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FINANCING OF A NON-GOVERNMENTAL NON-PROFIT ORGANIZATION FROM THE STATE BUDGET

Abstract

This contribution deals with the non-profit sector, where the author primarily mentions the differences between private and public non-profit organizations. The author will focus mainly on issues related with the funding of a non-governmental non-profit organization including their possible participation in the national budget of the Czech Republic. The author will also deal with the position of a non-governmental non-profit organization as a subject of law, which in the theory of financial law and specifically in the subsector of tax law “occupies” the position of a public benefit taxpayer [Law on income tax, Section 17a]. The main aim of the contribution is to use graphs and data to define which resources a non-governmental non-profit organization uses for its existence. In the last part of the article, the author using methods of comparison and deduction use states specific example of a non-governmental non-profit organization and its participation in the budget of the Czech Republic.

Key words: tax, law, public benefit taxpayer, budget, non-governmental organization.

JEL Classification: K34

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1. Introduction

When we say a non-profit organization, we mean "organization" or subject of law whose activities are likely to be non-profit in some respects. However, in order to be able to say exactly what such an entity does, what its content is and thus falls within the non-profit activity, opinions already differs [Balestri 2014: 187-199]. For better orientation, we will use the so-called typology of division of non-profit organizations into public and private organizations. And then i will deal with the hypothesis is the legal form of the NGO specific enough to make it possible for each NGO to be the public benefit taxpayer [Ronovská 2010: 428-432] in terms of tax law [Transparency and public benefit of Czech non-profit organizations].

As is obvious from the title of public or state non-profit organizations (hereinafter referred to as "SNO") are endowed with an activity which is "should be provided by the state. If the SNOs are entrusted with the performance of such activities, they are SNOs which are established by budgetary organizations as territorial self-governing units as contributory organizations [Bagarová, Grzywa 2003]. The performance of the entrusted activity usually consists of an activity that is beneficial to society, ex. an socio-cultural community of persons, but it is usually not a cost-effective activity that would generate profit, on the contrary, the SNO may face a tax loss. Such contributory organizations may include children's homes, schools, kindergartens, municipal or regional cultural, sports and other facilities. The contributory organization is endowed with legal personality.

Private organizations are established on the basis of private law (natural or legal person) which is characterized by features such as a formalized structure, independence from the state, with own self-governmental and what is typical of them voluntary membership¹. A non-governmental non-profit organization (hereinafter referred to as "NGOs") can be further divided from a functional point of view, ex. for what purpose it was founded, while this purpose can be determined individually or in cooperation with others [Partial study for the Concept of Government Policy towards Non-Governmental Non-Profit Organizations until 2020 on the topic: Civil society and the definition of NGOs, development, status and trends]. Whatever the purpose of the NGO, it will always be necessary to clarify from what sources the activity will be financed.

In terms of funding, we can divide NGO into those whose capital is made up of:

¹ The internationally shared definition of Non-Governmental Non-Profit Organizations by the American sociologist L. M. Salamon and the German sociologist H. K. Anheier [Skovajsa et al. 2010: 30-46].

- purely public sources (typical for state organizational units and territorial units),
- part of public resources (contributory organizations),

and those whose income is generated from own resources or external (gifts, grants, collections, etc.).

When establishing an NGO, the entity can choose which legal form, according to the main aim and purpose, will be the right one, but the most frequently chosen forms are associations [Civil Code, Section 214], foundations [Civil Code, Section 306], endowment funds [Civil Code, Section 394] and institutes [Civil Code, Section 402].

Table 1. Number of non-profit organizations over time

Year/legal form	Foundation	Endowment funds	Public Service Company	Registered institute	Church organization	Associations	Branch association
2014	508	1407	2926	123	4158	86956	26188
2015 (May)	495	1442	2912	206	4156	87698	26225
2015 (December)	5050	1518	2894	388	4166	89584	26423
2016 (March)	505	1544	2865	488	4166	90412	26463
2016 (June)	510	1574	2840	557	4170	91307	26583
2016 (September)	510	1592	2814	626	4170	91931	26359
2016 (December)	516	1635	2792	696	4177	92878	26370
2017 (April)	515	1670	2774	752	4171	93651	26414

Source: Czech Statistical Office, Statistics on the number of non-governmental non-profit organizations 2014 – 2017.

