

Judiciary and Civil Society in Provision of Constitutional Rule of Law in the Russian Federation

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Abstract: The existing demand for ensuring constitutional legal order as an indicator of the embodiment of law and legality in the regulation of social relations, the role of the judiciary and civil society institutions in achieving the supremacy of the Constitution as the most important condition for the formation of a constitutional state testify to the relevance of the chosen topic of research. The article is aimed at developing conceptual positions on the relationship of various public institutions (state and non-state) in the framework of ensuring justice as the most important guarantee of the rights and freedoms of citizens, their associations, a fundamental condition for ensuring and maintaining constitutional legal order. The study of the role of the judiciary in its dialectical relationship with the institutions of civil society, in the formation and maintenance of the constitutional legal order was used as the main approach for the research of the selected problems. The application of systemic and structural-functional methods of research provided an opportunity to consider the issues of constitutional legal order as a holistic phenomenon, which is in direct dependence on the associated systems of the judiciary and civil society. The analysis of the norms of the Constitution of the Russian Federation, the current legislation of Russia, domestic and foreign scientific publications on judicial power

and its interaction with institutions of civil society made it possible to receive the scientific information on the nature of influence of these constitutional and legal institutes on maintenance of the constitutional legal order. There is a need to increase the level of constitutionalization of legal regulation of public relations in the specified sphere, aimed to guarantee the effective realization of the principle of people's authority. The results and conclusions presented in the article can be used for the purposes of improvement legal and regulatory framework for social relations in the spheres of relations between the judiciary and civil society in their aim to achieve and maintain constitutional legal order. The obtained scientific information can be used in the educational process, as well as a basis for further theoretical research in the field of problems of Russian constitutionalism.

Keywords: Constitution; citizens; constitutional rights; freedoms of citizens; constitutional guarantees; constitution supremacy; constitutional rule of law; Constitutional Court of the Russian Federation; public institutions; judiciary; judicial community bodies; civil society; advocacy

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I. Introduction

At present, the public consciousness is increasingly questioning the conformity of the actually existing social order and the rule of law to the constitutional attitudes and ideal. In other words, the

establishment of the constitutional legal order as an indicator of the adequacy of legal regulation based on the norms of the Constitution, the effectiveness of the implementation of the regime of legality, the real security of human rights and freedoms is on the agenda of social development. The fundamental basis of the constitutional legal order is the supremacy of the Constitution, which is largely ensured by the courts. In view of this, it is obvious that an important role in the process of establishing the constitutional legal order is played by the judiciary, which is derived from the sovereign power of the people and should have stable feedback, including through the institutions of civil society. Nevertheless, the organization and activities of the judiciary, its cooperation with the institutions of civil society in order to achieve the goal — the supremacy of the Constitution and the law embodied in it as a fundamental condition for establishing the constitutional legal order in modern jurisprudence remain debatable.

Problem. The state of constitutional law and order is achieved through the activities of all branches of state power, local government, institutions of civil society, other human communities, and each individual. However, it is the judiciary that is called upon to ensure the direct effect of the rights and freedoms of citizens and the observance of all other constitutional guarantees in a democratically and socially oriented state. At the same time, the nature of judicial power, the same as all state power, contains a certain contradiction. This consists in the fact that it is derived from the sovereign power of the people in its origin, on the one hand, but, at the same time, is immanently built into the mechanism of the state and derived from it in its functioning, on the other hand. In the case of the judiciary, this contradiction is exacerbated by the fact that it is called upon to resolve legal conflicts that have arisen and potential, to which the state, represented by its bodies, is often a party. In this situation, the courts must rise above their state essence, following their supreme constitutional purpose. We assume that overcoming this contradiction, in global terms, is achieved by minimizing the effect of alienation of the bearers of public power from its source — the people. With regard to the judiciary, this can be achieved through various forms of interaction with institutions

of civil society and the establishment of effective public control over it as an element of the implementation of the principle of people's power (namely the formation of its human resources and institutional formations — courts), as well as the implementation of all functions of the judiciary, among which the dominant function is justice. The success in establishing and ensuring the supremacy of the Constitution, the law embodied in it and the constitutional order in general depends largely on the effectiveness of such interaction and control.

The constitutional legal order is viewed as a result of the implementation of constitutional legality, i.e., the embodiment by all subjects of law of the prescriptions of the Constitution, their implementation of actions on the basis of and in pursuance of the Constitution (Narutto, 2018). The establishment and maintenance of constitutional law and order are considered the most important tasks of public authorities, including the judiciary, with an emphasis on the bodies of judicial constitutional control (Bezrukov, 2017). It is noted that it is the court that is the “living organ of the constitutional law and order” (Ebzeev, 2014). The exclusive role of the courts in the constitutional order is emphasized (Barber and Vermeule, 2016).

The judicial power has been the object of scientific research in the context of its independence, autonomy (Anishina and Gadzhiev, 2006), functions and forms of implementation (Rzhevskij and Chepurnova, 1998). It is argued that the courts are secondary to the policies of developing states and have virtually no political support, which is the reason for the difficulties in achieving the rule of law. The establishment of the rule of law requires the development of proper links between the courts and society. Many studies have challenged the justification for denying the political dimension to the courts (Schor, 2006). A special interest in the forms of public control accompanying the activities of the judiciary is recognized due to the recognition of justice as the highest form of restoring truth and justice, not free, however, from errors and distortions that require elimination and restoration of violated rights and freedoms, including through the implementation of public control functions (Berdnikova, 2012).

