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## ON THE INSTANCE CONSIDERATION OF CITIZENS' APPEALS FOR THE PROTECTION OF CONSTITUTIONAL RIGHTS AND FREEDOMS IN UKRAINE

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**The article is devoted to the analysis of the constituent elements of citizens' appeals. The types of appeals and ways of their resolution by public authorities and their officials within the limits of the powers granted to them by law are investigated. The grounds and procedure for processing appeals of individuals and legal entities to law enforcement agencies of other countries on the prevention, detection and investigation of crimes are considered. The article concludes that a wide range of appeals to public authorities for protection of violated rights and freedoms indicates that they are guaranteed in administrative (out-of-court) and judicial proceedings. The jurisdictional activity of public authorities when considering citizens' complaints about violated rights and freedoms has an instance (stage) level, which is a condition for observance of the rule of law and other principles enshrined in the Constitution.**

**Key words:** citizen; appeal; instance; administrative review; case resolution.

**Introduction.** Citizens' appeals to public authorities and their officials for protection of their violated rights, freedoms and legitimate interests, despite the formally enshrined rights and obligations of the authorities to provide such protection, are often violated by representatives of public authorities. The issues of compliance with administrative law by law enforcement agencies when considering citizens' appeals and making decisions on them remain relevant.

**Analysis of recent researches and publication.** Issues related to administrative and legal protection of rights and freedoms of individuals and legal entities are considered in the scientific works of V. B. Averyanov, O. F. Andriyko, O. M. Bandurka, Y. P. Bytyak, I. P. Brosnichenko, V. G. Naumov, O. V. Kuzmenko, V. K. Kolpakov, A. T. Komziuk, M. V. Kovaliv, N. M. Tyshchenko and others.

**The aim of the article.** To achieve a scientific result by analysing the constituent elements of citizens' appeals and the ways in which they can be resolved by public authorities and their officials within the powers granted to them by law.

**Results.** The current conditions of development of the Ukrainian State indicate that protection of rights, freedoms and legitimate interests of individuals and legal entities remains one of the important responsibilities of the State. The protection of violated rights and freedoms of individuals and legal entities is ensured by public authorities in an administrative (out-of-court) and judicial manner.

The administrative (out-of-court) procedure for consideration of appeals from citizens whose freedoms have been violated by actions or omissions of state authorities is established by the laws of Ukraine and by-laws. It provides for the possibility for citizens, depending on the subject matter of the dispute, to apply to public authorities and other structures at their place of residence, place of work, central and other types of executive bodies by submitting written or oral appeals to the instance, which means successive links and stages in the system of subordinate public authorities and courts [1].

Judicial protection of human and civil rights and freedoms is carried out by the courts of Ukraine and international judicial institutions of which Ukraine is a member or participant (Article 55 of the Constitution of Ukraine). In addition, every citizen has the right to apply for protection of his or her rights to the Ukrainian Parliament Commissioner for Human Rights.

Formally, both the Constitution of Ukraine and some laws enshrine in their provisions the basic principles that can be used to understand the problems and prospects of protecting rights, freedoms, individuals and legal entities through appeals, which are quite diverse in their specific characteristics.

The essence of the principles aimed at protecting the rights, freedoms and legitimate interests of individuals and legal entities violated by unlawful acts or omissions of public authorities, their officials, can be assessed differently, taking into account what has been gained in the law-making and law enforcement practice of public authorities in the area of citizens' appeals.

There is a need to rethink approaches to the implementation of the principles of the Constitution of Ukraine, administrative legislation of Ukraine and other legal acts which have long remained unchanged (e.g., the Law of Ukraine "On Citizens' Appeals", the Code of Ukraine on Administrative Offences) in the face of significant changes in the political, economic, social and other spheres of human life and which usually have a negative impact on the decision-making practices in response to appeals of individuals and legal entities.

