



SOME ISSUES OF LEGAL REGULATION OF ENTREPRENEURIAL ACTIVITY OF NON-GOVERNMENTAL ORGANIZATIONS

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Article history:	Abstract:
Received: November 24 th 2022 Accepted: December 26 th 2022 Published: January 30 th 2023	<p>In the modern world, there is a tendency to decentralize state authority and to tackle the majority of societal problems through non-governmental organizations rather than through official institutions. In Uzbekistan, the number of non-governmental, non-profit groups has grown recently, and they have contributed to the resolution of several social issues.</p> <p>As the market economy evolves, it is also well recognized that entrepreneurship is growing. However, there are a number of significant concerns with regard to how NGOs might conduct their entrepreneurial operations. The difficulties surrounding the legal regulation of NGO commercial operations, current concerns, and potential remedies are discussed in this article using a scientific and legal approach.</p>
Keywords: public councils, entrepreneurial activity of non-governmental non-profit organizations, purpose of earning income, branch, public fund.	

In recent years, consistent efforts have been made to support non-governmental non-profit organizations and other institutions of civil society, strengthen social partnership between state authorities, implement effective public control, and improve the legal framework regulating this field.

M.S.Haque [1], D.A.Bräutigam, M.Segarra [2], P.Willetts [3] C.C.Millar [4] and a number of other research works on the main guarantees of the activities of non-governmental non-profit organizations can be cited. As a result of the implemented measures, the regulatory legal framework, which provides legal guarantees of non-governmental non-commercial organizations, meets modern democratic requirements and international standards, was further improved. As a result, **about 20** laws, documents of the President of the Republic of Uzbekistan and decisions of the Government were adopted.

The Public Chamber under the President of the Republic of Uzbekistan aimed at expressing the interests of non-governmental non-profit organizations and serving as a bridge between them and the state was established, and **public councils** were established under state bodies in order to introduce new effective means of open communication with the population.

Before defining the concept and characteristics of entrepreneurial activity of non-governmental non-profit organizations, it is appropriate to define the concept of entrepreneurial activity.

The main goal of entrepreneurship in our republic is to ensure the multifaceted direction of the

economy, to adapt production to the needs and demands of consumers, to overcome scarcity and cost, to ensure the freedom of citizens in the field of economic activity, to appreciate the personal abilities of each person and to open up their rich opportunities in the field of entrepreneurship, to create conditions with high productivity and initiative for them to work.

According to Article 3 of the Law of the Republic of Uzbekistan "On Guarantees of Freedom of Entrepreneurial Activity", entrepreneurial activity (entrepreneurship) is considered to be an initiative activity aimed at obtaining income (profit) carried out by the subjects of entrepreneurial activity in accordance with the laws, taking risks and under their own property responsibility.

The activity of the entrepreneur should be only within the framework of the law. As mentioned above, this means that every entrepreneur has the right to engage in activities in accordance with the laws currently in force in our republic. As long as the entrepreneur is engaged in activities related to the production of goods or the creation of household comfort for the purpose of obtaining some profit or income, his activities should be only within the framework of the law [5]. In this regard, a number of changes and additions are made to the legal documents aimed at their regulation in order to create more freedom and convenience for business entities and to develop fair competition in the country's economy.

It should be taken into account that in the implementation of business activities, this activity is



carried out by the subjects. In particular, according to Article 4-part of the Law "On Guarantees of Freedom of Entrepreneurial Activity", business entities (entrepreneurial entities) are legal entities and individuals who are registered according to the established procedure and are carrying out business activities.

State authorities and management bodies (except for the cases provided for by law), their officials, as well as other persons prohibited by law from engaging in business activities cannot be subjects of business activity.

Therefore, individuals and legal entities registered as entrepreneurs in the prescribed manner can be subjects of entrepreneurial activity.

At the same time, we can see that non-governmental non-commercial organizations are not included in the entities that cannot engage in business activities.

Now, if we talk about the concept and signs of entrepreneurial activities of non-governmental non-profit organizations, the legislation does not provide a clear and detailed definition of the concept of non-governmental non-profit organizations engaging in entrepreneurial activities, and only states that they engage in entrepreneurial activities that correspond to the scope of their charter goals. Because the purpose of the creation of non-governmental non-profit organizations covers social issues, and profit is not considered the main goal.

