CIVIL SOCIETY AND STATE INTERACTION: SOME PREREQUISITES FOR EFFICIENCY

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Summary: the article is devoted to the study of the problems of ensuring the effectiveness of interaction between civil society and the state. The multifaceted nature of theoretical and practical issues, on the solution of which the effective interaction of civil society and the state depends, is noted. It is concluded that one of the most important prerequisites for ensuring effective interaction between civil society and the state is the institution of constitutional control over the provision and protection of human rights and freedoms, which includes several components.

Keywords: civil society, legal state, person, human rights and freedoms, constitutional control, law.

It is probably not necessary to prove once again that the system of relations between civil society and the state, regardless of the specific historical period of their development, was characterized by dynamism and significant transformations which were due to a number of objective and subjective factors. If we talk about the current stage of evolution of these relations, it is obvious to recognize their qualitatively new level of development, which is associated not only with the functioning of modern democracies, legal and social states, but also with the unprecedented scientific and technological progress of mankind. has been going on for decades.

In these conditions, the study of the issues of ensuring the effectiveness of interaction between civil society and the state, the doctrinal search for those factors that have a significant impact on the progressive development of such interaction becomes especially important. It should be noted that this issue is extremely broad in its content, as in fact it concerns almost the entire range of relations between the state in the face of its authorized bodies and numerous civil society institutions, whose task is primarily to ensure the implementation, protection and defense of rights and freedoms of citizens and their associations.

In this regard, in this article we will try to describe in general terms only some prerequisites for ensuring the effectiveness of interaction between civil society and the state, among which a special place, in our opinion, is the institution of constitutional control over the providing and protection of human rights and freedoms.
At the same time, let us first dwell on some essential aspects of the nature of civil society, which, in fact, affect the nature of its relationship with a democratic, legal state.

In the stated context, first of all, we note that the issue of civil society and its relationship with the state is not associated exclusively with the current stage of legal development. Some aspects of it can be found even in the works of Aristotle, Plato and other ancient thinkers. This issue has to some extent also been studied in the works of G. Grotius, T. Hobbes, J. Locke, S. L. Montesquieu, J. J. Rousseau. This idea is further developed in the works of W. Humboldt, I. Kant, G.W.F. Hegel, K. Marx, F. Engels, M. Weber and other philosophers of the new formation.

It should be noted that a clear definition of the term «civil society» in these and subsequent periods did not yet exist. At the same time, all issues related to civil society in historical retrospect were related to the expediency of human existence and the perfection of its organization. There is no doubt about the relevance of issues related to civil society in the context of its relationship with the legal state, ensuring the protection and defense of human rights, freedoms and legitimate interests, the development of civil society institutions and more.

As we know, in the modern scientific literature, civil society is mostly defined as a set of individuals (namely individuals) and their associations with developed political, legal, cultural, economic ties that operate formally independently of the state, although interacting with it. This perspective of understanding the essence and nature of civil society means that individuals must influence the state in order to achieve the common good, due to which civil solidarity is formed in society.

Thus, the importance of civil society in the functioning of a democratic political regime and social, legal state, is, in particular, as follows:

1) civil society forms an appropriate social environment in which the individual is formed and developed by creating conditions to meet its basic needs and interests, ie creating conditions for its broad self-realization;

2) civil society is a guarantee of protection of the interests of each individual, his natural rights and freedoms from excessive state interference in private life;

3) civil society institutions formulate and represent public interests before the state, as well as seek to ensure an effective dialogue with the state to protect these interests or resolve possible conflicts;

4) through the inclusion of the individual in the structure of civil society is the necessary realization of spiritual and material interests, integration into the social environment.

Civil society as a society of citizens who are equal in their rights and responsibilities, a society that is nominally independent of the state, but interacts with it for the common good, is the basis of the state. The state, in turn, protects the democratic principles of self-government of all non-governmental organizations that directly shape civil society. For the civilized development of both phenomena it is necessary to create a reliable, effective and harmonious mechanism of their interaction and mutual enrichment [1].

