

Constitutional and Legal Regulation of State Authority Interaction on Citizen Appeals: Foreign Experience

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Abstract: The purpose of this article is to identify the foreign experience of constitutional legalization of the basic foundations of interaction between government bodies regarding citizens' appeals. The study was built based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and private scientific methods. The claimed interaction becomes relevant in modern conditions because that there is the coordination of the interests between an individual and the state in this process that is demanded to strengthen democratic values. Systematization of foreign constitutional experience, which appears in the comparative legal aspect as part of the general human rights theory.

Keywords: Human rights, citizens' appeal, public authorities, principle of interaction, separation of powers, unity of state power.

INTRODUCTION

Appeals of citizens, being a subjective constitutional law (Bruegel 1953; Gregory 1998; Plasser *et al.* 2016; Zhadan 2018) a form of participation in state affair management, a method of violated right protection (Bricker 2017; Kelemen 2017; Mancini 2018; Treskov *et al.* 2020), a source of information about their attitude to the functioning of public structures and the degree of trust in them, affect the nature of state body interaction (Weisman 1994; Slaughter 1995; Gaeva 2016). Moreover, the features of a public addressee along with an appealing content affect the form of the latter (Habermas 2008; Makogon *et al.* 2019). This is confirmed both in constitutional provisions and in diverse norms of substantive and procedural law (Chaptykov 2007; Bâli and Lerner 2017; Makogon *et al.* 2018).

The interaction of state bodies regarding citizens' appeals in modern conditions also becomes relevant because the interests of an individual and a state are demanded in this process to strengthen democratic values. At the same time, by combining the efforts of state bodies, it is possible to achieve a more significant human rights effect, a more comprehensive analysis of the information brought to their attention, as well as to

expand the boundaries of mutual significance understanding by public structures during the problem resolution outlined in the appeals.

Considering the abovementioned arguments, this work is devoted to the determination of the basic foundations of interaction between government bodies in foreign constitutions regarding citizens' appeals. We believe that such basic guidelines are legal norms in the constitutions on the right of citizens to appeal, as well as the principles of unity and separation of state power.

Objectives

The purpose of this article is to identify the foreign experience of constitutional legalization of the basic foundations of interaction between government bodies regarding citizens' appeals.

METHODOLOGY

The study was built based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and private scientific methods. As a focus group, the states with different territorial structures were selected: federal (Austria, Belgium, USA, Brazil), as well as unitary (Spain, France, Romania). The texts of their constitutions are taken from the database of the Internet library "Constitutions of states (countries) of the world" (world constitutions 2020; Varghese, 2016).

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RESULTS AND DISCUSSION

The Austrian Constitution of 1920 formalized the principle of legislative and executive power separation and the separation of legal proceedings from the executive power. According to the Art.24 "the legislative power of the Federation is exercised by the National Council in conjunction with the Federal Council"; the Art. 19 of the Basic Law stipulates that "the highest executive bodies are the Federal President, federal ministers and state secretaries, as well as the members of the land government." Part "B" of the Constitution establishes the foundations of the judiciary. In turn, the Art. 22 of the Basic Law contains provisions that "all bodies of the Federation, lands and communities, within the framework of the competence scope established for them by law, are obliged to help each other. We believe that it is the latter provision that can be regarded as the key basis for the interaction of state bodies regarding citizens' appeals in Austria.

The constitutional court acts as the addressee of citizens' appeals and the subject of interaction with state bodies by the provisions of the Austrian Constitution. This confirms its competence, which includes consideration of all property requirements that are not subject to either settlement in the ordinary court of law or enforcement by a governing body decision (Article 137), as well as the resolution of disputes between courts and governing bodies, the Administrative Court and all other courts (in particular, between the Administrative Court and the Constitutional Court), ordinary and other courts, lands, as well as between the land and the Federation.

