

**EU-CHINA SOCIAL PROTECTION REFORM PROJECT  
COMPONENT 3**

**THE LEGAL FRAMEWORK FOR SOCIAL ASSISTANCE FOCUSING ON  
SOCIAL ORGANIZATIONS' PARTICIPATION IN SOCIAL ASSISTANCE  
SERVICES**

**VOLUME ON 2019 RESEARCH**

**TOPICS 3.1.1B**



**Social Protection Reform Project  
中国-欧盟社会保障改革项目**



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**Topic: 3.1.1B**

**The legal framework for social assistance focusing on social organizations’  
participation in social assistance services**

**Assessment and Policy Recommendation Report**

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*March 2019*

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## 1 . THE THEORETICAL BASIS AND RELEVANT PRACTICE OF SOCIAL ORGANIZATIONS' PARTICIPATION IN SOCIAL SERVICES

‘Social organization’ is a general term referring to all kinds of organizational systems with a certain public nature and certain social functions outside of the government system. It has four basic attributes, namely, non-government, non-profit, common good or reciprocity.<sup>1</sup> The core of China's social organizations is all kinds of legally registered social groups, foundations and social service organizations (private non-enterprise units). These three types of organizations are also specifically identified in the Annual Statistical Bulletin on Social Service Development. By the end of 2017, there were 762,000 social organizations in China, an increase of 8.4 per cent over the previous year. A total of 8.647 million people were employed by these organizations, an increase of 13.2 per cent over the previous year.<sup>2</sup>

The definition of social assistance service, in a broad sense, includes the administrative management service of social assistance and the professional labor service for the recipients. In a narrow sense, it refers to the relevant labor service matching with cash and material goods provided to the recipients. Social assistance labor services mainly include personalized services such as psychological support, spiritual comfort, employment assistance and social integration.<sup>3</sup> The provision of social assistance services requires not only the involvement of government departments but also the participation and intervention of social organizations. This part will analyze the theoretical basis and related practices of social organizations' participation in social assistance services.

### 1.1 Theoretical basis

The theoretical basis of social organizations' participation in social assistance services mainly includes sector failure theory, participatory development theory and the welfare pluralism theory.

#### 1.1.1 Sector failure theory

Firstly, market failure theory. Market failure refers to the phenomenon of imperfect market competition, imperfect external information and so on. These often destroy the efficiency of the market, as well as the uneven income distribution caused by market competition.<sup>4</sup> Due to the actual inequality in the superficial equality of the market, the needs of vulnerable groups are often ignored and these groups cannot provide profit sources for profit-making organizations. This results in a lack of fairness in the market. However, the needs of vulnerable groups need to be met, This provides the premise for social organizations to participate in social assistance services. Secondly, government failure theory. It is the natural responsibility of a government to provide public goods, but the government tends to be neutral when providing public goods, that is, the government tends to meet the needs of the people in the middle class. Due to the differences in peoples' demands for public goods, some people's special needs or extra needs cannot be met. Social organizations happen to have advantages in this aspect. The American economist Weisbrod believes that social organizations and the government have a mutual substitution in the provision of public goods. Other conditions being unchanged, the more dissatisfied citizens are with the public goods provided by the government, the more social organizations there are. For a specific government supply, the greater the difference in citizens' demands, the greater the supply of social organizations. Similarly, if the conditions remain unchanged, the higher the homogeneity of citizens' demands, the less satisfied the demands and the

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<sup>1</sup> Wang, M. *Social Organization*. Beijing: Social Sciences Academic Press. 2013, p. 86.

<sup>2</sup> Ministry of Civil Affairs :Statistical Bulletin on Social Service Development 2017, <http://www.mca.gov.cn/article/sj/>

<sup>3</sup> Lin, M. & Ma. Y. Providing Social Assistance Services for Urban Dibao Families, China Social Science Daily, 08/30/2018

<sup>4</sup> Samuelson, P. & Nordhouse, W. translated by Xiao, C. et al. *Economics*, Beijing: Huaxia press, 1999, p. 223.

fewer the number of social organizations.<sup>5</sup> In addition, the efficiency boundary of government work and the loss and transaction cost in the process of resource transfer, caused by bureaucracy, are also manifestations of government failure. The quasi-market environment and flat structure of social organizations make them more advantageous than the government. Third, voluntary failure theory. Social organizations are not perfect. They often survive with the help of charity, morality and a religious cover to create a good image, but as a group, social organizations still have all the characteristics of an organization. With an increase in their scale and complexity, they are also vulnerable to all the limitations of slow-moving bureaucrats.<sup>6</sup> Social organizations do not seek private benefits by voluntary means, nor do they seek public benefits by compulsory means. They seek public benefits by voluntary means. They have neither operating income nor compulsory taxation. When social organizations cannot obtain sufficient resources through the spontaneous mechanism of society, their limitations are shown and they need the support of the government. The failure of the voluntary sector gives reasons for the government to intervene. The government and social organizations need to cooperate to give full play to their strengths.

According to related research of the sector failure theory, the three kinds of governance mechanism - government, market and society - cannot provide services independently to meet the needs of all members. Only through multi-party cooperation, can diversified social services be provided to the public. This provides the theoretical basis for social organizations to participate in social assistance service.

