

Section 6. Legal studies

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ISSUES OF CIVIL SOCIETY INSTITUTIONS IN THE CONSTITUTION

Abstract. The article provides an in-depth analysis of the use of the concept of civil society institutions in the legislation, the reasons for refusing to name non-governmental non-profit organizations as “non-governmental organizations”, disclosing the structure of civil society institutions in the Constitution of the Republic of Uzbekistan, theoretical and legal aspects of defining a public association, and author’s suggestions on the subject are given.

Keywords: civil society institutions, family, non-governmental organizations, Constitution, non-governmental non-profit organizations, Civil Code, public associations, law, citizens’ self-government bodies, registration.

The idea of civil society – as a set of ideas about the fair system in the state and society-was put forward by Western and Eastern thinkers. For example, in the work of Abu Nasr Forobi “the city of noble people” it says: “a person cannot form all the necessary things on his own, in order to find these, he feels the need for the services of people of different professions. Other people will be in the same position. It will be necessary for human beings to unite into a community and society in order to satisfy their needs and to be able to mature. In this community, every person tries to improve his art (craft) every day by learning the professions that suit his nature, talent and ability. Therefore, people living in different places (belonging to different nationalities and different religions) unite in different societies” [4].

Professor V. Ye. Chirkin does not support the use of the term “civil society” in public administration. He explains his opinion on this by the fact that

in modern constitutions the concept of civil society is not used [5]. V. V. Boytsova and L. V. Boytsova, however, disagree with this opinion, arguing that “the creators of modern constitutions are often based on traditional legal (constitutional-legal) terms. It should be noted that although the term “civil society” is not used in the Constitution of the Republic of Uzbekistan, it is enshrined that citizens have the right to participate in the management of society and state affairs directly and through their representatives [2].

Some scholars also consider the family to be one of the most important institutions of civil society. For Example, L. Yu. Grudsina believes that “the family is one of the most important institutions of the social system of civil society, in which a person spends the main part of his life. The purpose of the family, the state of its material support, the religious views of its members determine the level of life of a person,

his social activity, as a result of which he positively affects the success of the entire civil society” [6].

It should be noted that the person (individual) is considered the primary link of the civil society. In our opinion, the family should also be considered as a link of civil society. Consequently, Article 63 of the Constitution of the Republic of Uzbekistan states that “the family is the main link of society and has the right to be under the protection of society and the state” [6]. But before considering the family as an “institution of civil society”, it is necessary to pay special attention to the following.

Firstly, the Family Code of the Republic of Uzbekistan does not provide a legal definition of a family, and the Law does not establish the obligation for a family to consist of two or more persons. Consequently, there is also a possibility of family separation.

Secondly, like commercial organizations, each family can act only in its own interest. Accordingly, among the civil society institutions in the social sphere, not directly the family itself, but non-governmental non-profit organizations dealing with family issues (family centers, youth, women’s organizations, etc.) it will be desirable to enter.

Consequently, the self-governing body voluntarily decides issues of local importance. According to Article 105 of the Constitution of the Republic of Uzbekistan “gatherings of citizens in towns, villages and ovules, as well as in neighborhoods within them and in urban neighborhoods are self-governing bodies, which elect a Chairman (Elder).”

Therefore, we believe that we have every reason to include the bodies of self-government of citizens among the institutions of civil society. In the spiritual sphere, civil society serves to provide each individual with the right to freedom of thought, speech, faith and creativity. And this is directly related to the spirituality, culture, creative and spiritual way of life of citizens. A number of Public Associations operate in this area, including cultural and educational centers, creative associations, religious organizations and other organizations.

The adoption of the Constitution of the Republic of Uzbekistan in 1992 played an important role in solving these issues. In particular, according to Articles 31 and 61 of the Constitution of the Republic of Uzbekistan, “freedom of conscience is guaranteed for everyone...”, “religious organizations and associations are separated from the state and are equal before the law. The state does not interfere in the activities of religious associations” [1].

“Non-profit organizations during the former Soviet Union were called” public organizations and in the first years of “Uzbekistan’s independence received the name” public associations. The main reason for this is that in the Constitution of the Republic of Uzbekistan the term “public association” was used, and not “non-profit organization” [2]. International agreements do not provide for the concept of a non-profit organization [3]. Non-profit organizations in Western countries and the Russian Federation are called “non-governmental organizations”. M. Mokhovikova said that in Uzbekistan the word “nongovernmental” was deliberately abandoned, the use of such a word, according to the chunonchi scientist, gives rise to the meaning “against government” [4].

