

Non-Profit Ecological Organizations in the Function of the Realization of the Right to Freedom of Association and the Development of Civil Environmental Liability in Kazakhstan

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ABSTRACT

Environmental issues have become a central issue, which is considered not only at the state level, but also in the international arena. At the moment the main initiators of drawing attention to the environment are the environmental non-profit organizations. In developed countries, these organizations provide full support to the government and society. For developing countries, such as Kazakhstan, there is a number of issues: legal and social. The article deals with the legal regulation of the environmental non-profit organizations and reveals their role and influence on the government and the public. In order to achieve this goal has been applied the analysis of international law and the legislation of the Republic of Kazakhstan, the experience of scientists is generalized. In Kazakhstan, the legislation provides for free participation in non-profit organizations, including environmental. These organizations should be closed only in cases of violation of the legislation. Environmental non-profit organization conduct environmental education on the problems, cooperate with government authorities. The nature of such associations is exclusively peaceful and voluntary, nor is the goal to acquire profit.

KEYWORDS

non-profit organizations, the legislation of Kazakhstan,
rights and freedoms of citizens, voluntary associations,
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Introduction

The need to unite, to run a business together, a constant exchange of views, mutual aid inherent in the very nature of man as a social being, a social does not have the live and work alone (Farrington, 1993; Cent, Mertens & Niedzialkowski, 2013; Hasmath & Hsu, 2016) Moreover, as evidenced by the history of civilization, people need to unite together for any activity is growing, and this is reflected in the creation of an increasing number of associations and their diversity. For example, throughout the world, an increasing number of political parties, sports associations, associations of the profession, especially the new ones, associations for the protection of the environment and so on.

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Common interests of members of associations is reflected in the specific objectives of association (Shandra, Shandra & London, 2010; Yakovlev, 2004; Sikor, 2014). The objectives of the Association can serve the realization and protection of civil, political, economic, social and cultural rights and freedoms, the development of the activity and initiative of citizens, their participation in the management of state and social affairs, the satisfaction of professional and amateur interests; development of scientific, technical and artistic creativity, and other useful purposes.

The nature of relations between the state and the individual is the most important indicator of the state of society as a whole, the goals and prospects of its development. It is impossible to understand modern society and modern man without studying its diverse relations with the state.

Society - a historically evolving system of relations between people, the product of human interaction in the process of their joint life activity (Yakovlev, 2004; Cent, Mertens & Niedzialkowski, 2013; Dhanani & Connolly, 2015). Society and personality - of mutually phenomena that exist only in the indissoluble unity.

Personality - is individually defined set of socially significant properties of human manifested in human relations.

The concept of personality, personal characteristics of the individual is organically linked to the society and its features.

The position of the individual in society is predetermined by not only its own activity and abilities, and certainly not only the physical and spiritual medium of personal properties belonging to the human race (Shandra, Shandra & London, 2010; Farrington, 1993; Hasmath & Hsu, 2016). Main parameters and characteristics of the provision set and played a historically specific, historically unique social organism as a whole. These unconditional realities of society for over five thousand years are, in particular, a state-legal phenomena.

The actual situation of human scale of his freedom in the country are expressed primarily in the material and spiritual opportunities and responsibilities, quantity, quality and extent of which are substantial characteristics of a particular individual state. Opportunities and responsibilities practically occur in man only as the result of a complex interaction of him as a person and society. This is what predetermined significant differences in the legal, physical, social status between people. Depending on the time, historical, geographical, political space, objective and subjective factors of social life vary greatly between the main components of the state of the individual. Therefore, even the same human rights and freedoms, such as the right to life, in the conditions of modern Europe in terms of content are fundamentally different from the same rights and freedoms of the Second World War.

In the state-organized society in the factors system that determine the position of a person, it is the State's extremely important role (Abbott, Green & Keohane, 2013; Hasmath & Hsu, 2016). The value of the state due to its relative

independence and the degree of autonomy in relation to man and society, those levers of influence on social relations in which it has a monopoly.

We believe that the right to freedom of association are intended to ensure the freedom and autonomy of the individual as a member of civil society and its legal protection against any illegal external interference, even from the state.

This category of rights is characterized in that the state recognizes the freedom of the individual in a certain sphere of relations, which is given at the discretion of the individual and can not be claimed by the state.

