ПРАВОВЫЕ МЕХАНИЗМЫ СОТРУДНИЧЕСТВА ГОСУДАРСТВЕННЫХ И НЕПРАВИТЕЛЬСТВЕННЫХ ОРГАНИЗАЦИЙ В УЗБЕКИСТАНЕ: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

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В статье анализируются вопросы дальнейшего совершенствования правовых механизмов сотрудничества между государственными учреждениями и независимыми некоммерческими организациями в Узбекистане. Выдвинуты конкретные предложения и рекомендации по решению некоторых проблем в этой области.

Ключевые слова: негосударственные некоммерческие организации, институты гражданского общества, социальное партнерство, общественные советы, реализация закона.

LEGAL MECHANISMS OF COOPERATION BETWEEN STATE AND NON-GOVERNMENTAL ORGANIZATIONS IN UZBEKISTAN: COMPARATIVE-LEGAL ANALYSIS

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This article analyzes the issues of further improving the legal mechanisms of cooperation between state institutions and independent non-profit organizations in Uzbekistan. Specific proposals and recommendations on some problems in this area and ways of their solution are proposed.

Keywords: non-governmental non-profit organizations, civil society institutions, social partnership, public councils, implementation of the law.

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In Uzbekistan particular attention is paid to systematic improvement of legal mechanisms of cooperation between state and non-governmental organizations. Because in recent years, the “third sector” in the country has grown significantly and quantitatively. If there were 90 non-governmental non-profit organizations in Uzbekistan in 1991, as of January 1, 2018 their number amounts 9200. The consistent continuation of such a positive tendency depends on improvement of the legislative framework in the sphere.

First of all, legal regulation of relations between state and public associations in the Article 58 of the Constitution of the Republic of Uzbekistan, adopted in 1992, became a fundamental basis for the development of other legislative acts in this sphere.

This issue is identified as a top priority in “The Concept of deepening democratic reforms and developing civil society in the country”, proposed by the first President of Uzbekistan Islam Karimov in 2010, and about 30 laws were adopted on this concept.

In general, over the past 27 years of development, more than ten laws and more than 200 legislative acts have been introduced in Uzbekistan to regulate the activities of non-governmental non-profit organizations. Especially, the adoption of the Law of the Republic of Uzbekistan “On social partnership” in 2014 is worth mentioning.

The study of the experience of foreign countries (France, Belgium, Italy, Germany, South Korea, Japan, the United States, Canada, the United Kingdom and other countries) has shown that in developed democracies there is no single legislative document regulating issues of interaction of the state with non-governmental non-profit organizations. At the same time, these issues are regulated in the United Kingdom, France, and Canada, in Central and Eastern Europe within the framework of cooperation agreements between the “government and civil sector” that operate during a particular government term.

Social partnership up to this day have been regulated by a special law in more than 10 subjects in Uzbekistan, Kazakhstan and the Russian Federation. In their turn, the following similarity and difference can be observed by comparing the legal practice of these three countries:

Firstly, there are the following similarities in the legislative practice on social partnership of the above-mentioned states:

regulation of cooperation by a special law, that is separate laws are adopted “On social partnership”;

the concepts of “social partnership”, the object and the subject, the principles, the forms of its implementation are shown in these laws;

the procedure for establishing special commissions on social partnership, their rights and powers are clearly defined;

areas for the implementation of social partnership (at the republican, sectoral and regional levels) are defined.

Secondly, the Law of the Republic of Uzbekistan “On social partnership”, in contrast to the legislation of Russia and Kazakhstan in this area, shows state and non-governmental non-profit organization as subjects of social partnership. In Russia and Kazakhstan, social partnership mainly focuses on regulating relations between the employers’ representative and employees’ representative in connection with labor relations, whereas Uzbekistan’s legislation focuses more on supporting and providing financial support to non-governmental non-profit organizations by the state.

The Law “On social partnership” in the Republic of Uzbekistan entered into force on January 1, 2015. Implementation of this law is being taken seriously. Within the framework of implementation of this law, commissions on social partnership were established under local Kengashes of people’s deputies. Non-state non-profit organizations are also actively participating in drafting and implementing socio-economic development programs at the state and regional levels.

For example, ten paragraphs of the State Program¹ of the Action Strategy for 2017 envisages participation of non-governmental non-profit organizations, 14 directions of the State Program for 2018 are dedicated to the activity of civil society institutions².

In addition, the involvement of non-governmental organizations in the activities of permanent interdepartmental commissions (councils, working groups), established by the decisions of the Head of the State and Government is widening. If only in 2015, activists of more than 50 non-governmental non-profit organizations were involved in such commissions, in 2017 this figure amounted more than 70.

In some of our laws, the legal mechanisms for assisting non-governmental organizations by the state are broadly covered. For example, Article 11 of the Law of the Republic of Uzbekistan of January 3, 2007 “On guarantees of activities of non-governmental non-profit organizations” reflects the forms of state support for the activities of non-governmental non-profit organizations.

