



## INSTITUTIONAL FRAMEWORK FOR GENDER LEGAL EXPERTISE

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### ABSTRACT

This article discusses the institutional foundations of gender legal expertise. In particular, taking into account the opinions of various scientific schools, an analysis is given of the concept of institutional foundations both as a system category and broken down into individual components, including organizational, structural nature. Information is provided on the formation, development and improvement of the institutional foundations of gender legal expertise through the prism of the evolved state bodies and the non-state sector, directly responsible and involved in the process of promoting gender policy.

### KEYWORDS

Gender-legal expertise, institute, institutional framework, organizational structure, Women's Committee of Uzbekistan, State Committee for Family and Women, national mechanisms, gender policy.

### INTRODUCTION

The Law of the Republic of Uzbekistan “On guarantees with respect to equal rights and opportunities for women and men” uses once the word "institutional" in explaining the concept of "Temporary special measures to ensure the implementation of gender policy", which are legal, organizational and institutional measures taken by State bodies to eliminate gender inequality, achieve specific goals for ensuring the actual or fundamental equality of women and men [1].

As we can see, three main components of gender policy are mentioned here – legal measures, organizational measures and institutional measures.

Institutional measures assume the creation, maintenance and development of certain public institutions. At the same time, "institute" is understood as a verbal symbol for a better description of a group of social customs. The presence of institutions means the existence in society of a

prevailing and stable way of thinking or acting, which has become a habit for certain social groups or a custom for the people. Examples: "institute of law", "institute of property". One of the variants of the spread of institutional forms is the structure of executive state authorities, whose immediate task is the practical implementation of the goals of the government [10].

In this section, we will consider the institutional foundations of gender-legal expertise.

Institutional theory is currently a prospective direction in the research of the influence of institutions on the studied problems.

The origin of institutional theory occurred at the end of the XIX century in the USA with the appearance of scientific works of the founders of institutionalism T. Weber, W. Mitchell, J. Commons. As the theory develops, various approaches appear that reflect the preferences of their representatives [10].

The main ideas of neoinstitutional theory follow from two remarkable propositions contained in the articles by J. Meyer and B. Rowan "Institutionalized Organizations: Formal Structure as Myth and Ceremony" (1977) and DiMaggio and Powell "The Iron Cage Revised: Institutional Isomorphism and Collective Rationality in Organizational Fields " (1983). They identified the main fundamental principles of neoinstitutional theory. Firstly, organizations and institutions are a product of society (socially constructed). Secondly, organizations and institutions are constantly being reproduced (reenacted). This lies in the fact that the structure and rules are reproduced by people in the same way as roles are reproduced dramaturgically in the theater [10].

It should be noted that the emergence of an institutional approach is associated with the complication of the structure of society, the growth of ideas about social phenomena, about tangible and intangible objects, with the help of which relations between people develop [11].

It is no coincidence that the first scientific researches in this field took place in economics and sociology, where the application of an institutional approach was in demand for quite objective reasons [12].

The disunity of many aspects of life required their proper structuring, bringing them to a certain common denominator, which would make it possible to differentiate both the fields of knowledge and the methods used to obtain them. Criteria for the formation and development of social, economic, and political institutions were gradually developed [13].

So, one of the central concepts of the institutional approach to the study of ongoing socio-economic phenomena and processes in the life of society is the term "institute". In the scientific literature, scientists dealing with economics, sociology and political theory use various definitions of this term. According to D. North's widely accepted definition in economics, "institutions are restrictions developed by people that structure political, economic and social interactions. They consist of both informal restrictions (sanctions, taboos, customs, traditions, rules of conduct) and formal rules (constitutions, laws, property rights)" [14].

W. Scott suggests a different interpretation of this concept, according to which institutions "consist of cognitive, normative and regulatory structures and forms of activity that endow social behavior with stability and meaning." He identifies three types of

their carriers: culture, social structures and routines [15].

