instance for the protection of fundamental rights and ensuring that no violation is left outside constitutional control. Thus, in Ukraine, there is a significant gap between constitutional guarantees and the available instruments for their implementation and it is this discrepancy that creates the problem of protection of constitutional rights "beyond the constitutional complaint."

In the Ukrainian model of a constitutional complaint, even if the Constitutional Court of Ukraine (CCU) declares a law or its individual provisions unconstitutional, the applicant does not automatically receive restoration of the violated rights. The decision of the Constitutional Court has a normative controlling nature and is aimed at eliminating the defective provision from the legal system but does not have direct effect on the individual judicial or administrative act that gave rise to the complaint.

Accordingly, after the CCU's decision, the applicant is forced to return to the general jurisdiction court system to initiate a review of his or her case again, referring to the Constitutional Court's conclusions. According to the procedural codes, the applicant must file an application for review of the court decision based on newly discovered or exceptional circumstances, which does not guarantee success, as the general courts often interpret the status of the CCU decision and its impact on a particular legal situation differently.

This design significantly reduces the effectiveness of a constitutional complaint as a means of protecting fundamental rights. Unlike in Germany, where the Federal Constitutional Court can overturn an individual court decision or administrative act that violates the applicant's rights, in Ukraine the Constitutional Court does not have the power to over-

turn a court decision and restore the violated rights directly. As a result, even if an applicant wins a constitutional case, he or she is effectively left "alone" with the need to repeat the procedural stages, the risk of ambiguous application of the CCU's decision and the potential reluctance of general courts to change a previously adopted act.

This highlights one of the key problems of the Ukrainian model: the lack of direct individual protection, when even a positive decision of the Constitutional Court does not complete the process but only opens the possibility for the applicant to further fight for the restoration of his or her rights in ordinary courts. Thus, having formally recognised the unconstitutionality of a provision, the system does not actually guarantee immediate and complete elimination of the violation, which fundamentally distinguishes the Ukrainian model from the German *Verfassungsbeschwerde*, where the Constitutional Court's decision has direct individual effect.

The effectiveness of the institution of constitutional complaints in Ukraine remains limited due to its regulatory nature, formalised procedure and the lack of powers of the Constitutional Court to directly restore violated rights. Therefore, the formation of an effective mechanism of individual constitutional protection requires systemic changes that go beyond the current legislative regulation. First of all, it is necessary to expand the subject matter of a constitutional complaint, which is currently limited to challenging the constitutionality of a law. To ensure real, rather than declarative, protection of human rights, it should be possible to challenge court decisions, administrative acts and other forms of individual state interference with fundamental rights, which would be in line with European standards and bring the Ukrainian model closer to the German *Verfassungsbeschwerde*.

The procedure for admissibility of complaints also requires substantial revision. It is necessary to reduce the excessive number of formal obstacles enshrined in Article 62 of the Law "On the Constitutional Court of Ukraine", as their current wording turns the preliminary review into a rigid filtering stage that does not take into account the material nature of the violation.[27] It would be advisable to introduce substantive admissibility criteria similar to those contained in §93a BVerfGG, such as criteria of general constitutional significance or the risk of serious irreparable harm to the applicant. Such an approach would ensure that complaints relating to important human rights issues could be considered even in the event of minor formal deficiencies.

An important stage in the establishment of the institution of constitutional complaint is also the strengthening of the individual nature of protection. It is necessary to give the Constitutional Court the power to cancel or amend individual court decisions made on the basis of unconstitutional provisions, as well as to oblige the authorities to eliminate the consequences of the violation. This would avoid situations where the applicant, even after winning a constitutional case, is forced to repeatedly apply to the ordinary courts for a review of the decision,

[27] Law of Ukraine "On the Constitutional Court of Ukraine", No. 2136-VIII (July 13, 2017), accessed 25 October 2025, https://zakon.rada.gov.ua/laws/show/en/2136-19#Text. (in Ukrainian).

which creates uncertainty and reduces the human rights efficacy of the institution.

Special attention should be paid to harmonising the activities of the Constitutional Court with international mechanisms, in particular with the European Court of Human Rights. To eliminate situations of the duplication of jurisdiction and contradictory legal positions, it is advisable to provide for the possibility of initiating a review of court decisions directly on the basis of ECHR judgments or opening constitutional proceedings in cases where the ECHR has already established violations of the applicant's rights.

The organisational structure of the office of the Constitutional Court also needs to be modernised, including the creation of an analogue of the General Register, similar to §63 and §65 BVerfGGO.[28] Such a register would allow the separation of individual constitutional complaints from other appeals without burdening judges with non-key documents and enabling the improved quality of primary filtering of materials.

In essence, the establishment of an effective institution of constitutional complaints in Ukraine requires comprehensive amendments to the Constitution and the Law on the Constitutional Court of Ukraine, including the expansion of the subject matter of the appeal, the introduction of material admissibility criteria, the granting of individual protection powers to the Court and harmonisation with European standards. Only with such changes will a constitutional complaint be able to fulfil its basic function of being an effective tool for individuals to effectively protect their violated constitutional rights.

4. VENICE COMMISSION RECOMMENDATIONS ON THE UKRAINIAN CONSTITUTIONAL COMPLAINT

The study of the problems of how the constitutional complaint institution in Ukraine functions is impossible without taking into account the conclusions of the Venice Commission, which has been systematically analysing the state of the Ukrainian constitutional and judicial justice system for many years. As stated in CDL-AD(2013)034, the Commission has repeatedly provided Ukraine with recommendations to improve procedures and mechanisms for the protection of human rights[29]: "The Venice Commission has provided a series of opinions on Ukraine's judiciary."

