DOI: https://doi.org/10.14505/jarle.v9.5(35).36

Legal Regulation of the Non-Entrepreneurial Legal Entities' Status: Foreign Experience

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Suggested Citation:

Zelisko, Alla V.; Zozuliak, Olga I.; and Sishchuk, Liliana V.. 2018. Legal Regulation of the Non-Entrepreneurial Legal Entities' Status: Foreign Experience, *Journal of Advanced Research in Law and Economics,* Volume IX, Fall, 5(35): 1806 – 1818. DOI: 10.14505/jarle.v9.5(35).36. Available from: http://journals.aserspublishing.eu/jarle/index

Article's History:

Received 11 June, 2018; *Received in revised form* 19 July, 2018; *Accepted* 20 August, 2018; *Published* 30 September, 2018.

Abstract:

The relevance of the study is due to the fact that the implementation of the task of improving private-law regulation of relations with the participation of non-entrepreneurial legal entities is possible only on the basis of the international experience of the operation of the legal institute. In this context, this article aims to analyze the positive experience of regulating non-entrepreneurial legal entities under the legislation of leading foreign countries. Leading approach to the study of this problem is the comparative method that has afforded revealing peculiarities of regulation of legal entities under consideration within Ukraine and foreign countries. In the article the suggestions for improving the legislation of Ukraine are presented on the basis of foreign experience. The materials of the paper imply the practical significance for the university teachers of the legal specializations.

Keywords: a legal entity; non-entrepreneurial sector; non-entrepreneurial activities; the legal status.

JEL Classification: A19; A22.

Introduction

It is worth paying attention to the fact that each of the countries depending on the legal system to which it belongs, the historical traditions of lawmaking, the period in which those or other social relations have been constituted that require a normative settlement, choose a certain way of their formal consolidation.

As part of the regulation of the legal status of structures belonging to the non-commercial sector, as we have already stipulated above, it has spread from their legal status, primarily as participants in constitutional legal relations. Such an approach lies in the objective reasons connected with non-business organizations and the realization of the right to freedom of association via their functioning.

Active processes of non-commercial legal entities' entry into property and personal unlawful law-enforcement bodies require their qualitative settlement at the level of provisions of acts of the civil law. Since the non-entrepreneurial sector of Ukraine today is an integral part of intensifying its participation in relations with the private law sphere, the issue of choosing the optimal model for formalizing the norms that will be regulated by them is of great importance. In view of the above, studying positive foreign experience in the normative regulation of the legal status of non-business entities with the status of a legal entity is more than important.

The Institute of Non-Commercial Legal Entity is more perfect in the countries of the European Union than in the countries of the post-soviet legal area, including Ukraine in particular. In addition, legal value is presented not only with the relevant legal orders established within the EU, but also in other developed countries such as the United States, England, Japan, etc. At the same time, it is not necessary to completely disregard the legislative traditions in the studied direction of the CIS member-states.

Given the fact that the experience of legal regulation of non-business organizations in the legal systems of different countries is not one decade, further comparative studies should be carried out in order to borrow the best traditions of the legislative framework formation in both formal and the substantive aspects and their implementation in the domestic legislation taking into account Ukrainian realities.

The first steps aimed at improving national legislation with the subsequent adaptation of European legal norms were made in 1994 when signing the Partnership and Cooperation Agreement with the EU. In order to implement the latter, a package of regulatory documents was adopted, one of which is the Law of Ukraine 'On the National Program of Adaptation of Ukrainian Legislation to the Law of the European Union' of March 18, 2004. It can be noted that since their implementation, it has been a long time, but and still the domestic legal framework needs further improvement. The above applies to the Institute of non-commercial legal entity.

Undoubtedly, legislative adaptation is a long time process; however, in view of the ratification on September 16, 2014, the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, it seems relevant to put efforts to make the process of adaptation more intense. And since this Agreement was signed in order to further acquire a full membership in the EU, the prerequisite of which is the conformity of the domestic legal field to European standards, then their research and implementation in national legislation is necessary.

The legal status of non-governmental organizations in Europe is defined by general instruments, which include, in particular, the Fundamental Principles on the Status of Non-Governmental Organizations in Europe of July 5, 2002 (Fundamental Principles on the Status of Non-Governmental Organizations in Europe 2002) and the Recommendations of the Committee of Ministers of the Council of Europe to member States regarding the status of non-governmental organizations in Europe No. CM/Rec (Recommendations of the Committee of Ministers of the Council of Europe to member states regarding the status of non-governmental organizations in Europe 2007) (hereinafter – Recommendations). In general, they are very similar, since the Recommendations are based on the General Principles. Both the first and the second are of a recommendatory nature, and therefore are not mandatory in the application. The legal literature quite rightly emphasizes that this phenomenon is comprehensible, since it is unlikely that one document can be applied to so many states in imperative order (Paratha 2014).

1. Fundamental Principles of European Countries Regarding the Status of Non-Governmental Organizations

We consider it relevant to analyze the main points outlined in these documents, but we will concentrate on the characteristics of the General Principles, because, as already noted, the Recommendations have been developed on their basis. In addition, it should be noted that from the very title of the above documents it follows that in the EU, non-entrepreneurial legal entities are referred to as non-governmental organizations (hereinafter – NGOs). Thus, in the understanding of the General Principles of NGOs are voluntary self-governing organizations, namely: associations, charitable institutions, foundations, non-profit corporations, societies and trusts, besides, the explanatory memorandum to the Fundamental Principles states that the concept of 'non-governmental organization' is extremely broad and encompasses Trade Unions and Religious Communities (Fundamental Principles on the Status of Non-Governmental Organizations in Europe 2002). And the Recommendations are supplemented by the fact that they are created for the non-commercial purposes of founders and members (Recommendations of the Committee of Ministers of the Council of Europe to the states 2007). However, according to cited documents, non-governmental organizations do not include political parties.