### 1.1.2 Welfare Pluralism Theory

The concept of welfare pluralism was put forward by Richard Rose in 1986. Rose argued that overall social welfare is an important issue and welfare originates from three sectors including family, market and state. As a provider of welfare, any sector is beneficial to the other two sectors, and the integration of welfare from the three sectors forms the overall welfare in a society. The three sectors become social welfare pluralism. Afterwards, in the period of the welfare state crisis, quite a few scholars established their analytical framework based on the welfare pluralism concept. For example, in 1987 Johnson added the voluntary sector into welfare pluralism and enriched the theory of welfare pluralism. He divided the welfare providers into four categories: the state sector provides direct and indirect welfare, the market sector provides employee welfare, the voluntary sector such as self-help organization, mutual organization, non-profit organization and community organization provides related welfare and the informal sector such as relatives, friends and neighbors also provide welfare. Under this pluralistic structure, decentralization and participation are the ways to realize welfare pluralism. Johnson argues that the role of the state sector is limited in the welfare pluralism and criticizes the generous provision of the welfare state. When the welfare state is faced with an aging population, increase of nuclear families or unemployment rate, the affordability of the government decreases, and hence the other sectors have to share the responsibility for welfare provision. Welfare pluralism is one of the outlets for dealing with the crisis of the welfare state. Reducing the effect of the state in welfare provision and introducing different social sectors can transform the welfare state into a welfare society. From the above it can be seen that welfare pluralism theory emphasizes on changing a comprehensive state welfare to a mixed welfare with provision by several sectors and reconstructing the functions of the family, the community and other informal organizations through the participation of different social sectors, and finally transforming the welfare state to a welfare society.

In 1998 Evers learned from the welfare pluralism concept of Rose. Contrary to Rose's opinion, which considers welfare pluralism is overall welfare in a society from either sector of a different social

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<sup>5</sup> Zhao, J. Research on Poverty Alleviation of Contemporary Chinese Social Organizations, Ph D thesis, Jilin University, 2017

<sup>6</sup> He, Z. Civil Society and The Third Sector. Beijing: Social Science Academic Press, 2000, p. 253.

system—family, market and state, Evers argues that welfare pluralism consists of family, market economy and state and it should be called the ‘welfare triangle’. Welfare provision in the interactive process of welfare triangle is pluralistic, and the portion of welfare provision is interactional with a relationship restricting one another.<sup>7</sup>

The implications of a welfare pluralism theory for social assistance resources’ coordination in China is, that although the State should assume the primary responsibility for social assistance, society should not be excluded. The resources in society should be mobilized as a supplement to State resources and merged together so as to increase the whole power to social assistance services for the poor and disadvantaged people.

### 1.1.3 Participatory development theory

Participatory development theory argues that traditional development theory regards neoclassical economics as the norm, so that in the process of development, it intentionally or unintentionally ignores the factors affecting social development, including institutional and cultural factors. It does not regard people as the main body of development, which leads to the inversion of the truth. The practice under the guidance of this development theory is also full of defects, aggravating the polarization of the society, because the poor are at a disadvantage in the market competition. In addition, traditional development theory has also caused the inequality and low efficiency of the management system, resulting in the empowerment conflict from the top to the bottom and the exclusion of vulnerable groups in the name of power, investment and science.<sup>8</sup> On the basis of deep reflection of the traditional development mode, participatory development theory further puts forward an operable social reform plan from the macro level to the micro level. Some scholars put forward the important factors of participatory development on the basis of sorting out the international development literature, including the involvement in decision-making and selection process; contributory efforts; commitment and capability; motivation and responsibility; knowledge and innovation; the use and control of resources; capacity building; benefit sharing; self-organization and self-reliance; promotion mechanisms and so on.<sup>9</sup> The key to participatory development is empowerment. At its core, empowerment is the redistribution of participation and decision-making power throughout the development assistance process, namely increasing the voice and decision-making power of communities, especially the poor, in development activities.<sup>10</sup>

Participatory development emphasizes the participation of the poor and vulnerable groups. It can be said that participatory development theory provides a theoretical basis for social organizations to participate in social assistance service.

## 1.2 Relevant practices of social organizations’ participation in social assistance services

There are two main practical forms of social organizations’ participation in social assistance service. Firstly, social organizations provide social assistance services themselves independently and secondly, social organizations cooperate with the government to provide social assistance services. There are two specific modes of cooperation between social organizations and the government, namely government contracts and government subsidies. The following are the introduction of relevant practical experience of various forms of social organizations participating in social assistance services.

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<sup>7</sup> Peng, H. etc. *Introduction to Western Social Welfare Theory*, China Society Press, 2012, pp 3 - 4.

<sup>8</sup> Li, X. Qi, G.& Xu, X. *General development (2nd Ed)*. Beijing: Social Sciences Academic Press, 2012, pp 117 - 18.

<sup>9</sup> Li, X. Qi, G.& Xu, X. *General development (2nd Ed)*. Beijing: social sciences academic press,2012, pp 117-18.

<sup>10</sup>Zhao, J. Research on poverty alleviation by social organizations in contemporary China, PhD thesis of Jilin University, 2017.

### 1.2.1 Social organizations provide social assistance services independently

The common good and autonomy of social organizations determine that they can independently make decisions on social assistance design, management and evaluation, etc. Social organizations can take advantage of their unique advantages in social assistance services in areas where government assistance fails. At present, China's medical security system has difficulties in bearing all the medical expenses of the poor people, and medical assistance can become a key area for social organizations' participation in social assistance. In addition, the suddenness of disasters and the urgency of disaster assistance determine that disaster assistance is one of the key areas for social organizations' participation in social assistance service.<sup>11</sup>

As a national social organization, the China Charity Federation has independently carried out many assistance operations and services. For example, on 26th February 2011, the China Charity Federation launched a program to help thousands of children with congenital heart disease from poor minority families in the Great Hall of the People in Beijing. The program was sponsored by the China Charity Federation and undertaken by the press volunteer charity promotion committee. The program provides free surgical treatment for 0-16 year-old children with congenital heart disease from poor families in minority areas. By 2017, the "congenital heart disease children's assistance program" medical team had gone to the Gobi desert in Xinjiang 5 times, had gone to the Tibetan plateau 19 times, as well as to other minority areas in Inner Mongolia, Heilongjiang, Ningxia, Guangxi, Sichuan, Yunnan, Guizhou, Gansu, Shaanxi and Fujian. A total of 250,000 ethnic minority children were checked during the 300,000 km trip of the medical team, and 2,905 children from poverty-stricken minority families with congenital heart disease received free surgical treatment. All of them have recovered and been discharged from the hospital.<sup>12</sup>

### 1.2.2 Social organizations cooperate with the government to provide social assistance services

#### 1 Contract

'Contract' refers to the specific implementation of social assistance services by social organizations in the form of the purchasing of services by the government. Both parties establish a right and obligation relationship in the form of contract, and the general funds are allocated in installments according to the contract's terms. This is the most common mode of social organizations cooperating with the government in the implementation of social assistance services.

