

Strasbourg, 8 December 1997

<s:\cdl\doc\97\cdl-ju\60.e>

Restricted
CDL-JU (97) 60
Or. Fr./Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS
IN THE PROTECTION OF HUMAN RIGHTS**

by Mr Mikaël SEVIAN
Member of the Constitutional Court
of the Republic of Armenia

International seminar on "Constitutional Control
and the protection of Human Rights"
Yerevan, Armenia, 22-24 October 1997

As emphasized in the report by the Chairman of the Constitutional Court of the Republic of Armenia (RA), Mr G. Harutiunian, the protection of human rights and the establishment of reliable guarantees to that effect is one of the major legal and constitutional commitments of the State and International Community. In this regard, Article 4 of the RA Constitution indicates that the State shall guarantee the protection of human rights and freedoms as based upon the Constitution and the Law, in line with the principles and standards of the International legality. That means that it is primarily by means of the State structures that a person can re-establish his violated rights or remove the impediments to the effectuation thereof. In other words, the State is the principal guarantor of the human rights and freedoms.

Appealing to the State structures is not the only means for the citizen to protect his or her rights, freedoms and legitimate interests. The Constitution provides a choice of means for everyone to protect one's personal rights, freedoms and interests.

A citizen can apply for help to the governmental bodies or act through public organizations, the right to establish the latter being stated in the RA Constitution, Article 25. Each person has the right to establish organizations involving other persons, including professional associations. Thus, the above-mentioned Article, by reproducing the content of Article 18 of the "International Pact on Civil and Political Rights" secures the right of everyone to establish public organizations and to assume their membership. Further stated in the Article is that "Those rights may be restricted with regard to those serving in the Armed Forces and law enforcement agencies. Those restrictions have also been derived from the above-mentioned pact as well as from the stipulations of Article 20 paragraph 2 of the Universal Declaration of Human Rights.

It is to be noted that the purpose of this right to establish organizations and unions is to afford every person the opportunity to take part in the political life as well as to provide a legal basis for establishing diverse kinds of public associations. This right provides an opportunity to people to freely associate in pursuit of different interests and purposes. This will provide an obstacle on the way to one person or a narrow group of persons seizing power.

According to the "International Pact on Social and Political Rights", each person has the right of free associations with others, including the establishment of professional associations and the right to join them in pursuit of his interests (Art 22, Part 1). According to the "Universal Declaration of Human Rights", no one can be forced to join any association (Article 20, Part 2).

The operation of the public associations in the Republic of Armenia, its guarantees or restrictions, are contingent upon the criteria and principles of the International Legal Right.

The RA Constitution (Article 25) and the Feb. 26 1991 Law "On the Public-political Organizations" have determined the rights for establishing and operating the political parties, public movements, professional associations, initiative groups, women's and youth organizations, artistic unions, social-economic, social-cultural fellowships and associations.

Another state (governmental) commitment is the legal regulation of the rights-protection activities of the public organizations.

Published in 1996, Nov. 1, was the “On Public Organizations” RA Law regulating the relationships arising while exercising the constitutional rights of the person to establish associations in connection with the public organizations being established, operated, re-organized and dissolved.

The “On Public Organizations” RA Law states that a public organization is a voluntary association created on the basis of common personal interest in order to satisfy spiritual or other non-material requirements.

In our opinion, the role and purpose of public organizations are stated more precisely, in, e.g. the “On Public Organizations” RA Law. It is stated in Article 3 of the mentioned Law that any public organization is established “in order to achieve protection of common interest and common goals.” It is further stated that establishing the public organizations will “facilitate the implementation of the citizens’ rights and legal interests”. Indeed, the activity of any public organization should facilitate the protection of citizens’ rights and interests. Among the public organizations there is a distinctly recognizable group for which protecting the violated citizens’ rights is a major purpose of activity. Those are, e.g., professional associations, consumer societies, bar associations, etc.

Inclusion of the public organizations in the mechanism of human rights protection is of vital significance, since it enables everyone to use additional means to protect their rights (differing from the governmental protection mechanisms). On the part of the citizen, the protection of his rights using the public organization can be classified as a collective type of self-defence that is a most efficient means of implementing protection of a citizen’s rights and legitimate interests.

