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## **THE RIGHT OF CITIZENS TO A CONSTITUTIONAL COMPLAINT AS A MEANS OF RESOLVING A CONSTITUTIONAL AND LEGAL DISPUTE**

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The article examines the right of citizens to a constitutional complaint as a means of resolving a constitutional dispute. The concept of constitutional justice from the point of view of the theory of the state and law is considered and the role of constitutional justice in the system of protection of human and civil rights and freedoms is determined. Constitutional-legal dispute is a confrontation in the forms provided by the norms of constitutional law, the parties to the dispute – the subjects of constitutional relations, which, exercising constitutional rights and responsibilities, found contradictions over material and spiritual goods that are subject to constitutional regulation. Rights. Constitutional justice for a citizen is a means of influencing two branches of government – legislative and judicial. Such influence is the only legal remedy for the restoration of violated rights. The constitutional complaint from the standpoint of the Constitution of Ukraine and the law “On the Constitutional Court of Ukraine” is described. It is noted that the constitutional complaint is a petition of a citizen to check the compliance of the Constitution of Ukraine with the law of Ukraine applied in the final court decision in the case. The right of citizens to a constitutional complaint is a subjective right to establish in court the inconsistency of the legally established limits of constitutional human and civil rights and freedoms with the constitutional limits in order to protect the violated constitutional rights of a citizen. The sectoral affiliation of the disputed legal relations, the subject of the dispute and the special subject composition determined the consolidation of the basic principles of constitutional proceedings, the right of citizens to a constitutional complaint in the Constitution of Ukraine. The right of a citizen to a constitutional complaint is not the only way of judicial protection against violation of constitutional human rights and freedoms by law – to initiate constitutional proceedings to resolve a constitutional dispute may

**be subjects of constitutional law by way of normative control, courts concluding that the Constitution is inconsistent. the law applicable to the case.**

**Key words: rights and freedoms, Constitution, constitutional proceedings, constitutional and legal dispute, constitutional complaint.**

**Problem statement.** Recognition of a person, their rights and freedoms as the highest value poses a constitutional obligation before the state to recognize, respect, and protect human and citizen's rights and freedoms (Article 3 of the Constitution of Ukraine), including those enshrined in international treaties of Ukraine. Practical implementation of the principle of separation of powers, implementation of the idea of a rule-of-law state directly depend on the effectiveness of the Constitution protection mechanism, the mechanism of control over the legislative and executive branches, the mechanism of judicial protection of human and citizen's constitutional rights and freedoms. Citizens' capability to apply to the Constitutional Court testifies to the democratic nature of the state. The constitutional level of citizens' right to appeal to the Constitutional Court of Ukraine denotes the special significance of a constitutional complaint.

**Problem research analysis.** There is a huge number of academic works dedicated to the topic of constitutional proceedings, including the works of Ye. V. Burlai, S. V. Holovaty, V. V. Horodovenko, O. S. Zakharova, V. M. Kamp, M. I. Koziubra, V. P. Kolisnyk, A. V. Kolodiy, A. R. Krusian, V. V. Lemak, M. I. Melnyk, L. M. Moskvych, V. L. Musiyaka, M. P. Orzikh, V. F. Pohorilko, P. M. Rabinovych, M. V. Savchyn, A. O. Selivanov, I. D. Slidenko, O. V. Sniezhko, P. B. Stetsiuk, Yu. M. Todyka, S. V. Shevchuk, Yu. S. Shemshuchenko, and other scholars. However, citizens' right to a constitutional complaint as a means of resolving a constitutional and legal dispute has been under-research within Ukrainian legal science, it is expedient to identify its features, role and significance for constitutional justice.

**Objective of the article:** to study the right of citizens to a constitutional complaint as a means of resolving a constitutional and legal dispute.

**Statement of basic materials.** Legal science has developed a range of definitions for the notion of proceedings. They can be nominally divided into groups depending on the factor within the structure that stands out – procedural or substantive. Scholars who identify the procedural factor define the notion of justice through the notion of a legal process. Scholars who identify substance interpret the notion of proceedings through the notion of justice.

The majority of definitions of proceedings which emphasize the procedural element apply the term “legal process” in its narrow sense, i.e. as a judicial process. Here, judicial process becomes synonymous with proceedings. The legislator emphasizes the procedural element with regard to proceedings.

The second group of definitions views the notion of proceedings through the substantive side of the court activities – justice. The definition of proceedings as a legal or jurisdictional process focuses on the subject of authoritative powers and the sequence of actions, while the definition of proceedings as a way of exercising judicial power reflects the essence of the state function.

