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ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
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Х А Б А Р Ш Ы С Ы

ВЕСТНИК

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК
РЕСПУБЛИКИ КАЗАХСТАН

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NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

Қазақстан Республикасы Ұлттық ғылым академиясы «ҚР ҰҒА Хабаршысы» ғылыми журналының Web of Science-тің жаңаланған нұсқасы Emerging Sources Citation Index-те индекстелуге қабылданғанын хабарлайды. Бұл индекстелу барысында Clarivate Analytics компаниясы журналды одан әрі the Science Citation Index Expanded, the Social Sciences Citation Index және the Arts & Humanities Citation Index-ке қабылдау мәселесін қарастыруда. Web of Science зерттеушілер, авторлар, баспашылар мен мекемелерге контент тереңдігі мен сапасын ұсынады. ҚР ҰҒА Хабаршысының Emerging Sources Citation Index-ке енуі біздің қоғамдастық үшін ең өзекті және беделді мультидисциплинарлы контентке адалдығымызды білдіреді.

НАН РК сообщает, что научный журнал «Вестник НАН РК» был принят для индексирования в Emerging Sources CitationIndex, обновленной версии Web of Science. Содержание в этом индексировании находится в стадии рассмотрения компанией Clarivate Analytics для дальнейшего принятия журнала в the Science Citation Index Expanded, the Social Sciences Citation Index и the Arts & Humanities Citation Index. Web of Science предлагает качество и глубину контента для исследователей, авторов, издателей и учреждений. Включение Вестника НАН РК в Emerging Sources Citation Index демонстрирует нашу приверженность к наиболее актуальному и влиятельному мультидисциплинарному контенту для нашего сообщества.

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PRINCIPLES AND FORMS OF CONTROL FUNCTIONS OF PARLIAMENT

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 Constitutional Law of the Kyrgyz Republic «On the Government of the Kyrgyz Republic», the Law of the Kyrgyz Republic «On Procedure for Exercising Control Functions by the Jogorku Kenesh 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 Kyrgyz Republic and the works of legal scholars.

From the author's point of view, the principles of parliamentary control and notes these condition fully contribute to implementation of its main purpose.

According to the author attention to the fact existing principle of legality of parliamentary control implements dual function: on the one hand, control exercised by legislative body is aimed at monitoring and verifying implementation of law, on the other hand, principle of legality of parliamentary control ensures compliance with all relevant standards for conducting control measures.

The article examines the presented classifications of forms and types of parliamentary control in their content cannot be complete and none of them can have an advantage. The studied forms of parliamentary control show fairly unified result of the whole variety of manifestations of parliamentary control. According to the author, within certain limits of parliamentary control, interaction between the Jogorku Kenesh and the executive branch is based not only on “subordinate” relations between the subjects and the objects of control, but the executive branch itself is the so-called “product” of existence of parliament.

Key words: Republic of Kyrgyzstan, Jogorku Kenesh, theory, state, principle, functions, law, legislation, executive power, parliamentarism, parliamentary control.

Introduction. Implementation of aims for which parliament was created is ensured by systemic action of the principles of parliamentary control. The principles of parliamentary control are the most general rules of conduct.

Parliaments or legislatures are the keystone of democratic governance and they are critical in securing government accountability (Rahman, 2007, p. 10). Control of government, supervision, scrutiny, oversight and similar expressions can be found in the literature to denote an important function of parliament, or consequence of legislative activities (Damgaard, 2000, p. 6-7). Parliamentary questioning and various types of debates may contribute to many of functions of parliamentary control simultaneously (Wiberg, 1995, p. 180). The modern society requires a rational, professional, stable and socially accountable public administration that serves its

citizens (Jugovich, 2012, p. 16). Activities of Deputies on implementation of parliamentary control depends on factors such as the structural makeup of the parliamentary committee for oversight, political culture, and the personal views of the Members of Parliament involved, decide to a large degree how often the committee convenes, what the atmosphere of the meetings is like, and what issues are on the table (Hijzen, 2014, p. 227).

