

SECTION 1 THEORY AND HISTORY OF PUBLIC ADMINISTRATION

LEGAL STATUS OF UKRAINE NGO IN THE EUROPEAN STANDARDS

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The history of the formation and development of public organizations of Ukraine was researched. Were marked characteristic features of NGOs. Were showed types of NGOs. Was analyzed the legal regulation of the establishment and termination of NGOs. Harmonize elements of the legislation of Ukraine on associations with European standards were researched.

Key words: NGOs, the law on NGOs, the legal status of NGOs, NGOs signs of, European standards of public organizations.

Formulation of the problem. Taking into account the fact that the Ukrainian people have chosen the democratic path of their development, the existence of a functioning mechanism for the realization of freedoms and human rights needs special attention.

In Ukraine, public organizations are formed in accordance with the constitutional right to form associations (Article 36 of the Constitution of Ukraine). Proceeding from this, the democratic basis of regulation of the formation and activities of public organizations promotes the realization of this right.

One of the many specific features of a truly democratic state, which Ukraine seeks to become, is the involvement of the general population in making decisions that are important to the community of people, by the authorities.

Analyzing the experience of the European Union member states, we conclude that it is more effective and constructive to involve not individuals but the organized public.

It is this community, which is manifested by civil society institutions, is public organizations.

Issues related to the formation and functioning of public organizations are regulated mainly by the Basic Law of Ukraine and the Law of Ukraine "On Public Associations" of March 22, 2012.

In Ukraine, in addition to the Law on Public Associations of March 22, 2012, which has a general character, a number of laws of a special nature about non-governmental organizations are in force, namely: Laws of Ukraine "On Charitable Activities and Charitable Organizations", "On freedom of conscience and religious organizations", "On trade unions, their rights and guarantees of activity", "On youth and children's social organizations", etc., whose norms often contradict the norms of the Law of Ukraine "On Public Associations" Dated March 22, 2012., and therefore, in our opinion – need to be reviewed.

Taking into account the Euro-integration vector of Ukraine's development, it is expedient and logical to carry out such a review taking into account and using European standards as a person's rights (the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950) and on non-governmental organizations (Recommendation of the Committee of Ministers of the Council of Europe to the states members on the legal status of non-governmental organizations in Europe 2007 No. SM/Rec (2007) 14 and the Fundamental Principles of the Status of Non-Governmental Organizations in Europe in 2002).

Analysis of recent research and publications. Analyzing the historiography of this problem, we arrive at the conclusion that in modern science there were no complex and solid studies of the legal status of civil society organizations as subjects of civil law. Until the 90's of the XX century, certain aspects of the participation of civil society organizations in civil-law relations were considered in the writings of such scholars as S.M. Brother, V.V. Kachanova, G.O. Kudryavtseva, G.V. Mishchenko, P.I. Sedugin et al. Since 1991, after the proclamation of Ukraine by an independent state, the main attention of the scientists of this sphere at the level of monographic and dissertation study was given to the constitutional, legal and administrative status of public organizations (N.P. Gaev, A.M. Vashchuk, E.E. Dodin and etc.).

A significant contribution to the study and research of public-law issues related to non-governmental organizations is the work in the form of dissertations by O.M. Vashchuk "Constitutional legal status of civic organizations in Ukraine" and Ye.E. Dodina "Administrative and legal status of public organizations in Ukraine". But the research is based on an outdated legal framework and the authors either do not relate to the existence

of international standards in the field of the formation and functioning of civic organizations, or are limited only by international standards on the right to association.

The problems and aspects of the legal status of private law entities are thoroughly and thoroughly studied and studied, in the works of such scholars and scientists as S.S. Alekseev, A.Yu. Babaskin, T.V. Bodnar, V.I. Borisova S.M. Brother, O.M. Vinnik, V.V. Volovyk, M.K. Galantich, O.V. Dzera, A.S. Dovgert, I.V. Zhilinkova, D.V. Zadhaylo, I.S. Kanzafarova, O.R. Kibenko, N.V. Kozlova, V.M. Kossak, O.V. Kokhanovskaya, V.M. Kravchuk, N.S. Kuznetsova, I.M. Kucherenko, V.V. Lutz, R.A. Maidanyk, V.K. Mamutov, D.I. Meyer, J.O. Pokrovsky, V.D. Primak, N.O. Saniahmetova, V.I. Semchyk, I.V. Spasybo-Fateyev, R.O. Stefanchuk, Ye.O. Sukhanov, N.I. Titova, L.M. Trufanova, E.O. Kharitonov, O.I. Kharitonova, V.D. Frolov, P.P. Cherevko, B.B. Turtles, Ya.M. Shevchenko, G.F. Shershevich, R.B. Shishka, S.I. Shimon, V.S. Shcherbyna, V.L. Yarotsky and others. The legal status of individual subjects of civil law, in particular charitable and religious organizations (O.Yu. Litvina, V.P. Pidbna, V.D. Fuchegi, V.O. Chepurnov, and others) is studied and analyzed. However, the problems of the legal status of NGOs as subjects of civil law were deprived of due attention of scientists and scientists of modern national science, especially legal, which determines the actual choice of the subject of this study.

