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CONTROL FUNCTION OF PARLIAMENT AND PRINCIPLE OF DIVISION OF POWERS

Abstract. The article analyzes using the normative and systematic methods, as well as analysis and synthesis, the content of the statements of the Constitution of the Kyrgyz Republic, the Law of the Kyrgyz Republic «On Regulations of the Jogorku Kenesh of the Kyrgyz Republic», decisions of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic and the works of legal scholars.

The article is devoted to the study of the postulate that the principle of division of powers has a deep theoretical basis, which has been developed since existence of institution of state and is aimed at identifying clear boundaries of authority between individual branches of government in order to build their structure so that they serve society.

The author came to the conclusion that parliamentary control is in direct connection with the principle of division of powers, in this system it serves and acts as element of mutual control of branches of government. The judiciary today also unequivocally determines inadmissibility of overarching function, the priority role of legislative branch over other parts of government. Parliamentary control is in direct connection with the principle of division of powers, in this system it serves and acts as an element of mutual control of branches of government.

According to the author, presence of such control in practice constantly leads to idea of the priority role of legislative branch, which leads to weakening of principle of division of powers. However, it should be noted the implementation of control powers is not aimed at determining the priority of legislative branch in system of division of powers; parliamentary control only organizationally implements of existing powers of parliament.

Key words: Republic of Kyrgyzstan, Jogorku Kenesh, division of powers, law, legislation, state, executive power, parliamentarism, parliamentary control.

Introduction. Existence of integral system of object, phenomenon or process incredibly presupposes existence of regular mechanisms of its exhibition in form, properties, types, algorithms of actions, responsibility and, naturally, control over it.

State, as a complex phenomenon of society, also has its own exhibitions. In this, control of state over processes taking place in society is very important.

In today's realities, rapidly changing world and complication of relationships in society, state must reorient itself, its control functions must become more sensitive. Politics limited by law that subjects every public activity to court or other controls is the basic characteristic and demand of constitutionalism and the rule of law (Bashich A. & Bashich P., 2016, p. 119).

Methods. The article analyzes using the normative and systematic methods, as well as analysis and synthesis, the content of the statements of the Constitution of the Kyrgyz Republic, the Law of the Kyrgyz Republic «On Regulations of the Jogorku Kenesh of the Kyrgyz Republic», decisions of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic and the works of legal scholars.

Discussion. The meaning of the concept of «control», especially «state control», to a greater extent in Jurisprudence was determined in administrative law.

N.T. Sheripov in the textbook «Administrative Law of the Kyrgyz Republic», considering the modes to ensure the rule of law in activities of executive bodies, determined control is a very broad category and can be understood both as function of public administration and as superintendence phase. In the following, it means control helps to determine compliance of measures taken by government with established standards (Sheripov, 2009, p. 360).

At the same time, M.A. Lapina, agreeing with the generally accepted views on state control, notes the general concept of control is aimed not only at identifying shortcomings in government cycle, but also taking measures to eliminate them. At the same time, it especially focuses on the purpose of administrative supervision, which is to ensure law and order (Lapina, 2006, p. 154). In her opinion, ensuring law and order includes a set of measures: legal, organizational, economic and others. The scientist further comes to the conclusion results

of control by overcoming identified deviations in activity of controlled object are:

• elimination (correction) of discovered deficiencies;

• evaluation of efficiency of controlled objects;

• ensuring preservation and sustainable development of achieved results (Lapina, 2006, p. 156).

In general, it should be noted control implies designation of clear tasks and their further assessment to achieve set targets.

Control, state control is an integral attribute of management structures and system of state power as a whole.

In one of the latest scientific studies in Kyrgyzstan, S.M. Tynymseitova notes division of powers into legislative, executive and judicial branches with their corresponding interaction operates in many countries of the world (Tynymseitova, 2018, p. 14). Kyrgyzstan is no exception.

