Issues of improving the legal status of institutions in Uzbekistan

Inoyatov Behruzjon Umidjon o‘g‘li
chief legal advisor of the Legal support department of the Ministry of higher education, science and innovation of the Republic of Uzbekistan.
yuridik@edu.uz

Abstract. The article analyses the civil-law status of institutions in Uzbekistan, the sources of their funding and the right of operational management of property under the Civil Code and the Budget Code. The author shows the differences between the legal position of state and private institutions and argues that an institution’s income-generating activity should be distinguished from entrepreneurial activity. It is proposed to supplement Article 76 of the Civil Code with a rule on the institution’s independent liability, for obligations arising from income-generating activity, with the income received and the property acquired from it, and to supplement Article 180 with the institution’s right to lease unused property without the owner’s separate consent.

Keywords: institution, non-profit organization, right of operational management, property autonomy, income-generating activity, subsidiary liability, budget organization, lease.

At present, institutions occupy an important place in ensuring the socio-economic development of the Republic of Uzbekistan, performing the social functions of the state and meeting the needs of the population in various spheres. In particular, the reforms being carried out to improve the system of public administration and in the spheres of education, healthcare, science, culture and social protection give rise to the need to reconsider the civil-law status of institutions. In this process, expanding the organisational, financial and property autonomy of institutions, improving the mechanisms for the effective use of the property assigned to them and clearly defining the legal relations between the owner and the institution are of particular importance.

The main purpose of establishing institutions is not to derive profit, but to perform social, cultural, managerial and other non-commercial functions that are significant for the state and society. In accordance with Article 76 of the Civil Code of the Republic of Uzbekistan, an institution is a legal entity established by the owner and fully or partially financed by the owner, which specialises in performing managerial, socio-cultural or other functions of a non-commercial nature. This legal construction expresses the features distinguishing an institution from other non-profit organisations, in particular the financing of its activities by the owner and its use of the property assigned to it on the basis of a limited real right[1].

In Uzbekistan, institutions may be established in the fields of science, education, healthcare, culture, social protection of the population, employment promotion, physical culture and sports, as well as in other socially significant areas. Their legal status has certain specific features depending on the legal nature of the

[1] Rahmonqulov H. Fuqarolik huquqining sub’ektlari [Subjects of civil law]. – Tashkent: TSUL, 2008. – 116 p.

founder, the sources of financing of their activities and the procedure for the use of property. From this point of view, it is important to distinguish under the legislation of Uzbekistan between the legal position of institutions established by the state and that of institutions founded by private owners.

State institutions are established on the basis of the relevant decisions of the competent state bodies, and their activities are aimed at performing the functions established by legislation[2]. A certain part of such institutions have the status of a budget organisation, and their activities are financed from the funds of the State Budget. At the same time, the procedure for financing all state institutions is not uniform, since the activities of certain institutions may also be provided for from other financial sources stipulated in special legislative acts.

Private institutions, in turn, are established by individuals or legal entities to pursue non-commercial purposes. The activities of such institutions may, as a rule, be provided for from funds allocated by the founder, other financial receipts not prohibited by legislation, and funds generated from income-generating activities carried out within the limits established by the constituent documents. In this case, the financial autonomy of a private institution does not change its non-commercial nature but creates an additional economic opportunity for the effective performance of the tasks provided for in its charter.

One of the main features determining the civil-law status of institutions relates to their rights in respect of property. Pursuant to Article 178 of the Civil Code of the Republic of Uzbekistan, a state institution exercises the powers of possession, use and disposal of the property assigned to it within the limits established by law, in accordance with the purposes of its activities, the instructions of the owner and the purpose of the property. This right is recognised as the right of operational management. Accordingly, although the institution is the entity directly using the property, it is not its owner. The right of ownership of the property remains with the relevant owner.

In the exercise of the property rights of an institution, the restrictions imposed on its power to dispose of property play an important role. In particular, in accordance with Article 180 of the Civil Code, an institution has no right to alienate or otherwise dispose of the property assigned to it, as well as property acquired at the expense of funds allocated under the estimate. However, if the constituent documents of the institution provide for the possibility of engaging in income-generating activities, the income derived from such activities and the property acquired at the expense of such income pass to the independent disposal of the institution and are recorded on a separate balance sheet. This rule serves as an important legal basis for ensuring the property autonomy of institutions[3].

