

IDEAS FOR CIVIL SOCIETY AND ASSOCIATION THROUGH THE PRISM OF PUBLIC LAW

Dr. Boyan T. Georgiev, Assoc. Prof.
Burgas Free University

Abstract. The need for association and cooperation in its primary forms is existentially determined, embedded in the human psyche and morality before it becomes a rationally realized expediency and long before it becomes a right. The right of association is a fundamental right referred to in the group of political rights and freedoms, economic rights, and personal rights. This right combines the liberal idea of individual freedom with the collectivist idea of uniting the efforts of more people to achieve certain goals; exercising the right of association is an expression of free will. The principle of solidarity is exploited by hegemonic state doctrines and governments – communitarian, totalitarian, religious-fundamentalist, nationalist, modernizations, which call for the solidarity of tolerating restrictions, the renunciation of freedom in the name of certain collective goals, as well as in the doctrines and practices of revolutionary violence. The Code of Administrative Procedure provides wide participation of organizations in the various proceedings, both before the administration and in judicial administrative cases.

Keywords: association; public law; organizations; Code of Administrative Procedure; administrative procedure

The need for association and cooperation in its primary forms is existentially determined, embedded in the human psyche and morality before it becomes a rationally realized expediency and long before it becomes a right. Cultural anthropology deals with cooperation as a biosocial phenomenon and a condition for survival in a collective.

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Association culture is a system of values, norms and rules applied by individuals when forming communities for the realization of goals that they cannot achieve on their own. The will to work for the common good without receiving a benefit does not

necessarily mean seeking collective action. At the individual level, an individual's culture of association is directly related to his level of psycho-emotional readiness and is prompted or restrained by the particular social environment.

In the biosocial gene of the personality are encoded impulses: for learning, for acquisition, for protection, for establishing connections and for localization. Research shows that the urge to "make connections" exists in all individuals and has different manifestations according to the specific subject activity to which it is directed. The propensity (readiness) to associate is influenced by the degree of homogeneity of the cultural environment – sharing the same values and rules of behavior in different social communities supports the desire of individuals and groups to associate.

Association as an expression of collective reason requires the ability to organize, and the ability to self-organize itself is seen as a projection of the autonomy of citizens and civil society, as an alternative to the state-institutional beginning, to centralism and hierarchy. The way of organization depends on the nature of the goals and activities for which the organization was created. Organization is a source of effectiveness. Civil society is a form of organisation based on voluntary action and freedom of choice. But to associate means to accept together with the purpose and rules of the organization, to accept the collective statute, to observe discipline, to limit yourself voluntarily.

Within this framework of the so-called third sector, civil society carries out a wide range of aims and activities, ideally socially and morally motivated. In our opinion, a positive trend is civil society to be considered in an empirical-sociological context specific to the cultural-historical context – in the given country or region, for example in the Anglo-Saxon or European continental culture, in the countries of the former Eastern Bloc, in the Balkans, in the Scandinavian countries, in South America, etc. In this case, we imply the interest in the Bulgarian cultural specificity of the civil society.

Why is the state reluctant to open up to the third sector? Because the self-preservation instinct of the rulers, the services and the administration works, because the state wants to hold the monopoly on power, truth and the common good, and civil structures "appear to the state mind as potentially harmful from the point of view of replacing the common interest with a private one".

The assessment of the power potential of civil society is realistic: non-governmental organizations can influence public opinion, have moral authority, but they do not have executive power to impose their decisions and therefore remain weaker than the nation-state and its divisions, which have various coercive tools in their arsenal.

It is believed that one of the significant problems of modern Bulgarian society is the lack of collectivism, understood as the ability to identify with the goals of a community and, if necessary, to give up one's personal interests for the sake of

these goals. It is common to think that civil associations are the fruit of collectivist understandings, since collectivist beliefs and views tend to favor social bonding, association, and an ethos of duty to the community.

Humanity's evolution is going from predominantly collectivist to progressively individualistic life forms. In the formation of personality, individuation is the internalization of social interactions and develops in parallel with socialization, the incorporation of the individual into society. There are plenty of examples of brilliant individuals who profess collectivist ideologies; and vice versa. Both collectivist and individualist views and attitudes have degrees, moral direction, and social utility depending on societal circumstances and spheres of manifestation.

Strong individualists, the Americans are trusting and uninhibited in uniting for common causes, forming voluntary associations to solve one or another common problem, whereas in France this is expected from the government and in England from the elite.