Selection of previously unsettled parts of the general problem. The scientific novelty of the results presented in the article is that the article is one of the first studies of civil society organizations as subjects of civil law, and the peculiarities of their participation in civil legal relations.

The purpose of the article. The purpose of the article is to form the theoretical basis of the legal status of public organizations as subjects of civil law and to develop concrete and constructive proposals for improving and improving the norms of the current legislation of Ukraine in this area in accordance with and taking into account European standards.

Presenting main material. The history of the formation and development of civic organizations on the territory of Ukraine has more than two centuries. The following stages can be distinguished: the first (the stage of the birth of ideas, concepts, the creation of the first public organizations, which lasted until March 3, 1906, and was characterized by the absence of appropriate normative legal acts that would regulate their creation and activities); the second stage (from March 4, 1906 to 1917, during which the adoption in the Russian Empire of a normative

legal act regulating the creation and activities of civic organizations, became the impetus for their development); the third (the Soviet stage, which lasted from 1917 to 1991 and was characterized by strict state control over the creation and activities of civic organizations); the fourth (the current stage, which lasts from 1991 to the present day and is characterized by the formation of national legislation in the field of creation and activity of public organizations and its reforms in accordance with European standards) [17, p. 129].

The fourth ("modern") stage of the history of the development of civic organizations in Ukraine can be divided into two sub-stages: the first, which lasted from 1991 to 2003, during which the formation of the national legislation on civic organizations took place (adoption of the Law of Ukraine "On the Law" unions of citizens "and other normative-legal acts) and the constitutionality of the right to create public organizations (Article 36 of the Constitution of Ukraine); the second, which began with the entry into force of the Civil Code of Ukraine (January 1, 2004), which recognized NGOs as non-business partnerships and gave new impetus to the development of civic organizations, is still ongoing and is characterized by the reform of national legislation in the field of the establishment and operation of civic organizations in accordance with European standards [18, p. 205-206].

Considering this issue, it should be noted that for a public organization as a subject of civil law, based on scientific research Mendzhil M.V., characterized by the following features:

- the attributes peculiar to her as a legal entity (organizational unity, state registration and civil legal personality, manifestation of which is the separation of property, a statement in civil relations on its own behalf, independent property liability and the ability to be a plaintiff (defendant) in court);

- signs inherent in a public organization as a non-business partnership (special legal capacity, non-entrepreneurial character and non-profit activities);

- constitutive features that reveal the essence of a public organization – the purpose of creation and activity (public organizations are created to meet and protect legal social, economic, creative, age, national-cultural, sports and other interests) and the membership of public organizations.

Public organizations are the constitutional and legal form of public associations. They have the following characteristics of public associations, such as voluntariness, self-government, non-statehood and non-profit; these features are distinguished by civic organizations from politi-

cal parties. From another constitutional and legal form of public associations – public unions – public organizations are distinguished, firstly, by the fact that their founders and members (participants) can be only individuals, and secondly, that the founders and members (participants) by their actions take part in the work of a public organization [2, p. 14].

The modern system of public organizations in Ukraine has a fairly extensive structure and includes: trade unions, employers' organizations, youth and children's community organizations, creative unions, public organizations of physical culture and sports, public organizations of victims of Nazi persecution, disabled people, etc. The analysis of the provisions of normative legal acts does not provide grounds for considering public formations to protect public order and the state border as a form of public organizations [15, p. 187].

In studying this issue, we conclude that the place of public organizations in the general system of civil law subjects of Ukraine as such falls on the legal entities of private law.

In the process of establishing a public organization as a legal entity, two stages can be identified: initiative-organizational, which includes the will of the founders, which is expressed in the decision to establish a public organization at general meetings (conferences, congresses), elaboration and approval of the charter and formation of management bodies; registration, which envisages the legalization of a public organization and the state registration, as a result of which it acquires the status of a legal entity [16, p. 14].

It is on the basis of the statute should operate public organizations that acquire the status of legal entity. If public organizations are legalized by way of notice of establishment, they, in our opinion, can act on the basis of the provision.