According to W.K. Chinaliev, historically, the theory of division of powers developed in parallel with the institution of state and initially. Plato, believed ideal society should consist of division of labor between different classes (Chinaliev, 1998, p. 9). This scientist claims even in the concept of ancient thinkers, the idea of doctrine of powers into separate branches of power was formed and a full-fledged construct of division of powers continued to form in the Middle Ages, was developed by D. Locke and C. Montesquieu (Chinaliev, 1998, p. 10).

W.C. Chinaliev, cites D. Locke's thoughts, according to which realization of human rights requires limitation of state power, it is necessary to provide a framework for its implementation. At the same time, in order to avoid the preservation of power by some persons, this power should be divided. D. Locke distinguished three types of power:

- legislative (creates laws for public good);
- executive (ensures implementation of laws);
- federal (in charge of relations with other states).

At the same time, according to D. Locke, such a division, on the contrary, shows of mutual connection, balance and a certain subordination of authorities. Accordingly, even legislative power should not become above power structure, it is just a "trusted power" subordinate to the people, which remains supreme power to remove or change composition of legislative power (Chinaliev, 1998, p. 10).

The French philosopher C. Montesquieu spoke about division of powers with the need to prevent abuse. According to him, division of powers into legislative, executive and judicial branches should contribute to mutual restraint. As he determines, with such a division, it is also unacceptable for the same persons to participate in exercise of several powers. It is necessary, wrote C. Montesquieu, they, independently solving state problems, could ensure a balance among themselves, preventing usurpation of competences of power by another branch of government, and each power should exercise its competences without entering zone of responsibility of the other, while retaining possibility of parallel control over each other (Chinaliev, 1998, p. 11).

There is also a point of view according to which the considerations of D. Locke and C. Monstequier about division of powers were not clear and unambiguous (Penna, 2011, p. 74).

Thus, the principle of division of powers has deep theoretical basis, which been developed since existence of the institution of state and is aimed at defining clear boundaries of authority between particular branches of government in order to build such a structure for them to serve society. This principle, according to which, powers of government must be divided and limited is called fundamental (Siegan, 1989, p. 1). The doctrine of division of powers attracts almost universal support as a central element of liberal constitution designed to protect citizens against governmental power (Brennan & Hamlin, 1994, p. 345). The core of the doctrine is called not liberty, as many writers have assumed, but efficiency (Barber, 2001, p. 59).

In the future, it is necessary to determine significance of parliamentary control and its place in system of division of powers.

At the moment, the concept of parliamentary control is ambiguous, and in theory, various definitions of this concept are presented. As noted by O.V. Yatsenko in science there is no single definition of this category (Yatsenko, 2010, p. 2).

So, according to S.V. Bendyurina, parliamentary control is activity of parliament and its individual representatives to monitor, identify violations by authorized persons and bodies of legislation (Bendyurina, 2015, p. 16).

E.V. Kovryakova, refering about focus of parliamentary control on activities of executive authorities, notes parliamentary control is a system of norms that regulates established procedure for monitoring and verification, which is carried out both by parliamentary majority and opposition and its other bodies, and purposefully determining assessment of activities and establishing responsibility for it (Kovryakova, 2005, p. 12).

In turn, E.V. Berdnikov, sharing the position of M.V. Baglaya notes disclosure of definition of parliamentary control presented by him is the most complete, since subject of parliamentary control includes, among other things, participation in formation of government. Thus, parliamentary control in foreign countries has its own characteristics, depending on form of government. In parliamentary countries, it mainly includes expression of vote of no confidence in government and its dismissal. Such powers are excluded in presidential forms of government, control functions are expressed through participation in formation of government (Berdnikov, 2015, p. 432).

In general, the authors, reflecting the different

opinions on the definition of parliamentary control, agree it is a type of state control exercised by legislature within framework of allowed powers.