In this aspect, it should be emphasized that in international practice there is no single term that would characterize all non-entrepreneurial legal entities. As a rule, several terms are used, yes, in the English literature, the term 'non-profit organization' ('non-profit-making organization'). The next is the use of the term 'non-governmental organization', which is used in many countries and in documents of international organizations such as the UN, UNESCO, the EU, and others.

The term 'charity organization' ('charity organization') is mainly used in the practice of non-business organizations in England, but there, this term has a much broader meaning, covering the entire spectrum of socially useful non-governmental non-profit organizations. In addition to the aforementioned, the use of such

concepts as 'private voluntary organization' ('private voluntary organization'), public social organization or civil society organization ('civil social organization') is quite widespread (Lysenko 2009).

With regard to other civilizational peculiarities of NGOs, which are defined by the Fundamental Principles, they are as follows: their main goal cannot be receiving profit, but in case of profit, it is not distributed among the participants and founders, but is directed towards the achievement of the purposes for which they were created; Among the basic principles of the creation and operation of the matter is that NGOs with legal personality (legal entity status) may have the same opportunities as any other legal entities; they can be created as separate individuals or legal entities, and their groups; A quota of 2 people is sufficient to create them, but despite this, if the NGO has a legal personality, more stringent requirements may be imposed; An NGO is not necessarily a member organization, since it is possible to create an NGO in the form of a fund or a trust.

It is of scientific interest and the fact that the Fundamental Principles provide for the possibility of creating an NGO with the use of donation and inheritance institutions. There is also the explanation of the Establishment of an NGO in Inheritance in the Fundamental Principles. Therefore, paragraph 55 states that in the event of liquidation, an NGO may identify the heir, which may be another NGO with compatible objectives; founders and members, officials, directors and staff, in principle, are not responsible for any debts, duties and obligations of NGOs. However, paragraph 73 establishes that officials, directors, NGO staff with legal personality may be liable to it and third parties for unlawful behavior or neglect of their duties; The termination of an NGO can take place in the following ways: on the basis of a voluntary act of its members, in the event of bankruptcy, long-term inactivity or misconduct (Fundamental Principles on the Status of Non-Governmental Organizations in Europe 2002). These are general guidelines for the creation, operation and termination of NGOs, which, however, may vary from country to country, due to the specificities of a particular legislative field.

So, if you look at the countries of Central and Eastern Europe, then the same requirement for the number of members required to establish a non-commercial legal entity is quite different. In particular, in Estonia and Latvia the minimum number of members of such association is - 2 people. In other countries stricter requirements are put forward. For example, in Bulgaria, Croatia, the Czech Republic, Lithuania, Poland and Slovakia, the number of members necessary is3, and in Macedonia and Montenegro - 5 people. In Bulgaria, there is an exception to the rule, as members of a socially beneficial association must have at least 7 physical people or 3 legal entities. The harshest thing in this area is the legislation of Hungary and Slovenia, as in these countries, at least 10 participants are required to establish a non-commercial legal entity. In addition, in practically all the listed countries, participants of a non-commercial legal entity have the right to speak not only individuals (including foreigners), but also legal ones. And in Croatia, the founders and participants of a non-business association may also be domestic legal entities as well as foreign ones. The only exception is Macedonia and Slovenia, as the legislation of these countries prohibits the participation of legal entities in non-business associations (Ratzen 2009).

Also different legislative requirements are established for specific types of non-commercial legal entities, including public associations. In this aspect, it is important to observe the EU's general recommendation regarding the principle that a NGO with legal personality may have the same rights as any other legal entity. Hence, public associations with legal personality have the right to create separate units that are not endowed with the status of a legal entity. In spite of this, in some countries, for example, in Romania, the main organization that transfers part of its property to a separate subdivision is empowered to file an application for registration of this unit as a legal entity.

The legal norms of the Russian Federation are the most approximated to Ukrainian legislation. According to the Central Committee of the Russian Federation it is possible to create the following non-profit organizations: consumer cooperatives, public and religious associations, foundations, institutions and associations of legal entities (associations and unions) (Consultant-Plus). From the above, we can conclude that non-entrepreneurial institutions in the Russian Federation and domestic non-entrepreneurial legal entities have a lot in common in characteristics (Evstratova *et al.* 2016).

Particular attention should be paid to the approach regarding normative regulation of non-business entities with the status of a legal entity under the legislation of Poland as a neighboring country and a member of the EU at the same time. Poland belongs to those countries where a long time ago (60–80 years of XX century) an effective legislative mechanism for the regulation of organizations of the third sector was formed. The specificity of the legal regulation of the legal status of non-business organizations in the formal aspect is noted by the fact that at the level of the Civil Code of Poland (The Civil Code z dnia 23 kwietnia 1964) the system of legal entities is characterized in very general terms, and in detail the legal status of both business and non-commercial legal people is high lighted in separate laws.

In this country, division of legal entities according to the organization criterion is fundamental. As part of the regulation of unprivileged legal entities built on unitary basis, the Law of the Republic of Poland 'On Foundations' (Ustawa z dnia 6 kwietnia 1984 r) applies. According to O. Grabovska, a founder of the foundation in Poland may be one, two or more people. The person (people) who are the founders of the foundation must make a statement in the form of a notarial act on the creation of the latter. Creation of a foundation can also be foreseen in the will. Founders can be all individuals, regardless of citizenship and place of residence, as well as legal entities. A characteristic feature of the foundation is its non-profitability, that is, the realization of the goals of the foundation cannot bring profits to either the foundation itself or its founders. This means the need to use all the income received by the foundation (including from property, funds received from outside the authorized fund, subsidies, income from economic activities) to achieve the main goal (Grabovska 2008).

