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FEATURES OF CONSTITUTIONAL TRANSFORMATIONS IN THE CONDITIONS OF THE CONDUCTED REFORMS

Abstract: *The author examines the features of constitutional transformations in the context of the reforms being carried out in the Kyrgyz Republic. A brief historical analysis of the emergence and development of constitutional foundations is carried out. The author pays special attention to the need to improve the national legislation as a whole. The author's vision of the problems of introducing and deepening democratic principles, as well as the implementation of the principles of international law is substantiated. The existing controversial theoretical problems are described in detail and mechanisms for their resolution in the near future are proposed. Along with this, the author makes proposals for the effective implementation of the constitutional foundations, depending on certain aspects, such as: preconditions for constitutional reform; principles of constitutional reform; main directions of constitutional reform; tasks of constitutional reform.*

Key words: *constitutional changes; constitutional reform; protection of the rights and freedoms of citizens; legal system; legal principles; international law; constitutional review; judicial and legal reform.*

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Introduction

On the territory of the Kyrgyz Republic, as well as other individual CIS states, the dynamics of constitutional transformations indicates that since the early 1990s, throughout the post-Soviet space, the community has been actively discussing ways of constitutional reform.

It should be noted that the issues of improving national legislation in general are also being discussed. So, L.Ch. Sydykova rightly connects the need to reform individual institutions in the Kyrgyz Republic with a change in socio-economic relations, the entry of the republic into international cooperation [1, p. 7].

As you know, the level of development of constitutional foundations is an indicator of the state of democracy in society and one of the signs of real protection of human rights. Thus, analyzing the prospects for the development of constitutional foundations on the territory of Kyrgyzstan, one should pay special attention to the following aspects:

preconditions for constitutional reform; principles of constitutional reform; main directions of constitutional reform; tasks of constitutional reform.

Moreover, these aspects can be further combined within the framework of an independent approach to the institutional reform of the constitutional foundations in the Kyrgyz Republic.

Considering certain constitutional provisions in the Kyrgyz Republic for its compliance with international standards in the field of effective protection of the rights and freedoms of citizens, it should be noted that today it exists in isolation from international standards in this area.

So, in modern international law, a set of measures has been developed in the form of organizational and legal guarantees for the advocate's human rights activities in order to provide legal assistance to the population, i.e. international standards of advocacy, which are aimed at ensuring

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one of the fundamental human rights - the right to defense.

Each legal system has its basic legal principles that reflect the essential features of this system. In international law, industry principles inherent in it are formed and operate, reflecting the substantive specifics of this branch of law in the form of generally recognized principles of international law. The special significance of these principles for the formation of institutions of international law designed to protect human rights, to influence the development of national legislation in the direction of its humanization, to help strengthen the guarantees of the individual in its clash with public authorities and officials, in countering arbitrariness. The objective basis of the special legal force of the generally recognized principles of international law is predetermined by the needs of establishing stable and civilized international communication, which correspond to certain historical conditions and reflect the legal consciousness of all progressive mankind [2, p. fifteen].

The Constitution of the Kyrgyz Republic (part 3 of article 40) guarantees the right of everyone to receive qualified legal assistance (and in certain cases free legal assistance).

In the context of the above, the most important role in the development of the constitutional foundations in the context of ongoing reforms is assigned to the effective implementation of constitutional review and constitutional supervision.

Thus, in the 21st century, the necessity of the existence of constitutional control in a democratic, rule-of-law state based on the principle of separation of powers is not questioned. The institution of constitutional control throughout the history of its existence and spread in the world has acquired various forms and methods of implementation.

Constitutional control in the Kyrgyz Republic is the activity of authorized public authorities to control and, if necessary, confirm the compliance or inconsistency with the constitution (and in some countries and international acts) laws, other regulatory and other general acts, as well as actions (inaction) of public authorities, organizations or public associations.

Consideration of the issue of determining constitutional control should begin with a brief analysis of the relationship between the concepts of "constitutional control" and "constitutional review". Some Russian scholars consider these concepts to be identical, others share them, and still others classify constitutional oversight as one of the types of constitutional control, but we will pay attention only to some of them, reflecting the main approaches. For example, Professor Yu.L. Shulzhenko does not identify the concepts of "constitutional control" and "constitutional supervision". In his opinion, their difference is due to the measures that can be applied

by the supervisory and control authorities when violations are detected. Supervisory authorities have no right to cancel an illegal act. The controlling body, in most cases, is endowed with an effective means of influence and, above all, the right to repeal illegal acts. This is what distinguishes control from supervision [3, p. 7].

