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CONSTITUTIONAL COMPLAINT AS A MEANS OF ENSURING CONSTITUTIONAL GUARANTEES OF INTELLECTUAL PROPERTY RIGHTS

КОНСТИТУЦІЙНА СКАРГА ЯК ЗАСІБ ЗАБЕЗПЕЧЕННЯ КОНСТИТУЦІЙНИХ ГАРАНТІЙ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

The article examines the constitutional complaint as an important institutional mechanism for ensuring and protecting the constitutional guarantees of intellectual property rights in Ukraine under the conditions of the development of the information society, economic digitalization, and European integration processes. The relevance of the topic is conditioned by the need to enhance the effectiveness of constitutional and legal protection of intellectual property rights, which are violated not only due to imperfections in law enforcement practice but also due to the existence of legislative provisions that may be inconsistent with the Constitution of Ukraine.

The aim of the study is a comprehensive analysis of the constitutional complaint as a means of ensuring constitutional guarantees of intellectual property rights, determining its role within the system of constitutional review, as well as identifying normative and practical issues affecting the effectiveness of its application, together with the formulation of proposals for their resolution.

The methodological basis of the study includes general scientific and special legal research methods, in particular: the systemic-structural method for analyzing the place of the constitutional

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complaint in the human rights protection mechanism, the formal legal method for examining the provisions of the Constitution of Ukraine and the Law of Ukraine "On the Constitutional Court of Ukraine", the comparative legal method for taking into account European experience of constitutional review, as well as methods of analysis and synthesis for generalizing scientific approaches and the practice of the Constitutional Court of Ukraine.

It has been established that the constitutional complaint is an effective, yet still insufficiently implemented mechanism for the protection of intellectual property rights. The main problems have been identified, including the limitation of its scope exclusively to the laws of Ukraine, the complexity of admissibility requirements, the underdeveloped case law of the Constitutional Court of Ukraine in the field of intellectual property, and the shortcomings in the mechanism for enforcing its decisions. Particular attention is given to the impact of digitalization and emerging technologies on the transformation of intellectual property rights and the need for their proper constitutional protection.

Directions for improving legal regulation have been proposed, including the expansion of the scope of constitutional complaints, the optimization of procedural requirements, the development of consistent case law of the Constitutional Court of Ukraine, as well as the harmonization of national legislation with European standards of human rights protection in the field of intellectual property.

Key words: *Constitutional Court of Ukraine, rule-making policy, human rights, constitutional review, digitalization, legal protection, European integration, legal regulation, law enforcement practice, legal certainty, property rights, rule of law.*

У статті досліджується конституційна скарга як важливий інституційний механізм забезпечення та захисту конституційних гарантій прав інтелектуальної власності в Україні в умовах розвитку інформаційного суспільства, цифровізації економіки та євроінтеграційних процесів. Актуальність теми зумовлена потребою в підвищенні ефективності конституційно-правового захисту прав інтелектуальної власності, які зазнають порушень не лише внаслідок недосконалості правозастосовної практики, а й через наявність законодавчих положень, що можуть суперечити Конституції України.

Метою дослідження є комплексний аналіз конституційної скарги як засобу забезпечення конституційних гарантій прав інтелектуальної власності, визначення її ролі в системі конституційного контролю, а також виявлення проблем нормативно-правового та практичного характеру, що впливають на ефективність її застосування, із формулюванням пропозицій щодо їхнього подолання.

Методологічну основу дослідження становлять загальнонаукові й спеціально-юридичні методи пізнання, зокрема: системно-структурний метод для аналізу місця конституційної скарги в механізмі захисту прав людини, формально-юридичний метод для дослідження норм Конституції України та Закону України «Про Конституційний Суд України», порівняльно-правовий метод для врахування європейського досвіду конституційного контролю, а також методи аналізу й синтезу для узагальнення наукових підходів і практики Конституційного Суду України.

