

Information for citation:

Shirobokov S. A. Konstitutsionnoe pravo grazhdan na obrashchenie v sisteme pravovogo regulirovaniya vzaimodejstviya grazhdan i organov gosudarstvennoj vlasti i upravleniya [Constitutional Rights of Citizens to Appeal within the Legal and Regulatory Regime for Interaction between Citizens and Public Control and Administration Authorities]. Vestnik Permskogo Universiteta. Juridicheskie Nauki – Perm University Herald. Juridical Sciences. 2016. Issue 32. Pp. 158–164. (In Russ.). DOI: 10.17072/1995-4190-2016-32-158-164.

UDC 342.736 + 342.722.32

DOI: 10.17072/1995-4190-2016-32-158-164

**CONSTITUTIONAL RIGHTS OF CITIZENS TO APPEAL WITHIN THE LEGAL
AND REGULATORY REGIME FOR INTERACTION BETWEEN CITIZENS
AND PUBLIC CONTROL AND ADMINISTRATION AUTHORITIES**

S. A. Shirobokov

Perm State University

15, Bukireva st., Perm, 614990, Russia

ORCID: 0000-0001-7933-473X

ResearcherID: E-7942-2016

Articles in DB «Scopus» / «Web of Science»:

DOI: 10.5901/mjss.2015.v6n3s6p169

e-mail: shirobokovsa@gmail.com

Introduction: the article deals with the special meaning given to the interaction between citizens and public control and administration authorities in terms of citizens' constitutional right to appeal, as well as to innovative directions of the development of legal regulation of the constitutional right to appeal. **Purpose:** to substantiate the point that qualitative certainty of the constitutional right to appeal is determined by its links with many other legal phenomena. The right to appeal is a universal and fundamental one as a category of a tool subsystem within the legal system. Thus, it is impossible for a citizen to exercise their rights and freedoms beyond this category. **Methods:** as a methodological framework, a system of philosophical knowledge is used, according to which the author formulates the main criteria for requirements to scientific theories, to the study of the social life phenomenon and to individual opportunities. The methodology is based on the general scientific dialectical method of cognition, which includes the following specific scientific methods: the system structural approach, legal planning method, sociological, technical legal methods, and comparative analysis methods. **Conclusions:** the implementation of the citizens' constitutional right to appeal requires constant attention on the part of public control and administration authorities. The high efficiency level in the legal regulation of the right under study can only be achieved as a result of scientific justification and assumptions. Appeals of citizens as part of their participation in the state affairs is a universal legal category. Almost all legal categories of the legal status of an individual in the state are realized due to the citizens' right to appeal.

Keywords: constitutional right to appeal; development of legal regulation; procedures for consideration of citizens' appeals; participation of citizens in managing the state affairs; increasing degree of citizens' confidence in the activities of state bodies and officials; legislation concerning citizens' right to appeal

Information in Russian

КОНСТИТУЦИОННОЕ ПРАВО ГРАЖДАН НА ОБРАЩЕНИЕ В СИСТЕМЕ ПРАВОВОГО РЕГУЛИРОВАНИЯ ВЗАИМОДЕЙСТВИЯ ГРАЖДАН И ОРГАНОВ ГОСУДАРСТВЕННОЙ ВЛАСТИ И УПРАВЛЕНИЯ

С. А. Ширококов

Доктор юридических наук, доцент, профессор кафедры трудового и международного права
Пермский государственный национальный исследовательский университет
614990, Россия, г. Пермь, ул. Букирева, 15

