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The Concept of Public Association: Problems of the Concept Definition under the Civil Law of the Russian Federation

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Abstract: Non-profit associations of persons established to solve common social, charitable, cultural and other tasks take an important place in the economic, political, social life of society, along with profit associations. Thus, it is important to improve civil law regulation of relations with their participation. Current legal acts regulating non-profit organizations in general, and individual organizational and legal forms of associations of persons, including public associations, should be brought into compliance with the provisions of the Civil Code of the Russian Federation. The paper is devoted to the search for ways to solve the problem of defining the concepts used in the current legislation to designate associations of persons, the content of these concepts and relationships between them. The author substantiates that the category of a public association consolidated in domestic legislation requires clarification and determination of its relationship with the categories of an association of persons, civil-law community, legal entity and some other concepts used to designate formations performing joint activities of persons to protect common interests and achieve common goals (organization, corporation, association, etc.). The paper attempts to comprehend the concept of the public association and its relationship with other similar categories used in civil legislation. The author concludes that currently the category of public association is used in a rather narrow sense and does not cover all possible non-profit associations of persons, although it could be considered as a broader category, which would make it possible to determine the general principles of creation and operation of certain types of non-profit associations of persons, to

classify them and harmonize possible organizational and legal forms of their operation, giving legal certainty to the status, primarily to the civil-law status, of various types of associations of persons.

Keywords: public association; civil society; civil law; right to association; civil-law community; virtual community; legal entity; meeting decision; joint activities agreement

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Contents

I. Introduction

A person as a social being tends to interact with other individuals. In psychology, it is noted that "a social person creates numerous groups, collectives, parties, unions, corporations, states that are the result of his multifaceted activities" (Korneenkov, 2002, p. 112). The tasks of ensuring basic needs, including food, housing, life safety, cultural needs, are most effectively solved through association rather than alone.

Human society itself is a community of human individuals uniting to satisfy "social instincts," a historically developing form of human life (Ilyichev et al., 1983, p. 14).

Indeed, many social and economic needs are satisfied in a centralized way by means of state institutions vested with powers to distribute various benefits, to ensure protection of rights and interests of the most vulnerable groups, to ensure security and national interests, to protect citizens' health, etc. Under the Constitution, the Russian Federation is a social state designed to meet all social and economic needs in society.

However, these tasks cannot always be solved in a centralized way with the same degree of efficiency as they can be solved in decentralized human interaction. Decentralized interaction in society can be ensured by establishing local interaction (e.g., neighbors' networks) and reducing consumption (Bidwell, 2019, p. 19).

The very idea of the collaborative consumption economy is based on operation and interaction within a decentralized community open to an indefinite number of people: when people unite to achieve a common goal and jointly solve the problems and share resources: items, skills, time, etc. It is suggested that "networks for collaborative consumption can be created all over the world if local communities share the ideas of good neighborly interaction and respect for other people's property" (Bidwell, 2019, p. 19). However, a key problem for the sharing economy is also highlighted as related to trust in neighbors and the wider environment, which plays a critical role in the success of the platforms being created. After all, the models under consideration are based on interaction in the community and helping others, which cannot be implemented without trust and mutual respect (Bidwell, 2019, pp. 26–27).

All this allows us to conclude that determination of the legal framework for interaction within decentralized communities and associations of persons who do not always acquire the status of a subject of civil law is essential for solving social, economic, and political tasks the State and society are currently facing, which determines the socio-economic aspect of the relevance of the topic under consideration.

In connection with the above, it is important to determine the peculiarities of the legal status of emerging associations of persons, to find an answer to the question of whether these communities are civil, whether they should be created within the framework of organizational and legal forms of legal entities provided for by law.

II. Methodology

The study is based on a review and analysis of the provisions of the legal doctrine, philosophy, sociology, psychology, economics; the study of empirical material (constituent documents of public associations, judicial practice). The main research methods include general philosophical methods of deduction, induction, analysis, as well as special legal methods: historical-legal, formal-legal and the method of comparative law.

III. The Right to Freedom of Association and its Implementation in Associations of Persons: A Legal Framework

Subjects of civil law of the Russian Federation are currently recognized as individuals, legal entities and public-law entities. Associations that do not have the status of a legal entity do not acquire independent legal personality, nor do they become independent participants in civil turnover. Meanwhile, under Article 30 of the Constitution of the Russian Federation, everyone has the right to association. Freedom of public association shall be guaranteed. Following this provision that enshrines one of the fundamental freedoms of citizens, the definition of public associations was consolidated in relevant legislation. *A public association* is a voluntary, self-governing, non-profit formation established on the initiative of citizens united on the basis of common interests for the implementation of common goals specified in the charter (bylaws) of the public association.

