

INTERNAL PROCEDURE ON THE WORK OF CIVIL SOCIETY ORGANIZATIONS

Zaid Kazem Gleibish, Prof. Dr Alaa Hussein

University of Kufa, College of Arts, Department of Civil Society, Najaf, Iraq

Alaa.shibaa@uokufa.edu.iq

Abstract

The role of civil society organizations is among the most important priorities that the civilized countries of the world must pay attention to, based on strengthening the partnership between those organizations and the state, and in a way that guarantees their effectiveness on the ground, provided that all of this is by-laws issued by governments, and enhances the role of the participation of those organizations. Organizations in all activities that concern citizens. Therefore, the exercise of control over these organizations by governments in the countries of the world is also considered among the most important elements that would assess the work, if such control aims to correct the path of these organizations on the ground. In line with the laws that are enacted, and that would help in its growth.

The importance of oversight appears through our study of the Non-Governmental Organizations Law No. (12) of 2010. We see that this law has dealt with the issue of monitoring the work of these organizations, starting from their establishment, passing through financial matters, and ending with the penalties imposed on these organizations.

keywords: 1_ oversight 2_ organizations 3_ civil society

Introduction

The fields in which civil society organizations operate vary without limits, except for the commitment not to violate laws and public order. These fields may change from place to place and from time to time, depending on all areas, the renewable needs of the society in which they operate, as the controls imposed by the state on the formation and work of civil society organizations are Civilian is one of the important guarantees for the state and the regime alike to carry out the work for which it was founded.

These entities, which were previously described as civil society organizations, are among the most important tools that the masses use to claim their rights, by uniting individual forces and assembling them in one crucible, which ultimately serves the interests of all of them.

The oversight of the work of civil society organizations suffered from randomness and ambiguity before the issuance of Law No. 12 of 2010, and the matter was left to personal jurisprudence. However, after the issuance of the aforementioned law, the oversight was divided into administrative oversight and judicial oversight, which we will discuss in two parts.

The first topic

Administrative oversight of civil society organizations

Management oversight is one of the important types of oversight at various levels since civil society organizations seek to achieve and satisfy the self-interests of individuals, which vary

narrowly and broadly depending on the political, social, and economic circumstances of the state, as in return for that, there must be oversight exercised on those organizations.

This is because the general concept of administrative oversight is that oversight is undertaken by the administration itself to verify the legality of the actions issued by it or the extent to which it is appropriate to the circumstances surrounding it. As for the special meaning of administrative control, it is that control over the work of civil society organizations, and checking the extent of compatibility between what is issued by them and the laws that apply to them, not to mention that they are subject to penalties in case of violation.

The first requirement

Foundation control

Incorporation oversight is a type of administrative oversight, and it accompanies the organization before carrying out its work and on what is related to the establishment of "civil society organizations", and despite the stipulation of the method of incorporation in the "Non-Governmental Organizations" law in force: there are instructions issued in. In this regard, which is to facilitate the implementation of Law No. (12) of 2010, as amended; The Non-Governmental Organizations Department verifies that none of the founding members has been convicted of a non-political felony or misdemeanour involving moral turpitude, in coordination with the relevant authorities. This department is the only administrative body responsible for non-governmental organizations in Iraq.

However, the need to verify that the people who undertake the task of establishing "civil society organizations" are not previously convicted: it is considered a good position by the legislator, and despite the length of time that such a matter takes; This condition is considered necessary in Iraq, especially in light of the exceptional circumstances that this country is facing. On the other hand, we believe that the competent authorities should facilitate such a task for the applicants for the establishment of these organizations.

This is because the task that they undertake to carry out is aimed at achieving the public interest. Just as these stakeholders undoubtedly represent civil society, they do not seek to make a profit from it. Therefore, the competent authorities should have facilitated the matter of obtaining a criminal record, without complication.

Likewise, regarding the rejection of the incorporation application, Law No. (12) of 2010 stipulates that the management authority is competent to reject the refusal that is based only on a violation of the provisions of the "Non-Governmental Organizations" law, without specifying the meaning of that violation; that is, without limiting the prohibitions that must be avoided; In other words, all those who intend to form "civil society organizations" must take into account the requirements of this law, otherwise, their application will be rejected.

This is in contrast to what is in force in France about incorporation, and as previously stated his statement that; As the management body is obligated to issue a receipt indicating the submission of the incorporation application as long as it meets the conditions, and the application cannot be rejected unless it does not meet the conditions that must be met; This is because the administrative authority concerned with issuing approval or not, cannot assess the legality of the purpose of the association because such an issue is within the competence of the administrative judiciary.