In the framework of this study, the seventh section of the Austrian Constitution with the rules on public defense is particularly noteworthy. Let us clarify that without the right of citizens to appeal, there will be no reason for interaction between state bodies on this issue. Consequently, the Art. 148a of the Basic Law: "each person may appeal to the College of Public Rights Protection with a complaint of shortcomings in the implementation of federal administration, including the activities of the Federation as a subject of private law relations, in cases where these shortcomings affect his interests and when he did not have the right to use any means of appeal." At the same time, the indicated collegium, based on the principle of independence, has the right to verify on its own initiative the existence of possible shortcomings in the implementation of federal administration, as well as to assist in the execution of petitions and civil initiatives submitted to the National Council.

The collegium of human right protection can advise to the highest federal executive bodies regarding the measures that need to be taken in a particular case or about a specific case, as well as advice to a competent self-government body or an independent body. "A relevant body is obliged, within the period established by federal law, to either comply with these recommendations by informing the collegium of human right protection or justify in writing why the recommendations were not implemented" (Article 148c). "The lands, based on their constitutional laws, may declare the collegium of human right protection also competent in the field of land administration" (Article 148i).

The direct interaction of the collegium of human right protection with other state bodies is indicated by the Art. 148d of the Austrian Constitution, which enshrines the duty of human right protection collegium, to "report annually on its activities to the National Council and the Federal Council. Members of the collegium of human right protection have the right to participate in the report discussion within the National Council and the Federal Council, as well as within their committees (subcommittees) and to be heard on each request."

Separately the Art. 148b of the Austrian Constitution, determined the norm concerning the obligation of all bodies of the Federation, lands and communities to support the collegium of human right protection during carrying out its tasks, to provide it with the opportunity to get acquainted with the materials and provide, upon request, the necessary information (including information constituting an official secret).

An important place in the system of constitutional legislation of Austria is given to numerous constitutional customary laws, which proclaim several basic human and civil rights, including the right to petition (Article 149 of the Constitution). This fact can be explained by the fact that the Austrian Constitution (1920) did not provide a detailed consolidation of the basic provisions on the rights and freedoms of man and citizen which are generally reflected in several prescriptions. It will be fair to clarify that the non-specific subjective right to petition was already known to the Basic Law of the State in 1867.

Let's note that the Austrian Constitution, in comparison with the constituent acts of other federal states, has the largest number of provisions that

govern the format we have designated for the interaction of state bodies regarding citizens' appeals. Also, let's note that the above set of norms is the most successful in terms of content.

According to the purpose of the study, let's consider the provisions of the Constitution of Belgium (Kingdom of Belgium) issued in 1994. The Art. 28 of the Constitution, namely Part 2 "On the Belgians and their rights", clearly provides the right of everyone to appeal to the public authorities with petitions signed by one or more persons. The wording in the norm "everyone" has an expansive interpretation, however, the inclusion of law in the indicated part of the Constitution allows a subject of law to be interpreted narrowly, meaning only Belgian citizens by it. This position is consistent with the generally recognized name of citizens' appeal institution.

Let us clarify the features of power separation principle reflection in the Belgian Constitution as the legal basis for the interaction of state power regarding citizens' appeals. This principle is not directly fixed in the mentioned act, however, its fragmentary use is revealed in state power structure formulation (part 3 of the Basic Law "On Authorities"). So, the Art. 36 of the Constitution contains the provision that "Federal legislative power is exercised jointly by the King, the House of Representatives and the Senate." The Art. 37 notes that the King also has executive power to the extent determined by the Constitution. In general, executive power is vested in the Government, consisting of ministers appointed and dismissed by the King (Article 96 of the Constitution). At the same time, the norm is fixed separately, according to which "no act of the King can be valid if it is not countersigned by a minister, who thereby is obliged for him" (the Article 106 of the Constitution). In turn, the judiciary is exercised by the courts and tribunals, and decisions and sentences are carried out in the name of the King (Article 40 of the Constitution). The abovementioned provisions confirm the presence of an original model of state power separation principle in the Belgian constitution.