According to the accepted doctrine in international law, the right of everyone to an association (union) with other people, including the right to formal or informal non-governmental organizations (NGOs), refers to negative rights, which means that the State's duty not to interfere or impede the enjoyment of such rights by any person.

A special place in public associations take non-profit organizations whose primary purpose is not profit but functioning for the benefit of society (Cent, Mertens & Niedzialkowski, 2013; Dhanani & Connolly, 2015).

Taking into account the processes of globalization and the development of the industrial sector of Kazakhstan, environmental concerns come to the fore, threatening the destruction of natural resources (Venice Commission, 2005), Ovcharenko, 2007; Kulzhanova et al., 2016). Active participation in the fight against environmental challenges take environmental non-profit organizations. These organizations represent the most active part of the population. Their work is based solely on a voluntary basis. Freedom of association gives people the right to collectively express, pursue and defend common interests in the same way as they are expressed, pursues and defends the individual.

The most famous is a non-profit environmental organization «Greenpeace», which operates in many countries around the world (Brown & May, 1991; Greenpeace, 2013) The organization aims to preserve the environment, the search for renewable energy sources. Greenpeace operates by voluntary donations, they are regulated by international law and the laws of countries where the organization has offices. In Kazakhstan, there are also the environmental non-profit organizations, for example, the NGO "Reflection." The main problem of the activities of such organizations in Kazakhstan is their small number and small government support.

As a self-defined independent of the state of education, associations of citizens are able to effectively influence the public authorities and institutions at the same time to protect civil society from undue interference or arbitrariness on the part of the state. According to the same doctrine, it is through the implementation of the right of association and through the activities of associations created by citizens acquire real practical purposes, the ability to exercise meaningful influence on public life and public policies in accordance with their ideas and beliefs and thereby contribute to "pluralization" of power.

Aim of the Study

Consider the legal regulation of the environmental non-profit organizations in Kazakhstan

Research questions

How do environmental non-profit organizations affect the realization of rights and freedoms and the development of civil environmental responsibility?

Method

For the methodological basis of the study were used the scientific works on philosophy, sociology, psychology, economics, general theory of law. The study used methods of logic and system analysis, historical, legal and comparative legal analysis.

The paper applied the dialectical and metaphysical methods and principles of knowledge that allow to reveal the subject and object of study in their entirety and continuous development, identify their praxiologic axiological aspects. To achieve this goal a systematic, structural and functional activity have been applied. For the information base have been used the works of scientists who consider the problem posed, as well as international law and the laws of the Republic of Kazakhstan on regulation of activities of environmental NGOs.

Data, Analysis, and Results

Since the attainment of independence, the Central Asian states have enacted the legislation that allows citizens to come together. The legal regulation of environmental non-profit organizations is seen in non-profit organizations as a part of it. All Central Asian states have ratified the main international human rights agreements. Main provisions of the Constitution as a whole, are similar to the provisions of international human rights treaties. Civil Code and the Law on Public Associations regulate the establishment and activities of non-profit organizations.

The legislation states of Central Asia have a lot in common. This is due to historical reasons. In 1991-1992, all the newly independent states - former Soviet republics, including the Central Asian states have adopted similar laws on public associations. Law on Associations in its time played an important role in the development of the public sector in the region, although it had a number of serious problems. This law allowed the creation of a voluntary, self-governing organizations, membership-based and do not have the main purpose of profit. In the next stage of development of the legislation of Kazakhstan (1994), Kyrgyzstan (1996) and Uzbekistan (1997) took the Civil Code. Since the Civil Code was based on the Model Code, developed in the last years of the Soviet Union, then, of course, these codes have a lot in common. We must pay tribute to these civil codes have a section on non-profit legal entities, which establishes the regulatory framework for the different legal forms of non-profit entities. The main forms of these codes have fixed associations (organizations based on membership), institutions (organizations owned by the founder) and public

foundations (organizations without membership, based on the separate property).

The New Laws (amended laws) on public associations were adopted in Kazakhstan (1996), Tajikistan (1998 and a new law in 2007), Turkmenistan (2003). A different path went Kyrgyzstan, where the old Law on Associations was replaced by the non-profit organizations. However, with the development of civil society alone law on associations was not enough to solve the acute problems and further development of the non-governmental sector. Many states have begun to develop and enact laws regulating the relations of the nongovernmental sector, developing the Civil Code.

