

Artículo de investigación

Parliamentary control in the national security system

Парламентский контроль в системе национальной безопасности
Control parlamentario en el sistema de seguridad nacional.

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Written by:

Viktoria V. Kutko⁴⁵Galina S. Belyaeva⁴⁶Roman A. Romashov⁴⁷Sergey Yu. Sumenkov⁴⁸Neonila A. Turanina⁴⁹**Abstract**

The authors note that national security as a condition of a state on being protected against internal and external threats, resistance to adverse external influences, and the provision of such internal and external conditions of the country, which guarantee the possibility of steady progress of society and its citizens, includes many methods, ways and means to ensure the stability of the constitutional order. One of the most important elements of the national security system is parliamentary control. Different approaches to the definition of the concept and content of parliamentary control in different countries are analyzed, taking into account the peculiarities and differences of legal systems.

Key Words: National security, legal regulation, parliamentary control, powers.

Аннотация

Авторы отмечают, что национальная безопасность как условие защиты государства от внутренних и внешних угроз, противодействия неблагоприятным внешним воздействиям и обеспечения таких внутренних и внешних условий в стране, которые гарантируют возможность устойчивого развития общества и общества. Его граждане включают в себя множество методов, способов и средств обеспечения стабильности конституционного строя. Одним из важнейших элементов системы национальной безопасности является парламентский контроль. Анализируются различные подходы к определению понятия и содержания парламентского контроля в разных странах с учетом особенностей и различий правовых систем.

Ключевые слова: национальная безопасность, правовое регулирование, парламентский контроль, полномочия.

Resumen

Los autores señalan que la seguridad nacional como condición de un estado para estar protegido contra amenazas internas y externas, la resistencia a influencias externas adversas y la provisión de tales condiciones internas y externas del país, que garantizan la posibilidad de un progreso constante de la sociedad y sus ciudadanos, incluye muchos métodos, formas y medios para asegurar la estabilidad del orden constitucional. Uno de los elementos más importantes del sistema de seguridad nacional es el control parlamentario. Se analizan diferentes enfoques de la definición del concepto y el contenido del control parlamentario en diferentes países, teniendo en cuenta las peculiaridades y diferencias de los sistemas legales.

⁴⁵ PhD in Law, Belgorod State University; Email: kutko@bsu.edu.ru

⁴⁶ Doctor in Law, Belgorod State University; Email: belyaeva_g@bsu.edu.ru

⁴⁷ Doctor in Law, professor, St. Petersburg University of Humanities and Social Sciences; Email: romashov_tgp@mail.ru

⁴⁸ Doctor in Law, Penza State University; Email: sumenkov@bk.ru

⁴⁹ Doctor of Philology, professor, Belgorod State Institute of Arts and Culture; Email: turanina@mail.ru

Palabras clave: Seguridad nacional, regulación legal, control parlamentario, poderes.

Introduction

A feature of the modern period of statehood development is the trend to globalization, convergence and mutual integration of countries and legal systems. At the same time, it should be noted that globalization also has negative features. The world community was faced with new serious challenges and threats, the presence of which for a long time was either ignored at all or was considered as something local, secondary and not having a significant impact on the state of security of countries and peoples. We are talking about the growth of terrorism, environmental problems, illegal migration, etc. In such conditions, the procedure for the operation of the state power bodies comes to the fore; the need for transformations and changes occurs, both in society and in the structure of government, in the activities of state bodies and officials.

The problem of self-identification and prioritization for national interests, and ensuring national security in the modern world is relevant for all states. This issue is particularly acute for those countries which political and economic systems are forced to adapt to the new world realities in the situation of ongoing social transformation.

Today, it is necessary to create qualitatively new standards for the activities of state legislative (representative) bodies and officials, clearly define their control powers in cooperation with other power structures, which will ensure the priority of individual rights and freedoms, sustainability, security and stability of the constitutional order.

In the context of changing the old and testing new foreign policy priorities, the role of parliamentary control in ensuring national security increases significantly.

