

OVERVIEW

Specific Issues of the Regulation of Non-Commercial Organizations: International Experience

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Introduction

The Republic of Tajikistan (RT) is currently developing a new Law on Non-Commercial Organizations (Draft Law on NCOs). Several civil society representatives approached the International Center for Not-for-Profit Law (ICNL) with a request to learn about the experience of regulating non-commercial organizations (NCOs)¹ in various countries, which could be useful for Tajikistan. They posed the following questions to ICNL covering:

1. Rules for NCO registration.
2. Location of the NCO's permanent body of the NCO (legal address).
3. Territorial status.
4. Grounds for refusal of registration.

The information in this Overview is brief, as ICNL was tasked with preparing an expeditious response. As needed, ICNL stands ready to provide more detailed clarifications on these and any additional questions that may arise during the review of the draft law. ICNL is also prepared to participate in expert group meetings or bilateral meetings, both in person and remotely, to answer any questions.

For each question identified, we provide:

¹ In this overview, "NCO" means an organization officially recognized as a legal entity under national law that, in a given legal system, is not part of a government structure and does not operate for profit as its primary purpose, and any profit earned is not distributed to the founders, members, their heirs, or creditors, but is used solely for the implementation of its statutory purposes.

- excerpts from international documents reflecting positive practices and international standards for regulating NCOs;
- a brief overview of the relevant provisions of the Law of the Republic of Tajikistan on Public Associations (Law on PAs) and/or the draft Law on NCOs;
- examples from legislation and practice in different countries demonstrating possible approaches to solving similar issues; and
- recommendations for improving legal regulation of NCOs in Tajikistan, taking into account the state's international obligations and the experience of other countries.

Good practice refers to approaches that follow from the interpretation of international law, in particular the International Covenant on Civil and Political Rights (ICCPR),² which defines the international obligations of the state to ensure freedom of association.

It is important to note that, according to Article 10 of the Constitution of the Republic of Tajikistan, “international legal acts recognized by Tajikistan are an integral part of the legal system of the Republic. In the event of inconsistency between the laws of the Republic and recognized international legal acts, the norms of international legal acts shall apply.”

We recommend that civil society representatives and drafters of the NCO Law use [the Guidelines on Freedom of Association](#) (hereinafter referred to as the “Guidelines”) as a valuable resource for analyzing international standards and good practices for regulating NCO activities.

The preparation of the Overview also used materials from the Global Guide to Non-Profit Organizations ([Global Nonprofits Guide](#)), which ICNL recommends as an additional source of information on the regulation of NCOs in different countries.

1. Rules for NCO registration

INTERNATIONAL STANDARDS

The acquisition of legal personality should generally be viewed as a right, and not as an obligation or as mandatory.³

Submitting a notification of establishment to the authorities should be sufficient for the purpose of obtaining legal personality. [...] In such a procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an association has been

² Tajikistan [joined](#) the ICCPR in 1999.

³ Section 152 of the Guidelines.

created. [...] a “prior authorization procedure,” on the other hand, requires the approval (official confirmation) of the authorities to establish an association as a legal entity [...].⁴

Legislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses.⁵

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The Law on PAs (Articles 21-22) establishes the registration procedure for PAs. The draft Law on NCOs proposes a similar registration procedure for NCOs. Currently, the registration of NCOs in other forms (foundations, institutions, associations (unions) of legal entities) is regulated by the [Law on State Registration of Legal Entities and Individual Entrepreneurs](#), based on the “single window” principle and is simpler compared to the registration procedure for PAs.

INTERNATIONAL EXPERIENCE

In many countries, particularly in Europe, legislation allows certain types of NCOs (particularly associations) to operate without state registration or legal entity status. This approach recognizes that freedom of association includes the right to exist without mandatory registration.

The registration procedure can be:

- permission-based (Germany, Belgium, Czech Republic), when the state registration authority decides whether to approve registration; and
- notification (France), when registration is carried out automatically after the application is submitted.

Most countries in Europe and the former Soviet Union adhere to a permission-based system. A good practice is to ensure that the registration process for NCOs is at least no more complex than that for other legal entities. The law should encourage individuals and legal entities to pursue their legitimate interests through a relatively simple registration process.

