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CONSTITUTIONAL RIGHT TO COMPLAIN AS A FORM OF DEMOCRACY

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*In the article in the process of substantiation such basic components of the constitutional right of citizens to complain (as forms of manifestation of democracy) as legal and social content are indicated; as well as its functions; which are law enforcement; social control; the ability to express their own opinion on a particular issue. **The aim and objectives of research.** Article 3 of Constitution of Ukraine states that human; his life and health; honor and dignity; inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms determine the content and direction of state activity. This means that the personality of a human is a value not only for himself but for the whole society. The Constitution and the rights and freedoms of human and citizen are a manifestation of democracy in Ukraine. The purpose of this article is an attempt to point out the basic directions of solving problems of the constitutional right to complain as a form of expression of such form of democracy. **Materials and research methods:** comparative legal; sociological; historical; logical; dialectical. **Results:** the analysis shows; that the current legislation; while establishing the right of citizens to a complaint; provides different legal regimes for its securement; knowledge and understanding of which will enable to implement this constitutional right in practice. **Discussion:** In this article; the authors propose to discuss the main issues on the problems of general and special complaint; criteria for their differentiation.*

Keywords: appeal; citizen; complaint; human; legal state; person; personality; proposal; rights and freedoms; social state

1. Introduction: in the article in the process of substantiation such basic components of the constitutional right of citizens to complain (as forms of manifestation of democracy) as legal and social content are indicated; as well as its functions; which are law enforcement; social control; the ability to express their own opinion on a particular issue.

Analysis of recent research. Different aspects of the constitutional right to complain were and remain the subject of scientific interest and they are investigated by: V. Babkin; V. Zabigailo; A. Zaets; O. Zaychuk; M. Kozyubra; A.Kozlovsky; E. Kubko; E.Nazarenko; V.Opryshko; M.Orzich; V.Pogorilko; O.Petryshin; P.Rabinovich; I.Rymarenko; V. Selivanov; S.Slivka; O. Skakun; V.Tatsiy; E.Tihonova; N.Onishchenko; M.Tsvik; V. Shapoval;

Y. Shevchenko; Y.Shemshuchenko; V. Shkoda; L. Yuz'kov and others.

The aim and objectives of research. Article 3 of the Constitution of Ukraine states that human; his life and health; honor and dignity; inviolability and security are recognized in Ukraine as the highest social value [1]. Human rights and freedoms determine the content and direction of state activity. This means that the personality of a human is a value not only for himself but for the whole society. The Constitution and the rights and freedoms of human and citizen are a manifestation of democracy in Ukraine. The purpose of this article is an attempt to point out the basic directions of solving problems of the constitutional right to complain as a form of expression of such democracy.

Materials and research methods: comparative legal; sociological; historical; logical; dialectical.

Results: the analysis shows; that the current legislation; while establishing the right of citizens to a complaint; provides different legal regimes for its securement; knowledge and understanding of which will enable to implement this constitutional right in practice.

Discussion: of problems; general and special complaint; criteria for their differentiation.

2. Formulation of the problem. The modern transformation of the Ukrainian state into a democratic and socio-legal require appropriate conceptual and methodological support. To solve this problem; understanding of the phenomenon of the rights and freedoms of citizens as an essential principle of a democratic state of law becomes fundamentally important.

Fixing the right to a complaint on the constitutional level is evidence that Ukraine wants to be a democratic; social legal state; and that the priority of a person as the highest social value (“a person for the state” opposite to “a state for a person”); the naturalness and integrity of human rights and freedoms indicates Ukraine's recognition of the European spiritual and humanistic tradition in the doctrine of the state and the law.

The constitutional right of citizens to a complaint is a subjective right. However; it is implemented by a person not only in order to meet personal; subjective interests; but also in order to protect the interests of others; as well as public interests. Therefore; from our point of view; this right is an instrument; more precisely; a form of democracy's manifestation; “a dynamic system of relations; which concentrates not only on the supremacy of the people's power; but also ensures the realization of its state-law status - national sovereignty; manifestation of which is largely determined by the “triggering” mechanism of democracy” [2].