Materials and 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», the Law of the Kyrgyz Republic «On Procedure for Exercising Control Functions of the Jogorku Kenesh of the Kyrgyz Republic» and the works of legal scholars.

The principle of legality of parliamentary control is a fundamental and laid in as the basis of functions national of representation.

The Law of the Kyrgyz Republic «On Procedure for Exercising Control Functions by the Jogorku Kenesh of the Kyrgyz Republic» in Article 3 says parliamentary control is carried out on the basis of the principle of legality. In theory, this principle is not unambiguous and causes different judgments. In general, it is perceived as generally binding rules of behavior (Dolgopyat, 2008, p. 242; Bonner, 1989, p. 8). At the same time, as noted in the textbook «Theory of State and Law», edited by N.A. Kataev and V.V. Lazarev, this principle reveals implementation of legal norms by subjects of law relations (Afanasyev, Granat, Kataev et al.; 1994; p. 389]. On the other hand, this principle necessary and need to be separated from the very concept of «legality», i.e. the principle of legality and the concept of legality, completely different understandings.

Back in the Soviet period, A.T. Bonner noted legality wider claim the concept «principle of legality» and the given notion or idea is idea is one of the building blocks of the broader concept of legality (Bonner, 1989, p. 8).

In the case of the principle of parliamentary control - legality, this issue becomes even more important. Since parliamentary control is primarily associated with monitoring implementation of legal norms themselves, i.e. on the one hand, and mainly, the principle of legality is the very essence of parliamentary control, on the other hand, this fundamental should contain those provisions that will ensure the unquestioning implementation of rules that provide for regulations of control.

As is customary in theory, for example, according to S.S. Alekseev, the general legal category of legality includes the following principles:

1. rule of law;
2. equality of people before the law;
3. priority of human rights;
4. unity of legality throughout state (Alekseev, 2005, p. 67).

The next very important principle of implementation of parliamentary control is independence of conduct of this activity.

At the same time, independence naturally includes autonomy and self-dependence, allowing for comprehensive and impartial consideration of issues that should be gone behind.

In this case, it is self-evident it is unacceptable to influence subjects exercising this control and their subordination. At the same time, subject must have initiative, which at the moment may actually be absent in conditions of strict party discipline.

However, this initiative and independence presupposes not interconnection within parliamentary official groups or deputies, but rather independence of parliament - in general, when monitoring implementation of laws.

The principle of consistency is aimed at bringing into coherent system of various forms of parliamentary control and assumes interconnection with other functions of parliament.

Necessary beginning of all powers of parliament as representative body, the most open and closest to citizens, public associations, to other elements of civil society is the principle of publicity (Petukhova, 2016, p. 33). Including transparency regarding established facts of offenses by public authorities and officials.

The principles of parliamentary control fully contribute to fulfillment of its main purpose. At the same time, it is necessary to pay attention to the fact existing principle of legality of parliamentary control ensures implementation of the dual function: on the one hand, control exercised by legislative body is aimed at monitoring and verifying implementation of law, on the other, the principle of the legality of parliamentary control ensures compliance with all relevant norms regulating conduct of control measures.

Naturally, variety of forms and types of parliamentary control is of high interest in science.

A.A. Kornilaeva in her dissertation research revealed the following grounds for the classifications of parliamentary control:

- 1) based on the variety of parliamentary control bodies;
- 2) depending on the time, based on when parliamentary control was carried out;
- 3) by content (Kornilaeva, 2002, p. 25-26).

In turn, G.Yu. Divaeva presents the next classification of parliamentary control:

- depending on time of implementation;
- on bodies exercising parliamentary control;
- by content;
- depending on form of government in particular state;
- according to implementation procedure (Divaeva, 2004, p. 17-18).