In other words, the administration in France must, in the first place, issue a receipt for the establishment of those organizations that have fulfilled the conditions; Then, at the same time that you issue this receipt, you address the Public Prosecutor, who undertakes the task of appealing the decision and then requests the dissolution of the association with the illegal purpose.

Financial Supervision

Financial oversight by the administration is of great importance to the state that knows its authorities to finance organizations, as financial matters are among the most important things that “civil society organizations” must pay attention to, as they are the nerve that provides life to these organizations, which prompted many countries to confirm Such an issue is found in its legislation, and this is what Iraq has followed, as Law No. (12) of 2010 on “Non-Governmental Organizations” defines the resources of organizations as the subscriptions for each of members and donations; grants and bequests; internal and external donations and gifts; As well as the revenues generated from the organization's activities and projects.

This is because the Iraqi legislator has made it possible, in this text, for all organizations to receive gifts and bequests without specifying a specific amount, and without limiting these gifts and donations from within, but also allowed those organizations to receive money from anywhere; This is considered a good step for the Iraqi legislator in this regard, as it contributes to opening the way for these organizations to carry out the role assigned to them to the fullest. The Law Implementation Instructions also referred to the role of the “Non-Governmental Organizations Department” through its authority to ensure that the organization needs real estate that it owns, or that it owns after registration, to carry out its activities, after submitting these documents.

Organizations (civil society organizations) disclosed that real estate.

However, Law No. (12) of 2010 confirmed this by including an entire chapter under the title “Financial Provisions for Civil Society Organizations”, in which it restricted the organization’s right to own real estate, and even emphasized certain conditions that must be met to own such real estate. Among these conditions is that these properties are to the extent necessary for its branches, or the place where they meet, or to achieve their objectives.

The law also confirmed that these organizations (civil society organizations) have the right to conduct their financial operations by receiving and disbursing financial resources through governmental or private banks, through a bank account, provided that this account may not be frozen except by a judicial decision.

On the other hand, the law requires the “Non-Governmental Organizations” department to do something that is represented by the need for that department to seek to coordinate work between it and the Office of Financial Supervision about auditing the accounts of non-governmental organizations, if it appears to it that the financial records are inaccurate and contain manipulation. Provided that the organization is notified of this thirty days before the date of auditing these accounts.

Perhaps such a matter is a good step by the Iraqi legislator because he has imposed control over the funds of "civil society organizations", by making the task of auditing the responsibility of the Office of Financial Supervision, which mainly undertakes the task of supervising public

state institutions, as if, here Equality between public institutions and civil society organizations to achieve the meaning of oversight.

The second topic

Judicial oversight of the work of civil society organizations

Judicial oversight is another light of the types of oversight practised in civil society organizations, as the concept of the power to eliminate persons falls within the scope of the jurisdiction of the judiciary to eliminate all moral and natural persons within a single territory of the state and includes all state departments and institutions, including “civil society organizations.” And individuals alike, because the submission of these organizations to the authorities of the judiciary is among the most basic manifestations of asserting the authority of the state over its lands.

As for judicial oversight, it is what the judicial authority does as an independent authority, with its guarantees and independence from the legislative and executive authorities, as it is characterized by its performance by judges who are independent of the administration and enjoy merit and objectivity; It is also distinguished by the fact that it is issued by judicial rulings that enjoy the absolute argument, which is the argument of the thing decided against everyone.

The first requirement

Foundation control

The authority of the judiciary is to decide on the correctness of the organization’s registration procedures, and as we have previously dealt with the aspect of establishing civil society organizations, especially in terms of administrative oversight that affects these organizations, in return for that there is another type of oversight: judicial oversight, which is represented in the case of issuance of a decision by the “non-governmental organizations” department government”, to reject the application for incorporation or registration.

In the aforementioned case, the members of the body or organization have the right to file an appeal with the Court of Appeal in its cassation capacity, after the circuit clarifies the reason for the refusal, and informs the applicants of the decision in writing by following the due procedures, as stipulated in the Civil and Commercial Procedures Law No. (83). of 1969, although the jurisdiction of this court is defined by this law. However, the “Non-Governmental Organizations” law has assigned this jurisdiction to it, which is clear to us from the following phrase in the text: “With due regard to the provisions of other laws, the organization is exposed when it violates the provisions of this law ...

As we see, and also through the previous text that dealt with the issue of penalties imposed on associations or organizations, the “Non-Governmental Organizations” law provided for referral despite the explicit text that we presented previously, which means that the latter confirms what preceded it.

