

Legal Basis For Pursuing Criminal Liability Of Heads Of Non-Governmental Non-Profit Organizations

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Abstract

This article examines the concept of non-governmental non-commercial organizations, reveals the content of their activities, shows their differences from non-governmental commercial organizations, and examines the characteristics of a special subject of crime, particularly the officials of non-governmental non-commercial organizations. In addition, the article analyzes the elements of crimes related to abuse of office, bribery, and official forgery, which can be assigned to persons holding leadership positions in NGOs. On the example of notaries engaged in private activities, the problems of law enforcement practice regarding the legal assessment of socially dangerous acts committed were considered, opinions were expressed about the unreasonableness of holding them liable under articles providing for the liability of officials of state administration bodies, and proposals for solving this problem were also presented.

Keywords: Official forgery, official, abuse of power, non-governmental non-profit organizations, notary, organization, liability, bribery, offense, managers, employee, criminal liability.

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1. Introduction

At a time when the development of civil society institutions has become one of the priorities of state policy, non-governmental non-profit organizations (hereinafter - NGOs) play an important role in the life of society, carrying out activities in the social, cultural, environmental, and other spheres.

However, the daily increase in the number of NGOs determines the task of regulating their activities, exercising control, and correctly resolving issues of responsibility for offenses that may be committed by their managers and employees.

In particular, the relevance of the issue of the

responsibility of managers and employees of NGOs for committed crimes and administrative offenses is related to the fact that the grounds for liability of the heads of such organizations are still not clearly defined in the relevant legislation and errors are encountered in the practice of applying criminal law.

The correct definition of the issue of criminal liability of managers and employees of non-governmental organizations also requires an analysis of the essence and content of the term "non-governmental non-commercial organization" given in national legislation.

In particular, according to the Law of the Republic of Uzbekistan "On Non-Governmental Non-Commercial Organizations," the concept of "non-governmental non-

commercial organization is a self-governing organization established on a voluntary basis by individuals and legal entities, which does not make income (profit) the main goal of its activity and does not distribute the received income (profit) among its participants (members) " is defined. Consequently, a non-governmental non-profit organization does not aim to obtain income (profit) as the main goal of its activities.

As Ponomaryov O.A. correctly noted, non-profit organizations can be created to achieve social, charitable, cultural, educational, scientific, and managerial goals, protect the health of citizens, develop physical culture and sports, satisfy the spiritual and other non-material needs of citizens, protect the rights and legitimate interests of citizens and organizations, resolve disputes and conflicts, provide legal assistance, as well as for other purposes aimed at achieving public interests[1].

These organizations are listed in the "Register of Non-Governmental Non-Commercial Organizations and their divisions" of the Ministry of Justice of the Republic of Uzbekistan, and today their number is 11,522.[2]

In some articles of the Code of the Republic of Uzbekistan on Administrative Responsibility (hereinafter - the Code of Administrative Responsibility) and the Criminal Code (hereinafter - the Criminal Code), the terms "non-state commercial organization" and "other non-state organization" are used. However, there is no direct mention of non-governmental non-profit organizations. For example, Article 611 of the Code of Administrative Offenses and Article 19210 of the Criminal Code establish liability for "bribery of an employee of a non-state commercial organization or other non-state organization."^[3]

This, in turn, leads to the emergence of a secondary opinion regarding the use of the phrase "other non-governmental organization," cited in the articles of the Criminal Code and the Code of Administrative Offenses, respectively.

Based on the concept of NGOs given in the Law of the Republic of Uzbekistan "On non-governmental non-commercial organizations" and the essence of the phrases given in the provisions of these articles, it is justified to assert that the concept of "other non-governmental organization" also covers non-governmental non-commercial organizations.^[4]

At the same time, there are some misunderstandings in

law enforcement and judicial practice regarding the criminal liability of NGO officials. In particular, the presence of secondary considerations regarding the status of notaries engaged in private practice leads to their prosecution, for example, under Chapter XV of the Criminal Code "Crimes against the order of governance." From this point of view, we consider it necessary to emphasize the following.

