

The performance of charitable organization

Продуктивність благодійної організації

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Ключові слова:

благодійність, благодійна діяльність, громадська організація, благодійна організація, волонтери, важкі життєві обставини.

Key words:

charity, charitable activity, social organization, charitable organization, voluntary, difficult life circumstances.

Statement of the problem. Charities exhibit the usefulness and efficiency through the solving of urgent social and economic problems and needs of society. One of the key subjects of this activity is charitable organization and in recent years in our country its revitalization determines the necessity not only appropriate legislative regulation of their activities, but also its deep scientific research. Therefore, **the purpose** of this article is investigation the nature of charitable organizations.

State research. In the light of developments during the last years in whole world, and Ukraine is not exception, the research for the issue of charitable organizations becomes more important. Moreover, it was studied by E. Batozhska, N. Blazhko, V. Borisov, G. Goncharenko, V. Dolenko, I. Zavydnyak, Y. Zaika, V. Kornienko, V. Lysenko, O. Litvinov, V. Lutz, N. Protsenko, M. Sviridov, A. Sydorenko and others. However, even through the prism of Administrative Law the common approach for understanding the nature of charitable organizations is missing, so it caused the scientists for studying this issue.

The main material. Nowadays people around the world are united in various state and public institutions, among which distinguish the state of local governments, non-governmental organizations (NGOs), etc. The most numerous of these NGOs that are voluntary organizations of local, national or international level, working with citizens or in their name for the public welfare on the non-commercial basis¹.

NGOs are political parties, religious organizations, public associations, non-commercial society, the association of local government and its voluntary association, self-regulatory organization, an organization that provides professional self-government and others.

The largest group formations are associations, because this concept combines charitable organizations, voluntary organizations, organizations that deal with issues including people with disabilities, youth, women, members of counterterrorism operation, and victims of violence.

The activity of public associations covered all spheres of public life. In addition, this form of coverage is extremely diversified. Some of these organizations conduct various events (the round table meeting, meetings, concerts, etc.), while receiving financial support from state and local budgets, others attract international assistance for implementation of measures the appropriate direction, and others purposefully engaged in charity. In the last case we mind precisely about issue concerning charities.

Considering the importance of public activity in all its forms, let us note that the charitable organization is one of the most important public entities, because, on the one hand, the content of their work meets the core objective of grouping people, as mentioned above, and on the other hand their activities are consistent universal fundamental principles (humanity, rule of law, democracy, etc.).

At the end of 2014 in Ukraine according to local judicial authorities the number of non-governmental organizations reached 61 090 in performance of central public organizations (701 of them with national status), public unions were 718, the trade unions – 4 143, trade unions – 1 130 and charitable organizations – 9 799, and 89,9% of them were charitable funds and 4,8% were charitable institutions, 5,3% – benevolent associations².

¹ Енциклопедія державного управління : у 8 т. / наук.-ред. кол. : Ю.В. Ковбасюк та ін. – К. : НАДУ, 2011. – Т. 8 : Публічне врядування / наук.-ред. кол.: В.С. Загорський, С.О. Телешун та ін. – Львів : ЛРІДУ НАДУ, 2011. – 712 с

² Діяльність громадських об'єднань в Україні у 2014 році : Статистичний бюлетень / Державна служба статистики України. – К., 2015. – 145 с.

As any entity for charities are appropriated of characteristic features that distinguish them among the total array of NGOs. However, they have those characteristics that define them as belonging to the same NGO.

Thus, the common signs of charities are: 1) the element of civil society; 2) the form of public associations; 3) legal entities of private law; 4) non-commercial in nature, and their budget mainly consists of contributions from member organizations, donations and other sources³; 5) initiated the establishment of charitable organizations are capable individuals and legal entities of private law; 6) their activities aimed for the solving problems of people and not members of such organizations.