For instance, the Jing 'an district government of Shanghai purchases employment assistance services provided by the Shanghai Anjile Employment Assistance Service Center (SAEASC) by signing a service purchase contract. Shanghai Anjile Employment Assistance Service Center (SAEASC) was established in 2010, and in the beginning SAEASC only aimed at providing employment aid in order to meet the diverse needs of people with employment difficulties in the community and to help them integrate into society and promote employment. With the support of the Jing 'an district government, SAEASC has carried out services promoting the employment of all kinds of people with employment difficulties in the community through the project's operation. SAEASC not only provides investigations, visits, publicity and makes recommendations to the unemployed people, but also undertakes the investigation and review of the initial applications for the Dibao (Minimum Living Standard Guarantee) families, and the investigation and review of the related work of the educated youth returning back from Xinjiang and other inland provinces. To be specific, the project 'Spreading Wings Cabin', which is established through the form of government purchasing services, plans to carry out 5 neighborhood committees' pilot projects in the community, forms an the extended

<sup>11</sup> Tang, G.etc. The advantage, approach and risk prevention of social forces participating in social assistance, *Journal of Guizhou Party School*, 2018(1).

<sup>12</sup> China Charity Federation : congenital heart disease children assistance program, <http://www.chinacharityfederation.org/ProjectShow/0/35.html#>

service network of starting stations, establishes the youth labor resource database of neighborhood committees, and establishes the aid exchange network platform as part of the external network. At the same time, the project recruits employment assistance volunteers who have experience in human resources and have the charity and love to provide job information sources and related services. They regularly carries out one-to-one personalized vocational guidance services. By 2016, more than 10,000 people have changed their ideas about employment and have been placed in jobs with the help of SAEASC.<sup>13</sup> SAEASC has been awarded the honorary title of ‘Shanghai Advanced Organization for Promoting Employment’, and is the only social organization so selected in Shanghai. This indicates that the government has transferred the public employment service originally undertaken by itself to social organizations, and has shifted from tentative cooperation to normal cooperation. Since 2017, SAEASC has established the unemployed dynamic database, including data about updated personal information, dynamic adjustment of persons’ psychological state, and increases and changes in their ability and changes in their career’s status. Thus, the definition method can be developed to divide the target population and find the most accurate way to provide employment assistance services.<sup>14</sup> Social organization being the main body for employment assistance services, is the result of open thinking and an innovative idea in employment promotion work of the Jing’an district and the integrated resources from all achievements. Its direct effect is to make available to job seekers in the community targeted and personalized public employment services from a professional social organization. Its indirect effect is to change the mode by which the government undertakes all its social services and to provide beneficial practical experience for the innovation of social management and social services provision.

In 2015, in Chengdu, Sichuan Province, the first professional organization to provide social assistance to special groups in difficulty--the Jinjiang District Social Care Center (JDSCC) --was established. Social organizations were introduced to run the center. JDSCC serves special groups in difficulty whose household registration and real residency are both in Jinjiang district and whose incomes exceed the minimum living standard in Chengdu, but whose families are in difficulty because of long-term (emergency) disease, or severe disability, or attending national unified high officials vocational schools and college. Jinjiang District Social Care Center is entrusted to manage the Center of the Social Workers in Chengdu through the governmental purchasing of services. It has rooms for donations, studio rooms for social organizations and other multi-function rooms. Typically, more than 10 full-time social workers provide consultations to enterprises, groups and persons from all sectors, and receive visitors in difficulty and in need of social assistance. In accordance with the classification of social assistance, and following requests for tailored services, it has launched the program "Caring Package Plan 360", the Development Plan for special families with a difficulty livelihood, a support plan for students in special poverty, a nutrition plan for special children in poverty, a health plan for special families in poverty and so on. These programs and plans effectively integrate all kinds of social assistance resources, information resources and mutual social assistance resources, to stimulate the maximisation of efforts by social forces. They, bring the social forces into full play as a major player, It provides tailored services, with direct and targeted support as its major approach according to the needs of the specific groups and individuals.<sup>15</sup> By signing contracts with the government, social organizations become the main body for providing social assistance services to poor families. This shows that the government of Jinjiang district cares for the poor people and

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<sup>13</sup> Li, X. Pleasant Job-seeking of Young people with the Help of Social Organizations — “Jing’an” Model of Employment Assistance, China Labor Security News, 2016-4-11.

<sup>14</sup> Precise Provision of Employment Assistance to Help Stabilize Employment, [http://www.sohu.com/a/246487382\\_99951708](http://www.sohu.com/a/246487382_99951708)

<sup>15</sup> Jinjiang District Social Care Center: Love-giving Angel to “Sandwich Mass”, Civilization Alliance Sichuan Station, [http://sc.wenming.cn/zbsc/201501/t20150115\\_2403367.html](http://sc.wenming.cn/zbsc/201501/t20150115_2403367.html)

actively explores new ways of governance. By doing so it provides experience and reference for the development social organizations' participation in social assistance services in Sichuan province.

## 2 Government subsidy

'Government subsidy' means that the government subsidizes social organizations which participate in delivering social assistance services by means of financial aid, tax reduction and exemption, and / or low-interest loans. At the end of 2011, the Ministry of Civil Affairs and the Ministry of Finance jointly issued the Implementation Plan of 2012 for the Central Government to Support Social Organizations to Participate in Social Service Projects. A total of 200 million yuan was allocated to support social organizations to participate in social service projects. The Ministry of Civil Affairs set up a project leading group with an office responsible for the specific implementation and daily management of the projects. This was an important measure taken by the central government to foster the development of social organizations and encourage them to participate in social assistance services.<sup>16</sup>

Some economically developed provinces also provide government financial subsidies for social organizations to participate in social assistance services. For example, if the private, preschool early education centers in Quzhou city of Zhejiang province enroll impoverished disabled children and let them complete their three-year preschool education, then the government will subsidize the private preschool early education centers with 2000 yuan per disabled child to encourage them to participate in education assistance.<sup>17</sup>

## 2. THE EXISTING LEGAL FRAMEWORK OF SOCIAL ORGANIZATIONS' PARTICIPATION IN SOCIAL ASSISTANCE SERVICES AND ITS ANALYSIS

### 2.1 Legal framework

China's laws and regulations on the participation of social organizations in social assistance services include relevant laws and regulations on social assistance, the government's purchase of services and relevant laws and regulations on social organizations, both at the central and local levels.