Regarding those non-entrepreneurial structures with the status of a legal entity based on membership (participation), they are represented as partnerships and regulated by the law of the same name – Law of the Republic of Poland 'On Communities' (Ustawa z dnia 7 kwietnia 1989 r). Despite the fact that societies and foundations may have very similar goals, both foundations and companies are subject to mandatory registration in the register of associations, other public and professional organizations, foundations and public institutions of guardianship of the State Court Registry, from the moment of registration these subjects acquire legal status (Grabovska 2008). At the same time, there are significant differences between them in terms of the forms of formation, functioning and financial activity.

The main difference between societies and foundations is preconditioned by the organization of the latter. Yes, societies are a form of association of individuals for the joint achievement of a certain goal, while at the time of foundation being formed the most important is capital (property). Such detailed regulation of the legal status of the main legal forms of non-entrepreneurial legal entities allows us to solidify with the conclusion of Chupryna that the current legal framework of Poland regarding non-profit organizations is functioning quite effectively, both in terms of determining the procedure for their creation, termination, as well as granting significant tax breaks for both associations and foundations (Chupryna 2011).

In Germany, besides societies and foundations, as in Poland, the associations are also singled out. According to Art. 21 The German Central Committee association does not intend to pursue business activities and acquires the status of a legal entity by entering into a register of associations with the local German Civil Code. Legal literature provides a broader definition of this entity, in particular as a voluntary corporate entity, which is created for a certain period, the participants of which are entitled to be several individuals or legal entities that are aimed at achieving certain intangible purposes. The number of people required to establish an association is 2, but if the association seeks to acquire the status of a legal entity, then 7 people are needed.

The right to participate in the association has a personal character and cannot be transferred in order of inheritance. The material basis for the association's activities in Germany is voluntary contributions, but the statute may stipulate that members of the association must materially support its activities. The Association may be deprived of legal capacity if the number of its members is less than 3 people; its activities are contrary to the public interest or pursue a commercial purpose. The decision to terminate an association's activity may be taken by a general meeting with a qualified majority of votes. The association's termination may take place through conversion, merger and division. When leaving the association or terminating it, the members have no rights to receive a share of the property of the association. This type of non-business organization can be considered as the main legal form of civic activity in Germany. The above is due to its flexible internal organization and the lack of a minimum capital requirement (Rawert and Gärtner).

In general, for all the countries under consideration, within the limits of this paragraph, it is characteristic that non-business organizations are created in them for a non-commercial purpose and do not distribute the profit received between founders and participants. But the fact that in each country there are features associated with the types of non-profit organizations draws attention to. Therefore, it can be argued that the most important discussion issues are non-corporate entities.

In the countries of Central and Eastern Europe, the approach to the two main organizational and legal forms of non-profit organizations is preserved: associations and foundations. The first acts as a member organization, and the second are created on the basis of property defined for specific purposes. These forms of non-business legal entities are basic, but not the only ones.

It is worth paying attention to three additional forms:

(1) in some countries, divisions have been made between organizations that carry out their activities at the expense of grants or income from economic activity, and organizations providing services

(hospitals, institutes and training centers). This organizational form can be called quite differently: as a 'socially useful company' in the Czech Republic or 'center' in Albania;

(2) the public fund is another form of organization that runs its activities with the help of grants. For example, in Croatia, a community fund understands the same as a charitable foundation, but the only difference between them is that a public foundation is created for a certain period (no more than 5 years). A similar approach is also recognized in the Czech Republic;

(3) open-end fund – organizations that simultaneously have signs of organization and fund. As for funds, it is the realization of the association of property for the achievement of a specific purpose, and with regard to the membership organizations – the donors have the right to enter an open fund, while becoming its co-founders. Such, in particular, are charity and sponsorship funds of Lithuania. However, this hybrid organization is rare enough (Ratzen 2009).

A fundamentally different approach to types of non-profit institutions includes legislation in England and Wales. There are the following legal forms of public activity:

- so-called limited liability company, which is a member organization where members are liable within a certain nominal value, for example, 1 pound. This association is a legal entity. The number of members in such organizations can be quite large, in addition, the possibility of participation and through the representative is allowed;
- non-corporative association, which is also a member organization and is not a legal entity. Charitable and other non-governmental organizations, community associations, sports clubs and community clubs fall into this category. Association management members bear joint responsibility for its debts. Also, in certain cases, officials and participants may be liable for their debts. In their activities they are guided by case law;
- a trust that is an association created for the storage and management of assets in the interests of others and must pursue charitable purposes. Trust is usually not a legal entity, however, to recognize this status, has the right to apply to the Charity Commission, which may issue a certificate of registration of such a legal entity;
- industrial associations and mutual aid associations, which are non-profit corporate entities. This legal construct is most often used for residential associations and cooperatives as well as some charities (Laratta and Mason 2010).