At the same time the special characteristics of charitable organizations are: 1) it is the form of benefactor; 2) they can perform as one and several kinds of charitable activities; 3) they are governed by special legislation in charitable activities; 4) their activities aimed at categories of natural and legal persons who have needs that state and individuals are unable to satisfy; 5) they use a social initiative and activity of people who wish to spend their financial and human resources to ensure the rights and legitimate interests above the needs of individuals and legal entities.

Referring to the purpose about activity of charitable organizations it should be noted that the goal of scientists is understood as cumulative idea about the model of the future outcome that is able to satisfy the initial need for certain real opportunities, measured by the results of past experience⁴.

The activities of charities aims to improve financial situation of recipients of charitable care, promoting social rehabilitation of the poor, the unemployed, the disabled and others who are in need of care and assistance to individuals who because of their physical or other defects are limited in their rights and legitimate interests⁵.

At the same time the purpose of charities cannot be the receiving and the distribution of profits among founders, members of management, other related persons and employees of such organizations⁶.

It should be pointed about limitations for the specific definition of the purpose of the charitable organization, above, in particular regarding recipients of the charitable care, which the author brings exclusively to individuals who are in difficult circumstances (caused by disability, age, health, social status, life skills and way of life, due to which the person partially or completely has (not acquired or lost) the ability or opportunity to take care of their own personal (family) life and to participate in public life⁷, while the law defines beneficiaries, including non-profit organizations, municipalities, any entities that receive aid for the purposes of charity. In addition, the obtaining of charitable assistance could improve not only the recipients of its financial situation, but also psychological condition. The Law of Ukraine "About charity and charitable organizations" establishes aforementioned prohibition on purpose of activity charities, without specifying of its content. In this context and taking into account the above, we consider it necessary to supplement Article 11 of this legal act new paragraph with such details: "Charitable organizations operate to provide material and personal assistance to individuals who are in difficult circumstances, and non-profit organizations, local communities, any legal entities that receive aid for the purposes of charitable activities, for ensuring their rights and lawful interests and needs in certain fields of law and way determined by the law".

During specifications of charities we consider that it is necessary to dwell on the issue and the principles of its implementation. However, since the activities of such associations is governed by law, when we refer to the principles of their activities it should be talking about principles as internal beliefs, attitudes, norms of behavior that mean⁸, and on legal principles as initial ideas arising from the nature and level of social development, justice and embodied in the regulations, compliance of it contributes to the achievement of certain goals⁹.

³ Завидняк І.О. Благодійні організації як інститут громадянського суспільства / І.О. Завидняк // Науковий вісник Національного університету ДПС України. – 2014. – № 2 (65). – С. 74–79.

⁴ Енциклопедичний словник з державного управління / уклад.: Ю.П. Сурмін, В.Д. Бакуменко, А.М. Михненко та ін. ; за ред. Ю.В. Ковбасюка, В.П. Трошинського, Ю.П. Сурміна. – К. : НАДУ, 2010. – 820 с.

⁵ Енциклопедія державного управління : у 8 т. / наук.-ред. колегія: Ю.В. Ковбасюк та ін. – К. : НАДУ, 2011. – Т. 1 : Теорія державного управління / наук.-ред. колегія: В.М. Князєв, І.В. Розпутенко та ін. – 2011. – 748 с.

⁶ Блажко Н.І. Основні засади Закону України «Про благодійну діяльність та благодійні організації в Україні» / Н.І. Блажко, В.І. Доленко, Н.К. Проценко. – Кременчук, 2013. – 20 с.

⁷ Про соціальні послуги : Закон України від 19 черв. 2003 р. 966-IV // Відомості Верховної Ради України. – 2003. – № 45. – Ст. 358.

⁸ Державне управління : теорія і практика / за заг. ред. В.Б. Авер'янова. – К. : Юрінком Інтер, 1998. – 432 с.

⁹ Куца А.М. Адміністративно-правове регулювання соціального захисту інвалідів : дис. ... канд. юрид. наук : спец. 12.00.07 / А.М. Куца. – Запоріжжя, 2011. – 297 с.