The constitutional right to freedom of association is implemented both directly through the association of individuals and through legal

entities — public associations.[1] Thus, today associations of persons can be registered as a legal entity, but this requirement is not mandatory: it is actually possible to unite without creating a separate subject of civil law. In the legal literature, public associations are often referred to as the non-state element of the subjects of the political system (Kazannik and Kostyukov, 2015).

Associations that do not acquire the status of a legal entity are also listed in other federal laws. For example, Federal Law No. 125-FZ dated 26 September 1997 "On Freedom of Conscience and on Religious Associations"[2] (hereinafter referred to as *the Law on Religious Associations*) states that religious associations can be established in the form of religious groups and religious organizatiions, while a religious group is a religious association that does not acquire the rights of a legal entity (Art. 6, 7).

As a rule, these public associations are created by a decision made at the general meetings of their founders. Under Article 181.1 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation), the decision of the meeting, with which the law binds civil law consequences, generates legal consequences, to which the decision of the meeting is directed, for all persons who had the right to participate in this meeting (participants of a legal entity, co-owners, creditors in bankruptcy, etc.), for members of the civil-law community and for other persons, if this is established by law or follows from the essence of the relationships.

The Civil Code of the Russian Federation distinguishes the category of civil law association, but does not explain the specifics of its civil status. Not being an independent subject of law, the specified association can carry out legally significant actions, namely, make decisions that incur legal consequences. Due to the high prevalence of public associations and the necessity for individuals to unite without registering a legal entity, especially in the context of digital platform

[1] Art. 5 of Federal Law No. 82-FZ dated 19 May 1995 "On Public Associations." Collection of Legislation of the Russian Federation, 1995, 21, Art. 1930 (hereinafter — the Law on Public Associations). (In Russ.).

[2] Collection of Legislation of the Russian Federation, 1997, 39, Art. 4465. (In Russ.).

economy and the economy for the collective use of goods and services (sharing economy), it is essential to solve the problem of determining the features of the civil status of associations that do not acquire the status of a civil-law community. From a theoretical point of view, it is important to determine the balance between the categories of the civil-law community and the public association that does not acquire the status of the legal entity. These circumstances determine the law-making, law enforcement and doctrinal aspects of the relevance of the topic of this study.

Thus, the purpose of this study is to determine the content of the concept of the public association, primarily of the public association not acquiring the status of an independent subject of civil law, in the current legislation, and the relationship between this concept and related categories, in particular, between the category of civil-law community and the category of associations of persons in a broad sense.

To achieve this goal, it is necessary to solve the following tasks: to determine the category of the public association and associations that do not acquire the status of a legal entity; to identify the balance between categories used in current legislation to designate forms of interaction between persons in the implementation of joint activities to achieve common goals; to identify problems and contradictions in the normative regulation of the relations under consideration and to determine possible solutions to the highlighted problems.

IV. Associations of Persons in Civil Law and their Types

According to the current legislation, subjects of civil law can unite to achieve common goals both through the creation of legal entities (profit and non-profit organizations) and through the conclusion of agreements primarily substantiating joint activities. For example, activities that are not purely related to commercial purposes can also be carried out within the existing organizational and legal forms of non-profit organizations. Nevertheless, despite the civil legislation reform, the legal regulation of relations with the participation of non-profit organizations cannot be considered perfect today. As Prof. Gongalo notes, the Civil Code

of the Russian Federation "formulated the basic provisions on the legal personality of legal entities; other laws and other legal acts may establish the specifics of the legal status of individual legal entities that, however, must comply with the Civil Code. Unfortunately, in some cases there is no such interrelationship" (Gongalo, 2021, p. 25).

In the conditions of digitalization, the existing procedure for creating and regulating activities of non-profit organizations does not allow for effective use of this form of organizing joint activities to achieve a common goal, since it does not provide mobility and speed of interaction, which is typical for transactions in the Internet.

According to sociologists, "achievements in the field of information technology were a prerequisite for the creation of a new form of social groups called 'virtual communities.' Despite common characteristics of a social group, virtual network communities have special socio-psychological characteristics inherent only to them. First of all, their difference from social groups lies in the replacement of the 'territorial' community by networks that are formed on the basis of the personal choice of individuals" (Semenova, 2020, p. 64).

