

Concept, Essence and Significance of Constitutional Supervision in the Republic of Karakalpakstan

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Annotation: In the article, the legal bases of the organization of constitutional control in the Republic of Karakalpakstan, its essence, the procedure for organizing the powers and activities of the bodies implementing constitutional control, legal bases, and scientific aspects are considered.

Keywords: Constitutional Supervision Committee, laws, by-laws, compliance with laws, government regulations, regulatory documents.

On April 9, 1993, the Constitution of the Republic of Karakalpakstan was adopted, which, with amendments and additions, is still in force [1]. The Constitution of the Republic of Karakalpakstan, being the main law, requires a special approach to ensure its observance. This necessity comes from the requirements of the Constitution itself, in which a special principle is dedicated to the system of basic constitutional principles, enshrined in a separate third chapter called "The Supremacy of the Constitution and the Law".

Article 15 of this chapter directly establishes that "In the Republic of Karakalpakstan, the unconditional supremacy of the Constitutions and laws of the Republic of Uzbekistan and the Republic of Karakalpakstan is recognized. The state, its bodies, officials, public associations and citizens act in accordance with the Constitution and laws. Here, in Article 16, it is established: "Not a single provision of this Constitution may be interpreted to the detriment of the rights and interests of the Republic of Karakalpakstan. No law or other normative legal act may contradict the norms and principles of the Constitution."

As can be seen, the Constitution itself establishes the requirement for the need to ensure compliance by all legal entities with constitutional provisions, both in the process of their adoption of regulatory legal acts and in the process of their law enforcement.

Along with this, the need to ensure the supremacy of the Constitution comes from the requirement of the principle of building a state based on the rule of law. Here, a state based on the rule of law implies ensuring the supremacy of law, where the law is the basic and inalienable rights and freedoms of man and citizen. It means that a state based on the rule of law is not every state where the supremacy of the Constitution is ensured. In this case, it is the state in which the Constitution and its norms establish as their goal the provision of rights and freedoms of citizens, define this task as their priority, are aimed at achieving it and ensure it in real life through the supremacy of the Constitution and the law.

Based on the importance of the role and significance of the social and value characteristics of the rule of law, it should be defined as an important, necessary and mandatory component of a democratic state, the construction of which is the focus of the Constitution of the Republic of Karakalpakstan, where its first article states: "Karakalpakstan is a sovereign democratic republic". In this case, it should be noted that in the Republic of Uzbekistan, in the new version of the Constitution of the country adopted on April 30, 2023, for the first time, the provision that Uzbekistan is a rule of law is enshrined[2].

In turn, given that according to the Constitution of the Republic of Karakalpakstan, Karakalpakstan is part of Uzbekistan, and also in the Republic of Karakalpakstan the unconditional supremacy of the

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Constitutions and laws of the Republic of Uzbekistan is recognized, it would be appropriate to enshrine in its constitutional status a direct commitment to building a state based on the rule of law and to enshrine the first article of the Constitution of Karakalpakstan in the following wording: "Karakalpakstan is a sovereign democratic state based on the rule of law with a republican form of government...".

At the same time, such an innovation will serve to harmonize the Constitutions of Karakalpakstan and Uzbekistan. Direct consolidation at the constitutional level of the status of the Republic of Karakalpakstan as a state governed by the rule of law actualizes the issue of the need to strengthen constitutional and legal guarantees to ensure one of the main constitutional principles - the supremacy of the Constitution and laws in the Republic of Karakalpakstan, which requires the creation of the necessary organizational and legal prerequisites for effective supervision of compliance with constitutional norms.

At the same time, the above-considered conceptual provisions on the essence and significance of the supremacy of the Constitution of the Republic of Karakalpakstan in the life of a person, society and the state predetermine the need to disclose such categories as the concept, essence and significance of constitutional supervision in the Republic of Karakalpakstan.

The primary point is that in order to thoroughly disclose the issue of the concept of constitutional supervision, it is advisable to study it in connection with the categories of constitutional control, as well as taking into account the etymology of these terms, which are used in solving the problem of increasing the effectiveness of the activities of a special state body to ensure compliance with constitutional norms.

In world practice, both terms are used. Thus, the institution of judicial constitutional review arose in the United States in 1803 due to a judicial precedent, when the Supreme Court, chaired by J. Marshall, in the decision on the Marbury v. Madison case, for the first time declared invalid a federal law of Congress that contradicted the Constitution, and could be recognized by the court as unconstitutional. This marked the beginning of the formation of constitutional justice in its modern understanding [3].

The peculiarity of the American model was the implementation of constitutional control by courts of general jurisdiction. At the beginning of the 20th century, the European model of constitutional jurisdiction emerged, which differed from the American model in the implementation of constitutional control by specialized bodies – constitutional courts (councils). It was largely based on the ideas of the famous Austrian scholar and lawyer Kelsen, whose name is associated with the creation of the first constitutional court in 1920 – the Austrian one[4].