#### 2.1.1 Laws and regulations at central level

In the past decade, the State Council, the Ministry of Civil Affairs and the Ministry of Finance have promulgated some laws and regulations concerning the participation of social organizations in social assistance, mainly the Regulations on Foundations' Administration (State Council, 2004), the Guidelines on Promoting Social Forces to Participate in the Assistance Services for Vagrants and Beggars (Ministry of Civil Affairs, 2012), the Guidelines on Strengthening the Connection between Medical Assistance and Charities (Ministry of Civil Affairs, 2013), the Interim Measures of Social Assistance (State Council, 2014), the Interim Measures for the Administration of the Government's Purchasing of Services (Ministry of Finance, Ministry of Civil Affairs, State Administration of Industry and Commerce, 2014), the Opinions on Establishing a Charity Behavior Oriented Mechanism in the Field of Child Welfare (Ministry of Civil Affairs, 2014), the Opinions on Accelerating the Development of Social Work in the Field of Social Assistance (Ministry of Civil Affairs, Ministry of Finance, 2015), Guidance on Supporting the Cultivation and Development of Social Organizations through the Government's Purchasing of Services (Ministry of Civil Affairs, 2016), Charity Law (National People's Congress, 2016), Regulations on the Administration of the Registration of Social Organizations (State Council, 2016), Opinions on Further Improving the Relief and Support System of the Extremely Poor (State Council, 2016), Regulations on Voluntary Services

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<sup>16</sup> Wang, H. Ministry of Civil Affairs provides subsidized funds for social organizations to relieve their pressure, Beijing Times, 2013-12-9.

<sup>17</sup> Tang, G.etc. The Advantage, Approach and Risk Prevention of Social Forces Participating in Social Assistance, *Journal of Guizhou Party School*, 2018(1).

(State Council, 2017), Opinions on Actively Promoting the Government’s Purchasing of Services and the Strengthening of the Capacity of Social Assistance Handling Services at the Grassroots Level (Ministry of Civil Affairs, 2017), Measures on the Information Disclosure of Charitable Organizations (Ministry of Civil Affairs, 2018).

Laws and regulations on the participation of social organizations in social assistance services at the central level can be seen in Table 1 in the Appendix .

### **2.1.2 Laws and regulations at local level**

In the past five years, some laws and regulations on social assistance and social organizations promulgated at the local level also involve the participation of social organizations in social assistance. Representative of these include the Opinions of the Beijing Civil Affairs Bureau’s Opinions on the Participation of Charitable Forces in Social Assistance (Beijing Civil Affairs Bureau, 2015), Measures for the Implementation of Social Assistance in Beijing (Beijing Municipal Government, 2018), Opinions of Shanghai Municipality on Guiding the Social Forces to Participate in Social Assistance Work (Shanghai Civil Affairs Bureau, 2018), Regulations on Social Assistance in Shanghai (Standing Committee of Shanghai Municipal People’s Congress, 2018), Regulations on Social Assistance in Guangdong Province (Standing Committee of Guangdong People’s Congress, 2017), Opinions of the Department of Civil Affairs of Guangdong Province about Actively Implementing Government Purchasing Services to Strengthen Grass-roots Social Assistance Organization’s Handling Service (Department of Civil Affairs of Guangdong Province, 2018), Measures for the Implementation of Social Assistance in Yunnan Province (The People’s Government of Yunnan Province, 2014), Measures for the Implementation of Social Assistance in Sichuan Province (The People’s Government of Sichuan Province, 2014), Regulations on Social Assistance in Gansu Province (Standing Committee of Gansu People’s Congress, 2015).

Laws and regulations on the participation of social organizations in social assistance services at local level can be seen in Table 2 in the Appendix .

## **2.2 Analysis of existing legal framework**

### **2.2.1 Characteristics**

From combing both the central and local legal frameworks, central and the local governments have been concerned about the question of social organizations’ participation in social assistance services. Their involvement in the laws, regulations and regulatory documents includes social assistance, charity, volunteer service and government purchasing services. The existing legal framework mainly reflects the following characteristics:

First, the necessity for social organizations to participate in social assistance services has been specified through the laws and the regulations on social assistance.

The Interim Measures of Social Assistance use a special chapter to stipulate the participation of the social forces. These clearly state that the State encourages social forces such as units and individuals to participate in social assistance by means of donations, the establishment of assistance projects, the establishment of service institutions and the provision of voluntary services. As an important part of the social forces, social organizations should actively participate in social assistance, including intervening in social assistance services. On account of this, the laws and regulations on social assistance especially pay attention to assistance for the homeless and beggars, relief and support for the extremely poor, medical assistance and child assistance. For instance, the ‘Guidelines on Promoting Social Forces Participation in the Assistance Services for Vagrants and Beggars’ clearly states that: “ Local civil affairs departments and assistance management institutions may entrust host families and legally registered welfare institutions to provide life caring services for special recipients by purchasing service items and other means. By cooperating with social work institutions,

