

Harmonization of international standards and the national legal system regarding the institutional development of civil society entities

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Annotation. The article analyzes the impact of international standards that contribute to the construction of civil society in Ukraine, defines the spheres of their interaction, as well as the mechanisms of its harmonization with the national legal system.

The international standards of the functioning of civil society institutions, in particular, the standards of the Council of Europe, were studied, as well as the state of implementation of such provisions in the legal system of Ukraine was analyzed. The provisions of the Recommendation of the Committee of Ministers of the Council of Europe (regarding the creation and operation of non-governmental organizations) dated October 10, 2007, as well as the Fundamental Principles regarding the status of non-governmental organizations in Europe dated July 5, 2002, were analyzed. The compliance of the provisions of the Law of Ukraine «On Public Associations» with European standards in the field of legal regulation of non-governmental organizations was investigated.

It has been established that the harmonization of international standards and the national legal system regarding the institutional development of civil society entities is a rather broad and variable category.

Based on specific examples of the development of relations between international institutions and civil society, it was established that the efforts of foreign partners can be directed at the political environment of the state and its modification; economic and financial system of the country; social environment and development of specialized civic institutions; provision of educational and informational services, etc.

After analyzing a significant number of scientific studies, the issue of the institutionality of political organizations and their regulation at the international level, as well as the financial mechanisms of the development of civil society institutions in our country, was found to be insufficiently resolved.

Keywords: institute of civil society; legal system, association, non-governmental organization, public organization.

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INTRODUCTION

An active, influential and developed civil society is an important element of any democratic state and plays an important role in the implementation of urgent social changes, implementation of effective governance in state affairs and management of local affairs, development and implementation of effective state policy in various fields, establishment of the rule of law responsibility to the people, solving political, socio-economic and humanitarian issues. The development of civil society institutions largely depends on the state of the legal framework in this area. The main direction of improving the legal framework in this area is to bring it into line with current European standards.

The development of civil society and its institutions in Ukraine is becoming more and more important in the context of European values, that is, the orientation of our country towards membership in the European Union. To this end, Ukraine is working on the creation of legislation that meets international standards for the functioning of civil society and its main institutions.

Analysis of recent studies and publications. The issue of legal protection of institutions of civil society was studied by such scientists as N. Bortnyk, O. Vashchuk, I. Zharovska, I. Zabokrytskyi, V. Kovalchuk, O. Lotyuk, B. Melnychenko, P. Lyubchenko, O. Petryshyn, O. Remenyak, O. Skrypnyuk and others. However, modern aspects of the integration of international standards and the national legal system regarding the institutional development of civil society subjects require more thorough scientific research.

Purpose of the article. To investigate the harmonization of international standards and the national legal system regarding the institutional development of civil society entities, as well as to analyze the state of implementation of such provisions at the current stage of the development of civil society in Ukraine.

RESULTS

A developed civil society is based on the active activity of civil society institutions. The creation of civil society institutions is an integral attribute of a truly democratic state and a clear indicator of civil liberties. Actors of civil society (civil associations, political parties, interest groups, etc.) form and represent public interests before the state, and also strive to ensure effective dialogue with the state to protect these interests or resolve possible conflicts [1, p. 127].

In foreign scientific literature, civil society organizations are characterized by five criteria: they are private, non-commercial, autonomous and voluntary organizations. The fifth and last criterion is the organizational and legal form of the organization. The criterion «organization» assumes that civil society organizations have a certain structure and scheme of creation. The criterion «inviolability of private life» means that the organization of civil society is separated from the state. «Nonprofit» means that the purpose of such organizations is not to distribute benefits to certain people (even if they do receive benefits), but to fulfill their mission. «Autonomous» means independent of and not controlled by the state. Voluntary» means that no one is forced to join or to be a member of these organizations. Membership is the result of free choice, that is, these organizations are created on the basis of voluntary action [2, p. 167 - 168].

Non-governmental organizations are developing rapidly, their number is growing, and their impact on development is increasing. In the conditions of globalization, it becomes even more important for non-governmental organizations to acquire new economic and political functions. The process of globalization has led to the emergence of many non-governmental organizations whose purpose is to represent the interests of all mankind. Thus, it can be concluded that some civil society organizations have a tendency towards globalization, which

could theoretically lead to the emergence of a global civil society. Such a society must act within the framework of international law.