However, this opinion cannot be combined. As you know, in accordance with the Constitution and laws of the Republic of Uzbekistan, the government is understood as the Cabinet of Ministers, that is, the body that carries out executive power. Accordingly, the so-called non-profit organizations “non-governmental organization” means that they are free only from executive power. Although non-profit organizations are independent not only from the executive, but also from other authorities (legislative and judicial).

It is worth saying that when conducting a sociological survey among the public, 59% of respondents reported not to use the word “non-governmental organization” in Uzbekistan, since such organizations are free not only from the government, but also from another branch of government [1]. In addition, in the words non-profit organization “itself”, it is clearly reflected that it is free of

both necessary elements, that is, both “from the state” and “from Commerce”.

Based on the above, we believe that it was a very correct decision in Uzbekistan not to use the word “non-government” by the creators of the law. It should be noted that public associations belong to the constitutional form of non-profit organizations in Uzbekistan. In particular, Article 58 of the Constitution of the Republic of Uzbekistan states that “the state ensures the observance of the rights and legitimate interests of Public Associations, provides them with equal legal opportunities for participation in social life.” In the current Constitution of the Republic of Uzbekistan, the word “non-governmental non-profit organization” is not used even once, but the word “public association” is used 19 times.

There is even a separate chapter (XIII) dedicated to public associations in the Constitution [1]. The main reason for this is that when the Constitution of the country was adopted, the Law of the Republic of Uzbekistan “On Non-Governmental Non-Commercial Organizations” did not exist. On the contrary, before the adoption of the Constitution, that is, in 1991, the Law [2]. “On Public Associations in the Republic of Uzbekistan” was adopted. It should be noted that today, within the framework of the constitutional reforms being carried out in our country, work is being carried out to fill the above-mentioned legal gaps in our Constitution.

In particular, 2022 by the Legislative Chamber of the Oliy Majlis Article 56 of our main law “on amendments and additions to the Constitution of the Republic of Uzbekistan”, published on June 25, proposes the norm that “civil society institutions, including neighborhoods, political parties, movements, media, trade unions, public funds and other public associations of individuals form the basis of civil society, determine its content.” That is, it can be seen from this version that the Constitution envisages the introduction of 3 structures (non-governmental non-profit organizations, citizens’ self-government bodies, mass media) into the system of civil society institutions.

In general, the definition of Public Associations is given in 4 legislative acts, namely, the Constitution of the Republic of Uzbekistan (Article 56), the law “on public associations in the Republic of Uzbekistan” (Article 1), the Civil Code (Article 74) and the law “on non-profit organizations” (Article 11).

According to D. Kholmanova, the concept of “public association” recognized in the Law “On Public Associations in the Republic of Uzbekistan” has a broader meaning than the concept of “non-governmental non-profit organization” given in the Law of the Republic of Uzbekistan “On Non-Governmental Non-Commercial Organizations” [1].

However, the definition given in the Law “On public associations in the Republic of Uzbekistan” does not link the procedure of mutual association of citizens with the Law. It should be said that any mutual association of citizens cannot be called a public association. For example, changing the Constitutional system by force, opposing the sovereignty, integrity and security of the republic, the constitutional rights and freedoms of citizens, promoting war, social, national, racial and religious enmity, attacking the health and spirituality of the people, as well as military, national and religious spirit Citizens united with the aim of forming political parties cannot be recognized as a public association. In this matter, the Constitution of the Republic of Uzbekistan has established a more specific rule. In particular, in the definition of a public association in the Constitution, the phrase “registered in accordance with the law” is used, and this provision is an «insuring» norm from the negative situations we mentioned above.

It should be noted that we think that the sentence “in the order established by law” in the Constitution and laws should not be viewed as a referential norm. Chunoichi, the procedure for state registration of Public Associations is clearly defined in the laws. In accordance with this, it is advisable to revise the definitions presented to public associations in the first part of Article 1 of the law “on public associations in the Republic of Uzbekistan” and

in Part 1 of Article 11 of the law of the Republic of Uzbekistan” “on non-profit organizations”, to coordinate them among themselves. In this case, the

definition given to the public association should reflect the associations of citizens in the manner prescribed by law.

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