Not all researchers support the above disclosed classifications of parliamentary control. For example, A.S. Zubarev proposed the classification of parliamentary control depending on subject of control activity: bicameral, general chamber, committee or commission and individual (Zubarev, 2015, p. 48). This classification, according to I.V. Zaitsev, is not complete, since it does not take into account participation of individual state bodies in conduct of parliamentary control that are not part of

parliament, for example, accounting chamber etc. (Zaitsev, 2014, p. 61).

It should be noted the presented classifications of forms and types of parliamentary control in their content cannot be complete and we do not think any classification has advantages. On the contrary, a rather unified result of the whole variety of manifestations of parliamentary control is obvious.

In turn, A.A. Arabaev spoke about existence of various forms of parliamentary control (Arabaev A., Arabaev R., Berenalieva A.; 2013; p. 390). K.M. Osmonaliev also notes in his comments to the Constitution of the Kyrgyz Republic parliament is endowed with control powers, which are reflected in the legislation of the Kyrgyz Republic «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic» - «annual reports», «government hour», «parliamentary inquiry» etc. (Osmonaliev, Zhumabekova; 2018; p. 181-182).

Results and discussion. One of the most important types of parliamentary control is exercised over executive branch. In this case, it is necessary to rely on the constitutional norm, Part 1 of Article 85, according to which the Government of the Republic of Kyrgyzstan in its activities is accountable to the Jogorku Kenesh and is responsible to it within the limits determined by the Constitution.

Specifics of parliamentary country speaks not only of existence of parliamentary control over executive power, but also shows this is the result of functioning and activities of the Jogorku Kenesh of the Kyrgyz Republic. This is confirmed by content analysis by Article 84 of the Constitution of the Kyrgyz Republic:

- within 25 working days from day of the first meeting of the Jogorku Kenesh of new convocation, Candidate for the Prime Minister is nominated;

- Candidate for the post of Prime Minister submits not only program and structure, but also consist of the Government to the Jogorku Kenesh;

- if it is impossible to form the Government of the Jogorku Kenesh by forming a coalition with assistance of the President, factions independently form parliamentary majority and nominate Candidate for the post of Prime Minister.

In other words, within framework of parliamentary control, interaction of the Jogorku Kenesh and executive branch is based not only on “subordinate” relations - subject of control and object of control, but executive branch itself is so-called “product” of existence of parliament.

Speaking about importance of control over government, in this sense, E.A. Kazakov argues, first of all, it is executive branch that is aimed at implementing and enforcing laws and decisions adopted by parliament (Kazakov, 2016, p. 43) and it, in pursuance of laws and other normative legal

acts, implements functions of the state in managing all spheres of life of country and society, using special forms, methods and means of implementing managerial actions (Kazakov, 2016, p. 44).

If we pay attention to control on part of the Jogorku Kenesh over executive power, taking into account above, then this is formation of government and subsequent control in form of expressing a lack of confidence in government or providing confidence, as well as its annual report to the Jogorku Kenesh.

Regulating issue of expressing a lack of confidence consists, on the one hand, of establishing possibility of raising issue of confidence in government, which is initiated by the Prime Minister, and on the other hand, of potential for expressing a lack of confidence emanating from Parliament.

Raising of question of confidence in the Government of the Kyrgyz Republic is a kind of reflection of attitude to activities of this body, in positive answer to which the Prime Minister is primarily interested. This issue is regulated by Article 86 of the Constitution of the Kyrgyz Republic and Article 130 of the Law of the Kyrgyz Republic «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic», as well as Article 13 of the Constitutional Law of the Kyrgyz Republic «On the Government of the Kyrgyz Republic».

According to Article 86 of the Constitution of the Kyrgyz Republic, the Prime Minister, no more than twice a year, can put before the Jogorku Kenesh question of confidence in the Government. In this case, it is additionally provided if the Parliament makes decision on a lack of confidence, then the President either dismisses the Government of the Kyrgyz Republic or calls early elections to the Jogorku Kenesh, that is, there by significance of this procedure is determined, lack of mutual understanding between two branches of government should be decided at the discretion of the President.

