

Comparative Study of the Institutional Anchoring of Selected Non-profit Organizations in the UK, USA and Czech Republic

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Abstract: *The importance of non-governmental non-profit organizations and their economic strength have been steadily growing in recent decades, and in the Western countries, in the 21st century, the non-profit sector has become the real third pillar of society. Non-state non-profit organizations are a phenomenon. They are firmly connected with the three elements of civil society: the first is charity or philanthropic motivation of people, the second is the right to associate and the third volunteering. The subject of the research project was the elaboration of a comparative study of the institutional anchorage of non-profit organizations in the United Kingdom, the United States of America and the Czech Republic. The reason for choosing the subject of the research was to identify possible weaknesses in the institutional anchoring in the conditions of the Czech Republic and formulate possible measures that will improve the situation in the legal framework of non-profit organizations in the Czech Republic. Non-state non-profit organizations, associations, institutes and foundations have been selected to compile the comparison. Eleven determinants were monitored: Legal personality, Establishment, Registration, Founding Document, Organizing Document, Bodies, Extinction, Minimum Deposit, Business Activities, Tax Benefits, Other Obligations.*

Key words: Non-governmental Non-profit Organizations · Legal Framework · Comparison

JEL Classification: G30

1 Introduction

The importance of non-profit organizations and their economic power have been steadily growing in recent decades and in the Western countries, in the 21st century, the non-profit sector has become the real third pillar of society. Together with the development of the non-profit sector, its research has been developed. The more systematic scientific research on the non-profit sector has been encountered since the 1970s in the United States. After significant steps have been taken in the theoretical research of the non-profit sector, the need for comparative analyses has clearly emerged (Hyánek, 2011). The most important activities related to comparative research are associated with Helmut K. Anheier. In the early 1990s, Lester Salamon and Helmut K. Anheier (1997) realized the world's largest non-profit international research at Johns Hopkins University (the second phase of the project included 27 countries including the Czech Republic). It can be said that this research project is the widest and most systematic attempt to gather, classify and interpret non-profit sector information so far. Part of the research is also the effort to formulate a definition of a non-profit organization that would be applicable in an international context and would allow comparison of the non-profit sectors of individual countries. For example, according to Steinberg (2006, p. 118), the limitation of non-distribution of profits determines how the organization gains resources, how it is controlled, how it behaves on the market, how it is perceived by donors and clients, and how its employees are motivated. Other authors argue that this restriction is only legislative aspect and in certain situations may reduce incentives for effective action, as non-profit managers cannot participate in the profits resulting from their managerial skills and actions in accordance with the law. On the other hand, according to Weisbrode (1998a, p. 72), profit-sharing constraints provide a social advantage by enabling non-profit organizations to perform activities that do not generate financial gain but are important to society. On the other hand, Hansmann (1980), who made this restriction a centrepiece of its theories about the behaviour of non-profit organizations, argues that the limitation of profit distribution does not in itself imply a meaningful behaviour of a non-profit organization.

As far as the comparison of the forms of non-profit organizations is concerned, however, relatively less attention is devoted to this area. The United States and the United Kingdom represent different national contexts in which non-profit organizations have developed over the last century comparing to the Czech Republic. The idea of evaluating the

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legislative anchorage of non-profit organizations in the Czech Republic compared to selected countries, namely the United States of America (hereinafter referred to as "the USA") and the United Kingdom (hereinafter referred to as "the UK"), led us to formulate opinions and suggestions based on the conclusions of the comparative analysis .

2 Methods

The subject of the research project was the elaboration of a comparative study of the institutional anchoring of non-profit organizations in the United Kingdom, the United States of America and the Czech Republic. The reason for choosing the subject of the research was to identify possible weaknesses in the institutional anchoring in the conditions of the Czech Republic and formulate possible measures that will improve the situation in the legal framework of non-profit organizations in the Czech Republic. The United Kingdom and the United States of America were selected for the realization of the research project, as UK represents the cradle of the non-profit sector in Europe and the USA was selected as a representative of a non-European country with a developed national economy. The material is the legislative regulation of individual forms of non-governmental non-profit organizations in individual countries. For the comparative study, the association, the institute, the foundation have been selected. The methodology of the research plan is based on the comparison and subsequent analysis of the information that has been collected.