Considering various directions in the literature, A.Greif gives a broader alternative definition of the institute, covering the definition of D. North, as well as those definitions that are used in sociology and political science. The central place in its definition is occupied by the concept of institutional elements forming interrelated components of a common system. These include rules, beliefs, norms, and organizations that motivate, promote, and guide individuals. In his opinion, "institutions are a system of factors that are social, since they are man-made, immaterial and exogenous for each individual whose behavior they influence; they do one thing – they generate regularity of behavior" [16].

According to D. North, the institutional environment of any society consists of widely accepted principles and rules that facilitate and limit a wide range of individual and organizational activities in different spheres of life [17].

W. Scott believes that the institutional environment consists of three interrelated structures: regulatory, normative and cognitive. Together, they provide stability and meaningfulness of social life. The regulatory structure includes laws, norms, rules and public policy. The normative structure consists of social norms, values, beliefs, and society's attitude to certain activities. Cognitive structure refers to the knowledge and skills that people have to create and develop [15].

In the theory of economic policy, institutional measures involve the creation, maintenance and development of certain public institutions. At the same time, "institute" is understood as a verbal symbol for a better description of a group of social customs. The

presence of institutions means the existence in society of a prevailing and stable way of thinking or acting, which has become a habit for certain social groups or a custom for the people. Examples: "institute of law", "institute of property" [22].

Various variants of the spread of institutional forms are [18]:

- the structure of the executive bodies of state power, whose immediate task is the practical implementation of the goals of the government;
- formation and maintenance of objects of the public sector of the economy, that is, state property (\*in relation to this research, the gender policy sector is understood);
- development of national economic programs and economic forecasts (\*in relation to this research, the gender policy sector is understood);
- support of research centers on economics (having different forms of ownership), institutes of economic information, chambers of commerce and industry, various economic councils and unions, ensuring the functioning of institutes of advisers, consultants, expert councils on economic problems (\*in relation to this research, the gender policy sector is understood);
- legal, informational support of non-governmental structures: business and trade unions;
- participation in various forms of economic integration, organization of regular international meetings on economic issues.

In science, the terms (concepts) of systemic (institutional) transformations are also used [23], institutional forms of management and institutional mechanisms that can take a variety of institutional forms and provide for the creation of implementation units of one type or another (there are the most

common institutional forms of state implementation units – a government department, a project implementation unit, autonomous/decentralized unit within the government) [24].

Analyzing the essence of the institution, it is possible to conclude that the emergence of institutions is inseparably linked with the formation of human society. The basis for the emergence of institutions is the interaction between people, the accumulated experience of interactions over time forms the basis for further reproduction of the most convenient and effective ways of interaction. Based on this basis and the support of social groups, a certain way of behavior is formed in the minds of people with a certain interaction. Thus, informal institutions are emerging. Informal institutions are based mainly on morals, habits and ideas about proper behavior that develop in a particular society. With the advent of statehood, institutions begin to include formal and informal restrictions. Formal institutions are established in the form of rules of conduct fixed by law. This form of reproduction relies on the support of the state, since in most cases there is no genetic connection with the consciousness of people. In the theory of institutional change, there are two multidirectional approaches to the formation of institutional structures. The first approach assumes that development occurs spontaneously, without outside interference. At the same time, there is a possibility of losing control over the dynamics and vector of development of the institutional system. An alternative option is the progressive development of institutional structures. With this development option, it is possible to either grow or transplant institutions and even entire systems. These mechanisms for the development of institutional structures also depart from political and legal constructivism, as they are based on a painstaking analysis of the entire institutional system and the

selection of the most optimal combinations of institutions. The cultivation of institutions can take place in two ways – giving informal rules a more civilized form of a formal institution with the necessary adjustments, as well as the creation of previously non-existent institutional models [19].

So there is a different understanding of the institutional foundations in science, which, in our opinion, certainly implies consistency (complexity), as it includes various mechanisms related to the formation of legal foundations, the solution of organizational issues, structural transformations.

However, in almost all of the above studies by various authors, representatives of both legal science and economic, sociological theories, an organization, a certain structure responsible for a specific direction is meant as the main component of the institutional foundations.