ORCID: 0000-0001-7933-473X; **ResearcherID:** E-7942-2016

Статьи в БД «Scopus» / «Web of Science»: **DOI:** 10.5901/mjss.2015.v6n3s6p169

e-mail: shirobokovsa@gmail.com

Введение: в статье раскрывается особое значение, которое придается взаимодействию граждан и органов государственной власти и управления в части конституционного права граждан на обращение, а также новационным и инновационным направлениям развития правового регулирования конституционного права граждан на обращение. **Цель:** обосновать положение о том, что качественная определенность конституционного права на обращение обусловлена характером его связей с множеством других правовых явлений. Право на обращение является универсальным и основным как категория инструментальной подсистемы в системе прав. В связи с этим вне данной категории права практически нельзя реализовать свои права и свободы гражданину государства. **Методы:** в качестве методологической основы использована система философских знаний, на базе которых формулируются основные критерии требований к научным теориям, к изучению явлений общественной жизни и возможностей индивида. Методологией статьи служит общенаучный диалектический метод познания, включающий частнонаучные методы: системно-структурный, метод правового планирования, конкретно-социологический, технико-юридический, метод сравнительного анализа. **Выводы:** реализация конституционного права граждан на обращение требует постоянного внимания со стороны органов государственной власти и управления. Высокий уровень эффективности правового регулирования реализации конституционного права на обращение достигается только в результате научного обоснования и предположения. Обращения граждан в рамках участия в управлении делами государства является универсальной юридической категорией. С помощью права граждан на обращение реализуются практически все правовые категории правового статуса личности в государстве.

Ключевые слова: конституционное право граждан на обращение; развитие правового регулирования; процедуры рассмотрения обращений граждан; участие граждан в управлении делами государства; повышение степени доверия со стороны граждан к деятельности органов государства и должностных лиц; законодательство права на обращения граждан

Introduction

Defining the role and place of the right of access to a system of constitutional rights of citizens, it is necessary to draw attention to the importance and value of the system and the position of its elements. The rights and freedoms of citizens is not a chaotic set of images in all their diversity, as a systemic phenomenon that reveals the diversity of relations of the constitutional right of a citizen to appeal to the other rights and freedoms and thus justify its versatility in the system [8, p. 53].

Need to determine the system interconnection of the constitutional right of citizens to appeal to the interaction of citizens and public authorities and management

First, you need to install an existing relationship between the elements, the cops right, an analy-

sis of individual institutions, individual rights, and categories of a more general nature: political rights, personal, social, economic and so on. d. We emphasize that highlight patterns of the constitutional rights of a citizen outside of his right to an appeal is virtually impossible. In this regard, a valid reference to the European experience, since the appeal right is enshrined in the constitutions of many European countries. Particularly noteworthy provisions, including an analysis of what level you can build a system connected with citizens, the order in which questions can be solved by rebuilding the system, what is it the competence of the State, territorial authorities, the man himself. The constitutional article of the various states of the right to appeal are, quite unequal, set time-personal positions, but they are all designed to ensure human and civil rights, regardless of which category of rights and freedoms

in question – be it political, social or personal sphere. There is no doubt that the question of the place and the role of the right of access to the system of constitutional human and civil rights in foreign countries of interest and requires a thorough and thoughtful study, but it is a subject of separate research [9, p. 89]. However, the question of the constitutional consolidation of the right to appeal to the Constitutions of the States in the past constituted the Union of Soviet Socialist Republics, it deserves special attention, including from the point of view of the object of our study, as certain legal system, in the space of which were the Union State was apprehended and legal systems which have become independent states. Legal right of citizens to appeal reflected: art. 40 of the Constitution of Ukraine; Art. 40 of the Constitution of Belarus; Art. 52 of the Constitution of Moldova; Art. 66 of the Constitution of Azerbaijan; Art. 33 of the Constitution of Kazakhstan; Art. 35 of the Constitution of Uzbekistan; Art. 31 of the Constitution of Tajikistan. The absence of the right to appeal to the constitutions of other Commonwealth countries can be explained not so much a lack of objective conditions, as the fact that the official formulation of the articles takes place in different ways, depending on the understanding of their importance. Referring directly to the original sources. Thus, Article 31 of the Constitution of Tajikistan states: “...Citizens have the right personally or jointly with others to address the public authorities ...” [4, p. 389]. Article 52 of the Constitution of Moldova states: “...Citizens have the right to address petitions to the authorities only on its own behalf... Legally established organizations may petition exclusively in behalf of the associations that they represent...” [4, p. 148]. Clarification of the destination applications found in Art. 33 p. 1 of the Constitution of Kazakhstan: “...Citizens of the Republic of Kazakhstan have the right to appeal personally ... as well as to direct individual and collective appeals to state bodies and local self-government” [4, p. 288]. Defining the destination applications, types and timing of their consideration are contained in Art. 35 of the Constitution of Uzbekistan: “... Everyone has the right, either alone or in community with others, to submit applications, proposals and complaints to the competent state bodies, institutions and public representatives. Such applications, proposals and

