

# The Role of Non-Profit Organizations in The Development of Society

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**Abstract:** The role of non-profit organizations in the context of reforms in our country is important today. The main focus of this goal is to improve the activities of NGOs from a legal point of view, as well as providing ideas, suggestions and recommendations for filling legal gaps in the current Civil Code of the Republic of Uzbekistan and a number of other relevant legislative acts.

**Keywords:** legal entity, press cooperative, public associations, public funds, municipal institutions, private institutions, associations of legal entities, self-government bodies of citizens, non-profit organization.

**Introduction:** The adoption of the Action Strategy gave a powerful impetus to the development of all spheres of the country's socio-political and socio-economic life. In essence, the Strategy became a five-year 'road map' encouraging the accelerated, targeted and priority development of our country and society.

The laws of the Republic of Uzbekistan 'On Public Associations in the Republic of Uzbekistan', 'On Non Governmental Non Profit Organizations', 'On Political Parties', 'On Public Funds', 'On Guarantees of the Activity of Non Governmental Non Profit Organizations', as well as a number of presidential decrees, resolutions and Government decisions have been adopted. In total, more than 200 legal acts aimed at reinforcing the legal status, role and significance of civil society institutions have been adopted, and their number continues to increase year by year.

Within the framework of the Action Strategy, special attention was paid to the further development of the 'third sector' and the provision of comprehensive support. During the past period a series of measures were taken to enhance the activities of civil society institutions. In order to ensure the effective implementation of the tasks set in the Action Strategy, state authorities supported proposals by public

organizations to establish and revise a number of new non governmental non profit organizations. Among them are the Independent Institute for Monitoring the Formation of Civil Society (IIMFCS), the 'Mahalla' and 'Nuroni' foundations, the Chamber of Commerce and Industry of Uzbekistan, the Youth Movement of Uzbekistan, the Council of Farmers, Dehkan Farms and Household Land Owners of Uzbekistan, the 'Development Strategy' Center, the 'Noble Purpose' Foundation, and the Culture and Art Development Foundation under the Ministry of Culture.

International non profit organizations are also active today. For instance, the international NGO 'Buyuk kelajak' has been registered with the Ministry of Justice. An expert council has reportedly been formed within the organization with the participation of Uzbek professionals working abroad who are leading specialists in their fields.

The 'Buyuk kelajak' international NGO has set itself the goal of presenting new proposals on the reforms being carried out in Uzbekistan. It works in close cooperation with the 'Development Strategy' Center within the framework of the Action Strategy adopted up to 2021. By actively involving members of the expert council made up of specialists in various fields, joint proposals

are submitted for the State Programmes to be drawn up in the coming years. The organization's main objective is to develop long term proposals and strategies that will serve the accelerated development of Uzbekistan.

It should also be noted that the National Association of Electronic Mass Media of Uzbekistan—which unites the efforts of 575 NGOs—has itself given a significant impetus to expanding the circle of NGOs enlisted in the State Programme.

The transition of the national economy to a market economy has created the conditions for profound changes in all spheres of social life. At the same time it necessitated a new approach to the legal forms for effective use of non profit organizations—legal entities that fulfil predominantly non commercial objectives while actively participating in property relations. The broad involvement of non profit organizations in civil turnover requires a reassessment of their legal status and of the property basis of their activities.

It should be emphasized that non profit organizations and their specific organizational legal forms are among the most widespread types of legal entities and play an important role in ensuring the interests of the state and society. As the First President of the Republic of Uzbekistan, I. A. Karimov, rightly remarked, the institutions of civil society and NGOs are becoming an essential factor in protecting democratic values, human rights and freedoms and legitimate interests, creating conditions for citizens to realize their potential, increasing their socio economic activity and legal culture, and assisting in ensuring a balance of interests in society.

Indeed, non profit organizations may be state owned or established as non governmental entities. Consequently, it is important to clarify the general principles that combine their dual nature as legal entities—including their legal status as state or non state bodies, ownership of property and participation in civil turnover.

Moreover, the diversity of non profit organizations as legal entities and the fact that their participation in civil law relations is regulated by various legal acts make this issue particularly pressing.

The rules concerning the ownership of property by non profit organizations are contained in the Civil Code. However, the Code contains only a few provisions on the legal capacity of non profit organizations and on their property, mainly concerning state owned non profit organizations, in particular institutions. Therefore it seems advisable to expand the CC with general provisions common to all non profit organizations and their separate types.

In many cases non profit organizations—such as institutions established by an owner for managerial, socio cultural or other non commercial purposes—occupy an important place in state and public life. Although institutions do not aim to make a profit, they may engage in entrepreneurial activity and thus earn income. It is therefore important to improve the rules governing such activity.

The current legislation does not lay down specific rules as to the form of property on the basis of which institutions may be established. This creates difficulties in recognizing as an institution and determining the legal status of an entity established and financed by an owner to fulfil certain socio cultural tasks. Hence, the legislation should stipulate that institutions may be established by both state and private persons.