In the economic literature, such a form of operation is distinguished as a "virtual enterprise" and it is defined as economic agents associated to achieve joint goals of increasing efficiency of activities performed in virtual space and operating via the Internet. As an example of such self-organization the author refers to virtual associations of agricultural producers-consumers of means of production (Kuznetsova et al., 2018, p. 72). Virtual communities are considered as a specific kind of a consumer cooperative — a virtual consumer cooperative — characterized by a short existence or a discrete form of functioning, targeted nature, non-commercial orientation, interaction between participants based on trust, functioning of the community mainly in the virtual information space (Kotlyarov, 2016, pp. 77–75). The features of the virtual cooperative also include the presence of a head or a governing body who ensures interaction between the members of the cooperative and an external counterparty and coordination of the activities of the cooperative members (Kuznetsova et al., 2016, p. 72).

Based on the dispositive civil law regulation and the essence of the relations that have emerged, users entering into a joint activity agreement can form such virtual communities that can be recognized as civil-law communities capable of making decisions at general meetings that have legal consequences for all members of the community in cases stipulated by the agreement. In this regard, it is proposed to supplement the provisions on decisions of the meetings with the rule that civil-law communities can be formed on the basis of an agreement concluded between its participants, also in electronic form, and in cases specified in the agreement, make legally significant decisions at their meetings for all participants of such a community.

The legal category of citizens' associations has been examined in the scientific literature. As noted, "In the doctrine of constitutional law, the concept of 'citizens' association' primarily includes political parties, mass socio-political movements, electoral associations and organizations. In labor law, a 'citizens' association' is the key to understanding the legal nature of trade unions, associations and employers' associations. From the standpoint of administrative law, a 'citizens' association' is a process that makes it possible to understand the essence of legal relations arising from the acquisition of the official status of a collective entity: a political party, a public organization. In turn, in civil law contexts, 'citizens' association' is considered as any form of non-governmental organization that promotes the development of civil initiatives in the State and implementation of private interest (from a charitable foundation to a commercial organization)" (Bondarchuk, 2017, pp. 182–183).

It should be noted that in this interpretation, the association of citizens is actually identified with the category of organization: foundations and commercial organizations are varieties of legal entities recognized as subjects of civil law. Under the Civil Code of the Russian Federation, it is a legal entity that is defined through the category of an organization.

However, associations of citizens, as noted above, do not always acquire the formal attribute of a legal entity required under modern Russian civil law, namely, they do not undergo the procedure of state

registration. Therefore, they cannot be considered independent subjects of civil law, nor do they acquire legal personality.

In this regard, associations of persons in domestic civil law can be divided into two types depending on acquisition of independent legal personality:

1) Associations that acquire the rights of a legal entity after state registration in accordance with the procedure established by law (associations of citizens and other persons that are organizations — legal entities);

2) Associations of persons that do not acquire independent legal personality.

A broad understanding of the category of a public association as an association of persons is given in the judicial practice of the Constitutional Court of the Russian Federation (decisions dated 17 February 2004 in Gorzelik and Others v. Poland[3] and dated 1 February 2007 in case Ramazanova and Others v. Azerbaijan,[4] dated 10 June 2010 in case Jehovah's Witnesses in Moscow and Others v. Russia,[5] etc.).[6]

Thus, as noted above, the right of citizens to associate is realized not only through the creation of legal entities, but also directly through the association of individuals who do not acquire the status of a subject of civil law. At the same time, the legal status of legal entities, despite the existing problems of legislation and law enforcement practice, is

[3] ECHR Ruling dated 17 February 2004 in Gorzelik et al. v. Poland (Application No. 44158/98) Available at: http://www.echr.coe.int [Accessed 19.02.2023].

[4] ECHR Ruling dated 1 February 2007 in Ramazanova et al. v. Azerbaijan (Application No. 44363/02). Bulletin of the European Court of Human Rights (2007).

[5] ECHR Ruling dated 10 June 2010 in Jehovah's Witnesses of Moscow et al. v. Russian Federation (Application No. 302/02). Russian Chronicle of the European Court, 2011, 2. (In Russ.).