Therefore, the purpose of our article is to clarify and consider the appeals of citizens who are subjects of administrative and legal relations and the protection of their violated rights and freedoms is carried out by applying the provisions of administrative legislation of Ukraine, each of these provisions has a degree dimension, that is, a comparative value characterising the size, intensity, level of their implementation, as well as discretionary approaches when an official or a public authority resolves issues related to citizens' appeals at its own discretion [1, p. 168].

This means that we are talking about the powers of an official, which are also considered as a set of rights and obligations of public administration subjects, which make it possible, on the basis of administrative discretion, to determine in whole or in part one of the alternative options for public administration, which is most appropriate in a specifically defined public relationship with a specifically defined subjective composition [2].

Article 40 of the Constitution of Ukraine provides for the right of citizens to send individual or collective written appeals, or to personally apply to public authorities, self-government bodies and officials and employees of these bodies for the purpose of considering them and receiving a reasoned response within the established time limit.

The general meaning of the word "appeal" is to direct, appeal to someone in writing or in any other form for advice or assistance [1]. In terms of its content, the concept of appeal is broad and accumulates certain forms of implementation that are manifested in the actions of individuals and legal entities.

It should also be noted that appeals of citizens and legal entities to public authorities and their officials are conditionally divided into the following groups:

– proposals (comments), the essence of which is the real possibility of Ukrainian citizens to submit proposals and recommendations to public authorities to improve their activities, as well as to ensure the rights, freedoms and legitimate interests of individuals and legal entities;

– an application is considered as: 1) someone's appeal to someone with a statement of the main thoughts, provisions, messages; 2) a written request, drawn up as a business document, submitted to an official or institution that has certain powers [3].

In addition, the content of the application should be considered as an appeal by citizens to facilitate the exercise of their rights, freedoms and interests enshrined in the Constitution and current legislation of Ukraine or to report violations of current legislation or shortcomings in the activities of enterprises, institutions, organizations regardless of ownership, MPs of Ukraine, members of local councils, officials, as well as to express opinions on improving their activities [4].

It should be noted that the application in some cases is identified with the word "petition", which in turn is interpreted as a written statement, a request for something with an appeal to an official institution [5].

At the same time, the term "application" is used by the legislator in the Code of Ukraine on Administrative Offences (CUAO), only in Chapter 24-1, which has administrative and legal provisions governing the review of decisions on administrative offences in case of establishment by an international judicial institution whose jurisdiction is recognized by Ukraine and violation of international obligations by Ukraine in the course of the court's decision [6].

An integral part of the Code of Administrative Procedure of Ukraine (CAPU) is the action proceedings. Article 159 of the CAP of Ukraine provides for the types and content of statements on the merits of the case. Among them, statements on the merits of the case are: a statement of claim, a response to a statement of claim (response); a response to a response; objections; explanations of a third party regarding a claim or response [7].

The concept of a complaint is also one of the types of appeals demanding restoration of rights and protection of interests of citizens violated by actions (inaction), decisions of state bodies, local self-government bodies, enterprises, institutions, organizations, associations of citizens, officials [4].

The Law of Ukraine "On Citizens' Appeals" of 2 October 1996 stipulates that citizens of Ukraine have the right to address state authorities, local self-government bodies and other legal entities with comments, complaints and suggestions. A complaint is defined by the legislator as an appeal demanding the restoration of violated rights and protection of legitimate interests by the subjects of power.

A citizen or a group of individuals may file a complaint with the public authorities in writing or orally, subject to certain requirements. Thus, the complaint filed by a citizen must contain the surname, patronymic, place of residence of the citizen, the essence of the complaint and the relevant requests or demands [8, p. 196].

The review of court decisions in the administrative proceedings of Ukraine is carried out through appeal and cassation proceedings, during which appeals and (or) cassation appeals are considered. Thus, Art. 293 of the CAP of Ukraine provides for the right of participants in the case, persons who did not participate in the case, if the court has decided on their rights, freedoms, interests and (or) obligations, have the right to file an appeal against the decision of the court of first instance.