A number of studies are devoted to the civil society as a socio-political phenomenon (Khabrieva and Chirkin, 2005; Golovistikova and

Grudtsyna, 2007). It has been noted that the empowerment of civil society is the main concern of democracy (Flyvbjerg, 1998), and the principle of transparency in its activities can help prevent the abuse of institutional power (Richards and King, 2014). It has been argued that there is a need to develop and adopt a fundamental document that would define the strategy of the state and all involved authorities and public institutions to combat crime and delinquency (Skuratov, Glazkova, Grudin, and Neznamova, 2016, pp. 645–646). Some authors consider the state of civil society as reflecting the level of civil legal awareness of the population and the effectiveness of the system of public control over the activities of the state, creating additional guarantees of compliance with the constitutional rights and freedoms of citizens (Yastrebova, Salomatkin, Dzhavakhyan, Redkous, and Filonov, 2016). Some studies are devoted to the analysis of constitutional and administrative legal aspects of legislative regulation and ensuring public safety in the Russian Federation by the state and private subjects (Yastrebova, Stakhov, Merkulov, Suchkova, Filonov, and Matveeva, 2017).

At the same time, studies on the above topics do not address the underlying issues of the relationship and interaction of the judiciary with various institutions of civil society as the conductor of the sovereign will of the people — the only source of power, a tool to achieve the rule of law as an essential component of the constitutional legal order.

Methodology. In the course of the study of interaction between the judiciary and civil society institutions in the context of ensuring the rule of law as the most important element of the constitutional legal order, we used such methods of research that correspond to the goals and objectives of the work, including dialectical, systemic, structural and functional, formal and logical approaches.

The dialectics of coexistence and interaction of the judiciary with certain institutions of civil society as an objective necessity in achieving the rule of law as an essential component of the constitutional legal order formed the methodological basis of the study. In the process of cognition, the authors actively used the method of analysis of the studied social and legal phenomena: constitutional law and order, the judiciary and civil society as well as the synthesis of the data obtained.

The use of structural functional method is conditioned by the study, on the one hand, of the phenomena of the judiciary and civil society as elements of the social organization system and their functioning in relation to each other, and, on the other hand, by the definition of the role and place of the results of their interaction in the system of the constitutional legal order.

The Constitution of the Russian Federation, federal and federal constitutional laws, other regulatory legal acts of the Russian Federation in the relevant spheres of public relations, as well as the works of Russian and foreign scientists thematically aligned with this work formed the empirical basis for the studied problem.

Results. This article researches the current legal regulation and practice of public relations in the field of interaction of the judiciary with the institutions of civil society as a condition for the establishment of the rule of law and a component of the constitutional legal order. The results received within this study are the following.

1. The study revealed that none of the studied socio-political, political and legal phenomena — constitutional law and order, the judiciary, civil society have no legal, legislatively enshrined definition, derived from the set of scientific judgments about their nature and essence, which increases the level of disputability of the chosen topic;

2. The cornerstone in achieving and maintaining constitutional legal order is the supremacy of law and the Constitution. At the same time, law must be perceived as a synthesis of positive and natural law, corresponding to the concrete historical level of social development.

3. The primary role in ensuring the supremacy of law and the Constitution, implementation of its direct action, protection of the rights and freedoms of citizens and their associations belongs to the judiciary, implementing the functions that correspond to the goals and objectives of this form of organization of state power. The implementation of some of these functions depends on the maturity of the judiciary, the prospects for constitutional development and the achievement of a state of true constitutional law and order.

4. The Russian legislation of Russia determine the main directions and forms of interaction between institutions of civil society and

the judiciary, the points of contact between them in the process of its formation and activity. It is the Bar activities that are the most clearly regulated, however, its role in the process of the formation and functioning of the judiciary is unreasonably underestimated.

II. Judiciary and Civil Society: The Essence and Interaction to Ensure the Constitutional Rule of Law

The concept of “constitutional legal order” today has not become the subject of a wide scientific discussion among domestic lawyers, and even abroad. Nevertheless, a number of scientists, one way or another, have expressed their views on this issue.

A.V. Bezrukov, echoing A.V. Shinkarev, considers law and order as a result of the law, as a state of public relations, qualitatively characterizing the implementation of the law enforcement function of the state, as a complex socio-legal and political-state phenomenon, in which institutional, functional and socio-legal aspects can be distinguished. He notes the special role of the Constitutional Court of the Russian Federation in ensuring the supremacy of the Russian Constitution and establishing constitutional law and order (Bezrukov, 2017; Shinkarev, 2006). Other researchers focus their attention on the grounds of the constitutional legal order, laid by the functions of the Constitution in their systemic unity, secured, in turn, by various forms of implementation of constitutional norms. The political and legal regime of constitutionalism is considered to be the ideal center of the constitutional legal order (Kokotov, 2018).

