

UDC 342.565.2

DOI <https://doi.org/10.32845/2663-5666.2019.3.6>**CONSTITUTIONAL CONTROL AS A TYPE OF STATE CONTROL**

Introduction. The main condition for the manifestation of democracy is real democracy, that is, the power of people, which they realize in their own interests. It is clear that power arises simultaneously with the emergence of human society and accompanies the entire history of its evolution. Such “vitality” of power is determined by its objective social nature. The practical purpose is to organize and regulate the role of subordination and unity of the human collective. The unity of will and subordination becomes possible in the case of control.

In modern legal science there are various points of view regarding the understanding of the list and types of methods of control (state control and constitutional one as its type – the subject of our article and that is why are more interesting for us), characterized, as a rule, by the specific nature of the directions of scientific research. In their manuscripts researchers bring different forms of control, identifying them with methods, directions, means, measures and types of control. The current legislation of Ukraine also identifies forms and methods of control (state control as well), which may be various, depending on the subject, the object, the purpose, the means of control applied.

In order to establish the design of state control and constitutional one, as well, as for the possible elimination of disagreements not only in terminology but also in approaches to the classification of their methods, first of all, the content of the terms «state control» and «constitutional control» must be described [1, p. 171].

1. Control as a social phenomenon

As noted above, control is a product of power relations. Any power and control are social phenomena, since they are manifested in the field of human activity, but not any social power and control – political, that is, state ones. They become available at the stage of division of society into antagonistic classes as the power of those who are in power, the power of compulsion. Its organization (i.e. state) economically dominant classes use to ensure the political domination.

We believe that this interpretation of power and control is a characteristic of society during the period of existence of the state, despite the modern approaches of scientists to the interpretation of power and control as: organizing, creative force, which manifests itself in the organization of management of social affairs in order to prevent arbitrariness and disorder [2, p. 53]; a mechanism, through which society and its groups ensure compliance with certain restrictions, conditions, violation of which is detrimental to the functioning of the social system [3, p. 222; 4, p. 1263].

Moreover, we emphasize that power and control are an essential expression of the state and are implemented

in relation to a certain population and, above all, within certain territorial boundaries. The people and the state are recognized as the only subject – a powerfully organized people. However, it is possible to speak of the existence of legislative, executive and judicial authorities as organizationally defined state-power functions precisely in connection with the division of power.

The constitution of any branch of power and the exercise of its control will not be artificial and may be justified only if it really corresponds to the content of the legislation of the country, will create opportunities for the state bodies to exercise their competence and influence the quality of government. Formal is the approach, «for which the power is divided into components corresponding to the system of state bodies, formed from one or another (often subjective) reason» [5, p. 6].

As components of the state apparatus, the bodies cannot have an interest different from the interests of the people and, accordingly, the state. Between them and the state there is no legal relationship, but such legal relations arise between the state and individuals who hold positions in various state bodies, in connection with the implementation by officials of their powers [6, p. 215]. Through the system of its institutes state exercises a controlling influence on the political system. The state institutions, elected directly by the population or its representatives, control all sectors of state, socio-economic and cultural construction while exercising control.

Realization of state power and state control is a process of realization of state bodies' full powers. Such a procedure involves the concentration of will, strength and legal capacity of authorized subjects. Interdependence of subjective rights and full powers with governance can be reduced to two factors – they are an external manifestation of power (governance) and, at the same time, a form of limitation of its manifestation; subjective rights and full powers may be factors in the manifestation of power. In the named communications, the constituent element is the will. It directs and controls the processes of organization and concentration of domination, law and their manifestations [7, p. 21].

So, state control should be carried out by authorized bodies, officials, civil servants within the limits of the current legislation. It follows, in particular, Art. 19 of the Constitution of Ukraine [8], according to which the state authorities, local self-government bodies and their officials are obliged to act only on the basis, within the powers and in the manner, provided for by the Constitution and laws of Ukraine [1, p. 171].

The Ukrainian sciences distinguish between the following types of state control: control in the sphere of executive power, parliamentary and judicial control [9, p. 138].