By combining the two elements of the notion of proceedings, one can conclude that proceedings are a form of exercising state power involving court resolution of legal disputes and other legal cases which is mapped in law in the form of sequence of court actions aimed at resolving a case.

Since in their procedural and substantive aspects proceedings are aimed at court resolution of cases, the specifics of court cases serve as a criterion. The nature of the legal relationship within which the legal dispute arose serves as a criterion for determining the type of proceedings in judicial practice. Identification of the specifics of court cases is a common technique in doctrine and legislation when determining the specific types of proceedings.

A definition of criminal proceedings can be found in the legislation: according to the Criminal Procedure Code of Ukraine, criminal proceedings are pre-trial and court proceedings in criminal cases [1].

Administrative cases arising from administrative and other public legal relations related to the exercise of judicial control over the legality and validity of the implementation of state or other public authority which are resolved in the manner of administrative proceedings are specified in Article 1 “Purpose of the Code of Administrative Procedure of Ukraine” of the Code of Administrative Procedure of Ukraine [2].

While providing for a particular sequence of court’s actions concerning the delivery of judgement, each of the types of proceedings differs in the type of cases.

The type of case is determined by the subject matter of the case, the parties involved, and the sectoral affiliation of the rules of substantive law governing the disputed legal relationship. The criterion for distinguishing constitutional proceedings as a separate type of proceedings is the availability of a special type of cases which cannot be resolved with the help of other types of proceedings. The emergence of such cases and the need for court settlement is an objective prerequisite for the emergence of constitutional proceedings.

There is a general indication of the cases related to the protection of the Constitution, protection of human and citizen’s constitutional rights and freedoms, which derives directly from the Constitution of Ukraine and the law “On the Constitutional Court of Ukraine” [3; 4]. The general need for the resolution of the indicated cases in the Constitutional Court is explained by the process of democratization and the need to ensure compliance of normative legal acts, which come lower in the hierarchy of legislation of Ukraine, with the Constitution.

The term “dispute” is used to identify the categories of cases that are resolved by the court. Hence, a constitutional and legal dispute is a collision that has arisen between the subjects of constitutional and legal relations in the process of implementing the rules of constitutional law, which is resolved in a special manner prescribed by law with the application of jurisdictional procedures.

Court proceedings can resolve constitutional and legal disputes concerning the constitutionality of a normative legal act, disputes between public authorities regarding their competencies; there are special constitutional procedures provided for bringing to constitutional and legal responsibility. On the emergence of a constitutional and court process on the basis of a conflict of interests and opinions with the aim of resolving the relevant collisions in the established manner, including the cases of regulatory control.

A constitutional and legal dispute is a conflict, presented in the forms provided for by the rules of constitutional law, between the parties to the dispute (the subjects of constitutional relations), which, while exercising their constitutional rights and responsibilities, discovered some contradictions regarding material and spiritual goods that are subject to constitutional regulation.

The structural elements of a constitutional and legal dispute, as constitutional and legal relations, are the disputing parties, which are the subjects of the constitutional law and participants in substantive constitutional and legal relations.

The object of the dispute is the object of regulation of constitutional law in the relation to which the dispute arose; among the subjects of the dispute there may be the provisions of a normative legal act, the competence of a state body, specific actions of a state body or other subject of constitutional law; the substance is the rights and responsibilities of the parties in protecting their interests.

There is a special legal procedure for resolving these disputes. Cases of regulatory control constitute the largest category of cases resolved with the application of constitutional proceedings. Such cases deal with the issue of compliance of normative legal acts, agreements between public authorities, existing international legal agreements with the Constitution of Ukraine.

Citizens have the right to appeal to the Constitutional Court to resolve a constitutional dispute only when there is a dispute over the constitutionality of a law, which arose on the basis of the final court decision in the case.

This is indicated by the condition of admissibility of the complaint, established by Article 55 of the law “On the Constitutional Court of Ukraine”. It is allowed to file a complaint of violation of constitutional

rights and freedoms by a law if this law was applied in the proceedings that was completed and the final court judgment was delivered in the relevant case.

The term of regulatory control refers to the review of the constitutionality of a normative legal act, which was applied or is to be applied in the case, on the basis of a complaint of violation of constitutional rights and freedoms, or regardless of the existence of such a case, where the disputed act was applied or is to be applied by the court regarding procedural rights and obligations.

The emergence of a constitutional dispute with the participation of a citizen on the basis of a final court judgment undergoes several stages. At the first stage, the motives of the constitutional and legal dispute are formed. A citizen who has not received protection of their rights or has suffered other negative legal consequences as a result of a court resolution of a case and has exhausted all means of justiciability in general jurisdiction courts, decides to take further active steps to defend their interests in the Constitutional Court.