At the same time, Article 130 of the Law of the Kyrgyz Republic «On the regulation of the Jogorku Kenesh of the Kyrgyz Republic» provides for analogical norms. However, these norms are in the Chapter 25 of this law, which is called - «Approval of Nationwide Programs of Socio-Economic Development, Medium-Term Program Activities of the Government. Expression of a lack of confidence in the Government». In other words, it is this section that provides for the norms on the Government's submission of national programs to the Jogorku Kenesh for approval, moreover, directly in this section, issues of the Prime Minister's submission of medium-term programs of the Government are regulated no later than one month from the date of

appointment. This indicates importance of the presence of these norms in the said law.

More detailed moments and meaning of raising issue of confidence in the Government of the Kyrgyz Republic before the Jogorku Kenesh are disclosed in the Constitutional Law of the Kyrgyz Republic «On the Government of the Kyrgyz Republic». This act specifies in which cases the Prime Minister can exercise the competency to raise such a question. Thus, the question of confidence in the Government can be raised by the Prime Minister to the Jogorku Kenesh in conjunction with a specific draft decision of the Jogorku Kenesh initiated by the Prime Minister. In this case, rejection of the decision by the Jogorku Kenesh proposed by the Prime Minister is considered a refusal of confidence in the Government. The question arises in what form this decision of the Jogorku Kenesh should be adopted, since there are several types of acts of Parliament: laws, decrees, resolutions, declarations, appeals, statements and other acts on political issues (Article 99 of the Law «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic»). At the same time, percentage of norms of aforementioned law indicate existence of laws and decisions of the Jogorku Kenesh of the Kyrgyz Republic. In other words, a certain collision arises.

However, consideration of the following grounds for possibility of raising issue of confidence in the Government of the Kyrgyz Republic, established by the Constitutional Law of the Kyrgyz Republic «On the Government of the Kyrgyz Republic» leads to different conclusions. In accordance with this act, the question of confidence in the Government can be raised by the Prime Minister to the Jogorku Kenesh based on the general political situation in the republic. The general political situation specified in this provision presupposes its disclosure. This term is not defined in the legislation. Even if we turn to general scientific research, as noted by the Belarusian researcher, Doctor of Sociological Sciences G.M. Evelkin this term is used by sociologists, lawyers, philosophers and intuitively it is perceived unambiguously. However, there is no clear designation of this term (Evelkin, 2014, p. 47). In other words, this concept is rather a general scientific one, which is absent in the legislation. In turn, this very definition in theory is perceived as general situation in the country, including both national security and the economic situation, political mood of the population, etc.

In this connection, it should be noted norm foresaw in the Law «On the Government of the Kyrgyz Republic» on initiation by the Prime Minister of raising issue of confidence in the Government, on the one hand, discloses grounds for

the use of such a competency and is informative, on the other hand, there is nothing for the Chairman of the Government are limited and may be dictated by general socio-economic situation in the country.

Within framework of parliamentary control, raising issue of confidence in the Government of the Kyrgyz Republic is an important component that allows you to gain additional support for general initiatives of this body.

As the Kyrgyz Republic, in parliamentary countries the institution of parliamentary distrust of government is a kind of control authority (Baytin, Borisov, Grigoriev et al; 2001; p. 356).

The norms of the Constitution of the Kyrgyz Republic and the Law «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic» provide for the regulation of issue of expressing a lack of confidence in the Government as follows - this query is initiated by qualified composition of the Parliament, decision on it is taken by majority of votes of deputies, this question cannot be considered 6 months before next elections President and others (Article 85 of the Constitution of the Kyrgyz Republic and Article 131 of the Law «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic»).

These norms, considering exclusive responsibility of the Government to the Jogorku Kenesh, provide for restrictive norms of procedure for expressing a lack of confidence in the Government. Naturally, the above norms take into account and exclude crisis of power or misunderstanding between branches of power between themselves and head of state.