2. Constitutional control as a type of judicial control

Constitutional control is the activity of authorized body – the Constitutional Court of Ukraine, which is aimed at establishing factual data on the objects of this control in order to determine their conformity (nonconformity) with the legitimate evaluation criteria. This process involves the use of an adequate response to the result of response measures in a normalized order [10, p. 8]. That is, constitutional control, as well as state one, is carried out by the relevant state institution within the limits of competence, defined by the legislation of the Ukrainian state [9, p. 138].

Under constitutional control in the state-legal literature understand the monitoring of the compliance of controlled subjects with the requirements, that they received from the controlling subject [11, p. 221]; the analysis of the state of execution of instructions, imposed on the relevant institutes by regulatory requirements, on the objective and reliable information about the situation in a certain area of public life [12, p. 12; 13, p. 253].

The Constitutional Court of Ukraine is the only body of constitutional control and constitutional jurisdiction in Ukraine, which is one of the highest state bodies. Its legal status is regulated by Section VIII of the Constitution of Ukraine, entitled “Justice”. This body is not an element of the system of courts of general jurisdiction, which deals with disputes – cases of individual branches of law; may not be an appeal or supervisory institute for courts of general jurisdiction. The Constitutional Court reviews cases on the rules of constitutional justice in accordance with the Constitution, the Law “On the Constitutional Court of Ukraine” [14] and the Rules of Procedure, approved by the Court itself [15; 16, p. 15].

The main purpose of the constitutional control body is to ensure the rule of the Constitution throughout the country’s legal space. The specialized body of constitutional jurisdiction is the essence of the idea of a control authority with all its necessary attributes; its activity is controlled only by the force of the Basic Law. The very existence of the Constitutional Court improves the principle of separation of powers in the system of checks and balances [17, p. 84–85].

Constitutional control is a form of professional state control, the highest among specialized forms of supervisory activity. It applies both to the rule-making sphere and to the law-enforcement activity of state bodies [18, p. 10; 19, p. 151–152].

The powers of the Court include:

1) resolving issues regarding the compliance of the Constitution of Ukraine (constitutionality) with the laws of Ukraine and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, Cabinet of Ministers of Ukraine, Verkhovna Rada of the Autonomous Republic of Crimea;

2) official interpretation of the Constitution of Ukraine;

3) providing conclusions on the compliance of the current Constitution of Ukraine with the international treaties of Ukraine or those that are submitted to the Verkhovna Rada of Ukraine in order to consent to their binding;

4) providing conclusions on compliance with the Constitution of Ukraine (constitutionality) of issues that are proposed for referendum on a national initiative;

5) providing a conclusion on the observance of the constitutional procedure for investigation and consideration of the case concerning the removal of the President of Ukraine from position in accordance with the procedure of impeachment within the limits specified by Articles 111 and 151 of the Constitution of Ukraine;

6) providing a conclusion on the compliance of the draft law on amending the Constitution of Ukraine with the requirements of Articles 157 and 158 of the Constitution of Ukraine;

7) providing a conclusion on the violation by the Verkhovna Rada of the Autonomous Republic of Crimea of the Constitution of Ukraine or laws of Ukraine;

8) resolving issues regarding the compliance of the normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea with the Constitution of Ukraine and the laws of Ukraine;

9) resolving issues regarding the compliance of the Constitution of Ukraine (constitutionality) of the laws of Ukraine (their separate provisions) with a constitutional complaint of a person who considers that the law of Ukraine applied in the final judicial decision in her case is contrary to the Constitution of Ukraine (Art. 7 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

The list of functions of the domestic Constitutional Court gives the impression of completeness. Consequently, their implementation should realize control, informational and normative tasks.

The Constitutional Court of Ukraine is interested in establishing and continuation of the effective dialogue with all state bodies since such cooperation contributes to the improvement of mechanisms of securing human rights and development of democratic values in Ukraine. Professional cooperation and exchange of experience in resolving the problems are especially important and necessary now.

