

Civil society as difficult social system: Philosophical and legal aspect (Experience of Russia)

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Abstract: Civil society is a community of independent subjects (citizens) in the state, developing moral and material values in interests of the community and the state. Existence and development of civil society is impossible out of difficult system of the public relations and without participation (direct or mediated) the states. This is a definition that one can agree with. But life is much more complicated than theory, and in this article the author attempts to critically comprehend the interaction of the state and civil society institutions in "young" democracies, which had a chance for the free development of personality, human rights and freedoms, but whose road to democracy "turned aside". An important example is the short historical period (literally from the 1990s to the 2020s. the transformation of Russian statehood, the development and decline of civil society. The road from slavery to freedom is not easy for the Russian population, and the reason for this is not only the historical inertia of the people and the disbelief of the authorities, but also, in our opinion, the danger of "premature freedom" realized by the authorities.

Keywords: *Civic chamber of Russia. Civil society, Democracy, Economy, Human rights, Policy, Russian union of industrialists and businessmen, State.*

1. Introduction

The term "civil society" goes back to the ancient Roman word *civitas* (from *civis* – citizen), which denoted a civil community, whose members (Romans) were subjects of Roman civil law (*ius civile*). The words *civitas*, *civis*, *ius civile* at the same time had a syncretic (fusion) meaning, without distinguishing between their political and non-political meanings. In the future, their non-political meaning was preserved in terms of "civil society," "civil law," and political meaning in the term "citizen." The existence and development of civil society is unthinkable outside the complex system of social relations and without the participation (direct or indirect) of the state. The state and civil society are interconnected and interdependent (we do not undertake to assess the degree, measure, scale and volume of dependence on one another). This means that they cannot be opposed and torn away from each other. Learning one thing without exploring the other is impossible and counterproductive.

1.1. Habitat

Before we start our research, let's define the concepts. Take as a basis the definition that civil society is a community of independent actors (citizens) within states that produce moral and material values in the interests of the community itself and the state. Indeed, civil society of any state (and Russia is no exception here) cannot be considered as an autonomous social system independent of the state. If this system is inside the state (and it is), then, being an element of a more complex system, civil society cannot be completely autonomous. But civil society actors may well show their independence.

Antagonism and confrontation between the state and civil society, long-term conflicts arising between them (as in the human body – a cold, a serious illness), as a rule, do not benefit the entire system, starting to destroy it from the inside. Although, of course, in some cases, by analogy with the

development of immunity by the body due to a cold, such conflicts can be useful for further development and mutual understanding between the state and civil society [3]. About this - below.

1.2. *Lost Illusions*

In understanding the factors influencing the development of civil society, one should take into account not only a specific historical era, but also the historical development of the state and society that preceded it. In addition, as P.I. Novgorodtsev, "it is necessary to remember the difference in practice and theory when bringing them closer to each other. It is not always possible to characterize practical relations on the basis of theoretical ideals, just as it is impossible to reduce the entire content of these ideals to the immediate practical needs." [4]

First of all, any interpretation of the concept of "civil society" presupposes correlation with the concept of "state," since the former both historically and in theoretical analysis appears only in the presence of the latter. Recall Hegel, whose state is a multifaceted phenomenon that covers various spheres of human life, and not just hardware, management and political. An individual, on the one hand, cannot exist outside the state at all, and on the other hand, an individual's acquisition of a human (moral) appearance and his objectification as a citizen (in particular, legislative empowerment) are possible only in the state. Accordingly, in our opinion, the very endowment by the state - through the adoption of relevant laws - of an individual with rights and freedoms, as well as duties, is already an act of manifestation of public legal principles, which does not exclude, at the same time, the private legal nature of the rights and freedoms themselves, which the individual is endowed with.

If in the West the process of the formation of civil society came from the economy, private property, then in Russia, with the noted difficulties development of entrepreneurship, he went through associations of individuals at the institute of zemstvo, to which capital was then attracted.

At first glance, the development of civil society takes place exclusively within the framework of private interests, but the participation of public authorities and the extension of public norms to the private law sphere (albeit indirectly) cannot be questioned. After all, the state is a multifaceted phenomenon that covers not only the sphere of public interests, but also "penetrates" into all layers of the individual's public life. For example, the life of a citizen in Russia will differ from the life of the local population in Germany, and the difference will be not only in the social structure, worldview, traditions, national ideology, but also in the model of the political and legal systems existing in the countries.

An important task facing the state and society of a particular country at the same time is to eliminate the "triangle of distrust": the state - to society and business, business - to the state and society, society - to the state and business.