A public organization is a flexible social public institute much less formal than the governmental institutes, like the executive and judiciary bodies. This enables a public organization, if needed, to clarify and accelerate the procedure for adopting the decisions intended for the protection of citizens’ rights. The public organization itself is posing as an instrument to activate the citizens, to encourage their participation in public life, as well as to provide them with a legitimate way of protecting their rights, freedoms and legitimate interests.

To protect the human rights and freedoms, the public organizations can hold meetings, public gatherings, marches, rallies and picketing. The purpose of these public events is to produce an effect upon governmental bodies so as to regulate solutions of vital social issues (political, legal, social-economic, social-ethnic, etc.). This right is an essential element of democracy, a mode for the citizens and public organizations to take part in controlling the affairs of the state.

The states having developed institutes of social society, have elaborated an entire system of techniques and devices providing on the one hand the media as a way to display the will and the opinion of many, on the other hand, preventing the disruption of the legal basics of society.

Undertaking the protection of rights of individual persons’ interests, the public organization will by default assume the moral commitment to also respect the dignity and freedom of other people. Relationships of the member of the organization and of the organization itself are constructed upon a general respect of the personal dignity and freedom.

Article 22 of the RA Law “On Public Organizations” determines that a public organization, in order to implement its charter-envisaged objectives, has the right, within the limits of the law, to represent and to protect its rights and legitimate interests, as well as those of its members in other public organizations, courts, regional and state-sponsored self-governing entities.

In our opinion, to better use the potential of the public organizations, contingencies and assurances have to be elaborated to also implement the activity in the following ways:

1. taking part in exemplary operations, while processing the governmental bodies' decisions;
2. participation in the establishment of representative bodies;
3. holding the independent public hearings and investigations.

Cooperation between governmental bodies and public organizations will enable integration to be made of financial and governmental authorities with the human resources and creative potential of non-governmental organizations with the purpose of protecting human rights and more efficient resolution of basic social problems.

According to item 6 Article 55 of the RA Constitution, the RA President can establish consultative bodies. Thereby, the operational efficiency of those bodies will be much higher, should they include the representatives of proper public organizations. With regard to this, worthy of note is the opinion expressed in the presentation by Mr G. Harutiunian, Chairman of the RA Constitutional Court, recommending an establishment in Armenia of a national court for the protection of human rights. You will please allow me here to invite your attention to the experience of the French, that is certainly very instructive. They have established a national consultative committee on human rights including representatives of 27 advanced public organizations, 6 largest trade-unions, diplomats, sociologists, heads of higher educational establishments, judiciary system experts, etc., all to be elected for a 3-year period.

Belonging to the Committee's competence is the entire human rights field - the man's personal, social and political rights and freedoms, economic, social and cultural rights, the sphere of humanitarian activities, etc. It is this Committee that files all those reports and certificates on human rights that are submitted by France to the International organizations.

The Committee performs 2 roles:

1. overseeing all adopted human-rights instructions, laws and subjudicial acts;
2. presenting the proposals on the basis of governmental memos or private applications, which proposals are subsequently published.

With the above-cited in mind, it may be advisable to establish a similar body in Armenia, so as to secure not only a preliminary control of the regulatory acts of the executive authorities, but to also become an important link of the civilized dialogue. Also true is another opinion that has been vociferated here, that such a system would also substantiate the implementation of the competence by the RA President in pursuance of Part one of Article 49 of the Constitution,

since it deals primarily just with the issues of the protection of human rights.

The RA legislature does not envisage any specific type of participation by the public organizations in the law-making process by the representative state authority or in the decision-making process by the executive authority. Meanwhile, Article 38 of the RA Law “On Social Protection of Disabled Persons in the Armenian Republic” indicates that “discussion and resolution of the issues relating to the disabled by the bodies of state authority and governmental entities is implemented with the participation or approval by the appropriate public organizations”.

The public organizations, by establishing an infrastructure of the social society and giving an impetus to the overall activity, will facilitate Armenia’s becoming a democratic country.

Thus, the role of public organizations in the protection of human rights has become more important than ever today, when through the RA Constitution, Armenia has been declared a self-governing democratic, social and legal state.