РОЗДІЛ 1
ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

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HISTORICAL DEVELOPMENT OF THE FORMATION OF THE RIGHT TO PETITION

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The first legal mechanisms for both appeals and court proceedings appeared in the Roman state. The genesis of the development of the institution of citizens' petitions to government agencies is undoubtedly of scientific interest. Some scholars insist that the right to petition to public authorities should be dated to 1215 with the adoption of the Magna Carta. According to another group of scholars, the origin of the right to petition appeared lately, due to the formation of political power. In any case, the right to petition to the public authorities stems from the need to protect the relationship between society and political power long before the election, which created universal suffrage.

The right to petition to public authorities is the foundation of any democracy, because the law studied allows citizens to participate in the management of public affairs and influences the parliamentary agenda.

Key words: right to petition, historical development, ancient Rome, Common Law, Magna Carta, Bill of Rights, First Amendment, constitution, civil procedure code, appeal, universal declaration, international covenants, European convention, parliament.

Presentation of the material. Although some scholars claim that "the right to petition is in itself a fundamental interest of freedom", the concept of the right to petition has only recently emerged in common law jurisdictions[8, 463]. In fact, most authors claim that general legal systems were in no hurry to incorporate the right to petition into their civil or criminal rights[2, 399-402].

At the time of the formation of the traditions of statehood in ancient Greece and ancient Rome, in the first stage of the development of the state as a whole, the courts were a free and independent public and civil body that determined its decision. Over time, with the strengthening of the state, the judiciary developed, making it possible for judicial decisions to be reviewed by central authorities. At this initial stage of development, there was no appellate court and the issue of annulment or reversal of the decision was discussed in the trial court[4, 22].

The first legal mechanisms for both appeals and court proceedings appeared in the Roman state. In the early days of the Roman state, during the formation of the central government, there was no such body to challenge court decisions. In the early stages of the Roman Republic, the process of law-making by Roman citizens took place in two stages: 1) the "in jure" process and 2) the "juducio" process. The In Jure process involved the parties to the dispute and the judge. The judge performed almost no serious function. In this case, the main actions were taken by the plaintiff and the defendant; the plaintiff could satisfy the claim and the defendant could accept or reject the claim. If the defendant did not accept the plaintiff's claims, the case moved from the "in jure" stage to the "juducio" stage, which involved determining the actual validity of the factual evidence presented. This was done by judges elected by the parties themselves from the list of senators. The latter's decision was final and could not be disputed[3, 54].

The genesis of the development of the institution of citizens' petitions to government agencies is undoubtedly of scientific interest. Some scholars insist that the right to petition to public authorities should be dated to 1215 with the adoption of the Magna Carta. Thus, Article 61 of this Charter provides for the sending of complaints to the King and requires the King to respond to the complaints within 40 days (as well as to comply with the requirements for

those complaints). Even non-compliance with the requirements during that period created a risk of uprising and coup in the country[1, 241].

According to another group of scholars, the origin of the right to petition appeared lately, due to the formation of political power. In any case, the right to petition to public authorities stemmed from the need to protect the relationship between society and political power long before the election, which created universal suffrage. It should be noted that the right to petition to public authorities, which has a constitutional right in the modern sense, first appeared in the United Kingdom, but the right to petition has found its legal form in the form of the right to petition. The Bill of Rights of 1689 provided for "the unrestricted right of subjects to appeal to the King," and any arrest or prosecution for this petition was illegal.

The right to petition to public authorities was central to constitutional law and politics in the United States. This right was enshrined in the first amendment to the 1787 Constitution of the United States: "Congress ... shall not enact any law restricting the right of persons to appeal to the Government[7, 69]. It should be noted that the right to petition to public authorities is not unequivocally accepted by most Americans, or if known, the first four (conscience, speech, press, assembly) are considered an extension of freedom and are considered independent by their legal nature.

In the American colonies, the right to petition was formed as a complaint to the local legislature. At the beginning of the 18th century, Americans made various petitions to elected local congregations. The petitions covered a wide range of public and private interests, including religion and the church, slavery, relations with England, debt (public and private) obligations, taxes, state structure, marriage, court decisions, and citizenship. Petitions often set the legislative agenda in the colonies and led to the adoption of new laws. Petitions were also made by women, children and slaves. The elected authorities of the colonies had to consider everyone's petitions.

The bourgeois revolutions of the seventeenth and nineteenth centuries, the emergence of new ideas and concepts for the protection of human rights, as well as the formation of different mechanisms in public administration, also affected the development of the right to petitions.