In this sense, the income-generating activities of an institution should be assessed not in isolation from its main non-commercial purposes, but as an additional economic instrument serving the attainment of these purposes. The provision of paid

[2] Zokirov I.B. Fuqarolik huquqi: Darslik. I qism [Civil law: Textbook. Part I] / Ed. by H.Rahmonqulov. 5th revised and supplemented edition. – Tashkent: TSUL Publishing House, 2009. – 71 p.
[3] Fuqarolik huquqi: Darslik. I qism [Civil law: Textbook. Part I] / Team of authors. – Tashkent: TSUL Publishing House, 2016. – 103 p.

services, the performance of certain works or the receipt of income from other lawful types of activity by an institution does not transform its legal nature into that of a commercial organisation. In this case, the conformity of the activity with the tasks defined in the charter of the institution, the targeted spending of the funds received and the lawfulness of the use of property remain the main criteria.

The differences in the legal position of institutions manifest themselves primarily in the mechanism of their financing and the legal regime of their property. The financial activities of institutions maintained at the expense of the State Budget are regulated by the Budget Code of the Republic of Uzbekistan. According to this Code, a budget organisation is a non-profit organisation established in the prescribed manner for the purpose of performing state functions and maintained at the expense of the funds of the State Budget. The expenditures of budget organisations are made on the basis of the expenditure estimate drawn up and approved for the relevant financial year. This estimate reflects, under the relevant expenditure items, the budget funds allocated to ensure the activities of the organisation.

At the same time, the budget legislation of the Republic of Uzbekistan does not limit the financial support of state institutions solely to funds allocated from the budget. In particular, Articles 44, 60 and 63 of the Budget Code provide for rules on the formation of extra-budgetary funds of budget organisations and on the attraction of extra-budgetary funds from the income of the development fund and from payments established by legislation. Subject to compliance with the relevant legal requirements, such funds may be directed towards strengthening the material and technical base of the institution, increasing the efficiency of its activities and other established purposes.

The issue of the property autonomy of institutions is also directly related to their liability for civil-law obligations. According to Article 76 of the Civil Code of the Republic of Uzbekistan, an institution is liable for its obligations with the funds at its disposal. If these funds are insufficient, the owner of the relevant property bears subsidiary liability for the obligations of the institution. This procedure shows that the property autonomy of an institution is relative in nature and that its participation in civil circulation is inseparably linked with a certain legal and economic responsibility of the owner[4].

In our opinion, in improving the civil-law status of institutions in Uzbekistan, along with expanding their financial autonomy, it is important to further clarify the content of the right of operational management, to consistently regulate the powers of an institution in respect of the property acquired from income-generating activities, and to define the limits of property liability between the owner and the institution. Indeed, the property autonomy granted to institutions, while expanding their ability to perform their main tasks, must be harmonised with legal guarantees ensuring the targeted and rational use of property.

The civil-law liability of institutions has specific features and differs to a certain extent from the general rules on the property autonomy of legal entities and

[4] Fuqarolik huquqiga kirish: darslik [Introduction to civil law: Textbook] / Team of authors; under the general editorship of O. Oqyulov, Honoured Lawyer of Uzbekistan, Doctor of Law, Professor. – Tashkent: TSUL Publishing House, 2024. – 114 p.

their liability for their obligations. In particular, in accordance with Article 48 of the Civil Code of the Republic of Uzbekistan, a legal entity is liable for its obligations with all the property belonging to it. However, Article 76 of the Code provides for a special procedure for institutions, according to which an institution is liable for its obligations with the funds at its disposal. If these funds are insufficient, the owner of the relevant property bears subsidiary liability for the obligations of the institution.

In our opinion, although such a legal approach may be considered justified to a certain extent with respect to obligations arising in the course of the performance by the institution of its main statutory tasks, it cannot be regarded as entirely appropriate in relations connected with its income-generating activities. This is because, when an institution independently carries out activities aimed at generating income, its property liability to its counterparties should also be determined in accordance with the economic nature of such activities. Otherwise, certain legal imbalances may arise in protecting the property interests of persons who have entered into contractual relations with the institution.

In this regard, it is proposed to supplement Article 76 of the Civil Code of the Republic of Uzbekistan with a new part of the following content:

“An institution shall be independently liable for its obligations related to the conduct of income-generating activities with the income derived from such activities and with the property acquired at the expense of such income and recorded on a separate balance sheet”.

This proposal serves to expand the property autonomy of institutions, to increase their responsibility in economic activities and to create additional guarantees for the protection of the rights of counterparties. In this case, it is also necessary to clearly define the correlation between the current rule on subsidiary liability and the proposed special procedure of liability.