[6] Resolution of the Constitutional Court of the Russian Federation No. 10-P dated 8 April 2014 "On Constitutionality of the Provisions of Para. 6 of Art. 2 and Para. 7 of Art. 32 of the Federal Law 'On Non-Profit Organizations,' Part 6 of Art. 29 of the Federal Law 'On Public Associations' and Part 1 of Arti. 19.34 of the Code of Administrative Offences of the Russian Federation in connection with Complaints Commissioner for Human Rights in the Russian Federation, Foundation 'Kostroma Center for Support of Public Initiatives,' citizens L.G. Kuzmina, S.M. Smirensky, and V.P. Yukecheva." Collection of Legislation of the Russian Federation, 2014, 16, Art. 1921 (published without dissenting opinion). (In Russ.).

still defined more specifically than the legal status of associations of citizens who are not legal entities, which, in practice, remains undefined in domestic legislation.

V. The Category of a Public Association and its Relation to the Category of an Association of Persons in the Current Legislation

To facilitate the provisions of Article 30 of the Constitution of the Russian Federation, Article 5 of the Law on Public Associations provides a general concept of a public association as a voluntary, self-governing, non-profit formation created on the initiative of citizens to implement common goals. The scope of this rule is limited only to such formations that are not created for systematic profit-making and are non-commercial in nature. Thus, at the level of federal laws, the legal regulation of relations involving profit and non-profit associations is clearly distinguished. At the same time, it should be recognized that the concept of an association of persons in the broadest sense can be used to refer to associations created both for profit-making and for achieving other goals not related to profit-making.

The current civil legislation provides for the possibility of creating associations to achieve profit-making goals, and at the same time not registered as a legal entity. For example, according to Article 1041 of the Civil Code of the Russian Federation, under a simple partnership agreement (a joint activity agreement), two or more persons (partners) undertake to combine their assets and act together without forming a legal entity to make a profit or achieve another goal that does not contradict the law.

The legislation on peasant (farmer) household defines them as associations of citizens related by kinship and (or) a connection by marriage, having property in common ownership and jointly carrying out production and other economic activities (production, processing, storage, transportation and sale of agricultural products) based on their personal participation.[7] A farm carries out business activities without

[7] Federal Law No. 74-FZ dated 11 June 2003 (as amended on 6 December 2021) "On peasant (farmer) household" (with amendments and additions, effective

forming a legal entity and is created on the basis of an agreement between citizens, if there are several of them.

In this regard, it is important to note that the current legislation, although it does not provide for a general definition of associations of persons, nevertheless, makes it possible to associate to achieve various commercial and non-commercial goals. At the same time, according to the current legislation, the categories of "association of persons" and "public association" are not identical. Associations of persons can be created both to achieve commercial goals (systematic profit-making) and to achieve non-commercial goals. Under the Law on Public Associations, a public association means a voluntary, self-governing, non-profit formation created on the initiative of citizens united on the basis of common interests for the implementation of common statutory goals.

It should be noted that a historical analysis of the development of the provisions on public associations allows us to conclude that earlier the concept of a public association, at first glance, was broader. A public association under the USSR Law No. 1708-1 dated 9 October 1990 (with amendments; dated 19 May 1995) "On Public Associations"[8] recognized a voluntary formation that was established as a result of free expression of the will of citizens united on the basis of common interests. In the previously existing legislation, when defining public associations, no emphasis was placed on the commercial or non-commercial nature of their creation. Nevertheless, a subsequent study of the norm indicates that the purpose of creating an association was important in determining the sources of normative regulation of their standing. The regulatory legal act on public associations mentioned did not apply to cooperatives and other organizations pursuing commercial goals or contributing to the extraction of profit (income) by other enterprises and organizations, religious organizations, bodies of territorial public local governments (councils and committees of microdistricts, house, street, quarter, village, township committees, etc.), public self-activity bodies (people's squads, community courts, etc.), the order of creation and activity of which was determined by other laws.

from 1 March 2022). Collection of Legislation of the Russian Federation, 2003, 24, Art. 2249 (hereinafter referred to as the Law on PFH). (In Russ.).

[8] Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation, 1990, 42, Art. 839. (In Russ.).

Non-profit formations created for socially useful purposes can be attributed to public associations in the sense of the provisions of the Law on Public Associations. However, the study of its provisions allows us to conclude that it does not apply to all associations of persons pursuing non-profit goals.