A.V. Zimin believes that constitutional oversight, as a way to ensure constitutional legality, is manifested exclusively in the field of protection

Unlike the bodies of constitutional supervision, whose conclusions on unconstitutionality require approval by the Parliament and are of a preliminary nature, the bodies of constitutional control make a final decision on the violation committed and take measures to eliminate the discrepancy.

Thus, S. E. Nesmeyanova supports the point of view of a number of authors who believe that constitutional control and constitutional supervision are different concepts. V. E. Chirkin points out that "in a broad doctrinal interpretation, the term "constitutional control" at different stages of its development includes three elements: observation (in this case, a change in the situation), supervision (verification and evaluation) and, most importantly, making a decision on the compliance or non-compliance of a legal act with the constitution (the final element of control)" [6, p.623].

Thus, this position assumes that constitutional supervision is one of the constituent elements of constitutional control.

M. L. Lomovtseva agrees with the position that the difference in views on the understanding of constitutional judicial control is not least due to the different usage of words in the legislation of different countries and even of the same country. The researcher draws attention to the fact that, for example, in the United States there is no difference between the concepts of "constitutional control" and "constitutional supervision", and the American term "judicial review" is translated in the meanings of judicial control, judicial supervision, judicial review, while in the literature you can also find the term "constitutional control", which denotes constitutional control (supervision) in the United States [7, p.11-12].

Professor V. V. Maklakov believes that the concept of constitutional supervision, which is found in the domestic literature, as an institution that monitors the compliance of acts with the Basic Law, but does not have the right to speak about its compliance or non-compliance and, consequently, the right to invalidate these acts, should hardly be considered justified. This approach, according to V. V. Maklakov, leads to the fact that an unlimited number of participants, starting with ordinary citizens and ending with respectable institutions, can consider themselves as such supervisory bodies. All of them, therefore, have the right to apply to any state

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authorities, including the bodies of constitutional control.

At the same time, the scientist draws the attention of specialists to the semantic difference between the terms "control" and "supervision" existing in the Russian language. Following the logic of the dictionaries of the Russian language [8, p. 94, 344], "control" means checking something, and "supervision" implies continuous observation of something. "The very procedure of checking the acts of state bodies and individuals is the study of a specific act, and not an abstract observation of it.

The word "control" implies the concreteness of verification and is most suitable for the institution under consideration" [9, p. 123].

Professor B. A. Strashun notes that most often control is understood as a system of relations between public authorities, in which the controlling body can cancel the acts of the controlled body. "Supervision in this sense is a system of relations in which the supervisory authority can only draw the attention of the supervisory authority to its error and, at most, can suspend the validity of its act, but the supervisory authority itself must cancel or correct the act. In another understanding, control is an inspection of the activities of a controlled body, carried out by the controlling body either selectively on its own initiative or by some signal, and supervision is constant monitoring of the activities of the supervised body" [10, p.119-120].

If we turn, for example, to the scientific works of specialists in constitutional law in the countries of Eastern Europe that exist today on the territory of the former Yugoslavia, we can also notice the use of different terminology (constitutional control, constitutional control (supervision), constitutional supervision), and, as a rule, there is no strict distinction between the terms "control" and "supervision" [11, pp. 173-174].

In our opinion, when describing the institution under consideration, it is more appropriate to use both terms simultaneously or use the collective term "constitutional control (supervision)", especially if we take into account the experience, for example, of the countries of the former Yugoslavia. The fact is that the institution under study, from the moment of its appearance in the socialist period of development of these states (even formally, without actual implementation) to the present time, has characteristics characteristic of both control and supervisory activities.

The term "constitutional control (supervision)", especially if we take into account the experience, for example, of the countries of the former Yugoslavia. The fact is that the institution under study, from the moment of its appearance in the socialist period of development of these states (even formally, without actual implementation) to the present time, has characteristics characteristic of both control and

supervisory activities. First, the constitutional courts in the States of the region under consideration check the constitutionality and legality of acts at the request of authorized entities, having the right to annul or mark the effect of unconstitutional acts, which is characteristic of control activities. Secondly, the constitutional courts of a number of countries of the former Yugoslavia previously had and now have the right to initiate constitutional proceedings on their own initiative, as well as the authority to monitor the constitutionality and legality, informing the Parliament about detected cases of unconstitutionality and illegality in the State, with proposals on possible ways to eliminate them, including indicating the body that did not adopt any act that it was obliged to adopt. The latter is, in fact, an abstract observation with the ability to indicate an alleged violation. Adhering to the stated position, at the same time, we agree that further in this study, in order to simplify the presentation of the text, we will mainly use the term "constitutional control".

Many Russian scientists have not yet developed a unified approach to the definition of constitutional control.

For example, Yu. B. Berezin defines constitutional control as the activity of a competent state body to verify and establish the compliance of acts of the legislative, executive and judicial authorities with the constitution, domestic legislation and international acts and to make binding and final decisions on this basis [12, p. 9].

