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## **Theoretical and historical issues of the civil society research as political and legal phenomenon**

The article reveals the theoretical and historical issues of identifying civil society and its main features. The dynamic nature of this political and legal phenomenon, associated in the law theory and state with the law, has been identified. The experience of researching civil society in different historical periods under historical retrospective, the variability and development of this institution in the theories and various authors' approaches have been considered. The research purpose is to point out the civil society's main features by revealing its main functions. Using general and special research methods, the analysis and generalization of historical and theoretical material, political and legal acts, which define the concept and civil society features, were carried out. The concept and features of the civil society definition were determined while civil control was considered as the main and defining civil society feature in the relationship between civil society and the law rule. Civil society is viewed as a political and legal category that requires legal regulation of these relationships. As a result, the authors of the article conclude that civil control and civil monitoring are the main civil society features in relations with the legal state. These relationships require more detailed legal regulation and legal status of civil society determination of the institutions that exercise civil control and civil monitoring.

*Keywords:* civil society, civil institutions, legal state, legal norms, historical development, theory of law.

### *Introduction*

Civil society is a political and legal phenomenon that indicates the continuous development. This increases the scientific definition problem of this phenomenon, taking into account the changing phenomenon qualities. It is significant to highlight the main features that define civil society as a legal and political phenomenon. In modern conditions, civil society is a prerequisite for the legal state development. All the best legal and political science achievements are reflected in the legal state concept, while it should be noted that the concept or legal state theory includes the developed civil society presence. At the same time, the theory of the legal state can be considered in isolation from the theory of civil society conditionally, only for in-depth certain aspects of the phenomenon under research, recognizing the unity of the legal state theory and civil society as a dichotomy. The dichotomy is an inextricable state and society unity, legal and social norms relationship. Currently, Kazakhstan has social institutions that can be defined as civil society institutions but they cannot always effectively influence on government institutions, which allows to consider Kazakhstan's civil society as developing. In modern conditions, the main directions towards development of state support for civil society institutions continues. In the Concept of Civil Society Development for 2006–2011 of the Republic of Kazakhstan, civil society is defined as a society in which the main actor and social processes subject is a person with his entire needs system, interests, and values. Civil society implies the society development level at which the rights and citizens freedoms are ensured, conditions are created for their self-organization in order to realize their rights and interests, to participate in the making state decisions process [1]. The legal state formation due to the civil society formation's adequacy to it, determines condition for the legal statehood in the Republic of Kazakhstan development. The reforms carried out over the past ten years have laid the political, legal and institutional and organizational civil society foundations — non-governmental organizations that are currently taking an active part in the social and Kazakhstan society political life.

### *Experimental*

The conducted research is based on the general use of special and particular research methods. With the analysis and generalization assistance, historical and legal sources, views and individual scientists' theories,

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individual opinions and provisions that reveal the civil society problems in the state history and law are considered. With the induction and deduction support, historical aspects and patterns are extrapolated to the modern legal statehood progress in the interaction sphere between the state and society organized on certain legal principles. The research is based on a dialectical approach, reflecting the variability and dynamic social relations elaboration, which are at the state extension as such and legal statehood in particular. The meta-physical basis is the relationship principles between the law subjects interacting with each other in the realizing process of their rights and obligations, as well as the goals and their development objectives as individuals in the legal system. With the legal methodology assistance, legal principles and legal values are considered, which are the foundation of non-state institutions in a specific historical period. The considered phenomenon is studied in the inextricable connection of social relations, legal principles and legal social relations regulation. By applying methods of comparison and analogy, and researching historical institutions that take place in the state and law history, the civil (non-state) value institutions are revealed as the basic statehood institution, political phenomenon and the legal state, and as phenomenon of our time. The specific historical method made it possible to examine in the dialectical relationship the category continuity of non-state institutions and legal statehood, which is one of the basic modern law and the state phenomena, which makes it possible to exert an effective influence on public relations in the political and legal sphere.

