

Challenges in the legislative regulation of the activities of the civil society institutions



International
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a Think Tank

When the pants are too tight

The legislation regulating the activities of the civil society institutions in Armenia has been shaped in parallel to the development of the practices of exercising the fundamental human right to freedom of association. Indeed, throughout years people have chosen more and more comprehensive and sophisticated formats to realize their right to associate. Civil society institutions have been established; their needs for further development have been diverged, so have been the issues requiring the legal regulation of these institutions. It is a truism that the legislation regulating the activities of the institutions should aim at their development, based on their specific needs. When at a certain stage of development the needs and perspectives of the institutions diverge significantly, the differentiation of the regulation inevitably becomes a necessity. Incidentally, when the need for differentiation is already voiced out, any delay to address it has always created a wave of complaints, which inevitably has led to the expected changes.

Render therefore unto the Chamber the things which are the Chamber's; and unto the SNCO¹ the things that are SNCO's...

Throughout the one and a half decade of the independence, during the different development phases of the civil society institutions their regulation has been dispersed and differentiated. For instance, the regulation of the activities of commercial and non-commercial entities has been differentiated. Distinct laws regulate the activities of the religious, non-governmental and political organizations, as well as those of the foundations. The Labor Code regulates the activities of the trade unions and so on. In 2001 a rather matured step was undertaken in the same direction: the legislative regulation of several key institutions, such as the cultural centers, the health and educational institutions of state and communities ownership was differentiated. Further the regulation of certain professional unions, such as the Chamber of Lawyers and the Chamber of Commerce was differentiated. Thus, at a certain stage of development of the civil society institutions the need for differentiation starts maturing and then the subsequent process of change becomes inevitable. This conclusion can be generalized also to the commercial organizations, the regulation of which is quite differentiated and ensures the consistent development of individual sectors and types of these institutions, and addresses the relevant needs.

Cough drops prescribed for urinary obstruction?

Still, a considerable group of civil society institutions, ranging from the creative unions (associations of artists) with hundreds of members to think tanks with only a dozen or so are regulated by the same law: the activities of about 4000 organizations are regulated by the 2001 Law on Non-Governmental Organizations. It seems that during 2009 the need for defining the legal regulatory provisions which would take into account the needs and the specifics of the activities of the

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patriarchs of the Armenian civil society organizations – the creative unions – which pride themselves in a more than a half-century history, established traditions and property, has matured. Taking into account the specifics of the activities of these few but quite significant organizations in terms of their membership and the role, the RA Ministry of Justice has initiated the process of amendments in the 2001 Law on Non-Governmental Organizations, based on their recommendations. However, the recommended amendments will inevitably impact the army of the organizations, which though characterized with smaller membership, comprise quite a large number, and have a totally different peculiarities and development needs. The numerous complaints will perhaps soon ‘bury’ this rather controversial regulation initiative, given the vulnerability of its foundation, the risks associated with the legal provisions and other concerns verified by experience. Then, will the challenges of the artistic associations, one of the most significant segments of civil society, be addressed? Certainly, no! We believe it is high time to correctly perceive their development needs and heed to the imperative of differentiating between the regulation peculiarities. Incidentally, there is no need to regulate all the emerging issues with a different law or grant a special status to one or the other group of organizations. It is simply needed to fully and consistently use the whole inventory of the available instruments of the legislative technology.

The NGO dialectics

In this regard it is necessary to understand the specifics of the development directions and the needs of the organizations, which though fall in the same spectrum of the organizations and are regulated within the same legislation, still differ in nature. Moreover, one should agree that the need for regular differentiation of the legislative regulation indicates about the consistent development of the civil society organizations. For instance, in the recent years Armenian think tanks have developed quite considerably, and we are certain, that in the near future the need for adequate legislative regulation necessary for their further development will be clearly and loudly articulated. This will provide such institutions with an opportunity to gain financial independence and address visionary and long-term issues.

A gardener or a mower?

The role of the state agencies is extremely important for the formation and continuous development of a conducive environment for exercising the human rights. A distinct agency is responsible for the consistent development of each area. For instance, the Ministry of Agriculture addresses the development issues of the relevant area. Similarly, the executive bodies responsible for the economy, energy, education, science, health and other areas address the need for development of the adequate institutions, develop the legislation, contribute to the resolution of institutional issues, etc. The Ministry of Justice is essentially the agency within the executive which ensures the development of civil society. We believe the activities of the Ministry of Justice should be based on this vision. Therefore, as a diligent agent responsible for this area, it should function taking into account the development interests and demands of civil society. However, the development needs of the civil society institutions are quite different in nature from the ones on the agenda of the Ministry. Certainly, the issues of continuously increasing the transparency and accountability of the NGOs are important. However, there are far more significant issues essential for the development of this sector. The Ministry of Justice should seriously labor in order to address those, closely cooperating with all the stakeholders. We also think it is high time to form a department in the Ministry dealing with the development of civil society and to hire skilled personnel.

The paper is elaborated based on the opinions passed by the participants of the discussion “ NGO Law: What Are the Next Steps?”, which took place on December 8, 2009. The roundtable discussion was attended by independent analysts, government officials, and representatives of the international organizations.