FOREIGN EXPERIENCE OF CARING ACTIVITIES AND THE PLACE OF LEGAL AID

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The essence of foreign experience of charitable activities and the role of legal aid in it is considered. It is proved that a key aspect of any international standards is the establishment of restrictions on the activities of non-governmental organizations. These restrictions include: restrictions arising from the need to protect national interests and security, combat crime, protect the life and health of citizens (subjects), their fundamental rights, freedoms and interests (Bosnia, Czech Republic, Kosovo, Serbia, Montenegro, Slovakia, etc.); a ban on the creation of organizations whose purpose is to undermine the sovereignty of the state, its territorial integrity, constitutional order and unity of the nation (Bulgaria, Croatia, Bosnia, Macedonia, Romania, etc.); a ban on inciting racial, national, ethnic and religious hatred (Montenegro, Serbia, Macedonia, etc.); a ban on the activities of organizations directed against the existence of political pluralism or the principles of the rule of law (Romania); a ban on the creation of armed groups and formations that have political goals and motives (Hungary), or parliamentary structures that seek to achieve their goals through violence (Bulgaria); a ban on the creation of associations that plan to participate in political activities together with political parties (Bulgaria), etc. It has been established that in almost all EU countries the legislation provides for the need for public reporting of foundations - one of the means of increasing trust in their work. The main differences in the legislative norms of the European Union countries in this area concern whether it is necessary to ensure free access to the financial reports of such organizations, as well as under what conditions and with what frequency these reports should undergo an independent audit. Austria, Belgium, Denmark, Italy, Cyprus, Latvia, Malta, Germany, Portugal, Romania, Slovenia and Sweden do not require charitable foundations and other organizations to provide public access to their reports. The legislation of Estonia and Finland requires that reports be provided to any person, but only upon their request, and in Ireland anyone can obtain these reports from the Unified Register of Companies for a fee. While Bulgaria, the United Kingdom, Spain, Lithuania, Poland, Hungary and the Czech Republic have established requirements for public access to the financial reports of any charitable organizations, without specifying the form of such access, Greece, Luxembourg, the Netherlands and Slovakia have designated special printed bodies where such reports should be published. In summary, French legislation requires that financial reports be provided freely to those charitable organizations that receive budget funds or donations in an amount exceeding a certain annual amount.

Keywords: lawyer, charitable activities, charitable organizations, foreign experience, defender, types, public administration body, international charitable organizations, human rights defender, legal aid.

For the world community, charity is not a new and still unexplored practice, unlike in post-Soviet countries. International civil society has long realized all the advantages and the need for mutual assistance. Therefore, an analysis of international experience in organizing charity and attempts to integrate domestic legislation

into world standards can become a significant impetus for the development of the charitable movement in Ukraine.

It is worth noting that public relations in European countries in the field of charity do not have a single legal regulation. Europeans have been trying to solve this problem for the past 15 years, in particular, to develop a common legislative act that would regulate the activities of charitable institutions in the countries of the European Union (hereinafter referred to as the EU), opening the way for the unhindered implementation of international charitable projects. After all, Europeans perfectly understand the potential of charitable organizations and the importance of its use, so they strive to actively involve it [1].

This policy of the EU member states regarding the involvement of charitable organizations in solving social problems is also due to the fact that, experiencing the consequences of the financial crisis, many European countries are trying to shift the tasks and responsibility for solving certain social issues to private organizations or individuals. In conditions of state budget deficit, it becomes profitable for philanthropists to take on certain obligations, implement new social programs, develop and test models for solving certain problems.

The definition of the essence and features of the administrative and legal foundations of the functioning of charitable organizations in Ukraine has not yet received a well-deserved theoretical and legal development. Certain aspects of the mentioned problem were considered in scientific studies by such lawyers as: V. Averyanov, O. Bandurka, Yu. Bytyak, O. Bezpalova, T. Kolomoyets, V. Kolpakov and others [2]. At the same time, in the domestic administrative and legal literature, these issues are considered episodically, without a comprehensive approach. That is why improving the legal and organizational support for the activities of charitable organizations in Ukraine is currently extremely important.

The legal framework that regulates the activities of non-governmental organizations in all countries of Central and Eastern Europe has undergone significant changes over the past 15–20 years. These changes were caused by corresponding shifts in the political systems of many countries. Prior to this, the norms related to the regulation of charity were either completely absent or very outdated, such as in Romania, where non-governmental associations and foundations were registered in accordance with the Law adopted back in 1924 [3]. Today, almost all countries, with the exception of some (for example, Serbia), have adopted new, so-called «framework» laws that determine the procedure for registration and types of activities of non-governmental, including charitable organizations. It is worth emphasizing that this "framework" includes not only one specific law, but also a number of other laws and regulations, provisions on socially beneficial activities, tax legislation, laws on public procurement, social security and state participation in the implementation of charitable assistance. Such "framework" legislation can be found in the Civil Code of Hungary, in certain laws of Bulgaria and Croatia [4]. The clarity and coherence of the regulatory framework in different countries may vary. For example, the procedure for registering a charitable organization may be simple (one-step), as in Kosovo, or complex (two-step) – in Romania, or even represent a whole set of related regulatory and legal acts (as in Serbia) [5]. Tax legislation, accordingly, may provide for the provision of tax benefits and incentives or even exempt from taxation participants in the charitable movement, or, conversely, not provide any tax benefits. However, such cases are quite rare. As for state funding of non-profit organizations, it can be transparent (Hungary) or remain shadowy (Macedonia) [6].