It is difficult to overestimate the importance of constitutionalism in the system of protection of individual rights and freedoms, the peculiar cost of “unconstitutional omissions” (Neves, 2019). This is evidenced not only by the experience of the U.S. Supreme Court (Shah, 2020), but also by the experience of European countries (Piatek, 2020). Constitutional legal order is considered as a result of the implementation of constitutional legality and, is understood in a broad and narrow sense. In the broad sense, under the constitutional legal order is proposed to understand the totality of social relations in the Russian society,

established and functioning on the basis of the norms of the Russian Constitution. In the narrow sense, it includes parliamentary, electoral and other special constitutional procedures.

The structure of the legal order in the composition of special subjects, acts of implementation of the norms of constitutional law, the totality of constitutional legal relations, constitutional legal consciousness and constitutional legal thinking is defined. The constitutional legal order includes not only a block of state legal relations but also the sphere of relations within civil society. The creation of real mechanisms for implementing the principles of people's power is recognized as one of the primary conditions for maintaining the constitutional legal order (Baranov, 2014). Attention is drawn to the two existing contexts of the theory of constitutional legal order considered by scientists: the study of the typology of the legal order by sectoral principle and within the framework of speculation about the desired and actual state of the legal order. In the first context, the constitutional legal order is emphasized as systemic in relation to the sectoral types of law and order (civil law, criminal law, etc.). In the second context, the constitutional legal order prevails as the ideal embodiment of the proper state of order of legal life. The key characteristics of the constitutional legal order include: ideological component; focus on the formation of a proper legal order; correlation of interests of an individual, society, the state and the international community (Rakov, 2020).

The jurisprudence of the Constitutional Court of the Russian Federation considers the term “constitutional legal order” from various positions.

From the position of the federal legislator, who “not only has the right, but is obliged to use all available — within its discretionary powers — means, including the establishment of this or that type of legal responsibility, guided by its general principles, which have universal significance and inherently relate to the foundations of the constitutional legal order.”¹

¹ Resolution of the Constitutional Court of the Russian Federation No. 8-P dated 4 February 2019. Collection of Legislation of the Russian Federation. 18 February 2019. No. 7 (Part II). Art. 711. (In Russ.).

Moreover, in order to “protect the rights and freedoms of human and citizen, to ensure law and order, as well as for other constitutionally approved purposes, *the legislator not only has the right, but is obliged to use all available means* – within his discretionary powers – including the establishment of administrative responsibility, guided by the general principles of legal responsibility, which have universal significance and inherently belong to the foundation of the constitutional legal order.”²

One of the most important constitutional foundations of the relationship between the individual with society and the state is the right of the citizen to participate, within the limits granted by law, in making and implementing decisions that affect his interests. They also have the right to monitor this implementation through their ability to enter into a dialogue with entities exercising the functions of public authority in order to defend both individual (private) and public interests associated with the maintenance and enforcement of law and constitutional order.³

At the same time, the dialogue between civil society institutions and the authorities must be built on a balance of private and public interests and contribute to the achievement of constitutionally significant goals, such as ensuring the free self-organization of citizens within civil society institutions and the maintenance of law and order, without infringing on the very essence of the constitutional right to association, including by creating unreasonable, excessive and insurmountable obstacles to the realization of this right and freedom of activity of public associations.⁴

The constitutional legal order is based on a number of the most important principles of the judiciary:

– presumption of innocence of the accused;⁵

² Resolution of the Russian Constitutional Court No. 5-P dated 18 January 2019. Collection of Legislation of the Russian Federation. 28 January 2019. No. 4. Art. 360. (In Russ.).

³ Resolution of the Constitutional Court of the Russian Federation No. 19-P dated 18 July 2012. Collection of Legislation of the Russian Federation. 30 July 2012. No. 31. Art. 4470. (In Russ.).

⁴ Resolution of the Constitutional Court of the Russian Federation No. 2-P dated 17 February 2015. Collection of Legislation of the Russian Federation. 2 March 2015. No. 9. Art. 1389. (In Russ.).

⁵ Resolution of the Constitutional Court of the Russian Federation No. 33-P dated 17 December 2015. Collection of Legislation of the Russian Federation. 28 December 2015. No. 52 (Part I). Art. 7682. (In Russ.).

- general legal principles of equality and legal certainty;⁶
- principles of equality and justice in their interrelation with the requirement, enshrined in the Constitution of the Russian Federation, on the inadmissibility of exercising human and civil rights and freedoms in violation of the rights and freedoms of others;⁷
- administration of justice only by a court;⁸
- comprehensive nature of judicial protection and the ideas of a state of law, which implies unimpeded access to justice.⁹

The prohibition to decide instead of a court belongs to the fundamental part of the constitutional legal order and continues the principles of justice recognized in declarative, treaty law and other sources of international law. The Constitution of the Russian Federation does not allow for transferring the powers of a law court to the Russian Federation: by virtue of Art. 118 (Part 1) justice is administered only by a court; the fundamentals of the constitutional order guarantee the court independence in the separation of powers (Art. 10); Art. 46 (Parts 1 and 3) guarantees everyone the right to appeal to intergovernmental bodies for protection of rights and freedoms, and Part 1 Art. 47 prohibits denying anyone the right to have his case heard by the court and the judge in whose jurisdiction it is referred by law.¹⁰

The Constitutional Court of the Russian Federation analyzes the constitutional and legal aspects of improving law enforcement in

⁶ Resolution of the Constitutional Court of the Russian Federation No. 15-P dated 6 June 2017. Collection of Legislation of the Russian Federation. 19 June 2017. No. 25. Art. 3740 (In Russ.).