Another normative legal act - the Constitutional Law «On the Government of the Kyrgyz Republic» in article 17, in contrast to the above laws, clarifies some aspects of the expression of a lack of confidence in the Jogorku Kenesh. Thus, this body, based on results of consideration of Annual Report of the Prime Minister, may consider issue of expressing a lack of confidence in the Government or its individual member. Expression of a lack of confidence can only be considered based on results of Annual Report of the Prime Minister. According to K.M. Osmonaliev and T.A. Zhumabekova, expressed in the commentary to Article 85 of the Constitution of the Kyrgyz Republic, issue of a lack of confidence is considered exclusively when Annual Report of the Prime Minister is presented. Thus, there is a uniform understanding of procedures for expressing distrust between the norms of the Constitution of the Kyrgyz Republic and the legislation (Osmonaliev, Zhumabekova; 2018; p. 230).

It should be expressed of a lack of confidence in the Government of the Kyrgyz Republic is

directly agreed in the norms of the Constitution of the Kyrgyz Republic and the Law «On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic» covers for the competency of the Jogorku Kenesh to express no confidence in individual members of the Government.

At the same time, the President of the Kyrgyz Republic has the competency to both accept and refuse to make such a decision. If the President of the Kyrgyz Republic does not accept proposal to resign individual member of the Government of the Kyrgyz Republic, the Jogorku Kenesh has the authority to reconsider this issue and the President is obliged to dismiss member of the Government. In other words, unlike expressing a lack of confidence in the Government of the Kyrgyz Republic, when expressing no confidence in individual member of the Government of the Kyrgyz Republic, the President does not have the competency to dismiss the Government of the Kyrgyz Republic. This is reasonable, since the issue concerns only individual member of executive branch.

Thus, expression of a lack of confidence in the Government of the Kyrgyz Republic is one of forms of parliamentary control, which is carried out exclusively when the Prime Minister submits annual report.

Parliamentary control's the next very important element of is submission of annual report of the Prime Minister of the Kyrgyz Republic. Accordingly, the Constitution of the Kyrgyz Republic, in the norm that regulates general provisions of the legal status and the place of the Government in the system of authorities, indicates this body is responsible to the Parliament and is accountable to it (Article 85). At the same time, it should be borne in mind, as we noted above, this norm in combination with the norms of the Constitutional Law «On the Government of the Kyrgyz Republic» shows the Parliament has the competency to express a lack of confidence in the Government for not satisfying annual report.

The law «On the Government of the Kyrgyz Republic» also specifies the Prime Minister annually submits report on work of this body to the Jogorku Kenesh for the previous year, precisely within framework of the Government's program approved by the Parliament (Part 4 of Article 32). In other words, not just arbitrary report on work done or on basis of their own programs is provided, but precisely within framework of program approved by the Jogorku Kenesh. In turn, this program is approved at the time of appointment of the Prime Minister, in accordance with Article 84 of the Constitution. Moreover, significance of program approved by the Jogorku Kenesh and dependence of

the Government of the Kyrgyz Republic on the Parliament is confirmed by following norm. So, in accordance with the Constitutional Law «On the Government of the Kyrgyz Republic»:

- The Government carries out its activities on basis and in pursuance of the Constitution, laws and program of the Government's working approved by the Jogorku Kenesh (part 3 of Article 1);

- when exercising its powers, the Government is guided by program of activities approved by the Jogorku Kenesh (Part 1 of Article 4);

- The program of the Government's activities is basis of the Government's state policy (Part 2 of Article 4).

Undoubtedly, the above norms allow us to speak about importance of parliamentary control in the constitutional system of Kyrgyzstan through hearing annual report of the Government. In this vein, it is worth paying attention to the opinion of N.V. Petukhova, who, speaking about the Government's report as one of forms of parliamentary control, notes speech of the Chairman of the Russian Government is an informational message with a general description of activities of the body headed by him (Petukhova, 2017, p. 102). At the same time, according to her conviction, the deputies have the competency to express their opinion, this is «natural» (Osmonaliev, Zhumabekova; 2018; p. 103).