Kyrgyzstan (1999), Uzbekistan (1999) and Kazakhstan (2001) adopted general laws on non-profit organizations, governing the activities of non-governmental organizations of different legal forms, including public associations, institutions and foundations. These laws have played a major role in the development of non-governmental (public) sector in the region. But despite the imperfections and the repetition of the provisions of the Civil Code, these laws have made possible the creation of non-governmental organizations in various organizational and legal forms.

Probably, of all the states of Central Asia in Kyrgyzstan "Law on NGOs" played the most significant and positive role in the development of civil society (Annon., 2001). It secured the right to exist non-governmental organizations without a legal entity, its free state registration, the ability of businesses and individuals together to establish and participate in associations.

Kazakh law was less spectacular, but also a positive impact on the development of the non-governmental sector.

With the adoption of new laws, the states faced new challenges. Considering that the provisions of the constitutions of some states also regulate associations (Kazakhstan and Uzbekistan), it turns out that the same relationship to the order of creation, internal organization and activities of public associations may be regulated by different laws, and laws are not always consistent with each other.

In some countries, many of the provisions of the laws on non-profit organizations simply repeat the Civil Code (Kazakhstan, Kyrgyzstan), and the laws on public associations (Turkmenistan, Uzbekistan) are not always aligned with the Civil Code. As a result of the duplication of the provisions of the Act into law (Civil Code provisions in the law on non-profit organizations), and do not bring the old laws into line with the newer (laws on public associations with the laws of non-profit organizations and / or the Civil Code), there are problems, hindering the implementation of the legislation on non-governmental organizations.

Even the best laws on the books do not provide the right of association, if they are not applied in practice. Although important factor is the application of the laws, you can not reduce the value of the quality of legislation: a detailed regulation of procedures, clear language, and lack of conflict with other legislation and clarity of language. Since there are no perfect laws anywhere,

then each state itself analyzes their legislation and decide upon an improvement. It seems that in the development of differences between the laws of the Central Asian states will increase.

For example, in some states, the question may arise about the appropriateness of the existence of a separate law on non-profit organizations, where there are special laws regulating individual organizational - legal forms of non-profit organizations. Other states decide to improve the uniform law on non-profit organizations. This is normal, as a result of the legislation, some laws are repealed and new laws are passed.

Analysis of the delivered research and publications. The right of association in the Republic of Kazakhstan is governed by Articles 5 and 23 of the Constitution of the Republic of Kazakhstan, Section VII, Chapter 2 of the Civil Code of the Republic of Kazakhstan, the laws on NGOs (2001), Political Parties (2002), on Associations (1996) The Trade Union (1993), the freedom of religion and religious associations (1992), the certain provisions of the law on national security and combating extremism (changes adopted in 2006), criminal, administrative and tax laws, as well as a number of by-laws : instructions, rules, regulations, etc.

Paragraph 1 of Article 23 of the Constitution of the Republic of Kazakhstan, adopted in 1995, stipulates that citizens of the Republic of Kazakhstan have the right to freedom of association (Annon., 1995). The activities of public associations shall be regulated by law.

If you strictly follow the meaning of the first sentence of this paragraph, the Constitution of the Republic of Kazakhstan in full accordance with international law guarantees citizens the right to associate with others in order to create public associations.

However, based on the meaning of the second sentence of paragraph 1 of Article 23 and Article 5 of the Constitution of the Republic of Kazakhstan, constitutionally secured only one form associations - associations whose activities are regulated by law.

Thus, in accordance with Article 5 of the Constitution of the Republic of Kazakhstan prohibits the establishment and activities of public associations whose aims and actions are aimed at overthrowing the constitutional order, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity, as well as the creation of unauthorized paramilitary units.

Similar prohibitions contained in Article 5 of the Law "On Public Associations" dated 31 May 1996, but here the fact is a ban on the activities of unregistered public associations (Annon., 2003). This prohibition is contrary to international standards.

To confirm the turn, for example, such an instrument as "Fundamental Principles on the Status of NGOs in Europe" (2002) (Venice Commission, 2005), the Committee endorsed the decision of the Council of Ministers of the Council of 16 April 2003.