3 Research results

3.1 Comparative study

The specific forms of NGOs are based on the country's legislation. In terms of the Czech Republic, typology of NGOs is based on the new Civil Code Act No. 89/2012 Coll. and Act No. 90/2012 Coll., On Commercial Corporations. The recodification of these two codes represents the greatest change in private law, which also affects the functioning of non-profit organizations. Under Act No. 89/2012 Coll. and Act No. 90/2012 Coll. it is currently possible to typify these types of non-governmental non-profit organizations:

- Corporations (Society),
- Foundation (Foundation and Endowment Fund),
- Institute,
- State-registered Churches and religious societies.

Other types of NGOs in the Czech Republic:

- The unit owners' association, the legal regulation is in § 1194-1216 Civil Code.
- Political parties and political movement - legal regulation is found in Act No. 424/1991 Coll., On association in political parties, political movements.
- Professional chambers - each professional chamber is established on the basis of its own law, which regulates the status and activities of members of the chamber and their bodies.
- Hunting communities are the legal entities governed by Act No. 449/2001 Coll., On hunting

3.1.1 Definition of non-profit organizations in Great Britain

In the United Kingdom, as in the Czech Republic, the non-profit sector began to develop more dynamically in the 1990s, when the government, called New Labour, underlined the distancing from the old socialist style of government and focused on a new interpretation of equality. This new political party has opened the way to the development of so-called positive social services and social investments. (Munková et al., 2004).

An important milestone in relation to the non-profit sector was the year 1992, when the Charities Act was introduced, which is a key law in relation to the non-governmental non-profit sector. It is necessary to add that there is no state non-profit sector within the UK resulting from the conceptualization of the British social model, which is primarily based on the liberal concept of the social state, of which the main feature is the high emphasis on the participation of an individual in the labour market and the derived social protection. Within the British social model, attention is focused primarily on preventing the occurrence of social events rather than on state social security or solving social events (Munková et al., 2004). However, it is appropriate to add that the state cooperates with the non-governmental non-profit sector on a long-term basis and, to a certain extent, supports its activities by means of contributions from government funds on the basis of a public tender.

Legal forms of non-profit organizations

Regarding individual typologies of non-governmental non-profit organizations within the United Kingdom, it is possible to distinguish from a legal point of view (Kendall, Knapp, 1993):

- Charitable trust,
- Unincorporated association,

- Company limited by guarantee (a limited liability company with a publicly beneficial non-profit mission)
- Charitable incorporated organization.

A major problem within the UK is that the non-governmental non-profit sector is relatively complex and legally anchored in legislation. For comparison, England and Wales are subject to English law, which stems from customary law. Scotland, on the other hand, is based on Scottish law, which is based on Roman law, similar to European law. Northern Ireland is then at the border between English law and Scottish law. Also, Kendall and Knapp (1993) add that there is no unified and universally recognized definition of the status of a non-profit organization in any of the United Kingdom of Great Britain and Northern Ireland countries, which also results in difficulties in the categorization of UK non-governmental organizations (Kendall, Knapp, 1993).

3.1.2 Definition of non-profit organizations in the USA

The next chapter is dedicated to the definition of NO in the United States (USA). The US is often referred to as the cradle of public benefit organizations. The concept and position of the non-profit sector in the US is a very similar to the concept in Great Britain, as both of these countries are among the countries applying the Anglo-Saxon approach to understanding the importance of the non-profit sector in the national economy. Therefore, in the United States, as in the UK, there is no state non-profit sector, but only a non-governmental non-profit sector. For the US, there is also a markedly lower participation of the state in support of the non-governmental non-profit sector. E.g. Boukal et al. (2009) says that more than 90% of the revenue received by the non-governmental non-profit sector comes from private sources such as public collections, private foundations, donor campaigns, etc. Public budgets are therefore marginally involved in supporting the non-profit sector – maximum 10 % (Boukal et al., 2009). By contrast, for the most European countries, there is a markedly higher involvement of the state sector, which in many cases is a guarantee of many activities.