The Civil Code defines institutions as organizations established by an owner and fully or partly financed by that owner; however, it does not specify the minimum amount of such financing or the terms for providing it.

At present the property liability of institutions is regulated in different ways. Law enforcement and court practice confronts cases in which creditors seek to levy execution specifically on an institution's funds, while execution may not be levied on its other property.

In this connection, Plenum Resolution No. 21 of the Supreme Arbitration Court of the Russian Federation of 22 June 2006 and Information Letter No. 45 of 14 July 1999 provide explanations on levying execution on an institution's property as set out in the RF Civil Code.

The limits of liability for budgetary institutions are determined by various categories of property, and a distinctive feature is the levying of execution on funds. Unlike the civil law liability of private and budgetary institutions, the subsidiary liability of budget institutions is not envisaged. Nevertheless, both share the feature of execution being levied on funds. The absence of subsidiary liability leads to legal uncertainty when the debtor's property is lacking or insufficient to satisfy creditors' claims. Some scholars suggest changing the organizational legal form of the institution as a solution, while others consider this approach debatable.

The existing provisions on the independent property liability of a state institution do not adequately protect creditors' interests. In some instances the establishment of 'profitable institutions' seems to be a fiction, since the social orientation of their activities eliminates the prospect of earning profit.

All of an institution's funds are spent on maintaining its property. Moreover, the RF Civil Code prohibits

execution against property of special value. Therefore, there may be no funds left to satisfy creditors' claims, and the residual property—including that of special value—is unlikely to be attractive to creditors.

Article 28 of the Law of the Republic of Uzbekistan 'On Non Governmental Non Profit Organizations' provides that a non governmental NGO is liable for its obligations with its property to which execution may be levied under the law. However, it remains unclear what property of an NGO falls under this category. By contrast, the Russian Laws 'On Non Profit Organizations' and 'On Autonomous Institutions' stipulate that such property types are determined by the relevant public authority. The list of such property is established by the competent authority performing the functions and powers of the founder. In addition, the Procedure for Recognizing Property of an Autonomous or Budget Institution as Having Special Value, approved by Government Resolution No. 538 of 26 July 2010, sets the following criteria:

- 1) for federal autonomous and budget institutions—from 200,000 to 500,000 roubles; for the entities of the Russian Federation— from 50,000 to 500,000 roubles; for municipal institutions—from 50,000 to 200,000 roubles;
- 2) other property, if its removal would make it impossible for the institution to achieve the statutory objectives laid down in its charter;
- 3) property whose alienation requires a special procedure under the law, including museum collections and objects, items of the museum fund, archival documents, etc.

According to Article 3 of the Law of the Republic of Uzbekistan 'On Museums', a museum is a permanent non profit cultural institution established by an owner for the preservation, study and public display of museum items and collections. Thus, the legislator includes a museum among the non profit organizations in the form of an institution.

Paragraph 19 of the Regulations on the Procedure for Establishing, Reorganizing and Liquidating Museums, approved by Resolution No. 68 of the Cabinet of Ministers of the Republic of Uzbekistan of 12 April 2010, states that a museum's material and technical base consists of the buildings, communications, equipment, and other property used to enrich the museum fund with items and collections, to store, identify, collect and exhibit them, and to carry out cultural, educational, scientific and educational activities and other tasks in this field.

In our view, setting such criteria is inappropriate, because they effectively make it impossible to levy

execution on the property of an institution. Any institution may naturally hold funds amounting to at least 50,000 roubles. Moreover, certain institutions possess property the alienation of which would prevent them from fulfilling their functional tasks—for example, vehicles, special equipment, machinery, intellectual property objects, etc.

Part 3 of Article 40 of the Civil Code of the Republic of Uzbekistan provides that a non commercial legal entity may be established as a public association, a social fund or an institution financed by its owner; yet paragraph 3 concerning non commercial organizations later describes them as press cooperatives (Art. 73), public associations (Art. 74) and public funds (Art. 75). Although the amendments of 30 April 2004 properly set out separate articles, the third part of Article 40 remained in its old wording, i.e. referring to a social fund. This deficiency has remained unaddressed and should now be remedied.

Furthermore, the Civil Code contains no specific provisions concerning the types of non profit organizations and the organizational legal forms in which they may be established.

Consequently, before listing non profit organizations and their types in the CC, it would be appropriate to establish general provisions regarding non profit organizations. Such an approach is employed in the legislation of several foreign countries. For example, a separate paragraph—Articles 1231 to 12316—of the RF Civil Code is devoted entirely to non profit organizations.

The provisions of the Civil Code dealing with institutions are very abstract; they do not determine the forms of property under which institutions may be established. Nor do they establish rules regarding their status where they are established simultaneously as state or private property.

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