Perhaps the most thorough experience in creating a system \rightarrow theory of modern civil society belongs to \rightarrow American researchers Gene L. Cohen and E. Arato, who devoted fundamental scientific work "Civil Society and Political Theory" to this problem [1]. According to the authors, "modern civil society is created through certain forms of self-constitution and self-mobilization. It is institutionalized and generalized through laws and especially subjective rights that stabilize social differentiation." Thus, a five-part model is proposed:

1.3. *Political Society - State - Civil Society*

1.3.1. *Economic Society - Economy - Civil Society*

At the same time, the authors warn against the opposition of civil society to the state and the economy. These relations become antagonistic \rightarrow only when the institutions of economic and political societies begin to isolate the decision-making processes and those who make these decisions from the influence of social organizations, initiatives and public discussion. In other words, political society and economic society are spheres of civil society, but not separate societies, detached, but supposedly in contact with civil society.

In Russia, a self-governing organization that personifies and represents the business community in this "triangle of distrust" is the Russian Union of Industrialists and Entrepreneurs (RSPP) - the most important element of the system of developing civil society, because most of the business structures of the Russian economy are members of the RSPP.

Economic relations that make a person relatively independent of the state contribute to the development of other public relations, which has a beneficial effect on the development of civil society institutions in the country. There is also an inverse relationship between the economy and civil society. Being involved in the institutions of civil society (society of free people), a person acquires a certain distance from the state, learns to think independently and is aware of his own capabilities, in particular, in the economic sphere. Free market relations are a kind of "ontological foundation" on which a full-fledged civil society can be built.

Indeed, in addition to the specific purpose for which the activities of the community are aimed, its participants are united by a civic position that affirms the honor and dignity of each of them and the positive reputation of the community as a whole. This is exactly what the Russian Union of Industrialists and Entrepreneurs is doing. The support and development of domestic entrepreneurship in general, industry in particular and specific people seriously engaged in business, carried out by a public organization, is the school of civil society, the cornerstone of democratic construction. Without the private ownership class, there would be no full-fledged civil society institutions (and their progressive development), and the absence of civil society, testifying in one way or another to the dominant role of the state over public life, would only make it difficult for the private ownership class to appear.

1.4. The Brilliance and Poverty of Civil Society

By issuing laws, the state assumes specific obligations to citizens, public organizations, other states and the entire international community. But accordingly, the individual is responsible to society and the state. In this regard, the weakening of the sense of responsibility among most of the Russian population, the indifference of citizens to the affairs of society and the state, which is generated by the long Soviet period, imposed by decades of ideology, stagnation, leveling, etc. is alarming. It is possible to overcome the alienation of a citizen from the authorities, from public and state affairs, to increase responsibility for their actions only by liberating the individual, providing the opportunity for independent creativity and initiative.

Another danger arises here. As M.M. Speransky wrote two hundred years ago, "it is dangerous for a people who have been in slavery for a long time to immediately switch to freedom and enlightenment, because an educated people feel their slave state more acutely and is capable of unpredictable actions." Moreover, M.M. Speransky considered it possible to synthesize absolutism and civil society, autocracy and legal, legislative regulation of social relations, combining the class-hierarchical system and a free personality.

The road from slavery to freedom for the population of Russia is not easy, and the reason for this is not only the historical inertia of the people and the disbelief of the authorities, but also, in our opinion, the danger of "premature freedom" realized by the authorities. And freedom can be different. The same M.M. Speransky, in many respects ahead of his time in scientific and legal thinking, wrote: "Two forms of social freedom should be distinguished: freedom for the mob and freedom for the people. The rabble wants to be governed as little as possible, while the people are looking for control, but with "profit," with enrichment and without coercion. The first is the freedom of the working people, the second is the freedom of the chosen class. The first is lazy freedom, and the second is active." [5]

For the society of individuals (more precisely, citizens, the role of citizenship will be discussed below), the state is, on the one hand, an external necessity and the highest (coordinating) power, on the other hand, it is their immanent goal, and its strength is in the unity of its universal ultimate goal and special interest of individuals. Namely: in the fact that they have duties to him as much as they have rights. But it also refers to an important feature \neg civil society, namely: the endowment of individuals with rights in relation to the state, which assumes the obligations corresponding to these legal rights to fulfill them, guarantees this process.

A characteristic feature of civil society is the presence of contradictions, conflicts and competition as drivers of its development. Contradictions, conflicts and competition inevitably arise between people in the process of their interaction with each other; some people become only a means to achieve goals by other people. "In civil society, everyone is a goal for himself," noted Georg Wilhelm Friedrich Hegel,

"everything else is nothing for him." Or: "Civil society is the arena of the struggle of private individual interests, the war of all against all." At the same time, the category "state" always requires the researcher to decipher: either it means the system of power, or the administrative apparatus, or the institutionally organized geopolitical space, or the institutionally organized population, or all this is a \neg , united by the "development of an idea into its differences." Otherwise, you have to speculate about the maxims in the spirit: "Civil society is called upon to monitor the state." In addition, it is necessary to take into account the non-identity of the concepts of "society" and "civil society."

