



Comparative analysis of some aspects of NGO legislation of Uzbekistan, Germany and Japan

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ANNOTATION

This paper examines legal issues related to the legal basis and corporate management of non-state non-profit organizations of Uzbekistan, Germany and Japan. The ultimate goal of the paper is to develop proposals to improve the internal governance of non-profit organizations in Uzbekistan.

Key words: non-state non-profit organizations, NPO, internal governance, corporate management, governing bodies.

АННОТАЦИЯ

Ушбу мақолада Ўзбекистон, Германия ва Япония давлатларида нодавлат нотижорат ташкилотлари фаолиятининг ҳуқуқий асослари ва корпоратив бошқаруви билан боғлиқ ҳуқуқий масалалар кўриб чиқилади. Мақоланинг асосий мақсади Ўзбекистонда нодавлат нотижорат ташкилотларининг ички бошқарув тизимини такомиллаштириш бўйича таклифлар ишлаб чиқишдир.

Калит сўзлари: нодавлат нотижорат ташкилотлари, ННТ, ички бошқарув, корпоратив бошқарув, бошқарув органлари.

1. Comparative analysis of the legal basis of nonprofit organizations' activity

Apart from the NGO legislation of Uzbekistan, in Japan there is no basic law that regulates an activity of all types of Japanese non-profit organizations (NPOs), each type of NPO is regulated by separate laws.

Consequently, there is no a common definition of non-profit organization, which would describe its activity in general, as it is in Uzbekistan. At first sight it can be mistakenly supposed that the Law to Promote Specified Nonprofit Activities of Japan (known as “NPO Law”), adopted in 1998, is a basic law which regulates the activity of all types of non-profit organizations in general. However, NPO is



considered as one type of non-profit organizations in Japan and the term “NPO” itself is not applied for the other types of non-profit organizations, so, the Law to Promote Specified Nonprofit Activities is not a basic law, it is a special law which regulates an activity of NPOs.

Similar to Japan, Germany also doesn't have a basic law, regulating an activity of non-profit organizations. Mainly their activity is regulated by Civil Code, Law on Associations, Laws on Foundations of each German state and Limited Liability Company Law.

Compare to Japan and Germany, in Uzbekistan non-profit organizations' activity is regulated by one basic law – the Law “On the non-state non-profit organizations”, whereas peculiarities of establishment, activity, reorganization and liquidation of associations, public foundations, political parties, religious organizations, trade unions are regulated by special laws.

2. Legal forms of non-profit organizations and their internal governance

Uzbekistan

In Uzbekistan, according to the Law “On the non-state non-profit organizations” of Uzbekistan (1999) non-state non-profit organization can be established in the form of association, public foundation, institution and other forms prescribed by legal acts.¹

As for the internal governance of associations, the Law “On associations in the Republic of Uzbekistan” (1991) doesn't contain concrete provisions on the governing bodies of associations, it is only stipulated that the charter of association should contain rules on the competence and formation of the governing bodies and their term of office.² The Law “On the non-state non-profit organizations” of Uzbekistan (1999) contains the similar provision on the governing bodies of NPOs as a whole. Thus, according to such kind of flexible provision in the Law, NPO on its own discretion can decide which of the governing bodies will have the majority of authorities, and, among those, decision making authority plays a key role in determining the further perspective of NPO's activity. At the same time, in practice it may be observed a situation when the director of NPO in a bad faith can achieve the majority of authorities while drafting the charter in the time of establishment of NPO. Such kind

¹ The Law “On the non-state non-profit organizations” of Uzbekistan, Article 3.

² The Law “On associations in the Republic of Uzbekistan” (1991), Article 10.



of negative situation can lead to the abuse of power, waste of financial sources which can cause financial problems for NPO.