Even greater branching of non-corporate legal entities is characteristically for Japan. Thus, the types of nonprofit organizations that can be created and operate in a given country are: unions of associations (associations are created for religious, charitable, educational, artistic and other activities in the public interest); unions of corporations (foundations are set up for religious, charitable, educational, artistic and other activities in the public interest). We believe that the difference between the said associations is that unions of associations are member organizations, and associations of corporations – associations of property; corporations of social assistance (aimed at implementing social entrepreneurship); educational corporations (private schools); religious corporations (aiming at evangelization, religious rites, as well as the education and upbringing of believers); medical corporations (associations or foundations whose activities involve the establishment of hospitals or clinics in which doctors, in the course of their duties, regularly provide services to the poor and the elderly); public charitable foundation (created for religious, charitable, educational, artistic and other activities in the public interest); special non-profit legal entities (activities aimed at strengthening the health of the population, developing social security, education, arts, culture, sports, disaster management, international cooperation, etc.) (Laratta and Mason 2010).

Thus, the legislation of each individual country in terms of regulating the legal status of non-entrepreneurial legal entities is quite diverse and contains different approaches to the definition of such an institution, its types, features of the organizational structure, etc. In this regard, there is no possibility to take an example of a particular state and implement it in Ukraine. We have to build our own system of non-business entities with their own peculiarities and, of course, taking into account international experience (this will be discussed in the third part of this scientific paper).

Exploring the positive experience of leading foreign countries, it is worth focusing on the use of the construction 'non-corporate corporation'. If the term 'corporation' is a well-known domestic civilization, the term 'non-corporate corporation' has recently entered the terminology dictionary of domestic scientists, since traditionally the corporation is understood solely as an entrepreneurial entity with the status of a legal entity.

The category 'non-profit corporation' is used in the European law doctrine, especially in the countries belonging to the Anglo-Saxon legal family (Pryluckyi and Shatilo 2013). For example, in the English glossary of

terms we encounter the notion of 'non-corporate corporation' as a special type of corporation that is created to meet specific goals with a special tax regime. In order to qualify for a non-commercial status, a corporation must be created for the benefit of the public or a group of individuals and based on membership. Examples of non-corporate corporations include religious organizations, charitable organizations, political organizations, credit unions, membership clubs, etc. (Definition of a Nonprofit Corporation). In another definition of a non-corporate corporation, the latter is disclosed as a legal entity created for purposes other than profit generation, based on the membership relationship. Of course, a non-profit corporation can get profit, but profit (revenue) should be used to achieve the goals of the corporation and not be directed towards paying dividends to its members. Non-corporate corporations are different from business corporations that are created in order to profit and distribute it among their shareholders (Schneiderman 2015).

In the US, the term non-corporate corporation is also used. Thus, the analysis of corporate law of the states shows that not all corporations in the US are exclusively entrepreneurial. Under the Constitution of New York State (§ 65, section 2-A) corporations are divided into three main types: public corporations; corporations that do not have a purpose to profit; corporations with a purpose to profit. In their own turn, corporations that do not have the purpose of getting profit are recognized as non-profit corporations, corporations in the field of education, religions, cooperative corporations, as well as any other non-profit-making entities that are not public corporations (Kulagin and Puchynsky 1987).

The term 'non-corporate corporation' is also known under the laws of Japan, because there are social assistance corporations, religious, educational, medical corporations (Laratta and Mason 2010).

Thus, the foreign legal doctrine and legislation category 'non-corporate corporation' is well-known. The basis of the modeling the concept of 'corporation' (either business or non-entrepreneurial) is the specific organization of a legal entity, and the division of legal entities according to the specific organization, as noted by T. Blaschuk, is traditional for the doctrine of pendency law (Germany, Switzerland), distinguishing between corporations (unions) and institutions (Blaschuk 2005). Corporations are characterized by the presence of membership, common to many members of the goal, the independence of their existence from the change of participants.

Unlike the countries of Europe and the USA, in the majority of countries of the post-Soviet space, the term 'corporation' in the European sense of this category at the legislative level is not fixed, but developed exclusively by the doctrine. The only exception is Russia, where a few years ago a legal definition of this concept was introduced in the Central Committee of the Russian Federation (Consultant Plus – reliable legal support). Such an approach is perceived positively by Russian civilians. For example, Y. O. Sukhanov observes that the legal recognition of the corporation as a separate, independent form of legal entities should facilitate the ordering of their general system, the exclusion of unjustified differences in the civil status of legal entities having a fundamentally unified legal nature (especially this applies many 'varieties' of homogeneous, essentially non-profit organizations) (Sukhanov 2011).

According to the study direction, we also consider it relevant to analyze the legislative approaches of different states to consolidate the legal status of non-entrepreneurial legal entities. In this context, it is possible to distinguish several ways of resolving the issue of formal expression of the relevant norms that regulate the legal status of non-business organizations with the status of a legal entity:

(1) securing the main provisions on the regulation of the legal status of non-entrepreneurial organizations in the Civil Codes of those or other states. These are, in particular, the determination of the level of codes of the non-commercial legal entities system, their organizational and legal forms, concepts, characteristics, features of creation and termination, specificity of management, etc. Such an approach was chosen by Hungary, where the Central Committee described in detail the fundamental elements of the civil status of the basic organizational and legal forms of non-entrepreneurial legal entities – foundations (in the understanding of the Central Committee of Ukraine – institutions) and associations (Hungary Civil Code V of 2013). A similar approach can be observed in the legislation of the Netherlands, where within the framework of the Central Committee the main types of non-profit organizations with the status of legal entity are characterized (The nonprofit sector in the Netherlands 2001).

Germany goes in the same way, within the framework of the German Civil Code basic norms are established for non-entrepreneurial legal entities there. Exception is made by so-called limited liability companies, which have their normative settlement at the level of the Federal Act on Limited Liability Company (Federal Private Limited Company Act – GmbH) (Rawert and Gärtner). Japan also chose a similar path, where the

legislative regulation of the charter of non-profit organizations is also carried out in accordance with the provisions of the Central Committee (Laratta and Mason 2010).

