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## **Problems of increasing the efficiency of the parliamentary control mechanism in the Republic of Kazakhstan**

The article analyzes the problems of organizing parliamentary control in the Republic of Kazakhstan. Based on the analysis of modern research in the Republic of Kazakhstan and foreign countries, relevant issues of the formation and development of this legal institution have been raised. The authors of the article substantiated conceptual provisions. Parliament has a complex multifunctional mechanism for effective control. The analysis is based on two fundamental conceptual principles in the interpretation of parliamentary control. Firstly, parliamentary control as a system of norms aimed at checking and evaluating the activities of executive bodies, with the possible application of sanctions. Secondly, parliamentary control is a set of measures that allows initiating the resignation of the government. The principle of democracy is the initial category of parliamentarism. The central category of parliamentary law theory is the principle of separation of powers. The main functions of the Parliament are updated: legislative, representative, control. The article formulates the main conclusions and presents options for improving the effectiveness of the mechanism of parliamentary control in the Republic of Kazakhstan. One of the main conclusions of the study is the conclusion that a law is needed in the republic that would regulate and intensify the activities of the Parliament in such aspects as appeal to procedural forms of control such as interpellation with its ability to apply political sanctions, a resolution of censure, a parliamentary investigation of official crimes persons entailing their resignation, etc.

*Keywords:* law, parliament, deputy, control, parliamentary control, state.

### *Introduction*

The transformations taking place in the life of society in recent years have been accompanied by the reform of the system of state control of the sphere of production, social and political life of society. The importance of state control is growing in connection with the need to comply with the foundations of the constitutional system, enshrined in the Constitution of the Republic of Kazakhstan: the principles of democracy, separation of powers, human and civil rights and freedoms. The increasing role of state control requires, first of all, the pursuit of a unified policy in the field of state control based on constitutional principles. Of great importance is the problem of developing mechanisms for monitoring the socio-economic development of the country in a variety of forms of ownership and a market economy. Of particular relevance are the constitutional and legal foundations and principles of development of the state control system, the identification of potential opportunities and limits of control functions, finding the most effective methods and forms of their implementation.

The obligatory attributes of the modern state of law are, as life practice shows, two types of control in the management of the state — democratic, or democratic, and state. Democratic control is based on the activities of public structures and organizations aimed at protecting the rights and interests of citizens from arbitrariness, various kinds of abuses committed by authorities. It is an inherent way to realize the independence and sovereignty of the people — the only one in the country, as the Constitution of the Republic of Kazakhstan states, the source of state power. By delegating power to state bodies, he at the same time exercises control over the executive structures of the state through public associations and formations. And as it is rightly noted, in many developed countries it is perceived as the most important problem and direction of legitimizing state power. In the context of the theory of parliamentary law as a sub-branch of constitutional law, considerable attention is paid to the concept of parliamentary control, the essence, forms and order of its organization, its role in the system of state control and, more broadly, in the process of exercising state power.

### *Materials and methods*

The methodological basis of the study is the dialectical method, as well as the ideas presented in the works of philosophers, legal theorists, the concepts of modern domestic and foreign scientists, devoted to the

problems of improving the functioning of the parliamentary control institution in the Republic of Kazakhstan. The following research methods were used in the work: system-structural method, analysis and synthesis methods, formal legal method, comparative legal method, historical method, sociological method, legal modeling method.

### *Discussion*

The analysis of the theory and practice of parliamentary control manifests the presence of a whole of two fundamental conceptual attitudes in the interpretation of this type of control. The first, the most common, postulates parliamentary control as a system of norms aimed at regulating the procedure for conducting and verifying the activities of executive bodies, as well as evaluating these activities with the possible application of sanctions — a vote of no confidence, a resolution of censure, impeachment, etc. The second installation, more categorical, imperative, perceives parliamentary control as a set of measures, «allowing the chambers of Parliament to form an opinion on the activities of the government and overthrow it in case of non-compliance with current policies». This view is characteristic of the French, their researchers. This is natural, since it is precisely this state that has gained in history the fame of an adherent to the idea of democracy. It is no accident that the French Constitution enshrines the maxim of Lincoln as a priority principle: «The rule of the people, by the will of the people and for the people» (Article 2, Section 1).