Japan

According to the Japan Association of Charitable Organizations, in Japan there are more than 10 legal entities which are considered as civil society organizations.³ They are: public interest corporations (PIC), general nonprofit corporations (GNC), specified nonprofit corporations, public charitable trusts, social welfare corporations, private school corporations, religious corporations, medical services corporations, relief and rehabilitation corporations and others, activity of which are regulated by special laws.

Regarding the corporate management of non-profit organizations of Japan, it was found out that decision-making authority in public interest corporations and approved specified non-profit corporations must belong to the general meeting, they should have more than 1 auditor and a board of trustees as their executive body.⁴ The reason of this concrete regulation, perhaps, is that these organizations are granted with some tax preferences and strict regulation is needed.

Together with this, specified non-profit corporations should have 3 or more directors and 1 or more auditors as their officers.⁵ From my point of view, it is quite significant provision of NPO Law, because the obligation to have three or more directors reflects some kind of “system of checks and balances” inside of the organization. This system is very important in preventing abuse of power, especially in managing financial resources of organization, planning its expenditures and making significant decisions on the activity of organization. Moreover, it is extremely significant when organization has an obligation to have one or more auditors as its officers. Auditor’s control over the financial activity of organizations plays a key role in providing financial security, conducting financial activity of organization in a good manner, basing on the interests of NPO.

In addition, analysis shows that some non-profit organizations have common regulation regarding decision-making authority on their business operations. Particularly, business operations of PICs, general corporations and specified non-profit corporations should be decided by their general meeting.⁶ In my opinion, this provision of the corresponding laws fully conforms with the meaning and principles

³ The Japan Association of Charitable Organizations, Charitable and Non-profit Organizations in Japan, 2017.

⁴ Ibid.

⁵ The Law to Promote Specified Nonprofit Activities of Japan (1998), Article 15

⁶ The Japan Association of Charitable Organizations, Charitable and Non-profit Organizations in Japan, 2017.



of non-profit organization as an institute of civil society. Particularly, the least number of members of PICs and general corporations is 2 or more persons⁷, whereas the least number of members of specified non-profit corporations is 10 or more persons⁸, so, it is meaningful that everyone's participation in making significant decisions is needed. And also, as it is specified in the Article 3 of NPO Law "a specified nonprofit corporation must not engage in operations for the interests of a specific individual or corporation or other organization". Thus, on one hand, the abovementioned provision of the corresponding laws provides collective decision-making process, and on the other hand, it prevents abuse of power and infringement of the Article 3 of NPO law and corresponding provisions of PIC Law.

Taking into account abovementioned, it is worth to note two regulations on the internal governance of NPOs that can be incorporated to the Law "On associations in the Republic of Uzbekistan". First one is the provision, specifying that specified non-profit corporations should have 3 or more directors and 1 or more auditors as their officers. Second one is the provision which specifies that business operations of PICs, general corporations and specified non-profit corporations should be decided by their general meeting. From my point of view, incorporation of these two provisions to the Law "On associations in the Republic of Uzbekistan" will serve for preventing of the abuse of authorities, concentration of authorities in one governing body or person, unreasonable and ineffective use of financial assets, will provide for effective management and strict accounting and finally will increase responsibility of non-profit organization for its activity.

Germany

In Germany, in order to conduct non-profit activities, the organization should be established as association, foundation, cooperative, public institution and sometimes, when special requirements are met, as a limited liability company⁹. However, there are no specific organizational and legal forms of NPOs¹⁰ and "almost any type of private legal entity... can be used to form an NPO"¹¹.

⁷ Ibid.

⁸ The Law to Promote Specified Nonprofit Activities of Japan (1998), Article 10.

⁹ Council on Foundations, "Nonprofit Law in Germany".

¹⁰ Zimmer et al., "The Legacy of subsidiarity: The nonprofit sector in Germany".

¹¹ Council on Foundations, "Nonprofit Law in Germany".