The active expansion of judicial constitutional review is characteristic of the period after World War II. The division of models of constitutional jurisdiction into two types is, of course, conditional, since mixed models, including elements of both, are increasingly being developed.

Here, it is not particularly important to consider the etymology of the term "constitutional", since it unambiguously implies the norms of the Constitution as an object and does not cause ambiguity or controversy, including among other scientists. However, since, according to the experience of the Republic of Karakalpakstan, the term "supervision" is used in relation to a special body functionally designed to ensure compliance with the norms of the Constitution, and according to the experience of foreign countries, there is often a practice of using the term "control", it seems important to first consider the etymology of these terms. P.V. Pashkovsky notes the importance of such a research approach: "The point of view that the difference between constitutional supervision and constitutional control lies in the etymology of the words "supervision" and "control" seems entirely justified" [5].

Thus, the etymology of the term "supervision" comes from the phrases "nad- + -zor" [6], which implies observing someone and monitoring something. In other sources, the key word defining the essence of the term "supervision" is also the term "observation". In particular, according to the dictionary "Oxford Languages" supervision is "a group of people, an organ for monitoring someone



or something" [7] ; according to the dictionary of the Russian language: "supervision is observation of someone, something for the purpose of protection, control" [8].

The etymology makes it clear that in this case we are talking only about observation, detection and establishment, in which there is no impact on the observed object and no measures are taken.

In turn, according to the etymology of the term "control", this word came from French or Dutch. The French word *controle* from *contre-rolle*: *contre* - *rolle*. The first part: *contre* - means "against", in the context of "opposite", that is, the second person. The second: *rolle* - roll, list, inventory. If we impose meanings, then the French *contre-rolle* is a register, statement, book of income and expenses, which are maintained by two persons. Two persons connected by one document - this is always a verification of the contents of the document [9].

Another possible interpretation of the primary meaning of the word: Latin *contra* - against, *rotulus* - roll - to rotate, move. Control is always, in a certain sense, counteraction. This means that it is not only about identifying a constitutional violation, but also about taking effective practical measures to eliminate them. In particular, V.S. Nersesyants points to such signs, believing that constitutional control is ensuring the constitutionality and legal nature of the entire system of generally binding acts and norms by depriving those of them of an unconstitutional, anti-legal nature [10]. In turn, Professor Yu.L. Shulzhenko does not equate the concepts of "constitutional control" and "constitutional supervision". In his opinion, their difference is due to the measures that supervisory and control bodies can apply when identifying violations. Supervisory bodies do not have the right to cancel an illegal act. The supervisory body, in most cases, is endowed with an effective means of influence, and above all, the right to cancel illegal acts. This is what distinguishes control from supervision[11].

It follows that in ensuring compliance with the norms of the Constitution, control includes both stages of measures, where the first stage is the identification of a constitutional violation and the second stage is its practical elimination. In this regard, it can be argued that the term "control" is broader in content than the term "supervision", which includes the method of supervision as its first stage of measures.

A similar interpretation is given in the encyclopedic dictionary of constitutional law, where the essence of constitutional supervision is presented as the implementation by the supervisory body of monitoring the compliance of legal acts with the constitution, upon signals or on its own initiative, finding unconstitutional acts and proposing to the relevant bodies to cancel them. Moreover, it is separately noted that the supervisory body itself cannot cancel such acts if it performs purely the functions of constitutional supervision. In addition, here a reservation is made that if the constitutional supervision body is simultaneously a constitutional control body, then it can itself cancel, recognize such acts as invalid[12].

At the same time, the essence of the supervision function in relation to other branches of law is also monitoring something. For example, administrative supervision is understood as monitoring by specially authorized bodies of compliance, execution and application by legal entities and individuals of legal norms in the sphere of public administration; preventive supervision consists of monitoring the behavior of a person registered for preventive purposes and their compliance with restrictions established in accordance with the law.

According to the online encyclopedia "Wikipedia", constitutional supervision is a law enforcement activity to detect laws and other regulations that do not comply with the Constitution, which issues a demand to cancel the act recognized as unconstitutional to the body that adopted this act (or a superior body). The purpose of constitutional supervision is to systematically monitor the compliance of laws and legal acts with the current Constitution of the state. As a rule, it is carried out based on reports of violations that have already taken place. It is also noted here that control is a regular way of observing, analyzing and checking the results of the object's activities with subsequent adjustments when deviations are detected.

A similar position is taken by P.V. Pashkovsky, who states: "the controlling body has the right to independently cancel illegitimate acts of the supervised body by checking its activities. The



supervising body, having identified a violation, can only point out to the supervised body its error, suggesting that it correct it” [13].

