

ADVOCACY AND TRADE UNIONS AS A MECHANISM OF CONSTITUTIONAL RIGHTS' PROTECTION IN THE CIVIL SOCIETY

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Abstract

Institutions designed to further protection of constitutional rights of the citizens play a special role in the modern civil society. Last decades have demonstrated a significant growth of role of non-commercial organizations in human rights activities in conditions of civil society formation in Russia. At the same time, study of the role of such subjects as advocacy and trade unions in the sphere of protection of constitutional rights of the Russian citizens is not fully reflected in the legal science. But it seems that these institutions have enough potential and resources in the sphere of rights' protection: advocacy, primarily in the frameworks of realization of free legal assistance, and trade unions in the sphere of protection and assertion of labor rights of the citizens. The authors analyzed acting Russian law and scientific doctrine, on the basis of which offers are developed to elevate the status and role of advocacy and trade unions in the sphere of constitutional rights' protection.

Keywords: civil society, advocacy, trade unions

1. INTRODUCTION

Development of democratic state and establishment of civil society institutions depend on each other: civil society is developed insofar as state is democratic (Yakhina O.V., Vavilov N.S., Mikheev D.S., 2015). But in modern conditions a significant role is played by the "separate establishment of each institution" (inter alia, by advocacy institutions and trade unions), "rather than by institutionalization of the civil society" (Belousov E.I., Gornev R.V., Mamedov R.O., Murzanov I.A., 2016).

History of formation of these institutions demonstrates similarity of its legal nature: first of all, they initially appeared as human rights protection mechanisms. For example, since the days of Ancient Rome, the tasks of advocacy have included protection of rights of accused person from unlawful criminal charge, as well as solicitation for observance of legal prescriptions in court, so as to provide protection of innocent person from accusations. History of development and establishment of trade unions in Great Britain, which is justly considered to be the birthplace of trade union movement, allows to make a firm conclusion concerning rights protection function of trade unions in conditions of the labor process: trade unions allowed to unite and

collectively assert rights of the employees against the employers, attaining observance of the rights the employees had been granted. Subsequently, the development of advocacy and trade unions endowed them with other specific functions, but the function of rights protection still remains to be a front-and-center one.

Nowadays, however, Russian legislation doesn't fully establish relevant legal mechanisms of the protection of citizens' constitutional rights by means of advocacy and trade unions. Adopted normative and legal acts don't reflect specificity of these institutions as rights protection. According to our opinion, this fact deserves academic apprehension.

2. OPINIONS AND DISCUSSION

Performed analysis of normative and legal acts, which were adopted during the last decade, allows tracing the trend of increase of openness and transparency of relations between the state and civil society. In conditions of relative economic stabilization, the task of enhancement of the role of society in the state development steps forward. One of the most important resources of the civil society is public control of the central and local government institutions and authorities' activity. For example, acting in favor of the society, the state strives to provide transparency of procurements so as to oversee efficiency of budgetary spending; the legal act was adopted to create public commissions responsible for monitoring rights of people, who are held in pretrial detention centers and detention facilities.

But such measures as the control over state procurement and public monitoring commissions had sporadic character. Therefore, the universal Federal Law On the Basics of Public Control in the Russian Federation was developed and adopted in 2014 to increase efficiency of the public control. In art. 4 of this normative and legal act, public control is determined as an "activity of public control subjects, performed to monitor the activity of state authorities, local self-governance authorities, state and municipal organizations, other authorities and organizations, which implement in accordance with federal laws specific public powers, as well as to provide public examination, analysis and assessment of regulations, adopted by them, and decisions, made by them". According to V.V. Kudryavtsev and T.N. Mikheeva, public control is the most significant element of transparency in the government authorities' activity (Kudryavtsev, V.V., Mikheeva T.N., 2015). The issue of engaging public structures in governance (Mikheeva, T.N., Kudryavtsev, V.V., Yaichnikova, J.S., 2015), *inter alia*, in public control (Mikheeva, T.N., Likhoshva, A.O., 2016) is actively discussed in academic studies.