Article 224 of the Law of the Republic of Uzbekistan "On Notaries" dated December 26, 1996 No. 343-I ("Status of the Notary Chamber") states that the notary chamber is a non-profit organization based on the membership of all notaries engaged in private practice.^[5] Thus, this law states that notaries are a legal institution designed to ensure the protection of the rights and legitimate interests of individuals and legal entities. Consequently, obtaining income (profit) is not the goal of notarial activity.

This circumstance indicates that notary offices engaged in private practice, along with other non-governmental non-commercial organizations, are not non-governmental commercial organizations, but can be recognized as NGOs.

This conclusion is also confirmed by the provision of part two of Article 2 of the Law of the Republic of Uzbekistan "On non-governmental non-commercial organizations." In particular, it is stated that a non-governmental non-profit organization is created to protect the rights and legitimate interests of individuals and legal entities. At the same time, the Constitution of the Republic of Uzbekistan, which guarantees freedom of economic activity, entrepreneurship, and labor in connection with the development of market relations, also provides NGOs with the opportunity to materially support their activities. From this point of view, one can agree with A.Ahrorkulov's opinion that "Although the main goal of the activities of institutions is not aimed at making a profit, they can engage in entrepreneurial activity and thereby receive certain income."^[6]

Analysis of scientific research on the study of foreign experience on this issue indicates that in some countries, for example, in the USA and the Russian Federation, external donations can be used to form the funds of non-profit organizations.^[7]

It is known that the commission of an act containing all the elements of a crime stipulated by the Criminal Code of the Republic of Uzbekistan is grounds for prosecution.

One of the important features of the corpus delicti is the subject of its commission.

At the same time, it is emphasized that the subject of the crime also has corresponding characteristics for prosecution. These include, among other things, the fulfillment by individuals of the legally established age before committing a crime, the presence of sanity (Article 17 of the Criminal Code), and the presence of special subjective characteristics for certain crimes. At the same time, the characteristics of a special subject are, for example, whether a person is a sex member (Articles 118, 120, 126 of the Criminal Code), a relative (Articles 122, 1221, 123 of the Criminal Code), a citizen (Articles 1541, 157, 160, 225 of the Criminal Code), an official (Articles 1929, 19211, 205-210, 2411, 301, 302 of the Criminal Code) or an official (Article 19210, 214 of the Criminal Code), activity (Article 2141 of the Criminal Code), status (Articles 220, 221, 222, 226, 240, 2611, 266, 26).

In particular, as D. Sattorov correctly noted, "The characteristic of a special subject in the form of an official crime is an optional characteristic of the subject of the crime, and these characteristics are not necessary for crimes provided for in all articles of the Special Part of the Criminal Code, but are only necessary for official crimes"[8].

The Criminal Code and the Code of Administrative Offenses define an official as a person appointed or elected permanently, temporarily, or by special authority, performing the functions of a representative of power or carrying out organizational, managerial, administrative, and economic functions in state bodies, bodies of citizen self-government, enterprises, institutions, organizations, regardless of the form of ownership, and authorized to perform legally significant actions, as well as a person performing these functions in an international organization or a legislative, executive, administrative, or judicial body of a foreign state.

The expression "regardless of the form of ownership" indicates that not only state organizations, but also the heads of "non-governmental non-commercial organizations" are recognized as officials.

However, while the abuse of power, official forgery, and bribery by NGO leaders are signs of crimes provided for in Articles 205, 209, and 210 of the Criminal Code of the Republic of Uzbekistan, it is inappropriate to hold them criminally liable under these articles. Because the

subjects of "crimes against the order of governance," cited in Chapter XV of the Criminal Code, are officials working in government bodies and state administration organizations.

Therefore, it would be correct to classify the offenses of the heads of NGOs, including notaries engaged in private practice, as other crimes that infringe on the rights and legitimate interests of economic entities provided for in Chapter XIII1 of the Criminal Code.

