
ФКОНСТИТУЦИЯЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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State control: issues of constitutional and legal regulation

The problem of state control does not lose relevance due to a need for compliancy with the foundations of its constitutional system enshrined in the Constitution of the Republic of Kazakhstan. At present, problems arise with identifying potential opportunities and limits of control functions and finding the most effective methods and forms of their implementation. The purpose of this study is to update problems with the constitutional and legal regulations of our Institute of State Control in this modern time. As a result of analysis within the content of the Constitution and a wide range of sources, certain things have been revealed: in the constitution, state control is regulated in a general abstract-systematic form, manifested through the interrelated action of a large number of constitutional norms. The issues of constitutional zing state control are closely related to constitutional and legal policies. The authors associate problems of constitutional and legal regulations within state control with the functioning of the basic law of state and society. As a rule, control functions are a tool, a means of implementing different functions towards the state. The article concludes that control is a state-power activity expressed from control bodies who then must give controlled objects mandatory instructions to eliminate detected deficiencies; initiating the question of bringing to justice those responsible for the revealed violations.

Keywords: law, control, state, constitution, constitutional and legal regulation.

Introduction

State control is an extensive and important area of activity by public authorities. Transformations taking place within society in recent years are the result of reforms within the system of state control and all spheres of production, social and political life. The importance of state control increases due to its need to comply with the foundations of a constitutional system enshrined in the Constitution of the Republic of Kazakhstan: the principles of freedom, democracy, the separations of power, and human and civil rights. Increasing the role of state control requires, first of all, a unified policy in the field of state control, based on constitutional principles. Of great importance is the problem of developing mechanisms to control socio-economic development within our country in a variety of forms of ownership and market economy. Questions of efficiency in administrative and control types of activity, indicators and criteria of efficiency were and remain one of actual theory and practice in state construction [1; 58]. Of particular relevance are the constitutional and legal foundations and principles of development in state control, the identification of potential opportunities and limits of control functions and finding the most effective methods and forms of their implementation.

Materials and methods

In order to study the problem, doctrinal sources were analyzed. During research the following methods were applied: system-structural method, analysis and synthesis methods, induction and deduction, formal legal method, historical method, sociological method, scientific generalization, logical methods.

Discussion

In the Constitution, state control is regulated in a General abstract-systematic form, manifested through the interrelated action of a large number of constitutional norms-norms-principles, norms-goals, status and competence norms, etc. «the Direct action of the Constitution means that state bodies can (must) apply directly its norms in the following cases: 1) if there is no special normative act regulating the issues to be considered by the state body; 2) even if there is a special normative act, but it contradicts the Constitution; 3) if the provision of the Constitution does not contain an indication of the possibility (necessity) of its application, subject to the adoption of a normative legal act defining the rights, freedoms and duties of a citizen; 4) if the provision of the Constitution in that sense does not require additional regulation» [2; 35–42]. Indeed, «issues of state control are not directly regulated in Basic law. However, the analysis of constitutional norms fixing the legal status of the Supreme bodies of state power allows a conclusion about existence to corresponding control powers and about their constitutional and legal regulation [3; 35]. It is quite understandable that the Constitution «cannot solve the problem of regulating the whole life of society and the state with exhaustive completeness. Its own tools, its capabilities for this are clearly not enough and therefore it begins to attract related political and legal institutions, making them «work» for themselves, to achieve their goals and objectives. First of all, this applies to the current legislation» [4; 99]. According to Yu. n. Starilov, «positively acting law and laws, based on constitutional and legal principles, concentrate the provisions of Basic law and ensure its application. Therefore, it is hardly possible, from this point of view, to talk about the subordinate nature of ordinary (unconstitutional) legislation. It itself establishes limitations of distribution and breaks the influence of the Constitution in the regulation of public relations. The Constitution does not need to be built into the system of existing legal ties. On the other hand, it is already, by definition, at the center of this system; while, it needs to explain fundamental legal terms, concepts and principles. Only in its clear definition in the ordinary current law can become a pledge of effective application (implementation) of the constitutional norms regulating them in the most General form in the text of the Constitution» [5; 17].