Parliamentary control is the prerogative of the activities of the legislative branch of government — the Parliament and its chambers. Legislative power is actualized by such thinkers as John Locke, S.-L. Montesquieu, J. -J. Russo, T. Hobbes, I. Kant et al. The legislative branch has gained effective force in our time and is actively influencing modern state building and the constitutional process. The legislative branch, through its body — the Parliament — exercises constant and active supervision over all branches of the administration, and strictly and uncompromisingly criticizes the actions and methods of the government and its individual members.

Parliament is able to deploy its sophisticated multi-functional mechanism through effective monitoring. The control function is subordinated, according to V.Orlando, to the goal of constant and active supervision by the parliament over all branches of the administration and ensuring the right of the parliamentarian to express to the government members «any desire, doubt or dissatisfaction» [1; 134]. It is also noted that parliamentary control is carried out using parliamentary criticism of government actions [2; 530]. S.A. Kotlyarevsky also considered the control function to be extremely important: «In a modern state, the parliament's controlling activity is all the more important the more inevitable it is the strengthening of government, which holds in its hands the threads of legislative and budgetary work» [3; 264]. The conceptual concepts of the theory of parliamentary control are based on the principle of democracy: «the representative component of state power is seen as an institutional form of exercising the people's will. It is public power, with the help of which public interest is realized as a combination of state, national and public interests» [4; 137]. It is noted that «back in the Middle Ages, the idea of popular sovereignty was one of the popular accessories of natural-legal constructions. This idea was a further formulation of the legal dependence of the government on society. It postulated for the people a permanent right of control and supremacy over power» [5; 23]. Developing the theory of democracy as a principle of parliamentarism, K.V. Aranovsky notes: «The forms in which democracy is consolidated are different. It can be proclaimed directly.... The political image of the people — the founder, the holder of power — can be used — the text of the constitution is preceded by a preamble, from which it follows that it was the people who established the foundations of the political system, determined their goals and further reserves the right to control the conditions for exercising power in the country [6; 130]. The principle of democracy is thus the initial category of parliamentarism.

The central category of the theory of parliamentary law is the principle of separation of powers, designed to ensure the effectiveness of democracy, «this principle is democratic, it provides for such an organization of state power that can effectively identify and reflect the interests of both the majority and minorities of the population, its various groups» [7; 5]. In the history of political and legal thought, various opinions on this subject are embodied: the legislature should remove «people from government if they abuse their powers or fulfill their opposition to the clearly expressed opinion of the nation» [8; 53]. The government (ministers) must bear the consequences of not only their own violations, but also political mistakes that deprive them of the trust of people's representatives [9; 128]. The literature also notes that parliamentary control in the mechanism of separation of powers is one of the types of state control: «the oldest form of control (dating back to antiquity) is the conviction of the need for separation of state power into three branches — executive, legisla-

tive and judicial — and assignment of these functions to state bodies independent of each other. This type of control is designed to prevent abuse of power or the excess of power by individual state bodies and, thereby, ultimately guarantee civil liberties.... The basic law defines the tasks and boundaries of the executive and legislative authorities and allows them to be controlled for possible abuse» [10; 47]. A. Lafitov believes that «along with lawmaking, law enforcement and the implementation of the rule of law in the legal management mechanism, there exists and really operates a block of such legal means as acts of control bodies; measures against the adoption of unlawful management decisions; measures to correct such decisions to eliminate the consequences caused by them; preventive measures; crime prevention; compulsory performance of duty, legal liability. The legislation establishes state legal means that give parliamentarians the opportunity to actively participate: in making managerial decisions (legislative initiative, the right to make a question, request); in the organization of the execution of decisions» [11; 32].