In accordance with this normative legal act, public associations can be created in one of the following organizational and legal forms: a public organization, public movement, public foundation, public institution, public amateur activity body, political party, unions (associations) of public associations. It should be borne in mind that in accordance with the Law on Public Associations, most of them can be registered as a legal entity — the Civil Code of the Russian Federation names certain organizational and legal forms of legal entities, such as a public organization, a public movement, a foundation, an institution, an association — but this requirement is not mandatory. A body of public self-activity is not named as an independent organizational and legal form of legal entities in the Civil Code of the Russian Federation.

At the same time, non-profit associations, including associations without the status of a legal entity, can be created in other forms. In particular, the Civil Code of the Russian Federation specifies a large number of organizational and legal forms of non-profit organizations whose legal status is not determined by the Law on Public Associations and that do not fall under the list of types of public associations specified in the law (for example, consumer cooperatives, communities of indigenous minorities, Cossack societies, notary chambers, legal practices, religious organizations, etc.). Also, as mentioned above, the Law on Religious Associations provides for the possibility of creating a religious group as a voluntary association of citizens formed for the purpose of joint profession and dissemination of faith, carrying out activities without state registration and acquiring the legal capacity of a legal entity.

The Housing Code of the Russian Federation[9] defines the procedure for managing common property in an apartment building by means of

[9] Housing Code of the Russian Federation No. 188-FZ dated 29 December 2004 (amended 21 November 2022). Collection of Legislation of the Russian Federation, 2005, No. 1 (Part 1), Art. 14. (In Russ.).

decisions made by the meetings of owners of the apartment building premises.

Thus, the category of "public association" in the current legislation is not identical to the category of an association of persons as a whole, or an association of persons created not for the purpose of systematic profit-making (non-profit association of persons). The concept of a public association with a literal interpretation of the provisions of the current legislation turns out to be already a category of non-profit associations of persons.

VI. The Concept of a Civil-Law Community and its Relation to the Category of a Public Association

The current civil legislation also contains the category of a civil-law community. It seems that associations that are not endowed with the rights of a legal entity could be classified as civil-law communities that do not have legal personality under civil law, but have the opportunity to make decisions on a number of issues. As mentioned above, civil-law communities are not listed among the subjects of civil law.

According to the Clarifications of the Supreme Court of the Russian Federation,[10] a civil-law community is understood as a certain group of persons authorized to make at meetings decisions with which the law associates civil law consequences binding on all persons who were entitled to participate in the meeting, as well as for other persons, if this is established by law or follows from the essence of relationships.

It is noted in the literature that the law does not define which groups of persons are considered as civil-law communities, their list is not exhaustive. At the same time, in all the examples mentioned in the law, there is a connection in the community through a common counterparty, common property or other common elements (Filippova, 2014, p. 130).

[10] Resolution of the Plenum of the Supreme Court of the Russian Federation No. 25 dated 23 June 2015 "On Application by Courts of Certain Provisions of Section I of Part One of the Civil Code of the Russian Federation." Bulletin of the Supreme Court of the Russian Federation, 2015, 8. (In Russ.).

Thus, the civil society can be considered as a certain group of persons empowered to make decisions at meetings with which the law associates civil-law consequences binding on all persons entitled to participate in the meeting, as well as for other persons, if this is established by law or follows from the essence of the relationship.

According to the current Russian legislation, a group of persons must be legally empowered by law to make legally significant decisions. In the event that such a group of persons is not authorized by law, the decisions taken by it will not entail legally significant consequences.

Under the Law on Public Associations, public associations are created by the founders — individuals and legal entities — in the form of public associations that have convened a congress (conference) or a general meeting that adopts the charter of a public association and forms its governing and audit bodies. In the future, the management of the public association may be carried out by the highest governing body, namely, a congress (conference) or a general meeting of the public organization or public movement.

Thus, in fact, public associations that are not registered as a legal entity operate based on the decisions of the meetings, which allows us to talk about the proximity of the concepts of a public association and a civil-law community, but not about their full matching. Public associations today are understood in a narrow sense only as non-profit formations created in accordance with the Law on Public Associations, while in the case of state registration they can acquire the rights of a legal entity. Civil-law communities are not legal entities; they constitute a group that, by virtue of the law, has the opportunity to make legally significant decisions of meetings. Thus, not every public association can be considered as a civil-law community: in corporate legal entities, civil-law communities include only their highest collegial governing body — the general meeting of participants (members) of the organization, but not the legal entity itself. Rather, in public associations without independent legal personality, it forms a civil-law community.