In this context, Vlaschuk rightly points out that globalization affects both Ukraine in general and civil society organizations: «The growing role of civil society organizations in strengthening society cannot be underestimated; NGOs are true representatives of all the diversity of public interests, and they cannot be mediators between their owners and authorities... channels and should become mediators between their owners and authorities» [3, p. 42].

Different views on civil society institutions are presented in scientific literature. The simplest approach reduces the entire institutional structure of civil society to the so-called third sector (NGO). According to the broader approach, in addition to the structure of the third sector, there is a sphere of public communication between those who create and shape public opinion, and the media play an important role in this. A broader approach includes the processes of advocacy and organization of civil society into the structure of civil society. Finally, according to the broadest understanding of the structure of civil society, civil society includes political organizations that protect their interests and the interests of their citizens, perform political functions and act as counterparties to the state.

Thus, in his research, R. Moshchynsky points out that civil society is the sphere of non-state social institutions and relations, the sphere of voluntary human solidarity. The concept of civil society is used to understand the set of relations existing in society, which are not state-political and are outside the scope of state policy regulation. In such a society, the self-expression of free individuals and civil organizations that arose spontaneously is protected by law from direct interference or arbitrary regulation by state authorities. It is about the free development of the market, the unhindered spread of spiritual

and moral and national values, etc [4, c. 187].

In the monograph «Legal foundations of interaction between civil society and state authorities in the process of democratic legitimation», V. Kovalchuk and S. Ishchuk claim that civil society consists of independent self-governing institutions and a system of legal norms that regulate the relations of people in this society. Ishchuk claim that civil society consists of independent, self-governing institutions and a system of legal norms that regulate the relations of people within this society and create a legal basis for the functioning of civil institutions. and establishes clear procedures for interaction between civil society and the state, and, conversely, a system of legal norms that establishes clear procedures for interaction between the state and civil society [5, p. 17 - 18]. According to researchers, the basic elements of civil society are independent and autonomous institutions that perform an important legitimizing function both within society and in the process of interaction with state institutions.

A. Mikhnenko notes that the result of effective dialogue is the establishment of cooperation between citizens and public institutions within the framework of an equal partnership based on trust. The possibility of implementing such an effective dialogue lies in changing the nature of the administrative system, thereby transforming the institution of public service into an institution that serves the interests of citizens. It follows that the possibility of effective dialogue between the government and citizens, as well as between different groups of citizens, can become a reality only within the framework of the rule of law, with appropriate measures guaranteeing public access to its activities [6, p. 3].

Modern international standards of legal support for civil society are outlined in Recommendation CM/JES (2007) 14 (on the establishment and activities of non-governmental organizations) of the Committee of Ministers of the Council of

Europe for member states (hereinafter - the «Recommendation») [7]. The recommendation defines the regulatory and legal parameters of the functioning of non-governmental organizations - one of the most important institutions of civil society. Adopting the Recommendation, the authors recognized the crucial contribution of non-governmental organizations to the development and implementation of democracy and human rights, as well as their contribution to the cultural life and social well-being of democratic societies, in particular, through the promotion of public education, participation in public life and ensuring the transparency and accountability of state institutions.

The authors of the document note that these criteria are recommended to be used by the state bodies of the member states for the development of national legislation, state policy and practice, as well as to be taken into account during the monitoring of the member states' fulfillment of their obligations. Member States are also encouraged to widely disseminate the text of the Recommendation among the general public, directly interested non-governmental organizations, parliamentarians, relevant public authorities and educational institutions, as well as use it during the training of civil servants.

Paragraph 1 of the Recommendation states that the term «non-governmental organizations» includes voluntary self-government bodies and organizations created to achieve the non-commercial goals of their founders or members. It does not include political parties.

The main advantage of the document is its systematicity. The recommendations outline all the key issues related to the creation and functioning of non-governmental organizations. Legal status of non-governmental organizations, freedom of choice of goals, procedure for creation and joining of organizations, legal personality of non-governmental organizations (in particular, acquisition of legal personality, creation of separate

divisions, amendments to constituent documents, termination of legal personality, status of foreign non-governmental organizations), procedure activities of non-governmental organizations, property and financial issues (collection of donations, property, non-governmental organizations of state structures).