In the modern science of constitutional law, sufficient attention is paid to the problems of parliamentary control; the sources define this institution. The notion of parliamentary control formulated by M.M. Utyashev and A.A. Kornilayeva deserves attention and appreciation: this is a set of various measures carried out by the highest legislative (representative) government body to constantly monitor and verify the activities of the system, as well as to eliminate those identified as a result such verification of violations and prevention of possible inconsistencies [12; 30]. The authors of the textbook «Modern Parliament: Theory, World Experience, Russian Practice» also offer a definition of parliamentary control: parliamentary control is «a system of norms that regulates the established procedure for monitoring and verifying mainly the activities of executive bodies and aimed at evaluating these activities with the possible application of sanctions (vote of no confidence, resolution of censure, impeachment, etc.)» [13; 81]. Leading after the legislative powers of the parliament, modern scientists call the control function, which consists in exercising control over the activities of the government and other supreme bodies of state power with the exception of interference in their directly executive and administrative work [14; 386]. Considering parliamentary budget law as part of parliamentary financial control, A. Somenkov defines its specificity: parliamentary control «by its tasks is state control, as a form of unified state power, the source of which is the multinational people, exercising their sovereignty through representation in the control system relations» [15; 31]. The wording of the French scientists sounds more categorical and laconic: parliamentary control is a set of measures that allows the chambers of parliament to form an opinion on the activities of the government and to overthrow it in case of deep discrepancy with the current policy [16; 96]. E.V. Kovryakova defines parliamentary control as an institution of law as a set of rules of law governing the established procedure for conducting, monitoring and verifying mainly the activities of executive bodies in order to evaluate these activities and the possible application of sanctions (vote of no confidence, resolution of censure, impeachment, etc.) [17; 137].

E.A. Solomatina summarizes: «The stability and continuity of any power system is ensured by a certain constitutional and legal mechanism providing for a balanced balance of powers, their interdependence, and mutual control. For this, each of them determines its own source of formation, various terms of office are fixed, and political and legal levers are envisaged to neutralize the actions of the other. In modern conditions, the principle of separation of powers is considered as an organizational and legal mechanism for the implementation of a unified state power as a complex phenomenon. State authorities carry out activities adhering to a certain framework, which does not allow «checks» to go beyond, and «balances» represent powers whose implementation neutralizes possible abuses, deviations from state bodies, representing a different type of state power» [18; 20, 21].

In developed democracies, the principle expressed by the formula «when a people gather as a sovereign body, all government jurisdictions ceases» has good enough reason. And this is clearly demonstrated and demonstrated by their institutions of legislative power, representing the will of the people in a highly adequate and irrefutable form. Thus, the representative function of the Parliament is leading after the legislative one, that the control function is largely determined by the representative, that is, the nature, nature and purpose of this body.

However, in countries around the world, not all of these three functions are equally involved. There are countries where the legislative and control functions of the parliament are equally performed, and this does not create an imbalance of the branches of government, but, on the contrary, contributes to the sustainable and effective development of the state. There are no such precedents when the control function is overshadowed by the legislative, which creates a significant bias, which allows us to state the fact that the Parliament does not have control powers and the demand for these powers. This kind of imbalance in the functionalism of the Parliament is often a consequence of the fact that control functions are not prescribed in the Constitu-

tion, are not fixed in special legislative acts, as, naturally, the mechanism for their implementation is not fixed [19; 10].

So, the control function of the Parliament of the Republic of Kazakhstan has not been singled out in separate articles of the Constitution and relevant laws, which allows some experts to talk about the lack of parliamentary control in the country. However, a complete denial of the control activities of the Parliament is not entirely correct and lawful. A number of his powers, both exclusive and independent, contain elements of a control property.

These elements are included in the right of Parliament: 1) to approve the republican budget and the reports of members of the Government and the Accounts Committee on monitoring the implementation of the republican budget on its implementation; 2) take part in the implementation of the country's personnel policy (giving consent to the appointment of senior executive officials (the Prime Minister of the Republic of Kazakhstan, the Prosecutor General, the Republic of Kazakhstan, the Chairman of the National Security Committee of the Republic of Kazakhstan, etc.); 3) raise the issue of dismissal President of the Republic and submit its results to joint meetings of the chambers; 4) use the legal procedural forms of control — deputy questions and requests, parliamentary hearings, government hour, meetings with voters, etc.