The increase of newly NGO can be monitored from available information processed for the period December 2014 to April 2017 by the Czech Statistical Office. In the period under review, there was probably the largest increase in the newly established endowment funds (by 263 entities), with only 7 more established foundation. In my opinion, one of the reasons is the fact that the establishment of the endowment fund is not necessary to fold the principal, respectively there is no obligation to make a deposit as it is at the foundation, where the total amount of deposits is at least CZK 500 000 [Civil Code, Section 330]. Another large increase was observed in the legal form of NGOs newly established associations (by 629 entities), where there was a rapid increase by 6,695 entities.

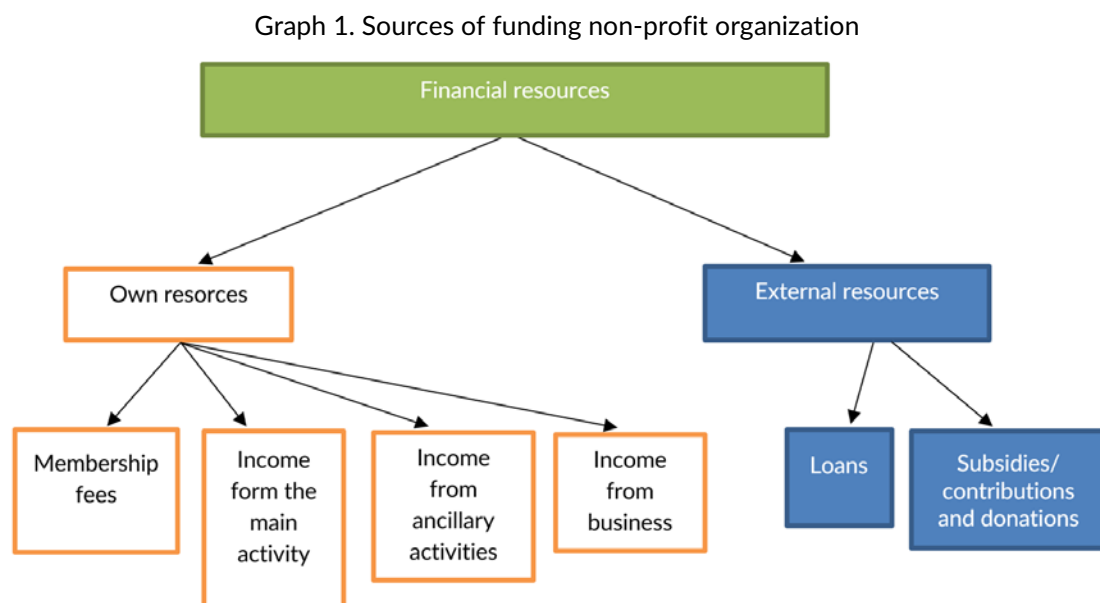
Based on the method of comparison, I presented basic differences in typology of the non-profit organizations. At the same time by the using the statistics indicated to what has been a rise in new non-profit organizations. At the same time by the using the statistics

method i present increase (and also type) of new established non-profit organizations in monitored time.

Within this work, following chapters are focus to the financing of NGO whose activities are financed from their own resources (usually consisting of a principal activity or membership fees) and also from public resources, with define how much these public resources traveling from the state budget.

2. Financing of non - governmental non-profit organizations

The non-profit sector represented by the non-profit organizations also needs finance for its activities. The income of NGO can consist of own and external income. It is no exception that NGO use both of the sources cumulatively and are therefore not dependent on only one type of income.



Source: author's own elaboration.

3. NGO own sources of financing

One of the most important types of income of NGOs are own resources. NGOs can, about this resources, directly decide and use them at one's own discretion. In the case of own resources, it is possible to create an equally important financial reserve for the future or for the fulfilment of a specific goal. Own resources can consist of:

- membership fees,

- income from the main activity (according to the type of activity),
- income from ancillary activities,
- income from business.

The obligation to pay the membership fee (annual) usually follows from the statutes. The amount must be decided by the competent authority. According to the Section 19, paragraph 1 of Act No. 586/1992 Coll., Law on income tax membership, fees are exempt from income tax, but only if the obligation to pay them follows from the Statutes.

NGOs often own various assets that can be used to raise additional funds. Typical income from ancillary activities are rentals (sports grounds, land, equipment, etc.). The revenue can also bring free financial assets (for example unit certificates). Other activities to assign into this category of income include income from advertising [Law on income tax, Section § 18a par. 2] for business entity, cooperation with municipalities in organizing social events, etc.

The amount of income from business activities is directly proportional to how the subject of activity is operated. These activities are purposefully carried out for profit, in the name of the NGO and at their own risk. Business activities have no restrictions. For their performance, it is necessary to respect the relevant legal regulation, obtain a trade license and proceed in accordance with the law.

