

SOME LEGAL ISSUES OF THE MANAGEMENT OF NON-GOVERNMENTAL ORGANIZATIONS

Bekzod Narimanov

Head of Department at Tashkent State University of Law

e-mail: b.narimanov@tsul.uz

<https://orcid.org/0000-0002-4703-3358>

Abstract

This article is analyzed on the basis of regulatory legal acts on certain legal issues related to the management of non-profit organizations. An analysis of the norms provided for by the legislation on the rights of non-governmental non-profit organizations to own, use and dispose of property was also carried out. At the same time, opinions and reflections were expressed on the role and tasks of the third sector in the current life of society and the state. At the same time, non-profit organizations expressed opinions on cases of non-governmental activities. In addition, the legislation of foreign states provides norms for non-governmental non-profit organizations on the rights to own, use and dispose of property. At the same time, the article presents problematic situations in several practices to solve the alleged problem.

Keywords: ownership of property, its use and disposal, financial transactions, minimizing the risk of abuse, property management.

Introduction

The reforms implemented in recent years clearly show the importance of the non-state sector in social development. Today, we are witnessing that the non-state sector is the most effective mechanism in providing communication between the citizen living in the most remote area and the head of the country.

It should be noted that in recent years, the social activity of non-governmental non-profit organizations and other institutions of civil society in the implementation of democratic changes in all spheres of society and state life is increasingly expanding. Today, more than ten thousand non-governmental non-profit organizations contribute to the realization of the noble idea of "Society is the initiator of reforms", protection of the rights and legal interests of individuals and legal entities, democratic values, and the implementation of social, cultural and educational reforms.

One of the most complex issues in the operation of non-governmental non-profit organizations is their interaction with state bodies. First of all, this is a process arising from the principle of independence of NGOs and non-interference of state bodies in their activities.

The activities of non-governmental non-profit organizations are regulated by the laws "On public associations in the Republic of Uzbekistan", "On public funds", "On non-governmental non-profit organizations", "On guarantees of the activities of non-governmental non-profit organizations".

Article 58 of the Tax Code of the Republic of Uzbekistan defines the concept of non-profit organizations from the point of view of tax legislation, according to which a legal entity registered in the form established for a non-profit organization in accordance with the following conditions is recognized as a non-profit organization for the purposes of this Code, if: if not; does not distribute income or property among its participants (members). [1] This norm focuses on the economic aspects of the activities of non-profit organizations.

However, the current Tax Code also uses the concept of "non-profit organizations", in its three articles, articles 48, 339, 378, non-governmental non-profit organizations are specified, while in all other more than thirty norms, the term non-profit organization is used. [2]

It is necessary to agree with the opinion of E. A. Zlobina that "the division of organizations into commercial and non-commercial types is carried out in the interest of civil transactions, that is, it refers to property relations and non-property relations dependent on them, based on the equality of subjects, autonomy of will and property independence." [3]

The requirements for the founding documents of the NGO are of decisive importance in regulating the activities of non-governmental non-commercial organizations. It is expedient to distinguish two directions of regulation by the founding documents of the NGO.

1. Issues related to the management and control bodies of these organizations, the scope of their authority, the order of their formation, and the terms of their authority.
2. Funds and other sources of property formation, issues related to the procedure for the disposal of property of a non-governmental non-commercial organization and its constituent units.

To a large extent, the prevention of crimes that occur in the activities of non-governmental non-profit organizations, in particular, the crime of money laundering through illegal financial transactions in their activities, depends on the extent to which these two directions are reflected in the founding documents of non-governmental non-profit organizations. [4]

Improving the requirements for the NGO's founding documents is important in combating their illegal financial operations. Studies show that there are some legal loopholes for NGO activities to be monitored by governing bodies and audit commissions.

In particular, it is not mentioned in the legal documents that the procedure for holding the meeting of collegial management bodies of non-governmental non-profit organizations and making decisions is not specified, and that the requirements for this should be reflected in their founding documents.

For example, 20 people were elected to the collective leadership bodies of the NGO. However, there is no requirement to hold their meeting and make decisions in the legal documents and founding documents, and the practice of holding meetings and making relevant decisions with 3 members of these collegial governing bodies is observed. Although this decision clearly disregards the opinion of other members of the collegial governing body, according to the legal documents and founding documents, this situation cannot be legally challenged.

Also, one of the negative aspects of these situations is that some of the members of the collegial governing body of the NGO make a different decision, and another part makes a different decision contrary to it. As a result, there is lack of control, chaos in the activity of the NGO, sometimes there are more than one directors with equal authority in one NGO. As a

result, there are negative obstacles to the realization of the goals and tasks of the non-governmental non-profit organization.

In addition, the fact that the norms of legislation on the audit commission of the NGO have not been improved leads to the fact that the audit commission does not carry out its activities. In practice, before the meeting of the higher (supreme) collegial body of the NGO, the report of the meeting is formalized once every 3, 4 or 5 years, according to the founding documents. The analyzes showed that there are no cases of criminal, administrative or even disciplinary measures being taken against the leading bodies based on the audit commission's conclusion. There are no norms on how the audit commission conducts an audit, in which direction it conducts an audit. Based on this, it is appropriate to improve the norms of legal documents on self-control of the activities of non-governmental non-profit organizations.

