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### Role of the Media in Providing Constitutional Law and Order

*Papel de los medios en la provisión de ley y orden constitucional*

**Anna YASTREBOVA**

<https://orcid.org/0000-0001-6629-1128>

[jastrebovaai@rgsu.net](mailto:jastrebovaai@rgsu.net)

*Russian State Social University, Russia*

**Yurij SKURATOV**

<https://orcid.org/0000-0001-7012-0727>

[skuratovjui@rgsu.net](mailto:skuratovjui@rgsu.net)

*Russian State Social University, Russia*

**Roman DZHAVAKHYAN**

<https://orcid.org/0000-0001-5411-6349>

[JavakhyanRM@rgsu.net](mailto:JavakhyanRM@rgsu.net)

*Russian State Social University, Russia*

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#### RESUMEN

El artículo tiene como objetivo elaborar posturas doctrinales que revelen características de interacción entre las autoridades públicas y la sociedad civil en la resolución de las tareas más complicadas del presente, incluso asegurando la ley y el orden constitucionales y mejorando los fundamentos legales de su interacción. Uno de los enfoques principales para el estudio de este problema es la interacción dialéctica de las instituciones legales estatales y las instituciones de la sociedad civil. En el artículo, los autores analizaron las disposiciones de los actos internacionales y las leyes nacionales rusas que rigen la interacción entre el estado y la sociedad civil (los medios de comunicación), incluso durante los conflictos armados. y medidas destinadas a garantizar el orden y leyes constitucionales.

**Palabras clave:** Periodistas, medios de comunicación, sociedad civil, derecho internacional humanitario, derecho internacional de conflictos armados.

#### ABSTRACT

The article aims to elaborate doctrinal positions disclosing features of interaction between public authorities and civil society in the resolution of the most complicated tasks of the present, including by ensuring constitutional law and order and improving statutory and legal foundations of their interaction. One of the leading approaches to the study of this problem is the dialectic interaction of state legal institutions and civil society institutions. In the article, the authors have analyzed provisions of international acts and Russian national laws governing the interaction between the state and civil society (the mass media), including during armed conflicts. and measures aimed to ensure constitutional law and order.

**Keywords:** Journalists, mass media, civil society, international humanitarian law, international law of armed conflicts.

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## INTRODUCTION

Civil society organizations currently play an important role in modern society in the resolution of major tasks. In times of armed conflicts, of special importance are issues related to security, the coverage in the mass media of measures taken to provide civil rights in the zone of armed conflict, and the assurance of security. Functions of this kind are carried out by journalists who are one of civil society organizations. At the same time, there are different viewpoints in jurisprudence about the classification of one or other subjects as civil society institutions.

Civil society can be considered as a structure, which is separate from the state and consists of a number of voluntary unions and associations (Taylor: 2006, 193-213). It is the independence from the state that is fundamental (Khabrieva, Chirkin: 2005). Multiple examples showing the establishment of voluntary associations in Russia in order to ensure public order in places of their residence are a sign of the emerging civil sense of justice in the country's population, the aspiration of the public to organize a system of public control over the state's law enforcement activities, the demonstration of independence and aspiration of people to ensure additional guarantees, and the compliance with their rights and freedoms as provided for in the Russian Constitution (Yastrebova et al.: 2016, 417-425).

The notion "civil society" has been studied in the works of many scholars, including V.K. Babaev and V.M. Baranov (1998), O.E. Leist (2002), T.Ya. Khabrieva and V.E. Chirkin (2005), N.I. Matuzov and A.V. Malko (2006), A.N. Golovistkova and L.Yu. Grudtsina (2007).

Separate aspects of civil society's participation in the measures aimed to ensure constitutional law and order is considered in the works by D.V. Vasiliev (2005), K.I. Usenov (2014), Yu.I. Skuratov (Skuratov et al.: 2016, 638-649), A.I. Yastrebova (2017), A.V. Bezrukov (2017). The role of the mass media as civil society institutions in the measures aimed to ensure constitutional law and order and the activity of the mass media in times of armed conflicts is considered by A.A. Robinov (2003) who studies the limitation of freedom of the mass media in order to fight terrorism, P.A. Danilov (2011) who dedicated his article to the study of measures taken to protect rights, freedoms, and lawful interests of a person when counteracting extremism, A.M. Tagaeva (2011) who studies the organization of interaction between authorities of internal affairs and the mass media in the counteraction of extremism using materials from Kyrgyzstan, as well as D.Kh. Khasson (2018) who studies the international legal problem of protecting journalists in the conditions of armed conflicts.