4. External resources of NGO funding

External resources include loans and credit. Here, however, it is good to keep in mind that it will be necessary to repay these loans, including interest to the provider (bank), in practice in practice it is common provide loans by their own members of NGOs. Other external resources of funding include those that can be obtained on the basis of application or participation on the project announced by public authorities, private organizations and individuals, while each of the sources has its own specifics and conditions under which the funds can be obtained. External resources can consist of:

- contributions from European Union resources,
- subsidies from the state budget,
- subsidies (contributions) from local governments,
- individual donations (from companies).

European Union resources that are funding sources for NGOs come from Structural Funds which are drawn under regional operational programs in individual areas. These are usually announced by regional councils [Fund information, 2019].

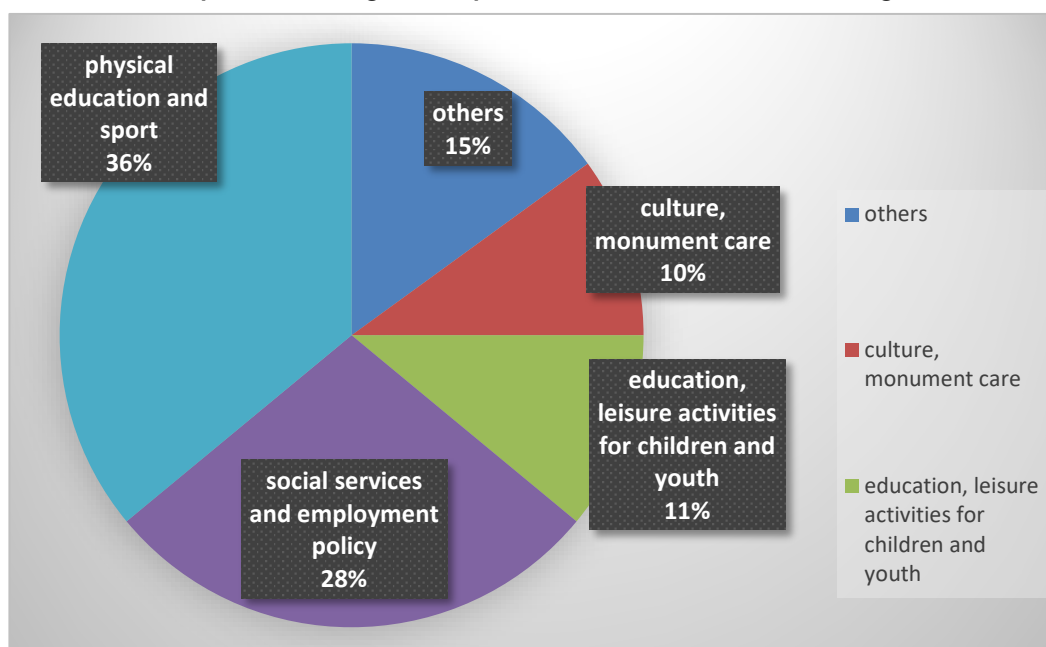
Subsidies from the state budget consist financial amount which is each year intended to support the activities of selected NGOs. For example, I present the program of the Ministry of Education, Youth and Sports VIII - Organization of sports in sports clubs, within which the amount allocated from the state budget is intended to support sports activities.

In terms of resources as individual donations, this form of fundraising is very common. The disadvantage is that it is occasional income and often accidental and above all unpredictable. In the context of economic development, this income cannot be considered as regular.

5. Non-governmental non-profit organizations and the state budget

According to the Act on Budgetary Rules, subsidies are provided from the state budget, and NGOs can apply [Act on budgetary rules and on the amendment of some related acts, Section 7 (budgetary rules)]. This financial support goes from the state budget to NGOs, where these funds appear on the expenditure side of the state budget as well as funds intended for organizational units of the state, contributory organizations, state funds, etc. [Memorandum on the State Budget of the Czech Republic for 2020]. For the year 2020 the state budget calculated with expenditures that will be directed to social spending, non-profit expenditures and the like up to 8.864.230.000 CZK [Act on the State Budget of the Czech Republic for 2019, Section 398 General treasury management], it makes the difference over year 2019 up to 183.040.000 CZK [Act on the State Budget of the Czech Republic for 2018, Section 398 General treasury management]. The following graph mention where the funds were redistributed (for NGOs for 2019), respectively which activity was supported.

Graph 2. Financing of non-profit activities from the state budget



Source: Ministry of Finance, Report on the State Budget of the Czech Republic for 2019.