The situation in Western European countries is somewhat more positive. In particular, in Poland, the Law "On Publicly Useful Activities and Volunteering", adopted on April 24, 2003, defines publicly useful activities as activities carried out by a non-governmental organization in the field of public needs specified in the statute (Article 3). Such activities also include promoting European integration, providing assistance to Poles abroad, repressed people, etc. (Article 4). It is also indicated that public administration bodies carry out activities in the field of social tasks in cooperation with public organizations and entities that carry out publicly useful activities in accordance with the territory and tasks falling within the competence of public administration bodies. This cooperation is carried out on the

principles of mutual assistance, sovereignty of the parties, partnership, efficiency, fair competition and openness [7].

Close cooperation between public administration bodies and non-governmental organizations deserves special attention. Such cooperation may consist in entrusting public organizations with the implementation of social tasks, mutual information about planned areas of activity and cooperation with the aim of harmonizing these areas, consulting with public organizations in accordance with the scope of their activities, draft regulations in areas related to the statutory activities of these organizations, as well as in the creation of joint commissions of an advisory and informative nature. Public administration bodies may commission such organizations to perform social tasks together with the provision of subsidies to finance their implementation, or may support such tasks by providing subsidies to co-finance their implementation [8].

The activities of the independent Charity Commission of the United Kingdom are successful, where the determining factor in determining charitable goals is the historically formed relationship between the state and the population. Non-governmental organizations have a long history and are widely supported by the population. The main sources of legal regulation of charity were formed on the basis of precedents, distinguishing four categories of charitable purposes: combating poverty, promoting education and religion, and other socially beneficial purposes. The Charity Commission for England and Wales puts forward three key requirements for organizations that claim charitable status: 1) the ability to bring tangible benefits to society; 2) potential beneficiaries must constitute a sufficiently wide group that can be considered as a community or part of society, while personal or private connections should not limit the circle of these individuals; 3) receiving benefits by individuals must be accidental and not outweigh the public interest. At the same time, it is allowed that the clients of a charitable organization mainly belong to a certain racial, ethnic, religious or other group. The only requirement is the absence of additional restrictions on receiving benefits exclusively by members of this group [9].

Thus, in the UK, any organisation operating solely for the public benefit is considered charitable. In this case, it is essential that the organisation's objectives comply with the statutory definition of the public good. In the context of the UK Charity Acts 2006 and 2011, interrelated aspects of public benefit can be distinguished, such as the interests of the benefit itself and the interests of society as a whole.

In France, according to the Decree of 6 January 1989 on financial and economic terminology, charity is understood as financial assistance provided to an organisation or person without direct compensation from the recipient, for the purpose of carrying out an activity of public interest. It consists of making donations (in money, in the form of material resources or expertise) to any body to support an activity carried out in the public interest. In France, public benefit activities also include activities of individuals and legal entities aimed at supporting amateur sports, art and the protection of the country's artistic heritage. In addition, in the context of such activities, the donor company may receive some public compensation, the amount of which, however, should not exceed the amount of the donation. For individuals, such compensation is clearly regulated and has symbolic meaning. French charitable organizations can have two forms of public benefit: general interest status and public benefit status. According to the law, the general interest criterion is met when an organization is mainly engaged in at least one type of public benefit activity and provides services to a specific group of beneficiaries. To obtain public benefit status, it is necessary to approve the statute, the model of which is determined by the Council of State. There are also certain requirements regarding the internal structure, use of funds, financial stability and size of the organization.

In Germany, charitable foundations can exist as legal entities under public or private law, or they can have no legal entity status. The latter are not accountable to state bodies that regulate charitable activities [10].

As the legislation of most developed countries shows, charitable organizations can take the form of non-profit (non-commercial) organizations. That is, these organizations do not set as their goal the receipt of profit or the distribution

of material benefits among their members. Charitable organizations are most often defined as non-governmental non-profit organizations that carry out free activities to achieve socially significant goals.

It is also worth focusing on charitable activities in the United States of America, because, according to the World Charity Ranking, which is conducted by the Charities Aid Foundation (CAF), it is the United States that occupies a prominent place among the leaders of world philanthropy. In addition, the organization's research indicates that the level of charity increases in those countries where the consequences of crises are felt, immediately after conflicts or confrontations have ended, because it is in difficult times that people acutely feel the need to support each other. The desire to help is inherent in all nations, even those where the standard of living is significantly inferior to, say, Western countries [11].

