

## PARLIAMENTARY OVERSIGHT AS A FORM OF STATE OVERSIGHT

### Парламенттик контроль мамлекеттик контролдун түрүнүн бири

### Парламентский контроль как вид государственного контроля

*The author of the article assumes that Parliamentary oversight is one form of state oversight, functioning as a mandatory condition of stable constitutional order in a country. The author considers Parliamentary oversight as the independent institution of parliamentarism, being one condition in achieving more effective functioning state power, established for the work of the entire state mechanism, preventing violations of rights and freedoms of persons and citizens, and realizing constitutionally established and required norms of the acting legislation.*

**Keywords:** parliament; parliamentary oversight; instruments of parliamentary oversight; parliamentary hearings.

*Автор статьи исходит из того, что парламентский контроль является одним из видов государственного контроля, выступает неизменным условием устойчивого конституционного строя в стране. В статье автор анализирует парламентский контроль как самостоятельный институт парламентаризма, одно из условий достижения более эффективной деятельности органов государственной власти, слаженности работы всего государственного механизма, предотвращения нарушения прав и свобод человека и гражданина.*

**Ключевые слова:** парламент; парламентский контроль; инструменты парламентского контроля; парламентские слушания.

*Макаланын автору парламенттик контроль мамлекеттик контролдун түрүнүн бири катары жана өлкөдөгү конституциялык түзүлүштүн туруктуу шарты болуп саналат деп эсептейт. Макаланын автору парламенттик контролду өз алдынча парламентаризм институту катары, мамлекеттик бийлик органдарынын ишинин өтө натыйжалуу жетишкендигинин бардык мамлекеттик механизмдердин ыргактуу ишин, адам жана жарандардын укугунун жана эркиндигинин бузулушуна жол бербөөнүн шарттарынын бири катары анализ жүргүздү.*

**Урунттуу создор:** парламент; парламенттик контроль; парламенттик контролдун каражаттары; парламенттик угуу.

The Constitution of the Kyrgyz Republic reinforces the core activities of executive branch bodies. In this within the Jororku Kenesh traditionally present parli- manner, parliamentary control is aimed at evaluating mentary functions: representative, legislative, and over- with the ability of adopting sanctions (vote of non- sight. At the present time, these traditional parliamen- confidence, resolution of sanction, impeachment, etc.) tary functions have gained new emphasis. This can be [2]. This definition of the essence of parliamentary con- explained by the adopted in June 2010 Constitution of trol is based on the world's experience with parliamen- the Kyrgyz Republic strengthening the role of parlia- tarism. ment in front of which created new possibilities but also led to new challenges. The oversight function of parliament is one of the most important elements of democracy and an indicator

One of the most important functions of the legisla- of effective administration. Along with other parliamen- tion body of state power is oversight. Such that in the tary functions, the oversight function allows parliament fair comment of V.N. Kukryavtsev, "less important is to support of balance of political forces and implement adopting this law or that law, what is necessary is creat- the role of being the defender of the public interest. Im- ing "mechanisms", causing a law's implementation and portant in this connection is conducting oversight in- as a result realizing legal norms" [1]. Namely parlia- creasing implementation of laws adopted by parliament. mentary oversight is an important element of effectively This gives the possibility, on the one hand, to see how increasing the implementation of legislation and the decisions of the parliament are being carried out by the public simultaneously contributing to which legislative executive and judicial branches, citizens, and legal enti- issues are addressed. ties. And on the other hand, parliamentary oversight

In the scientific literature, parliamentary control is shows which deficiencies exist in laws themselves, and defined as a system of norms, regulating an established which objective and subjective issues also exist which procedure for carrying out monitoring of and checks on interfere with the implementation of laws.

Implementing the oversight function by parliament is one of its most important substantive activities. Included within oversight procedures are reports to the parliament from office holders, oversight over delegations made in legislation, inquiries and questions to members of parliament, and parliamentary investigations. The development of accountability of the executive branch to the parliament may be considered to include the presentation by the prime minister to the parliament of reports “on the general status of state matters and external affairs” (Article 72 the Constitution of Japan); and the right of the parliamentary body to require any necessary information from the government and its departments (Article 109 the Constitution of Spain) [3].

Differing opinions exist about the inter-relationship of the legislative and oversight functions of the parliament but according to the preferred point of view the representative, legislative and oversight functions of the parliament are considered to be unitary. The oversight activity appears as an independent legislative form of activity allowing fully revealing the political legal nature of representative bodies [4].