However, a certain gap in modern scientific work, we emphasize again, should be considered the lack of developments in the interaction of the state, civil society and such a phenomenon of social reality as public life. Thus, the question arises as
to whether it is legally and scientifically correct to perceive civil society exclusively as the center of certain public organizations. The fact is that public organizations were created and are created for different purposes, have different “program” and prognostic directions, different areas of activity and influence, different worldviews and so on. After all, some of the grassroots are focused, for example, on “sports” topics, others – on the ethnic environment, some protect certain rights, others, on the contrary, promote them.

In this way, it would be inappropriate to rely on their consensus “vision” regarding the priority of development tasks in modern conditions. In addition, some active members of civil society may not yet choose a particular non-governmental organization due to, for example, the fact that such an organization does not exist in their administrative-territorial units. Therefore, it should be realized that civil society and public life cannot and probably should not be fully identified. These are quite different phenomena of social reality, but, of course, mutually appropriate, mutually necessary and mutually conditioned. Thus, the guidelines for the appropriate balance of civil society, the state and public life as an effective form of civil society affirmation should be clearly outlined.

Civil society can and is entrusted with certain strategic tasks, it is a kind of compass, a kind of reference point for future action, and characterized by appropriate forms of communication (e.g., public hearings). In the case of a specific public organization (for example, the Society for the Defenders of Certain Species of Rare Plants), in our opinion, such an organization cannot perform broader functions and tasks than its statute or other normative documents recognize.

In this way, we note once again that a mature, active and influential civil society cannot be identified with the indicator of the presence or absence of a certain number of public organizations. Another thing is that public organizations are called to properly perform their functions and tasks, which is a necessary condition for civilized social and state development in accordance with applicable law. Indicative in this aspect is the issue of ensuring and protecting human rights and freedoms in the context of the effectiveness of interaction between civil society, the individual and the state.

It is undeniable that among the most priority topics of modern legal work, several are dominant. One is related to the development of civil society and the legal state, the other to the protection of human rights, freedoms and legitimate interests, and thus to the constructiveness and effectiveness of modern law. It should be noted that a small part of scientific publications is aimed at combining these fateful issues, to understand their interconnectedness, relevance, strengthening the efficiency of today's regulatory processes to minimize the risks of antihumanist manifestations in certain areas of human life [2].

There is no doubt that effective protection of human rights and freedoms is impossible today:

1) without effective intervention of civil society in all processes of law-making;
2) without proper development of all institutions of the modern European state;
3) without a harmonious balanced action of civil society institutions and the legal state;
4) without educating a socially active person capable of reformist changes in the conditions of civil society development.

Referring to the concept of «mechanism of interaction of civil society, person and state», primarily in relation to at least two of its components, namely: 1) the institution of legal responsibility of the state to the person; 2) the institute of legal and social responsibility of business.

Regarding the first component, it should be noted that such an institution exists not only in scientific doctrine [3], but also receives a significant practical sound. In particular, the National Strategy for Promoting the Development of Civil Society in Ukraine for 2016-2020 (approved by the Decree of the President of Ukraine on February 26, 2016 № 68/2016) refers to the «establishment of a responsible state governed by the legal state».

As for the legal and social responsibility of business, this fateful problem is not only not reflected in modern law, but also not developed even in national legal doctrine, and this despite the fact that there is an urgent need to develop not only the general principles of this responsibility in the national, but also in supranational aspects as well. It should be recalled that in the Anglo-Saxon legal system 150 years ago there was a so-called criminal corporate law. Today in the European Union, some scientists, politicians and officials emphasize the lack of responsibility of transnational corporations. However, it can be stated that there is a lack of not only legal but also social responsibility of business to society, which can be easily verified only by reading a few publications from the media. In particular, this can be seen in the example of some «scandalous» buildings in Kyiv, «attacks» on communal cinemas in Kyiv, and so on.