Many European human rights defenders have repeatedly noted that a key factor shaping national security, public order and public opinion is the fairness of the procedural actions that state bodies carry out when working with members of the public (Tyler, 2003).

The importance of choosing the procedural means of parliamentary control established by the relevant norms is difficult to overestimate because the timely detection of violations and the prevention of possible inconsistencies in the

system of current legislation is the basis for ensuring national security.

In order to determine the trends and patterns for the development of parliamentary control, its place and role in the system of ensuring the national security of a state, it is necessary to turn to an analysis of the concept and characteristics of this phenomenon, and the characteristics of its implementation in various countries (Maharani & Subanji, 2018).

Methods

Various general scientific methods and techniques of obtaining logical-based knowledge were used in the work. Methods of analysis and synthesis were used in order to study the essence of parliamentary control as a phenomenon of state-legal reality, and an element of the national security system. The historical method allowed us to trace the dynamics, and to identify trends in the development of parliamentary control in various countries. The system-structural approach made it possible to examine the material and procedural components of the parliamentary control functions, to reveal their systemic interconnection with other methods, techniques and means of ensuring the national security of a country. The use of formal legal and comparative legal methods allowed us to perform comparative analysis for the development of legal norms regulating the control powers of parliament in different periods of time in different legal systems.

Discussion and Results

In the most general form, parliamentary control can be defined as an activity of authorized bodies regulated by constitutional norms, aimed at checking and evaluating compliance, and implementing laws in order to eliminate detected violations and prevent possible inconsistencies in the current legislation system (Volchkova, 2015; Parvizian et al, 2015).

We define parliamentary control as a complex of various measures carried out by the highest legislative (representative) state authority body to continuously monitor and inspect the activities of the subsidiary bodies system as well as to eliminate violations identified as a result of this check and prevent possible nonconformities

(Utyashev & Kornilaeva, 2001). It must be emphasized that this activity has its own specifics in European countries and post-Soviet states.

It should be noted that only the Constitutions of four CIS countries (Kyrgyzstan, Moldova, Turkmenistan and Ukraine) and almost all European countries directly assign control functions to parliament. Nevertheless, in the legislation of almost all countries, separate control powers of the parliament as a whole, its members, committees and commissions are set out, including at the constitutional level.

The legislation of a number of CIS countries directly indicates that the committees and commissions exercise parliamentary control over the areas of their activities. In pursuance of their powers, committees and commissions are vested with such traditional powers as the right to request documents and information materials necessary for their activities from state bodies and officials; involve experts and specialists in their work; to invite for participation representatives of various authorities in the preliminary consideration of issues related to their competence, etc.

In the Republic of Moldova, commissions are also entitled to create special subcommissions on the implementation of parliamentary control over the activities of a particular public authority. These subcommissions carry out checks, consider cases of violation of the Constitution, laws, constitutional rights and freedoms of citizens. Periodically, the subcommissions should report on the reported violations to parliament (The Constitution of the Republic of Moldova adopted on July 29, 1994).

The most extensive powers in the field of parliamentary control are vested in committees and commissions established by the Kyrgyz parliament. In fulfilment of the control function, the inspectors are entitled to freely visit various facilities, to get acquainted with the measures taken by managers to implement laws and decisions. The committees have the right to appeal to any government body and to any official to take appropriate measures on facts of violation or non-compliance with laws and decisions. Inspected entities are required, upon request of the relevant committees, to provide the materials necessary for the inspection, and to provide conditions for its implementation (The Constitution of the Kyrgyz Republic adopted by referendum (by popular vote) on June 27, 2010).

The following forms of parliamentary control are enshrined in the legislation of the Republic of

Kazakhstan: questions to the highest state bodies and senior officials; reports and statements of the Government and ministers on their activities in plenary sessions of the Parliament or its chambers; consideration of a vote of no confidence in the Government; parliamentary hearings; parliamentary investigations; convening special meetings of the Parliament to control the actions of the executive bodies in special situations; removal from office of a highest official (impeachment); ratification (approval) by the Parliament of international treaties concluded by the executive branch; and also countersignature by Parliament of acts approved by the head of the state.