Thus, civil-law communities capable of making decisions entailing legal consequences for all community members and for other persons play a great role at the present stage, primarily, for the development of a digital platform economy model of shared consumption. Therefore,

the rules governing interaction between all the community members and interaction with other persons need further improvement.

First of all, it is necessary to specify and determine the ratio between the concepts used in the current legislation, in particular, we are talking about the ratio between the concepts of the association of persons, civil community and public association.

A community in itself, in the usual sense of the word, is an association, a group of a certain number of people with a common goal. This concept is used as a synonym for the word association.[11] The community is also identified with the category of the commune and collective: in many foreign languages, this is how the word "community" sounds, for example, *community* (in English), *comunidad* (in Spanish), *collectivité* (in French).

In jurisprudence, the categories of groups of persons, communities, associations are not always identified. For example, the category of a community, a group of persons is used in criminal law to denote an association pursuing criminal goals. At the same time, a criminal association is a kind of a group of persons with the characteristics specified in the law.

In civil law, the category of civil-law community has recently appeared in connection with the reform of civil legislation. Federal Law No. 100-FZ dated 7 May 2013 "On Amendments to Subsections 4 and 5 of Section I of Part One and Article 1153 of Part Three of the Civil Code of the Russian Federation"[12] consolidated Chapter 9.1 "Decisions of Assemblies" that mentions the category of civil-law communities, but it does not disclose its concept and features. Thus, the civil-law community can be considered as a certain group of persons empowered to make decisions at meetings with which the law associates civil consequences binding on all persons who have the right to participate in the meeting, as well as for other persons if this is established by law or follows from the essence of the relationship. The Civil Code of the Russian Federation does not use the category of a group of persons to define the association.

[11] Ushakov, D.N. Explanatory dictionary. Akademik [website] Available at: https://dic.academic.ru/dic.nsf/ushakov/1035302. (In Russ.). [Accessed 23.12.2022].

[12] Collection of Legislation of the Russian Federation, 2013, 19, Art. 2327. (In Russ.).

VII. Interrelation between the Concept of a Public Association and some other Concepts Denoting the Form of Joint Activity of Persons to Achieve a Common Goal

For civil law, the concept of an association is much more significant. It is very often applied to define legal entities. For example, an association (union) is an association of legal entities and (or) citizens based on voluntary or, in cases prescribed by law, mandatory membership and created to represent and protect common, including professional, interests, to achieve socially useful goals, as well as other non-commercial goals that do not contradict the law (Art. 123.8 of the Civil Code of the Russian Federation). In the legal literature it is noted that "the term *association*, that is, in fact, an international analogue of the phrase 'association of citizens,' comes from the Latin word **association** — connection" (Bondarchuk, 2017, p. 183). For example, Article 20 of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, proclaims that everyone has the right to freedom of peaceful assembly and association, no one can be forced to join any association.

Essentially synonymous concepts in domestic civil law are used in different meanings — the category "association" is identified with the category "union" and represents one of the possible forms of unifications that acquire the status of the subject of civil law — a legal entity of a specific organizational and legal form. Thus, the category of "community" in civil law is broader than the category of "association (union)."

As noted above, communities of persons in a broad sense can acquire civil legal personality and be registered as a legal entity. In this case, they constitute an organization that has an integral feature of organizational unity, in the legal context they are considered as a single subject of civil law that are not a community in themselves. At the same time, other unifications that do not acquire the status of a legal entity can also be included in the category of associations of persons that can function as a civil-law community making legally significant decisions at meetings of founders, participants, and members.

Among unifications of persons in general, narrower concepts of public associations and religious associations stand out. The Laws

on Public Associations and on Religious Associations, in particular, separately identify the relevant categories that in some cases, without being registered as a legal entity, do not acquire the appropriate status. It should be noted that in the Law on Religious Associations, the legislator has more consistently and internally uncontroversially defined the types of religious associations: a religious organization acquires the status of a legal entity, a religious group can function without this status.

The legal literature also distinguishes the category of corporate-type public associations. In particular, the principle of legality of public associations is explained as follows: "endowing a public association with legal personality as a general right, i.e., the capacity to perform its activities either as a social entity, without the rights of a legal entity, or as a civil law subject that after state registration becomes capable of having civil rights and obligations, acquiring them on its own behalf and exercising them. A unification as a whole and its members must comply with the legislation of the Russian Federation, generally recognized principles and norms of international law, as well as the norms provided for by its charter and other constituent documents" (Afanasyeva et al., 2017, Chapter IV).