The interaction between the state and separate civil society institutions is studied by foreign scholars, namely J. Pictet (1987), B.D. Taylor (2006), I. Lichtenberg (2007), K. Tsutsui, C. Whitlinger, A. Lim, and J. Hagan (2012), T. Walsh (2016), D. Shibaev and N. Uibo (2016), B. van Stokkom and J. Terpstra (2018), M. Harrison and J. Adlard (2018).

The above studies do not cover one of the most important aspects, i.e. international legal regulation and the interaction between states and civil society through the prism of international law and national legislation. These issues are disclosed in detail by E.O. Tchinaryan, I.Y. Nikodimov, A.I. Yastrebova, and N.V. Lutovinova (2019).

## METHODOLOGY

The study of the interaction between the state and society in times of armed conflicts and measures aimed to ensure constitutional law and order suggests applying various methods of research, main of which are dialectic, comparative-legal, formal-logical, as well as the system structural approach.

One of the leading approaches to the study of this problem is the dialectic interaction between state legal institutions and non-state institutions (civil society institutions). In the study, we widely used the comparative-legal methods allowing us to compare provisions of international law and national legislation, as well as the interaction between these subjects in Russia and internationally. The system structural approach allowed us

to review measures aimed to ensure constitutional law and order and public security as a system contributing to the realization of constitutional rights and freedoms of the public.

To reveal the topic, we analyzed provisions of international legal acts, the Russian Constitution, federal laws, and other statutory legal acts of the Russian Federation, which were adopted to ensure law and order. In addition, we studied works by Russian and foreign scholars about issues related to the topic under review.

## **RESULTS**

Upon comprehensive analysis of norm making and law enforcement activities conducted to improve the efficiency of the interaction between the state and civil society in order to ensure constitutional law and order and their role in times of armed conflicts, we established the following:

1. Upon analysis of the Russian Constitution and other statutory legal acts, as well as foreign experience of public relations under study, we found that the legal mechanism of interaction regulation must meet specific requirements. In particular, it must correspond to the democratic vector of the Russian state's development and main principles of civil society's formation, namely: it is inadmissible for the state to interfere with the activity of public institutions; it is inadmissible to provide public associations with state authoritative powers; it is necessary to ensure civil society institutions are independent from the state; it is inadmissible to provide authoritative powers.

2. The legal mechanism of regulation must comply with constitutional principles of interaction between public authorities and civil society, namely: the principle of legality; the principle of respect and observance of the rights and freedoms of a person and a citizen; the principle of voluntariness of the association of citizens; self-governance; the principle of state guarantees of protection. These principles determine the character of interaction between these subjects.

3. The practice of providing non-state bodies with authoritative powers in order to make them later accountable to the state and its authorities does not allow civil society to form and develop itself to the full extent possible as a part of the society's political system that is independent from the state. Moreover, the application of state authoritative powers by non-state organizations runs counter to the principles secured in the effective Constitution of the Russian Federation.

4. Activities carried out by the mass media as civil society institutions are a significant element of keeping other members of the society informed about important events. For this reason, their activity must always be within certain restrictions and correspond to the provisions of national legislation. For this reason, representatives of the mass media must also have guarantees for the conduct of their activities without violating the principle of freedom of mass information when their activities are limited legislatively strictly in cases determined by law.

## **DISCUSSION**

The term "civil society" is used quite broadly in scientific publications. The term was introduced by Aristotle. He understood the term as "communities of free and equal citizens who are interconnected by a certain form of the political structure" (Golovistikova, Grudtsyna: 2007). The dictionary of legal terms includes as many as four meanings of the term. First, it is a form of human community that satisfies its needs by means of labor. Second, it is an aggregate of initial associations of individuals (families, associations, public organizations, professional, creative, sporting, and other structures, except for state and political ones) that are formed on a voluntary basis. Third, it is a system of non-state relations in society (Golovistikova, Grudtsyna: 2007).

Most scholars believe that civil society institutions are individuals, groups of individuals, and organizations which are not part of the state or its structures, are relatively independent from the state, but, at the same time, cooperate with the state or are in opposition to the state. Having specified the term of civil society, N.I. Matuzov states that such cooperation should be carried out on an equal basis, namely that civil society is "a system of non-state organizations, associations, institutions, political parties, professional, and other unions, as well as other non-governmental structures, that interact with official authorities on an equal basis" (Matuzov, Malko: 2006).