### *Conclusion*

The powers of deputies of the parliament of the Republic of Kazakhstan contain great potential for monitoring the activities of executive authorities, the Government, its individual members, the spending of budget funds, other material and financial income. However, deputies and committees and commissions operating within the framework of the Parliament do not fully use this potential, and if they do, they do not maintain the control sequence and do not bring it to the end. The Parliament of the Republic of Kazakhstan does not appeal to such procedural forms of control as interpellation with its ability to apply political sanctions, a censure resolution, a parliamentary investigation of the crimes of officials, entailing their resignation, etc. Meanwhile, the practice of foreign countries indicates the high dynamics of the application of such control measures in activities of the investigation committees, which may require any documents and materials, call any official for interrogation, up to the head of state and in accordance with the constitution and laws on the responsibility of state officials (on impeachment).

The factology of the activities of foreign parliaments leads to the conclusion that a law is needed in the republic that regulates and activates the activities of the Parliament in this aspect. The law should contain the norms of the parliamentary investigation, its procedures, create a basis for organizing investigative committees, whose competence would include, first of all, the investigation of violations of laws and other forms of deviant behavior of senior state officials. The parliamentary investigation is one of the specific methods of parliamentary and, more broadly, state control. A parliamentary investigation should be of a state legal nature. The parliamentary investigation should be organizationally and structurally isolated from other forms and means of parliamentary control, from other types of investigation. Only legislatively enshrined control activities of the representative body will give the Parliament a truly representative image, which it is currently deprived of.

### *References*

- 1 Орландо В. Принципы конституционного права. — М.: Изд-во В.М. Саблина: Потровка, домъ Обидиной, 1907. — 309 с.
- 2 Еллинек Г. Право современного государства. Общее учение о государстве / Г. Еллинек. — СПб., 1903. — 620 с.
- 3 Котляревский С.А. Власть и право. Проблема правового государства / С.А. Котляревский. — СПб.: Лань, 2001. — 368 с. — Мир культуры, истории и философии.
- 4 Государственное управление: основы теории и организации: учеб. / под ред. В.А. Козбаненко. — М.: Статус, 2002. — 366 с.
- 5 Новгородцев П.И. Историческая школа для юристов / П.И. Новгородцев. — СПб.: Лань, 1999. — 192 с.
- 6 Арановский К.В. Государственное право зарубежных стран / К.В. Арановский. — М.: Инфра-М, 1998. — 462 с.
- 7 Шеховцев В.А. Развитие российского парламентаризма / В.А. Шеховцев. — Владивосток: Дальнаука, 2002. — 320 с.
- 8 Милль Джон Стюарт. Представительное правление / Джон Стюарт Милль. — СПб.: Слово, 1907. — 322 с.
- 9 История политических и правовых учений XIX века. — М.: Наука, 1993. — 392 с.
- 10 Швебах В. Контроль за административной деятельностью. В сб.: Государственная служба / В. Швебах. — Вып. 6. Зарубежный опыт. Контроль. — М., 1995. — 289 с.
- 11 Латифов А. Парламентский контроль в Узбекистане / А. Латифов // Политика и право. — 2002. — № 5. — С. 31–36.

- 12 Утяшев М.М. Контрольные функции региональных парламентов: сравнительный анализ / М.М. Утяшев, А.А. Корнилова // Право и политика. — М. — 2001. — № 1. — С. 26–30.
- 13 Современный парламент: теория, мировой опыт, российская практика / под общ.ред. О.Н. Булакова. — М.: Эксмо, 2005. — 320 с.
- 14 Парламентское право России: учеб. пос. / под ред. И.М. Степанова, Т.Я. Хабриевой. — М., 1999. — 386 с.
- 15 Соменков А.Д. Проблемы парламентского контроля за исполнением федерального бюджета в России: автореф. ... д-ра юрид. наук / А.Д. Соменков. — М., 2006. — 31 с.
- 16 Исполнительная власть, законодательная власть, судебная власть во Франции: информационные и учеб. материалы. — Новая сер. — № 6 // Посольство Франции в России. МИД Франции. — М., 1996. — 118 с. (Рос.-фр. сер.).
- 17 Парламентское право России: учеб. — М.: Эксмо, 2006. — 656 с.
- 18 Соломатина Е.А. Теоретико-правовые основы контроля законодательной власти за деятельностью правоохранительных органов: дис. ... канд. юрид. наук / Е.А. Соломатина. — М.: МУ МВД России, 2005. — 172 с.
- 19 Франклин де Вризе. Принципы парламентской оценки эффективности применения законодательства. Руководство по парламентской оценке эффективности применения законодательства. — Лондон, 2018. — 16 с.