⁷ Resolution of the Constitutional Court of the Russian Federation No. 9-P dated 24 March 2017. Collection of Legislation of the Russian Federation. 10 April 2017. No. 15 (Part VII). Art. 2283 (In Russ.).

⁸ Resolution of the Constitutional Court of the Russian Federation No. 1-P dated 19 January 2017. Collection of Legislation of the Russian Federation. 30 January 2017. No. 5. Art. 866 (In Russ.).

⁹ Resolution of the Constitutional Court of the Russian Federation No. 4-P dated 17 January 2019. Collection of Legislation of the Russian Federation. 28 January 2019. No. 4. Art. 359 (In Russ.).

¹⁰ Resolution of the Constitutional Court of the Russian Federation No. 48-O-O dated 19 January 2011. Not published officially. Official site of the Constitutional Court of the Russian Federation. Available at: <http://doc.ksrf.ru/decision/KSRFDecision55030.pdf> (In Russ.) [Accessed 15.11.2022].

2016–2018. It is argued that “the state of constitutional legality largely determines the quality of law enforcement” and that “at the initial stage of establishing constitutional law and order, along with positive aspects, this led to insufficient delimitation of competence in the field of judicial control, direct and indirect, which was aggravated by the imperfection of the legislation determining the procedure for challenging regional laws and acts of the Government of the Russian Federation.”¹¹

One should agree with some of the positions expressed. However, it seems that the phenomenon of constitutional legal order has a deeper essence, comprehended only through a systematic analysis of its components. Meanwhile, understanding, for example, of the constitutional legal order through constitutionalism does not give a clear picture due to the lack of unity of the scientific position on the essence of constitutionalism itself. For the purposes of this work, we believe it is possible to define the constitutional legal order as the state of regulation of public relations by the norms of the Constitution of Russia, sub-constitutional legislation and the practice of their application, corresponding to the actual constitutional will of the people and perceived as such by public consciousness. It is in this context that the subsequent arguments of the authors about the place and role of the judiciary and civil society in achieving this goal are presented.

Despite a significant number of scientific works on the judiciary, there are still controversial questions about its essence, functions, forms of implementation and place in the system of checks and balances. In the absence of a legitimate definition of the concept of “judicial power”, nevertheless, one can confidently characterize it as an element of state power, personified by special state bodies — courts, which, within the framework of the competence and procedures established by law, carry out activities aimed at protecting rights, as constitutionally established value and guarantee of public good and private interest that does not contradict it, through law enforcement, interpretation of law, turning into lawmaking, and the resolution of issues (cases) of a public and private nature in accordance with the law (Dzhavakhyan, 2018). This

¹¹ Official site of the Constitutional Court of the Russian Federation. Available at: <http://www.ksrf.ru/ru/Pages/default.aspx> (In Russ.) [Accessed 15.11.2022].

confirms the position on the actualization of the problems associated with the constitutional reform, which was marked by a new round of discussion on the rationality of the organization of state power and ways to improve it at the beginning of 2020 and the validity of amendments to the Constitution of Russia (Dzhavakhyan, 2020).

It is customary to associate the beginning of the reform of the judicial system of the Soviet period with the adoption of the Concept of Judicial Reform of 1991,¹² which defined the tasks of establishing an independent judiciary in the state mechanism; protection and unswerving observance of fundamental human rights and freedoms, constitutional rights of citizens in legal proceedings; increasing the availability of information on the activities of law enforcement agencies, judicial and legal statistics. But only with the adoption of the Constitution of the Russian Federation in 1993, the justice system acquired the constitutional status of an independent branch of state power. Within the framework of federal target programs for the development of the judicial system of Russia, adopted for the periods of 2002–2006, 2007–2012, 2013–2020, important measures were taken in the field of the institutional organization of the judicial system, its material and technical equipment, accessibility and openness, accessibility of justice, status of judges. However, the fundamental constitutional ideas of organizing the judiciary, enshrined in the Constitution of the Russian Federation, have not yet been fully implemented.

The institutional content of the judiciary is expressed in the existence of constitutionally conditioned judicial system, which is part of a broader system of public authorities. The activity of courts to implement state-authoritative powers aimed at solving problems and performing the functions of state power in the field of settlement of social and legal conflicts (existing or possible) expresses the functional essence of the judiciary. The need to balance the powers of the judiciary and the executive in the system of checks and balances should be noted,

¹² Resolution of the Supreme Soviet of the RSFSR No. 1801-1 dated 24 October 1991 “On the Concept of Judicial Reform in the RSFSR.” Bulletin of the Congress of People’s Deputies of the RSFSR and the RSFSR Supreme Soviet. 31 October 1991. No. 44. Art. 1435 (In Russ.).

as confirmed by the research of foreign colleagues, in particular the study of Bijal Shah (Shah, 2020).

