



## **HOW TO LIQUIDATE AND SUSPEND THE ACTIVITIES OF NGOS: THE EXPERIENCE OF UZBEKISTAN**

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<b>Received:</b> May 20 <sup>th</sup> 2022 <b>Accepted:</b> June 20 <sup>th</sup> 2022 <b>Published:</b> July 28 <sup>th</sup> 2022	: This article examines the issue of termination of the activities of NGOs and suspension of their activities in Uzbekistan in scientific, theoretical and practical terms. During the liquidation of NGOs, aspects that differ from other legal entities were studied. Practical problems in the liquidation of NGOs were analyzed and suggestions for their solution were made. Especially the problems of judicial termination of NGO activities are of a real practical nature.

**Keywords:** Non-governmental organization, fund, liquidation commission, registration body, balance sheet, voluntary liquidation, compulsory liquidation.

### **INTRODUCTION**

Today in Uzbekistan, non-governmental non-profit organizations are important in building a rule of law state, ensuring the rule of law in society, as well as increasing the socio-political and socio-economic potential of the country.

In addition to creating a non-profit organization, it is important to study the legal basis for suspending its activities and terminating it. Because with the so-called freedom of NGO activity, it is possible not only to limit state interference in its activities, but also to understand the liberalization of the process of its termination. In this regard, a number of practical problems indicate the relevance of studying this topic.

### **MATERIALS AND METHODS**

The termination of the activities of NGOs and the suspension of their activities are considered the subject of scientific research within the disciplines of Constitutional Law, administrative law and the law of non-profit organizations.

Methods such as complex study of historical, system-structural, comparative-legal, logical, scientific sources, survey, induction, deduction and analysis of statistical data were used in the research.

### **RESEARCH RESULTS**

First of all, we will focus on the research conducted in this field, and on the experience of CIS countries.

According to L.I. Potyagaeva, the classification of liquidation basis of NGOs in the literature is a distinction between voluntary and compulsory methods

of liquidation of a legal entity. However, this classification in practice does not help to reveal the legal nature of liquidation basis, nor does it help to understand the essence of liquidation itself [1].

The research conducted by A.M. Kornishina and Yu.A. Kim analyzes the internal mechanisms of liquidation of NGOs, the formation of the liquidation commission, its activities, preparation of the interim liquidation financial report, settlements with employees and creditors, as well as the main shortcomings and mistakes of NGOs in this sphere[2].

The preparation of its accounting report on liquidation of non-governmental organizations and the peculiarities of its financial liquidation was studied by T.I. Malekhina[3], the liquidation of state-owned non-governmental organizations by O.E. Kalinina[4], the issues of civil law regulation of liquidation of legal entities by A.A. Melnikov[5], and administrative legal aspects of liquidation of legal entities by I.I. Spector[6].

Analyzing the specifics of the liquidation of non-governmental organizations in Azerbaijan, A. Guilyev noted that the charter of non-governmental organizations in Azerbaijan should not specify the procedure for its liquidation and the procedure for disposing of its property in the event of liquidation[7].

According to B.S. Khadivinat, the policy of liquidation and reorganization of unions of legal entities, which the International Monetary Fund pursues with the aim of rationalizing production, leads to an increase in the number of unemployed[8].

In our opinion, when forming unions (associations) of legal entities, it is important to rely not only on the opinion of international organizations,



but also on the non-governmental sector and public discussions. In particular, mandatory membership in associations of legal entities initiated by the state undermines healthy market competition mechanisms and hinders the effective functioning of the "third sector".

The principle of freedom of association established in accordance with Article 9 of the German Constitution from foreign states also guarantees the right to voluntarily distribute them[9]. Accordingly, the German Civil Code establishes that the distribution of unions can be carried out by decision of 4/3 of the members of their general meeting. The granting of the authority to the Charter of the Union to decide on its liquidation to another body other than the general meeting is considered one of the controversial issues[10].