M. Abdullaeva holds a similar opinion, stating: “unlike other types of control, constitutional control can deprive a normative legal document or its individual part of legal force. This, in turn, stops the legality of the document” [14].

Agreeing with the opinions of the above-mentioned authors, it can be determined that supervision is a set of algorithms of actions consisting of three stages, where the first stage is monitoring the actions of the subject, the second stage is recording and summarizing the information received about the presence of violations in the actions of the subject and, as the final third stage, an appeal to authorized entities to take measures to eliminate and bring the committed violation into compliance with the requirements of the law.

As can be seen, in supervision, unlike control, there is no fourth stage, in connection with which the subject-supervisor is not authorized to perform final actions, namely, to take measures to force the offender to eliminate the offense committed by him. In this case, it is meant that when adopting a normative act that violates the norms of the Constitution, the need to bring it into compliance with the requirements of constitutional norms. commission and thus does not perform final actions on. It follows that, unlike control, supervision is a method that does not include a full (completed) cycle of measures to influence the restoration of a constitutional offense.

There are also alternative points of view with which one cannot fully agree. In particular, B.N. Shchetinin identifies the concepts of supervision and control, arguing that these concepts are identical for the following reasons: firstly, constitutional control and supervision provide for a common goal: exercising control over the compliance of current legislation with the constitution; secondly, it is limited to the activities of the highest representative bodies expressing the will of the people [15]. Also, O.B. Kuznetsov believes that the distinction between the functions of control and supervision is conditional and that constitutional supervision refers to one of the types of constitutional control [16].

As a conclusion, it is important to note here that if the two terms “supervision” and “control” were assessed as identical, this would create ambiguities in the interpretation of the essence of these terms and duplication of the practical purpose of each of them, would narrow and limit the legislator’s ability to characterize in detail the social phenomena occurring in the matter of establishing clear boundaries of the functional purpose of entities for the protection of constitutional norms, such as the constitutional supervision committee, the constitutional court, the supreme court, etc.

This conclusion is also substantiated by the fact that most current constitutions of countries in the world mention either a control or supervisory body that ensures the rule of law, which proves the equality in the relationship between the concepts of “constitutional control” and “constitutional supervision”. However, according to some scholars, with whom one can agree, constitutional control and constitutional supervision must be distinguished by the criterion of vesting the initiative to initiate a review of the constitutionality of laws and other acts. Reviewing the constitutionality of acts on their own initiative is the prerogative of constitutional supervision bodies, while constitutional control bodies initiate proceedings only upon the request of authorized entities and are bound by the subject of the request [17].

This distinction highlights the difference in the work of the bodies of constitutional control and supervision, which are called upon to ensure the supremacy of the Constitution.

It should be noted that constitutional supervisory and control activities are a subtype of state control and supervisory activities.

In turn, constitutional supervision is characterized by its range of objects and subjects. Thus, constitutional and ordinary laws, amendments to the Constitution, international treaties and agreements, regulations of the chambers of parliament, decrees of the president, normative acts of executive authorities may act as objects of constitutional supervision.



Due to the fact that the Republic of Karakalpakstan is part of Uzbekistan and has the status of a sovereign republic, the object of constitutional supervision is also the issues of delimitation of competence between Uzbekistan and Karakalpakstan, the resolution of controversial issues between them.

The subjects of constitutional supervision include all those individuals and legal entities whose rights and obligations are directly enshrined in the Constitution. These include state bodies and their officials, civil society institutions (political parties, etc.) and directly citizens who are endowed with the right to inquire about the constitutionality of a certain act.

Along with this, depending on the content, constitutional supervision can be of the following types:

- formal: compliance with the procedural rules established for the adoption of laws and other regulations is assessed;
- material: the content of laws is checked for their compliance with the meaning of the constitution;
- abstract: implemented on the initiative of a specific authorized subject or body without a specific reason;
- specific: carried out only in connection with a specific legal case.

Depending on the time of the event, a distinction is made between subsequent and preliminary constitutional supervision.

Thus, subsequent constitutional supervision assumes that laws and other acts that have already been adopted and entered into force are subject to verification. Laws (in general or in individual provisions) recognized by authorized bodies as unconstitutional formally lose their legal force. At the same time, preliminary constitutional supervision implies that laws that are under consideration by parliament are subject to verification.

The authorized body of constitutional jurisdiction may recognize the contested act:

- in accordance with the constitution;
- completely contrary to the constitution (unconstitutional);
- partially contrary to the constitution.

In the second case, the act loses its legal force and is not applied by all courts and other state bodies. The decision made becomes final and can be reviewed only by the same body.

Thus, based on the essence of constitutional supervision, the body to whose functional duties this term is applied, in this case the Constitutional Supervision Committee of the Republic of Karakalpakstan, assumes the limitation of the functions it performs by methods of observation, detection and establishment of possible and admitted deviations from the content of the norms of the Constitution and thus their violations.