As we have already pointed out, for there to be civil associations, there must be a widespread attitude towards association, group interest, awareness of community and the significance of the collective beginning. One of the prerequisites for civic participation is social capital, understood as the ability to create and maintain sustainable associations in the community and their functional asset – a resource based on belonging to a group. (Putnam to Bourdieu) In a broader plan, social capital is a public good, which expresses the sharing of society-integrating norms – solidarity, trust, and commitment to solving public problems. The idea of social capital is also gaining popularity in connection with postmodern notions of globalization, of the development of local communities and local government, of urban neighborhoods and good unneighborly relations in which communication is face to face.

The strength of civil society really depends on the institutionalization of the third sector, which means its normative separation from the first, the state-political, and the second, the economic; it means a stable organizational and structural arrangement; it means a developed normative framework for the performance of its functions and for its external relations, for financing and staffing, for combining the professional and the self-employed.

Social groups compete for publicity and popularity, but their ultimate goal is to get into politics, occupy positions in management. Publicity plays the role of public sanction, it is a way of recognition and legitimacy. An alternative to the party system of the struggle for power is civil society – with its organizations for representing the differentiated society and for expanding access to governance.

The theme of the restructuring of society is associated with the fact that going public and consolidating in organizations is an essential part of the process of self-awareness of autonomous private group entities, of aligning their rights and interests with the public, of forming their active position and will. Because the

existence of passive citizens and amorphous social groups and communities is one of the ills of the transition society.

The European understanding follows the systematic dialectical logic of Hegel and in a sense reverses it: first, it assumes that civil society as a sphere of private interests is fraught with contradictions that the state is called upon to remove, and second, that civil society can limit the omnipotence of the state.

Civil society is a society of private entities, the relations between which are legally regulated. Private subjects are citizens in the legal sense, i.e. equal subjects of the law, enjoy legal freedom, connect with each other based on negotiation. Autonomous citizens, based on the (abstract, theoretically constructed) social contract, have established the state to conduct and protect their common and private interests. Societies are founded, exist, and develop on principles based on benefits and interests, justice and law, ethics and morality, sympathy and mutual aid, psychological needs of communication and inclusion. The need for cooperation, association, and solidarity for the achievement of personal, group and societal goals, as well as the role of association and associations, is universally recognized. The principle of solidarity is exploited by hegemonic state doctrines and governments – communitarian, totalitarian, religious-fundamentalist, nationalist, modernizations, which call for the solidarity of tolerating restrictions, the renunciation of freedom in the name of certain collective goals, as well as in the doctrines and practices of revolutionary violence.

The study “Theory of Civil Society” by N. Nenovski is the only text in the Bulgarian scientific literature by a legal theorist on the subject under consideration. N. Nenovski defines civil society as follows: “A certain type of human community, the characteristic features (or elements) of which are free citizens, free private property with its subjects, the market, social and ideological pluralism, optimally dosed intervention (or non-intervention) of the state in its sphere (in the market), different media, respected and guaranteed “rules of the game” (legal and non-legal).”

Solidarity is a resource of human relationships that is subject to purposeful generation, an indicator of the reality of communities and a subjective characteristic, a personal attitude implying trust between individuals and social groups. The crisis of trust, which is a vice of modern societies, reduces the readiness for unification, for inclusion in public causes and for solidary civil action. One of the important features of the conservative worldview is reverence for associational tradition and for the *importance of associations in people's lives*. In addition to autonomous individuals, civil society is built by autonomous voluntary communities that carry the moral tradition, protect their own and their members' freedom; they should be encouraged, and the state should not interfere with them. The protection of associations and traditional communities is on the agenda of societies and legal systems. Because governments do not favor associations in which they see

competitors for power and the monopoly on coercion. History and modern times abound with examples of state control over civil communities, of encroachments on the status, activity, and property of associations.

Liberals rightly argue that solidarity, in its true sense, means mutual aid between citizens to be organized and carried out voluntarily by the citizens themselves, and not to be transferred to the state and imposed as an obligation; that state intervention actually destroys civil solidarity. The idea of the social nature of man, the Aristotelian principle, has a high conceptual authority – people unite and want to live in society because of the benefits and because of the desire for everyone to achieve “the perfection of his life”. Association is a natural right, a realization of the human need – emotional and pragmatic – to live and work in community. The model is Athenian democracy, the direct participation of all citizens of Athens in the deliberation and decision-making of public affairs. Independent civil associations, the orderly social system, are called upon to give substance to the idea of democracy, that freedom and equality are realized in and through society; that freedom and equality cannot be achieved by the individual alone, that they are feasible in solidarity and voluntary cooperation, with personal commitment and collective effort.