It is important to note that in most countries, general jurisdiction government bodies (not specifically created for the registration of NCOs) register NCOs. These include, for example, courts/commercial courts (Germany, Belgium, Hungary, Czech Republic), chambers of commerce (Netherlands), notaries (Portugal), prefects or registrars of legal entities (Moldova, Georgia, France), police departments or municipalities (Austria, Italy). However, these bodies do not have any authority to monitor the activities of registered NCOs. The rationale behind this choice of registration body is to avoid bias and the assessment of documents submitted for registration, as these bodies have no

⁴ Section 154 of the Guidelines.

⁵ Section 156 of the Guidelines.

special competence or obligation to review their activities after registration. They generally automatically register documents submitted for registration. Grounds for refusal (discussed in more detail in Section 4) can be formulated broadly (France), but are rarely applied in practice.

In post-Soviet countries (Georgia, Moldova, the Kyrgyz Republic, and Lithuania), the registration procedure for commercial organizations and NCOs is governed by the same legal act, and their registration is carried out by the same government agency.⁶ The Ministry of Justice carries out registration in Azerbaijan, Armenia, all Central Asian republics, Ukraine, the Russian Federation, and Belarus.

Below are the experiences of Germany, Belgium, Austria, and France, which represent the two main models of NCO registration—permission-based and notification-based. These examples illustrate different approaches to interactions between the state and NPOs and help identify which elements of each model may be useful for improving Tajikistan's legislation.

Germany

Associations may operate without registration or legal entity status. Registration for associations is by permission and requires the applicant to submit a registration application to the local court (at the association's location), along with the charter, and minutes of the constituent meeting signed by at least seven founders. After registration, the court includes the association in the register of associations. Registration may be denied if the registering court finds that the submitted documents do not comply with legal requirements. Denial may be made for reasons related to the illegality of the association's objectives, non-compliance with public order, or if the association primarily pursues economic objectives. The association has the right to appeal a decision that rejects the registration application.

France

Associations may operate without registration or legal entity status. The registration procedure for associations⁷ is by notification. To obtain legal entity status, it is sufficient to notify the prefecture at the location of the association's location. The prefecture cannot refuse registration and must issue a receipt confirming acceptance of the declaration recognizing the association as a legal entity. If the declaration is incomplete, an acknowledgement is still issued, and the association must complete the declaration later. If the prefecture determines that the association's purpose is unlawful, it will still issue an acknowledgement and forward the documents to the public prosecutor (ministère public), who may require the association to amend its bylaws or file a petition

⁶ In Estonia, NCOs are registered in a special Register for Non-Profit Associations and Foundations, but the registration procedure is very simple.

⁷ In accordance with the [Associations Act of 1901](#).

for its liquidation.

There are no specific requirements for drafting an association's charter. Model charters, used as a template, are offered by prefectures for small associations or those that do not require specific regulations.

Upon publication in the Journal Officiel, the association acquires the status and legal capacity of a legal entity.⁸ Generally, the registration process for associations is simpler than for commercial organizations.

Belgium

The registration procedure for associations is permission-based and the same for all legal entities, both commercial and non-commercial. All legal entities are registered by the enterprise territorial court. The court may deny registration if the constituent document does not include the required information. To register, the constituent document and the publication form must be submitted.

Austria

The registration procedure for associations is permission-based. Registration is carried out by district administrative authorities (*Bezirksverwaltungsbehörde*) or local police departments (*Landespolizeidirektion*) at the association's location. The registration authority may refuse registration if the association's purpose, name, or organizational structure are unlawful, and the refusal must be justified in accordance with Article 11, Part 4, of the European Convention on Human Rights. Registration requires the submission of articles of association and a written application.

RECOMMENDATIONS

1. Consider the possibility of maintaining the existing registration procedure for funds, institutions and associations (unions) of legal entities with the State Tax Committee under the one-stop shop procedure and extending this procedure to PAs by amending the Law on PAs.
2. As an alternative to the recommendation above, consult with NCOs and PAs to identify practical problems in registering NCOs and PAs as legal entities and make appropriate amendments to the Law on PAs and the draft Law on NCOs, simplifying and standardizing the registration procedure.

2. Location of the NCO's permanent body (legal address)

LEGISLATION OF THE REPUBLIC OF TAJIKISTAN

⁸ The registration procedure for associations recognized as socially beneficial is more complicated, but they enjoy greater preferences.

According to Article 18 of the Law on PAs, the charter of an PA must include “the location of the permanent governing body.” The draft Law on NCOs states: “The location of a non-commercial organization is the place of its state registration, specified in its constituent documents.”