The next state to establish the right to petitions to the authorities was France at the end of the 18th century. The French Constitution of September 3, 1791, gave everyone, as a natural and civil right, "the freedom to appeal to the authorities established by petitions signed by certain citizens". Accordingly, in the history of this country, the right of citizens to petition has come a long way and has become one of the basic elements of the legal status of a person and a citizen in the developed countries of the world. Thus, in France, the right to petition to public authorities is considered the first political right of a citizen.

In France, as in a number of democracies, the appellate court is subordinate to the general judicial system and was established in 1804 to deal with appellate disputes. According to the French Code of Civil Procedure, the appeal is considered both from a legal and factual point of view.

In France, the concept of appeal appeared at the end of the XIII century, but for a long time the appeal was not a decision, but a complaint against the judge. Beginning in 1667, an appeal was lodged against a court decision, not against a judge. After many attempts, the French Civil Procedure Assembly was adopted in 1806 and entered into force on January 1, 1807. Based on this, several types of courts were established in France, such as appellate and cassation. The above principles of the rules of appeal and cassation are also taken into account in the new French Code of Civil Procedure of 1976[10, 182-186].

As we know, Roman law is the basis of the continental legal system. Compared to France, Roman law had less influence on the development of national law in England. Because of its lack of practical significance, Roman law had some influence on English legal thought. Roman law introduced England to legal terms, legal definitions and concepts, and a number of general concepts of Roman law.

In the English legal system, appeal was established as an institution. This was essentially different from the characteristics of the Continent. English rules, laws, and lawsuits were based on facts. The latter method involved reviewing the jury's verdict, which determined the circumstances of the case. In the UK, this unique system is still maintained to challenge the so-called "British Institute" court decisions.

In the twentieth century, the most important international document establishing the right to petition to public authorities was the Universal Declaration of Human Rights, adopted in 1948. However, the right to petition to public authorities is the same as the right to judicial protection (Article 7); also found in the Declaration.

It should be noted that at the 183rd plenary session held on December 10, 1948, the UN General Assembly stated that the right to petition is an important right for everyone, and that this right is recognized by the basic laws of most states[6]. However, the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 do not directly address citizens' petitions to public authorities.

Of particular interest is the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950. Article 34 of the above-mentioned document states that the court may receive a complaint from any person, any non-governmental organization or any person who claims to be a victim of a violation[5, 14]. However, it should be noted that the European Convention establishes the right to petition only from a procedural point of view, as it determines the procedure for appealing to public authorities in case of violation of substantive rules.

It is interesting to note that the right to petition to public authorities in modern Europe is developing very dynamically, so open and accessible institutions are being created to facilitate dialogue and more active involvement of citizens in political processes. Since the entry into force of the Maastricht Treaty, every citizen of the European Union has the right to petition to the European Parliament in the form of a complaint or inquiry relating to the scope of the Union. The petition is considered by the Parliamentary Application Committee.

The Scottish Parliament is a pioneer in modernizing the exercise of the right to petition to public authorities in Europe, having established an appeals system using information and communication technology in 1999[9, 9].

The application system is based on electronic means. Regardless of the method of sending complaints (by e-mail or regular mail), all appeals are published on the Internet and the review process can be tracked and monitored online. This system works from the moment it is presented and until the final decision is made.

In 2005, the Scottish experience was replicated in the Portuguese and German parliaments. Complaints were prepared electronically in Ireland (2012) and Luxembourg (2014). In 2015, the British Parliament launched a new system for filing complaints with government agencies, which provides for the establishment of a Complaints Committee and the strengthening of electronic appeals.

Thus, in general, we can conclude that the laws of ancient Rome played a special role in the formation and development of the legal space. The legal system there has developed and changed over time, so over time it has formed the basis of the legal system of almost all countries. The earliest historical evidence of the right to petition can be found in ancient Roman law.

The right to petition to public authorities is the foundation of any democracy, because the law studied allows citizens to participate in the management of public affairs and influences the agenda of parliament.

Thus, over the centuries, the legislation on citizens' appeals has been developed and improved, but many important provisions related to the rules of appeal to state bodies and their consideration by officials have not been fully taken into account when drafting normative legal acts.

An analysis of the historical, scientific and legal literature, as well as previous legislation, up to the sources of the laws of the ancient world, allows us to conclude that its form of expression depends on the content of the right to petition to public authorities.

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