In the United States, both profit and non-profit organizations are governed by the same law, and only non-profit organizations are allowed to distribute net profits among their owners or contributors who finance them. Profit must be returned to the process of organizing the organization (Salamon, Anheier, 1997). Laws dealing with non-profit organizations are a combination of a general legal order with a federal constitution and, in addition, non-profit organizations are governed by a number of separate national and national laws relating to separate foundations, fundraising, employment, volunteering and taxation within the state (Salamon, Anheier, 1997) Further details on tax, governance and corporate responsibility are provided by the US Internal Revenue Code (IRS, 2015).

Legal forms of non-profit organizations in the US can have the following legal forms:

- Non-profit corporation,
- Unincorporated non-profit association,
- Trust (fund).

Breakdown of non-profit organizations according to the IRS Tax Act

Regarding the further classification of non-profit organizations within the US, the rules for their breakdown are based on the United States Internal Revenue Code (IRC) from 1987, which includes, inter alia, provisions on federal income tax. These are broken down according to Hopkins (2013) into two classes, namely:

- Public Charities
- Private foundations,

Other types of non-profit organizations are defined in section 501 (c) (4), IRS, which defines the following organizations (IRS, 2015):

- Social welfare organizations (social care organizations, or civic societies, civic libraries) that focus on promoting social security and are not organized for profit.

3.2 Comparison of the Society

The first comparative form of organization is the society. Equivalent to the society as a voluntary association of citizens for a similar purpose, legal forms are selected for comparison:

- United Kingdom: 1) Unincorporated organization (hereinafter UO / UK) and 2) Charitable incorporated organization (hereinafter CHIO).
- USA: 1) Unincorporated Organization (hereinafter UO / USA) 2) Corporation with members (hereinafter referred to as CwM).

In summary, it can be concluded from the comparison that the absence of a non-registered form of a non-profit organization in Czech legislation can be considered as a disadvantage compared to the UK and the US. The authors find advantages in unregistered forms of NGOs, which are very simple and easy to implement. In spite of the new legal

anchorage, which gives the founders a free hand in organizing and managing the association, a less formal formation would be suitable for this type of NGO. However, as the comparison shows, the disadvantage of this form is the impossibility of using tax benefits. In the UK, this form is limited by the amount earned from gainful business activities. On the other hand, the positive for the Czech Republic is seen in the tax benefits, which are required, compared to the other monitored countries, to be asked to prove their charitable purpose. In this respect, Czech legislation is more compact. The comparison also shows the relatively high formal relationship of the Czech society and the British Charitable incorporated organization.

Table 1 Comparison of the Institutional Anchoring of the Society in the Czech Republic, the UK and the USA.

Society	CR	UK	USA
Legal personality	Yes	1) Yes 2) Yes	1) Yes 2) Yes
Establishment	Minimum 3 persons.	1) Minimum 2 persons. 2) Minimum 1 person	Minimum 2 person
Registration	Proposal for registration with the Ministry of Justice. Officially signed signatures. Formation of an entry in the Federal Register at the competent court.	1) Without approval by authorities and registration. 2) Registration with the CC is based on the registration in the charity register.	1) No registration and approval by the authorities 2) Request to the Secretary of State.
Foundation Document	Statutes	Contract	1) Contract 2) Founding Charter
Organizing Document	Statutes	1) Constitution 2) Constitution	1) Not mandatory 2) Statutes
Bodies	Statutory body (chair, committee), highest authority (member meeting)	1) Chairman, treasurer, secretary. 2) Charity trustees, member meeting	1) There is no obligation to establish bodies. 2) Managing authority (directors) and officers - president, treasurer, secretary
Extinction	Cancellation from the Federal Register	1) The founder can choose in the constitution how an organization can be extinct. 2) Removal from the charter register.	1a) If the purpose, for which the organization was established, was achieved. 1b) The organization has no members, 1c) The organization has suspended its operations for 3 years, 1d) Based on court judgment. 2a) The founding charter is fake. 2b) The Company abuses its powers conferred by law.
Minimum Deposit	Not specified	Not specified	Not specified
Business Activities	Only in secondary activities and in support of the main activity.	1) Yes, but earnings must be used for organization purposes. 2) The same as the previous form	1) Yes, but earnings must be used for the purpose of the association. 2) The same as the previous form
Tax Benefits	Yes, income tax relief has been granted by law.	1) Yes, if it is registered with HM Revenue & Customs (2016). 2) Entitlement to tax relief, reduction of business rates on its premises, refund of taxes on concluded agreements and other gifts.	1) Need to register with the IRS. 2) The same as the previous form
Other Obligations	Publication of financial statements in the collection of documents	1) Upon exceeding the £ 5,000 or more per year earnings, registration with CC is required. 2) The obligation to send CC to check all accounting records.	1) Not found. 2) Foundation fee.