According to Article 2 of the Law "On Non-Governmental Non-Profit Organizations", a non-governmental non-profit organization is a voluntary organization established by individuals and (or) legal entities, which does not make income (profit) the main goal of its activity, and receives income (profit) from its participants (is a self-governing organization that does not distribute among its members).

According to part 2 of this article, a non-governmental non-profit organization is established to protect the rights and legal interests of individuals and legal entities, other democratic values, to achieve social, cultural and educational goals, to satisfy spiritual and other non-material needs, to carry out charitable activities and for other socially beneficial purposes.

It should be noted that non-governmental non-commercial organizations have the opportunity to engage in direct business activities freely within the framework of the current legislation, but only under one condition - this activity must be carried out within the framework of their charter goals.

Some scholars say that the main problem lies in the wrong business practices of NGOs [6]. However,

they ignored the fact that non-governmental non-profit organizations can be limited entities rather than full-fledged entities of entrepreneurial activity.

According to Article 5 of the Law "On Guarantees of the Activities of Non-Governmental Non-Commercial Organizations", non-governmental non-commercial organizations may carry out any type of activity not prohibited by law within the scope of the goals set in their charters.

Also, according to Article 3 of the Law "On Non-Governmental Non-Commercial Organizations", a non-governmental non-commercial organization may engage in business activities within the scope of its charter objectives in accordance with the legislation.

At the same time, Article 29 of the Law stipulates that the sources of formation of property of a non-governmental non-profit organization include income received from business activities and used only for charter purposes.

In addition, based on Article 7 of the Law, non-governmental non-commercial organizations have the right to establish business structures to fulfill the tasks specified in the charter.

It is clear from this, that non-governmental non-profit organizations can carry out any type of activity not prohibited by law within the scope of the goals set in their charters and engage in business activities in accordance with the goals of their charter according to the laws. In this, they can participate as a limited entity of business activity. We can explain that the main reason for our recognition as a limited entity is that non-governmental non-profit organizations do not aim to make a profit.

Based on the above, we can say that the concept of business activity of non-governmental non-commercial organizations is a business activity that is carried out in accordance with the statutory goals according to the laws.

Some authors say that "the entrepreneurial activity of non-governmental non-profit organizations should, first of all, achieve the organization's goals, that is, strengthen its material and technical base, serve as a source of property formation used for the organization's goals, and contribute to the realization of the organization's socially useful goals. In addition, it must be consistent with the statutory objectives of the non-governmental non-profit organization, without going beyond its legitimate legal capacity. Therefore, entrepreneurial activity should fulfill only auxiliary tasks, that is, it should be subject to the goals of the charter." [7]

Entrepreneurial activity of non-profit organizations can be divided into active and passive.



The active category includes profit from the sale of goods, works and services, including non-profit organizations organized by business companies. Passive entrepreneurial activity involves the placement of funds in deposit accounts, profit from stocks, bonds and other securities [8]. These aspects, in a general order, show signs of the involvement of non-profit organizations in entrepreneurial activities.

Non-governmental non-profit organizations, by their nature, are certainly different from commercial organizations and have their own characteristics. As an example of such features, non-profit organizations, unlike commercial organizations, are created not only on the basis of the norms of the Civil Code, but also through other regulatory legal documents, regulation of the conditions for their creation, and forms of creation may be different. Another difference is that non-governmental non-commercial organizations have special legal opportunities, that is, the legislator initially creates the basis for their activity, the specific features of their activity are directly determined in their founding documents and laws.

It is known that in accordance with Article 3 of the Law on "Non-Governmental Non-Commercial Organizations", a non-governmental non-commercial organization may engage in business activities within the scope of its statutory goals.

According to this Law, the income of a non-governmental non-profit organization from its business activities, which is used only for the purposes of the charter, is one of the sources of the formation of its property.

Non-governmental non-profit organizations engaged in business activities in our republic have been discussed for years. Some experts say that any paid activity of non-governmental non-profit organizations is entrepreneurship. Others believe that the classification of the services of non-governmental non-profit organizations as business activities is not sufficiently justified, especially when they are carried out within the framework of the charter objectives. At the same time, the activities of non-governmental non-profit organizations have different legal consequences depending on which conditions are considered entrepreneurial activities.