So far the last analysis with information about funding NGOs from public budgets is from year 2016, however, thanks to this analysis, it is possible to monitor which entities respectively for what activities were allocated funds from the state budget.

Table 2. NGO as recipients of subsidies from the state budget in 2016 over 50 million in czk (in thousands of czk)

NGO as the recipient of the subsidy	The sum of subsidies in thousands of CZK	Share of the total volume in %	Number of subsidies
Football association of Czech Republic			
People in Need .	167 379	1,5	93
Mountain rescue service of Czech Republic	150 004	1,4	4
Diocesan charity Brno	149 173	1,4	154
Slezska diakonie	137 199	1,3	111
Czech Sports Union	109 640	1,0	4
Association for GP CR Brno	60 000	0,6	1
Czech ice hockey association	97 463	0,9	8
Charity Czech Republic	70 262	0,6	31

Source: Government of the Czech Republic, Analysis of financing of non-governmental non-profit organizations from public budgets in 2016.

Looking at this table, I am a little embarrassed, because the most funding goes to NGOs engaged in support the sport respectively to sports clubs, which i think is appropriate, but not to such an extent that it is happening. After all, it is necessary to realize that, for example, the Football Association of the Czech Republic, has benefits primarily for members and perhaps fans but for society as a whole does not provide any value. Thus, the use of public funds from the state budget will be used only in isolation support as subsidies for the football association, when, for example, the obtained funds will use to repair tribune etc, but without any value for society as a whole.

Due to the fact that NGOs are largely financed from external sources and usually have the funds necessary only for their activities, which can still be unprofitable, the legislator decided on an association, foundation, endowment fund, institute, public service company or other legal entities, which lists "public welfare" as the main subject of activity, to apply a tax advantage.

Under the vague term "public welfare" it is possible to imagine an activity contributing to the achievement of public welfare, and within the framework of tax theory it means it is an activity performed by the public benefit taxpayer². It is a non-profit, philanthropic or charitable activity [Pelikánová 2016: 130-136]. In view of this subject, the Law on income tax allows these entities to apply the provisions of which it is possible to reduce the tax base. The tax base can be reduced by tax loss [Law on income tax, Section 34 paragraph 1], deduction to support research and development [Law on income tax, Section 34 paragraph 4 and Section 34a to § 34e], deduction to support vocational education [Law on income tax, Section 34f to 34h; Except Law on income tax, Section 20 paragraph 8].

Including to the listed provisions, the public benefit taxpayer is also allowed to use the option of reducing the tax base by the so-called tax savings [Law on income tax, Section 20 paragraph 7]. The public benefit taxpayer can reduce the tax base by 30% to a maximum of CZK 1 million but on condition that the funds raised by the savings will be used for non-business activities, which is represented by the performance of the main activity for which the public benefit taxpayer was established, in the following tax period³.

6. Conclusion

The term "general welfare" or "public welfare" is not a term that would be able to define specific activity in time because the significance is changing depending on the development of society. And so it seems that only exact choice of legal form is able to expressed which entity is non-profit. his approach seems quite unfortunate, because it does not reflect the activities or main aim (the assessment of whether or not) the subject is an non-profit is assessed not according to the actual performance of the activity for which it was established but according the legal form. That should change by adopting the Law on public benefit. This Act should define the status of public benefit and also the public benefit taxpayer and other information with an impact on taxation. It should be added that in order to be granted public benefit status, in my opinion, there would be a space to examination of whether the main activity is performed as the entity states and at the same time whether the position and consumption of tax benefits is not abused. . In my opinion, the adoption of the Law on public benefit would helped also tax administrators because it would be easier to detect which entities use tax benefits legally. Work on the law began in 2008 but has not been adopted.

² Law on income tax, Section 17a parafraph 2, mentions only a negative list of entities which are not public beneficial taxpayers.

³ This claim is not for municipalities, and non- public benefit taxpayers.

I support the adoption of the law on public benefit and I am of the opinion that it is not enough to assess NGOs only according to their legal form but it is necessary to focus on the main performance of the principal activity and for which intent was founded. Because if it remains only at the formal assessment of the legal form, it could mean an increase of the number of new entities which would be able to use tax benefits and could demand contributions from the state budget, illegally.