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### Қазақстан Республикасындағы парламенттік бақылау механизмінің тиімділігін арттыру мәселелері

Мақалада Қазақстан Республикасындағы парламенттік бақылауды ұйымдастырудың мәселелері талданған. Қазақстан Республикасындағы және шет мемлекеттердегі қазіргі заманғы зерттеулерді талдау негізінде осы құқықтық институтты қалыптастыру мен дамытудың өзекті мәселелері қарастырылған. Мақала авторларының тұжырымдамалық ережелері негізделген. Парламенттің тиімді бақылауды жүзеге асырудың күрделі көпфункционалды тетігі бар. Талдау парламенттік бақылауды түсіндірудегі екі негізгі тұжырымдамалық ұстаным негізінде берілген. Біріншіден, парламенттік бақылау санкцияларды қолдану мүмкін болатын атқарушы органдардың қызметін тексеруге және бағалауға бағытталған нормалар жүйесі ретінде. Екіншіден, парламенттік бақылау - Үкіметтің отставкасын бастауға мүмкіндік беретін шаралар кешені ретінде. Халық билігі қағидасы парламентаризмнің бастапқы санаты болып табылады. Парламенттік құқық теориясының орталық санаты билікті бөлу принципі болып табылады. Парламенттің негізгі заң шығарушылық, өкілді, бақылау қызметі (функциялары) өзектілендірілген. Мақалада Қазақстан Республикасындағы парламенттік бақылау тетігінің тиімділігін арттыру жөніндегі ұсынымдардың негізгі қорытындылары тұжырымдалған және өзіндік нұсқалары берілген. Зерттеудің негізгі қорытындыларының бірі республикада саяси санкцияларды қолдану мүмкіндігі бар интерпелляция, айып тағу қарары, лауазымды адамдардың отставкасына әкеп соғатын қылмыстарын парламенттік тергеу сияқты аспектілерде Парламенттің қызметін реттейтін және белсендіретін заң қажеттігі туралы қорытынды болып табылады.

*Кілт сөздер:* құқық, парламент, депутат, бақылау, парламенттік бақылау, мемлекет.

Б.А. Тайторина, З.Т. Абдукаримова, М.Т. Бейсенбаева, Л.Б. Богатырева

### Проблемы повышения эффективности механизма парламентского контроля в Республике Казахстан

В статье проанализированы проблемы организации парламентского контроля в Республике Казахстан. На основе анализа современных исследований в Республике Казахстан и зарубежных государствах подняты актуальные вопросы формирования и развития данного правового института. Авторами статьи обоснованы концептуальные положения. Парламент имеет сложный многофункциональный механизм осуществления эффективного контроля. Анализ дан на основе двух основополагающих концептуальных установок в толковании парламентского контроля. Во-первых, парламентский контроль как система норм, направленная на проверку и оценку деятельности исполнительных органов, с возможным применением санкций. Во-вторых, парламентский контроль — комплекс мер, позволяющий инициировать отставку правительства. Принцип народовластия является исходной категорией парламентаризма. Центральной категорией теории парламентского права является принцип разделения власти. Актуализированы основные функции Парламента: законодательная, представительная, контрольная. В статье сформулированы основные выводы и представлены варианты рекомендаций по повышению эффективности механизма парламентского контроля в Республике Казахстан. Одним из основных выводов исследования является заключение о том, что в республике необходим закон, который бы регламентировал и активизировал деятельность Парламента в таких аспектах, как апелляция к таким процессуальным формам контроля, как интерпелляция с его возможностью применять поли-

тические санкции, резолюцию порицания, парламентское расследование преступлений должностных лиц, влекущее их отставку, и др.

*Ключевые слова:* право, парламент, депутат, контроль, парламентский контроль, государство.