Constitutional practice recognizes the following forms of oversight of the parliament over the activities of the executive branch: discussion of the main directions of the government’s policy; the budget and reports on its implementation; parliamentary inquiries, and the oversight function of standing committees and specialized investigatory committees as well as other specialized bodies of the parliament and significant office holders appointed by the whole parliament or its separate houses, and expressions of no-confidence in the government or different ministries.

In accordance with the Law of the Kyrgyz Republic “On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic” from November 25, 2011 No. 223 [5] the committees of the Jogorku Kenesh on questions within their scope of authority monitor the implementation of laws and decisions of the Jogorku Kenesh by executive branch bodies in accordance with the law of the Kyrgyz Republic “On the procedure for implementing the oversight function of the Jogorku Kenesh of the Kyrgyz Republic” [6].

In this manner, the committees of the Jogorku Kenesh possess functions for conducting oversight of implementation of laws by executive branch bodies. As was mentioned above, effective realization of oversight functions for the implementation of laws and decisions adopted by parliament increase the implementation of

legislation and the public simultaneously contributing to which legislative issues are addressed.

Oversight over the implementation of laws is carried out no less than six months after the corresponding law came into effect. Planned checks for conducting oversight over implementation of laws and decisions adopted by the Jogorku Kenesh are approved during meetings of committees and processed as decisions. As a result of oversight, a guide is prepared by committees with recommendations of eliminating violations and sent to the corresponding ministry, the Prime Minister of the Kyrgyz Republic, and the General Prosecutor.

The Jogorku Kenesh regularly utilizes such oversight authority as hearing the report of the Ombudsman, the report of the Prime Minister on the work of the Government, and reports from the General Prosecutor, the Chairperson of the National Bank, and the Chairperson of the Auditing Chamber.

In studying about the instruments of parliamentary control, it is relevant to study the experiences of foreign countries.

For example, in the Federal Republic of Germany (FRG), use of inquiries is widespread, and not just by the parliament and members of parliament, but also by political factions to which executive branch bodies receiving such inquiries are required to answer.

In relation to other key rights including the right to approve the budget, the lower house of the parliament of the FRG provides oversight over the Government and its activities. Also in the FRG the system is well established whereby the Committee on Petitions is responsible for the consideration of petitions submitted by any citizen of the FRG to the parliament. If the Committee for Petitions approves an inquiry from a citizen, the inquiry is sent to the corresponding state body which gives not just the parliament but also civil society oversight over implementation of decisions made by the parliament.

In Great Britain, parliamentary oversight is carried out primarily by specialized committees. At the same time in Great Britain, the practice is well developed to give oversight to non-official party groupings and committees consisting of members of political parties. The existence of the institute known as the “Shadow Cabinet” gives the British Parliament an advantage in that the opposition is actively involved in the process of parliamentary oversight.

One of the forms of parliamentary oversight in democratic governments independent from the specific form of government is listening to reports from the govern-

ment and its office holders. Oversight is not always given to the government and ministries correspondingly meaning that they themselves are responsible to the parliament, this exists in parliamentary and mixed forms of government.

The Jogorku Kenesh of the Kyrgyz Republic listens annually to the report of the Government on implementation of the national budget and the Prime Minister's report on the work of the Government. In the event of finding the report on the implementation of the national budget unsatisfactory, the Jogorku Kenesh considers the question of responsibility of the Government, and its separate members and other office holders.

In many countries, oversight over the activities of the government and its administration is carried out by permanent parliamentary standing committees. Especially effective in this area are the work of financial committees. The right to conduct oversight, for example, is given to permanent standing committees of the US Senate, Swedish Riksdag, defense and security committees of the Bundestag, and the committees for foreign affairs of several parliaments. Also in several countries, where the legislation allows the parliament to delegate its legislative authority to the government, specialized forms of parliamentary oversight have been developed for observance of limits and implementation of the terms of such delegation. For example, in Israel in accordance with the rules of procedures of the Congress of members of parliament, discussion and voting on questions such as affirming or repealing a royal decree/law (a state act but considered to be a royal decree) is conducted at a plenary session or a session of permanent members of parliament after which at minimum 30 days are required for it to then come into effect as a decree/law.

The legislation of the Kyrgyz Republic envisions such oversight procedures as parliamentary investigations, parliamentary inquiries, and inquiries from members of parliament. These are communications from the parliament or different members of parliament to the government and its different members and occasionally also different state bodies with the requirement to provide information or even reports on a defined problem within its competence.