References

- Bagarová Grzywa, M.: Příspěvkové organizace. Moderní obec [Contributory organizations. Modern village], 2003 Available at: <https://www.moderniobec.cz/prispevkove-organizace-2/>.
- Balestri, C.: The Other Side of Ownership in Nonprofit Organizations: an Economic Rationale for Democracy. Public Organiz Rev 14, 187–199 (2014). Available from: <https://doi.org/10.1007/s11115-012-0214-7>, 2012.
- Pelikánová, A.: Účetnictví, daně a financování pro nestátní neziskovky. [Accounting, taxes and financing for non-governmental non-profits] Praha: Grada Publishing, a.s., 2016,
- Ronovská, K.: K pojetí veřejné prospěšnosti v Evropě. [On the Concept of Public Benefit in Europe]. Legal forum. No. 9, 2010.
- Skovajsa, M. et al.: Organizovaná občanská společnost v České republice, Občanský sektor. [Civic sector, organized civil society in the Czech Republic], Portal 2010.

Legal Acts

- Act. No. 89/2012 Coll., Civil Code,
- Act No. 586/1992 Coll., Law on income tax
- Act No. 218/2000 Coll., On budgetary rules and on the amendment of some related acts (budgetary rules)
- Act No. 355/2019 Coll., The State Budget of the Czech Republic for 2019.
- Act No. 336/2018 Coll., The State Budget of the Czech Republic for 2018.

Other official documents

- Analysis of financing of non-governmental non-profit organizations from public budgets in 2016. Government of the Czech Republic.
Available at: <https://www.vlada.cz/cz/ppov/rnno/dokumenty/rozb-ncovani-ncstatnich-ncziskovych-ncorganizaci-168259/>, accessed: 13th August 2017.
- Frič, P.: Dílčí studie pro Koncepti politiky vlády vůči nestátním neziskovým organizacím do roku 2020 na téma: Občanská společnost a definice NNO, vývoj, stav a trendy. [Partial study for the Concept of Government Policy towards Non-Governmental Non-Profit Organizations until 2020 on the topic: Civil society and the definition of NGOs, development, status and trends]. Praha, 2015.
Available at: www.vlada.cz/assets/ppov/rnno/dokumenty/studie_fric_pro_web.pdf, accessed: 13th August 2017.
- Fund information. 2019. Ministry for Regional Development of the Czech Republic.
Available at: <https://www.dotaceeu.cz/en/Fondy-EU/Informace-o-fondech-EU>, accessed: 13th August 2017.
- Government Council for Non-Governmental Non-Profit Organizations. Government of the Czech Republic.
Available at: <https://www.vlada.cz/cz/ppov/rnno/zakladni-informace-767/>, accessed: 13th August 2017.
- Memorandum on the State Budget of the Czech Republic for 2020. Office of the Government of the Czech Republic, 2020.
Available at: <https://apps.odok.cz/veklep-detail?pid=KORNBDQMWHRD>, accessed: 13th August 2017.
- Organization of sports in sports clubs. Ministry of Education, Youth and Sports VIII.
Available at: <https://www.msmt.cz/sport-1/zverejneni-programu-viii>, accessed: 13th August 2017.
- Report on the State Budget of the Czech Republic for 2019. Ref . MF - 15 115/2018 / 1104-60. Ministry of Finance Czech Republic.
Available at: <https://www.psp.cz/sqw/text/orig2.sqw?idd=138426>, accessed: 13th August 2017.
- Statistics on the number of non-governmental non-profit organizations 2014 - 2017. Czech Statistical Office.
Available at: <https://www.neziskovky.cz/data/Statistika%20po%20C4%8Dtu%20nest%C3%A1tn%C3%ADc>

[h%20neziskov%C3%BDch%20organizac%C3%AD%202014_2016_duben2017txt16852.pdf](#),
accessed: 13th August 2017.

Internet Resources

Bachmann, P.: Transparentnost a veřejná prospěšnost českých neziskových organizací [Transparency and public benefit of Czech non-profit organizations].

Available at:

https://www.vlada.cz/assets/ppov/rnno/dokumenty/studie_bachmann_pro_web.pdf,

accessed: 13th August 2017.

Nevečeřalová, N.: Spolek jako veřejně prospěšný poplatník a zneužití položek snižující základ daně. [Association as a Public Benefit Taxpayer & Abuse of Reducing Tax Base].

Available at: <https://is.muni.cz/auth/th/pybla/?edmp=1>, accessed: 13th August 2017.

Senát ruší ustanovení o statusu veřejné prospěšnosti. Neobsahovalo uzákoněný prospěch. [The Senate repeals the provisions on public benefit status. It did not contain a legitimate benefit].

Available at: <https://www.ceska-justice.cz/2017/08/senat-rusi-ustanoveni-statusu-verejne-prospesnosti-neobsahovalo-uzakoeny-prospech/>, accessed: 13th August 2017.