Conclusion. Summing up the above, we note parliamentary control in form of annual report of the Government of the Kyrgyz Republic is monitoring content of direct documents of this body, approved by the Jogorku Kenesh during the procedure for appointing the Prime Minister.

In this connection, it should be noted norm foresaw in the Law «On the Government of the Kyrgyz Republic» on initiation by the Prime Minister of raising issue of confidence in the Government, on the one hand, clarifies situations when it is possible to use such powers and is informative, on the other hand, these cases are nothing are not limited and can be dictated by general socio-economic condition in the country.

Within framework of parliamentary control, raising issue of confidence in the Government of the Kyrgyz Republic, as we can see, is an important element of the constitutional system of this country, which makes it possible to secure additional support for general initiatives of this body.

Thus, expression of no confidence in the Government of the Kyrgyz Republic is one of forms of parliamentary control, while this control is carried out exclusively when the Prime Minister submits annual report.

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ПАРЛАМЕНТТИҢ БАҚЫЛАУ ФУНКЦИЯЛАРЫНЫҢ ПРИНЦИПТЕРІ МЕН НЫСАНДАРЫ

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ПРИНЦИПЫ И ФОРМЫ КОНТРОЛЬНЫХ ФУНКЦИЙ ПАРЛАМЕНТА

Аннотация: в статье проанализированы с применением нормативного и системного методов, а также анализа и синтеза, положения Конституции Кыргызской Республики, Конституционного Закона Кыргызской Республики «О Правительстве Кыргызской Республики», Закона Кыргызской Республики «О порядке осуществления контрольных функций Жогорку Кенешем Кыргызской Республики», Закона Кыргызской Республики «О Регламенте Жогорку Кенеша Кыргызской Республики», Закона Кыргызской Республики «О статусе депутата Жогорку Кенеша Кыргызской Республики» и трудов ученых-юристов.

По мнению автора, реализация целей парламентского контроля обеспечивается их системным действием принципов, которые представляют собой правила поведения наиболее общего характера и эти принципы в полной мере способствуют выполнению главного предназначения данной разновидности контроля.

Автор статьи полагает, что принцип законности парламентского контроля является одним из основополагающих и заложен в качестве основы функций народного представительства, а также реализует двойственную функцию: с одной стороны, контроль осуществляемый со стороны законодательного органа направлен на мониторинг и проверку исполнения закона, с другой – принцип обеспечивает соблюдение всех соответствующих норм проведения контрольных мероприятий.

В публикации исследуется вывод о том, что независимость включает в себя самостоятельность и автономность, позволяющие всеобъемлюще и беспристрастно рассматривать соответствующие вопросы. Является недопустимым оказание влияния на субъектов, осуществляющих парламентский контроль, и их подчиненность. Субъект контроля должен обладать инициативой, которая на данный момент может на самом деле отсутствовать в условиях жесткой партийной дисциплины. Однако эта инициатива и самостоятельность предполагает несвязанность внутри парламентских официальных групп или депутатов, а речь идет о самостоятельности Парламента – в целом при проведении мониторинга исполнения законов.

Автором в статье рассматриваются в рамках изучения парламентского контроля институт постановки вопроса о доверии Правительству Кыргызской Республики, который позволяет заручиться дополнительной поддержкой общих инициатив данного органа и выражение недоверия Правительству Кыргызской Республики представляет собой одну из форм парламентского контроля, которая осуществляется исключительно при представлении Премьер-Министром ежегодного отчета. Регулирование данных вопросов, учитывая исключительную ответственность Правительства перед Жогорку Кенешом, предусматривают ограничительные нормы порядка выражения недоверия Правительству.

Ключевые слова: Республика Кыргызстан, Жогорку Кенеша, теория, государство, государство, принцип, функции, право, законодательство, исполнительная власть, парламентаризм, парламентский контроль.

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