

Theoretical-legal principles of the public control institution

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Abstract. This work is dedicated to the one of the most acute issues - the problem of public control of the executive authority including law enforcement activity (administrative-jurisdictional) of the executive bodies of the Republic of Kazakhstan. The timeliness of the topic today consists in the fact that the system of governmental control of the executive authorities is not enough developed. This control is implemented through the powers of the President of the Republic of Kazakhstan, the Parliament, the Government, Security Council, prosecution agencies etc. At the same time the problem of public control in this sphere has not been significantly developed till modern days in our country. But if we turn our attention to the life and activity of some developed countries we will see that their public control institution takes the same key place as the governmental control, both in society and the state. This is proved by the system of public control of the police activity in many countries of the world and first of all in Great Britain, France, the USA and others.

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Introduction

The departure from the fundamental democratic principle of interaction of governmental and public control institutions has always led to the bureaucratic lawlessness, abuse of powers, corruption and other violations of power and law enforcement spheres.

Citizens, their constitutional rights and legal interests suffer from the security incidents of persons who have legal powers.

It is known that the most significant segment of such powers is possessed by the representatives of the executive power, who have the right to implement different types of coercion with the aim to bring the behaviour of an offender in compliance with the rules of the state [1]. The absence of the vested rights that regulate the procedure of implementation of the appropriate measures creates the conditions for the authorised state representatives' abuse of powers. All these facts are acute under the conditions of the free democratic society. That's why in March of 2006 the Head of the state said to the people of Kazakhstan: "...along with the development of the democratic tradition we must foresee the strict security system" [2].

"We are to provide strict parliamentary and public control, that's why we need to improve the report and assessment system of every law enforcement agency...

...In other words, a new decade needs a new law enforcement system which corresponds to the high international standards of the law enforcement service in the democratic state" [3].

Thus, within the frameworks of the prevention of violation of citizens' rights and freedoms from the illegal actions of the persons with state powers, the necessity of the further development of the institutions of constitutional system is of great importance.

It is known that the basis of the constitutional system is the principle of an "open civil society". According to A.E. Dick Howard, constitutional system is supported by the consonant and free citizens which are the civil society" [4].

Body

The developed civil society has such a degree of independence and self-regulation from the state, which guarantees the security of a person from abuse of powers. The civil society that is the fundamental basis for constitutional system is characterised by the additional peculiarities one of which is the openness. An open society has the social stability; its members have a high level of interests' contingency [5].

The formation of the civil society is the condition and consequence for an active participation of public control institution in the social-political life of the Kazakhstan society [6]. According to G.S. Sapargaliev, the citizens can form different associations for satisfaction of their legal interests and needs. The citizens can represent their own interests, interests of separate groups or the interests of the whole society [7].

One of the most effective institutions of the civil society in the sphere of complete defence of

rights, freedoms and legal interests of the citizens shall be the public control institution [8].

It should be noted that the public control institution as well as the civil society of the Republic of Kazakhstan is on the way of formation and establishment [9]. The qualitative form of the model of public control system over the governmental authorities in the whole and executive authorities in particular has not been yet created. The legislative framework, which provides the effective influence of the legal institution on the prevention of violations of rights and freedoms of natural persons by the governmental authorities and officials is absent.

The first steps to legislate the public control institution are taken in the labour legislation. Article 340 of the Labour Code of the Republic of Kazakhstan regulates the public control over the compliance with labour legislation in an organisation. According to the provisions of the above mentioned article the public control in the sphere of security and safety of labour in an organisation is performed by the public inspector for the safety of labour, which is elected by the trade union committee of an organisation, and if there is no trade union he/she is elected by the meeting (conference) of the workers [10].

In 2007 The Ministry of Internal Affairs of the Republic of Kazakhstan formed a social council for control over the police activity, which is now functioning. The basis of the functioning of this social establishment is the advisory function.

In the same year in the Mazhilis of the Parliament the Public Chamber was formed. It consisted of the representatives of political parties and social organisations.