The principles of charitable organizations include:

- Voluntariness. The principle of voluntary means to operate one or another organization on their own members, without any coercion requirement of such activities. As membership regarding voluntary charitable organization, it manifests itself in the free admission to membership of such an organization or outlet;
- Unity of interests of people who wish to contribute to the organization. Provides for the presence of common social, economic, creative or any other not prohibited by law in the interests of potential or actual members of the charitable organization;
- Equality before the law. It means that equality of rights and duties of charities based on their nature and the opportunity to be full participants in social and economic relations in society;
- Self-government. Provides for state intervention without self-determination at the charitable organization activities, issues connecting with management, control the activities of such organizations with consideration of legal constraints and restrictions and possible future opportunities;
- Organizational unity and independence from the state. Provides a stable structure of charities, their composition and relationships between members, independence from the state (except legalization, financial control by the public authorities, liquidation, etc.), the option of the implementation certain tasks and functions;
- Dedication of charitable organizations;
- Accessibility, transparency and publicity, which provides access to charities information necessary for the exercise of their activities, as well as public information about the activities of these entities;
- Free choice of the territory of the charitable organization;
- The absence of property interest in the members (participants) of charitable organizations.

In the scientific literature the civil society is used like concept under which should understand the basic directions of activity of civil society institutes and their influence on public life¹⁰.

In the context of the issues that are covered in this article, the main functions charities include: 1) implementation of measures to ensure the needs of individuals and entities in a financial or personal care, including those that are provided by the state; 2) involving people in social and community activities.

Further we will consider the issue spheres charitable organizations. Thus, based on the content of Article 3 of the Law of Ukraine "About charity and charitable organizations" and the analysis of the norms and provisions of national law, charities depending on the areas of human activity operate in the following areas:

- in the material sphere. In this field charities create crisis centers for family members, which committed domestic violence or there is a real threat of such violence; provide military, mobilization readiness, combat effectiveness and functioning of the Armed Forces of Ukraine and the National Guard of Ukraine; contribute to the development of science park and its projects; finance measures to ensure citizens' rights for the adequate standard of living and environmental security by providing drinking water in adequate amounts and in accordance with established standards; finance cultural programs of literature and art, support of talents and creative initiatives in culture, solution of social and domestic problems of professional artists; finance health care;
- in the social and political sphere. In particular, charitable organizations are fighting with AIDS, Tuberculosis and Malaria; provide social services and humanitarian assistance; providing free sanitary, medical and social assistance for people in difficult life circumstances and who are in need of care and support; conducting social work with families, children and youth; create shelters for animals;
- in the spiritual sphere through the publication of works;
- in cultural and domestic sphere. Among the relevant activities it should be distinguish non-profit charitable aid institution of culture and science park development.

However, identified directions are not exhaustive, because, as practice shows, charity is not limited by any boundaries, except: provide charitable assistance to political parties or on behalf of political parties; participation in the election campaign; he opportunity to be members of the Bank; provide charitable assistance to state and local governments or nonprofit organizations created by them or by their behalf - third parties unless the provision of such charitable help is prior or subsequent issue of the taxpayer for any permission, license, approv-

¹⁰ Енциклопедичний словник з державного управління / уклад.: Ю.П. Сурмін, В.Д. Бакуменко, А.М. Михненко та ін. ; за ред. Ю.В. Ковбасюка, В.П. Трощинського, Ю.П. Сурміна. – К. : НАДУ, 2010. – 820 с.

al, provision of public services or acceptance of other decision in his favour or acceleration of this issue, granting, adoption (simplification of procedures)¹¹.

Finally, turn to the content of concepts "charity" and "charitable organization activity" and, given the above, we believe it possible to offer the definition of authors. In paragraph 3 of Article 1 of the Law of Ukraine "About charity and charitable organizations" legislator secured the definition of "charity" and it is the legal entity of private law, the founding documents of which is determined charity in one or more areas defining by this Law as the main purpose of its activities¹².