As of January 2021, there are **135** business entities (enterprises) of non-governmental non-profit organizations in our republic [9], which are engaged in business activities within the scope of their charter goals.

As mentioned above, a non-governmental non-profit organization is a self-governing organization established by individuals and legal entities on a voluntary basis, which does not make income the main

goal of its activity and **does not distribute the received income among its participants.**

In accordance with Article 58 of Tax Code of the Republic of Uzbekistan, a legal entity registered in the form prescribed by law for a non-profit organization and meeting the following conditions is recognized as a **non-profit organization** for the purposes of this Code, if:

- does not have the purpose of earning income;
- does not distribute income or property among its participants (members).

According to Article 48 of this Code, the property acquired by the taxpayer for the purpose of taxation by the person who is the source of the targeted funds or for the use according to the purpose established by the legislation is included in the targeted funds.

Targeted funds include but are not limited to:

- ✓ funds allocated from the budget and budget subsidies;
- ✓ grants and humanitarian aid;
- ✓ target revenues.

Targeted incomes include incomes aimed at providing non-profit organizations and carrying out their activities specified in the charter (except for incomes in the form of excise goods), received free of charge based on the decisions of state authorities, as well as incomes received from other legal entities and (or) individuals, which are used for the intended purpose by these recipients.

Incomes of non-profit organizations not specified in the first part of this article are taxed in the generally established manner.

In the practice of law enforcement, any paid activity of non-governmental non-profit organizations is called entrepreneurship. Educational services provided by preschool and other non-state educational institutions; paid forms of cultural activities of cultural and educational institutions, theaters, philharmonic halls; paid services of medical institutions and others - all these are considered entrepreneurship. It is clear that this approach does not take into account the essence of non-governmental organizations.

At the same time, the activities of entrepreneurship and non-governmental non-profit organizations are based on fundamentally different foundations.

First, the purpose of entrepreneurship is to make a profit (profit) at your own risk and your own property liability. In order to achieve it, the founders create business entities of various legal forms (private



enterprise, limited liability company, joint-stock company, etc.).

Unlike commercial organizations, non-governmental non-profit organizations do not make profit as the main goal and use the profit received only for the purposes of the charter.

Secondly, entrepreneurship is a free initiative activity, in which the entrepreneur can engage in any type of activity that is not prohibited. The state guarantees the freedom of economic activity and entrepreneurship at the constitutional level. A business organization whose founders have specified only the main types of activities in the charter may also engage in other commercial activities not mentioned in this document.

Non-governmental non-profit organizations do not have such freedom of choice. The types of activities that have the right to be carried out must correspond to the goals defined in their founding documents. Entrepreneurship, free choice of entrepreneurial activity - all these have their own limits for non-governmental non-commercial organizations. The state provides additional guarantees of non-commercial characteristics of non-governmental non-commercial organizations by limiting the freedom of economic activity within certain limits.

The third main difference between a business structure and a non-governmental non-profit organization is the use of income (profit) from economic activities. The legislation guarantees entrepreneurs the right to dispose of the remaining income (profit) free of charge after covering all production costs and paying taxes and other mandatory fees. Thus, the profit received by the business entity can be distributed among the founders at their discretion.

Non-governmental non-profit organizations do not have the right to distribute the income (profit) received from paid activities among its participants (members) and can use them only to fulfill the charter goals of the organization.

It can be seen that the paid services provided by non-governmental non-profit organizations within the framework of their charter activities are fundamentally different from the paid services of commercial organizations and are not entrepreneurial in nature.

Since the current legislation restricts the use of income from paid services by non-governmental non-profit organizations for legal purposes, these amounts are included in the concept of "revenues intended for the implementation of charter activities" and they must be spent only for the purposes for which the non-governmental non-profit organization was created.

The fact that basic services are non-entrepreneurial and, therefore, the recognition of income from them as targeted income allows for the introduction of a special tax regime for the non-commercial sector and the adaptation of national legislation to the best practices of international experience.

Current Legislation, while granting benefits to certain types of activities of the non-governmental non-commercial sector, does not sufficiently take into account the non-commercial nature of non-governmental non-commercial organizations and their importance for the state and society. At the same time, the benefits themselves do not constitute a complete system, and their application is often associated with the risk of making tax mistakes.

