

CITIZEN'S ROLE IN CONSTITUTIONAL ADJUDICATION IN HUNGARY: FROM THE *ACTIO POPULARIS* TO THE CONSTITUTIONAL COMPLAINT

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The original function of constitutional adjudication is to protect and enforce the constitution against unconstitutional laws. Nevertheless, nowadays constitutional courts are important elements of the system of the protection of fundamental rights, as well. In harmony with the topic of the workshop,¹ we approach constitutional adjudication from the viewpoint of citizens who are the holders of fundamental rights. According to the European (Austrian–German) model of constitutional adjudication, citizens can mainly play a role as initiators (and not as parties as it is typical of contradictory judicial proceedings) in the procedures of the constitutional courts. The constitutional changes in Hungary (the new Fundamental Law and the new Act on the Constitutional Court)² make this viewpoint particularly topical since the citizens' role – being realized mainly in initiating the procedures – is going through an essential change. Until the end of 2011 citizens were entitled to initiate abstract constitutional review on the basis of so-called *actio popularis* – without any specific personal legal interest. From 2012, according to the new Fundamental Law, on the one hand, the *actio popularis* will be abolished; on the other hand, the so-called German-type constitutional complaint procedure will

¹ This article is the written version of a paper presented at the International Workshop on Human Rights Enforcement Mechanisms, Faculty of Law of ELTE University, Budapest, Hungary, 25 November 2011.

² In 2011, a new constitution called Fundamental Law and also a new Act on the Constitutional Court (Act CLI of 2011, hereinafter: HCC Act) were adopted by the two-third governing majority of the Hungarian Parliament. The Fundamental Law and the new act implementing the new constitution entered into force on the 1st of January, 2012.

be introduced. The latter entitles citizens to initiate a procedure only in case of a specific infringement of their fundamental rights, however, it can be initiated also against the *application* of the law, and the decision of the Constitutional Court serves as a ground for the review of the judgement passed in the concrete case.

The aim of this paper is to analyse and to evaluate this change from the viewpoint of the protection of fundamental rights. *How will this change of citizens' role influence the protection of fundamental rights?* As a first step, we point out that among the competences of constitutional courts the protection of fundamental rights is served not exclusively by the constitutional complaint. After that, we draw attention to the fact that the main function of the constitutional complaint is not the enforcement of individual fundamental rights by the citizens concerned.

I. The protection of fundamental rights by constitutional courts

The essence of constitutional adjudication is the judicial enforcement of the constitution against statutory law found to be in conflict with the provisions of the constitution. In Europe and in the CEE region the dominant means of constitutional adjudication is the abstract review of the law. As for the other forms of constitutional review, in addition to this, most of the constitutional courts exercise the power of concrete review initiated by ordinary courts, and as a special form of concrete review, some of them³ examine constitutional complaints filed against the law ('quasi' constitutional complaint). The speciality of the two latter forms is the fact that the decision of the constitutional court may have an effect on the concrete case in which the judge or the citizen realized the unconstitutionality of the law, but the constitutional function of these procedures remains to invalidate the unconstitutional laws. In some European countries the main function of the constitutional court (the protection and enforcement of the constitution) is supplemented by a function serving a more direct protection of fundamental rights in the form of the 'real' constitutional complaint procedure.⁴

³ E.g. the Polish and, until 2011, the Hungarian Constitutional Court.

⁴ Such a power is allocated to the constitutional courts of Germany, the Czech Republic, Croatia and Slovenia.

As a further starting point, the notion of the protection of fundamental rights has to be defined. In a narrow sense, it means the judicial enforcement of individual fundamental rights by citizens concerned which is also the indispensable constitutional minimum of the protection of fundamental rights. In a broader sense, it also covers quasi judicial procedures (such as the complaint-handling mechanism of ombudsman institutions), monitoring and advising activities not requiring a specific infringement of fundamental rights, and what's more, any sort of the promotion of human rights (such as awareness raising). As for this latter sense, we would like to distinguish between the two aspects of the protection of fundamental rights. The subjective aspect means the enforcement of fundamental rights by citizens concerned in judicial or quasi judicial (e.g. ombudsman-type) proceedings in a specific case. The objective protection of fundamental rights includes, on the one hand, the further effects of the aforementioned proceedings which extend beyond the specific case. On the other hand, it also covers additional mechanisms or activities, the goal of which is protecting and promoting fundamental rights, even in lack of a concrete infringement of a subjective fundamental right of a concrete person, mainly with a preventive goal and frequently in a proactive way.