INTERNATIONAL EXPERIENCE

The requirement to provide information about the location of the current governing body is consistent with common international practice and assumes that this address is used for official communications between government agencies and third parties with the NCO. For example, German law requires that NCOs provide information about the address of their governing body, while under Hungarian law, the registered address is the location from which the organization is managed.

Almost all European countries allow the use of an individual's residential address as the legal address of an NCO, and the presence of a separate office is not required (for example, Austria, France, the Czech Republic, etc.). The NCO is obligated to promptly notify the registration authority of any change to this address. Failure to comply with this obligation may result in liability if official correspondence is not delivered to the NCO as a result.

Given that the primary purpose of providing a current address to the registration authority is to facilitate effective communication between government agencies and third parties with the NCO, such an address may in some cases be virtual (postal) rather than physical. Some countries (e.g., Austria, France, the Czech Republic, the Netherlands, Estonia, and Italy) permit the use of a postal or virtual address. Other countries (e.g., Hungary) do not allow this.

In post-Soviet countries, the address of the governing body is generally required, and a virtual (postal) address alone is not permitted, although there are exceptions (e.g., Lithuania, Estonia, Moldova, and Ukraine). In some countries, the legal address may be located at the individual's place of residence (e.g., Kazakhstan, Lithuania, Estonia, Moldova, Kyrgyzstan, etc.).

The registration authority has the right to request the applicant's address/contact information and require it to be updated promptly. As noted above, indicating the address of the current governing body in NCO documents is a standard legal requirement for NCOs in most countries. This ensures contact with the NCO.

However, this detailed address does not necessarily have to be part of the memorandum of association or charter and can be included in other documents submitted to the government agency. This allows for notification of changes without the need to amend the charter or re-register, minimizing bureaucracy and the burden on both government agencies and the NCO.

For example, in France, the full address must be included in documents submitted to the prefecture for registration, but it is not required to be included in the articles of association. The requirement to include the full address in the articles of association can be a serious inconvenience, as it entails not only the possibility of making changes but also the potential⁹ need to convene a general meeting of the legal entity's members for any minor change of address (even if it involves moving to a neighboring building on the same street), not to mention the need to re-register the articles of association with government agencies, as is the case in some countries.

It should be noted that most European countries do not require a separate document confirming the organization's right to use the premises as a legal address (e.g., a lease agreement, landlord's permission, etc.), or do not have clearly established practices on this issue.

RECOMMENDATIONS

1. The current address of the governing body of an NCO or PA must be submitted to the registration authority in a separate document (e.g., an application), not in the charter. This will allow the registration authority to be notified of any address changes without having to amend and register the charter.
2. Allow the legal address to be located at the residential address of an individual, and also permit the postal address to be provided as such an address.
3. Do not require a document that would confirm the rights to the premises that are declared as the address of the governing body of the NCO or PA.

3. Territorial status

INTERNATIONAL STANDARDS

[...] legislation that restricts, for example, the territory on which certain associations may operate, and punishes them for undertaking activities outside this area, may be in violation of the right to freedom of association.¹⁰

Legislation should also refrain from placing territorial restrictions on the operations of associations, and should maintain the same procedures for registration throughout the whole country.¹¹

The requirement to determine territorial status and limit the territory of activity for PAs based on their status constitute an unlawful restriction of the right to freedom of association and are contrary to Article 22.2 of the ICCPR, which contains an exhaustive list of permissible grounds for restricting the right to freedom of association: “No

⁹ Depending on whether the charter gives the board of directors the right to decide such issues.

¹⁰ Section 180 of the Guidelines.

¹¹ Section 159 of the Guidelines.

restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Restricting the territory of NCO activity is inconsistent with international standards. Specifically, such restrictions are not provided for in the ICCPR and lead to discrimination because:

- it does not apply to commercial legal entities, but only to NCOs; and
- places NCOs with local status in a less favorable position compared to NCOs with republican status, since NCOs with local status can only operate within a limited territory.

Furthermore, the requirement for registration based on territorial status contradicts paragraph 159 of the Guidelines, which emphasizes that all associations, regardless of their legal form, must have the right to operate throughout the entire territory of the state. Not only PAs, but all NCOs must have the right to operate throughout the territory of the Republic of Tajikistan, just like other legal entities.