psychological counseling institutions, rehabilitation treatment institutions, education and training institutions and social organizations, the local civil affairs departments can provide professional assistance services such as psychological counseling, education, corrective behavior intervention, rehabilitation training and skills training for vagrants and beggars.” The ‘Opinions on Further Improving the Relief and Support System of the Extremely Poor’ demands that: “Public organizations, charities, and other social organizations, social service organizations, enterprises and public institutions, volunteers and other social forces should be encouraged to participate in the relief and support work for the extremely poor in order to provide specialized and personalized services,” and specify the necessity of social organizations’ participation in social assistance. The ‘Guidelines on Strengthening the Connection between Medical Assistance and Charities’ indicate that: “Local governments should guide charitable organizations to carry out flexible and diversified medical assistance projects through the means of delegation, negotiation, awards and subsidies. Government policies and measures on purchasing services should be improved and high-quality charitable organizations to undertake medical assistance projects should be selected through bidding. For projects regarding social organizations participating in social service, local governments should give priority to areas of medical assistance.” The above specify the necessity of charitable organizations’ participation in medical assistance. The ‘Opinions on Establishing a Charity Behavior Oriented Mechanism in the Field of Child Welfare’ state that: “civil affairs departments at all levels should guide social forces, especially charitable organizations, to actively explore assistance and services for children who are actually unsupported, disabled, seriously ill, having a rare disease, vagrant, migrant, deserted and from poverty-stricken families”, and “more effort should be made to purchase services from social forces, and a certain proportion of funds purchased from social organization services should be invested in assistance programs for children in distress and medical assistance programs for children with serious diseases.”

Local laws and regulations such as the Regulations on Social Assistance in Shanghai, the Regulations on Social Assistance in Guangdong Province, the Regulations on Social Assistance in Gansu Province, the Measures for the Implementation of Social Assistance in Sichuan Province and the Measures for the Implementation of Social Assistance in Yunnan Province, also stipulate the participation of social forces in social assistance and clarify the necessity for social forces, including social organizations, to participate in social assistance services and encourage social forces outside of the government to actively participate in providing assistance services.

Second, the content of social organizations’ participation in social assistance services has been defined through the laws and regulations on the government’s purchasing of social services and social work in the field of social assistance.

The ‘Guidance on Supporting the Cultivation and Development of Social Organizations through the Government’s Purchase of Services’ states that: “the development of social organizations providing public welfare and charity services to urban and rural communities should be given priority. All localities and departments concerned should specify the priority of government support for purchasing services from social organizations in accordance with the government’s demand for purchasing services and the professional advantages of social organizations”. The ‘Opinions on Actively Promoting the Government’s Purchasing of Services and Strengthening the Capacity of Social Assistance Handling Services at the Grassroots Level’ further clarify the content of social assistance service, pointing out that social assistance services mainly include clerical work and service work. “Clerical work mainly refers to the investigation of beneficiaries, means testing, skills training, policy publicity, performance evaluation and other work when the grassroots staff implement the minimum living standard guarantee scheme, medical assistance, temporary assistance and other assistance service. Service work mainly refers to the care, nursing, rehabilitation training, sending to hospital and caring, social integration, ability enhancement, psychological counseling and resource links which are carried out for social assistance recipients”. The ‘Opinions on Accelerating

the Development of Social Work in the Field of Social Assistance’ indicate that: “Social work services should be carried out in a targeted way according to the characteristics of the field of social assistance and the needs of recipients. The services include social integration services, capacity improvement services and psychological counseling services, resource link services which could help recipients link with government resources and social resources related to living, studying, employment and medical care, and publicity and advocacy services”. These statements emphasize the content of the service work in social assistance services. At the local level, the ‘Opinions of Department of Civil Affairs of Guangdong Province about Actively Implementing the Government’s Purchasing of Services to Strengthen the Grass-roots Social Assistance Organization’s Handling Service’ state that social assistance services purchased from social forces mainly include clerical work and service work and there are also specific provisions on the two types of services, which are in line with the statement in the ‘Opinions on Actively Promoting the Government’s Purchasing of Services and Strengthening the Capacity of Social Assistance Handling Services at the Grassroots Level’ which is at the central level.

Third, laws and regulations on charitable voluntary service stipulate that charitable organizations and other social organizations need to participate in assisting when there are natural disasters and with other charitable assistance services.

The Law on Charities Law stipulates that: “In the event of a major natural disaster, accident, public health event or any other emergency requiring prompt relief, the government shall establish a coordination mechanism, provide demanded information and provide timely and orderly guidance in fund-raising and relief activities.” In addition, the law clearly defines that “charitable services refers to the voluntary services provided to the society or others by charitable organizations, other organizations or individuals for charitable purposes.” The ‘Regulations on Voluntary Services’ also stipulate that: “ In the event of a major natural disaster, accident, public health event or any other emergency requiring prompt relief, the government shall establish a coordination mechanism to provide demanded information and guide volunteer service organizations and volunteers to carry out volunteer service activities in a timely and orderly manner” and “The State encourages and supports government agencies, enterprises and public institutions, people's organizations, social organizations and other organizations to establish volunteer service teams to carry out professional volunteer service activities”. The above provisions actually provide a legal basis for social organizations’ participation in natural disaster assistance and other charitable voluntary services.

Fourth, some developed areas have made special regulations for social organizations’ participation in social assistance services.

Some developed areas attach great importance to the participation of social forces in social assistance activities. In addition to the provisions in the relevant laws and regulations on social assistance, special normative documents have been issued to stipulate the participation of social organizations in social assistance services. For instance, the Beijing Civil Affairs Bureau issued the ‘Beijing Civil Affairs Bureau’s Opinions on the Participation of Charitable Forces in Social Assistance (2015)’, stipulating that “assistance a linkage mechanism, an information sharing mechanism, an overall coordination mechanism and a guidance and support mechanism should be established” and “charitable organizations should be encouraged and guided to undertake the management and operation of charitable assistance by purchasing services from the government”. The opinions emphasizes that charitable organizations should be encouraged to provide assistance services. The Shanghai Civil Affairs Bureau issued the ‘Opinions of Shanghai Municipality on Guiding Social Forces to Participate in Social Assistance Work (2018)’, stipulating that “all kinds of social organizations should be encouraged to provide personalized and flexible services to assistance recipients by taking advantage of their own advantages and using innovative methods and professional skills to meet the needs of people in need within the approved field”. Specific assistance

service refers to “professional services such as care and nursing, household services, spiritual comfort, psychological counseling, social integration, resource matching, skills training, employment assistance, and legal aid which are offered to disadvantaged groups”. The above special regulations play an important role in promoting the social organizations’ participation in social assistance services.