Detailed analysis of legislation on public control demonstrates that at the moment such forms of its implementation as public monitoring, examination, expert evaluation, public discussions and hearings are legally administered. Concurrently, the legislation considers the Public Chamber of the RF, public chambers of the RF constituent entities, public chambers (councils) of municipal institutions, public councils, affiliated to the federal executive authorities, public councils affiliated to the legislative (representative) and executive government authorities of the RF constituent entities, to be subjects implementing public control.

Amid this legislation, there is a growing academic interest toward the study of feasibility of public control implementation for the purpose of constitutional rights' protection by means of advocacy and trade unions as civil society institutions.

The Federal Law On the Basics of Public Control in the Russian Federation doesn't contain any references to the advocacy. As to the participation of trade unions in the activities on public control, there is only one specification: art. 3, which is specified that "peculiarities of public control performance by the trade unions may be set by the following federal laws". At the same time, this regulation doesn't provide the trade unions a direct right to act as a public control subject.

This state of things has not been ignored by the representatives of Russian trade unions. According to the head of legal department of administration of the Federation of Independent Trade Unions of Russia Y. I. Peleshenko, the "main goal and task of trade unions' activity is public control of the observance of the labor laws, and the fact, that trade unions are not legally included into the range of public control subjects, makes the Law on public control a profanation of the community role".

Actually, despite the fact, that the law includes the reference to the possibility of formation of other public control structures alongside monitoring commissions, public inspections, and public control groups, there is a situation which does not significantly favor extension of the list of subjects of public control. As the practice of application of the law mentioned has demonstrated, such organizational forms have not been used for 3 years. Therefore, such civil community institutions as advocacy and trade unions turn out to be deprived of an opportunity of public control performance.

It appears, that public institutions shall have more definite legal levers of influence. This should be expressed in the expansion of the range of public control subjects and forms, which they can use. As it was mentioned above, despite the difference between advocacy and trade unions they are united by the same nature: the orientation towards the protection of constitutional rights. That said, we deem it appropriate to note, that inclusion of public investigation into the range of public control forms alongside public monitoring, public evaluation, public discussions, and public hearings, shall provide advocacy and trade unions opportunities to participate in public control.

Speaking about public investigation, it should be mentioned that it represents a collection and analysis of information and data concerning violations of citizens' rights and legal interest, and abusive exercise of government officials' power. As a rule, it is performed in case of disclosure of certain significant infringements and abuse of authority. Accordingly, advocatory investigation shall be understood as a form of public investigation: an activity on collection and analysis of information and facts concerning violation of rights and legal interests of citizens performed by the lawyer in favor of the civil society. As to public investigation performed by trade unions, it is an activity on collection and analysis of information concerning violations of employees' rights at enterprise, inter alia, violation of working conditions. We should agree with E.G. Martynchik on the fact, that "granting a status of civil society institution means empowering public investigation to be a civil society tool in the capacity of important component of civil society protection". (E.G. Martynchik, 2003).

3 CONCLUSION

Successful development of a state is possible only with close cooperation with civil society (Yakhina O.V, Yaichnikova J.S., Mikheeva T.N., 2015). Due to this fact, the role and significance of the civil society institutions shall be increased. The analysis of the Federal Law On the Basics of Public Control in the RF disclosed significant gaps in this direction, though the researchers consider public control to be one of the top-priority directions toward the mechanism of constitutional rights' protection (Mikheev, D.S., Dudko, I.G., Mikheeva, T.N., 2015). This study demonstrated the necessity of expanding the law mentioned above.

1. The range of public control subjects shall be extended by inclusion of such civil society institutions, as advocacy and trade unions.
2. The forms of public control provided by the law shall be supplemented by public investigation, which shall significantly increase the civil potential.

Suggested amendments shall promote increase of advocacy and trade unions status in the area of overseeing state authorities and local self-government.

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