¹ See: The State program on implementation of the Action Strategy on five priority areas of development of the Republic of Uzbekistan in 2017—2021 in the Year of dialogue with people and human interests. In Annex 8 to the Decree of the President of the Republic of Uzbekistan of 7 February 2017 No. DP-4947. Available at: <https://www.lex.uz>.

² See: The State program on implementation of the Action Strategy in the Year of supporting active entrepreneurship, innovative ideas and technologies. In Annex to the Decree of the President of the Republic of Uzbekistan of 22 January 2018 No. DP-5308. Available at: <https://www.lex.uz>.

According to it, the state can support the activities of non-governmental non-profit organizations in the form of subsidies, grants and social orders. The state can also provide other support for the activities of non-governmental non-profit organizations in accordance with the legislation. In order to promote further development of democratic reforms in the country and active participation of non-governmental non-profit organizations in this process, the Public Fund for Supporting Non-Governmental Non-Profit Organizations and Other Civil Society Institutions, as well as the Parliamentary Commission for Managing the Fund’s means are being established under the Oliy Majlis of the Republic of Uzbekistan”³.

Since 2008, the Parliamentary Commission has been functioning and, according to its decision, the Public Fund supports the development of activities of the “third sector” and its various socially significant programs and projects.

This national mechanism, which is not available in other countries, is an effective way to support smaller non-governmental non-profit organizations in remote areas. Through this, many non-governmental organizations are able to strengthen their material and technical basis, effectively implement their program goals and objectives.

Since the establishment of the national mechanism for supporting non-governmental non-profit organizations in Uzbekistan, the Parliament has supported more than 1500 projects in the form of state grants, social orders and subsidies. As a result, more than 60 national, state and regional programs ensured participation of civil society institutions’ initiatives in addressing urgent issues⁴.

In 2008—2018, according to the decision of the Parliamentary commission, more than 70 billion sums were allocated by the Public Fund for development of activities of the “third sector” and supporting its various socially significant programs and projects.

Only in 2017, according to the Parliamentary Commission’s decisions, the Public Fund has funded 267 projects and programs in the form of state grants, social orders and subsidies. The projects were implemented on the basis of contracts and memorandums, joint working plans concluded in social partnership with state governing bodies and administration in executing objectives defined in state social, regional and sectoral development program, aimed at addressing current socio-economic, socio-political and humanitarian problems at places.

³ See: Bulletin of the chambers of the Oliy Majlis of the Republic of Uzbekistan, 2007, no. 1, paragraph 2.

⁴ See: From the report of Public Fund for supporting non-governmental non-profit organizations and other civil society institutions under the Oliy Majlis of the Republic of Uzbekistan. www.fundngo.uz.

Table of the growth rates tendency of funds allocated by the Public Fund for supporting non-governmental non-profit organizations and other civil society institutions under the Oliy Majlis of the Republic of Uzbekistan

In general, such support is important in ensuring financial sustainability of non-governmental organizations. Hence, they are provided with a number of benefits and preferences for implementing various payments and ensuring state support. Today, on the basis of resolutions of the President and Government, 71 public associations have been additionally financed from the state budget for strengthening their material and technical capacities, and 31 non-governmental organizations have been exempted from various taxes, mandatory payments and state duties.

Another important issue is intensification of involvement of the practice of non-governmental non-profit organizations in solving current issues of society's life and strengthening its legal mechanisms⁵. For example, it is important to develop legal mechanisms of participation of non-governmental organizations in such areas as ensuring employment of the population on the example of Uzbekistan, providing medical care, preventing offenses, promoting legislation and raising the legal culture of the population, promoting reading, fighting against corruption, enhancing ecological culture, and etc.

In addition, there are some shortcomings in implementation of the Law "On social partnership" and unused opportunities.

According to experts who are carrying out activity in this field, the planned objectives of implementation of this law has not yet been fully achieved.

What are the reasons for this? First and foremost, this law includes only two subjects (the state and non-governmental sector). It does not take into account the involvement of business structures. The experience of developed foreign countries also shows that in recent times various social problems are solved with participation of business subjects⁶. For example, this practice is widely

used in the United States and the United Kingdom. In many European countries, legislative frameworks for the interference of entrepreneurs in solution of social issues are being created. In Poland, for example, the Law on "Social cooperatives" was adopted in 2006.

In our opinion, before transforming the law "On social partnership" into an effective law, it is necessary to introduce amendments and addenda to this law in the light of the current reality. For this purpose, it necessary to introduce the "second sector", that is business entities into the subjects of social partnership and clearly define the forms and legal mechanisms for their involvement in social partnership.

In 2016, under the new President Shavkat Mirziyoyev's leadership, special attention is being paid to reforming and supporting state-owned organizations in the context of large-scale reforms that are being implemented under his direct control.

In particular, important tasks of strengthening cooperation of state and civil society institutions are defined in the first priority area of the Action Strategy on development of the Republic of Uzbekistan in 2017—2021, which was introduced on the basis of the Decree⁷ of the President of the Republic of Uzbekistan No. DP-4947 of February 7, 2017.