### *Results*

Civil society is defined differently in various sources. The main political and legal document that formalizes the civil society concept is the Concept of the Civil Society Development for 2006–2011 in the Republic of Kazakhstan. In this concept, a person is singled out as the main civil society feature and actor in modern social relations. A person is the subject in society, who tends to realize his needs and interests. This concept also includes the entire public relations set existing in state and its bodies independently: political, economic, cultural, national, religious, family and others, which reflects the private interests variety [1]. At the same time, it is noted that society becomes civil only at a certain democratic development stage and is formed as the economic and political country growth, the welfare increase, culture and people self-awareness [1]. In the large encyclopedic dictionary, civil society is considered as a term used in different meanings. This term was introduced by Aristotle, who called a civil society a free and equal citizens community linked by a certain political structure (state–policy) form. In the 17–18<sup>th</sup> centuries, civil society was opposed to the absolutist-feudal state. In a widespread modern sense, civil society means relations set in the economy sphere, culture, and other spheres that develop within the democratic society framework independently and autonomously from the state. Civil society presupposes the democratic rights of wide range and freedoms of civil society members. The full formation of social relations state leads to the democracy curtailment, the totalitarianism establishment [2]. In the Russian language explanatory dictionary, civil society is defined as “a society of free and equal citizens, relations between which in the economic sphere and culture develop state power independently” [3; 143]. In the legal literature, civil society is considered in close relationship with the legal state.

Civil society and the legal state should be viewed as the historical development result. This is, in essence, a reaction against the medieval theocracy ideas — the bifurcation of public and private result, society and state, law and morality, secular and religious. The importance of the concept of civil society is emphasized, which can be characterized by the following parameters: social justice; the citizens and society rights a whole in relations with the state; legal state; economic citizens well-being; democratic pluralism; society openness; national certainty of civil society [4; 424–426].

In modern literature, civil society is defined in different ways: as a non-state relations system; as a public relations system emerging outside the politic sphere; as a industrial relations set connecting citizens; as a stable horizontal social ties system, socio-political orientations and social behavior norms that arise directly from property relations, but are not reducible to them [5; 73–76], as relationships between individuals system, on the one hand, and between them and society — on the other hand [6; 12]. Civil society is viewed as organizing economic way, industrial relations, where personal interests develop to the collective degree, which in turn are perceived through the interests, individual rights and freedoms, due to the fact that the relationship between the state and civil society is the relationship between public power and individual freedom [7; 200]. In legal and political science sources, it is noted that in the literature there are many points of view on this matter. In its most general form, civil society is the sphere of social relations in which the state does not have the right to interfere with administrative methods. Without the presence of a developed civil society, it is generally impossible to talk about the state opposition and the individual, about more or less equal

mutual rights and obligations, since here the state completely absorbs the individual [8; 399]. There are three main civil society values in Russian scientific publications. A civilized (civil) society is, in the first meaning, opposed to an uncivilized, barbaric society; in the second meaning, as an ancient polis phenomenon, a civil community. The third meaning is bourgeois society, in which the private affairs sphere and private interests is freed from the direct state-power institutions influence, becomes an autonomous sphere of people's life, not directly dependent on the state [9; 163–165]. In modern information resources, civil society is viewed as a third sector, within the framework dividing concept of social democratic activity into sectors. The first sector is state institutions, the second sector is business structures, the third sector is all non-governmental organizations. However, in Kazakhstan, the term “non-profit organization” is most commonly used [10]. Thus, in the political and legal literature, a large civil society signs are highlighted, which reflect the social relations autonomy in all social life spheres, and autonomy from the state is emphasized.

Currently, a draft Decree of the President of the Republic of Kazakhstan “On Approval of the Concept for the Civil Society Development in the Republic of Kazakhstan until 2025” has been developed. In this project, civil society is defined as a set of moral, socio-economic, family relations and institutions, with the assistance which the individuals and groups interests are satisfied, freely and voluntarily creating associations, unions to satisfy their own needs and interests. The project enshrines the main civil society features: the most complete human and civil rights and freedoms provision; self-control; freely forming opinion and pluralism; general awareness; citizen rights implementation to access information [11]. It should be noted that it is the autonomy from the state, the control and state bodies accountability to non-state institutions that is the most important, and, in fact, the only ensuring human rights guarantee. In the draft concept, an international experience analysis is carried out, while it is concluded that the civil society definition, characteristics are similar. The international organizations definitions demonstrate the common civil society features. For instance, the World Bank uses the term “civil society organizations” to refer to a wide non-governmental range and non-profit organizations that participate in public life, express the interests and their members, or others values, and are guided by ethical, cultural, political, scientific, religious, or philanthropic considerations. The Organization for Economic Cooperation and Development gives a civil society definition similar to the previous one. Civil society is defined as a set of associations around which society voluntarily self-organizes and represents interests and connections of wide range. This category may include civil society organizations, indigenous peoples' organizations and non-governmental organizations [11]. Thus, civil society is viewed: at the institutional level, as a public organization set; at the functional level, as social ties of society members and their groups interacting with the state.

The draft Concept notes that today the global trends in the civil society development demonstrate a stable trends number:

1. At the international level, confidence in the civil society institutions is growing. The influence of these institutions on managerial decision-making in the state and corporate sectors is increasing. According to the World Economic Forum forecast, in the future, the gap between the public confidence level in government institutions and large corporations, the influence level of civil society institutions on the consciousness of the population will increase.