According to the well-established view of the functions of the judiciary, it is customary to divide them into internal and external. Internal functions traditionally include oversight over adopted judicial acts, disciplinary procedures, etc., and external functions, in addition to the main function — justice — include the functions of judicial control (supervision) over the legality and validity of measures of procedural coercion (election of preventive measures, search, etc.); interpretation of legal provisions; certification of facts of legal significance; restriction of constitutional and other branch of legal personality of citizens (Skuratov, 1996). In modern Russia, the composition of external functions has been enriched with the function of judicial constitutional control carried out by the Constitutional Court of the Russian Federation. There are opinions on the human rights and lawmaking functions of the judiciary, the so-called “judicial norm” (Bondar, 2010; Guk, 2009). At the same time, an important constitutional setting remains the provision of Art. 118 Part 1 of the Constitution of Russia that justice is administered exclusively by the court. In his theory of an independent judiciary in a democratic state, Charles Louis Montesquieu formulated the following principles of its organization and activity: popular principle (the exercise of judicial power by representatives of the people), and independence from politics and professionalism (Montesquieu, 1955). However, there is a modern point of view that the rule of law (and, therefore, the activities of the courts as guarantors of the rule of the constitution and law — *note by the authors*) is not based on denying politics, but on promoting the development of proper relations between courts and society (Schor, 2006). The role of the judiciary in the system of separation of powers is generally recognized as a deterrent against unconstitutional actions of the legislature and arbitrariness of the executive. In this regard, it is noted that in a system of constitutional power based on popular sovereignty, the government acts as an agent of the people and must exercise power in accordance with the conditions imposed by people in the form of the constitution. But, the interests of the principal and the agent may diverge: those entrusted with public power may seek to seize more power than was granted, or turn the power they received against

the people themselves. Thus, people are faced with the problem of establishing the effective control over the government (Law, 2009). In the context of the operation of the principle of separation of powers, it is also argued that the essence of such separation, although not all, lies in the combination of form and function; matching tasks with those bodies that are best suited to carry them out. The essence of the doctrine is not freedom, as many authors have suggested, but efficiency (Barber, 2001). It is believed that the judiciary is best suited for these purposes. Its purpose is realized through its functions. At the same time, in a series of relatively ordinary decisions that the courts make as part of their activities, some authors highlight exceptional cases when, for example, the validity of the constitution and the rule of law is questioned, or the court is asked to make a decision on the transition from one constitutional order to another, or when the health of the constitutional order requires that the judge act not just as if outside the law, but in fact contrary to the positive law, precisely in order to preserve the health of the constitutional order. Sometimes courts have no choice but to take on the responsibility of leading and truly participating in the establishment of the legitimacy of the very constitutional order that empowers them (Barber and Vermeule, 2016, pp. 16–25). In the USA, for example, this is the prerogative of the US Supreme Court, and in Russia — the Constitutional Court of the Russian Federation. As A.A. Mishin notes “in the United States, a significant part of the actual Constitution is the result of the activity of the judiciary” (Mishin, 1984, p. 65). For all the importance of the same Constitutional Court of Russia for ensuring the supremacy of the Constitution and constitutional law and order, since it implements the function of judicial constitutional control and, in certain cases, a kind of oversight in relation to other courts, these are far from all functions of the judiciary and relatively small volume of cases. At the same time, commercial (arbitrazh procedure) courts, courts of general jurisdiction consider an incomparably greater number of disputes, including those in the order of rule control. The above positions are of genuine interest and emphasize the importance of the place and role of the judiciary in ensuring the constitutional rule of law. It seems that the issues of the effectiveness of the implementation of the principle of democracy by the people in the activities of the judiciary,

including through the institutions of civil society, along with the use of the institutions of representative democracy and forms of direct participation of citizens (Parts 1 and 5 Art. 32 of the Constitution of Russia). Meanwhile, in the conditions of the visible tendency of the prevalence of political expediency, determined by the legislative and executive components of state power, over the rule of law, the issue of strengthening the judiciary, on the one hand, its improvement and the establishment of effective interaction with civil society institutions, public control over the formation and functioning of the judiciary, on the other hand.

The issue of the role of the public, civil society institutions in strengthening the constitutional rule of law in Russia (Bezrukov and Teplyashin, 2018) as a component of the mechanism of democracy implemented in the sphere of the judiciary is actualized. The very concept of civil society is ambiguously perceived and interpreted in the scientific community. It is spoken of as a form of human community; as a set of voluntary primary associations of individuals; as the very system of non-state relations in society (Golovistikova and Grudtsyna, 2007); as a qualitative state of society (Leist, 2002, p. 114). The institutions of civil society traditionally include the family, church, scientific and professional associations, media, organizations, self-governing associations, and other public associations independent of the state. It is indicative that in accordance with the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation No. 1-FKZ dated 14 March 2020 “On improving the regulation of certain issues of the organization and functioning of public authorities”, Part 1 Art. 114 of the Constitution was supplemented with Clause “e1” according to which, “The Government of the Russian Federation... takes measures to support civil society institutions, including non-profit organizations, ensures their participation in the development and implementation of state policy.”¹³ With regard to the issues of interaction of civil

¹³ Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation No. 1-FKZ dated 14 March 2020 “On improving the regulation of certain issues of the organization and functioning of public authorities.” Official Internet portal of legal information. Available at: <http://www.pravo.gov.ru>. 14 March 2020 (In Russ.) [Accessed 14.11.2022].

society institutions with the judiciary, it is necessary to determine the institutions of civil society that have the most significant impact on the judiciary, segments of the process of formation and activities of the judiciary in which interaction takes place, to analyze the forms of such interaction and directions for its improvement.