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Article 12 of the Law on PAs requires PAs to define their territory of operation at the time of their registration as a legal entity. PAs may register as:

- international – activities extend to the territory of the Republic of Tajikistan and beyond;
- republican – activities are carried out throughout the territory of the Republic of Tajikistan;
- local - activities extend to the territory within the administrative-territorial unit of a region, city, or district.

Depending on the status, the registering authority (e.g., the Ministry of Justice for international and national PAs, and the territorial justice department for PAs with local status) and specific registration requirements are determined. However, PAs can only operate within the territory specified in their registration documents. For example, a PA located in the city of Bokhtar and registered with the Department of Justice for Khatlon Oblast cannot operate throughout the entire territory of the Republic of Tajikistan, as registering with the regional justice department will prevent the PA from receiving international or republican status. Commercial organizations do not have this difficulty.

INTERNATIONAL EXPERIENCE

In international practice, territorial status exists only in some post-Soviet states, but not in other regions. Moreover, many post-Soviet states have also renounced territorial status (for example, Armenia, Georgia, Ukraine, Kyrgyzstan, the Russian Federation, Estonia, Lithuania, and Latvia).

Thus, a unified legal regime for all NCOs, allowing them to operate throughout the country and beyond, is considered a positive practice.

RECOMMENDATIONS

Eliminate the distinction between NCOs and PAs based on territorial status, ensuring that all NCOs and PAs can operate throughout the Republic of Tajikistan and beyond, just like commercial organizations. The law should not impose territorial restrictions on the activities of associations and other forms of NCOs and should ensure a uniform and non-discriminatory registration procedure throughout the country.

4. Grounds for refusal of registration

INTERNATIONAL STANDARDS

[...]in very limited circumstances, the substance of the documentation submitted to the authorities for registration should not be subject to review. [...]Only the association's ability to meet formal requirements should be relevant for the question of registration.¹²

[...]the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required. The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body.¹³

The responsible state agency should be required to provide a detailed written statement of reasons for a decision to refuse the registration of an association. Such reasons should not go beyond what is specified in the applicable law. The reasons set out in law should be compatible with international human rights standards; the rejection of a registration should be exclusively based on non-compliance with the prescribed formalities, or the existence of inadmissible names or objectives, in cases where these do not comply with international standards or with legislation that is consistent with such standards.¹⁴

The right to establish NCOs to pursue common goals is recognized in international law as a protected right of freedom of association, enshrined in Article 22 of the ICCPR.¹⁵ The only possible restrictions on this right are those provided by law and necessary in a democratic society in the interests of national security or public safety, public order,

¹² Section 158 of the Guidelines.

¹³ Section 160 of the Guidelines.

¹⁴ Section 162 of the Guidelines.

¹⁵ See *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H. R. 500 (1998).

the protection of public health and morals, or the protection of the rights and freedoms of others. Only “convincing and compelling” reasons may serve as grounds for restricting the right to association, and these restrictions are subject to a “narrow interpretation.”¹⁶

LEGISLATION OF THE REPUBLIC OF TAJIKISTAN

Article 23 of the Law on PAs provides for the following grounds for refusal to register a PA:

- if the charter of the PA contradicts the Constitution of the Republic of Tajikistan and regulatory legal acts of the Republic of Tajikistan;
- if a complete list of documents required for state registration, as defined by this Law, is not submitted, or the information in the documents is not properly prepared or submitted to the wrong authority;
- if a previously registered PA with the same name carries out its activities;
- if it is established that the submitted constituent documents contain false information;
- if the name of the PA offends the morality, national and religious feelings of citizens.

At the same time, refusal to grant state registration of a PA on the grounds of the inexpediency of its creation is not permitted.

The draft Law on NCOs repeats the stated grounds with minor editorial changes.

INTERNATIONAL EXPERIENCE

In many European countries, the grounds for refusal are formulated broadly, but are applied extremely rarely.

For example, in Germany, the government has the right to reject an application to register an association if its form does not fully comply with legal requirements (Civil Code, Articles 56-59). Such a decision, however, must be duly justified and can only be made in cases where the association is prohibited or can be prohibited under civil law. This implies that the association's goals or activities violate criminal law, are directed against the constitutional order, or the principles of international understanding (Basic Law, Articles 9-2). It should be noted that banning associations in Germany is extremely rare; most often, such a decision is made against neo-Nazi organizations for one of the

¹⁶ See *Ibid.*; see *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).

above-mentioned reasons.¹⁷ The ability of state authorities to prevent registration is strictly limited.