According to S.S. Alekseyev's point of view; by its structure; the right to a complaint may consist of powers of three main types: a) the right to demand; b) the right to positive actions; c) harassment [3]. In our opinion; this affirmation is true. The content of the the right to demand is the ability to require performance or compliance of legal obligations. The content of the right to positive actions is the ability to make active actions; which are legally significant. Unlike the right to demand this right is a right not to someone else's actions; but to oneself's actions; to such permitted behavior; which primarily concerns the authorized person: the vital interest is satisfied through acts of action of an active (positive) character [4].

Based on this; during the analysis of the content of the subjective right to complain; one can distinguish (along with the legal) its purely social content; which means the measure of possible behavior of citizens; aimed at achieving the goals associated with the satisfaction of its interests. In fact; this means that all legal parameters constituting the content of the right of citizens to a complaint; at the same time; are programmed to meet social interests; and thus they are the spokesperson for the power of the citizens of Ukraine - the people's power.

The content of the right of citizens to a complaint; as a form of manifestation of democracy; is stipulated due to the fact that it has a legal; constitutional nature. Its value lies precisely in the fact that this right provides each citizen with the use of the social good and allows him to satisfy the relevant interests. For this reason; the content of the right to a complaint is concrete and determined by the Constitution of Ukraine itself. Art. 55 guarantees the right to appeal to a court decisions; actions or inactivity of state bodies of local self-government bodies; officials and officers. Such content of the constitutional norm means that the citizen has the opportunity to appeal any action of the indicated subjects.

Specificity of the content of the right to a complaint; which fixed by the Basic Law; also defines its scope. One can say that the Constitution points to the total amount of the right to a complaint; but such universality implies stability; i.e. programmed for a long time use. And if the actual possibility of the right to a complaint is reflected in the current legislation; then we can say that the volume of this right is specified by sectoral legislation. Consequently; constitutional regulation gives the main; guiding reference points; which are then transformed into detailed regulation through the current legislation. The corresponding rights and freedoms in view of the phenomenon of the Constitution are primary in relation to the state mechanism; by its very existence; establishing the boundary of its functioning [5].

The constitutional possibility of appealing is specified in the current legislation in relation to many life situations; however this possibility does not reduce the right of citizens of Ukraine to complain; which is stipulated in the Constitution. Thanks to such concretization; its significance and value for citizens are confirmed. In this regard; the Law of Ukraine “On Citizens' Appeal”; dated from October 2; 1996 and the Law of Ukraine “On the Constitutional Court of Ukraine” dated from July 13; 2017; are of particular importance. Accordingly; this

law establishes; that a written petition to the Court on the verification of compliance with the Constitution of Ukraine (constitutionality) of the law of Ukraine (its separate provisions) submitted to the Court by the constitutional petition applied in the final court decision in the case of the subject of the right to a constitutional appeal. The subject of the right to a constitutional complaint is a person; who considers that the law of Ukraine (its separate provisions) used in the final judicial decision in her case is contrary to the Constitution of Ukraine. The entities of the right to a constitutional complaint do not include legal persons of public law. Thus; they specify the legal possibility of citizens to complain to the court of actions (inaction) and decisions of bodies of state power; local self-government; officials committed with a violation of the law. These laws filled the legal guarantee of social security.

Since the constitutional right of citizens to complain; as a form of manifestation of democracy; reflects a significant; rather substantial relationship between state and citizen; because it is ensured by the responsibilities of state institutions and officials; this means that the disclosure of the content of the right to demand is possible only through an analysis of such responsibilities. An analysis of the content of constitutional rights is impossible without disclosing the state's obligations to these rights. In the broadest sense; the state's duty to protect citizens' rights to complain is enshrined in Article 8 of the Constitution of Ukraine; which states that the principle of the rule of law is recognized and in force in Ukraine.

The norms of the Constitution are rules of direct action. And if the state does not provide the interests of a society that is to meet the interests of a person; the meaning of the constitutional right to a complaint will be lost. After all; this right makes sense only to the extent that it serves the satisfaction of the citizen's interests. This; in turn; stipulates the right of citizens to demand from the state provision through its bodies and officials of the consideration of complaints and the right to satisfy their rights and legitimate interests. That is; the change in the philosophy of power should take place through a change in values: "not a human for the state; but a state for a human" [6].