(2) the regulation of elements of the legal status of non-business organizations in the Central Committee, as well as in separate laws that regulate the legal status of non-business organizations in a comprehensive manner. An example of such an approach can be called the Russian Federation, Bulgaria, where the relevant laws 'On non-profit organizations' operate, and the general provisions are prescribed in the Civil Codes of the above-mentioned states;

(3) regulation of the legal status of non-entrepreneurial organizations in separate laws. This approach is characteristic, especially for countries belonging to the Anglo-Saxon legal system – the United States and Great Britain. So, the UK has the Law 'About Companies'. In the United States, the basic regulatory framework for registration of non-governmental organizations is formed at the state level and therefore is very different (Semykina 2012).

2. Analysis of Legislative Approaches to Consolidating the Legal Status of Non-Entrepreneurial Legal Entities in Ukraine

Under the conditions of development of the theoretical civil-law model of the essence of non-entrepreneurial legal entity, the issue of the most logical location of fundamental norms regarding them as participants in civil legal relations becomes of paramount importance. Since in the Central Committee of Ukraine, in the part of regulation of non-entrepreneurial legal entities, there are only a few articles, the issue of further reforming the legislation arises in order to ensure a systematic approach to their legal status.

In our opinion, several ways of solving this issue can be outlined:

(1) adopting a separate Law of Ukraine 'About non-profit organizations';

(2) supplementing the Central Committee of Ukraine with a separate chapter on the legal status of non-profit organizations;

(3) improving the existing special laws regulating the legal status of certain types of non-business organizations.

It should be noted that during the period of development and adoption of the Central Committee of Ukraine and several years later, the prospect of adoption of the Law of Ukraine 'About non-profit organizations' was rather actively discussed. Thus, the pages of periodical legal publications justified the adoption of such a special legislative act, which would regulate the legal status of non-entrepreneurial legal entities and would presuppose the general notion of non-profit organization; issues of its creation and termination of obligatory requirements to internal normative documents of non-profit organizations; the allowability of economic activity, including that which brings profit; types of legal liability and specific sanctions for breach of legal requirements (Miller 2002).

The above given considerations of scientists were embodied in the corresponding legislative work. For example, for consideration of the Verkhovna Rada of Ukraine, people's deputies have repeatedly submitted the draft Law of Ukraine 'About Non-Commercial Organizations' of March 14, 2000 No. 5168, of May 14, 2002, No. 961, and No. 25 of May 25, 2006, No. 909. However, the Law applying to any of these bills was not adopted, but special regulations on the settlement of the legal status of non-entrepreneurial legal entities, in particular the laws: 'On Public Associations' (2012), 'On the organization of employers, their associations, rights and guarantees of their activities' (2012),'On the Guaranteed System Individual Deposits' (2012), 'On charity and charitable organizations '(2013),'On voluntary activity' (2011) and many others were being adopted continuously.

The level of legislative technique of these legal acts does not withstand any criticism; often they do not adhere to the basic civil-legal notions about the essence and system of legal entities, which are laid down in the Central Committee of Ukraine. This situation has its own explanation, since the Basic act of Private Law does not contain proper regulation of the concept and system of non-entrepreneurial legal entities.

We would like to note that earlier the idea about appropriateness of the Law of Ukraine 'About non-entrepreneurial organizations' was perceived quite positively by us (Melnik 2002). However, today, under the conditions of such an extensive system of normative legal acts that regroup specific types of non-entrepreneurial structures with the status of a legal entity and the tendency to new ones, the prospect of adopting this Law is not perceived by us because it will not be able to act as a sufficient basis for determining the private legal status of non-entrepreneurial organizations. In this regard, it is worth agreeing with Zelisko, who, while studying the problems of civil law regulation of non-business associations, points out correctly that, taking into account world legal practice on unification, rather than differentiation of legislation, the adoption of a separate law on the legal status of non-business partnerships today is losing its relevance. There is a need to develop the basic conceptual provisions for determining the status of non-business partners in the norms of the Central Committee of Ukraine.

Such provisions should outline the basic principles of realization of legal personality by non-entrepreneurial societies; establish criteria for their classification in order to determine the specifics of the legal status of certain organizational and legal forms (Zelisko 2012).

Given the fact that legal entities act as one of the main participants in civilian turnover, and the study of legal people is at the heart of civilization, the general provisions on non-commercial legal entities should be contained in the Central Committee of Ukraine. Accepting Shevchenko's position regarding the system-forming nature of the norms regulating the activities of legal entities (Shevchenko 2012), we are convinced that the normative regulation of non-entrepreneurial legal entities, starting with the notion and system and completing separate elements of civil law, should be of universal character, and norms should be suitable for use by other branches of law. The requirements for the settlement of the same legal phenomena – in our study of non-business organizations – are absent in various legal acts, and therefore, the adding the Central Committee of Ukraine with the basic rules on non-entrepreneurial legal entities is the most optimal variant of the development of legislation in this area.

The adoption of the Law of Ukraine 'About Non-entrepreneurial organizations' in the present-day conditions is so inappropriate as it would be inappropriate to adopt the Law of Ukraine 'On Entrepreneurial Legal Persons' in the context of regulating their position within the framework of the Central Committee of Ukraine and the actions of certain laws that determine the legal status of economic partnerships, as well as a number of other entrepreneurial legal entities, including collective investment institutions.