Considering that almost all European countries are participating in the Organization for Security and Cooperation in Europe (OSCE), in essence, this document defines the understanding of international standards on the rights of association enshrined in OSCE commitments.

According to this document, for the mandatory registration of NGOs the paragraph 5 of the mentioned document is very important: "NGOs can be either informal bodies or entities with legal personality. In order to reflect differences in the financial and other kinds of support received by non-governmental organizations in addition to legal, they can enjoy a different status, in accordance with national legislation".

That is, we are talking about the differences between public organizations wishing to acquire legal personality and non-profit organizations with legal personality. As in most national laws, the text contains a number of provisions aimed solely at NGOs with legal personality. However, the document recognizes the Principle according to which non-governmental organizations have the right to carry out its activities without having legal personality. It emphasizes the importance of the national legislation as it was recorded.

Thus, since these Principles are common to the European countries in all European countries recognized that the association can be both formal and informal organizations.

The explanatory note to the Fundamental Principles states that the implementation of the right of association in Europe found "... reflected in the rapid growth of the number of registered non-profit sector organizations, which ranges from 2 to 3 million, and this figure does not take account of unofficial, unregistered associations, of which there are many in some countries. The number of clusters is growing, and this trend is inextricably linked with the ideals of freedom and democracy which guides the Council of Europe and its member states" (Venice Commission, 2005).

As already noted, Kazakhstan's legislation prohibits the operation of unregistered public associations, which creates certain problems in the use of legal terms and concepts.

Firstly, the term "unregistered public associations" is legally unfounded

The Public Association is one of the legal forms of non-profit organization, which in turn is a type of legal entity (Annon., 1994). This is a legal status. Prior to the registration in the Justice the public association does not legally exist, and there is a group of citizens applying for the acquisition of legal personality in the form of a non-profit organization and the legal form - public association. That is, if a group of citizens calling themselves the Committee, the Council, the club, social organization, etc. it does not mean that it is a public association.

Secondly, the legislation somehow prohibits the establishment and activities of unregistered public associations only, although among some non-profit organizations there are still legal forms, as an institution, a public fund, etc.

Thirdly, if the creation and activity of unregistered public associations are prohibited, it is not clear if it concerns only the organizations where there are ten (the minimum number of citizens-initiators for the creation of a public association under Kazakh law) or more members, or those in which the number of members is less. For example, the question of the legality or illegality of a public committee to clean up the yard of five members headed by the chairman. In addition, it is unclear how it is determined that some union has already taken place legally, if it is not registered in accordance with the procedure established by law.

Finally, as already noted, in accordance with Article 5 of the Constitution of the Republic of Kazakhstan prohibits the establishment and activities of public associations whose aims and actions are aimed at overthrowing the constitutional order, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity. The question arises: why in this case it is only on public associations. It is obvious that these goals and actions are not permitted either for public organizations or other types of legal entities. They are also prohibited for the individual citizen or the group of citizens.

The next question in the regulation of the freedom of association, the regulation of the goals and the objectives of public organizations in the Republic of Kazakhstan

Before any government inevitably raises the question of the need for specific regulation of any activity, and in this sense the activity of public organizations is no exception.

However, there should be a presumption against the need for regulation. Despite the fact that international human rights instruments recognize the existence of interests in the name of which it is possible to restrict the right of association, the burden of proof lies on the need to limit those who enter them. The essence of freedom of association is the ability of its members to decide how it should function. It requires a very cautious approach to regulation.

This also applies to such issues as the goals and objectives of the NGO.

Original position, as enshrined in international human rights instruments: the extraction of income can not be the main purpose of the non-profit organizations.

The rest, as noted in a memorandum to the Fundamental Principles, "range of goals and objectives that may be pursued by non-profit organizations, commensurate with their own diversity, as non-profit organizations The only requirement here, besides the fact that civil society organizations should be non-profit structure, it is the legitimacy of the goals and methods of achieving them" (Venice Commission, 2005).

It is important to note that in accordance with paragraph 10 of the Fundamental Principles "... Among the possible problems of non-profit organizations may be social issues, research, education, advocacy on issues of public interest, regardless of whether the position taken is the official policy of the state" (Venice Commission, 2005).

In general, the international legal doctrine comes from the fact that freedom of association will be better respected if at imposing restrictions guided the affairs of the organization, not the words of its objectives. The emphasis should be placed on the regulation of activities of the association and not to exercise control over him during the period of education.