The citizen's main goal is to ensure a court review of the case on the basis of the resolution of the Constitutional Court of Ukraine which recognizes the law as inconsistent with the Constitution. The possibility of such a review is provided for by the law "On the Constitutional Court of Ukraine" and the codes of Ukraine: Civil Procedure Code, Economic Procedure Code, Administrative Procedure Code, Criminal Procedure Code.

The resolution of a constitutional and legal dispute by the Constitutional Court is a means with the help of which the citizen is able to achieve a review by the court of the primary case with a different result and protect their subjective rights by offsetting the effect of negative legal consequences, among other things. At the second stage, the motives are realized through the legal formalization of the citizen's claims with legal justification. At this stage, conflict legal relationship is analyzed from the standpoint of the constitutional and legal aspect, while the legal justification indicates a violation of subjective constitutional rights. At the third stage, the citizen submits the constitutional and legal dispute for the review of the Constitutional Court. The dispute is objectified.

V. Horodovenko points out the standards of efficiency of the institute of constitutional complaint as a legal remedy: accessibility both in theory and in practice, and timeliness, i.e. possibility to satisfy the applicant's complaints and ensure reasonable prospects for success; taking into account the general legal and political context in which the legal remedies operate, as well as the applicant's personal circumstances [5].

Negative legal consequences for a citizen are a necessary prerequisite for initiating constitutional proceedings. Among the negative legal consequences, there can be deprivation or restriction of a subjective right, imposition of additional obligations in the sectoral legal relationships.

According to the law "On the Constitutional Court of Ukraine", citizens whose rights and freedoms have been violated by a law applicable to the case have the right to appeal to the Constitutional Court with a constitutional complaint of violation of their constitutional rights and freedoms. This does not mean that in terms of time the negative legal consequences from the violation of constitutional rights and freedoms occur only upon the delivery of the final court judgment. Negative legal consequences for a citizen may occur as a result of exercising their rights in legal relations or the application of the law in relation to the citizen by another law enforcement authority, which is a ground for the citizen to seek judicial protection in the case.

Examples of negative legal consequences for a citizen before the court review of the primary case include: bringing to administrative responsibility by another law enforcement authority (apart from court), along with exhaustion of the possibility to review the court judgement in the higher court, and in the court as a result of the application by the court of a law containing a constitutional defect to resolve the case. For a citizen the possibility to change the law will mean the possibility to change the decision of the law enforcement authority (court) and hence the possibility to restore the violated rights in the sectoral legal relationships.

M. Smokovych underscores the increased immediacy of the issue of efficient protection of human rights in administrative proceedings when a constitutional jurisdiction body recognizes a normative legal act as such that does not comply with the Constitution of Ukraine (is unconstitutional). Formation of a unified judicial practice regarding these issues should be based on a conceptually defined doctrine of law, which can be developed by means of a constructive, substantive dialogue between recognized theorists and practitioners of constitutional and administrative law and process, experts in international and European law, etc. [6, p. 6].

From the standpoint of a citizen, constitutional proceedings are a means of influence on two government branches – legislative and judicial. Such influence is the only legal remedy for the restoration of violated rights.

For a dispute to be referred by a citizen to the Constitutional Court, the legal justification must indicate adverse consequences (material or immaterial) as a violation of the constitutional rights of a citizen by the applicable law. In this regard, it is necessary to clarify what is meant by a violation of constitutional rights and freedoms. In the final court judgement the negative legal consequences are assessed by a citizen as a violation of rights in sectoral legal relations. At the stage of legal reasoning of the unconstitutionality of a law, the connection between the violated sectoral law and the subjective constitutional right is revealed. Such a connection is present due to the basic nature of human and citizen's constitutional rights, their constant and immediate action in any type of legal relations, including through sectoral rights.

The violated subjective right in the final court judgment in the case may be a subjective constitutional right or its component. For example, the procedural right of a person involved in a case to bring before a court the issue of non-application of a normative legal act that contradicts a normative legal act of greater legal force as an integral part of the constitutional right to judicial protection.

It is necessary to establish the connection between the violated sectoral law and subjective constitutional right with the aim of assessing the consequences as a violation of a subjective constitutional right. The analysis of legislation along with the judicial practice demonstrate that negative consequences in the form of violation of constitutional rights and freedoms by the law applied in the case occur in the following cases:

- if there is an adopted law which restricts human and citizen's constitutional rights and freedoms in an unconstitutional way, and when resolving a case the court defines the rights and obligations of a citizen on the basis of this law;
- if a law complies with the constitutional requirements, however, when resolving a case the court defines the rights and obligations of a citizen on the basis of the law and the unconstitutional interpretation that has been established in judicial practice, which restricts human and citizen's constitutional rights and freedoms.