Taking into account the interest of society and the state in the activities of non-governmental non-profit organizations, especially in social, health care, education and other similar fields, the tax policy in relation to the activities of non-governmental non-profit organizations should be focused on the development of its activities. In this regard, it is appropriate to establish a special tax regime for non-governmental non-commercial organizations. An important part of it is that the non-governmental non-profit organization should be fully exempted from taxation for the paid services performed by the non-governmental non-profit organization in order to achieve its charter objectives. Thus, the organization of paid physical education classes, provision of paid educational services, etc., not only bring funds for financing the non-profit sector, but also directly ensure the achievement of the goals of the organization. The more favorable the tax regime is for such activities, the more funds a non-governmental non-profit organization will try to spend on its expansion.

In addition to the introduction of a special tax regime for non-governmental non-profit organizations, unlike other commercial organizations, it requires the development of certain restrictions on their activities and a strict regime of monitoring their implementation. This serves to prevent abuse of the status of a non-governmental non-profit organization and to ensure that tax benefits are not applied outside of the socially beneficial activities provided for them.

Opportunities to engage in entrepreneurship and establish commercial organizations vary depending on the organizational and legal form of non-governmental non-commercial organizations [10].

Particular attention is paid to the transparency and accountability of the activities of non-governmental non-profit organizations, and to the prevention of conflicts of interest. The property, income, or profits of



the nonprofit organization may not be used, directly or indirectly (for example, for the scholarship of a relative), to any founder, member, officer, member of the governing body, employee, or donor for personal benefit related to the nonprofit organization. [11]

According to F.Mambetov, "the size of the legal capacity of a non-profit organization is determined not only by the type of legal capacity, but also by legal restrictions on legal capacity, which are conditionally divided into three groups: 1) restrictions apply equally to all legal entities and are organized depending on the type of activity performed; 2) restrictions on activities provided for all non-profit organizations; 3) restrictions on activities provided for certain types of non-profit organizations [12].

The relevance of the activities of non-governmental non-profit organizations is that the state deals with social problems first of all. However, no country around the world can fully solve the social problems in society alone. Because the social sphere is very broad and this sphere includes education, science, culture, art, health, employment and others.

The relevance of the activities of non-profit organizations lies primarily in the fact that the state deals with social problems first of all on its own. However, no country around the world can fully solve social problems in society alone. Because the social sphere is very broad, this area covers education, science, culture, art, health care, employment, etc.

Accordingly, non-governmental non-profit organizations:

- save the state budget (non-governmental non-profit organizations do not receive direct funds from the state budget. Funds received by non-governmental non-profit organizations in the form of grants and subsidies allow solving social problems much cheaper);

- timely identifies social problems arising in society and informs everyone;

- makes recommendations for solving social problems, acquires and implements new experiences;

- help to find a solution to the problems that arise in the society, achieve their reduction, etc.

It is necessary to separately dwell on the types of non-profit organizations in the Republic of Uzbekistan. Therefore, according to the legislation of many foreign countries, their organizational and legal forms were not classified as separate as provided for in our national legislation and were not regulated by separate laws, as is the case with us.

However, depending on the organizational and legal forms of non-governmental non-commercial organizations, they are classified and the direction of activity is determined.

At the same time, depending on their organizational and legal forms, the procedure for state registration in the judicial bodies and the requirements imposed on them differ from each other.

In particular, according to the Law "On Non-Governmental Non-Commercial Organizations", non-governmental non-commercial organizations can be organized in the form of a public association, social fund, institution, as well as in another form provided for by law.

Non-profit organizations can form associations in the form of associations (alliances) in order to coordinate their activities, as well as represent and protect their common interests.

A voluntary association of Citizens United in accordance with the procedure established by law on the basis of the commonality of their own interests to satisfy spiritual or other intangible needs is recognized **as a public association.**

Participants of a public association do not retain their rights to the property they have given to this association, including membership fees. They are not responsible for the obligations of the public association of which they are members, and this association is not responsible for the obligations of its members.

