

COMPARATIVE LEGAL ANALYSIS OF THE REGULATION OF VOLUNTEER AGREEMENTS: INTERNATIONAL AND NATIONAL SPECTS

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Annotation

The article examines the place of the volunteer agreement - in the system of civil law contracts; a comparative legal analysis of the regulation of the volunteer agreement is carried out: international and national aspects; legal problems of the essence of the volunteer agreement: doctrinal and applied research; prospects for the development of legislation of the Republic of Uzbekistan in the field of private law regulation of volunteering agreements. And the main contractual models for the implementation of volunteer activities are revealed: volunteer and beneficiary, volunteer and volunteer organization, volunteer organization and beneficiary. A contract on volunteer activity is by nature a civil contract for the provision of services or the performance of work, or a complex contract.

Key words: volunteer, volunteer agreement, volunteer organization, beneficiary.

The issue of legal regulation of volunteer activities attracts great attention from society and the state, as evidenced by the Law of the Republic of Uzbekistan “On Volunteer Activities”, as it is aimed at regulating relations in the field of organizing and carrying out volunteer activities in our country, although volunteers and volunteer activities in different forms as reality was present and in demand in the country in earlier periods.

The Law “On Volunteer Activities” includes the following: goals and objectives of volunteer activities; basic principles of volunteering; main directions and forms of volunteering; register of registration of volunteer activities; Powers of the Cabinet of Ministers in the field of volunteering; powers of local government authorities in this regard; participation of self-government bodies of citizens and non-governmental non-profit organizations in the field of volunteering; voluntary agreement; content of the voluntary agreement; measures to encourage volunteerism; support and financial support for volunteer activities is provided.

By adopting the above law, the legislator leaves a range for qualifying the legal nature of the contract, and at the same time other essential conditions, from civil to complex, because of which it seems appropriate to analyze foreign models for regulating volunteer activities and formulate recommendations for optimal legislative regulation in the Republic of Uzbekistan.

Current research by scientists on the legal nature of a volunteer agreement demonstrates potential categorization options: classifying this agreement as an employment, civil or complex agreement. So, according to Chumak E.G., Komleva E.R. Ponomareva M.I. “A volunteer contract is an agreement between an employee and an organization, according to which the employee voluntarily and free of charge undertakes to perform work in a certain specialty or position, subject to internal labor regulations, and the organization undertakes to provide working conditions similar to those provided for by labor legislation and a collective agreement, by agreement of the parties” [1].

At the same time, the most common option, shared by both domestic doctrine and the legislator, is the classification of volunteer activities as regulated by civil legislation. At the same time, M.N. Maleina believes that an agreement on volunteer activity is by nature a civil law agreement for the provision of services or for the performance of work, or a complex agreement [2]. I.A. Varpaeva also speaks in favor of the latter point of view [3]. In English judicial practice, the German legislator distinguishes between the concepts of “volunteer” (Freiwillige/r) and “volunteer” (Volontär), “volunteer service agreement” (Vereinbarung für den Bundesfreiwilligendienst) and “volunteer agreement” (Volontariatsvertrag).

Firstly, the volunteer contract and the volunteer service agreement have different sources of reinforcement. The only mention of a volunteer agreement in German law is found in § 26 of the Vocational Training Act of March 23, 2005 [4], which allows that employed persons seeking to obtain professional knowledge, skills and abilities may be not in labor, but in other contractual relations.

Research in this area was also carried out by such domestic scientists as Kayumova A.S. [5], Burkhanova L.M. [6-31], Shorahmetova U.Sh. [32-39], Karakhodzhaeva D.M. [40-55] and others.

Secondly, based on the above, volunteer and voluntary activities have different goals; in the first case, private interests related to professional growth are pursued (for example, in journalism, museum affairs), in the second, the goals are of a public nature, which leads to differentiation of legal regulation: a volunteer agreement can be considered as a type of employment contract. At the same time, the characteristic that unites a volunteer and a volunteer is the activity free of charge or for small compensation. Thus, in the German legal field, a

volunteer is understood as a person who, free of charge or for a small compensation, carries out activities aimed at acquiring knowledge, skills, and abilities in a certain profession.

The regulators of these relations in Germany are two laws: “On the development of youth volunteer service” dated May 16, 2008 (as amended on December 20, 2011) and “On volunteer service in Germany” dated April 28, 2011 (as amended on April 28, 2011). dated October 20, 2015). The term “voluntary service” (Bundesfreiwilligendienst) used in the title of the laws, in contrast to Russian “volunteer” activities, already indicates a different status of these relations in Germany.