An association is the most popular organizational-legal form in Germany for establishing non-profit organization.¹² As for the internal governance of associations, according to the Section 26 of the Civil Code of Germany these organizations must have a board, which “may consist of more than one person”. The board is entitled to represent the association “in court and out of court” and “has the status of legal representative”. General meeting of association is entitled to appoint the board in the accordance with the Section 27 of the Civil Code of Germany and this appointment can be revoked at any time by the general meeting. According to the Section 29 of the Civil Code of Germany, sometimes, when it is urgently needed, some members of the board can be appointed even by the local court. Particularly, according to this Section of the Civil Code “to the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases, for the period until the defect is corrected, on the application of a person concerned, by the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat.”

According to the Section 32 of the Civil Code of Germany, general meeting is entitled to deal with affairs of association that are not related to the authorities of the board. Such kind of significant authorities as making decisions on amending of the charter or dissolution of association also belong to the general meeting. The charter of association may also specify the appointment of special representatives for particular transaction.¹³ Thus, the board is responsible for the whole management of organization, whereas general meeting has crucial authorities concerning the destiny of organization, such as making decisions on dissolution of association, making amendments to the charter, appointment or dismissal of the members of the board and others. However, the charter of association may contain the existence of other governing bodies¹⁴. So, it can be noted that general meeting has a significant power in association and it seems to be logic, because association is established by members and only members should be entitled to make crucial decisions related to the activity of association.

Compare to the NPO legislation of Uzbekistan, German legislation clearly specifies governing bodies of associations and their main authorities, so, it provides for the basis of their internal governance. The legislation gives preference to the collective decision-making, where general meeting is entitled with crucial authorities, described above.

3. Concluding remarks

¹² Zimmer et al., “The Legacy of subsidiarity: The nonprofit sector in Germany”.

¹³ Civil Code of Germany, Sections 26 (1, 2), 27, 29, 30, 32, 33, 41.

¹⁴ Council on Foundations, “Nonprofit Law in Germany”.



From my point of view, taking into an account Japanese and German regulations on the internal governance of non-profit organizations, it seems meaningful to combine these regulations for incorporation to the NPO legislation of Uzbekistan, namely to the Law “On associations in the Republic of Uzbekistan”.

Particularly, from NPO legislation of Japan it can be pointed out the provisions, indicating that specified non-profit corporations should have 1 or more auditors as their officers, and that the decision-making authority in public interest corporations and approved specified non-profit corporations must belong to the general meeting, and from the Civil Code of Germany it can be pointed out the provisions, specifying establishment of the board and general meeting of association and their authorities, for the incorporation to the Law “On associations in the Republic of Uzbekistan”.

In my view, incorporation of these provisions to the Law “On associations in the Republic of Uzbekistan” will serve for preventing of the abuse of authorities, concentration of authorities in one governing body or person, unreasonable and ineffective use of financial assets, will provide for effective management and strict accounting and finally will increase responsibility of non-profit organization for its activity.

Bibliography

Books, Articles and Reports

Council on Foundations. “Nonprofit Law in Germany”.

<https://www.cof.org/country-notes/nonprofit-law-germany>

The Japan Association of Charitable Organizations. Charitable and Non-profit Organizations in Japan. Data Book, 2017.



Zimmer, Annette, Janne Gärtner, Eckhard Priller, Peter Rawert, Christoph Sachße, Rupert Graf Strachwitz, and Rainer Walz. The Legacy of subsidiarity: The nonprofit sector in Germany. <http://extras.springer.com/2004/978-3-322-80981-0/eBook/>

Legal acts

The Law “On associations in the Republic of Uzbekistan” (1991)

The Law “On the non-state non-profit organizations” of Uzbekistan (1999)

The Law to Promote Specified Nonprofit Activities of Japan (1998)

Act on Limited Liability Companies of Germany, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446)

Civil Code of Germany in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I p. 42, 2909; 2003 I p. 738), last amended by Article 2 (16) of the statute of 19 February 2007 (Federal Law Gazette [*Bundesgesetzblatt*] I p. 122)