### 2.2.2 Problems

Although the above relevant laws and regulations have played a direct and positive role in promoting social organizations to participate in social assistance services, it should be noted that the current legal framework in this regard is not perfect and there are some major problems.

First, the aim of legislation is mainly to regulate rather than promote.

The biggest difficulty for social organizations to participate in social assistance services in China is their lack of legal status. The reason lies in the fact that the purpose of the legislation on social organizations in China is to regulate and manage rather than promote and cultivate. The dual management system makes it impossible for many social organizations to obtain registration. The purpose of the dual management system is to share responsibilities and prevent risks through joint supervision by multiple departments. However, the fundamental reason for the establishment of this system is that the State does not fully trust social organizations.<sup>18</sup> The Charity Law issued in 2016 is undoubtedly a big step forward and article 10 of this law stipulates that: “the establishment of a charitable organization should be registered with the Civil Affairs Department of the People's Government at or above the county level. The Civil Affairs Department should take a decision within 30 days from the date of accepting the application”. This article is regarded as a major breakthrough from the dual management system. However, article 20 of the law also stipulates that “the specific measures for the registration and administration of charitable organizations shall be formulated by the State Council”, that is to say, the law authorizes the power to formulate specific regulations on the registration and management of charitable organizations to the administrative regulations. Since the State Council has not formulated new administrative regulations, has not abolished or revised the previous administrative regulations on social organizations, and failed to explain the relationship between the Charity Law and the latter, the dual management system has not been really abolished. Article 3 of the Charity Law only defines charity activities, but fails to define what a charitable organization is. Therefore, which organizations belong to charitable organization status and can be directly registered in the Civil Affairs Department without approval from the competent authority is unclear and operating rules are still needed in the actual process of identification.<sup>19</sup>

In addition, there are strict requirements on establishing a social organization. The establishment of a social group requires more than 50 individual members or more than 30 unit members., A national social group must have more than 100,000 yuan of activity funds, and local social group and cross-administrative social organizations must have more than 30,000 yuan of activity funds. The establishment of a foundation needs an original capital of 2 million yuan (non-public offering) to 8 million yuan (public offering), and the social groups and foundations both need to have a legal status. The above limitations means that many small social organizations can not meet the registration standard stipulated by the law and are actually in an illegal status.

Second, the level of legislation is low, and there are mainly administrative regulations and normative documents with few laws.

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<sup>18</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model of legislation in Germany, *Journal of Fujian Provincial Party School*, 2016(8).

<sup>19</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model of legislation in Germany, *Journal of Fujian Provincial Party School*, 2016(8).

At present, the participation of social organizations in social assistance services still basically relies upon a large number of administrative regulations, departmental rules and other normative documents. There is no unified legislation on social assistance formulated by the National People's Congress or its standing committee or unified social legislation on social organizations. There is a lack of unified planning in terms of both the content and the system, and the phenomenon of fragmentation is quite obvious. The legal provisions on social organizations and social assistance are scattered in various departmental laws and regulations, without a complete system and lacking in authority and coordination. This restricts the legalization process of the social organizations' participation in social assistance services.

Although a Social Assistance Law has been placed on the legislative agenda many times, it has not been enacted. At present, the 'Interim Measure of Social Assistance' issued by State Council is still the most authoritative regulation on social assistance. Although the administrative regulations on social organizations have been revised and relevant supporting regulations have been issued, they have never been formulated into a unified law on social organizations. As both social assistance and social organization legislation involve the realization of citizens' basic rights, it is necessary to improve the level of legislation and formulate special laws.

Third, there are some conflicts and omissions in the legislation

The promulgation of the 'Interim Measures for Social Assistance' in 2014 was the first time there was unification of the various social assistance programs in one regulation in China, but there are still some problems. As the provisions of the 'Interim Measures of Social Assistance' are rough, not strong in operability, and even less detailed than the previous separate legislation, it is possible that in practice, the separate legislation will be applied a priori, so that the effectiveness of the 'Interim Measures of Social Assistance' will be affected in practice.<sup>20</sup>

As for the participation of social forces as stipulated in the 'Interim Measures of Social Assistance', although compared with the previous individual legislation, it specifies the patterns and preferential policies on the participation of social forces, the connection with other relevant laws and regulations is not smooth. For example, article 52 of the 'Interim Measures of Social Assistance' stipulates that the State encourages social forces such as units and individuals to participate in social assistance through donation, the setting up of support projects, establishing service agencies and providing volunteer service. However, until there is a real change in the legislation on social organizations, this provision is of no practical significance to social organizations, since this encouraging provision cannot change the illegal nature of unregistered social organizations. Another example is article 54 of the 'Interim Measures of Social Assistance'. This stipulates that the government can purchase social assistance services from social organizations through entrusting, contracting and procurement. In recent years, the government has formulated a set of relatively complete rules for the purchase of services, but the problem is that the services purchased by government are on a small scale, and in practice organizations with an obvious official background will get more opportunities.<sup>21</sup>

### **3. IMPROVING THE LEGAL FRAMEWORK FOR SOCIAL ORGANIZATIONS' PARTICIPATION IN SOCIAL ASSISTANCE SERVICES**

As China's current social assistance legislation, namely the 'Interim Measures of Social Assistance (2014)', was formulated before the Charity Law (2016), most of the content concerning the participation of social organizations, including charitable organizations, in social assistance services

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<sup>20</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model of legislation in Germany, *Journal of Fujian Provincial Party School*, 2016(8).

<sup>21</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model of legislation in Germany, *Journal of Fujian Provincial Party School*, 2016(8).

is stipulated in principle.<sup>22</sup> The Charity Law is the basic law in the field of charity, so the regulations on a charity organizations' participation in social assistance services are scattered, and the legal framework for the whole social organizations' participation in social assistance services needs to be further improved.