Regarding the competences of constitutional courts in the light of the notion of the protection of fundamental rights, it is undoubted that the constitutional complaint procedure has the most direct relationship with and influence on the concrete infringements of fundamental rights. One of its main effects is the remedy of the concrete grievance: it is initiated by the citizen concerned as a legal remedy after the proceeding of ordinary courts, and it makes a ground for the revision of the concrete judgement of ordinary courts. However, defining the protection of fundamental rights in a broader sense and taking into consideration the notion of the objective protection, constitutional review procedures (including abstract review) also perform a function of the protection of fundamental rights. Their inherent *aim* is not the remedy of the concrete infringement of a subjective fundamental right, but they (indirectly) *contribute* to the protection of fundamental rights.

II. The consequences of the abolition of the *actio popularis*

Taking into consideration the latter statement, the question comes up: will the abolition of the right of citizens not concerned in a concrete case to initiate an abstract constitutional review of laws affect the protection of fundamental rights to a significant extent? We attempt to answer this question on the grounds of the Hungarian experiences of the *actio popularis*. The *actio popularis* and the abstract review of the laws on this basis proved to be a pretty characteristic feature and a successful means of the Hungarian model of constitutional adjudication in the last twenty years in qualitative as well as in quantitative terms.⁵ As for launching the abstract review procedure, however, the Hungarian regulation was categorized as one of the broadest ones, which provides for a virtually unlimited access. Referring to the workload caused by this possibility, the new Fundamental Law restricted the access to the Hungarian Constitutional Court which from 2012 is limited to the Government, a one-fourth minority of the MPs and the ombudsman.⁶

The abolition of the *actio popularis* will transform the range of the cases before the Constitutional Court. First of all, several types of cases cannot be brought before the Constitutional Court by citizens. As for the subject matter, according to the new regulation citizens cannot turn to the Constitutional Court in cases related to the principles of state organization, state organs and even the objective aspect of fundamental rights which may have an indirect fundamental right significance, but are not in a direct relationship with an enforceable subjective right of a citizen. As for persons concerned, by abolishing the *actio popularis*, the human rights NGOs' ability of initiating the procedure of the Constitutional Court will be also abolished, so the chance of bringing the problems of vulnerable groups

⁵ It should be noted that citizens have made a pivotal contribution to the Hungarian democratization in general, and to the entrenchment of human rights in particular. The introduction of judicial review of administrative decisions as well as the abolition of death penalty were the results of *actio popularis*. This legal tool was the vehicle for the development of numerous constitutional standards regarding the whole range of fundamental freedoms, such as the conception of the right to the protection of personal data as a right to informational self-determination, the constitutional requirement stipulating that public figures must tolerate even sharp and degrading criticism etc.

⁶ Art. 24 par. (2) point e) of the Fundamental Law of Hungary.

(e.g. children, homeless or Roma people) before the Court will decrease as well. The cases in which a concrete person could be concerned, will reach the Constitutional Court later: basically after a final judgement of ordinary courts and this way after the occurrence of the violation of a fundamental right.

Hence it follows that we may lose by the abolition of the *actio popularis*. Can this restriction be counterbalanced by other changes or new possibilities?

Besides the ombudsman, only governmental units are entitled to initiate the abstract review procedure: the Government and a one-fourth minority of the MPs (currently the latter would need the cooperation of all the opposition parliamentary groups, including the extreme right wing party), which is a rather restrictive regulation also in a European comparison. What has more importance from our viewpoint is the fact that these initiators have a political nature so they are likely to take advantage of starting a procedure to reach their political goals, and not to promote fundamental rights.⁷ Partly due to the proposal of the Venice Commission,⁸ besides the initiators of a political nature (the government or the opposition parties) the ombudsman (the Commissioner for Fundamental Rights) will be entitled to initiate an abstract constitutional review procedure. Will he/she be able to replace the *actio popularis* in functional terms? Generally ombudsman institutions, as a typical sort of national human rights institutions, can play a significant role in the objective protection of fundamental rights, so they may seem as a competent and effective mediator between the civil society and the Constitutional Court. The ombudsman is an expert on and also a champion of fundamental rights who can function as a filter helping to reduce the workload of the Constitutional Court. However, there are several counterarguments against the success of the

⁷ A German commentator remarked on the consequences of the range of initiators being of a political nature that "... the apparent manipulation of the judicial process for political purposes has led some observers to favour the abolition of abstract judicial review". See Donald P. KOMMERS: *The Constitutional Jurisprudence of the Federal Republic of Germany*. Durham and London, Duke University Press, 1997, p. 28.

