

Establishing of constitutional complaint institute in Ukraine

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Twenty years formation process of Ukraine as a legal state under conditions of public relations dynamic development has led to an aggravation of discussions on the necessity of constitutional reform. With all this, the question of the constitutional complaint in Ukraine as the way of improving of the human rights protection mechanism, consolidation of law dominion leading principles, mutual responsibility of an individual and state, and also the problem of its further implementation in the legislation of Ukraine accordingly to European models of man and citizen rights and freedoms need consideration.

The purpose of this study is to determine the main problems of the introduction of a constitutional complaint in the Ukrainian national legal system, resolution of which will improve the mechanism of protecting a person's rights protection.

The problem of necessity to consolidate the constitutional complaint institute at the constitutional level as a prerequisite for its implementation is reflected in the works of home scientists and constitutionalists M.Gultay, A.Golovin , I. Bakirov, P.Yevhrafov, M. Savenko and others. Nevertheless, some aspects of the constitutional complaint institute implementation problems in Ukraine are not studied. Most scholars approve the idea of constitutional complaints institute establishing in Ukraine, but alongside there is currently a range of issues that require theoretical development as early as in the process of implementation of the institute in Ukrainian legislation. A. Golovin says, "The objective reasons primarily include the complexity of organizational issues that must be resolved. In particular, the introduction of a constitutional complaint institute requires amendments to the Constitution of Ukraine and relevant laws, which should be attached with legal consequences of this introduction. The subjective reasons include theoretical uncertainty of the role and place of the constitutional complaint". One of the most important issues is the problem of definition of the constitutional complaints institute in Ukraine as there exist a variety of concepts directly taking into account international experience in the institute functioning of the leading countries in Europe. I. Bakirova believes that all that is now beyond the jurisdiction of the national system of general jurisdiction courts should be a subject of constitutional complaint. Indeed, challenging the constitutionality of acts of the constitutional complaint procedure is the most common and required by

law in most countries. This pattern is typical for Germany, where in addition to the laws a person has the right to appeal both the general and personal acts of administration, and the action or inaction of the executive. The subject of constitutional complaint can be considered in range of public relations related to the violation of constitutional rights and freedoms of a man and a citizen. This concept is successfully operating in the legislation of Spain, where the subject of the complaint is the protection of the fundamental right that has been violated by the Government legislative act. The problem of clearly defining the agents entitled to constitutional complaint should also be noted. P. Tkachuk believes that the rights of the subject to an appeal with a complaint to the Constitutional Court should empower citizens, foreigners, stateless persons and legal entities. Thus, foreigners and stateless persons have the right to appeal only if the violation of their constitutional rights and freedoms takes place. Support of the constitutional complaint by the Constitutional Court is also an urgent problem that needs to be addressed by introduction of a constitutional complaint in the Ukrainian legal system. Thus, the introduction of a constitutional complaint, as we believe, is an effective mechanism for improving the protection of a man and a citizen rights and freedoms. It allows to consolidate the leading principles of legal state in Ukraine. Long-term functioning of the constitutional complaint in the leading countries of Europe gives a lot of models of introduction this institution in Ukraine. However, the process should be gradual and deliberate, and consider the issues that arise in the course of its implementation into the national legal system of Ukraine.

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