### 3.1 Raising the level of legislation and formulating relevant laws

At present, the relevant laws and regulations on the participation of social organizations in social assistance in China have some problems, such as the low status of the legislation, and the poor coordination and fragmentation of the provisions of the relevant laws and regulations. Therefore, it is necessary to formulate a law on Social Assistance and a law on Social Organizations Law so as to improve the status level the legislation.

#### 3.1.1 Formulating a Social Assistance Law

The 'Interim Measures of Social Assistance' has regulated all assistance programs in the field of social assistance in one document, but they are still administrative regulations with weak coercive forces and normative forces. The 'Interim Measures of Social Assistance's' regulations on social organizations' participation in social assistance services are too general having a lack of coordination: First, the legal status of social organizations' participation in social assistance has not been identified. Second, the responsibilities of social organizations and governments in social assistance affairs are not clearly assigned, Third, the incentive support for social organizations' participation in social assistance services needs to be made concrete.

Compared with Germany's experience (see Box1 in the Appendix), China's 'Interim Measures of Social Assistance' lack provisions relating to social organizations so as to maintain their independence in the process of participating in social assistance services. In our country, in the process of social organizations' participating in social assistance services, their status should be independent. This should be embodied whether a social organization can decide to participate in the purchase of government services or whether it can accept an assistance mission entrusted by the government. In particular, social organizations are not subordinated to the government when the government entrusts them to purchase services. Therefore, it is necessary to avoid the government completely entrusting the obligations that the government should fulfill to social organizations, or it interfering in social organizations' participation in legal activities of social assistance services.<sup>23</sup> In addition, on the basis of the principle of government responsibility for social assistance, the policy of encouraging and supporting social organizations to participate in social assistance services should be clarified, and vague concepts in the previous legislation, such as society and social forces, should be avoided.<sup>24</sup> In terms of the identification of social assistance recipients, although the identification is the obligation of the government, social organizations can play an appropriate role in their identification. This is an important reflection of social organizations' participation in social assistance's administrative management services. It is mentioned in the social assistance legislation that the State commends and rewards the units and individuals that have made remarkable achievements, but it is not clear whether the units that have been commended and rewarded include social organizations. Moreover, the content of an administrative reward is not mentioned. This is not conducive to fully mobilizing the enthusiasm of social organizations to participate in social assistance

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<sup>22</sup> Han, J. Investigation and Analysis of the Legislation on Chinese Charity Organizations' Participation in Social Assistance, *Jianghuai Forum*, 2016(4).

<sup>23</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8).

<sup>24</sup> Han, J. Investigation and analysis on the legislation of Chinese charity organizations' participation in social assistance, *Jianghuai Forum*, 2016(4).

services.<sup>25</sup> This should be considered so as to be clarified and improved in the Social Assistance Law. In terms of the provisions of the social assistance fund, as to the government's expenditure on purchasing social assistance services and the necessary subsidies provided to encourage social organizations to participate in social assistance services, the purpose and proportion of the expenses should be specified. Thus, there will be a legal guarantee for social organizations to obtain financial support from the government.<sup>26</sup>

### 3.1.2 Formulating a Social Organization Law

At present, China should promulgate a basic law on social organizations on the basis of the relevant legislative experience of social organizations and unifying the commonality of social groups, private non-enterprises and foundations. In the legislation's purpose, "promotion and cultivation" and "management and regulation" should be paid equal attention. In terms of the content, procedural law and substantive law should be paid equal attention to stipulate the rights and obligations of social organizations in terms of substance.

Firstly, steps should be to reform the dual management system and lower the registration threshold for social organizations. The government should give up the management mode of the prior permission system for social organizations, and learn from the experience of the British legislation (see Box1 in the Appendix). Large social organizations should be regulated. The regulation of small social organizations should be relaxed and their legal status should be recognized. The capacity for the rights, and the legal status, of social organizations are different concepts. Registration only obtains the capacity for rights in the sense of the civil law. Legislation should focus on the regulation of the specific activities of social organizations, strengthening daily supervision and management, and strictly prohibiting and punishing social organizations who engage in economic, political and other illegal activities.<sup>27</sup>

Secondly, steps should be taken to establish a system of unincorporated organizations. In the current legal system of social organizations in our country, only private non-enterprises can have a partnership and individual form. Social groups and foundations are required to have a legal entity. Germany and Britain and other countries recognize unincorporated social organizations who are unregistered as being legal (see Box1 in the Appendix). Registration means accepting stricter rules from the law, enjoying more tax benefits and having a greater competitive advantage in purchasing services and undertaking government projects. This is conducive to the equality of rights and obligations. In its future legislation, China may also consider allowing the existence of unincorporated social organizations. Unincorporated organizations are not illegal, but just have an incomplete capacity for rights. Unincorporated non-profit organizations should be managed through records being kept on them..<sup>28</sup>

Thirdly steps should be taken to improve the regulations on daily supervision and the punishment of social organizations and establishing a diversified supervision mechanism. It is necessary to clearly stipulate the need for daily supervision and punishments for social organizations in the Social Organization Law and to construct a pluralistic supervision mechanism for social organizations. The practices of Germany, Britain and other developed countries has proved that under the premise of a sound self-regulatory mechanism of social organizations and effective social supervision, an

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<sup>25</sup> Han, J. Investigation and analysis on the legislation of Chinese charity organizations' participation in social assistance, *Jianghuai Forum*, 2016(4).

<sup>26</sup> Han, J. Investigation and analysis on the legislation of Chinese charity organizations' participation in social assistance, *Jianghuai Forum*, 2016(4).

<sup>27</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8).

<sup>28</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8).

appropriate reduction in the government's punishment of social organizations will not cause disorder and chaos in organizational management (see Box 1 in the Appendix). At present, China's registration and administration authorities and competent authorities are endowed with a large number of supervisory powers, but in practice, administrative authorities are powerless and lack sufficient manpower to ensure supervision. This makes supervision a mere formality. The government's supervision over social organizations can be gradually delegated to social organizations themselves, and society can be involved in supervision. The diversification of supervisory power can make supervision more effective.