Consequently, the subject of this study is the analysis of the institutional foundations of gender-legal expertise through the prism of the formation, reform and development of structures, organizations responsible for gender policy.

In this regard, H. Fraser notes that in recent years work to ensure gender equality and increase the role of women in the socio-political life of the country has been carried out in several directions [25]:

- improvement of legislative acts on women's rights;
- improving the institutional framework for the protection of women;
- raising public awareness of gender equality and women's rights;
- training of responsible persons on the basis of relevant legal norms to ensure their



implementation in the practice of the application of law.

According to the OECD Recommendation on Gender Equality in Public Life, reliable institutional systems of gender equality include [20]:

– central gender agencies with clearly defined powers; appropriate budget, resources and personnel with competencies in the field of political analysis, protection, communication and monitoring in order to exercise authority; including political interest and responsibility. Thus, these institutions will contribute to consistent national activities to respond to gender equality issues, provide advice and recommendations to the central Government and line ministries, monitor the development of the situation around gender equality and support the development and implementation of policies throughout the Government. In addition to the central institutions on gender issues, the best practices of the OECD member countries emphasize the crucial role of the central office of the Government, the Cabinet of Ministers and the Ministries of Finance, whose task is to ensure that line ministries and departments assess the impact of gender factors in the development of their policies, initiatives and budgets;

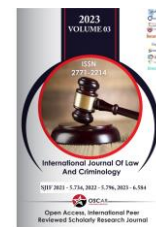
– branch ministries and departments that have sufficient capabilities and resources to develop and implement appropriate gender initiatives and analyze the gender implications of their core policies and initiatives. The appointment of gender focal points (i.e. permanent staff dealing with gender issues) at all levels of government, who will be responsible for the introduction of laws or regulations related to gender equality, data collection, the development of sectoral plans, the development of gender-oriented personnel policy and training of personnel on these issues will

contribute to the achievement of goals national gender equality;

– reliable coordination and implementation mechanisms in order to ensure policy coherence of all state bodies at all levels of government. These coordination mechanisms should also include interaction with non-governmental organizations and citizens. Mechanisms should also ensure coordination of data collection and issuing authorities, as well as provide for cooperation with relevant stakeholders to develop more effective indicators of gender impact;

– accountability and oversight in order to ensure compliance with gender equality policies, as well as to accurately identify shortcomings and correct remaining inequalities. In order to be effective, gender equality objectives should be linked to specific outcomes of public policy measures and contribute to the assessment of the implementation of government actions. This helps the Government to change the course of action if necessary, and independent or non-governmental stakeholders to hold the Government accountable. Independent monitoring mechanisms, such as the human rights and Gender Equality commissions, can ensure that complaints of gender discrimination are dealt with independently and monitor the implementation of gender equality obligations by the Government. Parliaments and parliamentary committees can assist in ensuring inspections of various government agencies, as well as contribute to the durability and sustainability of gender equality reform in times of changing political environment.

In more detail, we consider the formation and development of institutional foundations through the prism of improving the legal framework, which fully falls under the subject of gender-legal expertise.



The retrospective analysis shows the permanent improvement of the institutional foundations of gender equality. So, on February 23, 1991, the "Women's Committee of the Republic of Uzbekistan" was established. In 1995, a new position of Deputy Prime Minister of the Republic of Uzbekistan was introduced, responsible for overseeing issues related to the further enhancement of the role of women in society. It is determined that the Chairman of the Women's Committee of the Republic of Uzbekistan is at the same time appointed Deputy Prime Minister. In the Council of Ministers of the Republic of Karakalpakstan, khokimiyats of regions, cities, districts, positions were introduced respectively – Deputy Chairman of the Council of Ministers of the Republic of Karakalpakstan, deputy khokims for Women's Affairs [3]. Since July 1, 2004, the positions of a consultant on religious education and spiritual and moral education have been introduced into the structure of the apparatus of the kengashes of local gatherings.

With the enactment of the Action Strategy for the five Priority Areas of Development of the Republic of Uzbekistan in 2017-2021 [4], a new stage of institutional transformation has begun, including in the activities of structures responsible for the so-called women's issue.