The Constitution inside its legal literature is unanimously recognized as the basic law of the state and society, endowed with a special status in the system of legislation. «The most consistent implementation of the principle of the rule of law is the theory and practice of constitutionalism, in which the Constitution plays the role of Basic Law within the state, — believes S.K. Amandykova. All other law-making activity should have constitutional limits. This explains the fact that constitutionalism as the highest expression of the rule of law should serve to protect the social institutions of power from the deformation shifts associated with its capture and usurpation» [6; 91].

Characteristics of the essence of a modern Constitution should have five components: 1) to determine the place of the Constitution and constitutional law in the system of legal regulation, their leading role; 2) not give a list of chapters of the Constitution and point out the main participants of relations of cooperation and competition in society (people, collective, the state, which, being a part of society, however, acquired an independent existence, and the society itself), certain relationships which determine the essence of the Constitution and the constitutional order; 3) to characterize the main content of their relations, and, consequently, the constitutional regulation: the basis for the creation, exchange and distribution of social and spiritual benefits, which are realized in the consolidation of economic, social, political systems and the foundations of spiritual life within society; 4) to indicate the nature of the relationship; 5) to point to the regulator of these public relations, first of all, state power, as the power exercised on behalf of society as a whole, establishing the most General rules for such relations [7; 10, 11].

This doctrine for Kazakhstan offers, among the essential characteristics of the Constitution of the Republic of Kazakhstan: 1) establishment by the Constitution of the priority of the right over state and its organs to limit state power and define legal boundaries; 2) the stipulation of Basic law and principles of popular sovereignty, which proclaim the power of the people, and the only source and bearer of Supreme state power; 3) the Declaration by the Constitution of natural, absolute and inalienable human rights and freedoms in order to ensure personal freedom as the highest value of State; 4) the establishment by Basic law of the mechanism of power based on the principle of dividing unified state power into legislative, executive and judicial branches, their interaction with each other and the use of checks and balances [8; 58].

As for the issues of constitutional zing the Institute of State Control, Zh. d. Busurmanov's conclusion is relevant: «Constitutional and legal policy is designed to develop and implement strategic legal ideas to improve and implement the Constitution of the entire body of constitutional legislation. It should focus on state and society as a whole, on priorities in the constitutional and legal sphere and guide the country in the direction of its progressive legal development through the formation of a full and effective legal system — the core of which is the Constitution» [9; 193].

K.K. Aitkhozhin briefly and logically defines a list of principles: «the guiding principles that are of paramount importance for the formation of an effective mechanism of constitutional and legal regulation in the country: 1) democracy; 2) humanism; 3) the priority of human rights; 4) social justice; 5) transparency; 6) the optimal combination of interests for individual, society and state; 7) scientific validity; 8) constitutional legality [10; 72].

The determination of state control as a constitutional category is equivalent in content to the regulatory, protective, organizational, ideological and law-making functions of the Constitution. Thus, the Constitution of the Republic of Kazakhstan is inherent in the understanding of state control as a function of public administration, and public administration as a comprehensive form of implementation of state power. Function (from lat. *functio*-execution, implementation) is initially understood as a directly selective impact on the system (structure, whole) in certain aspects of the external environment. The authors of the sociological encyclopedic dictionary offer the following definition of the concept of «function»: «a) the role performed by a certain element of the social system in its organization as a whole, in the implementation of the goals and interests of social groups and classes; b) the dependence between different social processes, expressed in the functional dependency of variables; C) standardized, social action, regulated by certain norms and controlled by social institutions» [10; 397]. The big encyclopedic dictionary gives the following definition of function: 1) activity, duty, work; external manifestation of properties of any object in the given system of relations; 2) function in sociology — a role which is carried out by a certain social institution or process in relation to the whole (for example, functions of the state, a family, etc. in society) [11; 1300].