complaints shall be dealt with in the manner and within the period established by law” [4, p. 324]. Using the calls defined Art. 40 of the Constitution of Ukraine: “...Everyone has the right to file individual or collective petitions, or to personally appeal to bodies of state power, bodies of local self-government and to the officials and officers of these bodies that are obliged to consider the petitions and to provide a substantiated reply within the statutory period” [4, p. 59–60]. This is also evidenced Art. 40 of the Constitution of Belarus: “...Everyone has the right to address personal or collective appeals to state authorities... Public authorities and officials must consider on-increment and give a substantive response in a certain statutory period. Failure to review the submitted application must be justified in writing” [4, p. 107]. Article 66 of the Constitution of Azerbaijan the right to appeal and suggests “...criticism of the activity or work of state bodies, their officials, political parties, trade unions, other public associations, as well as individual citizens. Persecution for criticism is prohibited. Insults and calumny cannot be criticized” [4, p. 246]. Against the background of the above we have the basic legislative acts of a number of Commonwealth countries, Art. 33 of the Constitution is a general, declarative character “of the Russian Federation shall have the right to appeal personally and also to submit individual and collective appeals to state bodies and local self-government”. In our opinion, the constitutional recognition of the rights of citizens to appeal to the country is not quite fully reflects its objective necessity, does not match the time and does not contribute to the further development of communication of citizens with the state and its organs. In this regard, we consider it necessary to supplement and expand the content of Art. 33 Russian Federation, the following provisions of the Constitution: “The State guarantees the right of citizens to objective and comprehensive consideration of their applications by the competent authority within a reasonable time by the law, the prosecution of perpetrators whose actions and decisions have led to violations of the rights and freedoms of citizens, compensation of the damage”.

Particularly noteworthy are the constitutional laws that extend, complement, clarifying the provisions of the Constitution. For example, the law of Ukraine “On citizens” self-titled Law of the Re-

public of Belarus and a similar draft law of the Russian Federation “On citizens”.

Of course, that these regulations differ and legal advice, and policy framework, and their provisions. However, they appear to be one system, as they combine the following basic position:

- These laws are constitutional basis;
- Have a single generic object relation – the right of citizens to appeal;
- Provide specific characteristics of appeals;
- Establish requirements for appeals of citizens;
- Reinforce prohibitions in handling;
- Establish a specific procedure for processing applications;
- Determine the responsibility for violation of the law on citizens’ appeals.

The system determining the position of the right of citizens to appeal to the Russian legal system

For handling citizen’s right is fixed in Art. 21 Declaration of the rights and freedoms of man and citizen, adopted by the Supreme Soviet of the RSFSR November 22, 1991 The right to appeal – the natural right of a citizen to communicate with the state through its various agencies and organizations, the opportunity to feel like a legal element of the legal environment, and at the same time, is an expression of feedback that reveals the assessment of the state of activity, potential citizens to improve the existing system.

Securing the right to appeal in the Declaration, followed by a reflection of it in the Constitution of the Russian Federation – is the observance of interests of the individual and the state. The citizen’s right to appeal – it is a subjective human right, aimed at the implementation of the rights and freedoms protected by the state. The naturalness of the right of access is defined and needs, and self-interest, and social freedom of the citizen. Therefore, the right of access can be defined as the ability of man to realize, on the basis of personal interest, their subjective needs and requirements in various areas of his life. The state is not only an obligation but also a vested interest in ensuring a

dignified existence and free development of each person. In this regard, a great role play regulations, which are limited by the number and directions, but the effectiveness of each of them is the guarantor of a normal, civilized society as a whole.