If, accordingly, parliamentary control is a reflection of its direct powers, then it should be understood, as we noted above, that it is a kind of government cycle, i.e. implementation of representative and legislative functions by monitoring their implementation by relevant entities. It is in this relationship that essence of legislative branch and parliament is represented.

In turn, it is necessary to proceed from the meaning of the relationship between parliamentary control and division of powers. I.V. Leksin, associating this principle and control, determines in absence of system of division of powers, control becomes only presentation of report of subordinate structures to their higher entities. In this connection, in his opinion, mutual control of three branches of government is mediated from division of powers (Leksin, 2015, p. 241).

In this connection, parliamentary control should in no way be considered as counterbalance to theory of division of powers, on the contrary, the presence of such control, on the one hand, is aimed at achieving tasks set, legislative powers, on the other hand, it clearly outlines range of its competencies. Here, the key point is in system of division of powers, parliamentary control is one of elements of mutual control between branches of government.

As rightly noted by E.P. Popova, parliamentary control follows from essence of division of powers (E.P. Popova, 2010, p. 94).

G.V. Sintsov says legislature has extensive powers to oversee government agencies. At the same time, in his opinion, this does not in any way exclude the principle of division of powers, but on the contrary, clear regulation of the institution of parliamentary control makes it possible to improve quality of government activities (Sintsov, 2015, p. 101).

Parliamentary control over the executive branch in the form of submission of reports by heads of executive bodies on activities of executive branch of constituent entities does not contradict the principle of division of powers, as defined by M.V. Demidov, if this does not give instructions providing for responsibility of officials (Demidov, 2008, p. 132).

Results. The judiciary today also unequivocally determines inadmissibility of overarching function, the priority role of legislative organs over other branches of government.

Thus, by the decision of the Constitutional Chamber of the Supreme Court of the Republic of Kyrgyzstan dated April 11, 2014 «On the Case on Revision of Constitutionality of Paragraph 2 of Part 2 of Article 5 of the Law of the Kyrgyz Republic «On the Republican Budget of the Kyrgyz Republic for 2013 and Forecast for 2014-2015» and Paragraph 2 of Part 2 of Article 5 of the Law of the Kyrgyz Republic «On the Republican Budget of the Kyrgyz Republic for 2014 and Forecast for 2015-2016» in Connection with the Submission of the Government of the Kyrgyz Republic», it was stated the legislator, granting the competency to the specialized committee of the Jogorku Kenesh (Parliament) (on the basis of the law on the republican budget), in an expanded format, coordinate the Government of the Kyrgyz Republic expenditures under item of capital investments, contradicts the norms of the Constitution of the Kyrgyz Republic. At the same time, in this decision it is determined that one of the leading types of state control is parliamentary, which in no way should be carried out by influencing pursuance and distribution activities of the executive branch. Also in this judicial act, it was concluded absolute powers to exercise power functions in the system of bodies are inadmissible. The Jogorku Kenesh does not have the competency to be involved in the implementation of the so-called «operational» rights of the Government of the Kyrgyz Republic. However, control over the activities of the Government of the Kyrgyz Republic in the use of state funds remains, at least through approval of report for the republican budget.

Another example, by the decision of the Constitutional Chamber of the Supreme Court of the Republic of Kyrgyzstan dated April 24, 2019 No. 07r «On the Case on Revision of Constitutionality of paragraph 35 of part 1 of article 3 of the Law of the Kyrgyz Republic «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic» in Connection with the Appeal of the Chairman of the Supreme Court of the Kyrgyz Republic» was declared unconstitutional, which gives the Jogorku Kenesh the competency to hear annual information of the Chairman of the Supreme Court of the Kyrgyz Republic on activities of the judicial system of the Kyrgyz Republic, which is carried out in compliance with the principle of non-interference in administration of justice and prohibition of requirement to report on a specific case. However, division of state power into legislative, executive and judicial branches of government is a direct reflection of the principle of organization of power and democratic legal society. At the same time, according to the court, legislative, executive and judicial branches are self-dependent and relatively independent. Division of powers is based on natural delineation of such functions as lawmaking, public administration and justice. The essence of such a division is to endow each branch of government with relative self-dependent and independence, as well as such a volume of powers that will ensure necessary balance between them, excluding dominance of one branch over the others. However, the contested norm reinforces the dominance of the legislative branch over judicial, which entails the violation of the principle of division of powers and reduces level of independence of the judiciary.