Встановлено, що конституційна скарга є дієвим, однак ще недостатньо ефективно реалізованим механізмом захисту прав інтелектуальної власності. Виявлено основні проблеми, зокрема обмеженість її предмета лише законами України, складність процедурних вимог до прийнятності, недостатню сформованість практики Конституційного Суду України у сфері інтелектуальної власності й недосконалість механізму виконання його рішень. Окремо підкреслено вплив цифровізації та новітніх технологій на трансформацію прав інтелектуальної власності й потребу в їхньому належному конституційному захисті.

Запропоновано напрями вдосконалення правового регулювання, зокрема розширення предмета конституційної скарги, оптимізацію процесуальних вимог, формування сталої практики Конституційного Суду України, а також гармонізацію національного законодавства з європейськими стандартами захисту прав людини у сфері інтелектуальної власності.

Ключові слова: *Конституційний Суд України, нормотворча політика, права людини, конституційний контроль, цифровізація, правовий захист, європейська інтеграція, правове регулювання, правозастосовна практика, правова визначеність, право власності, верховенство права.*

Problem statement. In the context of the development of the information society, the digitalization of the economy, and the strengthening of the role of intellectual activity, proper protection of intellectual property rights as one of the fundamental constitutional rights of a person and citizen is of particular importance. The Constitution of Ukraine guarantees the right of everyone to own, use and dispose of the results of their intellectual and creative activities, however, in practice, the mechanisms for implementing and protecting these rights are not always effective. One of the important tools for ensuring constitutional guarantees of human rights in modern conditions is the institution of constitutional complaint, which provides a person with the opportunity to directly apply to the Constitutional Court of Ukraine in order to verify the constitutionality of the law applied in the final court decision.

The relevance of the study is due to the fact that violations of intellectual property rights are increasingly associated not only with the imperfection of law enforcement practice, but also with the presence of legislative provisions that may contradict constitutional guarantees of protection of property rights, freedom of creativity, and the right to judicial protection. At the same time, the practice of applying a constitutional complaint in the field of intellectual property rights protection in Ukraine is still at the stage of formation, which gives rise to a number of theoretical and practical problems regarding determining the boundaries of constitutional control, the criteria for admissibility of a complaint, and the effectiveness of restoring violated rights.

Analysis of recent research and publications. Analysis of modern scientific research indicates the growing attention of domestic scientists to the issues of constitutional complaints as a tool for protecting human rights and freedoms, as well as to the issues of ensuring effective protection of intellectual property rights in the context of the development of constitutional justice and European integration of Ukraine. At the same time, comprehensive scientific research devoted specifically to the constitutional complaint as a means of ensuring constitutional guarantees of intellectual property rights remains rare, which necessitates further scientific study of this issue.

A significant contribution to the study of the legal nature of the constitutional complaint and its place in the mechanism of human rights protection was made by modern Ukrainian scholars who focus on the transformation of the constitutional complaint into an important element of the national system of constitutional control. In particular, S. Babich defines the constitutional complaint as a mechanism for establishing the principle of the rule of law and enhancing the effectiveness of human rights protection in the activities of the Constitutional Court of Ukraine, drawing attention to the need to improve the model of individual constitutional appeal in Ukraine [1].

Further development of the mentioned scientific issues was revealed in the works of K. Rezvorovych, who studied the constitutional complaint as a tool for protecting social rights, focusing on the procedural aspects of its implementation, the features of the admissibility of the complaint and the importance of the practice of constitutional proceedings for ensuring effective protection of individual rights. The author emphasizes that the constitutional complaint is gradually turning into an independent means of protecting constitutional rights, which complements the system of national judicial guarantees [2].

In our opinion, the studies of K. Primakov and Y. Zakoveri, in which the constitutional complaint is considered one of the key instruments for the protection of human rights in a modern democratic state, are of great importance for the development of the theoretical foundations of the constitutional complaint. The scholars substantiate the need to improve the procedural aspects of constitutional proceedings and increase the efficiency of the mechanism for the execution of decisions of the body of constitutional jurisdiction [3].

A separate direction of modern scientific research is related to determining the place of constitutional complaint in the general human rights protection mechanism of the state. Thus, M. Stefanchuk and D. Lupiychuk analyze modern models of constitutional complaint and prospects for their improvement in Ukraine, emphasizing the need to ensure a balance between the stability of legislation and the effective protection of constitutional rights of the individual [4].