Spain is another country where government authorities can refuse to register an association. They have the right to do so in two cases:

- The objectives of the unification are illegal - they are contrary to the fundamental law and violate the political and social unity of Spain (Law of 24 December 1964, Articles 1-3).
- The association's goals are unclear—the organization's charter and memorandum of association leave doubts about its intended activities (*ibid.*, Articles 1-2). Failure to provide the legally required information may result in registration being rejected (*ibid.*, Articles 3.2.1-3.2.9).

According to French law, if there is missing information, the registration authority is obliged to confirm receipt of the package of documents within five days.¹⁸ In 1971, the French Constitutional Council ruled that, since freedom of association is guaranteed by the constitution, registration cannot be a permission-based procedure.¹⁹ Consequently, in France, the registration authority has no legal right to refuse registration, even if the application is not formally submitted, and the legality of an NCO's goals is determined by the courts. However, the 1901 Association Act (Article 3) declares any association invalid if its purpose is illegal, prejudicial to good morals, the integrity of the national territory, or the republican form of government.²⁰ If the registration authority determines during the registration process that there are grounds for declaring the association invalid, it still issues an acknowledgement for registration and submits the materials to the court for annulment. Thus, French practice is based on the principle of the presumption of legality of an association—registration is a technical act, and verification of compliance with the law is carried out only by the courts.

This “automatic” approach to NCO registration is prevalent in Western Europe and in a number of post-Soviet states, at least in relation to certain organizational and legal

¹⁷ Elie Alfandari, Amaury Nardone, *Associations et Fondations en Europe, régime juridique et fiscal* (Associations and Foundations in Europe – Legal and Financial Regime), (Editions Juris-Service, 1994), 390-391.

¹⁸ Article 5 of the Law on Associations (July 1, 1901).

¹⁹ Decision No. 71-44 DC (July 16, 1971).

²⁰ It should be noted that, since 1936, following the adoption of the Law on Combat Groups and Private Militias, all cases of dissolution of organizations aimed at undermining the integrity of national territory or the republican form of government have been transferred from the jurisdiction of the civil courts to the French government itself. Since 1936 (over a period of 80 years), only three organizations have been declared invalid. Regarding the other two grounds for declaring an association invalid, there were only 14 court cases between 1970 and 2000. See www.legifrance.gov.fr, which contains a collection of all laws and key regulations adopted at the national level, as well as all decisions of the Constitutional Council and administrative and civil courts.

forms of NCOs (for example, for NCO registration through a single window in Kazakhstan, Georgia, and Kyrgyzstan).

RECOMMENDATIONS

1. Reduce the list of grounds for refusing to register new NCOs and PAs, eliminating grounds that allow for subjective assessment by the registering authority (for example, if the name of the NCO or PA “offends the morality, national and religious feelings of citizens”).
2. Provide the opportunity to correct technical errors in NCO and PA registration documents in a routine manner, without refusing registration, by providing applicants with a reasonable time to make corrections (for example, if a complete list of documents required for state registration is not provided, the information in the documents is not properly formatted, or there is already a registered organization with the same name).
3. Replace the wording of the grounds for refusing registration due to a contradiction between the charter and the Constitution and regulatory legal acts of the Republic of Tajikistan, clarifying that refusal is possible only if the organization's goals are clearly aimed at promoting racial, nationalist, social and religious hatred or calling for the violent overthrow of the constitutional order and the organization of armed groups.
4. Eliminate the legal review of all provisions in constituent documents for compliance with all legal and regulatory acts, as this authority, in practice, can lead to arbitrary decisions based on the subjective opinion of the person conducting the review. Any NCO activity that violates the law may be terminated after registration. An NCO, like any other legal entity, can violate the law regardless of whether the illegal provision is included in the charter. Eliminating the need to review charters will save significant time for registration authority employees and will not lead to negative consequences. For example, commercial organizations currently do not provide charters during state registration, but their presence is mandatory, and violation of charter provisions entails liability in accordance with the law. Similar to commercial organizations, NCO registration should only confirm the creation of a legal entity, not an assessment of its charter.
5. Eliminate the obligation of the registering authority to verify the accuracy of information in the submitted constituent documents. The registering authority does not need to expend additional resources on investigations. The organization itself should be responsible for the accuracy of the information. If facts are discovered in the future indicating that false information was provided

and/or the rights of third parties were violated, the NCO will be held liable in accordance with the law.