The content of the right of citizens to complain; as a form of manifestation of democracy; is not unchanged – on the contrary; it is constantly changing. Therefore; in the process of its characteristics it is necessary to pay attention to the directions of development of this right. In the process of development of social relations in the

territory of Ukraine; new factual possibilities of realization by citizens of the right to complain of actions and decisions of bodies; institutions; and their officials will emerge. Thus; at each particular stage of development of society; the content and scope of the right to a complaint is not the same and is determined by the actual possibilities of appeal in this period.

An important factor in understanding the right of citizens to complain; as a form of manifestation of democracy; is an analysis of its functions. Under the functions of the right of citizens to a complaint; it is necessary to understand its meaning and role in the system of social relations on the territory of the state.

The first function of the investigated law is the law enforcement function. This right for citizens; as a form of manifestation of democracy; is also a means of protecting rights; freedoms and legitimate interests. In the process of developing democracy; its traditions; being constitutional; it strengthens its law-enforcement function; which is a natural phenomenon.

Today there is a need to increase mutual responsibility of citizens to the state and the state before citizens. In such conditions; the state must improve the mechanism of protecting the rights; freedoms and interests of citizens; which should manifest itself in expanding the methods of protection. Consequently; any normative act about their rights and freedoms can only be sufficiently complete and unified if it includes norms regulating in detail the procedure for appealing against unlawful and unjust actions by citizens in the event of violation of their rights. Thus; Article 12 of the Law of Ukraine "On Citizens' Appeals"; entitled "Scope of this Law"; notes that the operation of this Law does not apply to the procedure for consideration of applications and complaints of citizens established by the criminal procedural; civil procedure and labor legislation .

Given these circumstances; lawyers distinguish two types of complaints and call them "general" and "special". "General" complaint is defined by the Law of Ukraine "On Citizens' Appeal" and this is "... the absolute right of a citizen; which can be used throughout the conscious life; in the presence of any violation of the law and violations of rights and interests in the activities of state and non-governmental organizations" [7].

The right of citizens; whom they see; can not be limited by subordinate acts and is independent of actions of state and public organizations; their officials; it is not limited in form and content. The "special" complaint is determined by the criminal

procedural; civil procedure; labor; administrative-procedural; customs legislation of Ukraine.

The main elements (criteria) that are defined by law and which divide these two types of complaints are:

- a) the subject of a complaint;
- b) individuals; who entitled to file a complaint;
- c) the entities entitled to examine the complaint;
- d) the procedure for handling complaints;
- e) the consequences of complaints.

To serve as a means of protecting the rights and legitimate interests of citizens is one of the main functions of the right to complain in society. A citizen; referring to a complaint about the protection of the violated law; informs the competent authorities and officials of facts which; in his opinion; are negative in the work of the relevant institutions; causes the violation of his rights and legitimate interests; and requires their elimination. Of course; not every complaint is substantiated; that is; with an indication of valid; not fictitious violations of rights and interests. Very often it depends on the legal education of citizens. But it is important that in any case; by means of the right to complain; a citizen verifies compliance of the behavior of organizations and officials with the scale of behavior established for them in order to detect and prevent possible abnormalities.

The right to complain; as a form of manifestation of democracy; is an important means of social control; which is one of the manifestations of citizen participation in the management of public social affairs.

Understanding of citizens of named is not only a means of protecting rights and legitimate interests; but also a means of social control; is of great practical importance. That is; those complaints of citizens; which reflect the shortcomings of the present in the activities of bodies; officials; and not those that took place several years ago; are of particular significance. And if in such cases the right of citizens to complain and serves as a means of protecting rights and legitimate interests; then as a means of social control; it largely loses its value.

Since social relations are changing rapidly; their moral; legal and other parameters also change. The disadvantages of the past are not always relevant today; and therefore can not serve as a "point of support" for improving the social relations of the present. If the right of citizens to complain acts as a means of social control; regardless of which citizen's complaint it will be implemented - in justified or unjustified; then only with substantiated complaints it is possible to speak about this right as a means of eliminating deficiencies in the work of the authorities and their officials. It is the fact of the

restoration of the violated rights or legitimate interests that restoration of legality and justice.