According to the Committee of Ministers of the Council of Europe, among the main principles that should determine the legal status of NGOs in each country, the document establishes that: 1) non-governmental organizations include associations or organizations created by natural (physical or legal) persons and groups of persons; 2) non-governmental organizations may be created by a group of individuals (physical or legal) and may be founded by a group of individuals or organizations. 3) Non-governmental organizations can be both informal associations or organizations, and associations or organizations that have the status of a legal entity. 4) Non-governmental organizations must have the right to freedom of expression and other rights and freedoms guaranteed by international or regional treaties enjoyed by such organizations; 5) non-governmental organizations should not be subject to control by state bodies; 6) non-governmental organizations having the status of a legal entity should have the same rights and should be subject to the same obligations and sanctions.

This recommendation states that public bodies should be free to choose their goals and means of achieving them, with only one limitation: they should be subject to the same obligations and sanctions as other legal entities. For this, non-governmental organizations should be free to carry out research, educational and propaganda activities on socially significant issues; in supporting candidates in elections and referenda (provided transparent declaration of the reasons for support); in carrying out legal economic,

entrepreneurial and commercial activities in support of its main activity. must be free.

Any person or group of people, whether natural or legal entities, has the right to create non-governmental organizations. According to point 19 of the Recommendation, the minimum requirements for the content of constituent documents of non-governmental organizations (which must have the status of a legal entity) are established. These documents must contain information about the name of the organization, its purpose, powers, the highest governing body, the periodicity and procedure for holding meetings, the procedure for approving financial and other reports, the procedure for making changes to the charter, and the procedure for the organization's liquidation or its merger with another non-governmental organization.

The Recommendation on the creation and operation of non-governmental organizations establishes two main requirements for the legal personality of a non-governmental organization: 1) the non-governmental organization must be clearly separated from the legal personality of its members or founders; 2) a non-governmental organization created as a result of the merger of two or more non-governmental organizations shall inherit rights and obligations.

The Recommendation interprets the property rights of non-governmental organizations with legal personality quite broadly. In particular, paragraph 50, which establishes the procedure for collecting contributions, is fundamental for the financial and property aspects of the activity of a non-governmental organization: «a non-governmental organization can request and receive contributions in the form of money or other property not only from its own state bodies, but also from legal and natural persons, international organizations and organizations of other states. Chapter VI of the Recommendation is devoted to the regulation of state support of non-governmental organizations. In particular,

paragraph 57 of the document states that non-governmental organizations should be assisted in achieving their goals with the help of state funding and other forms of support. For example, exemption from income tax and other taxes or mandatory payments on membership fees of non-governmental organizations, funds and goods received from donors, state and international organizations, investment income, income from renting real estate, as well as tax benefits in the form of exemption from taxation of donations in favor of non-governmental organizations. Tax benefits include, for example, tax exemption for donations to non-governmental organizations. However, any form of state support for non-governmental organizations is subject to clear and objective criteria.

European standards for the functioning of civil society organizations are additionally defined in the Basic Principles of the Status of Non-Governmental Organizations in Europe, adopted by the participants of a multilateral meeting organized by the Council of Europe in Strasbourg on July 5, 2002. This document sets out the following basic principles of the activities of non-governmental organizations: «6. 6. Non-governmental organizations are created on the initiative of individuals or groups of individuals. Therefore, the national legal and tax framework applicable to non-governmental organizations should allow and encourage such initiatives. 7. All non-governmental organizations organizations have the right to freedom of expression. 8. Non-governmental organizations with the status of a legal entity have the same opportunities as other legal entities in general, and the same 9. Any act or omission of a government body that affects non-governmental organizations, should be subject to administrative review and appeal in an independent and independent court, as well as in an independent court [8].

According to Article 1 of the Law, «Public associations are voluntary

associations of individuals and (or) legal entities on the basis of private law for the exercise and protection of rights and freedoms, satisfaction of public, in particular economic, social, cultural, environmental and other interests. Public organizations are created in the form of state bodies or public associations, depending on their organizational and legal form» [9]. The purpose of creating a public organization is to protect rights and freedoms, satisfy economic, social, cultural and other interests. Thanks to the activities of public organizations, citizens have the opportunity to effectively interact with state authorities and influence their decisions.