Having summarized research conducted by a number of authors, V.E. Chirkin and T.Ya. Khabrieva (2005) consider civil society in various meanings: first, as a structure separate from the state, consisting of a variety of voluntary unions and associations; second, as the area for the realization of public interests beyond the state's direct activities; third, as a community of people who build their relations on the basis of the freedom of choice without the state's interference. There are also such notions of civil society as "the qualitative state of the society". O.E. Leist (2002) subscribes to this opinion noting that the formation of civil society is a long process and civil society's development has not been completed either in Russia or globally.

Independent non-state structures and institutions play a determinant role in the structure of civil society. V.K. Babaev believes that civil society institutions include the family, church, education system, scientific and professional associations, journalists, mass media, organizations and associations that carry out activities on the basis of real self-governance: "elements of civil society are also public institutions and relations that are independent from the state, through which an individual can exercise their diverse interests" (Babaev, Baranov: 1998). Many researchers emphasize that at the moment, there is a pressing need to develop and adopt a fundamental document that would define the strategy of the state and public authorities, as well as public institutions, participating in this process in order to fight against crime, and would also define fundamental principles of interaction between the state and civil society (Skuratov et al.: 2016).

The analysis of the aforementioned notions of civil society allows us to conclude that in jurisprudence, there is no unified view on problems relating to the activity of civil society or interactions between its institutions, including the interaction between civil society's non-state institutions and the state. Among other reasons behind the high efficiency of activities carried out by state authorities, D.V. Vasiliev (2015) points to intensive cooperation between the state and civil society in the area of law and order. A.V. Bezrukov (2017) considers the interaction between the state and society in the measures aimed to ensure constitutional law and order. However, he points out that such interaction cannot be carried out on an equal basis. It should be noted that the state and civil society institutions cannot interact on an equal basis because public authorities can be provided with state authoritative powers (Yastrebova et al.: 2017). However, the state's policy should rely on a firm legal basis consisting of constitutional provisions, federal laws, and international statutory legal acts and consider principles of legal justice, determination, humanism, and equality of rights and freedoms of an individual and a citizen (Skuratov et al.: 2015).

Thus, civil society is, first, a self-organizing organization that is independent from the state and, second, an aggregate of subjects, such as the family, church, scientific and professional associations, journalists, mass media, organizations, associations, etc., including various subjects carrying out activities in the mass media sector and public organizations that operate amid active interaction with public authorities in order to meet their objectives. Such public associations and representatives of the mass media are able to participate due to their legal status in the measures aimed to ensure public order and security and cover in the mass media publicly important events, including in zones of armed conflicts.

Modern foreign studies show that close interaction between public authorities and civil society is necessary, defining their criteria of convergence (Lichtenberg: 2007) and noting the efficiency of ensuring public order with the participation of civil society institutions – independent observers (Walsh 2016). Activities carried out by public authorities seriously influence inter-political communication, the interaction between public authorities and civil society, and the mass media (Harrison, Adlard: 2018). While studying the police in

Canada and Austria, researchers B. van Stokkom and J. Terpstra found that it is necessary to pay attention not only to the measures aimed to increase the number of policemen but also to the public benefits and the interaction with civil society (Van Stokkom, Terpstra: 2018).

The mass media is an aggregate of opinions of journalists and editors about a public event or fact covered in a specific form of the periodical distribution of mass information (Robinov: 2003).

One of the most important principles is the priority of human rights, including the right to life. It is quite difficult to ensure such a right in the zone of armed conflict. This right is secured in international acts. The most significant of them are the Charter of the United Nations Organization, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, Geneva Conventions, etc. Moreover, public relations in every state are regulated by national legislation. Such a supreme act in Russia is the Constitution of the Russian Federation that Russian laws must comply with.

The UN Charter secures goals, one of which is to encourage and to develop the respect of human rights and main freedoms and to maintain international peace and security (the UN Charter, 1945). Article 3 of the Universal Declaration provides that "everyone has the right to life, liberty and security of person" and pursuant to Article 19 "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (the Universal Declaration of Human Rights, 1948). These guarantees are also secured in Russian laws, the Law "On the Mass Media". The human rights and freedoms in various fields are reflected in the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights of 1966.