Within the framework of practical implementation of the Action Strategy, on May 4, the Decree⁸ of the President of the Republic of Uzbekistan "On measures of radically increasing the role of civil society institutions in the process of democratic renewal of the country" was declared.

For the first time in the political and legal practice of Uzbekistan, the Advisory Council for civil society development under the President of the Republic of Uzbekistan was established to promote dialogue between the President and non-governmental organizations. The organization includes representatives of 42 government agencies and various non-governmental organizations. The Advisory Council was tasked to introduce proposals to the President of the Republic of Uzbekistan on the issues of improving organizational-legal and economic foundations of civil society institutions' activities, implementation of social partnership and public control, creation of favorable conditions for the expansion of participation of these institutions in public administration.

While raising activity of the "third sector" in Uzbekistan, increasing its involvement in addressing problems facing the population is one of the priorities of the state policy, we consider it necessary to further strengthen the status of the Advisory Council under the President.

⁵ See: Naryshkin S. E., Khabrieva T. Y., Kapustin A. Ya., etc. Non-Profit Organizations in International and Domestic Law: monograph. In T. Y. Khabrieva, S. V. Chirkin (eds.). Moscow, 2017. 304 p.

⁶ See: Salamon L., Sokolowski W., List R. Global civil society: An Overview. Baltimore: Johns Hopkins Center for Civil Society Studies, 2013; Salamon L., Haddock M. A., Sokolowski S. W.,

Tice H. Measuring Civil Society and Volunteering: Initial findings from implementation of the UN Handbook on non-profit institutions. Working Paper. No. 23. Baltimore, 2017.

⁷ See: Collection of the legislative acts of the Republic of Uzbekistan. February 13, 2017, No. 6, Article 70.

⁸ See: Collection of the legislative acts of the Republic of Uzbekistan. May 7, 2018, No. 18, Article 360.

It is useful to pay attention to the experience of developed countries in this practice. There is also a practice of organizing public councils of different levels at some of the state governing bodies of foreign countries. For example, the Economic, Social, and Environmental Council is operating in accordance with the Chapter 11 of the Constitution of France. According to the Article 69 of the Constitution of this country, the Council presents its conclusions on drafts of legislation, ordinances or decrees, in accordance with the Government's request⁹.

In our opinion, based on the experience of France, it would be expedient to provide the constitutional and legal status for the Advisory Council on Civil Society Development under the President of the Republic of Uzbekistan. To do this, some additions need to be introduced to the Constitution. By doing so, effective implementation of tasks assigned to the Advisory Council can be achieved.

Another important issue is the establishment of Public Councils under the state governing bodies. Paying serious attention to this issue, the resolution of the President of the Republic of Uzbekistan "On measures for organizing activities of Public Councils under the state governing bodies" was adopted on July 4, 2018.

In the future, the adoption of the law "On Public Councils under the state governing bodies" is important in strengthening the legal framework of Public Councils'

activities under the state governing bodies, clearly defining the main directions of their activities, goals and tasks, their rights and responsibilities. This creates legal basis for the activities of various public councils under the state governing bodies.

In addition, special departments that will cooperate with non-governmental organizations operating in their respective areas should be established in each ministry, and their legal framework should be created.

Another important issue is that we need to consider the issue of establishment of a separate ministry in Uzbekistan supporting civil society institutions, coordinating their activities, cooperating with the state governing bodies on the basis of broad public opinion. Some foreign countries have experience in organizing such a ministry. In particular, the Ministry of Religious and Civil Society Institutions was established in the Republic of Kazakhstan in 2016. Or, the Ministry of Development of Civil Society Institutions is operating in Sakha (Yakutia) Republic of the Russian Federation.

Establishment of such a new ministry in Uzbekistan will comprehensively develop the "third sector" which serves over 40 thousand people, will further strengthen their activity.

In conclusion, the improvement of the organizational and legal framework of cooperation between the state and civil society institutions will have a positive impact on full protection of the interests of different segments of the population, ensuring the principle of priority of human rights and freedoms defined in the Constitution.

⁹ See: Shirinov J. The Legal Framework of Public Control is Strengthening. Available at: <https://www.parliament.gov.uz>.

REFERENCES

- Naryshkin S. E., Khabrieva T. Y., Kapustin A. Ya., etc. Non-Profit Organizations in International and Domestic Law: monograph. In T. Y. Khabrieva, S. V. Chirkin (eds.). Moscow, 2017.
- Salamon L., Haddock M. A., Sokolowski S. W., Tice H. Measuring Civil Society and Volunteering: Initial findings from implementation of the UN Handbook on non-profit institutions. Working Paper. No. 23. Baltimore, 2017.
- Salamon L., Sokolowski W., List R. Global civil society: An Overview. Baltimore: Johns Hopkins Center for Civil Society Studies, 2013.
- Shirinov J. The Legal Framework of Public Control is Strengthening. Available at: <https://www.parliament.gov.uz>.