Considering the right to appeal, as a constitutional right and we understand it as a constitutional freedom. “...Many times proved that enshrined in Soviet legislation the legal rights and freedoms of citizens is a form of freedom of expression...” [5, p. 35]. But there is on this score another point of view, which is suitable to issue a volumetric “...the difference between the basic rights and fundamental freedoms are due to both the history of their origin, established traditions and the semantic load” [2, p. 135]. Finally, the opinion of E. A. Lukashev asserts that “the analysis of constitutional law shows that the term” freedom “is intended to emphasize greater opportunities for individual choice, without outlining the specific results of its” [6, p. 31].

Analyzing the content of the right to institute an appeal of a citizen to pay attention to such categories as a duty and a guarantee. A study of the provisions of Chapter II of the Constitution leads to the conclusion that it is practically impossible to apply any rate, not at the same time attracting the right to appeal. Therein lies its universality. Enshrined in the Constitution of the right to education, health and legal protection, etc. it is difficult to imagine is the citizen to the appropriate authorities. It was an appeal of a citizen is the basis for the granting of any rights and freedoms, as well as guarantees.

As an example, take 1 of article 27 of the Constitution, which states: “...Everyone lawfully within the territory of the Russian Federation has the right to move freely and choose their place of stay or residence...” This provision is specified Part 1 of Art. 3 of the RF Law “On the Right of Citizens of the Russian Federation to freedom of movement, choice of place of residence in the Russian Federation within”: “...In order to ensure the necessary conditions for the realization of a Russian citizen rights and freedoms, as well as the

duties of them to other citizens, state and society, introduced registration accounting of citizens of the Russian Federation at the place of stay and place of residence within the Russian Federation”. Registration accounting of citizens is carried out on the basis of Part 1 of Article 6 of the Act: “...A citizen of the Russian Federation, to change the place of residence, shall not later than seven days from the date of arrival at the new place of residence to appeal to the official responsible for the registration, a statement in the prescribed form”. Through the realization of the right to appeal is carried out and is important for the legal status of a person, as a citizen. So to claim 1 Art. 37 of the Law “On Citizenship of the Russian Federation”, states: “...Applications for registration and change of nationality is served in the internal affairs bodies of the Russian Federation at the place of residence declare middle, and persons living outside the Russian Federation, in the respective diplomatic missions and consular posts Russian Federation”. According to Clause 1, Article. 23 of the same Act renunciation of citizenship of the Russian Federation is possible “...at the request of a citizen in accordance with the procedure established by this Law”. Considering the provisions of art. 33 of the Constitution of the Russian Federation in the structure of chapter II “The rights and freedoms of man and citizen”, note its connection with Articles 20, 26, 28, 29, 30, 31, 32, 34, 35, 37, 38, 39, 40, 41, 43, 45, 46, 48, 52, 53, 57, 59, 62, 63. This allows us to state that the constitutional right of access can be realized by itself or together with other rights and freedoms enshrined basic Law.

The scope and functionality of the constitutional right of access

To volume and versatility right to appeal may be considered in a certain system: issues of personal, political, economic, social, environmental, cultural, spiritual, etc. character. Some authors constrict this system to three basic elements, while others extend it, but let’s stick to the view, which argues that the system consists of blocks, within which there are multiple links and manifestations.

One of the problems relating to the citizen’s right to appeal is a question of how you need to treat it either as something whole, as and appeal at all or to differentiate it by type. The other side of the same issue as the right to appeal to regard as the right political, personal or any other?

Some authors equate the right of the citizen to appeal, and the presence of democracy in the state: “...under the forms of democracy are understood ways of involving citizens to address socially important issues influencing the adoption of state authorities and local self-government solutions and make adjustments in their work in accordance with the will of the subjects of interest” [1, p. 34.]. There is more categorical judgment: “...the constitutional right to appeal is a political right of Soviet citizens” [3, p. 35.]. And finally, the position that we fully share and support “...the right of appeal, first of all, provides a personal interest in the protection of its citizens violated right (or in teams of its members-wearing)” [7, p. 14.]. Let us turn to Art. 32 to claim 1, 2 of the Constitution. If the treatment is aimed at improving the content of the state apparatus and organs of self-government, the problem is in the competence of the President of the Russian Federation, Chairman of the Russian Government or the Federal Assembly. The same can be said about the right to appeal, referring to Art. 45, p. 1. 2; Art. 46, p. 1. 2. 3; Art. 52; Art. 53 of the Constitution.