## References

- 1 Orlando, V. (1907). *Printsipy konstitutsionnogo prava [Principles of constitutional law]*. Moscow: Izdatelstvo V.M. Sablina: Potrovka, dom Obidinoi [in Russian].
- 2 Jellinek, G. (1903). *Pravo sovremennoho hosudarstva. Obshchee uchenie o hosudarstve [Law of the modern state. General doctrine of the state]*. Saint Petersburg [in Russian].
- 3 Kotlyarevsky, S.A. (2001). *Vlast i pravo. Problema pravovoho hosudarstva [Power and law. The problem of the rule of law]*. Saint Petersburg: Lan [in Russian].
- 4 Hosudarstvennoe upravlenie: osnovy teorii i orhanizatsii (2002). [Public administration: the basics of theory and organization]. Moscow: Status [in Russian].
- 5 Novgorodtsev, P.I. (1999). *Istoricheskaiia shkola dlia yuristov [Historical school for lawyers]*. Saint Petersburg: Lan [in Russian].
- 6 Aranovsky, K.V. (1998). *Hosudarstvennoe pravo zarubezhnykh stran [State law of foreign countries]*. Moscow: Infra-M [in Russian].
- 7 Shekhovtsev, V.A. (2002). *Razvitie rossiiskogo parlamentarizma [The development of Russian parliamentarism]*. Vladivostok: Dalnauka [in Russian].
- 8 Mill John, Stewart. (1907). *Predstavitelnoe pravlenie [Representative Board]*. Saint-Petersburg: Slovo [in Russian].
- 9 Istoriia politicheskikh i pravovykh uchenii XIX veka (1907) [The history of political and legal teachings of the nineteenth century]. Moscow: Nauka [in Russian].
- 10 Schwebach, V. (1995). *Kontrol za administrativnoi deiatel'nostiu [Control over administrative activities]*. Moscow [in Russian].
- 11 Latifov, A. (2002). Parlamenskii kontrol v Uzbekistane [Parliamentary control in Uzbekistan]. *Politika i pravo — Politics and Law*, 5, 31–36 [in Russian].
- 12 Utyashev, M.M., & Kornilayeva A.A. (2001). Kontrolnye funktsii rehionalnykh parlamentov: sravnitelnyi analiz [Control functions of regional parliaments: a comparative analysis]. *Politika i pravo — Law and Politics*, 1, 26–30 [in Russian].
- 13 Bulakova, O.N. (Eds.). (2005). *Sovremennyi parlament: teoriia, mirovoi opyt, rossiiskaia praktika [The modern parliament: theory, world experience, Russian practice]*. Moscow: Eksmo [in Russian].
- 14 Stepanova, I.M., & Khabriyevoy, T.Ya. (1999). *Parlamenskoe pravo Rossii [Parliamentary law of Russia]*. Moscow [in Russian].
- 15 Somenkov, A.D. (2006). Problemy parlamenskogo kontrolya za ispolneniem federalnogo biudzheta v Rossii [Problems of parliamentary control over the execution of the federal budget in Russia]. *Extended abstract of doctor's thesis*. Moscow [in Russian].
- 16 Ispolnitelnaia vlast, zakonodatelnaia vlast, sudebnaia vlast vo Frantsii (1996) [The executive branch, legislative branch, judicial branch in France]. Moscow [in Russian].
- 17 Parlamenskoe pravo Rossii (2006) [Parliamentary law of Russia]. Moscow: Eksmo [in Russian].
- 18 Solomatina, E.A. (2005). Teoretiko-pravovye osnovy kontrolya zakonodatelnoi vlasti za deiatel'nostiu pravookhranitelnykh orhanov [Theoretical and legal foundations of the control of the legislative power over the activities of law enforcement bodies]. *Candidate's thesis*. Moscow [in Russian].
- 19 Franklin de Vries. (2018). *Printsipy parlamentskoi otsenki effektivnosti primeneniia zakonodatelstva. Rukovodstvo po parlamentskoi otsenke effektivnosti primeneniia zakonodatelstva [Principles of parliamentary evaluation of the effectiveness of the application of legislation. Guidance on parliamentary assessment of the effectiveness of legislation]*. London [in Russian].