If the right of citizens to complain is a means of eliminating shortcomings in the work of institutions; their officials; then the correct; systematic analysis of complaints that enter these bodies will reveal the nature and causes of deficiencies. Their sequential elimination will reduce the incoming complaints to the relevant authorities. At the same time; it is important not to allow a gap between the desire to reduce the number of complaints of citizens and the right choice of means to achieve this goal. For example; instead of a skilled analysis of incoming complaints and relevant conclusions; to improve the criteria for their statistical record-keeping; namely; those complaints that were previously considered as substantiated; considered by some new criteria as unfounded.

The right to a complaint; as a form of manifestation of democracy; performs another very important function in a democratic society. For every citizen; it is an important means to freely express their thoughts. For organs; institutions; organizations; it serves as a source of information about the needs; interests; mood of citizens; is a means of identifying public opinion.

In writing a complaint; a citizen is not bound by any restrictions on its content. Not very important; the legal claims of the person who wrote the complaint are substantiated or substantiated. In a complaint; a citizen freely expresses his opinion about those phenomena in public life with which he does not agree; which he considers illegal; violating his rights and legitimate interests.

In the conditions of the development of democracy; the potential of citizens' complaints increases; and the number of citizens who are interested in protecting their right; legitimate interest; preventing recurrences of violations of laws; and not assuming manifestations of negative phenomena increases. Often they raise issues of a social nature. Their analysis should become a stimulating factor in the work of institutions and officials of different levels. The quality of such analysis very often depends on the competence and even the interest of the employees who are engaged in this work.

Today; on the basis of the fact that the scope and significance of the right of citizens to complain as a form of manifestation of democracy is increasing; another function of its function is to be a means of citizen participation in the management of state processes.

In realizing the right to a complaint; citizens exercise social control over the activities of

enterprises; institutions; organizations; officials; and help eliminate the shortcomings in their work; which is a manifestation of their participation in management. In realizing this right; citizens thus express a public opinion about various social problems; and if such an opinion is properly recorded and analyzed; then it will become an important channel of management activity.

If the right of citizens to complain; as a form of manifestation of democracy; to consider personal law; such as the right to inviolability of the individual; housing; the secrets of correspondence; etc.; then it means recognizing that in the dialectic combination of personal and social interests in the content of the foreground the personal; individual interest of a citizen. Therefore; the task of society and citizen is to create; including by legal means; a reliable mechanism for the protection of this personal interest from both individuals and officials.

In scientific legal literature; "democracy" is sometimes equated with popular sovereignty [8]; democracy [9]; and so on. However; according to N. Kondakov; in contrast to the real; reflecting the essential features of an object or phenomenon; nominal definitions may also be false [10]. However; according to the legislation complaint is a form of people's power and the form of public control; which is carried out by citizens of Ukraine; associations of citizens. It is expressed in constitutional law to receive and obtain information on state power activities and direct the appeal (proposals (remarks); statements (petition); complaints) to the authorized bodies of state power. The obligation of addressees of the appeal is timely consideration of the substance and taking appropriate measures [11-12].

For instance; the means of public control is the right to appeal to the court decisions; actions or inactivity of state authorities; local self-government bodies; officials and officers in accordance with Part 2 of Article 55 of the Constitution of Ukraine.

Therefore; "if the state and disappears; sovereignty of the people together with it does not disappear. It is from sovereignty that it derives from its right to self-determination and the creation of a new state; and; accordingly; the ability and sovereign power of the people to form a state; its organs ... its responsibility to society" [13]

The people are the source and bearer of sovereign power in a democratic state. The modern stage of civilization recognizes human rights in all their dimensions as the highest social value. For the most complete embodiment of them; the people are registered in a state that is its public authority [14]. The right to complain is the form of democracy and

it is the inalienable right of a citizen which is not "granted" by the state; but is his natural law.