The legislator, by defining and securing the natural rights of the individual in art. 33 of the Constitution, assumed, first of all, the fact of treatment. But if we consider the right to appeal in terms of implementation of the individual features, that is his own, inalienable right and related rights, and their duties. There is the argument that protects the understanding of the right to appeal as a political right as targeted treatment. But the adoption of treatment does not mean its implementation in favor of accesses. We consider the right to on-increment as a private citizen’s right and because of the emergence of interest, and optionally the method of its implementation. And the practices indicate that the complaints and applications of citizens are practically deprived of any political

content and involve the realization of their legitimate rights and freedoms. L. D. Voevodin, considering the rights, freedoms and duties of citizens in public and political life and activity, the right to appeal in this area are not considered.

Now we try to relate the right to apply to other rights, which are usually included in the category of personal rights, individual rights. All variety of the personal rights of the individual authors is traditionally divided into two main groups: 1-I, the personal rights as a single set of interrelated components; 2nd, individual rights must be subdivided into sub-groups according to their content. The first group of individual rights seems to us more promising. It can reduce all the different interpretation of individual rights to one thing – the right of everyone to life. If this position is to expand, the current Constitution of the Russian Federation radio, stand out the following: the right to life; dignity of the individual; right to liberty and security of person; the right to privacy; inviolability of the home; national identity; freedom of movement and residence; freedom of conscience and religion; freedom of thought and speech. Add to this affiliation and alienation of rights from the moment of birth, the appropriateness of taking into account the rights of the rights and freedoms of others, equality of rights and freedoms of individuals, etc. Some authors distinguish the right to marry, protection of motherhood, children and families, as well as the rights and duties of parents and children in relation to each other. This list can be replenished naturally and the right to appeal. After all, if we take the relationship of the right to appeal to a fundamental right – the right to life, life is born in the family (private options we do not consider). But to create a family man and a woman are turning to the state authorities with the application for recognition and attachment-legal fact – a family. And if the life of the new man appears outside the family, and even then it is necessary to recognize the physicality born through an appeal to the relevant authorities. If the individual threatens to deprivation of their rights, and even his life, he will be forced to act as through treatment (treatment to the police, a petition to the President for clemency, etc.). List all main characteristics of an individual's personal rights:

- is absolute and objective;
- expressed the need for a certain individual;

- show interest in the individual associated with his self-development;
- are used only at the request of the individual;
- have an increased level of assurance and protection.

All these symptoms can be associated with the right of appeal, which also can be attributed to its own human rights. However, the content of the right to appeal does not lie on the surface, but that it is his essence. L. D. Voevodin include the right to appeal not only to personal rights, but also to the socio-economic, referring to the totality of the rights of access and private property, which is considered as the backbone [2, p. 214.]. The right to private property is due to the state of any one of the stages (appearance, use, transfer and use, etc.) cannot be considered outside of the right to appeal to the state bodies and local self-government.

In general, a number of fundamental rights and freedoms of a citizen the right to appeal has specific features:

- objectively belongs to the individual, emphasizing it as a citizen;
- the universal right of access can be related to any category of other rights and freedoms;
- the universal right to appeal is a legal instrument for the implementation of rights and freedoms.

The right to appeal as a constitutional principle and a constitutional guarantee

The constitutional right to an appeal can be understood as a constitutional principle, and as a constitutional guarantee. As a constitutional principle - the right to appeal is considered from two different angles: from the state point of view, and from the individual point of view. From the point of view of the state, this principle can be defined as follows:

- The state enters into a relationship with a citizen only after he spoke to him;
- State considers only those appeals that meet state requirements (in the form of treatment);
- State openly defines its relationship with the citizen through the reference to it.

The right to appeal is a constitutional principle, from the point of view of the individual can be reflected in the following points:

- The right to appeal – the prerogative of the individual;
- Type of treatment elected by the citizen on the fact of his case;

– Treatment requires mandatory public response.