As already indicated, Article 5 of the Constitution of the Republic of Kazakhstan secured a ban on the establishment and functioning of public associations pursuing the goals or actions directed toward a violent change of the constitutional order, a violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity ...

This injunction, essentially, conforms with international standards determining which goals are illegal in terms of the realization of the right to freedom of association.

Based on the principle of "all that is not forbidden - is allowed," it is evident that all the other goals of citizens' associations, except prohibited by law and generally accepted moral principles are legitimate.

In accordance with the Law "On Public Associations", public associations are established and operate in order to implement and protect the political, economic, social and cultural rights and freedoms, the development of the activity and initiative of citizens; meet the professional and amateur interests; development of scientific, technical and artistic creativity, the protection of human life and health, protection of the environment; participation in charitable activities; of cultural-educational, sports and recreation activities; historic preservation; patriotic and humanistic education; expansion and strengthening of international cooperation; carrying out other activities not prohibited by the laws of the Republic of Kazakhstan.

Obviously, all these goals involve not only NGOs, but also any other legal forms of non-profit organizations.

The law does not limit the number of non-profit organization in its objectives.

However, the Kazakh authorities of Justice when the registration of the statutes of NGOs insist that these institutions are required to specify all the objectives pursued by them, thus practically not recommended to enter in the statutes the statutory phrase "other activities not prohibited by the laws of the Republic of Kazakhstan" (Ovcharenko, 2007).

This allows the public authorities (the same judicial authorities or prosecutors) in the next step to bring civil society organizations in pursuit of the claim is not statutory activities, if they pursue the purposes specified in the Act, but not mentioned in the Constitution. This, of course, is not the problem of the legislation, but rather a legal practice, however, the recognition of this fact, they do not cease to be a problem.

The objectives and activities of non-governmental organizations as well as any business entity must comply with the Constitution of the Republic of

Kazakhstan and the legislation in force, to be legitimate. In addition, in contrast to commercial organizations, as already noted, public organizations should not be the main purpose of gaining income and do not have to distribute it among the members (shareholders). Finally, a non-profit organization may engage in entrepreneurial activities only insofar as it is consistent with its statutory goals. The main objectives for the environmental non-profit organizations are: the impact of the adoption of environmentally significant decisions by the authorities, the formation of ecologically-oriented public opinion.

In general, there is a certain paradox in which the activities carried out by non-governmental organizations are legal, however, are not enshrined in the Constitution, and the registration authority or other authorities having oversight functions, indicate a lack of this kind of activity in the statute and in this regard to its implementation, as a violation. Naturally, this does not refer to the activities requiring a special permit or license.

It is obvious that, if set out in Article 5 of the Law "On Public Associations" that associations may be established and operate "in order to ... carrying out other activities not prohibited by the laws of the Republic of Kazakhstan ", the inclusion of this provision in the constituent documents of public organizations, first of all, is fully consistent with the law, and secondly, provides for the right to public organizations engaged in any activity other than prohibited.

If the goal of creating an association of citizens do not contradict the legislation of the Republic of Kazakhstan, then they have a right to exist. Let these goals do not seem useful for the whole society, but, in any case, they are useful for the group of citizens who have come together to achieve them. Therefore, the state can not set the "degree" of public usefulness or uselessness of the objectives of a particular group of citizens and other citizens can not forbid this group to realize their legitimate objectives. This is called a freedom of association. If someone does not like this purpose, no one bothers to find like-minded people and to create public organizations for other purposes. The main feature of the environmental non-profit organizations is that their goals are nationwide and national importance. In connection with these objectives environmental non-profit organizations cooperate with all governments, and also carry out educational work among the population.

The International Covenant on Civil and Political Rights, which Kazakhstan ratified in 2005, contains the following wording: "Everyone has the right to freedom of association with others ..." (Annon., 2001).

The comprehensive nature of the word "everyone" means that the freedom of association, in principle, also covers persons who are not citizens (i.e. persons who are citizens of other countries, refugees and stateless persons, repatriates).

The International law recognizes the possibility of introducing some restrictions on political activities of persons who are not citizens of a particular state (non-citizens) that extends to freedom of association. However, only those restrictions that comply with the principles of political democracy, freedom and the rule of law are considered acceptable. It is therefore justified the ban on

membership in political parties are not citizens, as parties involved in the formation of national authorities.