Thus, according to Article 113 of the Constitution of the Republic of Karakalpakstan, the Constitutional Oversight Committee:

firstly, on the instructions of the Jokargy Kenes or on the proposals of its deputies (at least one fifth) or on the proposal of the Chairman of the Jokargy Kenes, submits to the Jokargy Kenes conclusions on draft laws, laws and other acts of the Jokargy Kenes, resolutions of the Presidium of the Jokargy Kenes and orders of the Chairman of the Jokargy Kenes, as well as resolutions and orders of the Council of Ministers of the Republic of Karakalpakstan for their compliance with the Constitution and laws of the Republic of Karakalpakstan;

secondly, it has the right, on its own initiative, to submit conclusions on the compliance of acts of the highest bodies of state power and administration of the Republic of Karakalpakstan with the Constitution and laws of the Republic of Karakalpakstan. At the same time, the conclusion of the Committee can be rejected only by a decision of the Jokargy Kenes of the Republic of Karakalpakstan,



adopted by two by one third of the votes of the total number of deputies of the Jokargy Kenes of the Republic of Karakalpakstan.

As the constitutional status of the Constitutional Oversight Committee of the Republic of Karakalpakstan shows, its powers are defined correctly and correspond to the essential characteristics of a constitutional oversight body, which, on behalf of the authorized body (Zhokargy Kenes), carries out monitoring and verification, has the right to independently initiate monitoring and verification, without having the authority to take measures to eliminate violations of the Constitution, which is vested only in the Jokargy Kenes.

In addition, in Uzbekistan, from June 20, 1990 (the Law "On Constitutional Oversight in the Republic of Uzbekistan was adopted [18]) to May 6, 1993 (the Law "On the Constitutional Court of the Republic of Uzbekistan was adopted [19]), constitutional oversight also operated. However, the Constitutional Oversight Committee of this period functionally had a broader competence, in contrast to the constitutional status of the Constitutional Oversight Committee of modern Karakalpakstan, which had elements of constitutional control. This was expressed in the fact that the Constitutional Oversight Committee of Uzbekistan, along with monitoring and verification, at the same time had the authority to suspend regulations that violate constitutional norms and, moreover, to cancel them.

Thus, according to Article 21 of this law, "The conclusion of the Constitutional Oversight Committee of the Republic of Uzbekistan, stating that any normative legal act or its individual provisions violate the fundamental human rights and freedoms enshrined in the Constitution of the Republic of Uzbekistan and in international acts to which the Republic of Uzbekistan is a party, entails the loss of force of such act or its individual provisions from the moment of adoption of the conclusion of the Committee." The only exception was that the conclusions of the Constitutional Oversight Committee of the Republic of Uzbekistan could not suspend the laws of the Republic of Uzbekistan and other acts adopted by the Supreme Council of the Republic of Uzbekistan, the Constitution of the Republic of Karakalpakstan or their individual provisions.

Nevertheless, in the example of constitutional supervision of the Republic of Uzbekistan, one can observe the presence in its essence of both supervision and control. Such an approach from the point of view of legislative technique cannot be recognized as entirely positive, because it does not allow more precisely to outline and establish the constitutional and legal status of the constitutional supervision committee, and therefore its place in the system of state bodies and the separation of powers.

A similar legal practice exists, for example, in the Tax Code of the Republic of Uzbekistan (Articles 36, 331) [20] , where the terminologies "control" and "supervision" are used together in the form of "supervisory (control) activity", giving the state body a control and supervisory status, which cannot be considered a positive legal practice.

Addressing this problem critically, A.B. Yablonskaya asserts: "Control" and "supervision" as concepts are not identical, but they are closely interconnected. That is why considering the control and supervisory function exclusively from the point of view of its implementation by competent bodies and officials of legal authority leads to a distortion of the vision of this single function" [21].

K. Yu. Guglyova comes to the same negative conclusion, using Russia as an example, noting: " Thus, in our opinion, supervisory authorities do not have regulatory and administrative powers in relation to supervised bodies, but only supervise the implementation of laws and other regulatory acts, and, therefore, the differences between them should be legally enshrined in law in order to avoid legal conflicts that entail an ambiguous assessment by law enforcement agencies. As, for example, this arose with the publication by the Government of the Russian Federation of the Resolution of 22.04.2002 "Regulations on Federal Supervision of Nuclear and Radiation Safety", the characteristics of the functions of which represent more control than supervisory activities of the executive authority" [22].

Thus, it can be concluded that compliance with the application of essential features of such categories as "constitutional supervision" and "constitutional control", as well as "constitutional justice" is an



important condition for the unambiguous correct definition of the constitutional and legal status of a special state body performing functions to ensure compliance with constitutional norms.

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