By virtue of the direct indication of the law, the legal profession as a professional community of lawyers — independent professional advisers on legal issues, belongs to the institutions of civil society. The forms and directions of interaction between the legal profession and the judiciary are determined by the Constitution, Federal Law No. 63-FZ dated 31 May 2002 “On advocacy and the legal profession in the Russian Federation,”¹⁴ criminal procedure, civil procedure and other legislation.

Thus, Art. 2 of the Constitution of the Russian Federation proclaims a person, his rights and freedoms as the highest value, and the recognition, observance and protection of human and civil rights and freedoms as the duty of the state. In its turn, Art. 18 of the Constitution establishes that human and civil rights and freedoms are directly applicable. They determine the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and are provided by justice. In accordance with Art. 48 of the Constitution, everyone is guaranteed the right to receive qualified legal assistance. Every arrested person, taken into custody, accused of committing a crime, has the right to use the assistance of a lawyer (defense lawyer) from the moment of arrest, detention or presentation of charges, respectively. These provisions of the Constitution correspond to Art. 1 of the Federal Law No. 63-FZ dated 31 May 2002. This characterizes advocacy as qualified legal assistance provided on a professional basis by persons who have received the status of a lawyer in the manner prescribed by law to individuals and legal entities in order to protect their rights, freedoms and interests, as well as ensuring access to justice. The participation of judges of courts of general jurisdiction and commercial (arbitrazh procedure) courts in the work of qualification commissions of bar chambers of the constituent entities of the Russian

¹⁴ Federal Law No. 63-FZ dated 31 May 2002 (amended: 2 December 2019) “On Advocacy and the Practice of Law in the Russian Federation.” Rossiyskaya Gazeta. No. 100. 5 June 2002 (In Russ.).

Federation, in accordance with Art. 33 of the Federal Law No. 63-FZ dated 31 May 2002, can be considered as one of the specific forms of interaction between the judiciary and the legal profession. However, there is no feedback in this format between the legal profession and the judiciary. The issue of the unnatural alienation that has arisen between the bar and the courts was discussed at the round table of the Federation Council with the participation of the leadership of the Federal Chamber of Lawyers of the Russian Federation in October 2019. There was proposed to include lawyers in the qualification collegium of judges – bodies of the judiciary. The current legislation also allows judges considering candidates for the positions of federal judges, representatives of the public to participate in the work of the qualification collegiums. Such judges make up about 30 % of the total composition of the corresponding collegium. However, in practice, these are legal scholars and members of the Association of Russian Lawyers, which, according to the existing opinion, does not create the necessary wide public representation (including the involvement of human rights organizations). On the other hand, due to the small number of such it cannot influence decision-making, and therefore requires an increase to at least 50 % of the composition of the collegiums (Faroi, 2018) with the adjustment of the decision-making procedure by the qualification collegiums of judges. There is also a second “filter” in the selection of candidates for the positions of federal judges – the Commission for the preliminary consideration of candidates for positions of judges of federal courts. This is an advisory body under the President of the Russian Federation to ensure the implementation of the constitutional powers of the President of the Russian Federation to appoint judges of federal courts. The President of the Russian Federation himself approves its composition. Only one person in this composition of 15 participants is a representative of the public – the chairman of the central council of the All-Russian public movement for a decent life and justice “Civil Society” (as agreed). Unfortunately, it is obvious that such representation is largely formal, both because of its insignificance, and because there already exist, so to speak, “systemic institutions of civil society,” which are essentially built into the system of state authorities and cannot provide real expression of public opinion and protection of

its interests. Obviously, the current situation does not give grounds to talk about the interaction of civil society institutions with the official authorities on an equal basis (Matuzov and Malko, 2006, p. 108). Other issues related to the constitutional right of citizens to participate in the administration of justice remain in the field of scientific discussion are the following: the justification for the removal of people's assessors from consideration of civil and criminal cases (Smirnova, 2006, pp. 4, 9); the imperfection of the institution of arbitrazh procedure assessors (Lyadnova, 2010, pp. 7, 8); legal regulation in the field of world justice (Dzhavakhyan, 2017), the abolition of the institutions of public defenders and prosecutors (Rubinina, 2015); the formation and operation of qualification collegiums of judges (Lipchanskaya, 2012, pp. 42, 43); and forms of interaction between public authorities and civil society institutions (Yastrebova et al., 2020).

The performed analysis allows us to conclude that the institutions of the civil society in Russia today do not have a sufficient constitutional and legal basis for equal cooperation with public authorities in the field of justice. The existing forms of interaction are not effective and do not have a systemic character. It is too early to talk about the organic coexistence of the state and civil society, including in the implementation of the judiciary, as a necessary tool for establishing and maintaining constitutional law and order.