In connection with this, it is necessary to determine the relationship between the concepts of a "community" and a "corporation."

A corporation is often defined as a large unification created for the purpose of economic activity in a certain area of the market.[13]

At the same time, a corporation is also defined as "a type of a legal entity whose founders (participants) have the right to participate (the right of membership) and form its supreme body (general meeting of participants, congress, conference or other representative (collegial) body) determined by the corporation's charter (bylaws) in accordance with the law" (Afanasyeva et al., 2017, Chapter I). This definition of a corporation in a legal sense is based on interpretation of the provisions of Article 65.1 of the Civil Code of the Russian Federation, according to which legal entities whose founders (participants) have the right to participate (membership) in them and form their supreme body constitute corporate legal entities (corporations). Thus, in modern domestic civil law, the term "corporation" is not identical to the term

[13] Corporation [Internet]. Available at: https://investments.academic.ru/1077Корпорация. (In Russ.). [Accessed 11.01.2023].

"association" and represents its specific case — corporations are certain types of legal entities that have the characteristics of corporate organizations specified in the law. In addition, modern law also knows one person corporations including those created on the basis of a sole decision of its founder.

VIII. Problems of Improving the Current Legislation on Public Associations

The Law on Public Associations contains quite a large number of contradictions and inconsistent terms. Firstly, it is unclear from the law itself which public associations should be registered as legal entities, which may not acquire such a status. This issue should be decided by the founders or members of the public association.

Secondly, the correlation between the categories used in the Civil Code of the Russian Federation and in this law raises questions. For example, in the Civil Code of the Russian Federation, public organizations and social movements are named as separate organizational and legal forms of non-profit corporate organizations. According to the Law on Public Associations, they may not acquire this status and function without being registered as a legal entity. The body of public amateur activity under the Law on Public Associations can be registered as a legal entity, while in the Civil Code of the Russian Federation such an organizational and legal form of a legal entity is not determined. The categories of institution and foundation are traditionally used to designate unitary non-profit organizations. The institution is created on the initiative of one founder and cannot be an association in its essence.

In addition, it should be noted that all public associations created on the initiative of citizens, with the exception of religious organizations, as well as commercial organizations and non-profit unions (associations) created by them, fall within the scope of Article 2 of the Law on Public Associations. Article 4 defines that specifics related to the creation, operation, reorganization and (or) liquidation of certain types of public associations — trade unions, charitable and other types of public associations — may be regulated by special laws adopted in accordance with the Law on Public Associations. Activities of the public

associations before adoption of special laws, as well as the activities of public associations not regulated by special laws are regulated by the Law on Public Associations. Thus, literal interpretation of these rules makes it possible to formally recognize all other non-profit organizations and civil-law communities created on the initiative of citizens to achieve non-profit goals as public associations and extend the application of the Law on Public Associations to them. However, based on the literal interpretation of the current norms of the Law on Public Associations, such a conclusion seems incorrect and contradictory, because the list of organizational and legal forms of public associations is much narrower than the list of existing organizational and legal forms of the same non-profit organizations, and the understanding of the category of the civil-law community is also quite broad in judicial practice and includes, for example, a collective of co-owners, bodies of a legal entity, etc. These contradictions must be eliminated in order to give certainty to the legal regulation of the relations under examination.

The issue concerning the relationship between the category of the public association and the public organization is not explained in Federal Law No. 7-FZ dated 12 January 1996 "On Non-Profit Organizations"[14] (hereinafter referred to as the Law on Non-Profit Organizations). Article 6 defines these concepts as voluntary associations of citizens "recognized as public and religious organizations (associations) that have united in accordance with the law on the basis of their common interests to meet spiritual or other non-material needs." However, the analysis of the provisions of the Civil Code of the Russian Federation, the Law on Public Associations, the Law on Religious Associations makes it clear that the terms "public association" and "public organization," as well as the terms "public association" and "religious association," "religious association" and "religious organization" are not completely identical.

In order to eliminate the identified contradictions, it is necessary to bring the terminology used in the regulations into line with each other. At a minimum, it is necessary to identify in the law organizational and legal forms of public associations that must acquire the rights of

[14] Collection of Legislation of the Russian Federation. 1996, 3, Art. 145. (In Russ.).

the legal entity and be registered accordingly. In this regard, public organizations could be recognized as a public association that should be registered as a legal entity, as well as public institutions and foundations. A public initiative body may be a public association without acquiring the status of a legal entity.