Pursuant to Article 328 of the Code of Administrative Procedure of Ukraine, the right to cassation appeal is granted to the parties to the case, as well as persons who did not participate in the case, if the court decided on their rights, freedoms, interests and/or obligations, have the right to appeal the decision of the court of first instance after the appellate review of the case, as well as the decision of the court of appeal in whole or in part [7].

Article 55 of the Constitution of Ukraine guarantees citizens the right to file a constitutional complaint (one of the types of complaints) with the Constitutional Court on the grounds established by the Constitution and other laws of Ukraine.

Finally, the types of appeals by individuals include petitions and motions.

A petition is a written collective request or petition submitted to public authorities. A petition is a request submitted to an official institution, which may be made in writing or orally for the purpose of an action by the subject of authority in the interests of the applicant [9].

There are also appeals in the form of constitutional petitions and constitutional appeals to the Constitutional Court of Ukraine. Thus, the basis for a constitutional petition may be the need for an official interpretation of the Constitution and laws of Ukraine for the purpose of their official clarification and interpretation of certain legal acts. A constitutional petition by legal entities indicates the existence of ambiguous application of certain provisions of the Constitution or laws of Ukraine by the courts of Ukraine or other public authorities, provided that the petitioner believes that his or her constitutional rights and freedoms have been violated [10].

Administrative and procedural protection of violated rights of citizens, participants to proceedings on administrative offences and in administrative proceedings, despite the fact that it has been and remains the object of attention of scholars and practitioners, is still "somewhat young", the reasons for which are the relatively new legislation on administrative proceedings in Ukraine, as well as legislative "injections" supporting the application of the Code of Administrative Offences and other regulatory legal acts.

The issue of appealing decisions on citizens' appeals in the administrative (out-of-court and court) procedure was considered by V. B. Averyanov, O. M. Bandurka, Y. P. Bytyak, I. P. Holosnichenko, E. V. Dodin, V. K. Kolpakov, A. T. Komziuk, O. V. Kuzmenko, T. O. Kolomoyets and others. At the same time, the subject of our consideration is to clarify the essence of interpretations of terminology which is directly or indirectly related to appeals of individuals and legal entities regarding violation of their rights and freedoms, as well as administrative and procedural procedures for their restoration and protection.

As already mentioned, the instance of administrative (extrajudicial) protection of violated rights and freedoms by appealing against actions or omissions of public authorities and their officials is provided for in Article 55 of the Constitution of Ukraine. In addition, Article 55 of the Constitution guarantees every citizen the right to appeal to the courts against violations of their rights and freedoms.

Mandatory requirements for administrative appeals against decisions, actions or omissions of public authorities are: the subject and grounds for appeal, the timeframe for acceptance and resolution of the issues raised in the complaint; the procedure for registration and consideration of the complaint; personal reception of citizens; responsibility for violation of the existing procedure for administrative consideration of the complaint and control over its implementation [11, p. 383].

In addition, Article 267 of the CUAO provides for the right of citizens to appeal against measures to ensure proceedings in cases of administrative offences. This applies to violations of citizens' rights during:

- administrative detention;
- personal search and inspection of belongings, as well as seizure of documents, including a driver's licence;
- temporary detention of a vehicle; suspension of drivers from driving vehicles, sea, river, small sports vessels or jet skis;
- examination for alcohol, drug and other intoxication;
- being under the influence of drugs that reduce attention and reaction time.

We would like to draw attention to the fact that the list of violations committed by authorised officials under the provision of interim measures in Article 267 of the Code of Administrative Offences requires a certain generalisation of interim measures in order to avoid their further expansion, which tends to occur in the case of certain types of administrative offences.