In our opinion, this definition significantly restricts the actual state of affairs, unreasonably excluding other acts of general effect from the sphere of constitutional control, as well as establishing the inconsistency of acts with the constitution. In addition, it should be noted that the constitutional control bodies are not always entrusted with the function of assessing the compliance of internal acts with international ones.

Professor Yu. L. Shulzhenko defines constitutional control as the activity of competent state bodies for checking, identifying, ascertaining and eliminating inconsistencies of normative acts with the constitution, laws, during which these bodies are authorized to cancel the detected inconsistencies [13, p.7]. This definition, in our opinion, restricts constitutional control to checking exclusively normative legal acts, without taking into account the assessment of other acts (for example, collective agreements), as well as the constitutionality of the actions of individual officials. In addition, we note that the constitutional control bodies are not always authorized to cancel unconstitutional norms, but to deprive them of their legal force-always.

A. V. Zimin suggests considering constitutional control not only as an activity to check for compliance with the constitution of legal norms, but also as a complex system of measures aimed at the real

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establishment, maintenance, consolidation and restoration of the constitutional order, that is, actual relations. The researcher defines constitutional control as the activity of authorized state authorities (officials) to establish, maintain, strengthen and restore the constitutional order, which is expressed in checking for compliance with the constitution of legal acts or actions of special subjects of state power (state bodies and officials with a special constitutional and legal status), and, if necessary, in suppressing constitutional violations and bringing perpetrators to constitutional responsibility [14, p.13].

The above definition is both broad and narrow, since, on the one hand, it does not allow to clearly identify the distinctive features of constitutional control, and on the other hand, it narrows the range of objects of constitutional control, leaving outside it the verification of the constitutionality of acts and actions of persons who do not belong to "state bodies and officials with a special constitutional and legal status", for example, members and (or) supporters of a political party.

It seems that the specific formulations of the concept of constitutional control and the existing differences in the positions of researchers are largely predetermined by the prevailing socio-political and historical conditions in which they are given, the peculiarities of the regulatory legal regulation of the status or competence of the constitutional control bodies existing in the country of residence of an individual specialist or in those countries that he is engaged in research.

The difference in the definitions of constitutional control is justified, in addition, by the variety of objects of constitutional control: in some states they are exclusively laws and by – laws, in others – also international treaties, other acts having a general effect, in others-also the actions of officials and members of public associations. The competence of the constitutional control bodies in different states may include an assessment of the compliance of acts exclusively with the norms of the constitution or international acts, as well as an assessment of the compliance of subordinate acts with the laws of the country. According to the form, the constitutional control can be either preliminary, carried out before the entry into force of the act, or subsequent, carried out after the entry into force of the act. Recognition of an act as unconstitutional may entail various legal consequences (advisory and ruling control; recognition of an act as invalid from the moment of its publication – ex tunc control, from the date of entry

into force of a court decision or another date determined by the court – ex nunc control), which also affects the concept of constitutional control given by individual scientists.

The constitutions and legislation of the countries of the former Yugoslavia include among the general acts not only laws, by-laws adopted by national state authorities, bodies of territorial units, local self-government, but also acts of organizations endowed with public functions, public associations, including political parties. In addition, we emphasize that the verification of by-laws for their compliance with laws, that is, acts of higher legal force, carried out by the constitutional courts of the countries of Eastern Europe located on the territory of the former Yugoslavia, in our opinion, is also, in fact, a process of assessing the constitutionality of the relevant acts. After all, the mandatory compliance of by-laws and other general acts not only with the constitution, but also with laws adopted by parliament, is also one of the constitutional principles.

In conclusion, we can conclude that the judicial and legal reform should provide a real mechanism for implementing the constitutional principles of the organization and activity of the court, its true independence and the exercise of its powers.

Only under such conditions can the court really exercise this power in a state governed by the rule of law, ensure the protection of the legitimate rights and interests of citizens. The dynamics of constitutional transformations on the territory of the Kyrgyz Republic, as well as others. The experience of individual CIS states shows that since the beginning of the 1990s, the community has been actively discussing ways of constitutional reform throughout the post-Soviet space.

Constitutional control is the activity of authorized state authorities to monitor and, if necessary, confirm compliance or non-compliance with the constitution (and in some countries with international acts) of laws, other normative and other general acts, as well as actions (inaction) of public authorities, organizations or public associations. The level of development of the constitutional foundations is a key indicator of the state of democracy in society and one of the signs of real protection of human rights. In this connection, the development of the constitutional foundations in the Kyrgyz Republic depends on the following aspects: prerequisites for constitutional reform; principles of constitutional reform; main directions of constitutional reform; tasks of constitutional reform.

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