While some believe that the decision of the "Non-Governmental Organizations" department, rejecting the establishment of the organization, is a purely administrative decision, which includes four elements: it is a legal act, i.e. the actions carried out by the administration to produce certain legal effects; issued by a public administrative body; It is issued by the sole will of the administration; Finally, it is intended to bring about a certain legal effect that includes a change in legal positions.

Financial Supervision

The judiciary exercises control over the financial affairs of the organization by considering it a legal person.

The judiciary has a long hand in verifying the sources of financing the organization and that its goal is determined by it, but the organization will aim to achieve a social interest. Financial judicial oversight is also the decisive factor in deciding financial disputes between the administration and the organization.

There are two things in which Egyptian law differs from both the French and Iraqi laws in the field of judicial oversight of associations:

The first: It creates a link between administrative oversight and judicial oversight, by establishing a committee specialized in examining disputes that arise between the association and the administrative body to settle them amicably, before resorting to the judiciary, whether by the administration or by the association itself regarding the decisions of the administration, and the lawsuit is not accepted, regarding the dispute before the competent court except after a decision has been issued by the committee or sixty days have elapsed without a decision on it.

And the second thing: it made the judicial authority competent to monitor the work of associations and adjudicate disputes that arise between the administrative authority and the association after presenting it to the committee is the Administrative Judiciary Court located in its jurisdiction the centre of the association's administration.

Conclusion

1_ The importance of oversight appears through our study of the Non-Governmental Organizations Law No. (12) of 2010. We see that this law has dealt with the issue of monitoring the work of these organizations, starting from their establishment, passing through financial matters, and ending with the penalties imposed on these organizations.

2_ We see that the Iraqi legislator, about the financial control imposed on the regulating institutional branches, and serving to protect people against terrorism in the whole world.

3_ The judicial oversight carried out by the judicial authority as an independent authority has its guarantees and independence from the legislative and executive authorities, as it is characterized by its performance by judges who are independent of the administration and enjoy merit and objectivity; It is also distinguished by the fact that it is issued by judicial rulings that enjoy the absolute argument, which is the argument of the thing decided in the face of everyone.

4_ We find the need to verify that the people who undertake the task of establishing "civil society organizations" are not previously convicted: this is a good position by the legislator, and despite the length of time that such a matter takes; This condition is considered necessary in Iraq, especially in light of the exceptional circumstances that this country is facing. On the other hand, we believe that the competent authorities should facilitate such a task for the applicants for the establishment of these organizations.

References

- Esraa Hussein, political parties (its origins - tasks - classification - functions), a research published on the Internet on the website com. ahlmountada. 2002-essay.www, the date of the last access to the site. 2/10/2022

- Abed Al-Baqi Al-Bakri and Dr Zuhair Al-Bashir, Introduction to the Study of Law, House of Wisdom for Publishing, Translation and Distribution, Baghdad, without a year of printing, p. 312.
- Essam, Abdel-Wahhab Al-Barzanji and others, Principles and Provisions of Administrative Law, new and revised edition (Iraq: Al-Sanhouri Publications, 2015, p. 127)
- Rawnaq, Ouda Hassan, previous reference, p. 101
- Paragraph 1 of Article 2 of Instructions No. 6 of 2010
- Rawnaq, Ouda Hassan, previous reference, p. 102
- Law No. 12 of 2010, Paragraph Six of Article 8
- Muhammad, Ibrahim Khairy Al-Wakeel, previous reference, p. 1151
- Rawnaq, Ouda Hassan, previous reference, p. 102
- Law No. 12 of 2010, Article 13
- Instructions No. 6 of 2010, Article 11
- Law No. 12 of 2010, Article 14, Paragraph III
- Same source, Article 16, paragraphs one and two
- Same source, Article 14
- Ghassan, Al-Saleh: The Judicial Authority to Supervise the Work of Civil Society Organizations, Al-Sabah Newspaper, Issue 1697, June 9, 2009
- Muhammad Ali Jawad: Administrative Judiciary, 1st edition (Cairo, Al-Atak for the Book Industry, 2007, p. 7)
- The Law of Non-Governmental Organizations in force, Paragraph Seven of Article 8.
- Same source, the same article
- Same source, Article 23
- Rawnaq, Ouda Hassan, previous reference, p. 111
- The role of civil society organizations in reducing organized crime in Iraq, previous reference.
- Rawnaq, Ouda Hassan, previous reference, p. 57
- Dr Abdel Rafi Musa, previous source, p. 68
- Dr Muhammad Ibrahim Khairy Al-Wakeel, previous source, p. 285.