In this context, it is worth emphasizing that civil society does not appear out of nowhere, but is the result of progressive social and state development. It should be borne in mind that the degree of perfection of civil society institutions, its greater or, unfortunately, less «maturity» and development depends on the perfection of both society and the state in certain spatio-temporal dimensions. Without the existence of the state (state bodies and other institutions of state power) there would be no civil society (its institutions) in the modern sense given to this concept today. After all, civil society is gaining its strength and ability to develop precisely in interaction (dialogue and partnership) or confrontation (conflict) with the state.

An important task of civil society development is to ensure effective and permanent public control, which can be an important factor in the democratization of society: ensuring the right of the people to good governance. There is hardly a special need to prove the need to intensify youth movements, to create adequate forms of influence on the minds of young people in order to form a stable civic position.

The proclamation of the main problem of today’s human rights, the recognition of the interests of the individual more important than the interests of society and the state, is a classic postulate of the doctrine of civil society. However, this does not and cannot mean a weakening of the role of the state in the protection and preservation of the individual. Human rights can be guaranteed only in a legal, democratic state that is able to govern society and positively influence the individual.
In these conditions, in our opinion, it is necessary to revive respect for the law, the principle of the rule of law, the principle of legality, increasing the authority of the law, which should be recognized as one of the highest priorities of modern social and state development. Therefore, without proposing new «recipes for instant recovery of society», given that this is not a process of one day, week or month, that society can not «recover» by «waving a magic wand», and trust in law, law and the rule of law and law and order cannot arise instantly at the request of both government officials and its opponents, or members of society, we want to emphasize that it is necessary to rely on the practical significance of the problem of action, effectiveness, efficiency, effectiveness of law in civil society, man and state. We want to note that the law is not a constant value, its perception, understanding, implementation, effectiveness, etc., depends on many factors, including: origins, postulates, functions of law, principles of government, source base, etc.

Despite the fact that in today’s languages the law accompanies us constantly, we can hardly say that it is adequately effective or capable of meeting our expectations, providing a sense of security to every citizen, guaranteeing his rights and legitimate interests, and so on. It is obvious that the success of democratic transformations largely depends on the extent to which the law is supported and respected in society by various social institutions and groups, as well as by each individual.

Moreover, it should be noted that during the years of independence in Ukraine adopted a huge array of legal norms, which in general are consistent with international norms, and civilized forms of public relations, and European standards. But at the same time, this array is not valid, ie the effectiveness of the law today remains only «paper». Therefore, the highest priority of both doctrine and practice is the transformation of law, in which it really becomes an effective regulator of social relations. At the same time, the unconditional main «criterion» for assessing the effectiveness of the law should be the high level of protection of citizens, protection of their rights, freedoms and legitimate interests.

In this context, it should be emphasized that one of the effective mechanisms to ensure the effectiveness, positive effectiveness of the relationship in the coordinate system «person – civil society – state» is the constitutional control in the field of human rights, which should be recognized as an independent guarantee of legal protection of the individual, provided both by the activities of a specially authorized body of constitutional justice, and other subjects of power defined in the constitution and legislation.

Constitutional control is an independent type of state control, the specificity of which is associated primarily with the performance of a special function in the process of its implementation – ensuring the supremacy of the constitution in the system of regulations, its direct effect in the system of public relations. Constitutional control ensures the highest level of legality and extends primarily to the law-making process. However, in modern realities, no less important prerogative of constitutional control is, of course, ensuring the full rule of law in public life, enshrined in particular in Article 8 of the Constitution of Ukraine. These components of constitutional control in the field of human rights are closely interrelated, as it is impossible to ensure the rule of law in the system of regulations in the absence of
properly established guarantees for the implementation and protection of human and civil rights and freedoms, as well as clear mechanisms for verifying compliance [4].

