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завідувач кафедри конституційного, міжнародного та адміністративного права навчально-наукового юридичного інституту Прикарпатського національного університету ім. В. Стефаника, доцент, кандидат юридичних наук, керівник центру дослідження конституційної юстиції Прикарпатського національного університету ім. Василя Стефаника
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**Конституційна скарга як засіб реалізації міжнародних пактів
1966 р. у правовій системі України.
(Constitutional complaint as a means of implementing the
international pacts of 1966 in the legal system of Ukraine)**

In accordance with article 3, paragraph 3, of the International Covenant on Civil and Political Rights of 16 December 1966, each State party to the Covenant undertakes:

1) To ensure that every person whose rights and freedoms as set forth in the present Covenant have been violated shall be provided with an effective remedy, even if such violation has been committed by persons acting in an official capacity;

2) ensure that the right to legal protection for any person in need of such protection is established by the competent judicial, administrative or legislative authorities or any other competent body provided for by the

legal system of the state, and develop the possibilities of judicial protection;

3) ensure that the competent authorities apply remedies when they are provided [1].

The institution of a constitutional complaint was introduced in Ukraine within the framework of constitutional justice to implement this provision. That is why, according to Article 55 of the Law, a constitutional complaint is a written request to the Court to review the compliance of the Constitution of Ukraine (constitutionality) with the law of Ukraine (its individual provisions) used in the final court decision on the subject of the constitutional complaint [2].

The constitutional complaint shall state:

1) surname, name, patronymic (if any) of a citizen of Ukraine, foreigner or stateless person, address of registered residence of a person (for foreigner or stateless person - place of residence) or full name and location of legal entity persons, as well as the number of the means of communication, e-mail address, if any;

2) information on the authorized person acting on behalf of the subject of the right to a constitutional complaint;

3) a summary of the final court decision in which the relevant provisions of the law of Ukraine were applied;

4) a description of the course of consideration of the relevant case in the courts;

5) specific provisions of the law of Ukraine to be checked for compliance with the Constitution of Ukraine, and specific provisions of the Constitution of Ukraine for compliance with which the law of Ukraine is to be checked;

6) substantiation of allegations concerning the unconstitutionality of the law of Ukraine (its separate provisions) indicating which of the human rights guaranteed by the Constitution of Ukraine, in the opinion of the subject of the right to constitutional complaint, has been violated as a result of law;

7) information on the documents and materials referred to by the subject of the right to a constitutional complaint, with the provision of copies of these documents and materials;

8) list of documents and materials attached [2].

A copy of the final court decision in the case of the subject of the right to a constitutional complaint must be certified in the prescribed manner by the court that passed it. I would like to draw attention to the fact that according to Article 77 of the Law a complaint is considered admissible if no more than three months have elapsed from the date of entry into force of the final court decision applying the law of Ukraine (its separate provisions) [2].

According to Article 56 of the Law, the subject of the right to a constitutional complaint is a person who considers that the law of Ukraine (its separate provisions) applied in the final court decision in her case contradicts the Constitution of Ukraine [2].

According to Article 74 of the Law “On the Constitutional Court of Ukraine”, a constitutional complaint is submitted to the Court in the state language. Constitutional complaints are sent to the Constitutional Court by mail or sent directly to the Registry of the Court (hereinafter - the Registry) without collection of state duty [2].

Due to the fact that a significant number of petitions are submitted to the Constitutional Court of Ukraine (as well as to the constitutional courts of other countries) in violation of the Law, the Law and the Rules of Procedure of the Constitutional Court provide for their preliminary processing by the relevant Secretariat. Thus, Article 57 of the Law stipulates that preliminary examination of appeals to the Court is carried out by the Registry. If the constitutional complaint does not meet the requirements of the Law, the head of the Secretariat returns it to the subject of the constitutional complaint. The return of a constitutional complaint does not preclude re-appeal to the Court in compliance with the requirements of this Law [3].

One of the oldest histories of formation and development has the Austrian model of constitutional complaint, which covers the right of

individuals to appeal to the constitutional court all kinds of legal acts, actions or inaction of public authorities that violate their constitutional rights. T. A. Nikolaeva points out that such a complaint in the science of constitutional law is traditionally referred to as "constitutional" (although this definition is correct for any model of complaint to the constitutional court). It has the features of both abstract and concrete complaint in their classical (historical) sense, has a mixed nature. A feature of the Austrian model of constitutional complaint, which distinguishes it from other models of full individual complaint, including constitutional complaint in Germany, is the individual's ability to apply to the Austrian Constitutional Court not only on constitutionality but also legality of acts violating administrative rights guaranteed by constitutional law. Thus, in accordance with Part 1 of Art. 139 and Part 1 of Art. 140 of the Austrian Federal Constitutional Law ("Federal Constitution"), which entered into force on November 10, 1920 and is still in force with the following changes and additions³, the Austrian Constitutional Court hears cases of "illegality of decisions" and "unconstitutionality of laws" at the request of which claims that because of this illegality or unconstitutionality her rights are directly violated [3; p. 30-31].

An important feature of the Austrian model of constitutional complaint is its basis, which is formulated in the Federal Constitution and the Constitutional Court Act as a violation of "rights guaranteed by constitutional law" (Article 144 FCC, paragraph "K" of the Constitutional Court Act). Unlike most European countries, Austrian constitutional legislation does not specify the requirement to violate precisely those rights and freedoms provided by the Federal Constitution as a precondition for filing a constitutional complaint, nor does it specify a closed list. This is probably due to the fact that the Austrian FCC does not contain a separate section specifically devoted to human rights and freedoms. The latter are set out in separate laws, the key of which are: "The Basic Law of the State" On General Rights of Citizens of Kingdoms and Lands Presented in the Imperial Council "of December 21, 1867, which operates in part not contrary to the Federal Constitution, Law" On the Protection of

the Right to Housing ”of October 27, 1862, as well as the Federal Constitutional Law“ On the Protection of Personal Freedom ”of November 29, 1988 [4, p. 132].

References:

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