In legal literature, opinion is expressed that the concept of function should cover both the purpose of law and the resulting direction of its impact on public relations. Actually, the function of law is the realization of its social purpose, which formed from the needs of social development. In this regard, «the study law's function towards movement and development allows us to clarify the actual picture of the functioning of the legal system, to detect changes in it caused by transformations of a deeper order occurring in public relations, which are designed to influence law» [12; 38, 39]. In addition, «functions not only reveal the essence and social purpose of the Constitution, but also characterize the main directions of its impact on public relations, reflecting the features of constitutional norms, institutions... Developed by philosophy, the understanding of functions as a certain relationship that makes the functioning expedient, directed, establishing the dependence of one component (or a set of one-order properties) from another, as well as from the whole, allows us to distinguish different levels of functions within the Constitution... Constitutional norms in this process are most characterized by integration, i.e. generalized regulation of the single, coinciding, which is characteristic of enlarged groups of social relations. Many constitutional norms have a primary, constituent, fixing or program character» [13; 33, 34]. S.A. Avakyan under the functions of the Constitution understands «various manifestations of its purpose, reflecting the role of basic law in politics, society and the citizens within, as well as the implementation of tasks for the state» [14; 11]. A.N. Sagyndykova believes that «the functions of the Constitution are understood as the main directions of its impact on the development of public relations» [15; 49]. The social functions of the Constitution determine the directions of its impact on public life [16; 68–72].

Modern constitutionalists under the functions of the Constitution understand, first of all, the implementation of its social purpose, which is formed, and consisting of the needs for development of society and State. The social purpose of the Constitution is to regulate fundamental social relations, give them proper stability, create the necessary conditions for the realization of human rights and freedoms as the highest value of the state and the normal functioning of civil society as a whole. The functions of the Constitution derive from its essence and content and are determined by the purpose of Basic Law in society and State. Therefore, the functions express the most essential and fundamental features of the Constitution and in general are aimed at the implementation of the most important tasks facing basic legal law in the conditions of forming a democratic, social, secular and legal state. All this suggests that the functions of the Constitution are the main directions of its impact on fundamental social relations, and their need for the implementation of which generates the need for the existence of Basic Law as a special legal and socio-political act [8; 61, 62].

Conclusion

Summing up the controversy on the functioning of the Constitution, let us turn to the text of article 3, which defines the unity of the state-power mechanism of State Affairs management, including the functioning of legislative, executive and judicial authorities using the system of checks and balances [17]. The unity of state power is justified by the right of a citizen to participate in government, in the implementation of state and public control, through their representatives in state bodies, representing all branches of government and checks and balances. Regardless of whether the control function is structured within a public authority for which this function is not the main one, or a specialized control body is created, all control functions have common features defined by the essence of state control. First, all control bodies exercise in legal form a special function of state power. Secondly, the functions of state control are inherent only to public authorities and management, so all kinds of commercial, non-governmental, public organizations and associations do not carry out the functions of state control (except when these functions are delegated to them by state bodies). Thirdly, the control functions are a tool, a means of implementing the functions of State. Fourthly, state control is exercised on behalf of the State as a whole, so regardless of which bodies exercise the functions of state control, they are of a national, not departmental nature. Fifth, the system of control bodies reflects the hierarchical principle of building the state apparatus, so it is built, as a rule, on hierarchical levels. At the same time, such a construction should not entail the formation of an unnecessarily independent and autonomous system of state control. Legal scholars, considering the control as an organizational and legal form of the implementation of state power, its main purpose is to ensure that it checks the implementation of laws and other regulatory legal acts by state bodies and the elimination and prevention of deviations, violations of norms and rules provided for by legislation. At the same time, two fundamental functions should be distinguished from the range of powers of the bodies vested with the right of verification, outside of which the essence and nature of state control can be reduced to zero:

1) control is a state-power activity, which is expressed in the fact that the control bodies give controlled objects mandatory instructions and instructions to eliminate the detected deficiencies;

2) the right of control bodies to initiate the issue of bringing to justice persons guilty of revealed violations, as well as to apply in some cases measures of state coercion and, in particular, judicial responsibility.