On the whole, Russian scientists also agree. For example, N.Sh. Kolsarieva in her dissertation

research came to the conclusion the principle of division of powers does not imply absolute power, but delimits powers of three authorities. She also notes if one admits possibility of priority of one branch over others, then it should not have legislative power, but judicial power, since, in her opinion, citizens should have guarantees against arbitrariness of parliament itself. That is why, according to the idea of N.Sh. Kolsarieva if there is a priority of one branch, it should belong to the judiciary (Kolsarieva, 2010, p. 48).

Z.Sh. Beishenaliev also refers about inadmissibility of dominance of one branch of power over another (Beishenaliev, 2014, p. 25).

Conclusion. It can be concluded principle of division of powers has meaningful theory established from the moment state was formed. The principle of division of powers is focused on organizing establishment of boundaries of power between various branches of government and aimed at determination their structure for society.

Parliamentary control is directly related to the principle of division of powers, in which this type of control serves and acts as an integral part of mutual control of branches of government. Today, judicial authorities also unequivocally determine inadmissibility of the priority role of legislative organs over other branches of government.

Parliamentary control is interconnected with the principle of division of powers, it is an element of mutual control of all branches of government.

In practice, parliamentary control is seen as the priority role of legislative branch, which undermines the principle of division of powers. At the same time, exercise of control powers is not intended to determine the priority of legislative branch in system of division of powers; parliamentary control organizationally exercises existing powers of the parliament.

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ПАРЛАМЕНТТІҢ БАҚЫЛАУ ФУНКЦИЯСЫ ЖӘНЕ БИЛІКТІҢ БӨЛІНУ ПРИНЦИПІ

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КОНТРОЛЬНАЯ ФУНКЦИЯ ПАРЛАМЕНТА И ПРИНЦИП РАЗДЕЛЕНИЯ ВЛАСТЕЙ

Аннотация. В статье проанализированы с применением нормативного и системного методов, а также анализа и синтеза, положения Конституции Кыргызской Республики, Закона Кыргызской Республики «О Регламенте Жогорку Кенеша Кыргызской Республики», актов Конституционной палаты Верховного Суда Республики Кыргызстан и трудов ученых-юристов.

Статья посвящена исследованию постулата о том, что принцип разделения властей имеет глубокую теоретическую основу, которая была разработана с момента существования института государства и направлена на выявление четких границ власти между отдельными ветвями власти с целью построения их структуры таким образом, чтобы они служили обществу.

Автор пришел к выводу, что парламентский контроль находится в прямой связи с принципом разделения властей, в этой системе он служит и выступает элементом взаимного контроля ветвей власти. Судебная власть сегодня также однозначно определяет недопустимость главенствующей функции, приоритетной роли законодательной ветви власти над другими частями государственной власти. Парламентский контроль находится в прямой связи с принципом разделения властей, в этой системе он служит и выступает как элемент взаимного контроля ветвей власти.

По мнению автора, наличие такого контроля на практике постоянно приводит к мысли о приоритетной роли законодательной ветви власти, что приводит к ослаблению принципа разделения властей. Однако следует отметить, что реализация контрольных полномочий не направлена на определение приоритета законодательной ветви власти в системе разделения властей; парламентский контроль осуществляется только организационно.

Ключевые слова: Республика Кыргызстан, Жогорку Кенеш, разделение властей, право, законодательство, исполнительная власть, законодательная власть, исполнительная власть, парламентаризм, парламентский контроль.

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