2. Civil society institutions participate in shaping the global agenda and actively implement it. Currently, international non-governmental organizations with a stable structure actively participate in formal consultative processes, multilateral forums such as the G20 and the UN. For example, a separate Policy Forum for Civil Society is held during the annual meetings of the International Monetary Fund and the World Bank Group. It discusses the prospects for the world economy, global financial stability issues, employment and poverty eradication.

3. The world becomes hyper-connected. With the access to the Internet expansion, social media, and mobile phone technology, the individual power as a virtual citizen is growing. The social media scale has changed the paradigm for expressing the citizenship of an individual or a people group. Traditional civil society institutions compete with new network institutions for the right to have a monopoly on the expression of the population opinion.

4. The governments goals of the countries are not building in civil society but in the social cohesion development. It involves the active population participation in solving urgent its life problems, in overcoming social isolation, and social disintegration (poverty, homelessness, orphanhood, etc.).

5. Big business and block chain technologies can replace some government institutions and have a positive impact on complex social problems by ensuring transparency in decision making. JPMorgan Chase,

a commercial and investment finance company, predicts that the business community will invest up to \$1 trillion in social projects over the next decade.

Kazakhstan is moving in the same direction with global trends and there is an understanding that new social activity will affect the daily people life and the state. Civil society can and must become a vehicle for a new transformation [11]. These trends in the modern civil society development predetermine the formation of state policy in the civil society support field of institutions and the new approaches development to their interaction and coordination with the legal state. At the same time, the main goal for the sake of which the civil society develops remains unchanged — the protection and provision of human rights. In modern conditions, a civil society should be considered a socially active, politically and legally literate community of people, the main unifying factor of which is human and civil rights. Human rights are a necessary political, ideological and legal basis for the functioning of civil society. Human rights are the basis of legal statehood, since they should determine the essence of modern legislation and the political and legal framework of law enforcement practice. The exercise of human rights is an integral part of state administration, its main internal function, while practically all functions of the legal state are determined by human rights. Human rights are the basic all state principles functions, their implementation is the performing these functions goal, on the one hand, and the basic implementing state functions way, on the other hand.

### *Discussion*

Research conducted in the Republic of Kazakhstan is carried out by various sciences, which touch upon certain civil society problems, linking it exclusively with the legal state. Research is implemented in various directions, while the main direction should be considered the relationship with the legal state. However, the presence of individual institutions in civil society, their historical development and functioning often remains outside of scientific research, since the modern approach to the legal state and civil society theory unreasonably narrows the period of the civil society existence, reducing it exclusively to modern history. At the same time, independent and autonomous civic organizations and individuals have always existed, but they did not possess the features and modern civil society properties, which does not allow to characterize them as institutions of civil society in the modern sense.

Disclosure of the historical civil society individual institutions development, their functional research helps to provide its effectiveness in a particular historical period. The foundations of the civil society modern understanding are laid by R. Stammler, G. Radbruch, G. Kelsen, R. Marchich, G. Hart, P.I. Novgorodtsev, S.A. Muromtsev, and many other thinkers of the first half of the 20th century. Various approaches to the theoretical explanation of the modern civil interaction society and the state are given in the works of such foreign researchers as J. Keane, R. Putnam, E. Arato, B. Barber (model of “strong democracy”); D. Bell and B. Barry (moral and legal substantiation of civil disobedience to the state authorities); G. Almond, S. Verba, B. Paul (meaning and types of legal and political cultures); S. Barnes, R. Dalton, A. Malbras, G. Povell, G. Nie, C. Tilly, and others (clarification and operationalization of the functions of the modern state). The results of the research of modern civil society are presented in the works of Gadzhiev K.S., Galkin A.A., Golenkova Z.T., Gorshkov M.K., Vityuk V.V., Krasin, Yu.A., Panarin A.S., Peregudov S.P., Reznik Yu.M., Khoros V.G., and others, which reflect the importance of civil society institutions for the West and for political modernization and democracy in the CIS. The works of a number of Russian legal scholars (G. Maltsev, M. Marchenko, E. Lukasheva, S. Alekseev, E. Arganovskaya, L. Mamut, V. Nersesyants, M. Baglai, V. Chirkin, N. Vitruk, S. Kozhevnikov, V. Kudryavtsev, V. Salnikov, A. Semitko and others) are also substantial. The fundamental theoretical and legal and state studies were conducted in works of G.A. Borisova, M.I. Baytin, N.V. Vitruk, B.S. Gershunsky, I.I. Kalny, V.D. Karpovich, V.D. Kerimov, N.M. Konin, V.V. Lapaeva, A.V. Malko, V.M. Manokhina, N.I. Matuzova, B.C. Nersesyants, I.N. Senyakina, V.N. Sinyukova, O.I. Tsybulevskaya, K.V. Shundikova and others. The works of the following Kazakh scientists are of great importance for the disclosure of ways to improve civil society: E.A. Abilya, A.Sh. Altayev, S.K. Amandykova, N.S. Akhmetova, M.T. Baimakhanova, S.Z. Zimanova, G.Z. Kozhakhmetova, S.N. Sabikenova, G.S. Sapargaliev, S.F. Udartsev, and others.