Social civil society, as a society of the largest majority, is part of the concept of democratic politics and **democratic governance**: with the active participation of most working people, governing institutions are democratically formed, which carry out policies in pursuit of their will and interests. It is perceived as an **alternative** to the state and business in terms of common social goals and in terms of their inherent modes of governance, as a carrier of deliberation and an advocate of corporate democracy.

The formula is a social democratic state plus civil participation – free self-organization of citizens for mutual aid, support, and recognition, for the realization of rights.

The other most essential aspect of civic activity is social support, where citizens come together and organize solidarity, collective action to solve social problems of the community or of individual groups and citizens, for social inclusion of the population – with their own capabilities and by attracting private and/or public resources, in most cases relying on the cooperation of local institutions and administrations. In some theories, a distinction is made between civic engagement in and for democratic governance, which is required to address social issues, and direct social engagement, which is expressed in projects by organizations to address specific social problems, most often driven by volunteerism and philanthropy. In the first case, it is about policies. At the local level, this division is rather conditional, as there is not much distance between public authorities and citizens and civil associations are committed to participation in local governance as well as to their own activity, organizing people to solve specific problems.

The paradigm individualism-collectivism has a socio-philosophical and historical aspect, as well as the character of an explanatory principle in the knowledge of morality and behavior. The starting point is to understand the social as a correlation of individual and collective principles; overcoming their elementary opposition, as well as the elementary identification of collective and social, individualist and asocial. The dominance of the individual or the collective, their specific coexistence - including in terms of property and citizenship, is one of the indicators of civilizational identity; it serves on the division liberal individualistic West – autocratic overthrown East. As it is known, the model of civil society and thinking about it as a specific ratio of individualism and collectivism is a Western phenomenon.

The problems of association should not be addressed solely and primarily in the context of civil society, although it is not possible to ignore theory. General questions and aspects of civil society are considered with the terms and with the methods of sociology and management disciplines, of the teachings of morality and culture, of the theory of the state and law, and a number of other disciplines. Civil society is a constitutional concept positioned together with the rule of law - both concepts are given in the modalities of the present and the future, of the desirable, the targeted and the due.

The Code of Administrative Procedure provides for wide participation of organizations in the various procedures, both before the administration and in administrative court cases. The role of organizations can be defined as leading in relation to the participation of citizens. It's because of the subject of the administrative proceedings, the public relations. They will be protected in the best way if the legal interest is realized precisely through the citizens' organizations. For this reason, an attempt was made to formulate a definition of a public organization in the Code of Administrative Procedure. The goal is to stimulate citizens' aspiration to association, to protect their public interest.

Separately, existing law and practice recognise associations which do not have the status of a legal person as being organised separately on the basis of a law. In legal literature, the concept that the Code of Administrative Procedure gives to 'organisation' is interpreted broadly, assuming that once an entity is a party to the proceedings for the issue of an individual administrative act or a general administrative act, it will have this quality regardless of whether it is a legal person, since the provisions of the Code of Administrative Procedure concerning the parties to this proceedings are specific to Article 131 (1) of the Law on Persons and the Family. It is sufficient for these organizations to have legal personality under public law. Therefore, organizations within the meaning of the code are associations which, by virtue of law, can be carriers of public subjective rights and obligations, even though they are unincorporated companies. These organizations do not necessarily have to be registered as separate legal entities.

The presence of citizens' organizations in the issuance of general and normative administrative acts has been strengthened. This is understandable given the unlimited number of addressees of those acts. The collective legal interest must belong to a group or category of persons having the same legal capacity or status as the organisations of the persons concerned referred to in Article 66 (1) and Article 67 of the Code. Is this not an amalgamation of individual interests or is it an independent legal interest?

According to E. Kandeve, the collective legal interest is not necessarily binding, compared to the individual interest of the individual participants. Proceedings of a particular individual party shall prevail over general proceedings. Each interested party among these 'unspecified persons' must prove that it has a personal legal interest, i.e. that it belongs to the category addressed by the general or normative administrative act (Kandeve 2008, p.11).

The legal interest is too broad-based, as it also covers the potential danger that rights, freedoms or legal interests may be affected or threatened by the disputed act. Both citizens and their organizations whose rights, freedoms or legitimate interests are violated or threatened have the right to challenge administrative acts before the court. For example, with Interpretative Decision No. 2 of 12/02/2010, the Supreme Administrative Court accepted that associations and other legal entities with a non-profit purpose can challenge by-laws in the presence of a legal interest justified by the subject of activity and the purposes for which are created. Associations of legal entities or natural persons, which are organizationally separated on the basis of law, have the quality of "organization" within the meaning of the Code of Administrative Procedure according to the definition given by the additional provision of § 1 (2). As organisations in the hypothesis of Article 186 of the Code of Administrative Procedure, which are established by law and statute to represent and protect the common interests of their members, trade associations and other non-profit associations are entitled to participate in the administrative procedure for issuing the by-law. They may challenge the by-law issued in cases where it affects or may affect general rights, freedoms or legitimate interests or creates obligations for the persons belonging to the association. The legal interest of the class (branch) organizations and other non-profit legal entities is determined by the impact on their personal rights or legal interests, directly arising from the subject of their activity and the goals of their establishment.