The essential terms of the volunteer service agreement are subject, term, place of volunteer service, type and amount of monetary compensation, number of days off and school days. The subject of the agreement on volunteer service is voluntary activity carried out free of charge to achieve public benefit in institutions for helping children and youth, including institutions for additional education for youth, in institutions of the social sphere, healthcare, assistance to the elderly, disabled people, in the field of culture and protection of monuments, sports, integration, protection of the population, assistance to victims of natural disasters, in the field of ecology, environmental protection (§ 3 of the Law on Voluntary Service). A study of the legal nature of the agreement on volunteer service in Germany leads to the conclusion about its complex nature: the sign of gratuitousness classifies the agreement as a civil law agreement, however, the presence of a public entity as a party, the name “service”, the interchangeability of alternative civil service and volunteering signal the presence of an administrative -legal regulation. At the same time, the Law on Voluntary Service itself obliges the agreement on volunteer service to apply the norms of labor legislation subsidiarily or by analogy [4].

Thus, it can be argued that in the German legal order, volunteer activity is implemented through a multi-sectoral comprehensive agreement. UK case law proceeds from the fact that the relationship between a volunteer and an organization is not regulated by law, including labor legislation.

This is explained by several reasons: unlike an employment contract, there is no consideration [10]; the parties have no intention to enter into an agreement, which can later be challenged in court; there are no obligations between the volunteer and the organization; as a result, the relationship between the volunteer and the organization is not protected by labor legislation.

The English model demonstrates an example of a liberal approach; it is aimed at maximum demarcation in the subject matter with an employment agreement (contract), however, the agreement does not translate into the civil legal field, remaining outside the legal field, a moral

obligation. The English model prioritizes the freedom of expression of volunteers, which first provides for the ability of a volunteer to refuse the functions they perform at any time.

Summarizing what has been said, it is necessary to note the following. In Germany, volunteer activity is given the status of a service and is interchangeable with alternative civil service; The relationship between volunteer and organizer is always secured by a multi-industry comprehensive agreement. In the UK, neither case law nor statutory law governs volunteer relationships, leaving them therefore without judicial protection. The agreement can be recorded on paper and signed or only recorded - it all depends on the discretion of the parties.

In the Russian Federation, the relationship between a volunteer and an organization is formalized by a civil or complex agreement on volunteer activities (mono- or multi-industry). The choice in favor of a multi-industry comprehensive agreement was due, among other things, to the highly qualified assistance of the volunteer; By analogy with labor legislation, a written form of agreement is required here [5].

The law of the Azerbaijan Republic defines that voluntary activity is a socially useful and non-profit activity related to the performance of work or provision of services not prohibited by the legislation of the Azerbaijan Republic. Volunteer is a citizen of the Republic of Azerbaijan, a foreigner or a stateless person who personally carries out unpaid socially useful activities of his own free will and based on free choice.

Organizer of voluntary activities - state bodies, organizations financed from the state budget, local government bodies and non-governmental organizations that ensure the organization and implementation of voluntary activities. Unpaid activity is an activity carried out without payment. Areas of voluntary activity:

providing assistance to the disabled, lonely, elderly, low-income families, refugees and internally displaced persons; promoting humanity and tolerance; consumer rights Protection; legal and cultural education; education, upbringing, physical and spiritual development of children and youth; sports development; information about diseases and epidemics; promotion of healthy lifestyles; environmental protection; protection of historical and cultural monuments, cultural and spiritual heritage; providing assistance in eliminating the consequences of armed conflicts, natural disasters, industrial accidents, fires, epidemics, epizootics and other emergency situations, including persons affected by emergency situations; providing assistance to individuals and individuals (families) with difficult living conditions, released from penal institutions, susceptible to drug addiction, and subjected to domestic violence; other areas of activity that do not contradict the requirements of the legislation of the Republic of Azerbaijan. Relations between participants in voluntary activities are regulated in accordance with the

legislation of the Republic of Azerbaijan and the agreement concluded by the organizers of voluntary activities with the involved volunteers. Minors may engage in voluntary activities based on the consent of their parents or legal representatives. When carrying out voluntary activities by minors, the requirements stipulated by the labor legislation of the Azerbaijan Republic regarding the use of labor of workers under 18 years of age must be observed.