In addition, the legal experience of countries that have special laws on non-entrepreneurial organizations, as mentioned above, is not entirely positive. So, let's say, in Russia, such a law is in force, but it is obvious that its norms were not enough, because within the framework of reforming Russian civil legislation the Central Committee of the Russian Federation was substantially filled with provisions for non-commercial legal entities. Such a reform demonstrates the inability of the Law to properly regulate relations for the purpose of regulating which it was adopted. A similar situation has also occurred in Bulgaria, where, under the terms of a separate law, which regulates the legal principles of non-business organizations, a rather large regulatory array of legal provisions of non-business organizations is also located in the Central Committee of Bulgaria.

In today's conditions there is a tendency towards the refusal of the so-called 'three-level system of civil legislation', when there are still general laws between the Civil Code and special laws on certain types of legal entities. Such an approach was traced primarily in the CIS countries, in particular in the Russian Federation during the reform of the Central Committee. According to Novoselov, one of the main areas of reforming the Central Committee of the Russian Federation was to strengthen the role of the Central Committee in regulating the status of legal entities, especially non-entrepreneurs, and bringing laws regulating various aspects of their activities into a single agreed system, as well as through their consolidation and the abolition of obsolete and ineffective legislative acts (Novoselova 2012). This way of reforming the legal status of non-entrepreneurial legal entities, in our opinion, is also optimal for Ukraine. In a situation where at the level of the Central Committee of Ukraine there is no adequate base of normative regulation of relations related to the creation and activities of non-business organizations, there is no sense also to chaotically and situationally make 'patches' on separate special laws that are devoted to the regulation of certain types of specific non-entrepreneurial legal entities.

Therefore, on the basis of the above, it should be emphasized that there is a need to improve the very provisions of the Central Committee of Ukraine and to fill the last with the norms, which would determine the system of non-entrepreneurial legal entities. Such a legislative decision, firstly, would emphasize the thesis that 'the institute of legal entities is the core of civil law', and therefore, the fundamental rules regarding the settlement of their legal status as subjects of civil law should be fixed at the level of the Code. Secondly, it would also contribute to the development of legislative acts regulating the legal status of certain non-profit organizations, including public associations, employers' organizations, political parties, charitable organizations, religious organizations, consumer cooperatives associations of credit unions, trade unions on the same the methodological principles laid down within the Central Committee of Ukraine.

Another important aspect that should be considered through the prism of the comparative approach is the implementation by non-entrepreneurial legal entities of entrepreneurial activity (revenue-generating activities). Indeed, the domestic civilization of recent years with particular interest looks at the problem outlined above. However, if a few decades ago the issue was raised in the context of the possibility of entrepreneurial activity by non-entrepreneurial legal entities in general, today the idea of such activities is perceived as completely justified and appropriate to the fundamental foundations of modern civilian turnover and market economy mechanisms.

This situation means that in the two approaches – functional and economic – in the explanation of the purpose of the non-entrepreneurial legal entity the advantage has been given to the economic approach itself,

and this is confirmed in the provisions of the Central Committee of Ukraine, which determines the basic principles of the implementation of entrepreneurial activity by non-entrepreneurial legal entities. In this aspect, it should be emphasized on the foresight of the developers of the Central Committee of Ukraine, who at the time the non-entrepreneurial organizations in the property relations that were inactive at that time were able to see along with their non-commercial goals and the tendency for commercialization.

Indeed, today among the researchers of the issues of commercialization of non-business organizations, it is almost impossible to distinguish views that would deny the logic of those processes associated with implementation along with their non-entrepreneurial entrepreneurial activity. Even those of the researchers of the issues of the non-profit organizations commercialization, for example, the American scientist Howard Olek in his early scientific writings criticized and denied these processes, but subsequently, on the contrary, favored such a trend (Howard 1979; Howard 1989).

In this aspect, the arguments of Sukharev are to the point. According to the author, in general law practice, there are two stable stereotypes about non-entrepreneurial organizations. The first of them proves the exclusiveness of the existence of non-entrepreneurial organizations to address issues of the provision of certain socially significant services. However, this is only partially correct. The fact is that there are many non-profit organizations that are created not for the purpose of providing services to the community. Different guesses and assumptions about the fact that non-business organizations are created to solve social problems and provide special, highly necessary, socially meaningful services, often become profane if one takes into account the 'exclusive' nature of these organizations. The answer is also clarified when compared with government organizations or agencies working in related fields. The second stereotype is connected (and in many respects intertwined with one of the problems of regulating the legislation of non-business organizations), with the statement that the main distinctive feature of non-entrepreneurial organization is its complete refusal to make a profit (Sukharev). The problem to find the most optimal mechanism for regulating entrepreneurial activity of non-entrepreneurial legal entities is further complicated by the fact that the legal figure of a non-entrepreneurial organization as a participant in property relations from the theoretical point of view is almost unknown. Therefore, choosing the ways of developing legislation, in no case should not forget that entrepreneurship - a professional activity with a certain specialization, directions and forms of implementation. Entrepreneurial activity of non-entrepreneurial structures without deliberate legislative restrictions will clearly not be able to withstand the competition of professionals – entrepreneurial legal entities. This may affect the duration and effectiveness of their activities, since being an unreliable counterparty, without a minimum authorized capital, often a non-owner of property, and thus an inferior subject of civil liability, entrepreneurship of non-entrepreneurial structures can seriously undermine the stability of civilian turnover.

Entrepreneurial activity by non-business organizations puts on the agenda of the national legislator issues about the peculiarities of their participation in business relations, the relation between their special legal capacity and profit, the question of the legal mechanism and the appropriateness of the relevant restrictions in the course of their entrepreneurial activity, about which we will try to outline our own vision.