Source: Own processing based on (Charity trustees, 2016; Charitable Incorporated Organization, 2012; Duties of a director. Washington Non-profit Corporation Act., 2016; Charities Act, 2011; Community Voluntary Action, 2016; Foundation group, 2015; Institute of Fundraising, 2015; Introduction to the Voluntary Sector, 2015; Law Handbook, 2015; Legal Zoom, 2015; Neziskovsky, cz, 2015; Trustee Act, 2000; US Legal, 2016; Washington nonprofit corporation act., 2000)

3.3 Comparison of the Institute

In the Czech Civil Code, the Institute is governed by the provisions of § 402 to 418; this form of non-profit organization is also covered by the general regulation of legal persons (§ 118 to 209) and the provisions on the foundation are applied accordingly.

Table 2 Comparison of the Institutional Anchoring of the Institute in the Czech Republic, the UK and the USA

Institute	CR	UK	USA
Legal personality	Yes	Yes	Yes
Establishment	natural person or legal entity, one or more persons	natural person or legal entity (older than 18 years)	natural person or legal entity
Registration	Proposal submitted to Ministry of Justice. Formation by registration in the register of institutions at the relevant court of registry	CC registration for charity status.	Registration with the Secretary of State.
Foundation Document	Founding charter in the form of a notarial record. Possibly a case of death.	Founding Charter at the appropriate court.	Founding Charter
Organizing Document	Status (optional)	Constitution	Statutes
Bodies	Director (1), Board of Directors (minimum 3)	Trustees	Directors, president, secretary, treasurer.
Extinction	The Institute has long failed to meet the purpose, for which it was founded.	Deleting from the charity register if it does not meet charity purposes.	The foundation charter of the company is fake. The company abuses its powers conferred by law
Minimum Deposit	Not specified	Not specified	Not specified
Business Activities	It may operate a business or other ancillary activity, but such activities must not be detrimental to the quality, scale and availability of services provided in the principal activity of the Institute.	It can engage in business activities, but only in the fulfilment of the purpose, for which the organization was founded	Only in the fulfilment of its purpose
Tax Benefits	Tax relief automatically.	They get automatically by registering with CC	Required registration with the IRS.
Other Obligations	Obligation to issue an annual report		Foundation fee.

Source: Own processing based on (Charity trustees, 2016; Charitable Incorporated Organization, 2012; Duties of a director. Washington Non-profit Corporation Act., 2016; Charities Act, 2011; Community Voluntary Action, 2016; Foundation group, 2015; Institute of Fundraising, 2015; Introduction to the Voluntary Sector, 2015; Law Handbook, 2015; Legal Zoom, 2015; Neziskovsky, cz, 2015; Trustee Act, 2000; US Legal, 2016; Washington nonprofit corporation act., 2000)

In summary, the largest differences between the monitored countries in the case of the Institute are found in: a) Organizational Documents (in the Czech Republic more liberal than in the UK and the USA), b) Bodies (more explicitly defined in the Czech Republic and the USA than in the UK) c) Extinction (US related to the infringement), d) Business Activities (more liberal approach in the Czech Republic than in the US and the UK).