Three grounds for liquidation of non-governmental organizations are provided in the German Constitution. First, it is prohibited if the purpose or activity of a non-governmental organization is contrary to criminal law. Secondly, the activities of a non-governmental organization are prohibited if they are contrary to the constitutional system, which is described in German law as a "free democratic social system".

When it comes to the constitutional system, such concepts mean, first of all, the observance of human rights enshrined in the Constitution, as well as democratic principles, including the principle of state responsibility, the principle of multi-party system and the formation and functioning of opposition organizations. Thirdly, the activity of a non-governmental organization is prohibited if the purpose or activity of the non-governmental organization is aimed at inciting hatred between peoples.

The decision of the competent authority to liquidate a non-governmental organization is an administrative document, and in accordance with the German law on administrative procedures, this decision must comply with the principle of proportionality. The right to apply to an administrative court for invalidation of an administrative document must also be guaranteed[11].

It should be noted that over the past decade in Germany, a number of major studies (B.Adam[12], Schultz C., Hoffmann S., Ferdinand M. [13], Freund S. [14], Schön A. [15], Fischer B. [16], Haas U., Neumayer L. [17], Marx R. [18], İlgün-Birhimeoğlu E. [19]) have been conducted on the activities of NGOs, focusing on improving the German administrative procedures for registering NGOs, and the widespread introduction of ICT in trust management organizations

and volunteer organizations and organization of their activities, legal regulation of social partnership between NGOs and the state. We believe that this study will provide an insight into the trends observed in the field of NGOs in Germany today.

Six non-governmental organizations stated on its voluntary liquidation in connection with introduction Institute of "Foreign agent" in the Russian Federation, which creates grounds for the prosecution of leaders of non-governmental organizations[20]. It should be noted that in recent years, many studies (Romanovskaya O. [21], Klimovskikh N.V., Tarek N, Pervyakova R.N. [23], Dmitriev A. [24]) have been conducted in this country on the pros and cons of this new institution, and changes in this legislation have led to increased state control in this area, which has led to the liquidation of many NGOs.

Although the United States initially refused to liquidate non-governmental organizations, the procedure for liquidating legal entities and their associations was strengthened in the mid-twentieth century in accordance with amendments to the corporations act after scientific discussion[25].

In the United States, the liquidation of a non-governmental organization is carried out in court on the recommendation of the attorney General. Law of United States establishes a number of grounds for the liquidation of foreign non-governmental organizations. This includes:

- non-governmental organization created by providing false information;
- legal proceedings by deception or violation of the law;
- carrying out activities outside the Charter of a non-governmental organization;
- attempting to violate the constitutional system[26].

The legal basis for the liquidation of non-governmental organizations in the Republic of Uzbekistan is regulated by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated January 15, 2015 No. 5 "On the approval of the relevant articles of the laws", "on public associations in the Republic of Uzbekistan", "On non-governmental organizations" and "On State Funds", as well as The Law of the Republic of Uzbekistan "On public associations in the Republic of Uzbekistan".

Now we will try to develop proposals aimed at improving national legislation by directly analyzing the problems and practical problems associated with the liquidation of the activities of NGOs in this legislation.

According to Article 62 of the Constitution of the Republic of Uzbekistan, the liquidation of public



associations, the prohibition or restriction of their activities can be carried out only on the basis of a court decision.

In the legislation, especially in the Law "On Non-governmental organizations" of the Republic of Uzbekistan, it is also mentioned about the suspension of the activities of NGOs before the procedure for liquidation of NGOs[27].

Article 34 of the Law of the Republic of Uzbekistan "On non-governmental organizations" stipulates that the activities of non-governmental organizations may be suspended by the court in case of violation of the Constitution and laws of the Republic of Uzbekistan[28].