The civil legislation of the Republic of Uzbekistan allows institutions to engage in income-generating activities in cases provided for by their constituent documents. At the same time, Article 76 of the Civil Code establishes that an institution is fully or partially financed by the owner. This, in turn, may necessitate the use, in financing the activities of an institution, of other financial sources permitted by legislation along with the funds allocated by the owner.

In particular, where the activities of an institution are partially financed, the possibility of engaging in income-generating activities becomes an important economic instrument ensuring the performance of its main tasks defined in its charter. In such a situation, although this activity is formally defined as a right of the institution, from an economic point of view it may be connected with the need to ensure its sustainable functioning[5].

The receipt of additional income by an institution creates the financial conditions necessary for expanding its material and technical capacities, improving the quality of the services it provides, developing its production and social infrastructure and effectively performing the tasks defined in its charter.

[5] Xomidov E.O. Davlat oliy ta’lim muassasalarining tadbirkorlik faoliyatini fuqarolik-huquqiy tartibga solish [Civil-law regulation of the entrepreneurial activity of state higher education institutions]: Abstract of the PhD dissertation in Law. – Tashkent, 2020. – 17 p.

Therefore, it is advisable to assess the income-generating activities of institutions not as activities contrary to their non-commercial legal nature, but as an auxiliary economic mechanism serving the attainment of their main purposes.

Determining the legal nature of the income-generating activities carried out by institutions is of great importance for the theory of civil law and legislative practice. Indeed, the property and organisational autonomy of institutions is associated with certain restrictions established by legislation, which requires their economic activities to be distinguished from the activities of commercial organisations.

Article 2 of the Civil Code of the Republic of Uzbekistan characterises entrepreneurial activity as activity aimed at deriving profit and carried out at one's own risk. However, the income-generating activities of institutions do not always fully encompass the features inherent in entrepreneurial activity, such as independence, economic risk and the determination of profit-making as the main purpose.

In particular, an institution carries out its activities within the purposes defined in its constituent documents, while its powers to use and dispose of property are limited by the boundaries established by legislation and by the owner. Therefore, interpreting the income-generating activities of an institution in all cases as a legal category identical to entrepreneurial activity is theoretically debatable[6].

In our opinion, it is necessary to establish a clear legal boundary between these concepts. In this regard, it is advisable to characterise entrepreneurial activity as economic activity carried out independently, at one's own risk and for the purpose of systematically deriving profit, and the income-generating activity of an institution as an auxiliary activity serving the financial and material support of its main statutory tasks.

Such an approach makes it possible to preserve the legal status of institutions as non-profit organisations, to define the limits of their participation in economic relations and to consistently regulate the property rights and obligations arising as a result of income-generating activities.

Improving the powers to use and dispose of the property assigned to institutions plays an important role in expanding their property autonomy. In accordance with Article 180 of the Civil Code of the Republic of Uzbekistan, an institution has no right to alienate or otherwise dispose of the property assigned to it, as well as property acquired at the expense of funds allocated under the estimate. At the same time, if the constituent documents of the institution provide for engaging in income-generating activities, the income derived from such activities and the property acquired at the expense of such income pass to the independent disposal of the institution.

However, in the practical activities of institutions, certain property items assigned to them may not be used on a permanent basis, or the possibilities for their use may not be fully exploited[7]. In such cases, the temporary lease of such property

[6] Попов А.А. Учреждение как субъект гражданского права: автореф. дис. ... канд. юрид. наук. – Краснодар: 2005. – 10 с.

[7] Лескова Ю.Г. Правовое положение учреждений по российскому законодательству: автореф. дис. ... канд. юрид. наук. – Белгород: 2005. – 12 с.

may form an additional financial source for the institution, improve its material and technical support and expand its ability to perform its main statutory tasks.

From this point of view, in order to ensure the property autonomy of institutions and the effective use of the property at their disposal, it is proposed to supplement Article 180 of the Civil Code of the Republic of Uzbekistan with a new part of the following content:

“In cases provided for by legislation, where this does not contradict its statutory purposes and tasks, does not impede the performance of its main activities and is aimed at obtaining additional income, an institution shall have the right to lease the property assigned to it without the separate consent of the owner. In this case, the procedure and conditions for leasing the property shall be determined by legislation”.

In implementing this proposal, it is also necessary to take into account the requirements and restrictions of special legislation on the lease of state property.

This amendment may serve to expand the possibilities for institutions to exercise the right of operational management, to involve unused property items in economic circulation, to generate additional financial resources and to organise the main activities of institutions effectively. At the same time, the mechanisms for maintaining control over the use of property, ensuring its targeted use and protecting the lawful interests of the owner should also be improved.