Conclusions. Thus, a key indicator for any international standards is the establishment of certain restrictions on the functioning of non-governmental organizations. These restrictions include: restrictions due to the need to protect national interests and security, prevent crime, protect the life and health of citizens (subjects), their fundamental rights, freedoms and interests (Bosnia, the Czech Republic, Kosovo, Serbia, Montenegro, Slovakia, etc.); prohibition on the creation of associations whose purpose is to undermine the sovereignty of the state, its territorial integrity, constitutional order and unity of the nation (Bulgaria, Croatia, Bosnia, Macedonia, Romania, etc.); prohibition on inciting racial, national, ethnic and religious hatred (Montenegro, Serbia, Macedonia, etc.); prohibition on the activities of organizations directed against the existence of political pluralism or the principles of the rule of law (Romania); prohibition on the creation of armed groups and formations that have political goals and motives (Hungary), or parliamentary structures that try to achieve their goals through violence (Bulgaria); prohibition on the creation of associations that seek to participate in political activities together with political parties (Bulgaria), etc.

In this regard, states are increasingly developing and adopting separate legislation on socially beneficial activities and creating relevant organizations for comprehensive and unified regulatory regulation. For example, in Hungary there is legislation on socially beneficial activities, in Lithuania in 2002 the Law «On Charity and Sponsorship» was adopted, in Poland, as already mentioned above - «On Socially Beneficial Activities and Volunteering», etc. Thus, the United States is the only country represented in the top ten in all types of charity: assistance to those in need, volunteering and financial donations. In the USA, charitable organizations are a type of non-profit organizations, which, in addition to churches, schools and hospitals, include political parties, trade unions, professional associations and others. They are divided into private and public. Public organizations receive significant public and state support, that is, they are funded not by one or several founders, but by a wide range of individuals. In addition, a number of organizations, including churches and church organizations, as well as - subject to certain conditions - public educational and medical institutions, are equated with public charitable organizations. All other charitable organizations are classified as «private foundations», which has an impact, first of all, on the tax status of the organization.

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ЗАРУБІЖНИЙ ДОСВІД ЗДІЙСНЕННЯ БЛАГОДІЙНОЇ ДІЯЛЬНОСТІ ТА МІСЦЕ ПРАВНИЧОЇ ДОПОМОГИ

Розглянуто суть закордонного досвіду благодійної діяльності та роль юридичної допомоги в ньому. Доведено, що ключовим аспектом будь-яких міжнародних стандартів є встановлення обмежень для діяльності неурядових організацій. Ці обмеження включають: обмеження, що випливають з потреби захищати національні інтереси й безпеку, протидіяти злочинності, охороняти життя та здоров'я громадян (підданих), їхні основні права, свободи та інтереси (Боснія, Чехія, Косово, Сербія, Чорногорія, Словаччина та ін.); заборону на створення організацій, метою яких є підрив суверенітету держави, її територіальної цілісності, конституційного ладу та єдності нації (Болгарія, Хорватія, Боснія, Македонія, Румунія та ін.); заборону на розпалювання расової, національної, етнічної та релігійної ненависті (Чорногорія, Сербія, Македонія та ін.); заборону діяльності організацій, спрямованої проти існування політичного плюралізму чи принципів верховенства права (Румунія); заборону створення збройних угруповань та формувань, які мають політичні цілі та мотиви (Угорщина), або парламентських структур, які прагнуть досягти своїх цілей шляхом насильства (Болгарія); заборону на створення об'єднань, що планують брати участь у політичній діяльності разом з політичними партіями (Болгарія) та ін. Встановлено, що майже у всіх державах ЄС законодавство передбачає необхідність публічної звітності фондів – один із засобів підвищення довіри до їхньої роботи. Основні розбіжності в законодавчих нормах країн Європейського Союзу в цій сфері стосуються того, чи потрібно забезпечувати вільний доступ до фінансових звітів подібних організацій, а також за яких умов та з якою періодичністю ці звіти мають проходити незалежний аудит. Австрія, Бельгія, Данія, Італія, Кіпр, Латвія, Мальта, Німеччина, Португалія, Румунія, Словенія та Швеція не вимагають від благодійних фондів та інших організацій забезпечення публічного доступу до своїх звітів. Законодавство Естонії та Фінляндії вимагає надання звітів будь-якій особі, але тільки на її вимогу, а в Ірландії будь-хто може отримати ці звіти з Єдиного реєстру компаній за певну плату. Якщо Болгарія, Великобританія, Іспанія, Литва, Польща, Угорщина та Чехія встановили вимоги загального доступу до фінансових звітів будь-яких благодійних організацій, не уточнюючи форму такого доступу, то Греція, Люксембург, Нідерланди та Словаччина визначили спеціальні друковані органи, де мають публікуватися такі звіти. Підсумовуючи, законодавство Франції вимагає забезпечувати вільний доступ до фінансових звітів лише тих благодійних організацій, які отримують бюджетні кошти або пожертвування на суму, що перевищує визначений щорічний розмір.

***Ключові слова**: адвокат, благодійна діяльність, благодійні організації, зарубіжний досвід, захисник, види, орган публічної адміністрації, міжнародні благодійні організації, правозахисник, правова допомога.*