III. Conclusion

The problems selected for this work are due to the growing scientific interest and dynamic changes in social life associated with the obvious need to change the balance in the state-society-individual relationship. The Russian Constitution forms the basis of these relations and the constitutional legal order. The judiciary is to ensure the constitutional rights and freedoms of citizens, their associations, which include the institutions of civil society. Its highest purpose is to control the rule of law, compliance with the written and actual constitution, positive and natural law, limiting the unfounded claims of other authorities and eliminating the unconstitutionality of their actions. The results of the activity of the judiciary largely determine the achievement and

maintenance of the state of constitutional law and order. Periods of significant political and legal transformations become “moments of truth” for the judiciary, either raising its authority and social significance, or leading to their loss. In this sense, it is difficult to overestimate its solid social foundation. The civil society, not least of all, is bound to provide such foundation.

The need to enhance the role of civil society institutions in the life of Russia is beyond doubt. At the same time, awareness of this need poses the questions of the maturity of civil society itself, the level of development of culture (legal, political, etc.) and public consciousness, readiness for responsible and equal interaction with the institutions of public authority, need to nurture it in accordance with its purpose.

References

1. Anishina, V.I. and Gadzhiev, G.A., (2006). Independence of the judiciary. *Obshchestvennye nauki i sovremennost [Social Sciences and Contemporary World]*, 6, pp. 5–14. (In Russ.).
2. Baranov, P.P., (2014). Modern Problems of the Theory of Constitutional Law and Order in the Russian Federation. *Filosofiya prava [Philosophy of Law]*, 4(65), pp. 95–101. (In Russ.).
3. Barber, N.W. and Vermeule, A., (2016). The Exceptional Role of Courts in the Constitutional Order. *Harvard Public Law Working Paper*, 16–25. Posted: 18 February 2016. Available at: <https://ssrn.com/abstract=2734218>, doi: 10.2139/ssrn.2734218.
4. Barber, N.W., (2001). Prelude to the Separation of Powers. *Cambridge Law Journal*, 60, pp. 59–88. Available at: <https://ssrn.com/abstract=2240838> [Accessed 14.11.2022].
5. Berdnikova, E.V., (2012). Forms of public control in the judicial system of the Russian Federation. *Izvestiya Saratovskogo universiteta, Seriya: Ekonomika, Upravlenie, Pravo*, 12(1), pp. 97–101. (In Russ.).
6. Bezrukov, A.V. and Teplyashin, I.V., (2018). The Role of the Public in Strengthening Constitutional Law and Order in Russia. *Russian Law: Education, Practice, Science*, 3, pp. 36–40. (In Russ.).
7. Bezrukov, A.V., (2017). *Constitutional and legal mechanism for ensuring law and order by public authorities in the Russian Federation*.

The Author's Summary of Dr. Sci. (Law) Diss. Ural State Law Academy. Ekaterinburg. (In Russ.).

8. Bondar, N.S., (2010). Constitutional Court of Russia: Not a "quasi-court", but more than a court. *Zhurnal konstitucionnogo pravosudiya [Journal of Constitutional Justice]*, 3(15), pp. 28–33. (In Russ.).

9. Dzhavakhyan, R.M., (2017). Improvement of forms of citizen participation in the administration of justice as a mechanism of constitutional transformation of the judiciary. *Russian Juridical Journal*, 2, pp. 45–54. (In Russ.).

10. Dzhavakhyan, R.M., (2018). *Constitutional justice, arbitration proceedings and the right to judicial protection*. Moscow: De'Libri Publ. (In Russ.).

11. Dzhavakhyan, R.M., (2020). Judicial Power: In Search of Constitutional Balance. *Modern Law*, 3, pp. 5–14. (In Russ.).

12. Ebzeev, B.S., (2014). *Constitution, power and freedom in Russia: The experience of synthetic research*. Moscow: Prospekt Publ. (In Russ.).

13. Faroi, T.V., (2018). Qualification collegiums of judges and the problem of the independence of the judiciary in the Russian Federation. *Vestnik Tomskoy gosudarstvennoy akademii*, 15(2), pp. 130–136. (In Russ.).

14. Flyvbjerg, B., (1998). Habermas and Foucault: Thinkers for Civil Society? *The British Journal of Sociology*, 49(2), pp. 210–233. Available at: <http://dx.doi.org/10.2139/ssrn.2237923>.

15. Golovistikova, A.N. and Grudtsyna, L.Y., (2007). *Explanatory dictionary of legal terms*. Moscow: Eksmo Publ. (In Russ.).

16. Guk, P.A., (2009). Review of Proceedings of the Round Table Legal Policy and Legal Reform in Modern Russia. *Gosudarstvo i pravo [State and Law]*, 4, pp. 106–107. (In Russ.).

17. Khabrieva, T.Y. and Chirkin, V.E., (2005). *Theory of the Modern Constitution*. Moscow: Norma Publ. (In Russ.).

18. Kokotov, A.N., (2018). Action and realization of the Constitution of Russia of 1993. *Vestnik Sibirskogo yuridicheskogo instituta MVD Rossii*, 4(33), pp. 14–20. (In Russ.).