The consequences of the suspension of a non-governmental organization are not fully explained in the legislation. The consequences of the suspension of a non-governmental organization, reflected in Article 35 of the Law of the Republic of Uzbekistan "On non-governmental organizations", are abstract and sometimes one claim denies the other.

For example, although the above article of the law prohibits the use of Bank deposits by a suspended non-governmental organization, it states that it excludes expenses for commercial activities, employment contracts, compensation for damage caused by their actions (inaction), and the payment of fines.

This makes it possible in practice to conduct almost all financial activities through a non-governmental organization. In addition, although the requirements of this article prohibit a non-governmental organization from holding mass events, other events are not prohibited. This also means that the liquidation of a non-governmental organization has little effect on the non-governmental organization's performance in practice or on the need to improve certain elements.

In this regard, it is proposed to make the following changes to the legislation related to the liquidation of the activities of a non-governmental organization.

*"From the date of entry into force of the court decision on the suspension of the NGOs, their activities, rights as a founder and editor of the media, the goals and objectives of the charter and the implementation of advocacy, organization of events, entrepreneurship, property and the use of funds in bank accounts will be suspended for the period specified in this resolution.*

*During the suspension of activities of a non-governmental organization, as an exception, the organization retains the average salary of employees*

*(in accordance with labor legislation, local and internal documents), payments related to property protection, and compensation for damage caused by their actions. Refunds, taxes, and other mandatory payments may be incurred."*

According to the Article 36 of the Law of the Republic of Uzbekistan "On non-governmental nonprofit organizations" elimination of non-commercial organizations is carried out by decision of its Supreme body or in court[29].

Founders, participants of a non-governmental organization or body that has made a decision to liquidate a non-governmental organization, appoint a liquidation Commission in coordination with the judicial body of state registration.

Resolution No. 5 of the Cabinet of Ministers of the Republic of Uzbekistan dated January 15, 2015 approved the Regulation on the procedure for the liquidation of non-governmental organizations. The legislation does not specify which court has jurisdiction over the liquidation of a non-governmental organization.

Accordingly, when liquidating the non-governmental organization in court, these tasks are proposed to be carried out by the Supreme Court of the Republic of Uzbekistan, the non-governmental organization registered with the Ministry of Justice of the Republic of Uzbekistan, and the non-governmental organization registered with the territorial administration bodies of the Ministry of Justice of the Republic of Uzbekistan.

At the same time, the court, having made a decision to liquidate the activities of a non-governmental organization and its subdivisions, in practice often appoints employees of state bodies as liquidators. However, it is not the task of any state body to liquidate a legal entity.

In addition, the liquidation process is complicated and often arises due to the dependence of legal entities on founders and managers (lack of seals and stamps on them, lack of information about their property, debtors and creditors, lack of sources of repayment of existing debts, etc.) the scope of work to work with employees of government agencies.

In addition, placing such an obligation on the founders or members of the governing body of non-governmental organizations increases their responsibility when creating a non-governmental organization.

Therefore, it is proposed to make the following amendments to the legislation.

*"As a rule, the court that decides to liquidate a non-governmental organization appoints the founders*



*or members of the governing body or the head of a non-governmental organization (other than political parties and trade unions) as liquidators.*

*When liquidating the divisions of a non-governmental organization registered in the territorial judicial bodies, the head of its division or the head of the main organization or other employees of the main organization are appointed as a liquidator."*

It should be noted that the current legislation on the preparation of financial statements and accounting documents related to the liquidation of a non-governmental organization and its divisions also has a number of difficulties and misunderstandings.

In particular, in accordance with paragraphs 17-18 of the Regulation on the procedure for liquidation of public organizations, approved by the Cabinet of Ministers on January 15, 2015 No. 5, the results of inspections conducted by the bodies of the state tax service after the expiration of the deadline for filing claims by creditors, taking into account the register of executive documents, the liquidation Commission drafts an interim liquidation balance sheet.