One of the key themes of its conclusions is the conceptual incompleteness of the Ukrainian model of constitutional complaint. The Commission explicitly states that the current approach – which allows only legal provisions to be challenged – is systematically

[28] Bundesverfassungsgericht, „Geschäftsordnung des Bundesverfassungsgerichts (BVerfGGO)" (Berlin: Bundesministerium der Justiz, 2015), accessed 25 October 2025, https://www.gesetze-im-internet.de/bverfgo_2015/BVerfGGO_2015.pdf.

[29] European Commission for Democracy through Law (Venice Commission), *Opinion on Proposals Amending the Draft Law on the Amendments to the Constitution to Strengthen the Independence of Judges of Ukraine*, CDL-AD(2013)034.

insufficient and contrary to modern European standards of constitutional review. Ukrainian legislation, according to the Commission, effectively excludes the possibility of constitutional appeal against individual decisions or actions, which is one of the key instruments of constitutional protection in European countries: "In Ukraine, individual complaints to the Constitutional Court can only be directed against unconstitutional legislation but not against individual unconstitutional acts".[30]

It is particularly important that the Commission emphasises that violations of rights arise not only at the level of regulatory frameworks, but also in the process of application of the law by the authorities and courts. In particular, it points to the lack of tools for appealing against violations related to excessive length of proceedings: "The violation of human rights through individual acts, including cases of excessive length of procedure, cannot be attacked before the Constitutional Court".[31]

The introduction of a full constitutional complaint was proposed by the Speaker of Parliament in 2011 but this proposal has not yet been implemented. A full constitutional complaint to the Constitutional Court would also cover cases of an excessively lengthy procedure before the Supreme Court". Thus, the limited model of access to the Constitutional Court deprives citizens of an effective mechanism for redressing violated rights, which contradicts the content of Article 55 of the Constitution of Ukraine on the guarantee of judicial protection. The Venice Commission formulates a clear recommendation on the need to introduce a full constitutional complaint in Ukraine, i.e. a mechanism that allows to challenge any violations of rights arising from acts of application of law: "a full constitutional complaint<…> *should be introduced"*.[32]

Furthermore, the Commission emphasises the systemic need to ensure effective domestic remedies, including instruments to expedite judicial procedures and compensation for excessive length of proceedings: "In its report on the Effectiveness of National Remedies in Respect of Excessive Length of Proceedings, the Venice Commission insisted that in case of an excessive length of proceedings the parties should have both *a compensatory and an acceleratory remedy*, i.e. the possibility of an urgent appeal to a judicial instance which results in speeding up the adoption of the delayed decision".[33]

As a result, the Commission's position allows us to conclude that the main problem of the constitutional complaint institution in Ukraine is not procedural shortcomings, but the very architecture of the model: it was originally built to be limited and it is incapable of providing effective individual constitutional protection. Such structural limitations in-

[30] European Commission for Democracy through Law (Venice Commission), *Opinion on Proposals Amending the Draft Law on the Amendments to the Constitution to Strengthen the Independence of Judges of Ukraine,* CDL-AD(2013)034.

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

evitably lead to low admissibility rates of complaints, a formal nature of the Constitutional Court's decisions and minimal impact on the restoration of violated rights of citizens, which effectively deprives the institution of constitutional complaints of its main function, thereby ensuring real and effective access to constitutional justice.

CONCLUSIONS

A constitutional complaint is essentially a tool for the protection of an individual constitutional right since it can be filed only when a particular person believes that the state has violated his or her fundamental rights by an act, whether that be normative or individual. This is the key difference between a constitutional complaint and abstract rule control: the applicant does not apply to protect the public interest or the general legal order, but to restore a personal, specific, individually determined right violated as a result of the application of a certain rule or decision of a public authority. Such a personalised nature of the complaint is typical for the German *Verfassungsbeschwerde*, which allows an appeal to be made against any act of the state that directly affected the applicant's rights. In Ukraine, despite the declared individuality of the complaint, the subject of review is not the violated right itself or the act of its application but only the constitutionality of the law. This then makes the Ukrainian model only partially suitable for protecting individual human rights.

The Federal Constitutional Court of Germany, from the very beginning, was given the authority not only to review the constitutionality of laws, but also to overturn decisions of all courts, including the highest courts. It was this ability that ensured the emergence of the German *Verfassungsbeschwerde* as a full-fledged means of protecting fundamental rights. The presence of an effective mechanism of individual control contributed to the fact that the number of cases arising from violations of rights at the level of higher courts significantly decreased and courts of general jurisdiction began to systematically use constitutional standards in their activities. This is one of the key arguments in favour of introducing an additional, full model of constitutional complaint in Ukraine, which would provide direct individual protection and at the same time relieve both the Constitutional Court and courts of general jurisdiction.

Despite the significant differences between the German and Ukrainian models of constitutional complaints, there do have common features that allow us to speak of the potential compatibility of approaches and the possibility of harmonising law enforcement practice. Both German and Ukrainian legislation recognise a complaint as an instrument of individual protection aimed at ensuring the supremacy of the Constitution and preventing violations of fundamental human rights. Both systems provide for mandatory subsidiarity, the requirement to first go through national instances and the existence of procedural mechanisms for preliminary examination of a complaint. However, the German model demonstrates a much broader subject of appeal, material admissibility criteria and the possibility of direct individual protection, which significantly increases the effectiveness of this institution. Taking into account the positive experience of European countries and seeking to create an effective

mechanism for the protection of constitutional rights, Ukraine needs to amend both the Law on the Constitutional Court of Ukraine and the Constitution of Ukraine. Such amendments should expand the scope of constitutional complaints, introduce substantive admissibility criteria, provide the Court with individual protection powers and institutionally strengthen the complaint procedure. Only with these systemic reforms will constitutional complaints in Ukraine be able to become truly effective and meet European human rights standards.

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