Firstly, the decisions of collegial governing bodies are formalized in the form of minutes of their meeting. The minutes of the meeting are signed by the chairman and secretary of the meeting, as well as by the members of the enumeration commission when ten or more people participate in the meeting.

Based on the conditions of the pandemic, it is recommended to hold the meetings in the form of a video conference. In this case, it is advisable to confirm the documents of the meeting with an electronic signature by the participants.

Secondly, it is appropriate to specify in legal documents that the inspection of the financial activities of NGOs and the proper spending of funds and the purposeful use of their assets by the audit commission of non-governmental non-profit organizations is carried out annually or during other periods according to the charter.

Officials of the NGO are obliged to submit documents on the organization's financial activities to the audit commission of the organization at its request. In the conclusion of the audit commission, the information on the reliability of the information in the reports and other financial documents, the violation of the procedure of accounting and financial reporting, as well as the suggestions and recommendations regarding the identified deficiencies must be included in a mandatory manner.

Consistent efforts are being made to prevent the use of non-governmental non-profit organizations in financing terrorism and to increase the knowledge and skills of their representatives in this field. Based on the recommendations and analytical data of the **Financial Action Task Force (FATF)**, the heads of non-governmental non-profit organizations are given suggestions and recommendations to take certain measures to minimize the risk of their abuse to finance terrorist activities.

In particular, the risks in this sector were assessed in the direction of combating the financing of terrorism. The Ministry of Justice has developed special recommendations for non-governmental non-profit organizations regarding the risks identified in the results of the assessment, and its contents are being conveyed through seminars in cooperation with the Department of Combating Economic Crimes.

In our opinion, our national legal documents have not improved the norms regarding the disposal of property of non-governmental non-commercial organizations.

In particular, according to Article 17 of the Law of the Republic of Uzbekistan "On Non-Governmental Non-Profit Organizations", Article 10 of the Law "On Public Associations in

the Republic of Uzbekistan" and Article 12 of the Law "On Public Funds" it is noted that the rights of the subdivisions in terms of property management are provided for.

According to Article 164 of the Civil Code of the Republic of Uzbekistan, the right to property is the right of a person to own, use and dispose of his own property at his own will and for his own interests, as well as the right to demand the elimination of any violation of his property right by whoever consists of

In the cited national legal documents, it is not mentioned that the charter of a non-governmental non-profit organization should provide for the authority of the governing bodies that exercise the rights to own, use and dispose of its property.

Property management rights provided for in Article 17 of the Law of the Republic of Uzbekistan "On Non-Governmental Non-Commercial Organizations" include ownership and use of property and does not fully cover the rights to dispose of it.

As a result, in some cases, the charter of a non-governmental non-profit organization does not fully provide for the rights to own, use, and dispose of property, or these rights are included in the authority of its sole executive body.

This is due to the fact that there are gaps in the ownership, use and disposal of property, as well as the loss of transparency in the management of non-governmental non-profit organizations, and as a result of the independent decision of the fate of the collective property of the executive body based on sole leadership, it leads to the legalization of proceeds from criminal activities through illegal financial transactions in the activities of non-governmental non-profit organizations. reducing the effect of combating.

At the same time, the laws "On protection of joint-stock companies and shareholders' rights", "On limited liability and additional liability companies" and laws regulating the activities of other commercial organizations clearly state the powers of the governing bodies to dispose of their funds and other property. However, due to the lack of a mandatory norm on the necessity of clearly defining the powers of their governing bodies regarding the disposal of funds and other property in the NGO charter, there are cases where the powers of their governing bodies regarding the disposal of funds and other property are not specified in the NGO charter. This is the reason for the use of various practices on the disposal of the property of the NGO in the future, and sometimes its property will be used without purpose, and as a result of this, the legalization of the proceeds from criminal activities and other crimes will occur.

In addition, the "German Civil Code According to Articles 21-89, the name, formation procedure and powers of the governing bodies of the Associations are defined directly in this Code" [5].

In particular, the Board, which is the top collegial governing body of the non-governmental non-profit organization named "A", makes a decision on the disposal of its funds of 1,000,000,000 soums, and the decision includes the estimate of the non-governmental non-profit organization "A" on the disposal of funds of 1,000,000,000 soums. a decision is made to confirm the expenses.

However, the Estimate consists of sections with two or three paragraphs of general directions, so that the head of the non-governmental non-profit organization "A" will be able to use the funds in these directions for any expenses.

This causes the property of the non-governmental non-profit organization "A" to be spent without purpose, and as a result, the legalization of proceeds from criminal activities and other crimes occur.

Accordingly, in the constituent documents of the non-governmental non-profit organization, the governing body with the authority to make decisions on the disposal of its property and funds should be noted.

