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**NORMATIVE MODEL OF THE CONSTITUTIONAL COMPLAINT:  
DOMESTIC AND FOREIGN PRACTICE**

The Constitutional Modernization of 2016 provided for amendments to the Basic Law of Ukraine on justice, and subsequently the adoption of the Law of Ukraine «On the Constitutional Court of Ukraine» in a revised version of July 13, 2017. In addition to changing the structure of the Constitutional Court (hereinafter referred to as the Court), which, it is important to note, strengthened the independence of this body (this could include, for example, the transfer of the function of dismissal of judges to the Constitutional Court exclusively by judges of this body, etc.), the long-awaited introduction of the institution of constitutional complaint was the absolute novelty of the reform.

Given the high theoretical and applied importance of this topic, after the introduction of the constitutional complaint and the first decisions taken on the case, the scientific and practical controversy becomes more powerful, since questions arise, in particular, about the introduction of a full model of the constitutional complaint, rather than a normative one, which is in force in Ukraine today. Scientists, such as Yu. Barabash, Yu. Bysaga, D. Bielov, I. Bodrova, V. Gorodovenko, M. Getsko, M. Gultai, P. Yevgrafov, V. Lemak, O. Petryshyn, S. Seriogina, O. Sovgyria, M. Teslenko and others, have paid attention to the problems of introduction in Ukraine and implementation in other states of the institution of the constitutional complaint. Today, a model of full complaint (any person can apply to the Constitutional Court to determine the constitutionality of any legal act adopted against it, as well as if they have exhausted other possibilities to protect their constitutional rights) exists in Germany, Austria, Belgium, Malta, Georgia, Czech Republic, Croatia, and more. The incomplete complaint model (limited appeal) is represented in Poland, Latvia, Armenia, the Russian Federation, and now in Ukraine and others. Undoubtedly, the introduction of a full constitutional complaint in Ukraine will increase the level of responsibility of both law making and law enforcement entities.

In the Guide to Good Practice on National Remedies (approved by the Committee of Ministers of the Council of Europe on 18 September 2013) states among the criteria for evaluating effectiveness that a constitutional complaint may not be effective as a remedy according to Article 35 of the Convention if it concerns only statutory provisions and not decisions of courts, when an appeal is brought against a judgement [1]. In order to objectively consider

any public phenomena, including the new institute of constitutional complaint for Ukraine, to identify and prevent ineffective components in this field, it is worth mentioning some data on foreign practice of constitutional complaint implementation, in particular Poland and Lithuania, and realistically look at the current capabilities of the Ukrainian legal system.

Thus, the judge of the Tribunal of Poland M. Granat emphasised: the broad model of the complaint was rejected because the drafters of the Constitution feared that the Tribunal would in this case be able to interfere with the administration of justice by the courts. The narrow model of the complaint was criticized in legal circles, but still beliefs dominated that a constitutional complaint could not relate to court decisions. In order to avoid the influx of appeals to the Constitutional Tribunal, a complaint can only be directed against a normative act, which became the basis for a specific individual decision. Although a narrow complaint model was introduced in Poland in 1997, it has been successful. The complaint is important for the protection of rights and freedoms. In the future it may be possible and necessary to transform the constitutional complaint into a broad model [2, p. 140, 146]. Thus, the normative model has been operating in Poland for over 20 years, but this country is not yet ready to implement a full complaint model.

The incomplete model of the constitutional complaint also applies in Lithuania. A. Lavinsch points out that in choosing such a model of a constitutional complaint, the legislator relied on the concept that the Constitutional Court should be a «court of law» and not another instance of appeal «over» existing general courts. Here, the authors of the Law have taken into account the negative experience of some countries of the new democracy (post-socialist states), where in the presence of a broad model of constitutional complaint there form tense relations between the Constitutional Court and the courts of general jurisdiction, which may adversely affect the legal system as a whole. In addition, the legislator tried to avoid overloading the Court and all related problems [3, p. 132-133]. Therefore, in both cases, we can distinguish among the general overloads of the Constitutional Court as a consequence of the introduction of a constitutional complaint.

Summarizing the practice of implementing the constitutional complaint institute in Ukraine, the current achievements and prospects in this area, we note the following.

1. Considering a constitutional complaint, the Constitutional Court of Ukraine functions as a «court of law», that is, the Court does not consider individual decisions in the field of law enforcement, but checks the conformity of the law, which became the basis for the decision, to the Constitution of Ukraine. The introduction of a normative model of a constitutional complaint in Ukraine provoked a number of discussions regarding the full realization of the rights of individuals in Ukraine. In agreement with most of the comments in this area and the need to introduce a full model, it is important to evaluate the situation in the country first and foremost. Thus, given the complex political and economic situation in the country, the level of legal education and legal culture of citizens, the quality

of legal services, any reforms, and especially the introduction of a constitutional complaint, should be moderate in nature and be phased, elaborated and legally predicted by professionals.

2. An analysis of the experience of foreign countries (Poland, Lithuania, etc.), which also have a normative model of a constitutional complaint, shows that the Ukrainian legislator has made the right choice, at least in the first stage. Since the beginning of the operation of the constitutional complaint in Ukraine by the Constitutional Court, 10 decisions have been taken (as of April 2020, the first decision was made in April 2019): if to this we add other normative legal acts, besides the laws, as well as enforcement acts, then the Constitutional Court of Ukraine will operate in a «complicated» mode, which is unacceptable, given that the quality of the reasoning of the decisions of the Constitutional Court is of priority, since only in this case constitutional judicial practice on constitutional complaints can become a powerful an instrument of law formation in Ukraine. The introduction of a full constitutional complaint model is an important direction for the development of constitutional modernization in Ukraine, which should move in parallel with political, social, economic reforms, improving the activities of administrative bodies and the judiciary. Only under such conditions is it advisable to implement a full model of a constitutional complaint.

#### **References:**

1. Керівництво з належної практики щодо національних засобів правового захисту (ухвалено Комітетом Міністрів Ради Європи 18 вересня 2013 року). С. 47. URL: <https://rm.coe.int/k-/1680695aab>.
2. Гранат М. Порядок розгляду конституційних скарг у Польщі // Матеріали Міжнародної науково-практичної конференції з питань запровадження конституційної скарги в Україні: збірка тез, м. Київ, 18 груд. 2015 р. Київ: ВАІТЕ, 2016. С. 140-139.
3. Лавіньш А. Модель латвійської конституційної скарги // Матеріали Міжнародної науково-практичної конференції з питань запровадження конституційної скарги в Україні: збірка тез, м. Київ, 18 груд. 2015 р. Київ: ВАІТЕ, 2016. С. 132-139.

**Ключові слова:** Конституційний Суд України, інститут конституційної скарги, повна модель конституційної скарги, нормативна модель конституційної скарги, суспільний інтерес.

**Ключевые слова:** Конституционный Суд Украины, институт конституционной жалобы, полная модель конституционной жалобы, нормативная модель конституционной жалобы, общественный интерес.

**Key words:** Constitutional Court of Ukraine, institute of constitutional complaint, full model of constitutional complaint, normative model of constitutional complaint, public interest.