According to paragraph 15 of the Fundamental Principles, any natural or legal person, citizen or foreigner, or group of such persons should be free to form associations. In the Explanatory Memorandum to the Fundamental Principles states that no grounds for restricting the right to form associations for foreign citizens can not be. Naturally, this does not apply to political parties, which, as mentioned above are non-profit organizations.

Thus, based on the provisions of international human rights instruments and international experience, we can draw the following conclusion: no restrictions for foreigners, refugees and stateless persons, repatriates in the creation, membership and participation in the activities of non-profit organizations do not exist, except for some restrictions on their political activities (e.g., participation in the activities of political parties, campaign finance, etc.). In addition, there are no restrictions for non-citizens in the right to lead a non-profit organization or its branch (representative office).

We mentioned above that under Article 5 of the Constitution of the Republic of Kazakhstan in the Republic of Kazakhstan prohibits the establishment and activities of public associations whose aims and actions are aimed at overthrowing the constitutional order, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity, as well as the creation of illegal paramilitary groups.

Essentially, this constitutional provision complies with international law. Firstly, it prohibits the acts of violence to achieve political goals. Secondly, is the protection of national security. Thirdly, a ban on incitement to the hatred of all kinds, that is, maintaining one of the principles of a democratic society - tolerance (tolerance).

In addition, under Article 39 of the Constitution of the Republic of Kazakhstan rights and freedoms of a man and a citizen may be limited only by laws and only to the extent that this is necessary in order to protect the constitutional order, public order, human rights and freedoms, health and morals. This position is also in accordance with international standards in terms of restrictions of a right.

However, the direct analysis of legislation relating to the regulation of the right of association, shows that they contain a significant number of constraints that are associated with the broad interpretation of the constitutional norms and do not comply with such restrictions in terms of international legal theory and practice.

Article 374 of the Code of the Republic of Kazakhstan "On Administrative Offences" stated that "the commission of leaders and members of the public association of actions beyond the goals and objectives defined by the Charter of the associations or violate the laws of the Republic of Kazakhstan on public associations, after the issuance of a written warning - entails warning or fines on persons who are members of the governing body of a public association, of up to twenty MCI. Violation of the legislation of the Republic of Kazakhstan by a

public association or the commission of the same action repeatedly within a year after the imposition of an administrative penalty referred to the first part of this article - entails a fine on persons who are members of the governing body of a public association, of up to fifteen monthly calculation indices with the suspension of activities of a public association for up to six months. The same actions committed repeatedly within a year after the imposition of administrative penalties provided for the first and second parts of this article - involve the prohibition of the activities of the public association " (Annon., 2001).

In general, the current administrative legislation of a public association - the only organizational-legal form of legal entity, which threatens to ban activities for repeated violation under all existing legislation on public associations.

However, subparagraph 4 of paragraph 2 of Article 49 of the Civil Code of the Republic of Kazakhstan provides a basis for the elimination of any legal person, as repeated or gross violation of the law. However, in the same paragraph there is an instantiation, what exactly is the "repeated" or "rude" violations, namely the failure to provide a declaration on the corporate income tax (on annual income and deductions made) or the simplified declaration for one year after the statutory period representation of creditors in the absence of a legal person, the lack of a legal entity at the location or the actual address, as well as the founders (participants) and officials, without which the entity can not operate for one year). (Annon., 1994). Moreover, the Supreme Court of the Republic of Kazakhstan adopted the Regulation from June 18, 2004 "On the jurisprudence of liquidation of legal entities that operate with a gross violation of the law" which indicates that it was made in the "purpose of the uniform interpretation and application in the jurisprudence of the legislation on the elimination of legal persons carrying out its activities with a gross violation of the law (hereinafter - the lack of legal persons and absent debtors). "That is, it is only on the Elimination of missing entities and absent debtors.

Discussion and Conclusions

In general, describing the national system of human rights protection in the intervening period, it can be argued that it was in the process of improvement. The strengthening of the judicial system and all its elements was occurring. The institutions of extra-judicial protection of the rights of man and citizen were developing. The abidance and protection of human rights were carried out in accordance with the Constitution, to create the necessary legal conditions for the free exercise by citizens of their rights and freedoms.