O. F. Andriyko and V. L. Naumov, studying the general legal principles of appeal by citizens in the administrative (out-of-court) procedure, define it as a procedure established by the laws of Ukraine and by-laws for the protection of rights, freedoms and legitimate interests of persons violated by decisions, actions or inaction of executive authorities, which is carried out by filing complaints – written or oral at a personal reception and provides for the obligation of certain officials to respond and make decisions on the merits of the issues raised within the established time limits [11, p. 382].

O. M. Bandurka and N. M. Tyshchenko note that citizens' appeals are of both individual and public nature. Despite the different content of information contained in citizens' appeals, it has common features. Among them:

1) appeals reflect the state of affairs in certain spheres of society and, accordingly, the state of executive activity of public authorities or their officials;

2) the obligatory recipient of the information contained or expressed in citizens' appeals is a representative of executive authorities and local self-government bodies;

3) the information contained in citizens' appeals should, after its consideration, have appropriate legal consequences [12, p. 336].

According to O. V. Kuzmenko, a common feature of citizens' appeals is a reflection of the state of affairs in the relevant area of public life and its individual links. They give an idea of the functioning of state and local self-government bodies [13].

Review of cases on administrative offences is one of the stages of proceedings on administrative offences when a court (judge) has made a decision (ruling) on the case [14, p. 202].

It is at this stage of proceedings on administrative offences that the legislator allows the participants in the case to file a complaint within the established time limits against the legal consequences of the decision in the case. It is worth noting that consideration of cases on administrative offences is not mandatory, it is carried out only in cases where there are procedural grounds for this [14, p. 203].

Procedural grounds for reviewing a court (judge) decision on an appeal filed by an applicant may include;

- complaint of the person in respect of whom the decision in the case was made;
- complaint of a person who suffered from an administrative offence committed against him / her;
- protest of the prosecutor against the decision made in the case in order to ensure the legality of the application of measures of influence for administrative offences (Article 7 of the CUAO);

4) discretion of a higher executive body<sup>9</sup> or official), as well as the court (judge) that made the decision in the case.

Military personnel and law enforcement officers have a separate restriction on their ability to apply. These restrictions relate to their official activities [15, p. 37].

Also noteworthy are the grounds and procedure for processing appeals of individuals and legal entities to law enforcement agencies of other countries on the prevention, detection and investigation of crimes. According to O. Bandurka, this procedure is determined by a special instruction agreed with the Prosecutor General's Office of Ukraine and announced by an order of the Ministry of Internal Affairs of Ukraine. Thus, according to this instruction, requests for legal assistance in criminal cases are sent by the Prosecutor General's Office of Ukraine through the Ministry of Foreign Affairs of Ukraine to the central justice authority (prosecutor's office) of a foreign state, unless otherwise provided by bilateral or multilateral agreements to which Ukraine is a party [16]. It should be noted that consideration of such appeals by Ukrainian citizens and legal entities is usually lengthy and depends on the relations between the countries regulated by national legislation. Article 55 of the Constitution of Ukraine stipulates that everyone has the right to apply for the protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant [17].

It is worth noting that in proceedings on administrative offences, the right to appeal against other participants in the proceedings is not fully exercised. This applies to: witnesses (Article 272 of the CUAO); expert (Article 273 of the CUAO); interpreter (Article 274 of the CUAO); Victim (Article 269 of the CUAO); legal representatives, representatives (Article 270 of the CUAO); defense counsel (Article 271 of the CUAO), prosecutor (Article 250 of the CUAO) are a guarantee of ensuring the citizen's appeal by the state.

According to Article 289 of the Code of Administrative Offences, the time limits for appealing against a court decision are as follows:

*On the instance consideration of citizens' appeals for the protection of constitutional rights and freedoms...*

– 10 days from the date of issuance of the decision on administrative offences (i.e., citizens have the right to appeal against decisions issued by courts (judges) on almost all offences under Chapters 5-15 “A” of the CUAO, except for administrative offences that are appealed against from the date the court decision enters into force;

– 10 days from the date of entry into force of the decision on administrative offences.