Within the frameworks of the Decree of the President of the Republic of Kazakhstan No. 1550 of April 16, 2005 "About the measures of the strengthening of fight against corruption, strengthening of the discipline and order of the government agencies and officials activity" the Social Committee for fighting corruption was formed.

Thus, considering the above said we can conclude that the work for implementation of the public control institutions into the different spheres of public relations is being performed in the republic. However, as we have already stated above, there is no normative basis which regulates the functioning of the above mentioned subjects of the civil law, the forms and means of implementation of their powers are not worked out, their competence is not clearly defined and so on. All these negative factors have an adverse effect on the normal formation and development of the public control system over the activity of governmental (executive) authorities in the Republic of Kazakhstan.

We suppose that the questions of formation of public control system over the activity of executive authorities of the Republic of Kazakhstan must acquire an independent legal status due to the actualization of the problem of complete providing of the constitutional rights of human and citizen. This status can not only legalize the public control institution, but also allow building such a system of state and public control which would stimulate the activity of executive authorities and would not brake or otherwise prevent the development of political, ideological, economic and other relations in the society.

The modern historical stage of the Republic of Kazakhstan can be characterised by the development of the process of formation and development of the public control system over the activity of governmental authorities. The main purpose of the public control was formulated, its tasks and main functions are determined.

However, there appeared a necessity of creation of a special-type control - public control over the law enforcement activity of the executive authorities of the Republic of Kazakhstan which focuses on the implementation of control functions in the law enforcement sphere. It's most important task is to reveal violations (violations of law) in law-enforcement activity of law enforcement structures, before-the-act prevention of their negative consequences, taking proper measures for eliminating these violations and their prevention.

The functioning public control agencies and their departments were being created with regard to the functioning of the previous public control system. The necessity of public control working with the most important spheres of the state construction has conditioned the diversity of public control agencies and their departments, which have control powers [11].

Generally the modern state of the public control in the Republic of Kazakhstan can be characterised by the following properties:

- diversity of public control types;
- great number of public control agencies and their departments;
- absence of the concept and normative basis for performing control functions by the subjects of the public control system;
- absence of the agency (structure) of coordination of the activity of public control agencies.

Report

It is obvious that the imperfections of the modern legislation and problems of performing all types of public control over the activity of law enforcement agencies help to form a "nutritious

environment" for these subjects of the state power which is basis for different violations (violations of law), and vice versa, the perfect legislation and effectively organised public control over the law-enforcement activity of law enforcement structures create a strict filter for prevention and elimination of different violations, contribute to the improvement of executive discipline, effectiveness of the state administration system.

In order to understand the role of public control over the law enforcement activity of executive agencies of the Republic of Kazakhstan under the conditions of modernization, reforming of the modern society, it is necessary to investigate and study theory and praxis of public control and state administration. Underestimation of the study, working out and implementation of measures for development and improvement of public control can be the reason for appearing and worsening of crisis situations in the state and society.

Conclusion

Thus we can draw a logical conclusion that now in Kazakhstan there is not the system of public control, as the total of social control agencies and their departments. The situation can be characterised by the gaps and collisions of the law, non-commonality of normative acts that define the powers of the public control subjects, absence of the effective system of coordination and interaction. That's why there often appears parallelism and duplication of the work of controlling civil agencies and as a consequence insufficient effectiveness and irrational use of resources by the public control agencies.

We can mention the following suppositions of the solving tasks of formation of public control system over the activity of the law enforcement activity agencies of the executive authority in the Republic of Kazakhstan:

- thorough analysis of the powers of functioning public control agencies, which perform the control in the sphere of law enforcement activity of the subjects of the law-enforcement system;

- improvement of the normative basis of the public control mechanism functioning, acceptance of the concept and the law "About the public control over the law enforcement activity of the executive authorities of the Republic of Kazakhstan";

- development and implementation of technologies and methods of control activity, which

provide actual effectiveness of the public control in the law-enforcement sphere.

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