1.5. *Freedom and Civil Society*

It is generally accepted that civil society is the foundation of a democratic public organization. The more developed civil society, the more grounds for democratic forms of the state. Conversely, the less developed civil society is, the more likely the existence of authoritarian and totalitarian regimes of state power. The degree of freedom of the individual, the breadth of human and civil rights and freedoms, and guarantees of their implementation in each specific case largely depend on the regime of state power in the country.

All these are postulates of the classical theory of civil society. With regard to Russia, the situation is somewhat different. Let's start with Hegel's idea that the development of civil society comes later than the development of the state. This means that civil society is secondary to the state and the latter inevitably, at least, takes part, and as a maximum, it forms civil society itself or makes it possible for its institutions to emerge and develop. The state is more primary both by the historical fact of the emergence and by the strength of the supreme power extended to the subject territory.

The logic of causation seems to us as follows: an example of recent Soviet history and the existence of a totalitarian state of the USSR indicates that with total control and nationalization of the majority (in the traditional scientific sense) of civil society institutions, its development seems impossible or completely controlled by the state (in the remaining non-state part of civil society institutions). In other words, the postulate of classical theory sounds exactly the opposite: the more developed the authoritarian or totalitarian regime of state administration, the less opportunities and conditions for the existence of at least some institutions of civil society remain, since this regime destroys civil society by nationalizing most of its institutions, and makes the rest of them a mouthpiece of a tough ideological orientation. This interpretation is also explained by the fact that never in our history have there been periods of the existence of a full-fledged (developed and freely developing) civil society. In the first place was always state power (monarch, grand dukes, specific princes, etc.).

Suffice it to recall that in our country serfdom (essentially slavery) was abolished only 150 years ago (in 1861). Prior to this period, the bulk of the population (peasants), which, under better historical conditions, could eventually form the basis of the middle class of Russia (and therefore civil society), did not have the opportunity to be owners, own, use and dispose of at least some own real estate (land, house, etc.). This means that the lack of personal freedom as such in the first half of the XIX century. prevented the formation of a class of owners in Russia (unlike European countries of that time), and therefore prevented the development of civil society, since the individual's personal freedom is based on his right to private property.

If civil society ensures human rights, then the state – the rights of a citizen. In both cases, we are talking about the rights of the individual, in the first case – about her rights as a separate human being to life, freedom, the pursuit of happiness, etc., and in the second – about her political rights. From these positions, it is obvious that the fundamental condition for the existence of civil society is to ensure the individual's right to self-realization and personal freedom.

G.V.F. Hegel came to the conclusion that civil society is a special stage in the dialectical movement from the family to the state, i.e., in the process of a long and complex historical transformation from the Middle Ages to the New Age [2]. "Civil society," he wrote, "is a differentiation that stands between the family and the state, although the development of civil society comes later than the development of the state." Hegelian interpretation of civil society as "movement from family to state" was subsequently perceived and described in Russia in the "Guide to Knowledge of Laws" by M.M. Speransky, according to whom society in its being has a limit and cannot satisfy endless human desires [5]. Blame the hostel

and demand more from it than it can give, there is a disease of our century - he wrote. In other words, a certain limit to the "endless human desires" of civil society should be established by the state (state power), the so-called "political society" (or state). The establishment here of a certain limit, boundaries in no way diminishes the freedom of civil society, expressed, according to M.M. Speransky (perceived by him from the teachings of G.V.F. Hegel), in the desires of his individuals. On the contrary, the absence of any restrictions on these "desires" (according to Hegel - "wars of all against all") would testify not to the freedom of civil society, but to social lawlessness, not to the orderliness of civil relations, but to the permissiveness of individual individuals.

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References

- [1] Cohen Jin L, Arato E. Civil society and political theory. - M., 2003. S. 7, 12.
- [2] Hegel G.V.F. Philosophy of Law. M., 1990. S. 228, 330.
- [3] Nersesyants V.S. General theory of law and state: Textbook for universities. M.: Norma, Infra-M, 1999. S. 279.
- [4] Novgorodtsev P.I. Kant and Hegel in their teachings on law and the state. Two typical constructions in the field of philosophy of law. - M., 1901. - S. 27, 330-351.
- [5] Speransky M.M. Guide to the knowledge of laws. - St. Petersburg: Science, 2002. - S. 9, 23.