The activity of the control body should stabilize political situations, resolving constitutional crises. We need to point out the unique nature of the Constitutional Court of Ukraine, which is not the subject of the political process, but it does not stand aside these issues. It may influence the process only by exercising constitutional control over acts related to this process.

One remember the Decision of the Constitutional Court of Ukraine in the case upon the constitutional petition of 62 People’s Deputies of Ukraine regarding conformity to the Constitution of Ukraine (constitutionality) of the Decree of the President of Ukraine “On Early Termination of Powers of the Verkhovna Rada of Ukraine and the Appointment of Early Elections”. So, the Constitutional Court of Ukraine had played an extraordinary role in the 2019 parliamentary elections. The process of adopting this decision was extremely difficult, because the attention of the entire Ukrainian and international community was focused on the consideration of this case [20]. Despite the fact that the Constitutional Court of Ukraine, when considering this case, was limited in time, the judges understood the extraordinary social significance of this issue, which imposed additional responsibility on the Court.

According to some statistical data, since 1998, the Constitutional Court of Ukraine has adopted about 20 decisions and provided 2 opinions on issues related to the electoral process. For instance, on December 21, 2017, the Grand Chamber of the Constitutional Court of Ukraine adopted the Decision № 3-r/2017 in the case upon the constitutional petition of 49 People's Deputies of Ukraine concerning the conformity to the Constitution of Ukraine (constitutionality) of Articles 61.9, 105.3 of the Law of Ukraine "On Election of the People's Deputies of Ukraine", paragraph 3 of Chapter II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On Election of the People's Deputies of Ukraine" regarding the exclusion of candidates for People's Deputies of Ukraine from election party list in the multi-member constituency» (the case on the exclusion of candidates for People's Deputies of Ukraine from election party list in the multi-member constituency) [21].

Today numerous challenges faced by the constitutional jurisdiction body, in particular, with regard to the protection of population in the context of the provisions for national security and observance of the balance of individual interests on the one hand, and those of the state on the other are identified. Besides that, the national security protection is topical for the constitutional jurisdiction authority in our country, and primarily for those having been affected by forcible interference to this or that extent. Proceeding from the difficult situation that emerged in the state back in 2014, Ukraine has been observing the principle of humanism and ensuring the protection of human rights, and this was highly appreciated by the European institutions [22].

However, problems in state-building space make clear the intention of some high state bodies (the president or the parliament, for instance) to increase state control over controlled subjects and tighten the procedure, defined the mechanism for maintaining state control in the sphere of constitution protection. Today some of the political elites emphasize the inertia of state and constitutional control, which is, according to them, one of the real cause of hazard for the national security and state control service.

References. Based on the vector of the modern state building in Ukraine and its results, we argue that often such constitutional control is characterized by political forces only as political fiction which is not aimed at achieving fundamental changes in the structure of the political system. The inertia of state and constitutional control, which is one of the real cause of hazard for the national security and state control service, is emphasized. The Constitutional Court, according to some of the political elites, can be involved in decisions making on the basis of political expediency, which contradicts the concept of independent constitutional control.

Despite these theses, we claim that constitutional control is a form of professional state control, the highest among specialized forms of supervisory activity. It applies both to the rule-making sphere and to the law-enforcement activity of state bodies. The specialized body of constitutional jurisdiction is the essence of the idea of a control

authority with all its necessary attributes; its activity is controlled only by the force of the Basic Law.