As for the interaction of the legislative and executive authorities regarding citizens' appeals, an interesting constitutional provision should be noted, according to which it is forbidden to submit petitions to the chambers personally and on their own behalf. In this case, each chamber has the right to send the ministers the petitions that were addressed to it, and the ministers undertake to give explanations about their contents

whenever the chamber so requires (the Article 57 of the Constitution). We believe that this norm somewhat limits the fixed right of everyone to petition the public authorities, namely, the chambers of the federal parliament (Baranov 2018, Minasyan *et al.* 2019).

It seems that the Belgian Constitution has formulated the issues of interaction between state bodies regarding citizens' appeals about the judicial branch of government in the most detailed and successful manner. A striking example of this is the Chapter 5 of the Basic Law "On the Arbitration Court, Prevention and Resolution of Conflicts".

To basic norms on the interaction of state bodies regarding citizens' appeals are also contained in Chapter 7 of the Constitution "On the State Council and Administrative Judicial Bodies". So, "there is one State Council for Belgium, which makes decisions through decrees as an administrative judicial body and gives opinions in cases determined by law" (the Article 160 of the Basic Law).

Further, in the context of the topic under study, we consider the provisions of the Constitution of the United States of America (USA) issued in 1787. Due to its political nature, it reveals a classical version of the power separation principle as the basis for the interaction of public structures regarding citizens' appeals. In the United States, the principle of power separation was taken as the basis for state power system development, which under American conditions was transformed into the so-called system of checks and balances. In the Constitution, an organizational division was made between the three branches of state power - the Congress, the President and the Supreme Court, each of which the allowed to act independently within the constitutional framework. Let's clarify that the US Supreme Court clarified the following in the resolution concerning the case United States v. Richard Nixon, delivered in July 1974: "The Constitution not only dispersed power to secure freedom better, but it also assumes that in practice dispersed power is integrated into a whole for effective governance. The Constitution prescribes the branches of power are simultaneously separated from each other and interdependent, be autonomous and interacting with each other" (Padover 1995; Massaro and Milczarek-Desai 2018; Rossum 2018; Epstein and Walker 2019)

The positions enshrined in the Amendment 1 to the Constitution should be recognized as equally significant

with respect to the aspect under consideration: "Congress should not enact laws establishing any religion or prohibiting its free religion or restricting freedom of speech or press or the right of people to assemble peacefully and appeal to the Government with petitions to satisfy complaints." This norm is one of the direct indications of the right of citizens to apply to state bodies.

To continue the analysis of the basic laws of the American continent, let's consider the Constitution of the United States of Brazil (1946). Thus, the Art. 1 of this Act, stated that "the United States of Brazil is the Federation and the Republic based on a representative form of government. All power comes from people and is carried out on people behalf." The highest authorities of the state are the Federal Parliament, the Federal Government, the President, the courts of various levels, including specialized courts (military, election, labor, etc.). However, let's note that the principle of power separation, declared by us as the legal basis for the interaction of state bodies regarding citizens' appeals, does not directly follow from the Constitution text content. Its elements can be traced only in relation to the competence component of state bodies.

As a negative point, let's note that the Constitution under consideration does not contain the right of citizens to appeal or petition. Its absence indicates the lack of constitutional and legal regulation concerning the forms of state body interaction regarding citizens' appeals.

Next, let's turn to the analysis of unitary state constitutions to determine the basic legal basis for the interaction of state bodies regarding citizens' appeals.

The Constitution of the Kingdom of Spain (1978) is of interest because it reflects both Spanish traditions and foreign constitutional experience - normative and doctrinal. To a certain extent, the act of 1978 acts as the synthesis of European constitutional law.

Following the Art. 29 of the Constitution, all Spaniards have the right to submit individual and collective petitions in writing, except for military personnel for whom certain restrictions are established. Also, the constitutional norms under consideration reveal the right to appeal to the Constitutional Court and ordinary courts. Another way to protect the rights of citizens is to appeal to the Public Defender (the Spanish version of the Ombudsman).

Concerning the constitutional and legal regulation of interaction forms between state bodies regarding

citizens' appeals, it should be noted that there is the art. 9, which enshrines the obligation of public authorities to ensure the conditions under which the freedom and equality of individuals and their groups become real and effective.