A significant step in the development of Kazakhstan's democracy and civil society was in the signing of the 1966 International Covenant on Civil and Political Rights, on Economic, Social and Cultural Rights.

The analysis showed that during the period Civil Forum of Kazakhstan became clear the evidence of the attention paid by the state of civil society institutions in Kazakhstan. In particular, the development of organizations, which combat environmental threats.

Thus, summarizing the above we can draw the following conclusions:

The compulsory registration of associations of citizens and legal norms of responsibility for their activities only because of the lack of registration does not meet international standards.

In this regard, to bring national legislation in line with international standards of human rights and freedoms must be secured with the right of a person to create or join associations, unions, associations, including the informal nature.

To do this, you must either adopt a separate law on the right of citizens to form associations (for example, the experience of the Republic of Poland), or statutory entities must apply to the Constitutional Council with a request to give an interpretation of paragraph 1 of Article 23 of the Constitution of the Republic of Kazakhstan in terms of citizens' rights to freedom of association in any form, both formal and informal organizations.

As well as analyzing the legislation of Kazakhstan, in the definition of classes and certain activities it is clear that people can associate in public organizations for any purpose with two requirements: for this purpose, must be lawful and income should not be the main objective.

In this connection, it is proposed to exclude from the legislation and law enforcement provisions relating to the application of the concepts of "statutory" and "hazing" activities of NGOs, and the outcome of the statutory provisions on the right of non-profit organizations to engage in any activity not prohibited by applicable law or requires special permission.

Generally, the prohibition of activities of any entity is the most extreme measure of exposure and that is why in the law and practice the necessity, reasonableness and proportionality of the measure must be confirmed.

In this regard, it is logical to suggest changes to the administrative legislation of the details of administrative responsibility for administrative violations in the field of non-profit organizations, including NGOs, in order to meet the requirements of these rules predictability, flexibility and efficiency did not allow them a broad interpretation.

As already noted, the commission of leaders and members of the public association of actions beyond the goals and objectives established by the charter of the public associations, entails administrative liability, up to the prohibition of activities. In subparagraph 3 of paragraph 2 of Article 49 states that the systematic implementation of activities contrary to the statutory goals of the legal entity may be the basis for its liquidation. From the Commentary to the Civil Code of the Republic of Kazakhstan (General Part) follows that this requirement applies only to non-profit organizations, as commercial organizations have general legal capacity (unless otherwise stipulated by legislative acts), and non-profit - special.

This raises a number of issues related to the validity, necessity and proportionality of such restrictions.

Firstly, "the commission of acts beyond the goals and objectives" and "carry out activities contrary to the statutory purposes" - not identical concepts.

Secondly, a non-profit organization, of course, may be an indication of the statute main goals, but according to the law, it has the right and on the other activities not prohibited by law (Yakovlev, 2004). The main thing that was not the main purpose of gaining income that this income is not distributed among the members (shareholders) of a non-profit organization and to entrepreneurial activity corresponded to the main non-profit (social) objectives of NGOs. If a non-profit organization actually engaged in entrepreneurial activity, the state represented by registration authorities, tax authorities, prosecutors may apply to the court with a request that the organization was re-registered as a commercial. This is legitimate and justified.

For the operation of environmental NGOs in Kazakhstan, the organization must fully adhere to the law. The government should provide more support to such associations. Environmental NGOs mean a voluntary organization, which can enter anyone. The activities of environmental NGOs are aimed to: educational activities about the importance of a clean environment, cooperation with the government in improving the environmental situation.

Implications and Recommendations

The involvement of non-profit organization responsible for activities in the framework of the law, but "goes beyond the statutory goals and objectives", and even in such a formulation, which allows a very broad, arbitrary interpretation, it is not in conformity with the requirements of reasonableness and proportionality of restrictions. Especially if we take into account the possibility of the elimination of the non-profit organization on these grounds.

It is therefore necessary to consider a clearer and consistent with international standards in the field of requirements for the admissibility of the statement of the restrictions on the legality and illegality of the goals, objectives and activities of non-profit organizations and their reflection in the charters of public organizations.

Modernization of the legislation is necessary for the normal functioning of NGOs, in particular environmental NGOs. These organizations have an important educational function of informing the public and the government on environmental issues.

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