Therefore, as a principle of constitutional law the right to appeal to the individual's point of view, is a fundamental beginning of the relationship between the citizen and the state, which was initiated by a citizen. But, based on the individual articles, it acts both as a duty and as a guarantee for the implementation of this provision. The constitutional right to appeal as a guarantee is crucial. After the citizen to the state authorities, the mechanism for ensuring his rights, liberties, privileges, or their recovery. The State guarantees the required response to the appeal of a citizen. To do this, establish a special body with a wide range of powers which either themselves satisfy the interest of the individual, or have the ability to influence others in favor of the resolution one way or another entity reference. The constitutional right of access can be considered as a pre-condition for the implementation of the pledged right to appeal from the state, expressed in the creation of a system consisting of bodies and legal means to ensure the citizen's interest.

Results

The qualitative certainty of the constitutional right to appeal due to the nature of its links with many other legal positions. Right to appeal – is a universal and fundamental as the categorical instrumental subsystems rights system.

References

1. *Alistratov Yu. N. Pravo petitsiy v Rossiyskoy Federatsii* [The Right to Petition in the Russian Federation]. Moscow, 1997. 92 p. (In Russ.).
2. *Voevodin L. D. Yuridicheskiy status lichnosti v Rossii* [The Legal Status of the Individual in Russia]. Moscow, 1997. 304 p. (In Russ.).
3. *Karaseva M. V. Konstitutsionnoe pravo grazhdan SSSR na obzhalovanie* [Constitutional Right of Soviet Citizens to Appeal]. Voronezh, 1989. 150 p. (In Russ.).
4. *Konstitucii stran – chlenov SNG* [Constitutions of the CIS Member Countries]. Yerevan, 1997. 440 p. (In Russ.).
5. *Kuchinskiy V.A. Lichnost', svoboda, pravo* [Personality, Freedom, Right]. Moscow, 1978. 208 p. (In Russ.).

6. *Lukasheva E.A. Obshchaya teoriya prav cheloveka* [The General Theory of Human Rights]. Moscow, 1996. 520 p. (In Russ.).
7. *Khamaneva N. Yu. Zashchita prav grazhdan v sfere ispolnitel'noy vlasti* [Citizens' Rights Protection in the Executive Branch]. Moscow, 1997. 216 p. (In Russ.).
8. *Shirobokov S. A. Pravovaya motivatsiya vzaimodeystviya grazhdan i gosudarstva v Rossiyskoy Federatsii* [Legal Motivation of Interaction of Citizens and the State in the Course of Joint Development]. *Vestnik Permskogo universiteta. Yuridicheskie nauki* – Perm University Herald. Juridical Sciences. 2012. Issue 1(15). Pp. 53–60. (In Russ.).
9. *Shirobokov S. A. Aktual'nye problemy pravovogo regulirovaniya uchastiya grazhdan v upravlenii delami gosudarstva v Rossiyskoy Federatsii*: [Current Problems of Legal Regulation of Citizens' Participation in Managing State Affairs in the Russian Federation]. Perm, 2014. 212 p. (In Russ.).

References in Russian

1. *Алистратов Ю. Н. Право петиций в Российской Федерации*. М.: Манускрипт, 1997. 92 с.
2. *Воеводин Л. Д. Юридический статус личности в России*. М.: Норма, 1997. 304 с.
3. *Карасева М. В. Конституционное право граждан СССР на обжалование*. Воронеж: Изд-во Воронеж. гос. ун-та, 1989. 150 с.
4. *Конституции стран – членов СНГ: сб. док.* Ереван: Мхитар Гош, 1997. 440 с.
5. *Кучинский В. А. Личность, свобода, право*. М.: Юрид. лит., 1978. 208 с.
6. *Лукашева Е. А. Общая теория прав человека*. М.: Норма, 1996. 520 с.
7. *Хаманева Н. Ю. Защита прав граждан в сфере исполнительной власти*. М.: ИПП РАН, 1997. 216 с.
8. *Широбок С. А. Правовая мотивация взаимодействия граждан и государства в Российской Федерации // Вестник Пермского университета. Юридические науки*. 2012. Вып. 1(15). С. 53–60.
9. *Широбок С. А. Актуальные проблемы правового регулирования участия граждан в управлении делами государства в Российской Федерации*. Пермь, 2014. 212 с.