Along with the study of the institute of constitutional complaint, considerable attention in modern legal science is paid to the problems of legal support and protection of intellectual property rights. In

particular, N. Kapitanenko studied the administrative and legal principles of state control in the sphere of implementation of intellectual property rights, focusing on the need to improve the mechanisms of state protection of the results of creative activity in the context of the development of the digital economy [5].

In turn, P. Makushev and I. Rudenko in their works analyze the theoretical principles of administrative liability for violations of intellectual property rights, justifying the need to strengthen legal guarantees for the protection of intellectual property objects and improve the mechanism of legal liability for their violations [6].

In the current conditions of the development of digital technologies and the innovative economy, the problem of ensuring effective protection of intellectual property rights is gaining international importance. This is confirmed by foreign studies that analyze the latest challenges in the field of intellectual property related to digitalization, the development of NFT technologies, technology transfer, and the protection of innovative activities [7].

Identification of previously unresolved parts of the general problem. Despite the presence of a significant number of scientific works devoted separately to the constitutional complaint and separately to intellectual property rights, in modern legal science the issue of the functioning of the constitutional complaint as a means of ensuring constitutional guarantees of intellectual property rights remains insufficiently studied. Insufficient attention has been paid to the analysis of the practice of the Constitutional Court of Ukraine in cases related to the protection of intellectual property rights, as well as to the problems of the correlation of constitutional control and sectoral mechanisms for the protection of these rights. This necessitates further scientific research in the relevant direction.

The purpose of the article is a comprehensive study of the constitutional complaint as an effective mechanism for ensuring and protecting constitutional guarantees of intellectual property rights, determining its role in ensuring the supremacy of the Constitution of Ukraine, analyzing the practice of applying the institution of constitutional complaint in the field of intellectual property rights protection, as well as outlining problematic aspects and prospects for improving the mechanisms of constitutional protection of relevant rights in the context of European integration and the development of a digital society.

Presentation of the main material. The constitutional complaint in the modern conditions of the development of constitutionalism in Ukraine is gradually acquiring the features of one of the key mechanisms for the protection of fundamental human rights, including intellectual property rights. Its importance is due to the fact that intellectual property rights have a dual nature: on the one hand, they are a component of the right to property guaranteed by the Constitution of Ukraine, and on the other hand, they are directly related to ensuring freedom of creativity, scientific and innovative activity, information security of the state and the development of the digital economy [8].

The Constitution of Ukraine enshrines the right of everyone to own, use and dispose of the results of their intellectual and creative activities, and also guarantees the protection of intellectual property, copyright, moral and material interests arising from various types of intellectual activity. At the same time, the effectiveness of the implementation of these constitutional guarantees largely depends on the proper regulatory and legal mechanism for their provision and the functioning of effective instruments of constitutional control.

The introduction of the constitutional complaint institution in Ukraine has become an important stage in the development of mechanisms for the protection of human rights and the approximation of the national model of constitutional justice to European standards. According to Article 151-1 of the Constitution of Ukraine, a person has the right to apply to the Constitutional Court of Ukraine to verify the constitutionality of the law of Ukraine applied in the final court decision in his case. Thus, the constitutional complaint serves as an additional means of protecting the constitutional rights of a person after exhausting other national means of legal protection [9].

At the same time, the analysis of modern regulatory and legal regulation indicates the presence of a number of problems that significantly affect the effectiveness of the use of constitutional complaints in the field of protection of intellectual property rights. First of all, the issue of the narrow subject of a

constitutional complaint remains problematic. In Ukraine, the subject of an appeal may be exclusively the law of Ukraine or its individual provisions that were applied in the final court decision. Instead, a significant number of violations of intellectual property rights in practice are associated with the application of subordinate regulatory legal acts, administrative procedures, decisions of state authorities or the activities of public administration entities, which actually makes it impossible to directly appeal them through a constitutional complaint [10].