⁸ Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary – Adopted by the Venice Commission at its 86th Plenary Session (Venice, 25–26 March 2011), Section 66.

replacement. Following from his function and scope of competence, he as the Commissioner for Fundamental Rights could be entitled to initiate procedures only on the basis of the fundamental rights provisions of the Fundamental Law in his field of competence, namely, in connection with state authorities listed in the Act on the Commissioner for Fundamental Rights. This interpretation is supported by the fact that, according to the new Act on the Constitutional Court,⁹ the ombudsman himself has to claim the unconstitutionality of the actual law. There are also several arguments for the interpretation according to which the ombudsman's submission should be based on a concrete case investigated by his office. To sum up, the ombudsman's leeway is pretty restricted.

Analysing the further elements of the new regulation, there comes up the question whether the extended preventive review can be 'an even better means' of the objective protection of fundamental rights. According to the new Fundamental Law, in addition to the constitutional veto of the President of the Republic, the Parliament will be also authorised to initiate a prior constitutional review.¹⁰ However, similarly to the abstract review, this possibility is more likely to be used as a political weapon than an instrument enforcing fundamental rights.

The Hungarian regulation, similarly to the German one, provides for the type of constitutional complaint that can be submitted directly against the law, however the complainant is required to be affected by the law he/she complains of, and there cannot be other available legal remedy.¹¹ The degree of the similarity between this special form of the constitutional complaint and the *actio popularis* depends on the interpretation of the requirement of the victim status. An extensive interpretation may result in developing the procedure of *actio popularis*, at least as regards the acts on fundamental rights. To avoid this, the German Federal Constitutional Court enforces this criterion very strictly: the complainant has to be *clearly, directly, and presently* affected by the act complained of.¹² At the

⁹ Art. 24 par. (2) of the HCC Act.

¹⁰ Art. 6 par. (2) of the Fundamental Law of Hungary.

¹¹ Art. 26 par. (2) of the HCC Act.

¹² Velimir BELAJEC: Admissibility requirements for constitutional complaints and mechanisms for avoiding an excessive caseload. In: *The protection of fundamental rights by the constitutional*

moment, we cannot rely on the practice of the Hungarian Constitutional Court, but being aware of the fact that the enormous workload caused by the *actio popularis* was a significant argument for its abolition, it seems to be against an extensive interpretation.

To sum it up, from this viewpoint, the possibility and the means of the objective and preventive protection of fundamental rights will narrow down. Nevertheless, in order to evaluate the changes in a comprehensive way and analysing also the aspect of the subjective protection of fundamental rights, the reverse side of the coin, namely the introduction of the German-type constitutional complaint also has to be taken into consideration.

III. The function and the characteristics of the constitutional complaint

The constitutional complaint is basically conceived as an effective instrument aiming for protecting the citizens' individual rights. And indeed the formal appearance of the constitutional complaint procedure points towards that this instrument is destined to perform the function of subjective fundamental right protection. What are the factors that indicate this function? From the individuals' perspective, the constitutional complaint is an extraordinary legal remedy available for any person who claims that the state has violated one or more of his fundamental rights, and justifies that all other legal remedies proved fruitless. Furthermore, the scope of review is quite broad since complaints can be lodged against any act of public authorities. Considering the absence of *actio popularis*, the constitutional complaint is the only instrument that directly opens up the way of challenging a normative act by individuals. The scope of the review upon a constitutional complaint also suggests effectiveness since it reaches beyond the original subject matter of constitutional adjudication: the constitutional supervision is not restricted to the review for the constitutionality of legal norms but also extended to the review for the constitutionality of the application of laws by judicial tribunals. Finally,

court. Council of Europe, 1995, pp. 146–147. KOMMERS, *ibid* 1997, p. 530; Gerrit MANSSEN: *Staatsrecht II. Grundrechte*. Munich, C.H. Beck, 2007, 251.

the possible outcome of the procedure promises an effective remedy for infringements too as the constitutional court is authorised to invalidate any law or decision found to be unconstitutional and return the issue back to the competent ordinary court for a further decision. Taking into consideration all of these characteristics, one cannot deny that the constitutional complaint procedure is able to effectively remedy individual fundamental right violations, and, by doing so, serves the individual interests of the complainant.