The institution of parliamentary investigations provides with itself corresponding instruments, with the assistance of which the legislative body and together with the civil society of a country, have the ability to monitor the effectiveness of the activities of the executive branch, requiring office holders to be responsible in

the event of discovering their professional incompetence or violations of law. The institution of parliament investigations is widely applied to legal systems in many countries including the countries of Western Europe, the US, and a range of countries in the CIS (Georgia and Ukraine).

Questions about the number of members of parliament which can initiate procedures conducting parliamentary investigations, varies from country to country in their national legislation. The necessity for opening an investigation varies in the number of initiating members of parliament required for this from 1/10 (in Turkey) to 1/3 (in Latvia and Slovenia) to not less than 50 percent of the voting members of parliament (in the Kyrgyz Republic). The reason for establishing this "barrier" is first and foremost connected with the necessity to not allow the use of the institution of parliamentary investigations in political fights, which may bring with them destabilizing effects within the parliament.

In accordance with Part 20 Article 20 of the Law of the Kyrgyz Republic from December 18, 2008 No. 267 "On the status of members of parliament of the Jogorku Kenesh of the Kyrgyz Republic" upon the initiative of members of parliament – parliamentary investigations may be conducted for any question which is within the scope of authority of the Jogorku Kenesh [7]. In this manner, all state bodies and office holders are required to assist in the conducting of parliamentary investigations. Upon the demand of parliamentary committees, detailed investigations are required without being impeded for objectively studying data and documents related to a question. No one has the right to evade the jurisdiction of committees conducting parliamentary investigations.

It should be noted that this instrument is effective for deciding actual problems in society. In the Jogorku Kenesh in March 2015 a legal proposal was considered which would have repealed the right to conduct parliamentary investigations. In connection with this several experts opined that parliamentary investigations are in general beneficial processes according to which members of parliament can study and decide the most complex questions which are then time wise relevant for the population.

One of the forms of parliamentary oversight are parliamentary hearings. In accordance with the legislation of the Kyrgyz Republic, political factions, committees, and commissions on questions within their scope of authority initiate and conduct parliamentary hearings. The conducting of parliamentary hearings on legal pro-

posals on providing constitutional rights, freedoms and par- needs of citizens, the legal status of political parties, oversight non-commercial entities and mass media sources, on Effective the budget, taxes and other required fees, on the intro- the duction of new forms of state regulation of entrepre- state neurial activity, on the provision of ecological safety, Mechanisms and the fight against legal violations are mandatory. the Parliamentary hearings are open for attendance by rep- Espe- representatives from mass media sources, citizens, and accountability their affiliations. suprema- Parliamentary hearings are effective instruments for of securing the attention of the society on questions signif- ican to the society and state. Nevertheless, the com- function mittees of the Jogorku Kenesh rarely conduct parlia- timely mentary hearings as a means for conducting oversight. branch. In this manner, it may be concluded that the legisla- indica tion of the Kyrgyz Republic provides fundamental in- state struments for parliamentary oversight well known also methodology in the legal systems of many foreign countries. Despite of this, procedures and results in conducting such instru- Increas- ments like parliamentary inquiries, inquiries from ex- members of parliament, debates and hearings, in aggre- of gate do not fully realize their potential. The system for and planning measures for parliamentary oversight are not fully in place. Thus, inter-relations and distribution of roles for re- im- alizing oversight functions between political fractions, parlia- committees, commissions, and the parliamentary ad- adopted

ciencies in the inter-relations and cooperation of liament with executive bodies on questions on conducted over the implementation of laws. inter-relations have not been developed between parliament with the President, Government, other bodies and local self-governing bodies. for inter-relations, exchange of information, and solidarity of the society are not well developed. cially the absence of mechanisms for of executive branch civil servants undermine the cy of law and reduce the effectiveness of the work state bodies. Another problem in perfecting the oversight is the absence of qualitative mechanisms and monitoring of the activities of the executive In connection with this, it is necessary to develop tors of evaluation of accountability for parliament, bodies, and office holders. In addition, has not been sufficiently elaborated for oversight implementation of adopted law and decisions. ing effectiveness in implementation of laws by the ecutive branch requires utilization of the potential civil society in the process of oversight over laws decisions adopted by the Parliament. Deciding the above considered problems would allow increasing the effectiveness of oversight over plementation of laws, improve instruments for mentary oversight, and improve the quality of

ministration are not well elaborated. There are defi- laws

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