The balance sheet of the interim liquidation is approved by the supreme body of the non-governmental organization. Within five working days after the approval of the balance sheet of the interim liquidation, the liquidation commission notifies any creditor in writing of the recognition or rejection of its claims, the amount of the recognized claims, within five working days after the approval of the balance sheet of the interim liquidation, receiving confirmation (stamp of the acceptance date, postal receipt, written or email, etc.).

In addition, in accordance with paragraphs 25-26 of this Regulation, after full satisfaction of creditors' claims, the remaining liquidation is executed after the alienation of the remaining property in accordance with the established procedure. The liquidation balance sheet is approved by the highest body of a non-governmental organization and submitted to the state tax service.

In practice, in case of voluntary liquidation of non-governmental organizations are practically no cases when the liquidation Commission makes intermediate liquidating balance and approved by the highest body of a non-governmental organization.

This is due to the fact that voluntary liquidation of a non-governmental organization occurs when it is practically not necessary. In this process, there is practically no higher NGOs' body. In addition, the legislation does not have a standard form of liquidation balance through special.

The order (registration number 1226, March 20, 2003) of the Minister of Finance of the Republic of Uzbekistan "On approval of the National Accounting Standard (No. 15) "Balance Sheet" of the Republic of Uzbekistan" dated March 12, 003 No 45 approved the National Accounting Standard (No. 15) "Balance Sheet" of the Republic of Uzbekistan.

Also, the form of the balance sheet was approved by the order of the Minister of Finance of the Republic of Uzbekistan dated December 27, 2002 No. 140 (registration number 1209, January 24, 2003).

According to paragraph 4 of this order, financial reporting forms and rules for their completion shall enter into force 10 days after the date of state registration in the Ministry of Justice of the Republic of Uzbekistan for all enterprises, audit organizations and exchanges with foreign investment, effective for other business entities from January 1, 2004, excluding insurance companies and banks. According to the legislation, non-governmental organizations are not included in the structure of business entities.

This form can be used because there is no other form for an interim liquidation balance sheet when a non-governmental organization is liquidated. However, this form of balance sheet mainly reflects the monetary amount of assets and liabilities of the business entity.

Furthermore, the balance sheet form approved by order No. 140 of the Minister of Finance of the Republic of Uzbekistan dated 27 December 2002 (registration number 1209, 24 January 2003) did not fully take into account the specifics of non-governmental organizations.

In particular, it is unclear how much of the liabilities in the property balance, sponsorship donations received for the Charter purposes for free, will fall. Also, the profit of a non-governmental organization from business activities cannot be directly transferred to the part of retained earnings (8700). This is due to the fact that according to the balance sheet rules, retained earnings must be distributed among the founders or transferred to the authorized capital.

In non-governmental organizations, profit should not be distributed among the founders, and its property should not belong to the founders through the authorized capital.

In addition, not all of the above obligations may be reflected in the 8800-targeted receipts of the passive part of the balance sheet.

Therefore, it is necessary to further improve the passive part of the balance sheet, based on the



characteristics of the activities of non-governmental organizations.

In addition, a balance sheet means that this property is recorded as assets and liabilities on a double entry basis. Therefore, in our view, the requirement for NGOs to approve an interim liquidation balance sheet by the highest NGOs' body leads to excessive bureaucracy.

However, since there is no separate standard form for the final balance sheet of a non-governmental organization, the standard form of the balance sheet approved by Order of the Minister of Finance of the Republic of Uzbekistan No. 140 of December 27, 2002 (registration number 1209 of January 24, 2003) is used in practice.

We noted above that the balance sheet of a non-governmental organization means that existing assets are recorded as assets and liabilities based on a double entry.

In accordance with paragraph 24 of the Regulation on the procedure for the liquidation of non-governmental organizations, approved by Cabinet of Ministers Resolution No. 5 of January 15, 2015, the liquidation Commission uses the methods and directions specified in the decision and (or) donated.