Not taking into account the fact that the founding documents are mandatory documents which operating entities consider wrong definition of "charitable organization" because of the content of such documents. In addition, the definition of the purpose of such organizations as charitable activities without clear detail makes it impossible to understand the deep meaning of the studied categories. In the literature studied concept is defined as follows:

- non-governmental organization that performs charitable activities in the public interest or individuals without the purpose of generating profits from this activity. However cited definition, in our opinion, as well as legislative, devoid of specifics regarding the content of ongoing activities;
- non-governmental (state and municipal) nonprofit organization established for the implementation of the law stipulated objectives through the charitable activities for the benefit of society as a whole or certain categories of persons¹³. This provision of Article 3 of the Law of Ukraine "About charity and charitable organizations", which stipulates that the objectives of charitable activities is assist to promote the legitimate interests of the beneficiaries in the areas of charitable activities defined by this Law, and the development and support of these areas in the public interest has referential character;
- non-profit organizations engaged in useless activities aimed on achievement of socially significant goals¹⁴. This definition, though the general content, but may be taken as the basis in the formulation of the author's definition, because it reflects such highlights as the nature of charitable organizations (non-commercial) exercised its activities (disinterestedness) and the focus of this activity (achievement of relevant targets).

Considering aforementioned, we propose the concept of "charity" understand as the voluntary, self-governing public association, founded by one or more socially active individuals or legal entities of private law on the basis of their common interests is not prohibited by law, performing one or more kinds of charitable activities in the material, social, political, spiritual or cultural and community spheres of providing material and personal assistance to individuals who are in difficult circumstances, and non-profit organizations, local communities, any legal entities that receive aid for the purposes of charitable activities, to ensure their rights and lawful interests and needs without the purpose of generating profits from this activity.

At the same time concerning the definition of charitable organization, based on the fact that the components of any activity is the goal, object, instruments and procedures, consider the activities of charitable organization functioning of the public association aimed at providing material and personal charitable assistance material, social, political, spiritual or cultural and community spheres of individuals in difficult circumstances, and non-profit organizations, local communities, any legal entities that receive aid for the purposes charitable activities, to ensure their rights and lawful interests and needs without the purpose of generating profits from this activity.

Finally, we note that typically charitable organizations are not massive, but their software (charter) objectives are limited by around specific issues¹⁵.

In conclusion we would like to mention that charitable organizations are the key subjects of the rights and legitimate interests and needs of individuals and entities as making significant contributions for resolving

¹¹ Податковий кодекс України від 02 груд. 2010 р. № 2755-VI // Відомості Верховної Ради України. – 2011. – № № 13–14, 15–16, 17. – Ст. 112.

¹² Про благодійну діяльність та благодійні організації : Закон України від 05 лип. 2012 р. № 5073-VI // Відомості Верховної Ради України. – 2013. – № 25. – Ст. 252.

¹³ Большая юридическая энциклопедия. – М. : ДиректМедиа Паблшинг, 2006. – 5818 с.

¹⁴ New York Code of rules and regulations, Chapter V Charitable Uses and Purposes, Art. 90.2.

¹⁵ Завидняк І.О. Благодійні організації як інститут громадянського суспільства / І.О. Завидняк // Науковий вісник Національного університету ДПС України. – 2014. – № 2 (65). – С. 74–79.

the issues including cooperation with the state. And not much credits need to be done in order to point out the fact that the formation and implementation of state policy should be fully and deeply consider the specific functioning of charities.

Анотація

Стаття присвячена дослідженню діяльності благодійних організацій через призму наукових визначень і практичних аспектів її реалізації. Зокрема, автор досліджує характеристики й функції благодійних фондів, цілі, принципи, завдання та напрями їхньої діяльності. На основі отриманих результатів сформовано розуміння автором концептуальної основи й підходів до змісту досліджуваних категорій.

Summary

This article is devoted to the activities of charitable organizations through the prism of scientific definitions and practical aspects of its implementation. In particular, the author investigated the characteristics and functions of charities, goal, principles, objectives and areas of activity. On the basis of the results author version in relation to the understanding of the relevant conceptual framework and approaches to the content of the studied categories.

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