But should the redress of subjective right infringements be considered as the primary function of the constitutional complaint procedure?

To evaluate what extent the constitutional complaint procedure is aimed at protecting subjective fundamental rights, we need to identify such characteristic factors of the complaint which, on the one hand, may question or even undermine the strength of the protection of individuals by the complaint, or, on the other hand, which massively suggest the objective aspect of this procedure. When seeking for these, a comprehensive approach is used focusing mainly on the Hungarian and German regulation. There are at least two rationales behind the parallel examination of these two forms of the constitutional complaint. It can be justified partly because, apart from some *seemingly* minor deviations, the regulation of the two institutions greatly converge, and partly because the German pattern is had an effect not only on the legislators but also the Hungarian Constitutional Court itself. Ever since its establishment in 1989, the Hungarian Constitutional Court has looked to the jurisdiction of its German counterpart as a point of reference when seeking pointers on how to decide on concrete cases.

Starting with the factors that relativize the subjective aspect of the constitutional complaint, these can be derived from the purpose of *keeping away* or *sorting out* constitutional complaints. The practical role of these factors is to protect the constitutional court from an excessive caseload. Indeed, these factors altogether, in our view, also play a role of preventing the constitutional court from taking over the place of ordinary courts to which the function of subjective right protection is primarily allocated. Nevertheless, from citizens' point of view, these factors necessarily result

in a limitation on the right to seek protection for individual fundamental rights by submitting a constitutional complaint.

As for the factors that keep away an amount of constitutional complaints from the constitutional court, among these the mandatory legal representation that is required before the Hungarian Constitutional Court, as well as the fine that may be imposed both in Hungary and in Germany if the lodging of a constitutional complaint constitutes an abuse, are to be emphasized. In addition, to discourage the filing of trivial complaints, in Germany, the constitutional court was given the additional authority to charge a fee on any petitioner whose complaint it refuses to accept because it is either “clearly inadmissible or wholly unlikely to succeed”.¹³

Factors aimed at sorting out constitutional complaints are manifested in the formal and, even more, in the substantial criteria of filing a complaint with the constitutional court. Before the court looks at the merits of the case, the constitutional complaint is subjected to a preliminary examination procedure in which the court scrutinises whether the initiative meets the range of criteria prescribed by the law. This preliminary screening leaves a major leeway for the constitutional court to decide on which complaint it accepts. Indeed, there are scholars who have argued, that this procedure, all in all, shows some likeness to the certiorari jurisdiction of the US Supreme Court.¹⁴

As for the formal criteria, here we do not refer to those requirements that are known as usual and commonly justified restrictions of legal remedies, such as the deadline of submission, the precondition of exhausting other legal remedies, the obligation to specify the claim, the requirement of victim-status etc. However, the possibility of dismissing the constitutional complaint as inadmissible on the basis that the complaint is unclear,

¹³ Art. 34a par. 1-3 of the FCC Act. See also KOMMERS, *ibid* 1997, p. 19.

¹⁴ Cf. Wolf-Dieter MNDLER: *The American writ of certiorari and the German constitutional complaint with respect to criminal judgments*. New York University, School of Law, 1967. And cf. also Ralf ROGOWSKI and Thomas GAWRON (eds), *Constitutional Courts in Comparison. The US Supreme Court and the Federal Constitutional Court of Germany*. Berhahn Books, 2002, pp. 8–10, 145–146.

inconsistent, or it lacks a proper foundation,¹⁵ which happens to turn up often in the German practice, provides a wide space for the constitutional court to refuse complaints behind of which even serious violations of fundamental rights can stretch. It is not without precedent in Germany that an inadequate analogy (an improper reference to a decision made by the Federal Constitutional Court) drawn by the complainant can lead to the dismissal of the constitutional complaint.¹⁶