If it is impossible to use the excess property for the purposes of a non-governmental organization, it can be transferred to non-governmental organizations that perform functions in areas similar to the main purpose of a non-governmental organization.

In all cases, documents confirming the fact of alienation of property are issued. Distribution of the remaining property between the founders (participants), members of the governing body or other employees of a non-governmental organization is not allowed.

Therefore, upon completion of the liquidation process of a non-governmental organization, its property will be alienated in accordance with the decision of a higher authority and, of course, its property will not remain. This means that in practice, assets and liabilities in the balance sheet are naturally equal to "0". If the assets and liabilities in the balance sheet are not equal to "0", this means that the liquidation process has not been completed and the liquidation balance sheet does not need to be formalized.

*In this regard, it is proposed to remove the requirement for approval of the liquidation balance sheet by the highest body of NGOs from the Regulation on the procedure for liquidation of non-governmental organizations approved by the Cabinet of Ministers resolution No. 5 of January 15, 2015.*

It should be noted that in the case of voluntary liquidation of a non-governmental organization, in practice, there is no higher authority approving its liquidation balance sheet. Thus, the requirement to approve the liquidation balance sheet by the highest authority of a non-governmental organization remains one of the invalid norms in the current legislation.

According to the paragraph 19 of the regulation No. 5 on the procedure for liquidation of NGOs, approved by the Cabinet of Ministers on January 15, 2015, in accordance with the interim liquidation balance sheet, from the date of its approval, the liquidation Commission pays creditors the following amounts:

first- satisfaction of citizens' claims arising from labor relations, alimony and monetary payments under copyright agreements, as well as claims of non-governmental organizations for causing harm to the life and health of citizens by canceling the corresponding temporary payments;

second - payments to the state budget and state trust funds of the Republic of Uzbekistan;

third - claims of other creditors (in the order of priority on the calendar).

## **CONCLUSION**

Based on the above, it is proposed to include the following norms in the draft Code "On non-governmental organizations of the Republic of Uzbekistan", which is planned to be adopted:

**Firstly**, it is proposed to make the following amendments to the legislation related to the suspension of the activities of a non-governmental organization.

*"From the date of entry into force of the court decision on the suspension of the NGOs, their activities, rights as a founder and editor of the media, the goals and objectives of the charter and the implementation of advocacy, organization of events, entrepreneurship, property and the use of funds in bank accounts will be suspended for the period specified in this resolution.*

*During the suspension of activities of a non-governmental organization, as an exception, the organization retains the average salary of employees (in accordance with labor legislation, local and internal documents), payments related to property protection, and compensation for damage caused by their actions. Refunds, taxes, and other mandatory payments may be incurred."*



**Secondly**, the legislation does not specify which court is responsible for the liquidation of a non-governmental organization.

*Accordingly, when liquidating the non-governmental organization in court, these tasks are proposed to be carried out by the Supreme Court of the Republic of Uzbekistan, the non-governmental organization registered with the Ministry of Justice of the Republic of Uzbekistan, and the non-governmental organization registered with the territorial administration bodies of the Ministry of Justice of the Republic of Uzbekistan.*

**Thirdly**, placing such an obligation on the founders or members of the governing body of a non-governmental organization increases their responsibility when creating an NGO.

Therefore, it is proposed to make the following amendments to the legislation. *"As a rule, the court that decides to liquidate a non-governmental organization appoints the founders or members of the governing body or the head of a non-governmental organization (other than political parties and trade unions) as liquidators.*

*In case of judicial liquidation of divisions of a non-governmental organization registered in the territorial bodies of justice, the head of the division or the head of the parent organization or other employees of the parent organization shall be appointed as the liquidator";*

**Fourthly**, it is proposed to remove from the Regulation on the procedure for liquidation of NGOs, approved by the Cabinet of Ministers on January 15, 2015 No. 5, the requirement for approval of the liquidation balance by the highest body of NGOs.

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