The procedure and forms of parliamentary control in Russia are established by the Federal Law dated May 7, 2013 "On Parliamentary Control". So, the State Duma is considering the issue of confidence in the Government of the Russian Federation, hears its annual reports and reports of the Chairman of the Central Bank of the Russian Federation on the activities of the Bank of Russia. Parliamentary hearings and investigations are being held. Inquiries of Deputies are sent. Representatives of the Federal Assembly of the Russian Federation may be involved in the work of a government commission to investigate the causes of the emergency and eliminate their consequences. State and local bodies, and organizations or relevant officials are obliged to consider the proposals from the Chamber of the Federal Assembly of the Russian Federation prepared as a result of parliamentary control, and notify the Chamber of the measures taken within a certain period of time.

The word "control" is used only once in Chapter 5 of the Constitution of the Russian Federation, and it is associated with the implementation of control activities over the execution of the federal budget. To implement such a function, the chambers of the Parliament form the Accounts Chamber of the Russian Federation (The Constitution of the Russian Federation, as amended on July 21, 2014).

Chambers of Parliament may issue instructions to the Accounts Chamber in exercising control over the expenditure of federal budget funds.

The Central Bank of the Russian Federation is also under the supervision of the parliament; its leadership is formed by the chambers of the Federal Assembly of the Russian Federation, and annually no later than May 15 it submits an annual report approved by the Board of its

Directors to the State Duma. The report of the Bank of Russia is sent to the President of the Russian Federation, as well as for obtaining a conclusion to the Government of the Russian Federation, and is prepared by the budget committee for consideration in the plenary session of the chamber.

In the capacity of parliamentary control forms, the Constitution of Austria establishes checks by the National Council and the Federal Council (Chambers of the Parliament of Austria) of the conduct of cases by the Federal Government; requests from the Chambers of Parliament to members of the Federal Government regarding all aspects of executive activity; the establishment of investigative committees (by decision of the National Council); initiation by the National Council of the constitutional justice procedure (in the Constitutional Court of Austria) on cases to members of the Federal Government and bodies equal to them in respect of their responsibility, in connection with violation of the law by them, and a number of other powers.

The parliamentary control forms in the Federal Republic of Germany, in accordance with its Constitution, include: consideration of a report by the Chambers of Parliament of Germany of the Federal Government on all revenues and expenditures, as well as on the state property and the public debt for the next financial year; consideration by the Bundestag and the Bundesrat of the report submitted by the Federal Court of Auditors on the results of checks of calculations, as well as on profitability and correctness of budget maintenance and management of the economy; expression by the Bundestag of no confidence in the Federal Chancellor by electing a majority of his/her successor and asking the Federal President to dismiss the Federal Chancellor from the post that should be satisfied by the Federal President (Winzen, 2012).

In the Constitution of Spain, the following forms of parliamentary control are provided among others: the requirement by the Chambers of Parliament and the commissions of the Chambers for the presence of Cabinet officers at their meetings; inquiries of Parliament deputies addressed to the Government and members of the Government of Spain, to which the latter are obliged to answer in the chambers of Parliament; upon that, any request may serve as a basis for the introduction of a draft resolution in which the Chamber expresses its opinion; the denial of parliamentary confidence in connection with the

statement by the Chairman of the Government before the Congress of Deputies of the question of confidence in his/her program or any general political issue, the result of which is the duty of the Government to submit a letter of resignation to the King of Spain; the formulation by the Congress of Deputies of the question on the political responsibility of the Government through the adoption of a censure resolution, which should include a proposal regarding a candidate for the Prime Minister position (Karlas, 2012).

The forms of parliamentary control over the executive branch in Italy, in accordance with its Constitution, include resolving issues of collegial (Council of Ministers in general) and individual responsibility of ministers (for the actions of their departments), responsibility of the Chairman of the Council of Ministers for leading the general policy of the Government of Italy; no reliance from each of the chambers of the Parliament of Italy (the Chamber of Deputies and the Senate) to the Government, the adoption by a roll-call vote of a motivated no-confidence resolution; voting of one or both chambers of the Italian Parliament against any Government proposal which does not necessarily entail its resignation; the request of the Houses of Parliament to the members of the Government, the answer to which should be given at a meeting of the Chamber; legislative approval of decrees being the laws issued by the Government by virtue of the delegation of powers to the Chambers of Parliament to issue such decrees; conducting by each of the chambers of an investigation on matters of state interest (Winzen, 2012).