The substantial criteria of the complaint serve as the most convincing evidences for proving how accidental the success of the constitutional complaints is. To obtain a decision from the court, it is not enough to overcome the formal criteria, the acceptance of complaints is only granted, if the court finds that either the complainant has a legitimate interest in obtaining a decision,¹⁷ or the petition poses a question of fundamental significance.¹⁸

The requirements of the acceptance of the constitutional complaint ought to be seen in combination with the procedural provisions of the preliminary scrutiny procedure. What should be pointed out here is, that the Act on the Hungarian Constitutional Court requires only “a short-cut reasoning”¹⁹ to the decision on dismissal, while the Federal Constitutional Court of Germany does not have to give any reason for the decision.²⁰ What makes the individuals’ situation worse, the competence of refusing a complaint considered as “obviously inadmissible” has been allocated to a single judge in Hungary.²¹

¹⁵ Art. 92 in connection with Art. 23 par. 1 of the FCC Act. For the praxis see MAUNZ, SCHMIDT-BLEIBTREU, KLEIN, BETHGE: Bundesverfassungsgerichtsgesetz. Kommentar. C. H. Beck 2012, Line no. 54. See also Thomas KREUDER: Praxisfragen zur Zulässigkeit der Verfassungsbeschwerde. *Neue Juristische Wochenschrift*, 2001, 1243 ff.

¹⁶ KREUDER, *Ibid* 2001, 1248.

¹⁷ The Hungarian law stipulates that the Constitutional Court may accept the complaint if the judgement to be reviewed has been essentially determined by the imposed unconstitutionality in question. [Art. 29 of the HCC Act] According to the German rule concerned, the complainant has to be accepted if the complainant would suffer especially grave disadvantage as a result of refusal to decide the case. [Art. 93a par. (2) point b) of the FCC Act]

¹⁸ Art. 93a par. 2 point a) of the FCC Act and Art. 29 of the HCC Act.

¹⁹ Art. 56 par. 3 of the HCC Act.

²⁰ Art. 93d par. 1 of the FCC Act.

²¹ Art. 55-56 of the HCC Act.

As it was mentioned above, several features can be identified which demonstrate that the objective function of the constitutional complaint greatly surpasses its subjective character. One of the clear manifestations of the objective aspect of the complaint is the possibility of gaining a court decision also in cases that are of fundamental constitutional significance. The path to the constitutional court upon this basis has nothing to do with the question of whether a subjective right has been actually violated in a concrete case. It is aimed at providing the constitutional court with the option to establish and preserve constitutional standards and develop constitutional law regardless any personal legal interest.

In several countries that have the constitutional complaint, the constitutional court is allowed, or at least not forbidden, to review not only the violation of those constitutional provisions to which the complainant referred, but also such aspects of the case that have not been alleged by him or her. The Federal Constitutional Court of Germany, for instance, has extended its scope of review not only beyond the fundamental rights violation claimed in the complaint but also to other norms or constitutional principles of the German Basic Law. As for Hungary, the Hungarian Constitutional Court may basically examine the case only to the extent it has been alleged by the complainant. However, there are two exceptions regarding the constitutional complaint from this rule. In case of complaints challenging legal norms, it is allowed to scrutinise beyond the petition, when otherwise the principle of legal certainty would get harmed. In addition, if the complaint is brought to the court against a legal norm that was applied in the judicial procedure, the constitutional court may review not only the constitutionality of the norm itself but also the challenged decision (the application of laws), and vice versa.²²

In addition, in Hungary, the success of a complaint is not independent from “luck factors” either. As a result of the *res iudicata* effect of the original case, if the Hungarian Constitutional Court has already decided on the validity of a legal norm upon either a judicial initiative or a constitutional complaint challenging a court decision, further constitutional complaints, claiming the same legal provision on the same constitutional grounds, are

²² Art. 28 of the HCC Act.

inadmissible. This limitation creates a kind of unfair competition among complainants since the court gives remedy only to the person who reached the court first.

To sum up, all of the aforementioned characteristics lead us to conclude that the adjudication upon constitutional complaints is not a matter of individual right but rather of judicial discretion. The court only handles a case if there are particular important reasons to proceed. Accordingly, the constitutional complaint procedure tends to operate even more as an instrument to safeguard the objective constitutional order than to be a remedy for subjective right violations. As an instrument of objective right protection, the constitutional complaint represents a key institution to serve the interpretation and development of constitutional law, as well as the enhancement of respect for fundamental rights.