When carrying out appropriate scientific researches in the direction we have chosen, one should also turn to the positive experience of other countries, where the legal mechanism of business activity of non-entrepreneurial structures is clearly elaborated. Thus, the recourse to the experience of the countries of Central and Eastern Europe suggests that, in addition to the general formula for the non-distribution of profits gained as a result of entrepreneurial activity, additional requirements are established in certain countries, including the need to indicate in the constituent documents the types of economic activities carried out non-entrepreneurial legal entity. Some countries state that economic activity can only be occasional and cannot be part of the organization's activities on a regular basis (Romania), or such activities are allowed only to the extent necessary to support activities aimed at to achieve statutory goals (Croatia, Hungary, Lithuania).

The influence of a kind of non-commercial legal entity is quite clearly visible when it is engaged in entrepreneurial activity. For example, in the Czech Republic, public and charitable foundations are prohibited from doing business, despite the general permission to engage in such activities for all other types of non-profit organizations. A similar approach has been introduced in Slovakia. In Macedonia, charitable foundations and associations cannot directly engage in entrepreneurial activity, but only through the creation of a joint-stock company (Ratzen 2009).

From the stand point of economic models embodied in business activities of the non-business enterprises, in some economically developed countries, for example, in the United States, there are several viable business models for non-profit organizations that allow generating additional sources of income and achieving a more sustainable entrepreneurship management by the nonprofit organizations, in particular: increasing sales of

branded goods, model 'payment for services', the establishment of a separate business enterprise or so-called the hybrid social enterprise or change from nonprofit to a commercial (Stecker 2014). The most common are the first two – the sale of branded goods and the system of 'payment for services'. With the active activities of non-profit organizations, the scope and limits of their business activity are changing (increasing or decreasing). Their gradual commercialization will inevitably lead to a change in their legal model for an entrepreneurial legal entity in the organizational and legal forms foreseen for the latter. If, however, due to certain mechanisms (say, the model that we have presented - payment for services), a non-entrepreneurial legal entity has the opportunity to be at the proper level of financing (or rather, self-financing), it will thus find its place in the commercial sphere.

Spasibo-Fateyeva also noted a similar tendency, marking out that non-entrepreneurial societies lose for business organizations both in start-up capital and in further financing. However, if the non-entrepreneurial society still overcame this barrier, it already loses its content in the narrowing of the purposes for which it was created. And, on the contrary, the prevalence in any sphere of non-business partnerships engaged in entrepreneurial activity means that there has not yet been a competitive environment. Therefore, non-entrepreneurial societies do not compete with entrepreneurship, but occupy their niche in the business sector (Spasibo-Fateyeva 2012).

Realizing that the boundaries of entrepreneurship for different non-entrepreneurial structures are different, and perceiving this fact as an objective phenomenon, and for some of them, according to the quite well-reasoned remark by Spasibo-Fateyeva, is generally not conceived in a commercial context (for example, charitable, other purely altruistic organizations, as well as residential and other cooperatives, the purpose of which does not involve entrepreneurship) (Spasibo-Fateyeva 2014) the relevant criteria (conditions) for entrepreneurship realizing should be elaborated in details at the legislative level. And these criteria should be fixed at the level of the Central Committee of Ukraine, and then it should be detailed in the special legal acts.

The basis for securing non-entrepreneurial legal entities (both non-business partnerships and institutions) the right to engage in entrepreneurial activity is Article 85 of the Civil Code of Ukraine, which provides for the legal definition of non-business partnerships as non-profit making companies for its subsequent distribution among participants. As it follows from the above article, the conceptual principles of regulation of the Central Committee of Ukraine of non-entrepreneurial legal entities are completely undeveloped and of a fragmentary nature, since within the framework of this law it is a question of non-entrepreneurial societies as a kind of concept, however, it does not mention a non-entrepreneurial legal entity as a generic category.

In addition, to determine the principles of the implementation of business activities by non-entrepreneurial legal entities Article 86 of the Civil Code of Ukraine 'Entrepreneurial activity of non-business partnerships and institutions' is not less important, it states that non-business associations and institutions may, along with their main activities, engage in entrepreneurial activities, unless otherwise provided by law and if this activity is consistent with the purpose for which they were created and contributes to its achievement. A comprehensive analysis of both norms of the Central Committee of Ukraine suggests that the legislator sets a number of conditions for the implementation of entrepreneurial activity by non-entrepreneurial legal entities:

- first, entrepreneurial activity should serve the purpose for which the legal entity was created;
- secondly, the profit generated as a result of such activity should not be distributed among the participants.

To understand the essence of a non-commercial legal entity, the provisions that determine the legal mechanism, the limits and other aspects of entrepreneurial activity by non-business entities with the status of a legal entity play an important role. Modern civilians are united in the fact that, having foreseen the right to engage in entrepreneurial activity by non-entrepreneurial legal entities, an effective legal mechanism for the exercise of such a right has not been worked out. The entrepreneurial activity of non-entrepreneurial legal entities, according to Piddubna, has certain specifics and restrictions established by the legislation, and therefore the issue of carrying out the said activities by these legal entities requires further scientific research and refinement (Piddubna 2014; Piddubna 2015). The need for more detailed regulation of the mechanism for the implementation of entrepreneurial activity, however, by non-business partners, is emphasized by Zelisko, offering, in particular, to establish mandatory rules on the mandatory indication in the constituent documents of non-business associations of an exhaustive list of possible types of their business activities, increased requirements to their status, the size of the authorized capital, the special order of reporting on the results of activities etc. (Zelisko 2012).