REFERENCES

1. Shevchuk O. Separate methods of implementation of state control of the legitimate trafficking of drugs. *Jurnalul Juridic National: teorie si practica*. 2018. № 1 (29). P. 170–174.
2. Sirenko V. Some remarks to the question about the nature of power. *Authorities in Ukraine: the ways to efficiency* / ed. council : O.D. Sviatotsky (head) and others. Kyiv : Journ. "The Law of Ukraine" : In Yure, 2010. P. 46–53.
3. Administrative Law of Ukraine : textbook / ed. Yu.P. Bityak. Kharkiv : Law, 2000. 520 p.
4. Soviet Encyclopedic Dictionary / ed. A.M. Prokhorov. Moscow : Sov. encyclopedia, 1989. 1632 p.
5. Kozlov Yu. M. Executive Power : essence, functions. *Bulletin of Moscow State University. Series "Law"*. 1992. № 4. P. 35–39.
6. Shapoval V.M. State, power, people as a category of Ukrainian constitutionalism. *Problems of Contemporary Constitutionalism* : teach. manual / M.V. Afanasyeva, O.V. Batanov, A.A. Ezerov and others; ed. A.R. Krusjan. Odesa : Phoenix, 2015. Issue 3 : Contemporary Ukrainian Constitutionalism. P. 209–234.
7. Ladichenko V.V. State power as a legal phenomenon. *Scientific works of the National Aviation University. Series "Legal Bulletin "Aerospace and Law"*. 2009. № 2. P. 19–23.
8. Constitution of Ukraine : Law of Ukraine, dated 28.06.1996. № 254к/96-VR / Verhovna Rada of Ukraine. URL: <http://zakon2.rada.gov.ua> (date of the appeal: 18.08.2019).
9. Legal encyclopedia : In 6 t. / ed. Council : Y.S. Shemshuchenko (head) and others. Kyiv : Ukr. encyclopedia, 1998. Vol. 2 : D-J. 1999. 744 p.
10. Shestak V.S. State control in modern Ukraine (theoretical aspects) : author's abstract of dis... Doctor of Law Sciences degree : 12.00.01. Kharkiv, 2002. 18 p.
11. Public Administration : teory and practice / ed V.B. Averyanova. Kyiv : Yurinkom Inter, 1998. 432 p.
12. Andriyko O.F. Control in a democratic state: problems and trends. Kyiv : Scientific Opinion, 1994. 114 p.
13. Slovskia I.Ye. The concept of state power. *Ukraine's Development in the 21st Century: economic, social, ecological, humanitarian and legal issues: materials of VIII int. sc.- pract. internet conf.* (Ternopil, November 5, 2010). Ternopil : Ternopil. nat Economics University, Council of Young Scientists, 2010. Section 5-8. P. 259–262.
14. On the Constitutional Court of Ukraine : Law of Ukraine, dated 13.07.2017. № 2136-VIII. Verhovna Rada of Ukraine. URL: <http://zakon2.rada.gov.ua> (date of the appeal: 18.08.2019).
15. Rules of Procedure of the Constitutional Court of Ukraine : Resolution of the Constitutional Court of Ukraine, dated 22.02.2018. № 1-пс/2018. Verhovna Rada of Ukraine. URL: <http://zakon.rada.gov.ua> (date of the appeal: 18.08.2019).
16. Kordun O. Powers of specialized bodies of constitutional control : world experience and Ukraine. *Man and politics*. 2001. № 2. P. 3–25.
17. Gergeliynyk V. Constitutional Court in the system of control bodies : theoretical aspects. *Law of Ukraine*. 1999. № 5. P. 81–85.
18. Kelman M.S. Constitutional control as a means of protecting constitutions in the national legal systems of continental law : author's abstract of dis... PhD of Law Sciences degree : 12.00.02. Kyiv, 2001. 19 p.

19. Slovka I.Ye. Ukrainian constitutionalism: stages of formation and development : dis... PhD of Law Sciences degree : 12.00.02. Kyiv, 2004. 213 p.

20. «The Constitutional Court of Ukraine may influence the electoral process only by exercising constitutional control over acts related to this process», noted Natalia Shaptala. Constitutional Court of Ukraine. URL: <http://www.ccu.gov.ua> (date of the appeal: 18.08.2019).

21. Chairman of the Constitutional Court of Ukraine Natalia Shaptala held a meeting with the Head of the OSCE/ODIHR Election Observation Mission Ambassador Albert Jónsson. Constitutional Court of Ukraine. URL: <http://www.ccu.gov.ua> (date of the appeal: 18.08.2019).

22. Meeting of the Chairman of the Constitutional Court of Ukraine with Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine. Constitutional Court of Ukraine. URL: <http://www.ccu.gov.ua> (date of the appeal: 18.08.2019).