IV. Conclusion

The original and main function of constitutional adjudication is the enforcement of the constitution against the laws. Regarding the replacement of the *actio popularis* with a German-type constitutional complaint, it can be stated that, as for the *application* of the laws, it broadens the function of the Constitutional Court: the control of the legislation will be supplemented by that of judiciary. Furthermore, it provides for an extraordinary legal remedy, however, its function as a means of subjective fundamental rights protection is pretty restricted, and the main reason for the introduction of the constitutional complaint is the advantage gained by the objective control and development of the jurisdiction.

By contrast, regarding the laws, the constitutional change does not transform or broaden the function of the Constitutional Court (namely the control of unconstitutional laws), but requiring the personal legal interest, it restricts the range of possible initiators, therefore less laws and only later can be brought before the Court. As for the protection of fundamental rights, due to the aforementioned restriction of initiators, the function of objective fundamental rights protection will also narrow down. The operation of the constitutional complaint as a means of subjective fundamental rights

protection is also accidental; it is only an additional effect of a review procedure initiated by an affected person (which did exist in Hungary in the last two decades in the form of a restricted or quasi constitutional complaint procedure).

The citizens (as initiators) are primarily the means and not the subjects or aims of the constitutional adjudication. The enforcement of their subjective fundamental rights is a secondary effect. In Hungary, the *actio popularis* was mainly the product of the transition to democracy which has made the citizens active participants in the process of the revision of the old legal system. It was abolished by the current constitutional changes stating that the constitutional complaint procedure will provide a more efficient way of judicial enforcement of individual fundamental rights: it can be submitted against the law itself as well as the application of the law; requiring the personal legal interest, the workload of the Constitutional Court will be reduced, meanwhile the real infringements of fundamental rights will be remedied, what's more, in a more efficient way by a Court working more quickly. We have pointed out that it is only the appearance: the constitutional complaint procedure is essentially the means of the objective protection of fundamental rights as regards the application of the laws as well as the laws themselves. Regarding the latter, however, the constitutional complaint is a much more restrictive means than the *actio popularis*.

SUMMARY

Citizens' Role in Constitutional Adjudication in Hungary: From the *Actio Popularis* to the Constitutional Complaint

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The procedure of constitutional complaint is generally accompanied by the idea of performing the function of efficient individual human rights enforcement. In Hungary, the German-type constitutional complaint is introduced by the new Basic Law entering into force on the 1st of January

2012. The constitutional change offers the occasion to analyse the benefits of this new competence of the Constitutional Court in the field of fundamental rights protection. Nevertheless, it seems that citizens had to pay a ‘high price’ for being able to submit a constitutional complaint: the *actio popularis*, a means proved to be outstandingly efficient in constitutional review in the last two decades, has been abolished. The paper focuses on the direct and indirect functions of the constitutional complaint mechanism. By doing so, the paper points out the shift of emphasis in the system of fundamental rights protection produced by the abovementioned changes.

RESÜMEE

Die Rolle der Bürger in der Verfassungsgerichtsbarkeit in Ungarn: Von der *Actio Popularis* zur Verfassungsbeschwerde

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Die Verfassungsbeschwerde ist im Allgemeinen als ein Instrument im Interesse effektiven individuellen Grundrechtsschutzes anerkannt. In Ungarn, das Verfahren der Verfassungsbeschwerde ist nach deutschem Vorbild ab dem 1. Januar 2012 in das neue ungarische Grundgesetz aufgenommen worden. Die verfassungsrechtliche Änderung bietet Gelegenheit zu untersuchen, was durch diese geänderte Kompetenz des ungarischen Verfassungsgerichts zum Grundrechtsschutz hinzugefügt wird. Dennoch scheinen die Bürgerinnen und Bürger einen „hohen Preis“ für das neue Rechtsbehelf bezahlt zu haben: die *Actio Popularis*, ein hochwirksames Mittel zur verfassungsrechtlichen Prüfung in den letzten zwei Jahrhunderten, wurde abgeschafft. Die Abhandlung konzentriert sich auf die direkten und indirekten Funktionen der Verfassungsbeschwerde. Dadurch wird die Verlagerung des Schwerpunkts in dem System des Grundrechtsschutzes diskutiert.