It should be noted that the basic principles of relations in the coordinate system «person – civil society – state», governed by the basic law of a democratic state governed by the rule of law (constitution), are essential for achieving effective functioning of social and state system enshrined in it to ensure the stability of the legal status of the individual, as well as the strict implementation of constitutional norms by all subjects of the relevant legal relationship. Special protection of the constitution as the basic law of a modern democratic, legal, social state is a necessary and at the same time the most important prerequisite for the effectiveness of the guarantees enshrined in the law for citizens to exercise their rights, freedoms and legitimate interests.

Moreover, the supremacy of the constitution as the basis of the entire system of legislation that directly ensures the rights, freedoms and legitimate interests of citizens and their protection in any legal state, stable functioning of civil society, etc., can be ensured only by effective mechanisms constitutional legality. It should be noted that the entire system of human rights and freedoms, enshrined in the level of the basic law of the state, should be subject to the same constitutional and legal protection by the competent authorities. After all, civil, economic, political, social and cultural rights are equally important for each individual, because only in their totality are they able to ensure its comprehensive development.

Given that in modern democracies human rights and freedoms are recognized as the highest social value, which determines the content and direction of the legal state, constitutional control over the provision and protection of human rights and freedoms should cover not only the level of verification of compliance by the legislator with the relevant provisions of the constitution in the process of adopting regulations, but also the level of constitutional review of laws or their individual regulations at the request of courts of general jurisdiction and specialized courts, as well as on the basis of an individual constitutional complaint, which gives a person direct access to constitutional justice and control.

In this regard, it should be noted that the institution of individual constitutional complaint in modern conditions acts as an important guarantee of protection of civil rights from violations by the subjects of power, as well as a form of ensuring the practical implementation of constitutional principles or principles related to the sphere of human rights, freedoms and legitimate interests. Moreover, by giving the citizen the opportunity to actually challenge even legislative decisions, the institution of a constitutional complaint thus promotes the integration of citizens into the process of governing the state and society, which can not but have a positive effect on citizens’ trust in government.

At the same time, in our opinion, constitutional control in the field of human rights protection should not be limited to verifying the constitutionality of laws and other normative legal acts or their individual provisions. After all, given the growing dynamics of relations in the coordinate system «person – civil society – state», an important aspect of constitutional control in the field of human rights is the inspection and evaluation of various acts committed by public authorities and their
officials in law enforcement. This aspect of constitutional control in the field of human rights protection is related to the features of practical implementation of constitutional norms by the relevant bodies, which are authorized to decide individual cases at the request of citizens.

Examining the theoretical foundations of constitutional control in the field of human rights protection, it is impossible not to say at least a few words about such an essential indicator of this activity as the interpretation of regulations. After all, when it comes to determining the conformity of a law or other normative legal act to the constitution, there is a need for professional interpretation of these acts. That is why we can say that interpretation is a substantive aspect of constitutional control. Interpretation of legal norms is a process that takes place in cases where it is necessary to establish the meaning of the relevant regulations, their teleological significance. At the same time, in the process of interpretation of legal norms, not only their legal features are revealed, but also their social characteristics, which follow from the fact that the legislation enshrines and uses many concepts that reflect the relevant social phenomena.

It should also be noted that the process of interpreting the basic law of the state should not turn into the replacement of some constitutional provisions by others. The interpretation of the constitution is not to create new norms of direct action, but to clarify their value and meaning, to adapt the relevant regulations to the new realities of social and state development.

Thus, we can conclude that constitutional control in the field of human rights is one of the most important prerequisites for ensuring the effectiveness of interaction between civil society and the legal state, as well as a central link in the overall system of control over the law and order in public life. The extraordinary importance and significance of this type of control in democratic legal systems is explained both by the special place of the constitution in the system of legal acts and society, and by the consolidation of the rule of law, which obliges the state to approve and ensure human rights and freedoms, regardless of the specific sphere of social relations within which they are realized.

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