A separate problem is the complexity of the procedural requirements for the admissibility of a constitutional complaint. The Law of Ukraine "On the Constitutional Court of Ukraine" establishes strict criteria for the admissibility of a complaint, including the need for a final court decision, substantiation of the unconstitutionality of the applied law, and compliance with certain deadlines for appeal. In cases related to the protection of intellectual property rights, such requirements often create additional procedural barriers, since the relevant disputes are often characterized by the complexity of proof, multi-level judicial review, and the need for special expert research [11].

Another significant problem is the insufficiently developed practice of the Constitutional Court of Ukraine in the field of protection of intellectual property rights. Despite the gradual expansion of the subject of constitutional control, the number of decisions of the Constitutional Court of Ukraine directly related to the protection of copyrights, patent rights, trademark rights or other intellectual property objects remains insignificant. This complicates the formation of consistent law enforcement practice and reduces the level of legal certainty for intellectual property rights holders [4].

No less important is the question of the correlation of the constitutional complaint with the sectoral mechanisms for the protection of intellectual property rights. Today, the protection of the relevant rights is carried out in the order of civil, commercial, administrative and criminal proceedings. However, in cases where it is the legislative provisions that create the risk of violating the constitutional guarantees of intellectual property rights, traditional judicial mechanisms are not always able to ensure the effective restoration of violated rights. In such a case, the constitutional complaint acquires special importance as a means of eliminating unconstitutional legislative restrictions [12].

In the context of the rapid development of digital technologies and the transformation of the information society, the issue of ensuring constitutional guarantees of intellectual property rights is becoming particularly relevant. Modern digital platforms, artificial intelligence technologies, NFT technologies and the globalization of digital content create new challenges for the national system of legal regulation of intellectual property. At the same time, the current legislation of Ukraine does not always respond promptly to relevant technological changes, which may lead to conflicts between legislative restrictions and constitutional guarantees of freedom of creativity and property rights [13].

An important direction for improving the constitutional complaint mechanism in the field of intellectual property rights protection is to take into account European experience. In the countries of the European Union, the institution of individual constitutional complaint is often characterized by wider boundaries of the subject of appeal and more flexible procedural mechanisms for an individual's access to the bodies of constitutional jurisdiction. Given Ukraine's European integration course, it seems appropriate to gradually improve the national model of constitutional complaint by expanding the possibilities for protecting the constitutional rights of individuals and strengthening the role of the Constitutional Court of Ukraine in forming legal standards in the field of intellectual property [3].

In addition, the mechanism for implementing decisions of the Constitutional Court of Ukraine in cases related to constitutional complaints needs to be improved. Even in cases where the unconstitutionality of legislative provisions is established, the lack of an effective mechanism for the prompt review of court decisions and the restoration of violated individual rights can significantly reduce the effectiveness of constitutional protection. In the field of intellectual property, this problem is of particular importance given the economic value of the results of creative activity and the need for prompt protection of relevant rights [14].

Conclusions. Thus, in modern conditions, a constitutional complaint is an important means of ensuring constitutional guarantees of intellectual property rights, however, the effectiveness of its implementation is largely constrained by the imperfection of regulatory and legal regulation, the limited

scope of the subject of constitutional control, the complexity of procedural requirements, and the insufficient formation of constitutional practice in the relevant field. Further improvement of the institution of constitutional complaint should be carried out taking into account the modern challenges of the digital society, international standards for the protection of human rights, and the need to ensure effective constitutional control in the field of intellectual property rights protection.

In order to increase the effectiveness of the constitutional complaint as a mechanism for ensuring and protecting constitutional guarantees of intellectual property rights, it is advisable to expand the subject of constitutional control regarding individual subordinate regulatory legal acts, improve procedural requirements for a constitutional complaint, form a consistent practice of the Constitutional Court of Ukraine in the relevant field, as well as improve the mechanism for implementing decisions of the Constitutional Court of Ukraine and adapt legislation in the field of intellectual property to modern digital and European standards.

We believe that the further development of the institution of constitutional complaint should be aimed at improving the normative policy in the field of constitutional control and ensuring proper protection of intellectual property rights in the context of digitalization and European integration of Ukraine.

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