According to the authors of research "Constitutional complaint in the activities of a lawyer", the functional purpose of a constitutional complaint goes beyond the constitutional protection of rights and freedoms of a particular person and is interpreted more broadly as a guarantee of constitutional law and order in general [7, p. 13].

As for the subjective constitutional rights, the identification of their limits does not only allow distinguishing lawful behavior from unlawful one, but also allows distinguishing lawful behavior of the state regarding statutory regulation from unlawful one taking into account the legislative content of constitutional rights and freedoms, including in cases of restricting fundamental rights and freedoms permitted by the Constitution and laws of Ukraine.

The limits of the constitutional right are of importance mainly in the following situations: in case of conflict of interests of the legal subject in the process of exercising the constitutional right; in case of legal regulation of constitutional rights and freedoms by the legislator. The Constitution stipulates that human and citizen's rights and freedoms being the highest constitutional value must be recognized, respected and protected by the state. Constitutional rights and freedoms must be developed and specified in laws. The

Constitution prohibits adopting laws that cancel, diminish human and citizen's rights and freedoms thus restricting their constitutional nature. Violation of this prohibition shall mean violation of human and citizen's subjective constitutional rights and freedoms.

The subject of a dispute to be resolved in constitutional proceedings is a law that violates human and citizen's constitutional rights and freedoms. Therefore, comparing the limits of human and citizen's constitutional rights and freedoms, the way they are granted by the Constitution, that is, established by law, is a way of identifying violations of human and citizen's constitutional rights and freedoms and a way of resolving constitutional and legal disputes.

It is advisable to distinguish between the violation of citizen's constitutional rights and freedoms by the applicable law in the form of negative legal consequences that have occurred for him/her as an incident of the dispute and the violation of human and citizen's constitutional rights and freedoms by law as the essence of the dispute. Negative legal consequences for a citizen occur as a result of interrelated actions of the legislator and the court, the parties to the constitutional proceedings initiated by the complaint of a citizen are the applicant in the case and the legislative bodies. The court that applied the law is not a party to the case. There are no direct relationships between a particular citizen and the legislative bodies.

The duty of the state to carry out the function of legislative regulation of public relations is laid upon the legislative bodies. The duty to apply laws to resolve particular legal disputes is laid upon the courts. The legislative and law enforcement functions are performed by those state bodies in the public interest.

The fact that the legislator indicates the parties to the case in constitutional proceedings does not mean that these legal subjects are parties to the constitutional and legal dispute over the unconstitutionality of the law. There is an opinion in the theory of law according to which protective legal relations appear in case of violation of regulatory rights in material legal relations.

State power in Ukraine is divided into legislative, executive, and judicial. State power in Ukraine is exercised by the President, the Verkhovna Rada, the Cabinet of Ministers of Ukraine, and courts. The criterion for exercising state power is the observance of the highest constitutional value – human beings, their rights and freedoms, which must be recognized, respected, and protected. This determines the content and application of laws, the activities of the legislative and executive branches, local self-government, and is guaranteed by the judicial system.

Human and citizen's rights and freedoms, guaranteed by the Constitution, cases of their possible restriction are the criteria of work for the legislative branch and law enforcement.

Since it is the people of Ukraine that are the subject of constitutional law, it is necessary to acknowledge constitutional legal relations between the people of Ukraine and the state regarding adoption and application of laws by state bodies. These legal relations in their essence mean the duty of the state and the right of the people of Ukraine to demand that the state fulfil its duty. The legal relations in question are permanent and define the nature of other relations in which the state is involved.

If the state violates the obligation to recognize, respect, and protect human and citizen's rights and freedoms by means of adopting a law in which the legislative boundaries of rights and freedoms limit constitutional boundaries in an unconstitutional way, and by means of applying it to resolve specific cases, the people of Ukraine have the right to force state bodies to rectify the violation of constitutional responsibilities. This right is aimed at protecting the sovereign power of the people of Ukraine, therefore its basic content is enshrined in the Constitution.

A dispute regarding a law that violates human and citizen's rights and freedoms which is to be resolved in the constitutional proceedings is called a constitutional and legal dispute, the parties to such a dispute are the people of Ukraine and the state, the object of the dispute is the relationship concerning human and citizen's constitutional rights and freedoms as the highest value, the subject is the law that violates the rights and freedoms. A citizen is a party to the dispute, since he/she belongs to the people of Ukraine.