It is appropriate to consider this issue with the help of a case. 20 people were elected to the collegial leadership bodies of "A" public association. A meeting was held with 3 members of the said collegial governing bodies and a relevant decision was made. Hearing this, the members of the public association objected. The person who held the meeting of the collegial body emphasized that the requirements for holding their meeting and making decisions are not specified in the legal documents and founding documents.

Such ambiguities lead to the election of two or more executive directors within a particular public association, each acting under its own seal and official letterhead, resulting in major conflicts[6].

Also, in the founding documents of the non-governmental non-profit organization, the decision on the disposal of property and funds should reflect the requirement to clearly indicate the directions and type of expenses for the disposal of property and funds, as well as the norms on the obligation to establish supervisory bodies to monitor its implementation.

Accordingly, the following is related to the improvement of the constituent documents of the non-governmental non-profit organization:

According to Articles 17 and 28 of the Law of the Republic of Uzbekistan "On Non-Governmental Non-Commercial Organizations", in the charter of a non-governmental non-profit organization, the powers of the governing bodies exercising the rights to own, use and dispose of property of the non-governmental non-commercial organization and its constituent units, as well as the division of control and inspection bodies, as well as the existence of rules providing for the formation of leading bodies and improvement of the decision-making procedure;

In accordance with the Law of the Republic of Uzbekistan "On combating the legalization of proceeds from criminal activities, the financing of terrorism and the financing of the distribution of weapons of mass destruction", the control and inspection activities carried out by the supervisory authorities in accordance with the founding documents of the non-governmental non-profit organization are measures aimed at combating the legalization of proceeds from criminal activities. It is proposed to make changes and additions according to the calculation.

Adoption of this proposal will lead to the further improvement of the founding documents of non-governmental non-profit organizations and the strengthening of the legal framework regulating relations on the disposal of property of non-governmental non-profit organizations, as well as the prevention of crimes related to the misuse of property, in particular, crimes of money laundering.

Articles 17 and 28 of the Law of the Republic of Uzbekistan "On Non-Governmental Non-Commercial Organizations" are proposed to be stated in the following version:

Article 17. Charter of non-governmental non-profit organization

The charter of a non-governmental non-profit organization stipulates the following:

- the name, goals and tasks of the non-governmental non-profit organization, its organizational and legal form, the territory where it carries out its activities;
- the structure of the non-governmental non-profit organization and management and control bodies;
- the scope of authority of the management and control bodies and the procedure for their formation, their terms of office, the land where the management body is located on a permanent basis;
- procedure for holding meetings of leading bodies and formalizing their decisions;
- for associations with defined membership - conditions and procedures for membership and loss of membership, rights and obligations of members;
- sources of formation of funds and other assets of the non-governmental non-profit organization and its divisions, powers of their management bodies to dispose of the funds and other assets of the non-governmental non-profit organization and its constituent divisions;
- reorganization and liquidation procedure;
- the procedure for making amendments and additions to the charter.

Article 28. Property of non-governmental non-profit organization

...

(parts four and five)

The authority to make decisions on the disposal of funds and other assets of a non-governmental non-profit organization with collegial management bodies and its constituent units cannot be assigned to the sole head of the non-governmental non-profit organization in its founding documents.

In the founding documents of a non-governmental non-profit organization, the decision on the disposal of property and funds should clearly indicate the directions and type of expenses for the disposal of property and funds, as well as the responsibility of the members of the governing bodies for these cases.

the court that made a decision to liquidate a non-governmental non-profit organization and its units often appoints employees of state bodies as liquidators in practice. However, it is not the responsibility of any state body to liquidate a legal entity.

In addition, due to the fact that the liquidation process is complicated and often depends on the founders and managers of legal entities (lack of seals and stamps, lack of information about assets, debtors and creditors, lack of sources of payment of existing debts, etc.) increases the volume of work.

Also, imposing such obligations on the founders of non-governmental non-profit organizations or members of the governing body increases their responsibility in establishing a non-governmental non-profit organization.

Therefore, the following additions to the legislation are proposed.

"The court that has made a decision to liquidate a non-governmental non-profit organization, as a rule, appoints the founders or members of the management body or the head of this non-

governmental non-profit organization (except for political parties and trade unions) as liquidators.

When the divisions of a non-governmental non-profit organization registered by the regional justice bodies are liquidated by court order, the head of its division or the head of the main organization or other employees of the main organization are appointed as the liquidators.

From the above, the following proposals and recommendations can be made for the development of civil society institutions in Uzbekistan:

1. It is necessary to provide benefits and preferences when dividing civil society institutions into groups.
2. It is necessary to strengthen the material and technical base of civil society institutions.
3. It is advisable to ensure the openness of the activities of civil society institutions.
4. The establishment of intelligence centers is required for the scientific-theoretical study of civil society.
5. It is necessary to further support the activities of volunteering.
6. It is advisable to set the "day of employees of non-profit organizations".
7. It is advisable to develop and approve the code of ethics of non-profit organizations.

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