In the Republic of Armenia, the Law “On Charity” was adopted in 2002. In accordance with the Law, volunteers are individuals who perform free work for the benefit of beneficiaries, based on the purposes of the Law. Charity is the provision by individuals and legal entities of voluntary, disinterested, not prohibited by law (free of charge or on preferential terms) material and spiritual assistance to individuals, healthcare, and non-profit organizations for the implementation of the purposes of the Law. Individuals and legal entities carry out charity on the principle of voluntariness and freedom of choice of goals, individually or jointly, personally or indirectly. It is prohibited to restrict the freedom to choose the purposes and forms of charity determined by law. Charity participants are benefactors, volunteers, and beneficiaries. Charitable organizations can act as both philanthropists and beneficiaries. The Republic of Armenia and municipalities can also be participants in charity (philanthropists and beneficiaries).

In the Kyrgyz Republic, the Law “On Patronage and Charitable Activities” was adopted in 1999. In 2023, the Law “On Volunteering” was adopted. The Law defines charitable activities as the implementation by citizens and legal entities of voluntary activities for the disinterested (free of charge or on preferential terms) transfer of property to citizens or legal entities, including funds, disinterested performance of work, provision of services, provision of other support.

In recent years, there has been a steady increase in the number of citizens and organizations participating in charitable and volunteer activities, and the scale of ongoing charitable programs and projects is expanding. There are various areas of volunteer activity:

- prevention and control of drug addiction, alcohol addiction and smoking;
- HIV/AIDS prevention;
- providing assistance to elderly citizens or orphans, disabled people and other people in need of help;
- maintaining a clean environment;
- promotion of a healthy lifestyle and much more.

The Law of the Republic of Uzbekistan “On Volunteer Activities” uses the following basic concepts:

volunteering (volunteering) is a set of social relations associated with the voluntary implementation by individuals, in their free time from work (study), of activities in the interests of recipients of the help of a volunteer (volunteer);

voluntary (volunteer) activity - voluntary socially oriented, socially useful activity, carried out by performing work, providing services in the forms and types provided for by law, without receiving monetary or material remuneration (except for cases of possible reimbursement of costs associated with the implementation of voluntary (volunteer) activity);

volunteer (volunteer) - an individual who, in his free time from work (study), carries out voluntary socially oriented, socially useful activities in the forms and types provided for by law, without receiving monetary or material remuneration (except for cases of possible compensation related to the implementation of voluntary work) activity costs);

recipient of the help of a volunteer (volunteer) - an individual, legal entity, social group, society as a whole who need the help of volunteers (volunteers) and in whose interests voluntary (volunteer) activities are carried out;

voluntary (volunteer) organization - a socially oriented non-profit organization that implements voluntary (volunteer) programs and projects, attracts volunteers (volunteers) to its activities, on whose behalf and on behalf of which a volunteer (volunteer) acts;

voluntary (volunteer) association - an association of citizens created to solve certain social problems through voluntary (volunteer) activities;

volunteer coordinator (volunteers) - a responsible person in a voluntary (volunteer) organization, responsible for attracting volunteers (volunteers), organizing their work and coordinating their activities;

volunteer (volunteer) program - a set of activities aimed at solving socially significant problems, implemented using the labor of volunteers;

voluntary (volunteer) action - a one-time event aimed at solving socially significant problems, the participants of which are volunteers;

personal book of a volunteer (volunteer) - a document of the established form that confirms the activities of an individual as a volunteer (volunteer);

information network of volunteerism (volunteering) is an open information resource created on the information and telecommunications network "Internet" and includes the possibility of maintaining electronic diaries and creating virtual communities, as well as mechanisms for promoting common values to promote voluntary (volunteer) activities.

Volunteer activities are carried out in accordance with the principles:

gratuitousness, voluntariness, equality and legality of the activities of volunteers;

freedom in determining the goals, forms, types and methods of choosing voluntary (volunteer) activities;

publicity and accessibility of information about voluntary (volunteer) activities;

humanity, respect for human rights and freedoms when carrying out volunteer activities;

equality of all, regardless of gender, religion, nationality, language, social status, age, in the right to carry out volunteer activities;

solidarity, integrity and cooperation of participants in voluntary (volunteer) activities;

safety for your life and the lives of others;

equal and mutually beneficial international cooperation in this area.

Conclusion - the Law of the Republic of Uzbekistan “On Volunteer Activities” adopted in 2019 is aimed at regulating relations in the field of organizing and carrying out volunteer activities in our country. An analysis of the English and German models of organizing and implementing volunteer activities shows that this type of contract is a complex contract, including both the norms of a civil and labor contract.

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