In particular, knowingly illegal receipt by a non-governmental non-commercial organization of material assets or property benefits in exchange for the performance or non-performance by officials, in the interests of the person engaged in bribery, of a certain action that they should or could have performed using their powers, under part 2 of Article 1929 of the Criminal Code ("Commercial bribery"), intentional use by the head of a non-governmental non-commercial organization of their official powers, causing a large amount of damage or serious harm to the rights or legally protected interests of citizens or state or public interests, under Article 19211 of the Criminal Code ("Abuse of powers by officials in a non-governmental commercial organization or other non-governmental organization"), and official forgery, respectively, under Article 228 of the Criminal Code ("Production, forgery, sale or use of documents, stamps, seals, forms").

At the same time, the provision in the provisions of Article 1929 of the Criminal Code, providing for criminal liability for "Commercial bribery," of liability for the transfer of material assets or the acquisition of property benefits by an official of a non-state commercial or other non-state organization (part 1), as well as for the acquisition of such material assets or the acquisition of property benefits by them (part 2) necessitates a change in the name of this article. In our opinion, it is advisable to amend the title of Article 1929 of the Criminal Code as "Extortion by bribery in a non-state commercial or other non-state organization."

Along with the above, we consider it appropriate to study the concept of an employee of a non-governmental non-commercial organization and the issue of their responsibility. In particular, part 3 of Article 611 of the Code of Administrative Offenses defines an employee of a non-state commercial or other non-state organization as a person carrying out labor activity on the basis of an employment contract or a civil law contract, without the

attributes of an official.

Knowingly illegal receipt of material assets or property benefits by an NGO employee in exchange for the performance or non-performance in the interests of the person recruiting them of a certain action, which they should have or could have committed using their authority, unlike the liability of NGO officials for such an act, is grounds for bringing NGO employees to administrative responsibility for the first time under Article 61 of the Code of Administrative Offenses of the Republic of Uzbekistan ("Extortion of an employee of a non-governmental commercial organization or other non-governmental organization"). And the repeated commission of this act within a year after the application of administrative penalties is grounds for criminal liability under part 2 of Article 19210 of the Criminal Code ("Extortion of an employee of a non-state commercial organization or other non-state organization by bribery").

Responsibility of heads of non-governmental non-commercial organizations for other elements of crimes, for example, fraud (Article 168 of the Criminal Code), evasion of payment of taxes or fees (Article 184 of the Criminal Code), arises in accordance with the current criminal legislation in the general procedure. In particular, NGO leaders who acquire another's property or the right to another's property through deception or abuse of trust may be held liable for fraud (Article 168 of the Criminal Code).

Fraud can manifest itself, for example, in the provision of false information, the creation of fake projects to obtain funds allocated for a grant, charity, or financing of an activity. Evasion of tax or other payments by the head of an NGO (Article 184 of the Criminal Code) may be expressed, for example, in failure to submit a tax return, deliberately entering false information into it, or in another way.

Analysis of the foreign experience of countries with developed civil society shows that the emphasis is on preventive measures, promoting the openness and self-regulation of the non-commercial sector. Criminal prosecution is applied only in cases of obvious abuse and causing significant damage. At the same time, in a number of countries, legislation provides for strict liability measures for violations in the activities of NGOs, which are subject to criticism from international human rights organizations. Finding a balance between

monitoring the legality of NGO activities and protecting freedom of association remains a pressing task.

2. Conclusion

In conclusion, it should be noted that the criminal liability of heads of non-governmental non-commercial organizations constitutes a complex legal problem that requires a balanced approach. On the one hand, it is necessary to ensure the legality of the organization's activities and the use of its funds. On the other hand, it is important to avoid unjustified criminal prosecution when it cannot harm civil society. Improvement of legislation in this area should be carried out by clarifying the elements of crimes, eliminating ambiguities in definitions, and ensuring guarantees of legal protection for NGO leaders. In addition, the development of practice requires improving the qualifications of law enforcement officers, developing uniform approaches to assessing the actions of NGO leaders. From this point of view, in order to eliminate errors arising in judicial practice, we consider it expedient to develop a resolution of the Plenum of the Supreme Court providing for guiding instructions on the issues of responsibility for crimes committed by officials of non-governmental non-commercial organizations.

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