If this right; as a form of manifestation of democracy; is considered political; it can be noted that there is a public interest in its content; which is combined with the personal interest of a citizen in participating in the management of the affairs of the state and society. Democratic rule-of-law should be interested in the participation of citizens in such management; because it is an incentive to develop democratic social relations; firstly; and secondly; also a way to protect the rights and freedoms of man and citizen.

The constitutional right of citizens to appeal; ensuring the personal interest of an individual in protecting the violated right or legitimate interest; ensures direct participation of citizens in the management sector. Each realized complaint of a citizen - it is not only the protection of violated law and legitimate interest; but at the same time correcting deficiencies; preventing violations of law; the real fact of taking into account the point of view of an individual; his participation in the management of enterprises; institutions; organizations. It must be said that the participation of citizens in the managerial sector through the appeal is of a specific nature.

3. Conclusions. The right to complain arises from a citizen as a reaction to unlawful acts that infringe on his rights and legitimate interests. Consequently; it is implemented in law-enforcement relations. With the help of these relationships; negative; unlawful phenomena in the work of bodies; enterprises; institutions of organizations and officials are canceled. Recognizing the right of citizens to complain of this property; as a way of protecting rights and freedoms; poses a qualitatively new task to scientists; namely the creation of a mechanism for the realization of this right

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Конституційне право громадян на скаргу як форма прояву народовладдя

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У статті в процесі обґрунтування конституційного права громадян на скаргу як форми прояву народовладдя; вказані на такі його основополагаючі складові як правовий та соціальний зміст; а також його функції – правоохоронну; соціального контролю; можливість висловити власну думку по тому чи іншому питанні. **Мета та завдання статті:** Ст.3 Конституції України стверджує; що людина; її життя і здоров'я; честь і гідність; недоторканність і безпека визнаються в Україні найвищою соціальною цінністю. Права і свободи людини визначають зміст і спрямування діяльності держави.. Це означає; що особистість людини є цінністю не тільки для себе; але і для всього суспільства. Надані Конституцією права та свободи людини і громадянина є проявом народовладдя в Україні. Метою даної статті є спроба вказати на основоположні напрямки вирішення проблем конституційного права на скаргу як форми прояву такого народовладдя. **Методи:** порівняльно-правовий; соціологічний; історичний; логічний; діалектичний. **Результати:** проведений аналіз показує; що діюче законодавство; встановлюючи право громадян на скаргу; передбачає різні правові режими його забезпечення; знання і розуміння яких дасть можливість на практиці реалізувати дане конституційне право. **Обговорення:** в даній статті автори пропонують до обговорення основних положень щодо проблем загальної і спеціальної скарги та критеріїв їх розмежування.

Ключові слова: громадянин; звернення; людина; особа; особистість; права та свободи; правова держава; пропозиція; соціальна держава; скарга.

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Конституционное право граждан на жалобу как форма проявления власти народа

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В статье в процессе обоснования конституционного права граждан на жалобу как формы проявления власти народа; указаны такие его основополагающие составляющие как правовое и социальное содержание; а также его функции – правоохранительную; социального контроля; возможность высказать собственное мнение по тому или иному вопросу.

Цель и задачи статьи: Ст. 3 Конституция Украины утверждает; что человек; его жизнь и здоровье; честь и достоинство; неприкосновенность и безопасность признаются в Украине самой высокой социальной ценностью. Права и свободы человека определяют содержание и направленность деятельности государства. Это означает; что личность человека является ценностью не только для себя; но и для всего общества. Предоставленные Конституцией права и свободы человека и гражданина являются проявлением народовластия в Украине. Целью данной статьи является попытка указать на основополагающие направления решения проблем конституционного права на жалобу как формы проявления такого народовластия. **Методы:** сравнительно-правовой; социологический; исторический; логический; диалектический. **Результаты:** проведенный анализ показывает; что действующее законодательство устанавливая право граждан на жалобу; предусматривает разные правовые режимы его обеспечения; знание и понимание которых даст возможность на практике реализовать данное конституционное право. **Обсуждение:** в данной статье авторы предлагают к обсуждению основных положений по проблемам общей и специальной жалобы и критериев их разграничения.

Ключевые слова: гражданин; жалоба; личность; обращение; права и свободы; правовое государство; предложение; социальное государство; человек.

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