3.4 Comparison of the Institute

Table 3 Comparison of Institutional Anchoring of the Foundation in the Czech Republic, the UK and the USA

Foundation	CR	GB	USA
Legal personality	Legal entity	Legal entity	Legal entity
Establishment	Foundation charter form of public documents - registration in a public register	Founding charter	Registration in a register.
Registration	Foundation Register of Ministry of Justice	CC	At the appropriate court
Foundation Document	Founding charter notarized / acquitted in case of death.	Statement of Confidence. Signatures must be made in the presence of a witness.	Founding charter
Organizing Document	Status	Constitution	Statutes
Bodies	Board of Directors - minimum 3 members	Trustees	Board of Directors Board of management

	Supervisory Board Inspector		
Extinction	Delete from register: - the purpose of the foundation has been achieved -the decision of the court	Approval of CC	It does not fulfil the purpose, it disappears by deletion from the register
Minimum Deposit	500,000 Czech koruna	10,000 pounds	250,000 dollars
Business Activities	It is legally permitted to participate in the business of joint-stock companies (the total range of up to 20% of the Foundation's assets)	Long-term business activity is not allowed. Income only for Foundation purposes	Revenues are only for the purpose of the foundation
Tax Benefits	It is given by law Tax benefits	It has tax benefits if it asks for charity status with the CC.	Yes, if registered with the IRS
Other Obligations	Compulsory audit. The annual report must be issued by 30 June of the following year.	Accounts must be approved by an independent auditor if the investment exceeds 500,000 pounds.	Foundation fee

Source: Own processing based on (Charity trustees, 2016; Charitable Incorporated Organization, 2012; Duties of a director. Washington Non-profit Corporation Act., 2016; Charities Act, 2011; Community Voluntary Action, 2016; Foundation group, 2015; Institute of Fundraising, 2015; Introduction to the Voluntary Sector, 2015; Law Handbook, 2015; Legal Zoom, 2015; Neziskovky, cz, 2015; Trustee Act, 2000; US Legal, 2016; Washington nonprofit corporation act., 2000)

4 Discussion

In summary, it can be concluded that the most striking differences between the countries surveyed are found in the Foundation's bodies (the more liberal approach in the UK), the business activities, the tax benefit mechanism (for both the more liberal environment in the Czech Republic) and the fact that the US Foundation Fee is set. On the basis of the evaluation of the results of a comparative study, it is possible to identify the legislative anchoring of non-governmental non-profit organizations in the Czech Republic as comparable to advanced economies. As a recommendation for legislative bodies, it is possible to formulate a requirement for the establishment of a non-profit organization like society as a legal entity, such as in the case in Great Britain and the USA. Given that the societies are primarily intended to bring together people with the same areas of interest and so-called leisure activities, we do not find it necessary to bind them by registering in the Commercial Register.

5 Conclusions

The content of the final chapter is based on a presentation of the comparison of the above-mentioned forms of non-profit organizations. For comparison, 11 criteria were defined: Legal personality, Establishment, Registration, Foundation document, Organizing Document, Bodies, Extinction, Minimum Deposit, Business Activities, Tax Benefits, Other Obligations. The most important findings from the analysis and the subsequent comparison of the above criteria are the fact that the legislation of the United Kingdom and the United States allows - unlike Czech legislation - the unregistered form of a non-profit organization (Unincorporated organization). In the UK, this form does not have legal personality, i.e. the condition for its creation is not the provision of a legal entity under the law. Furthermore, there is no need for registration or statutes (constitution), which otherwise provide the basic framework for the management of a non-profit organization. In the US, this form is designated as Unincorporated non-profit associations; it is a combination of two or more persons for a common (non-business) purpose with minimum management and accounting requirements. This form has two possible variants, of which one is a non-profit organization that is not a legal entity and is not a state registered. Other relevant results of the comparison include the following findings: a) a relatively larger liberal environment for the profit-making activity of non-profit organizations in the Czech Republic compared to the UK and the USA b) easier administration in relation to the recognition of tax benefits in the Czech Republic compared to the two remaining monitored countries; c) the possibility of establishing a non-profit organization in the form of the acquisition in case of death in the Czech Republic d) greater autonomy in establishing the bodies of a non-profit organization in the UK compared to the Czech Republic and the USA e) the extinction of a non-profit organization in the United States is primarily considered to be an illegal act f) in the USA unlike the Czech Republic and the UK, a fee for establishing a non-profit organization is required.

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