The direct issues of interaction between state bodies regarding citizens' appeals are also reflected in the following constitutional provisions: Congress and Senate (the chambers of the Parliament of Spain) can receive individual and collective petitions, always presented in writing, as well as transmit the petitions received to the Government, which must discuss its content every time the chambers require it (the Art. 77); the right of authorities and individuals and legal entities to appeal to the Constitutional Court on several grounds, within the framework of established procedures (Article 162) (Ginsburg 2017; Morgan 2017; Zakharov 2019).

The French Constitution of 1958 is of certain interest in the context of this study. The principle of power separation that we have stated as the basis for the interaction of state bodies regarding citizens' appeals is consistently reflected in the following provisions:

- the executive branch and the legislative branch should be separated from each other in such a way that the Government and the Parliament, each for its part, are responsible for the exercise of their powers;
- The government should be accountable to Parliament;
- The judiciary must remain independent to ensure respect for freedoms.

At that, the right to petition (appeal) is not directly enshrined in the Constitutional Acts of France.

The studied constitutional and legal norms concerning the interaction of state bodies regarding citizens' appeals are reflected in Section 8 "On the Judiciary". So, according to the Art. 68-2 of the Constitution, "Any person who considers himself to be affected by a crime or tort committed by a member of the Government during the exercise of his functions may apply to the complaints commission. The aforementioned commission makes a decision either to submit the application to the archive, or to forward it to the Prosecutor General at the Court of Cassation to appeal for the adoption of the case by the Court of the

Republic. The Prosecutor General at the Court of Cassation may also formally submit the relevant opinion of the complaints commission to the Court of the Republic.”

Further, in the context of this study, we consider the provisions of the Romanian Constitution of 1991. This basic law directly enshrines the right of petitions, which is addressed not only to the citizens of the state, but also to organizations, moreover, “public authorities are obliged to respond to petitions within the time and under the conditions established by law” (the Article 47 of the Constitution).

The principle of power separation is consistently enshrined in the Romanian Constitution. Namely: the highest representative body of the state is the parliament, consisting of the Chamber of Deputies and the Senate (the Article 58); executive power is vested in the Government (the art. 101); the judiciary is separated from other branches of government, and the Constitutional Court is recognized as the supreme body of constitutional justice (the Articles 100, 101, etc.). A separate Chapter 2 is devoted to the President (Article 80 of the Constitution).

It should be noted that the following contextual provisions of the Constitution can also be attributed to the considered features of the legal regulation of interaction forms between state bodies regarding citizens' appeals: the President exercises the function of mediation between the state authorities, as well as between the state and society (the Article 80); The Constitutional Court, within the framework of its powers, checks the fulfillment of the conditions by citizens concerning the implementation of legislative initiatives, resolves protests, the subject of which is the constitutionality of a political party (Art. 144), etc.

Thus, the Romanian Constitution reveals a sufficient number of norms that are the legal basis for the interaction of state bodies regarding citizens' appeals.

CONCLUSION

The content of the considered basic laws of the aforementioned foreign states has shown that the principle of state power separation is mentioned in all constituent acts, as one of the basic principles of interaction between state bodies regarding citizens' appeals. However, its substantive characteristics are presented variably.

The studied constitutional acts of modern states tend to direct or indirect consolidation of subjective

and/or collective rights to appeal to public authorities as to the basis for the interaction of these bodies.

In most constituent acts of foreign states, the constitutional and legal forms of state body interaction regarding citizens' appeals are reflected to the powers of the judiciary in a state, and less often to the prosecutor's office (or similar bodies) activities. The constitutions of some states, provide human rights institutions with a special place in the system of state body interaction regarding citizens' appeals.

RECOMMENDATIONS

It is suggested that this legal phenomena and process should be studied in more federal and unitary countries to comprehensively address the subject of this study in its various dimensions. Also, it was suggested to extend the research in the other areas in the comparative way.

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