Distinguishing a public movement as an independent form of a nonprofit organization raises questions — it could form a public association without mandatory state registration as a legal entity. In the case of state registration, it would have to acquire the status of a public organization. This conclusion is related to the fact that when managing a legal entity, it is important to determine the composition of its bodies: for the formation of public movement bodies, as a rule, only those participants who are registered in the public movement and have submitted an application for this, and not any participants who support the public movement, are taken into account. Thus, most often in a public movement, the participants who have submitted an application and actually acquired membership rights are allowed to manage the organization, which contradicts the concept of a public movement that, in fact, turns into an analogue of a public organization.[15] Thus, for the public movement, the difference between the categories of "participant" and "member" of a public movement is actually leveled.

In this regard, it is important to note that the concepts of "founder," "member," "participant" of a public association given in the law also need clarification and comparison with similar concepts used in the Civil Code of the Russian Federation. In the Law on Public Associations, the categories "member of a public association" and "participant of a public association" are not identical, whereas in the Civil Code of the Russian Federation the categories of participation (membership) are used as identical.

IX. Conclusion

Thus, in a broad sense, associations of citizens include both legal entities and other associations without the status of a legal entity.

[15] All-Russian public movement "Volunteers of Victory" [website]. Available at: https://волонтерыпобеды.рф/docs. (In Russ.). [Accessed 18.01.2023].

Terminologically, in order to harmonize the use of various concepts, it is proposed to recognize associations of citizens registered as legal entities as organizations — legal entities. Under the Law on Public Associations, it should be clarified that a public organization is a public association registered as a legal entity acquiring the civil personality of an independent subject of civil law. This clarification will make it possible to bring the provisions of the Civil Code of the Russian Federation and the Law on Public Associations into line with the definition of their organizational and legal forms.

The procedure for creating associations of citizens — legal entities allow us to conclude that initially they pass the stage of the civil-law community. After registration, such an association cannot be considered a civil-law community, since it acquires organizational unity and is considered as an independent entity.

Associations of citizens not registered as a legal entity can be created through the adoption of a decision by the constituent founding meeting and approval of the charter of a public association or by reaching an agreement on implementation of joint activities, in fact, by signing a joint activity agreement. In the first case, an analysis of the provisions of the Civil Code of the Russian Federation, the Law on Public Associations, judicial practice allows us to conclude that such associations of citizens are created and continue to function as a civil-law community by virtue of the law making decisions with legal consequences. In the second case, there is no unambiguous understanding of the association of citizens as a civil-law community, since they are created based on an agreement.

It should also be borne in mind that the category of public associations based on the meaning of the current legislation, cannot be identified with the category of citizens' associations — these are different concepts, which ultimately leads to contradictions in the legal regulation of emerging relations, incomplete regulation of relations with the participation of citizens' associations and their complication.

Other organizational and legal forms of non-profit organizations that are not specified in Article 7 of the Law on Public Associations, as well as associations of citizens that can be created on the basis of a joint activity agreement, are not formally recognized as an organizational and legal form of public associations, while in essence they are an association of persons.

Thus, the relationship between the concepts of "public association" and "association of citizens" needs to be clarified by expanding the scope of the Law on Public Associations to any associations of citizens exercising their constitutional right to association. Exceptions from the scope of the said law also need clarification. Public associations need to be classified; possible organizational and legal forms of public associations should be clarified, bringing their list in line with the norms of the currently effective civil legislation.

The above allows us to conclude that various terms are used to designate associations of persons in civil law, in particular, legal entities as organizations, associations, cooperatives, public organizations, social movements, etc. as separate organizational and legal forms of legal entities, public associations, corporations, civil-law communities.

By itself, a variety of terms is acceptable. Nevertheless, in order to give certainty to the legal regulation of relations involving associations of persons, it is necessary to establish the exact meaning of each term used in different legal acts in order to avoid contradictions and ambiguity of interpretation.

Thus, it can be concluded that in the current legislation the category of the public association is used in a rather narrow sense and it does not cover all possible non-profit associations of persons, although in its content it could be considered as a broader category, which would make it possible to determine general principles of establishing and operating for all types of non-profit associations of persons and to classify them and harmonize possible organizational and legal forms of their operation. All these measures will contribute legal certainty to the status, primarily to the civil-law status, of various types of associations of persons.

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