The EU-Ukraine Association Agreement provides for the introduction of a European approach to the protection of human rights and freedoms. German constitutional complaint provides everyone with the

possibility to call into question the constitutionality of a norm, without the need to apply for any procedures in any other court. Obviously, there are some filters there, namely, the principle of subsidiarity regarding legal protection in courts of general or specialized jurisdictions [8, p. 127]

Citizens' right to a constitutional complaint is a subjective right to expose by judicial means the inconsistency of the legally established limits of human and citizen's constitutional rights and freedoms with the constitutional limits in order to protect the violated constitutional rights of the citizen. The public effect of a constitutional complaint should not substitute its practical significance for the applicant. For the outlined problems to be resolved, there should be functional interaction of various state bodies and joint efforts aimed at the implementation of the duty of the state – affirmation and protection of human rights and freedoms [9].

**Conclusions.** Citizens' right to a constitutional complaint is the right of the people of Ukraine to expose by judicial means the inconsistency of the legally established limits of constitutional rights and freedoms with the constitutional limits in order to protect the violated constitutional rights of an indefinite range of persons and to prevent negative consequences for the citizens in the future. The right to a constitutional complaint allows resolving a constitutional and legal dispute with the aim of protecting the highest constitutional value – human rights and freedoms, rights and freedoms of an indefinite range of persons.

Sectoral affiliation of the disputed material legal relations, the subject of the dispute and the specifics of the parties involved regularized the main parameters of the constitutional proceedings, including the right of citizens to a constitutional complaint, in the Constitution of Ukraine. Citizens' right to a constitutional complaint is not the only way of judicial protection against violation of human and citizen's constitutional rights and freedoms by law. Constitutional proceedings aimed at resolving constitutional and legal disputes may be initiated by the subjects of constitutional law enlisted in the Constitution, in the order of regulatory control, as well as by courts provided that they arrive at a conclusion that the law applicable to the case is inconsistent with the Constitution.

Regardless of the subject of law that initiated the constitutional proceedings, the judgement delivered as a result of a constitutional and legal dispute regarding a law that violates human and citizen's constitutional rights and freedoms by means of declaring the law unconstitutional applies to all members of society, not just the very applicant, which testifies to the unified legal nature of the constitutional and legal dispute.

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## **ПРАВО ГРОМАДЯН НА КОНСТИТУЦІЙНУ СКАРГУ ЯК ЗАСІБ ВИРІШЕННЯ КОНСТИТУЦІЙНО-ПРАВОВОГО СПОРУ**

У статті досліджується право громадян на конституційну скаргу як засіб вирішення конституційно-правового спору. Розглянуто поняття конституційного судочинства з погляду теорії держави і права та визначено роль конституційного судочинства у системі захисту прав і свобод людини та громадянина. Конституційно-правовий спір – це протистояння у формах, передбачених нормами конституційного права, сторін спору – суб'єктів конституційних правовідносин, які, реалізуючи конституційні права і обов'язки, виявили протиріччя з приводу матеріальних і духовних благ, що є об'єктами регулювання конституційного права. Конституційне судочинство для громадянина виступає засобом впливу на дві гілки державної влади – законодавчу та судову. Такий вплив є єдиним правовим засобом відновлення порушених прав. Охарактеризовано конституційну скаргу з позиції Конституції України та закону “Про Конституційний суд України”. Зазначено, що конституційною скаргою є клопотання громадянина щодо перевірки на відповідність Конституції України закону України, застосованого в остаточному судовому рішенні у справі. Право громадян на конституційну скаргу є суб'єктивним правом на встановлення у судовому порядку невідповідності законодавчо встановлених меж конституційних прав і свобод людини та громадянина з метою захисту порушених конституційних прав громадянина. Галузева приналежність спірних правовідносин, предмет спору і особливий суб'єктний склад визначили закріплення основних засад конституційного судочинства, право громадян на конституційну скаргу в Конституції України. Право громадянина на конституційну скаргу є не єдиним способом судового захисту від порушення конституційних прав і свобод людини та громадянина законом. Ініціювати конституційне судочинство з метою вирішення конституційно-правового спору можуть суб'єкти конституційного права у порядку нормативного контролю, суди, дійшовши висновку про невідповідність Конституції закону, що підлягає застосуванню у справі.

**Ключові слова:** права і свободи, Конституція, конституційне судочинство, конституційно-правовий спір, конституційна скарга.