Based on the peculiarities of committing administrative offences on transport (Chapter 10 of the Code of Administrative Offences) and the current possibilities of recording them, the time limits for appealing against the decisions on the case provided for in Article 289 of the Code of Administrative Offences should be reduced to 5 days. A similar reduction of the time limit for consideration of an appeal to five days against a decision on an administrative offence considered by the competent authorities (officials) under Article 292 of the CUAO.

It is also worth considering the appropriateness of the provision in Article 289 of the Code of Administrative Offences that if a complaint against a resolution is filed simultaneously with a higher executive body, an official and a court, the complaint must be considered by the court.

The instanced sequence of appealing a court (judge) decision by filing an appeal, which is submitted directly to the court of appeal, is described in Article 288 of the CUAO, which provides for the procedure for appealing a decision on an administrative offence. Analysing the content of Article 288 of the Code of Administrative Offences, it can be noted that this article of the Code of Administrative Offences provides for the right of participants to appeal against a decision on an administrative offence in the manner prescribed for filing the first complaint, as well as for further appeal to the court of appeal of a higher instance. Thus, in accordance with Art. 221-1 of the Code of Administrative Offences, the decision of a judge of the Supreme Court, adopted as a result of consideration of such a case, may be appealed to the Criminal Court of Cassation and reviewed by a panel of three judges [6].

As we can see, the possibilities for citizens to appeal against unlawful actions or omissions include administrative (out-of-court) and judicial review of appeals. One of the first requirements of 1991 in paragraph 9 of the Resolution of the Plenum of the Supreme Court of Ukraine “On the Tasks of the Courts of Ukraine” No. 1 of 22.02.1991, which refers to ensuring timely and correct consideration by the courts of cases on citizens' complaints against resolutions of other bodies and officials on imposing administrative penalties, bearing in mind that consideration of such cases is an important means of restoring the violated right and strengthening law and order, remains important today [18].

**Conclusions.** Summarising the consideration of issues related to the instance of consideration of citizens' appeals on violation of their rights and freedoms by appealing against unlawful actions or omissions of authorized public authorities (officials), the following conclusions can be made:

1. The main legal act providing for the rights, freedoms and legal instruments for their protection is the Constitution of Ukraine, as well as the Code of Ukraine on Administrative Offences, the Code of Administrative Procedure, other national and international acts.

2. The broad scope of appeals to public authorities for protection of violated rights and freedoms indicates guarantees of their enforcement in administrative (out-of-court) and judicial proceedings. The jurisdictional activity of public authorities when considering citizens' complaints about violated rights and freedoms has an instance (level) level, which is a condition for observance of the rule of law and other principles enshrined in the Constitution.

3. The current Code of Ukraine on Administrative Offences needs to be updated, in particular in terms of appealing against decisions on administrative offences.

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### **ПРО ІНСТАНЦІЙНИЙ РОЗГЛЯД ЗВЕРНЕНЬ ГРОМАДЯН ЗА ЗАХИСТОМ КОНСТИТУЦІЙНИХ ПРАВ І СВОБОД В УКРАЇНІ**

У статті проаналізовано складові елементи звернень громадян. Досліджено види звернень та способи їх вирішення органами державної влади та їх посадовими особами в межах наданих їм законодавством повноважень. Розглянуто підстави і порядок оформлення звернень фізичних і юридичних осіб до правоохоронних органів інших країн з питань запобігання, розкриття та розслідування злочинів. У статті зроблено висновок, що широкий за обсягом вид звернень до органів державної влади за захистом порушених прав, свобод свідчить про гарантії їх забезпечення в адміністративному (позасудовому) і судовому порядку. Юрисдикційна діяльність суб'єктів владних повноважень під час розгляду скарг громадян на порушені права, свободи має інстанційний (ступеневий) рівень, що є умовою дотримання законності та інших принципів, закріплених в Конституції.

**Ключові слова:** громадянин; звернення; інстанція; адміністративний розгляд; постанова по справі.