Absolutely agreeing with the above considerations regarding the appropriateness of introducing relevant restrictions for running business by non-entrepreneurial legal entities, we believe that the content of the basic rules, which should be fixed in the Central Committee of Ukraine, should be clearly elaborated and balanced. At

the same time, we believe that the role of profit-making activity in ensuring the proper activity of a non-entrepreneurial structure with the status of a legal entity plays a role in this process.

In the legal literature attention is drawn to the relevance of introducing additional restrictions and requirements for the implementation of entrepreneurial activities by non-profit organizations (Ageev 2011). At the same time, we are convinced that at the level of the Central Committee of Ukraine it is not necessary to specify the special restrictions on the entrepreneurial activity of certain non-entrepreneurial legal entities (this may create additional confusion in law enforcement), but to maintain the established rule on equal opportunities for entrepreneurial activity by non-entrepreneurial legal entities, however indicating that such activity is possible, unless otherwise prohibited by law. And already it should be indicated in special legislative acts what restrictions on the implementation of entrepreneurial activities relate to one or another type of non-business entities with the status of a legal entity. In our opinion, these restrictions can be manifested either in the total prohibition of entrepreneurial activity, or, for example, in allowing non-profit organizations to carry out those types of business activities that are defined in their constituent documents, etc. It should also be noted that there is a position on the prohibition of direct participation in entrepreneurial activities of non-entrepreneurial legal entities. The right to entrepreneurial activity, as Piddubna notes, can be realized through the establishment of business legal entities. An example of such an activity, which is not related in its nature to the functional orientation of the activity of a religious organization, may be the activities of its business associations (Piddubna 2014).

Menjul studying the issues of business activities by public associations offers to supplement with the relevant provisions a special law on the regulation of the activities of the organizations. In order to improve the legal mechanism of regulation in this area of legal relations, the author proposes to provide additional liability of the founders if the association carries out business activities, as well as to indicate at the legislative level that the profit received as a result of entrepreneurial activity is the property of a public association. The scientist suggests that the following scientific ideas are fixed in the Law on Public Associations, adding to it the following norm: 'If the charter of a public association envisages the right to engage in entrepreneurial activity directly, then the founders (members) of such association, which are authorized to make decisions from the name of a public association, bear additional responsibility in accordance with its obligations for its property'. In addition, according to the author, it is necessary art. 24 of the Law of Ukraine 'About Public Associations' to make a supplement with a new part of the following content: 'Profits received by public associations as a result of the entrepreneurial activity of such association, business activity of legal entities (societies, enterprises) established by them are the property of a public association and is used exclusively for the achievement of statutory goals '(Menjul 2015).

Conclusions

The suggestions to improve legislation are obviously full of content and should be taken into account while further improving national legislation as a public association and other non-corporate legal entities built on a corporate basis. In general, it should be noted that all the ideas offered by civilians regarding the establishment of legal regulation of the relevant restrictions in the implementation of non-entrepreneurial business entities deserve attention. At the same time, it should be pointed out that today with such a variety of non-entrepreneurial structures that have different legal nature and differ in the principles of achieving the corresponding goal, it is unlikely that it will be possible to apply a single mechanism of restrictions in the conduct of their entrepreneurial activity. In this situation, a differentiated approach should be applied through which the specifics of each non-profit organization could be outlined.

Positively accepting the thesis that it is necessary to define in the constituent documents an exhaustive list of possible types of entrepreneurial activity by non-entrepreneurial legal entities, we believe that the normative settlement of the above-mentioned questions regarding the content of the constituent documents of non-entrepreneurial legal entities should be focused on the level of the Central Committee of Ukraine as a fundamental act defining the legal status of legal persons, including the order of creation and termination, and be detailed at the level of special legislation. In view of the above, the requirement contained in the CC of Ukraine in terms of the content of the constituent documents appears to be not entirely logical in the location and should be transferred to the Central Committee of Ukraine and find its place in the articles that determine the content of constituent documents of legal entities. Tax law or other branches of law will be subject to the above norms, rather than to model their own rules that distort the civility principles regarding the form and content of constituent documents, overburdening them with superfluous public elements.

Regarding the position about the appropriateness of establishing legislative requirements regarding the minimum size of the authorized capital of non-entrepreneurial legal entities engaged in entrepreneurial activity, have been perceived positively by us, however, in light of recent legislative tendencies regarding the leveling of

requirements for the minimum size of the authorized capital of even business entities (primarily companies with limited liability) we see a certain illusion in the possibility of its implementation. Although for some, even non-entrepreneurial legal entities, such a requirement is clearly necessary (for example, the Deposit Guarantee Fund of Ukraine in the current banking system crisis) is a vivid example.

In the part of improving the mechanism of legal regulation of business activity by non-entrepreneurial legal entities at the level of the Central Committee of Ukraine, it is necessary to maintain the norm regarding equal rights to entrepreneurial activity by all non-entrepreneurial legal entities, but indicating that such activity is possible, unless otherwise is provided by law. And already in the acts of special legislation, which detail the legal status of certain non-entrepreneurial legal entities, clearly determine the scope and limits of their business.

Entrepreneurial activity by non-entrepreneurial legal entities does not violate the principle of special legal capacity that is inherent in them. The Central Committee of Ukraine should be supplemented by the norms, which would provide for the detailed content of the statute as part of the consolidation of an exclusive list of types of entrepreneurial activities that will be carried out by a non-commercial legal entity. Subsequently, the legislative work should focus on consolidating the role of property segregation of a legal entity by consolidating the relevant legislative requirements regarding the minimum size of the authorized capital of legal entities, including non-entrepreneurial ones.

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