As S. Ishchuk rightly points out, most of the changes in the legal status of public organizations provided for by the Law were due to the need to adapt national legislation to European standards in the field of legal regulation of the activities of non-governmental organizations [10]. The Law of Ukraine «On Public Associations» provides for the following innovations in the field of activities of public associations: 1) the age of the founder of youth public associations has been reduced from 15 to 14; 2) the right of a legal entity under private law to be the founder of a public organization created in the form of a public association has been clarified; 3) the status of a legal entity is established; NGOs with the status of a legal entity have the right to carry out direct entrepreneurial activity, if such activity corresponds to the goals of the NGO, provided for by the NGO charter, or through a legal entity (association, enterprise) created in accordance with the law.

The program for promoting the development of civil society is laid out in the most detailed form in the agreements with the EU. In addition, it should be noted that the EU always takes into account that countries applying for cooperation fulfill their obligations to the Council of Europe. The Partnership and Cooperation Agreement envisages cooperation between the EU and Ukraine based on «common

values shared by both parties» and includes a commitment to «strengthen the political and economic freedoms that are fundamental to the partnership.» The parties recorded their conviction that «the rule of law and respect for human rights, in particular the rights of minorities, as well as the establishment of a multi-party system with free and democratic elections are of vital importance» [11]. The EU-Ukraine action plan is aimed at achieving concrete successes in the implementation of obligations based on common values. One of the Plan's priorities is to further strengthen the stability and efficiency of institutions that ensure democracy and the rule of law. In the section «Democracy, rule of law, human rights and fundamental freedoms» of the Plan, the following goal is formulated: «In accordance with Ukraine's international obligations and its strategic goal of further European integration, Ukraine will continue internal reforms based on strengthening democracy, the rule of law, respect to human rights, the principle of separation of powers and the independence of the judicial system, democratic elections in accordance with the norms and standards of the OSCE and the Council of Europe (political pluralism, freedom of speech and mass media, respect for human rights, respect for human rights, respect for [12, p. 145]. A separate point of the Plan, «Ensuring the development of civil society», provides for «observance of the right to freedom of association and involvement of citizens in the decision-making process, including through civil society organizations.»

Ukraine has a well-developed network of non-governmental organizations. Modernization of legislation that guarantees their functioning is an urgent task. However, the potential of NGOs is largely limited by distorted social and political practices and a weak material base for creating an influential «third sector». To achieve progress in this area, it is necessary to limit the role of the state in those areas where civil society organizations can and should work, and to

support the strengthening of economically independent citizens. Currently, such institutions as public councils, consultations and public hearings at authorities do not provide an opportunity to significantly influence the adoption of management decisions. The practice of manipulating civil society continues. In the short-term perspective, we should not expect targeted institutional measures from the authorities aimed at the development of civil society.

Currently, Ukraine has practically harmonized with European standards in the field of legal protection of human rights and fundamental freedoms and is on the threshold of membership in the European Union. However, in practice, there remain serious problems with compliance with the legislation, particularly in terms of financing. In order to really guarantee human rights and basic freedoms, it is necessary to significantly reform the socio-economic sphere. At the same time, such problems as the lack of tolerance of state regimes, especially the bureaucracy, towards ordinary citizens, insufficient competence and the general focus of the justice system on the protection of rights and interests deserve special attention. As the experience of dozens of countries shows, the most difficult part of building state institutions is the formation of an

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independent and competent judicial system. By its very nature, it implies a high level of legal culture and developed institutions of civil society. For the newly independent states, the development of the judicial system is a particularly difficult task.

There are problems that need to be solved, in particular, regarding the level of readiness to really deepen democratic transformations and develop a modern European political culture in Ukraine, taking into account the legal regime of martial law.

CONCLUSIONS

Thus, the study of the state of harmonization of international standards and national legal systems regarding the institutional development of civil society subjects makes it possible to describe generally positive changes in the development of the Ukrainian democratic state in this regard. At the same time, on the way to membership in the EU, some urgent problems related to the functioning of civil society institutions remain unresolved, such as the functioning of political organizations, generally understandable and transparent procedures for receiving budgets by state bodies, as well as the international status of such institutions.

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