In particular, with the approval of the Concept of Administrative Reform in the Republic of Uzbekistan [5], structural transformations have been carried out in the activities of almost all ministries and departments.

Thus, in February 2018, the Decree of the President of the Republic of Uzbekistan "On measures to radically improve activities in the field of support for women and strengthening the institution of the family" was adopted [6]. In accordance with this Decree, one of the

main activities of the Women's Committee of Uzbekistan is to ensure the effective implementation of state policy to support women, which also involves regulatory policy, including gender-legal expertise.

Since April 1, 2018, instead of the position of a consultant on religious education and spiritual and moral education of citizens' gatherings, the position of a specialist in working with women and strengthening spiritual and moral values in families has been introduced.

The Oila Scientific and Practical Research Center and its territorial divisions have been established under the Cabinet of Ministers of the Republic of Uzbekistan. One of the main tasks of the activity of this Center is the development of proposals for further improvement of the regulatory framework in this area.

It should also be noted singly the Decree of the President of the Republic of Uzbekistan dated March 7, 2019 №4235 "On measures to further strengthen guarantees of labor rights and support women's entrepreneurship", where we can observe the first practical result of gender-legal expertise. So, paragraph 1 of this resolution provides for the abolition from May 1, 2019 of the prohibitions on the use of women's labor in certain industries or professions, as well as the approval of a recommendation list of industries or professions that may adversely affect women's health [8].

Thereby, in the period from 2017, we can observe the gradual consolidation of certain elements of gender-legal expertise for certain institutions (structures) at the level of normative legal acts, which later in 2019 will be combined under a single concept of "Gender-legal expertise" and already at the legislative level are enshrined in the Law of the Republic of Uzbekistan "On

guarantees of equal rights and opportunities for women and men".

But, studying the work of the Women's Committee of Uzbekistan, it is impossible not to note the period of unification into the Ministry of Mahalla and Family Support of the Republic of Uzbekistan in accordance with the Decree of the President of the Republic of Uzbekistan dated February 18, 2020 №5938 "On measures to improve the socio-spiritual atmosphere in society, further support of the mahalla institute, as well as raising to a new the level of the system of work with families and women" [7].

One of the main tasks and directions of this Ministry was determined to ensure guarantees of equal rights and opportunities for women and men.

The Ministry has been designated as the authorized body of state administration for the development and implementation of a unified state policy in the field of family support, women and the elderly, protection of their rights and legitimate interests, as well as for establishing cooperation with citizens' self-government bodies.

At the same time, in the Concluding Observations on Uzbekistan's sixth periodic report to the Committee on the Elimination of Discrimination against Women (United Nations), it is noted that the merger of the Committee on Women's Affairs, mahalla management bodies and family centers into a new Ministry for Mahalla and Family Support may lead to a shift in focus from gender equality to traditional stereotypical roles of women in the family; fragmentation of the national mechanism reduces its ability to effectively implement the policy of gender equality and to take into account gender aspects in all government departments [21].

Recall that the Committee on the Elimination of Discrimination against Women is a body of independent experts monitoring the implementation by States parties of the Convention on the Elimination of All Forms of Discrimination against Women. Countries that have become parties to the treaty (States parties) are obliged to regularly submit reports to the Committee on the implementation of the relevant rights. During its sessions, the Committee reviews the reports of each State party and presents its views and recommendations to them in the form of concluding observations. The Committee develops general recommendations and proposals. General recommendations are addressed to States and relate to articles or topics of the Convention [26].

In this regard, the Decree of the President of the Republic of Uzbekistan dated March 1, 2022 №81 "On measures to improve the system of work with families and women, support for the mahalla and the older generation" established the State Committee of Family and Women, its divisions in the Republic of Karakalpakstan, regions, the city of Tashkent and districts (cities).

In accordance with this document, one of the main directions of state policy to strengthen the institution of the family and support women is the continuation of the policy of ensuring gender equality.

Ensuring guarantees of gender equality is one of the main tasks and activities of the State Committee for Family and Women.