The difference in judgments and definitions suggests that the phenomenon under consideration is multifaceted, has different functions due to different goals. There are several definitions of “civil society” term, but they have the same basic idea. Civil society is a society in which citizens associations of different nature (parties, unions, trade unions, cooperatives, groups) maintain a connection between a person and the state, and do not allow the latter to usurp the person [12, 189–203]. Accordingly, the regulatory impact on society is carried out not only by state, but also by public institutions. All this diversity suggests that many organiza-

tions and democratic society institutions do not depend on the state power. Civil society exists and functions in a contradictory unity with the state. Under a democratic regime, and interacts with the state, under a totalitarian regime, it stands in passive or active opposition to the state. In the law theory, the civil society features are distinguished: the various types of property presence; developed political society system reflecting the interests of various groups and strata diversity; developed and ramified democracy; a high intellectual level, psychological members of society development and their ability to act independently; legal social relations regulation, that is, the effective functioning of the legal state [13, 228–231]. The above signs, in essence, are not signs, these are the conditions for the civil society existence. Features should be understood as structural elements that characterize civil society itself, as a concept that is qualitatively different from the “society” concept. The civil community incorporates the entire interpersonal relations set that develop outside the framework and without state intervention, as well as an extensive public institutions system independent of the state that implement everyday individual and collective needs. Since everyday citizens interests are unequal, to the extent that the civil society spheres have a certain subordination, which can be expressed as follows. Basic human needs for food, clothing, housing, etc., ensuring the vital individual activity are satisfied by production relations, which constitute the interpersonal relationships of first level [14, 95–101]. The need experienced by a person to eliminate deviations from the vital activity parameters, which are optimal for him as a biological being, an individual and a person [15, 77–105]. These needs are realized through such public institutions as professional, consumer, and other associations. Needs for procreation, health, parenting, spiritual development and faith, information, communication, etc. are realized through a socio-cultural relations complex, including family and marriage, religious, ethnic, and other interaction types. They form the interpersonal relationships of second level. The second level necessities are met within the institution framework such as family, church, educational institutions, creative unions, sports societies, etc. The third, interpersonal relations’ highest level is political and cultural relations, which contribute to the realization of the necessity in political life based on political preferences and value orientations. This level presupposes the formation of a specific political position in an individual. The individual political preferences and groups are realized with the political parties and other subjects of the political system help [14, 115–120]. Different approaches to the civil society definition and the legal state lead to the fact that under these concepts improved models, progressive society and the state development are formed, that are put forward by various social groups. All the best expectations from such a society and the state development are put into this concept. It should be noted that individual society representatives will always be dissatisfied with the development level of social relations and, accordingly, there will be criticism stages of the development paths, as well as the state institutions and civil society interaction. Consequently, the civil society features will be constantly supplemented, taking into account the society needs through political institutions representing the individual social groups interests.

As a result of all these researches and discussions, it is necessary to consider the “Concept of Civil Society Development for 2006–2011 of the Republic of Kazakhstan”, as well as the developed draft “Concept for the Civil Society Development in the Republic of Kazakhstan until 2025”. Thus, the totality of ideas and concepts is formed into the civil society theory, which supplements and develops the legal state theory and the human rights theory, which are essentially a unified theory aimed at the harmonious development of each person based on the humanism and justice principles. Historical stages in the civil institutions development have predetermined the modern civil society understanding, which, in turn, is in continuous development. The scientific thinking development, analysis of the modern society interests, foreign experience and international standards generalization allow to consider trends in the civil society development as the main directions for the development of functions and civil society institutions.