The basis for legal regulation of the reorganization of non-business partnerships, including public organizations, may be the following principled approach: in the process of merger, division and separation of non-entrepreneurial society, only a non-entrepreneurial society can be created; non-commercial partnership cannot be transformed into a business association or join it [19, p. 146].

As a result of the reorganization or liquidation of a public organization, the termination of its activities, as well as any legal entity of private law, means the termination of its legal personality.

Civil capacity of non-governmental organizations can be defined as their ability to have civil rights and duties, and the content of legal capacity is specific property and personal non-prop-

erty rights that are provided to these organizations of the Central Committee of Ukraine, other normative legal acts and can be fixed in the statutes. The capacity of a specific public organization is determined by the purpose of its creation and activities, which is enshrined in the statute [22, p. 372].

A positive phenomenon in Ukraine is the fact that legal entities have general legal capacity, however, in our opinion, it would be appropriate to establish a special legal capacity in the Civil Code of Ukraine for all non-entrepreneurial societies, including civil society organizations.

A public organization that has acquired the status of a legal entity has a wide range of rights that can be classified into the following types: rights of organizational and representative nature (the right to disseminate information; to represent and protect their legitimate interests and legitimate interests of its members (participants) in state bodies, bodies local authorities, enterprises, institutions and organizations; mass events (meetings, rallies, demonstrations, etc.); the right to form or join associations (unions, associations, etc.); civil rights (property and personal non-property rights) [19, p. 147].

Any public organization of different directions should have its own unique name and in no case use the name of another legal entity. The direct right to name of a public organization includes: the right to a full and abbreviated name, the exclusive right to use its name, the right to demand from other natural and legal persons the termination of the misuse of the name and the right to protection against such unlawful use. The prohibition against the use of the name of a public organization by individuals and legal entities is legally prohibited, protection against the misuse of the name of a public organization is not conducive.

Conclusions and suggestions. The existence in the constitutional legislation of civic organizations of the territorial status of civic organizations (international, all-Ukrainian and local) does not comply with the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (as specifically mentioned in the judgment of the European Court of Human Rights in the case of "Koretsky and others v. Ukraine"), as well as Recommendation No. CM/Rec (2007) 14 and the Fundamental Principles. Such an approach violates the principle of equality of these civil society institutions. In order to harmonize the constitutional legislation on public organizations with European standards, it is proposed to introduce two statuses – international and national, without linking them exclusively with the territory of the activity of a public organization. An important factor in determining the status of a public organiza-

tion should be the citizenship of its founders and members (participants) [2, p. 12].

Studying and analyzing the Law of Ukraine on Citizens' Associations of June 16, 1992, No. 2460-XII did not comply with Recommendation No. CM/Rec (2007) 14 and the Fundamental Principles regarding the possibility of forming non-membership non-governmental organizations. The Law of Ukraine "On Public Associations" of March 22, 2012 No. 4572-VI does not deny the possibility of establishing such institutions of civil society, but does not regulate their legal status separately. Thus, in order to harmonize the constitutional legislation of Ukraine on public organizations with European standards, it is necessary to take a number of concrete measures in the legislative and normative field to eliminate this gap.

It is advisable to provide public organizations with the right of normative initiative at the local level. At present, the internal structure of public organizations, established by the Law of Ukraine "On Public Associations" (2012), does not comply with Recommendation No. CM / Rec (2007) 14 and the Fundamental Principles due to the extreme complexity. In connection with this, it was suggested that public organizations that provide for the membership should form a non-governmental organization in the organizational and legal form, with the mandatory presence of such bodies as the general meeting of members and the executive body (a similar structure of bodies for the membership organizations that are legalized by message). It is advisable to regulate in detail the procedures for convening and holding a general meeting of members of a public organization in the Law of Ukraine "On Public Associations" [2, p. 13].

The study of the Law of Ukraine "On Public Associations" (2012) testifies that not all of its norms are still valid. This is due to the fact that by January 1, 2018, public organizations must bring their statutory documents in line with them, and before that they use their corporate norms, created in accordance with the provisions of the Law of Ukraine "On Citizens' Associations" (1992) On the basis of comparison of the Laws "On Public Associations" and "On Citizens' Associations", we arrive at a conclusion on the greater correspondence of the current law with European standards on civic organizations [2, p. 15].

In order to design and develop concrete proposals to improve the norms of the relevant legislation of Ukraine in accordance with European norms and standards, this problem requires further comprehensive and comprehensive study, however, in our opinion, the practical implementation of the above proposals, in our opinion, will improve this situation in the near future.

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