Словська І.Є. КОНСТИТУЦІЙНИЙ КОНТРОЛЬ ЯК ВИД ДЕРЖАВНОГО КОНТРОЛЮ

У статті досліджено соціальну природу державного і конституційного контролю. Наголошено, що будь-яка влада і контроль є соціальними явищами, оскільки проявляються у сфері діяльності людей, але не будь-які соціальна влада і контроль – політичні, тобто державні.

Акцентовано увагу на тому, що реалізація державної влади та державного контролю – це процес реалізації повноважень державних органів. Така процедура передбачає концентрацію волі, сили та юридичних можливостей уповноважених суб'єктів.

Розрізняють види державного контролю: контроль у сфері виконавчої влади, парламентський і судовий контроль. Конституційний контроль є особливим видом судового і, відповідно, державного контролю.

Підкреслено, що головним структурним елементом у системі охорони та захисту Конституції є Конституційний Суд України — єдиний орган конституційного контролю і конституційної юрисдикції в Україні, який за фактичним статусом є одним з вищих державних органів.

Роз'яснено, що конституційний контроль здійснюється у формі нагляду за відповідністю Конституції України правових актів, відповідних міжнародних договорів; у формі нагляду за дотриманням конституційних процедур (розгляд, ухвалення та набрання чинності правовими актами, розслідування і розгляд справи про усунення Президента України з поста в порядку імпічменту); у формі офіційного тлумачення Конституції України та законів України, а також у формі нагляду за відповідністю законопроектів про внесення змін до Основного Закону вимогам статей 157 і 158 Конституції України.

Підсумовано, що спостерігається певна інерція конституційного контролю, в чому криється загроза для національної безпеки.

Ключові слова: Конституційний Суд, парламент, судовий контроль, державний контроль, конституційний контроль.

Slovka I.Ye. CONSTITUTIONAL CONTROL AS A TYPE OF STATE CONTROL

The article examines the social nature of state and constitutional control. It is stressed that any power and control are social phenomena, since they are manifested in the field of human activity, but not any social power and control – political, that is, state ones. They become available at the stage of division of society into antagonistic classes as the power of those who are in power, the power of compulsion.

It is emphasized that power and control are an essential expression of the state and are implemented in relation to a certain population and, above all, within certain territorial boundaries.

The article highlights that the realization of state power and state control is a process of realization of state bodies' full powers. Such a procedure involves the concentration of will, strength and legal capacity of authorized subjects.

Distinguish types of state control: control in the field of executive power, parliamentary and judicial control. Constitutional control is a special type of judicial and, accordingly, state control. Constitutional control is the activity of authorized body – the Constitutional Court of Ukraine, which is aimed at establishing factual data on the objects of this control in order to determine their conformity (nonconformity) with the legitimate evaluation criteria.

It is emphasized that the Constitutional Court of Ukraine is the only body of constitutional control and constitutional jurisdiction in Ukraine, which is one of the highest state bodies. This institute is not an element of the system of courts of general jurisdiction, which deals with disputes – cases of individual branches of law; may not be an appeal or supervisory institute for courts of general jurisdiction. The Constitutional Court reviews cases on the rules of constitutional justice.

It is explained that constitutional control is carried out by the Court in the form of supervision over compliance with the Constitution of Ukraine by legal acts, corresponding international treaties; in the form of monitoring the observance of constitutional procedures (review, approval and entry into force of legal acts, investigation and consideration of the case of removal of the President of Ukraine from position in the order of impeachment); in the form of an official interpretation of the Constitution of Ukraine and the laws of Ukraine, as well as in the form of monitoring the compliance of the draft laws on amendments to the Basic Law to the requirements of Articles 157 and 158 of the Constitution of Ukraine. Consequently, the Constitutional Court carries out the role of an independent arbitrator in the system of power.

Summed up, that according to some of the political elites there is an inertia of state and constitutional control, which is one of the real cause of hazard for the the national security and state control service. Often such constitutional control is not aimed at achieving fundamental changes in the structure of the political system.

Key words: Constitutional Court, parliament, judicial control, state control, constitutional control.