The Geneva Convention dated August 12, 1949 on the protection of civilian persons in time of war secures that "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples" (the Geneva Convention, 1949).

The principles of humanitarian law secured in the international declarations must be implemented in zones of armed conflicts (Pictet: 1987). This is especially topical today when armed conflicts and non-international armed conflicts occur in many places around the world. Human rights are protected at the international level and states must provide standards of human rights and freedoms as secured in international documents (Tsutsui et al.: 2012). The activity of the mass media as civil society institutions is an important element of informing other members of the society, in the connection with which their activities must always be in specific limits. In particular, they must conform to the provisions of national legislation.

In the broadest sense of the word, legal restrictions are legal instruments that are used to provide the achievement of specific goals of legal regulation that can be different, but eventually, they come to the fair order of public relations by setting specific limits that secure the boundaries of the admissible, desirable, recommendable, and prohibited behavior (Danilov: 2011). The lawmaker can adopt a federal law limiting the rights and freedoms of a person and a citizen to the extent necessary for socially important purposes as specified in Article 55.3 of the Constitution of Russia.

Some researchers propose to establish responsibility for the infliction of damage to the national security of the Russian Federation in the information area and for the violation of Russia's national sovereignty in the global information space (Shibaev, Uibo: 2016). For this very reason, representatives of the mass media

should also have guarantees for the conduct of their activities without violating the principle of freedom of mass information along with legislative restrictions strictly in cases determined by law.

We can currently point to an increase in the number of assaults and threats with regard to journalists and other representatives of the mass media in times of armed conflicts of an international and non-international character. Specifically, this tendency shows that the effective principles and provisions of international humanitarian law do not provide journalists with reliable protection (Khasson: 2018). According to the Committee to Protect Journalists (CPJ), 20% of journalists killed in 2016 were freelancers and unprofessional journalists while the most dangerous job was a photographer and video operator (Khasson: 2018).

Attempts to form principles, on the basis of which the interaction between the state and civil society institutions can be built, were taken by A.M. Tagaeva who emphasizes general principles of interaction, such as legality, and respect for the rights of a person and a citizen (Tagaeva: 2011).

D.Kh. Khasson views assaults on journalists as the violation of the right to freedom of opinion and expression, which falls within the positive duty of states. This stipulates specific inter-state measures to be taken to protect journalists and to conduct effective investigations of cases when their rights are violated, fair protection in court, and the indemnity of damage inflicted (Khasson: 2018).

## **CONCLUSION**

At present, more and more attention is paid not only to the interaction between states at the international level but also to the interaction between the state and civil society. Various public associations, organizations, and the mass media can be classified as civil society institutions. Meanwhile, one of the most important civil society institutions is representatives of the mass media that fulfill their professional duties when ensuring constitutional law and order, as well as in zones of armed conflicts. Often at the risk of their lives, these people cover armed conflict zones.

Representatives of the mass media and journalists are not classified as combatants or parties to a conflict. However, if journalists take weapons instead of cameras or video cameras, they should be classified as combatants. It is very important to consider this circumstance because representatives of the mass media are classified as civil society institutions and consequently, they must not be provided with state authoritative powers, take military action as part of armed forces of the front-line forces, or side with one or another party to a conflict. If they participate in an armed conflict, they should be classified as members of volunteer corps that are also combatants.

Representatives of the mass media should have guarantees for the conduct of their activities without violating the principle of freedom of mass information while their activities are limited legislatively strictly in cases determined by law.

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## **BIODATA**

**Anna YASTREBOVA:** Candidate of Legal Sciences, Associate Professor of the Department of State Legal Disciplines. Research interests: ensuring constitutional law and order; interaction of the state and civil society institutions; social state concept; intellectual property.

**Yurij SKURATOV:** Doctor of Legal Sciences, Professor. Head of the Department of State Legal Disciplines. Honored Lawyer of the Russian Federation. Academician of the Russian Academy of Natural Sciences. Valid State Counselor of Justice. Research interests: constitutional reform, concepts of a social state, popular sovereignty, Eurasian paradigm of a guarantee state.

**Roman DZHAVAKHYAN:** Candidate of Legal Sciences, Associate Professor, Department of Public Law and Arbitration Justice. Research interests: issues of the implementation of the constitutional right to judicial protection; constitutional and legal problems of the formation and activities of the judiciary; the interaction of civil society and the judiciary.