The effectiveness of state control is achieved if the legal status and activities of control and supervisory bodies are fixed and specified in normative legal acts and if these bodies are represented by professional, highly qualified specialists capable of ensuring an appropriate level of monitoring and audit. In countries where the level of state control is high, where its positive transforming power is highly effective, the effectiveness of the public administration system is guaranteed.

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В.А. Тайторина, Г.Т. Байсалова, А.А. Асанова, Л.Б. Богатырева

Мемлекеттік бақылау: конституциялық-құқықтық реттеу мәселелері

Мемлекеттік бақылау мәселелері Қазақстан Республикасының Конституциясында бекітілген конституциялық құрылыстың негіздерін сақтау қажеттілігіне байланысты өзектілігін жоғалтпайды. Қазіргі кезеңде ықтимал мүмкіндіктер мен бақылау функцияларының шектерін анықтау, оларды жүзеге асырудың тиімді әдістері мен формаларын анықтау мәселелері өзектендірілуде. Бұл зерттеудің мақсаты қазіргі кезеңдегі мемлекеттік бақылау институтының конституциялық-құқықтық реттеу мәселесін өзекті ету. Конституцияның мазмұнын және көптеген қайнар көздерін талдау нәтижесінде мемлекеттік бақылау Конституцияда көптеген конституциялық нормалардың өзара әрекеттесуінен көрінетін жалпы абстрактілі-жүйелі түрде реттелетіні анықталды. Мемлекеттік бақылау институтын конституциялау мәселелері конституциялық-құқықтық саясатпен тығыз байланысты. Мемлекеттік бақылауды конституциялық-құқықтық реттеу мәселесін авторлар мемлекет пен қоғамның негізгі заңының жұмыс істеу мәселелерімен байланыстырады. Әдетте, бақылау функциялары мемлекет функцияларын іске асырудың құралы болып табылады. Мақалада бақылау органдары бақылаудағы объектілерге анықталған кемшіліктерді жою бойынша орындауға міндетті нұсқаулар мен нұсқаулықтар беруінен көрінетін мемлекеттік-билік қызметі бар екендігі туралы қорытынды жасалды; ашылған құқық бұзушылықтарға кінәлі адамдарды жауапкершілікке тарту туралы мәселе көтерілген.

Кілт сөздер: құқық, бақылау, мемлекет, Конституция, конституциялық-құқықтық реттеу.

В.А. Тайторина, Г.Т. Байсалова, А.А. Асанова, Л.Б. Богатырева

Государственный контроль: вопросы конституционно-правовой регламентации

Проблематика государственного контроля не теряет актуальности в связи с необходимостью соблюдения основ конституционного строя, закрепленных Конституцией Республики Казахстан. В современный период актуализируются проблемы выявления потенциальных возможностей и пределов контрольных функций, нахождение наиболее эффективных методов и форм их реализации. Целью данного исследования является первостепенность проблемы конституционно-правового регулирования института государственного контроля в современный период. В результате анализа содержания Конституции и обширного круга источников выявлено, что в Конституции государственный контроль регламентирован в общей абстрактно-систематической форме, проявляется через взаимосвязанное действие большого количества конституционных норм. Вопросы конституционализации института государственного контроля тесно связаны с конституционно-правовой политикой. Проблему конституционно-правовой регламентации государственного контроля авторы связывают с вопросами функционирования основного закона государства и общества. Как правило, контрольные функции выступают инструментом, средством реализации функций государства. В статье сделан вывод о том, что контроль есть государственно-властная деятельность, выражающаяся в том, что контрольные органы дают подконтрольным объектам обязательные для исполнения указания и инструкции по устранению обнаруженных недостатков; иницируют вопрос о привлечении к ответственности лиц, виновных во вскрытых нарушениях.

Ключевые слова: право, контроль, государство, Конституция, конституционно-правовое регулирование.

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