### *Conclusions*

In the Republic of Kazakhstan, it seems necessary to finalize the draft Concept for the “Civil Society Development until 2025”. The developing concept should reflect not only the interaction principles between non-governmental organizations and the state, but also the social and interfaith foundations harmony. This concept should be based on the Eurasian human rights concept, which is currently being developed in legal science, in order to determine not only the main protecting human rights goals, but also the ways and their implementation methods. For modern Kazakhstan, this approach to the development of non-state institutions problem seems to be the most acceptable. Proceeding from this, civil society and the legal state are called upon to ensure human rights on the basis of “universal” values, to form their own human rights concept, taking into account national and cultural characteristics that have formed as their own historical development

result. This human rights concept should become the ideological foundation of modern Kazakhstani civil society. A positive aspect, enshrined in the draft “Concept for the Development of Civil Society until 2025”, is the civil control system idea development [11]. In our opinion, civil control and civil monitoring are the main control of civil society function in relations with the legal state. Since the civil society control function is aimed at interacting with state bodies in a legal form, the legal civil control regulation, and great importance of civil monitoring. It is paramount to determine the legal status of civil society institutions exercising civil control and civil monitoring. Thus, the civil society development is an important condition for the legal state development, which should be carried out through civil control and civil monitoring.

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### Саяси-құқықтық құбылыс ретінде азаматтық қоғамды зерттеудің теориялық және тарихи мәселелері

Мақалада азаматтық қоғамды анықтаудың теориялық және тарихи мәселелері қарастырылған және оның негізгі белгілері ашылған. Мемлекет және құқық теориясында құқықтық мемлекетпен байланысты саяси және құқықтық құбылыстың динамикалық сипаты берілген. Тарихи ретроспективада әртүрлі тарихи кезеңдердегі азаматтық қоғамды зерттеу тәжірибесі, әртүрлі авторлардың теориялары мен тәсілдеріндегі осы институттың өзгеріштігі мен дамуы қарастырылған. Зерттеудің мақсаты азаматтық қоғамның негізгі функцияларын анықтау арқылы оның белгілерін табу. Зерттеудің жалпы және арнайы әдістерінің көмегімен азаматтық қоғамның түсінігі мен белгілерін анықтайтын тарихи-теориялық материалдарды, саяси және құқықтық актілерді талдау және жалпылау жүзеге асырылған. Жүргізілген зерттеудің нәтижесі ретінде азаматтық қоғамның түсінігі мен белгілерін анықтау, ал азаматтық бақылау азаматтық қоғам мен құқықтық мемлекет арасындағы қарым-қатынаста азаматтық қоғамның негізгі және анықтаушы белгісі ретінде көрсетілген. Азаматтық қоғам осы қатынастарды құқықтық реттеуді талап ететін саяси және құқықтық категория. Мақалада азаматтық бақылау және азаматтық мониторинг құқықтық мемлекетпен қарым-қатынастағы азаматтық қоғамның негізгі белгісі болып табылады деген тұжырымдар жасалған. Бұл өзара қарым-

катынастар неғұрлым егжей-тегжейлі құқықтық реттеуді және азаматтық бақылау мен азаматтық мониторингті жүзеге асыратын азаматтық қоғам институттарының құқықтық мәртебесін айқындауды қажет етеді.

*Кілт сөздер:* азаматтық қоғам, азаматтық институттар, құқықтық мемлекет, құқықтық нормалар, тарихи даму, құқық теориясы.

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## Теоретико-исторические проблемы исследования гражданского общества как политико-правового явления

В статье раскрыты теоретические и исторические проблемы определения гражданского общества и выявлены его основные признаки. Описан динамичный характер данного политико-правового явления, связываемого в теории права и государства с правовым государством. В исторической ретроспективе рассмотрены опыт исследования гражданского общества в различные исторические периоды, изменчивость и развитие этого института в теориях и подходах различных авторов. Цель исследования — выявление признаков гражданского общества посредством определения его основных функций. При помощи общих и специальных методов исследования осуществлены анализ и обобщение историко-теоретического материала, политико-правовых актов, определяющих понятие и признаки гражданского общества. В качестве результата проведенного исследования является определение понятия и признаков гражданского общества, при этом гражданский контроль рассматривался в качестве основного и определяющего признака гражданского общества во взаимоотношениях гражданского общества и правового государства. Гражданское общество — политическая и правовая категория, требующая правового регулирования этих взаимоотношений. В статье сделаны выводы о том, что гражданский контроль и гражданский мониторинг являются основными признаками гражданского общества во взаимоотношениях с правовым государством. Эти взаимоотношения нуждаются в более детальном правовом регулировании и в определении правового статуса институтов гражданского общества, осуществляющих гражданский контроль и мониторинг.

*Ключевые слова:* гражданское общество, гражданские институты, правовое государство, правовые нормы, историческое развитие, теория права.

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