From the point of view of the institutional foundations of gender-legal expertise, the following provisions of the above document are of interest for research:

– The Committee is the authorized body of state administration for the development and



implementation of a unified state policy in the field of family and women support, protection of their rights and legitimate interests;

– Draft normative legal acts on family and women issues are subject to approval by the Committee without fail.

From an institutional point of view, it is also important that the Law of the Republic of Uzbekistan "On Protection of Women from Harassment and Abuse" [2] separately designates the powers of the Cabinet of Ministers, local government authorities, internal affairs bodies, labor bodies, state education management bodies and educational institutions, state system management bodies health care and healthcare institutions, as well as the Women's Committee of Uzbekistan in the field of protecting women from harassment and violence. It provides for the participation of citizens' self-government bodies, non-governmental non-profit organizations and other civil society institutions in the protection of women from harassment and violence, the interaction of authorized bodies and organizations that protect women from harassment and violence.

The Law of the Republic of Uzbekistan "On Guarantees with Respect to Equal Rights and Opportunities for Women and Men" defines the powers of the Cabinet of Ministers in the field of ensuring equal rights and opportunities for women and men, the Commission on Gender Equality of the Republic of Uzbekistan of State bodies and the authorized person in the field of ensuring equal rights and opportunities for women and men in State bodies. In addition, it provides for the participation of citizens' self-government bodies, non-governmental non-profit organizations and other civil society institutions in the field of ensuring equal rights and opportunities for women and men [1].

Taking into account the provisions of the two laws, it can be stated that the institutional framework provides for both state structures and non-state, the so-called third sector. At the same time, the third sector, along with non-governmental non-profit organizations, citizens' self-government bodies and other civil society institutions should include mass media. The active involvement of the mass media can become an effective means of promoting the importance of the gender issue and making the measures taken more visible in the eyes of the public, which has a multiplier effect.

In this regard, the Concluding Observations on the sixth periodic report of Uzbekistan recommend strengthening the cooperation of the national mechanism with civil society organizations, in particular those dealing with women's rights, in order to ensure their meaningful participation in decision-making in all areas covered by the Convention [21].

It should be noted that the work of various commissions also refers to the institutional mechanism of gender equality. Thus, the Commission on Family and Women Issues previously functioned in the Legislative Chamber (it ceased its activities in accordance with the resolution of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan No. 2091-IV dated 28.04.2022), and the Committee on Women and Gender Equality was formed in the Senate.

In general, the following consistent measures are being implemented to strengthen national mechanisms for the advancement of women:

Firstly, a Commission on Gender Equality has been established under the leadership of the Chairman of the Senate of the Oliy Majlis;



Secondly, a Committee on Women and Gender Equality has been formed in the upper house of Parliament. The lower house of Parliament has a Commission on Family and Women's Issues;

Thirdly, the systematic work of the Parliamentary Commission for Monitoring the implementation of National Goals and Objectives in the field of Sustainable Development for the period up to 2030 has been organized, where the fifth goal is devoted to the tasks of achieving gender equality;

Fourthly, the Republican Public Council of Women has been established, one of the main tasks of which, along with comprehensive support for women and girls, is to coordinate issues related to the implementation of the provisions of the Convention and the implementation of the Beijing Platform for Action;

Fifthly, a special Republican working group has been created that studies and identifies women's life problems in all regions, organizes work to reduce poverty and improve the welfare of the population.

The above-mentioned results have been achieved thanks to the implementation of the Action Strategy for the five priority Areas of Development of the Republic of Uzbekistan in 2017-2021.

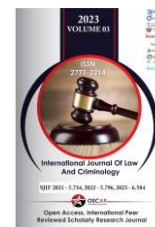
As a result of the reforms over the past five years, the country has created the political, legal, socio-economic, scientific and educational foundations necessary for building a New Uzbekistan.

Decree of the President of the Republic of Uzbekistan №60 of January 28, 2022 approved the Development Strategy of the New Uzbekistan for 2022-2026 [9], which provides for a set of tasks to protect the rights and interests of women and ensure gender equality in the country.

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