The most detailed implementation of parliamentary control is regulated in Portugal. In addition to the forms of parliamentary control related to the consideration of reports, assessments of activities and the implementation of investigations, the Constitution of the Portuguese Republic also contains provisions on the subjects and forms of parliamentary responsibility and on sanctions applied by Parliament. For example, the Assembly of the Republic may consider the issues of political responsibility of the Prime Minister, Deputy Prime Ministers and Ministers; the adoption by the Republican Assembly of a resolution on censure to the Government on the implementation of its program or on issues of national interest; rejection of the Government's program entailing the resignation of the Government, etc.. However, as in most other parliamentary regime countries, the occurrence of any of the above bases on Government

resignation in Portugal does not imply its imminent resignation. The President of the Republic can dismiss the Government only when it is necessary to ensure the normal functioning of democratic institutions, after hearing the opinion of the State Council.

In a number of forms of parliamentary control in France, consideration is given to the question of confidence in the Government of the French National Assembly; expression by the National Assembly of no confidence in the Government by voting a resolution of censure; consideration of the question on confidence in the Government in connection with voting on a specific project put forward by the Prime Minister after its discussion in the Council of Ministers.

As noted earlier, one of the forms of parliamentary control, which is carried out directly by parliamentary commissions, is a parliamentary investigation, which deserves more detailed consideration.

The institute of parliamentary investigation is an important means of parliamentary control over the observance of the rights and freedoms of citizens. For example, in the UK, the social significance of the ongoing parliamentary investigations is emphasized, in particular, compared to ministerial checks and other procedures (Van Noije et al, 2008). The House of Commons consists of a general assembly and committees, which are divided into committees of the entire chamber, selected (elective, special) committees, standing committees and joint committees. Some of them function constantly, others are created for the duration of the activities of this parliament or for the current session. Their responsibilities include mainly control over the activities of the government, namely the conduct of investigations. Special committees have the right to call witnesses and specialists to meetings. Most of these commissions, as a rule, carry out their investigations openly; giving evidence and presentation of the final report is subject to official publication. Selected commissions of the House of Commons can be divided into departmental (for defence, health care, international relations, trade, domestic affairs, for Scotland, Northern Ireland, etc.) and non-departmental (for elections, procedures, public reporting, modernization of the House of Commons, etc.). The commissions investigate the activities of government departments, as well as related bodies and organizations. It is necessary to emphasize the importance of parliamentary investigations by selected commissions of the House of Commons for

budget reporting and budget execution of expenditures. Despite the fact that the issues related to the European Communities, as well as control of the delegated legislation, are mostly related to the competence of selected committees created by the House of Lords, commissions are often empowered to investigate specific items. For example, on December 22, 2008, the House of Lords Commission on European Union Affairs announced a parliamentary investigation into the financial crisis with a view to identifying the effectiveness of current legislation and the need for financial support for certain subjects.

With all the obvious effectiveness of parliamentary investigations, we can note a number of problems in the implementation of this type of parliamentary control. First, the legislation does not establish measures of responsibility for the refusal of ministers to provide information to parliamentarians. Second, the order of participation of representatives from various political parties in the selected commission is not defined, and therefore the commission created by the party with a majority in parliament primarily seeks to reflect the views of the government and the leaders of party factions in the final report. Third, there is a flaw in the procedure for gathering information: members of the commission may use incorrect polling techniques, there is no plan, a consistent line of interrogation; they are very rarely able to ask the question, which is often the most important, because, in fact, the commission consists of 12 competing investigators. Each is given the opportunity to ask two or three questions, and then the other begins his/her interview. The practice of conducting parliamentary investigations by the Parliament of Great Britain is based, as a rule, on the publicity of the procedure. This is consistent with the global trend to increase the degree of openness of the state to society. When initiating a specific parliamentary investigation, the goals and objectives of the investigation are published and posted on the Internet, and the means of providing information to any persons who wish send documents and other materials that, in their opinion, contribute to the achievement of the objectives of the parliamentary investigation are indicated. The staff of the commissions is selected. When they request information, they emphasize that in the course of conducting a parliamentary investigation, the commissions are not authorized to investigate individual cases and issues. Verbal and written explanations are widely covered in printed media. The sequence of interrogation of witnesses at a meeting of the