A non-governmental non-profit organization without membership, established on the basis of voluntary property contributions by individuals and/or legal entities, pursuing charitable, social, cultural, educational or other socially useful goals, is recognized as a **public fund.**

The property transferred to the public fund by its founders (founder) or testator is the property of the fund. The founders of the fund (founder) or the fund, when established by will, do not respond to the will on the obligations of the executive fund, while the fund does not respond on the obligations of the founders (founder) or the executor of the will.

The property of the public fund is used to fulfill the goals and tasks defined in the fund's charter and to cover administrative costs.

The public fund must annually publish a report on its activities.

A non-governmental non-profit organization formed by individuals and (or) legal entities for the implementation of social, cultural and other non-commercial tasks is recognized as **an institution.**

An international organization that can operate in the territory of the Republic of Uzbekistan and in the territory of one or more foreign countries in accordance with its charter and legislation of the Republic of Uzbekistan is considered **an international non-governmental non-commercial organization.**



In addition, **the representative office** of a non-governmental non-profit organization is a separate unit located outside the land where it is located, which represents and protects the interests of the non-governmental non-profit organization.

A branch of a non-governmental non-profit organization is a separate unit located outside the place where it is located, which performs all or part of its tasks, including the tasks of a representative office.

Representative offices and branches of a non-governmental non-profit organization may have the status of a legal entity from the moment of state registration.

Representative offices and branches of international non-governmental non-profit organizations and foreign non-governmental non-profit organizations whose main organization is outside the Republic of Uzbekistan are legal entities.

It can be seen from the above that the requirements for non-governmental non-profit organizations to engage in business activities are implemented on the basis of the requirements applied to business entities in general. Of course, it is conditionally regulated on the basis of legal documents aimed at regulating the activities of non-governmental non-commercial organizations. Therefore, non-governmental non-profit organizations can carry out business activities within the framework of their charter goals.

According to A. P. Kashkovsky, "restrictions common to all legal entities are primarily aimed at protecting the interests of the state. Such restrictions include prohibitions explicitly stated in the law, established state monopoly and compulsory licensing of certain types of activity". [13]

The fact that the current state of Uzbekistan's economy is not at a high level, and the fact that the majority of the country's population needs social protection, indicates the need for proper support from the state for the implementation of the work of non-governmental non-profit organizations. Gaps and conflicts in legal regulation often lead to the transformation of non-governmental non-profit organizations into purely commercial entities without changing their civil status. Forgetting about their main goal, that is, the need to achieve a socially useful goal, they direct all their efforts only to profit. In the process of inspections of the activities of non-profit organizations, gross violations of laws are frequent.

In order to prevent this negative process, an optimal balance is required between the interests of civil circulation to ensure a certain level of protection of the

rights and legal interests of NGOs and to support the full activity of NGOs.

To prevent this negative process, an optimal balance is required between ensuring a certain level of protection of the rights and legitimate interests of non-profit organizations and the interests of civil turnover in support of the full-fledged activities of a non-profit organization.

It is especially relevant for the work of non-governmental non-profit organizations. Failure to research the conditions and procedures for its implementation has led to frequent neglect of the specific features of the entrepreneurial activity of these organizations in practice. Many non-governmental non-profit organizations, without changing their legal status, actually become commercial organizations that unreasonably use the benefits provided to achieve the socially useful goals of the activity for profit.

In spite of the significant number of legal documents regulating the relations with the participation of non-governmental non-profit organizations and their special types, a small number of norms are devoted to the business activities of these organizations. Some of them have a general nature in relation to the conditions for the implementation of business activities. The lack of legal regulation of business activities of non-governmental non-profit organizations requires the improvement of relevant legal documents and the further development of their general provisions.

According to the results of the research, the following proposals are made in order to improve the field of regulation of business activities of non-governmental non-profit organizations:

1. In order to support non-governmental non-commercial organizations engaged in business activities, introduction of benefits in relation to their activities related to business activities. In this case, it must be provided that the benefit is applied to the part of the income from the business activity directed to the social goals of the non-governmental non-profit organization;
2. In order to increase the number and quality of non-governmental non-profit organizations conducting business activities and to support their activities, the state will carry out their separate statistics.
3. It is necessary to develop a regulation by the decision of the Cabinet of Ministers, which regulates the activities of non-profit organizations in entrepreneurship.



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