Both public discussion and institutional coordination ensure the stability and justification of the normative act, helping the competent authority to make the best decision regarding the public relations regulated by it. That is why we believe that the participation of organizations of interested citizens should be expanded through regulatory changes. The right of initiative to adopt a normative administrative act may be provided for in a legal provision regulating the entities that have the possibility to initiate this procedure, like Article 87 (1) of the Constitution and Article 24 (1)

of the Code of Administrative Procedure. Here, too, representative organizations should be one of the main subjects, along with administrative bodies. It should also be considered whether to introduce mandatory participation of organizations in the proceedings for the issuance of general and normative administrative acts. In this way, citizens will be better informed both about the progress of the procedures themselves and of the acts issued – their objectives and expected results.

The legal system of administrative justice presupposes that the administration submits to a court of law regarding the legality of its acts and actions, not to obey the private interest, but to reconcile and transform this private interest into a common, aggregate interest, whose she herself is the speaker. Administrative justice should be guided not by the principle of absolute equality between legal subjects (as in civil justice), but by the principle of protection of the common interest represented by the state, as well as by the basic principles of public law. The procedural requirement of personal and direct interest in the appeal of an administrative act is seen as a driving force that is used to enforce respect for legality by the administration. And since the process was defined as objective, it was considered that the requirement of such an interest was rather introduced to ensure the seriousness of the appeal, so as not to allow a permanent obstruction in the work of the administration. And while in the beginning this interest was supposed to be direct and pecuniary, later it was allowed to be of an indirect character as well as of a moral nature.

The historical development of administrative justice, especially in France, proves that the judge has played a very creative role in this respect. The Council of State in France, during the long period of its activity, has developed a tendency to gradually expand the concept of personal and direct interest, thereby expanding the range of interests affected and of repealed acts, and more certain guarantees have been developed for the by-laws activity of the administration.

In a well-organized society, the personal position, although initially aimed at satisfying only the needs of the individual subject, often finds itself in a position to contribute to the achievement of socially valid interests. But the public interest should not be seen as the simple sum of private interests, but rather as a moderate, principled and reasonably balanced interest, sometimes the result of a conflict between or even opposed to private interests. Personal goals and desires must be united in a common cause in order to receive the protection, assistance, and cooperation of the state.

During the Enlightenment, the idea of association clashed with the individualistic spirit of liberal capitalism (unlike to social studies and socialist utopias, which looked at man as a member of society and through the prism of society). Its patriarch John Locke believed that individual rights were fundamental and in this sense even the uniting of people in the name of some higher good should not lead to the restriction of personal rights (the basic for Locke are life, liberty and property). He wrote: The only way by which anyone renounces his natural liberty and imposes

upon himself the reins of civil society, is by consenting to the association with other men into a community, that they may safely, comfortably, and peacefully live together, enjoying free his property and in greater safety than one who is not a member of society (Semigin 1997, p. 361).

In conclusion, we should say that indeed civil society in our country is a heavy abstraction, historically and ideologically burdened. In the literature we find an endless series of different opinions on the scope and functions of civil society, on its relations with the state. The culture of association is a subject of scientific and public debate, particularly in the context of our alignment with Europe.

The right of association is a fundamental right referred to the group of political rights and freedoms, economic rights and personal rights. This right combines the liberal idea of individual freedom with the collectivist idea of uniting the efforts of more people to achieve certain goals; the exercise of the right to associate is an expression of free will (Pavlov 2023).

Administration is a powerful power machine against which the individual standing in less organized forms of social life is always relatively powerless. A way out of this inequality, of this dependence of the citizens on the administration, can and is trying to offer the modern European legislation, gradually adopted in our country after our accession to the European Union. The main codifying normative act in this direction is the Code of Administrative Procedure. In advance, it can be argued that the ongoing reform of the judicial system bypasses the topic of public organizations or puts it pro forma. Few theorists find it interesting or important. The judicial system is not set up to monitor, evaluate and support the resolution of the association's problems - there is no professional debate and a general shared professional understanding, no statistics.

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✉ **Dr. Boyan Georgiev, Assoc. Prof.**
Burgas Free University
E-mail: bgeorgiev@bfu.bg