19. Law, D.S., (2009). A Theory of Judicial Power and Judicial Review (December 20, 2008). *Georgetown Law Journal*, 97, p. 723. Available at: <https://ssrn.com/abstract=1112613> [Accessed 14.11.2022].
20. Leist, O.E., (2002). *The essence of law. Problems of theory and philosophy of law*. Moscow: Zertsalo-M Publ. (In Russ.).
21. Lipchanskaya, M.A., (2012). *Participation of citizens in the management of state affairs: Constitutional and legal research*. The Author's Summary of Dr. Sci. (Law) Diss. (In Russ.).
22. Lyadnova, E.V., (2010). *The right of citizens to participate in the administration of justice: constitutional and legal content and mechanism of implementation*. The Author's Summary of Cand. Sci. (Law) Diss. Belgorod State University. Belgorod. (In Russ.).
23. Matuzov, N.I. and Malko, A.V., (2006). *Theory of State and Law*. Moscow: Yurist Publ. (In Russ.).
24. Mishin, A.A., (1984). *The principle of separation of powers in the US constitutional mechanism*. Moscow: Publishing House "Nauka". (In Russ.).
25. Montesquieu, S., (1955). *On the Spirit of Laws: Selected Works*. Moscow: Goslitizdat Publ. (In Russ.).
26. Narutto, S.V., (2018). The supremacy of the Constitution as the basis of the constitutional legal order in Russia. *Russian Law: Education, Practice, Science*, 3, pp. 30–33. (In Russ.).
27. Neves, I.F., (2019). Hermeneutical possibilities to the judicial appreciation of administrative unconstitutional omissions: the control of unconstitutional omissions in contemporary constitutionalism. *Quaestio Iuris*, 12(4), pp. 698–717, doi: 10.12957/rqi.2020.39212.
28. Piatek, W., (2020). Access to the Highest Administrative Courts: between the Right of an Individual to Have a Case Heard and the Right of a Court to Hear Selected Cases. *Central European Public Administration Review*, 18(1), pp. 7–23, doi: 10.17573/cepar.2020.1.01.
29. Rakov, K.A., (2020). Key characteristics of the constitutional legal order. *Vestnik Moskovskogo universiteta MVD Rossii*, 1, pp. 20–22. (In Russ.).
30. Richards, N.M. and King, J., (2014). Big Data Ethics. *Wake Forest Law Review*, 19 May 2014. Available at: <https://ssrn.com/abstract=2384174> [Accessed 14.11.2022].

31. Rubinina, E.R., (2015). Participation of civil society institutions in the administration of justice. *Saratov State Law Academy Bulletin*, 5(106), pp. 111–117. (In Russ.).

32. Rzhetskij, V.A. and Chepurnova, N.M., (1998). *Judicial Power in the Russian Federation: Constitutional Basis of Organization and Activity*. Moscow: Yurist Publ. (In Russ.).

33. Schor, M., (2006). The Rule of Law. Encyclopedia of Law and Society: American and Global Perspectives, Forthcoming. *Suffolk University Law School Research Paper*, No. 07-14. Posted: 27 Mar 2006. Available at: <https://ssrn.com/abstract=889472> [Accessed 14.11.2022].

34. Shah, B., (2020). Executive (Agency) Administration. *Stanford Law Review*, 72(3), pp. 641–747. Available at: <https://www.stanfordlawreview.org/print/article/executive-agency-administration/> [Accessed 14.11.2022].

35. Shinkarev, A.V., (2006). *Social control in the system of law enforcement by internal affairs bodies*. The Author's Summary of Cand. Sci. (Law) Diss. Moscow. (In Russ.).

36. Skuratov, Y.I., Glazkova, L.V., Grudin, N.S., and Neznamova, A.A., (2016). The development of organized crime in Russia: A system analysis. *Russian Journal of Criminology*, 10(4), pp. 638–648, doi: 10.17150/2500-4255.2016.10(4).638-648. (In Russ.).

37. Skuratov, Yu.I., (1996). Chapter 17. In: Kutafin, O.E., editor, (1996). *State Law of the Russian Federation*. Moscow: Juridicheskaya literatura Publ. (In Russ.).

38. Smirnova, V.A., (2006). *The constitutional right of citizens to participate in the administration of justice*. The Author's Summary of Cand. Sci. (Law) Diss. Dostoevsky Omsk State University. Omsk. (In Russ.).

39. Yastrebova, A.I., Salomatkin, A.S., Dzhabakhyan, R.M., Redkous, V.M., and Filonov, V.I., (2016). Civil Public Organizations for Providing a Public Order and their Role in Forming of Civil Society. *Journal of Advanced Research in Law and Economics*, Volume VII, 2(16), pp. 417–425. Available at: <https://journals.aserspublishing.eu/jarle/article/view/229> [Accessed 14.11.2022].

40. Yastrebova, A.I., Stakhov, A.I., Merkulov, P.A., Suchkova, T.Y., Filonov, V.I., and Matveeva, E.S., (2017). Constitutional-legal and

administrative-legal aspects of statutory regulation and maintenance of public security in the Russian Federation by the state and private actors. *Journal of Advanced Research in Law and Economics*, 8(1), pp. 272–290. Available at: <https://journals.aserspublishing.eu/jarle/article/view/1154> [Accessed 14.11.2022].

41. Yastrebova, A.I., Stakhov, A.I., Redkous, V.M., Gubin, A.N., and Suchkova, T.Y., (2020). State and non-state actors ensuring constitutional order and public security: Problems of legal regulation of interaction. *PalArch's Journal of Archaeology of Egypt / Egyptology*, 17(10), pp. 3424–3446. Available at: <https://archives.palarch.nl/index.php/jae/article/view/5656/5556> [Accessed 14.11.2022].

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