commission and the time it will take place are subject to making available to the public.

It is noteworthy that in a number of European countries, including the UK, there is the possibility of resuming the parliamentary investigation which was previously terminated. In most countries of the former Soviet Union, this possibility is absent (Christensen et al, 2002).

The peculiarity of the parliamentary investigation in the Republic of Moldova is that it can be carried out not only by specially created commissions but also standing if the matter is within their competence and with the approval of the Permanent Bureau of Parliament (The Constitution of the Republic of Moldova adopted on July 29, 1994).

In world practice, the results of parliamentary investigations sometimes affected not only the events inside the country to a decisive extent but also the foreign policy positions of the state. Suffice it to recall that, for example, in Italy and Japan, parliamentary investigations sometimes ended with the resignation of ministers, or the trial of government officials whose official conduct was investigated (Karlas, 2011).

Conclusions

The system of ensuring national security is a set of bodies, forces and means of ensuring national security, taking measures of a political, legal, organizational, economic, military and other nature in accordance with the legislation aimed at ensuring the security of an individual, society and the state.

It should be noted that one of the main elements of the national security system is parliamentary control.

Parliamentary control is a common global practice of government control. It exists also in foreign countries, where the history of parliamentarism goes back several centuries and has long established traditions, and in those countries that relatively recently embarked on the path of formation of legislative power through general elections.

In general, the institution of parliamentary control is a general legal element that is necessary for any state striving for prosperity and development.

In constitutional practice, such forms of parliamentary control are known as discussion of the main areas of government activity; control through parliamentary commissions and

committees; special parliamentary inquiries or questions; interpellation; the right to declare a vote of confidence or a vote of no confidence by means of a censure resolution; control powers that are exercised by special officials: auditors, inspectors; parliamentary investigators, etc..

At the same time, there is a certain dependence of the control powers of parliaments on the form of government in certain states. In countries with a parliamentary regime, the highest legislative body legally appoints the executive branch, controls its actions through numerous means, can legally remove the government, whereas in the presidential republics there are two poles of power - the executive and the legislative, which are formed independently of each other and are quite able to resist each other. The practical implementation of the supervisory powers of parliaments differs significantly from theoretical constructs, although to a very noticeable degree it depends on the form of government and the place occupied by parliament in the system of central state bodies. In addition, the various control capabilities of the parliament greatly evolve from epoch to epoch: they change; new opportunities constantly arise, the value of the former rigid control methods (for example, censure resolutions) decreases and other methods come to the fore. The parliamentary control over the activities of the government is of primary importance in parliamentary states and semi-presidential republics, the main methods and forms of which are the raising of the issue of trust, censure resolution, interpellation, parliamentary issues, and parliamentary investigation. In presidential republics, parliamentary control over the activities of the government is of much less importance: its main tool is a parliamentary investigation, which may entail (in exceptional cases) the application of the impeachment procedure. In recent decades, parliamentary control of human rights has become increasingly important (Magnette, 2003). In addition, a special kind is parliamentary financial and financial-economic control exercised through special bodies of parliament: the counting chambers, the courts of accounts, etc.

Summing up, we would like to note that the institution of parliamentary control is not fixed at the constitutional level in most countries of the post-Soviet space, and when analyzing the regulatory legal acts of the CIS countries related to parliamentary control, one can often encounter insufficient regulation of existing forms of parliamentary control in European countries, on the contrary, there is more or less detailed

constitutional consolidation of the control functions of parliament.

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