### 3.2 Formulating supporting regulations and elaborating the legal provisions

China now has administrative regulations on social organizations, including 'Regulations on the Registration and Administration of Social Groups', 'Interim Regulations on the Registration and Administration of Private Non-enterprise Units', and 'Regulations on the Administration of Foundations'. Due to the differences in the legal activities 'of social groups, private non-enterprise units and foundations, the future Social Organization Law should be the basic law for the commonness of social organizations. In other words, in the Social Organization Law, only the most basic content related to social organizations should be stipulated, so as to reflect the legal status and independence of their rights and obligations, etc. The specific provisions made according to the characteristics of the different types of social organization, especially the specific procedural provisions such as registration, cancellation and liquidation, should be detailed under the administrative regulations. The existing 'Regulations on the Registration and Administration of Social Groups', the 'Interim Regulations on the Registration and Administration of Private Non-enterprise Units', and the 'Regulations on the Administration of Foundations' could be continued, and any inconsistencies between them and the future Social Organizations Law should be rectified.<sup>29</sup>

In addition, specific provisions should be made for the participation of the social organizations in various aspects of social assistance, especially in the relevant legislation on the purchasing of social assistance services by social organizations. Although, in 2014 the Ministry of Finance and the Ministry of Civil Affairs issued the 'Administrative Measures on the Governments Purchasing of Services (Interim)', which provide a certain behavioral paradigm for the government to purchase social services, these are a departmental regulation and as such have a weak normative force. Due to the particularity and professionalism of the content of social assistance services, the basic ways and working modes of the government to purchase social assistance services are complex and diverse in practice. Therefore, it is necessary to pass special legislation.<sup>30</sup> At the national level, it is suggested to formulate an administrative regulation on the government's purchasing of social assistance services, which will be conducive to promoting social organizations to participate in social assistance services. To be specific, it is necessary to clarify the purpose and the principles of the government's purchasing of social assistance services and to define the legal status of the buyers, implementers and recipients of social assistance services. It is necessary to specify the scope of the projects for which the government will purchase social assistance services, to scientifically formulate a guiding catalogue for a state-level government to purchase social assistance services, and to clearly define a unified and standardized service scope and quality standards. It is necessary to stipulate the ways and procedures by which the government will purchase social assistance services, and to establish the bidding system and an information disclosure system for the government's purchasing of social assistance services. In particular, it is necessary to regulate the large number of non-independent purchasing and non-competitive purchasing procedures in practice. It is necessary to establish an

<sup>29</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8).

<sup>30</sup> Han, J. Investigation and Analysis of the Legislation of Chinese Charity Organizations' Participation in Social Assistance, *Jianghuai Forum*, 2016(4).

incentive mechanism and performance evaluation mechanism for social organizations' participation in the government's purchasing of social assistance services.<sup>31</sup>

### 3.3 Revising the relevant laws and making the legislation more coordinated

The participation of social organizations in social assistance services involves multiple legal relationships. Relying only on the Social Assistance Law, a Social Organization Law, the Charity Law and other relevant laws and regulations, will make it difficult to stipulate all the areas for social organizations' participation in social assistance services. Therefore, it is necessary to revise and improve the relevant laws to increase the coordination of the legislation

Firstly, improve the provisions on a legal personality in the Civil Law. Provisions about incorporated foundations and unincorporated societies could be added to clarify the legal status of both these organizations. Secondly, the Tax Law's provisions on tax incentives for social organizations should be improved. The 'Implementation Regulations of the Enterprise Income Tax Law' should be amended to make special provisions for the payment of tax, the tax exemption rules for social organizations, and to distinguish the operating income of social organizations (which belongs to the scope of taxable income and which belongs to the scope of tax exemption) so as to avoid a one-size-fits-all provision on the total exemption or full levy of the income of the different natures of social organizations. Third, the Procedural Law on the rights' relief of social organizations should be improved. The relevant provisions of the Administrative Procedure Law and the Civil Procedure Law should be amended to keep them in line with the ways of rights' relief in the legislation of social organizations. An infringement of the internal management of a social organization by an administrative organ should be regarded as one of the situations for accepting cases of administrative litigation, and unregistered unincorporated organizations shall be given a certain litigation status. Fourthly, social work legislation should be improved. Social workers are the key force in providing social assistance services. Social workers can provide specialized and personalized assistance services. The 'Interim Measures of Social Assistance' also stipulate that social work service agencies and social workers should play their roles. However, at present, China's social work legislation has problems of low priority level and is imperfect. It is necessary to prescribe the legal definition, professional conditions, professional ethics, rights and obligations of social workers, the scope, content and beneficiaries of social work, social work service agencies and other related matters.<sup>32</sup>

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<sup>31</sup> Han, J. Investigation and analysis of the legislation of Chinese Charity Organizations' Participation in Social Assistance, *Jianghuai Forum*, 2016(4).

<sup>32</sup> Gao, Y. Participation of Non-profit Organizations in Social Assistance: a Model for German Legislation, *Journal of Fujian Provincial Party School*, 2016(8).

## Appendix

**Table 1 Laws and regulations on the participation of social organizations in social assistance services (central level)**

Year	Department	Name of laws and regulations	Main provisions on the participation of social organizations in social assistance services
2004	State Council	Regulations on Foundations' Administration	<p>Article 30 - When a foundation conducts a public welfare project, it shall make known to the public the type of public welfare project and the evaluation procedures for its application</p> <p>Article 31 - The foundation may sign an agreement with the recipients, stipulating the amount of the fund and the purpose and use of the fund. The foundation shall have the right to supervise the use of the fund</p>
2012	Ministry of Civil Affairs	Guidelines on Promoting Social Forces to Participate in the Assistance Services for Vagrants and Beggars	<p>Providing professional assistance service. Local civil affairs departments and assistance management institutions may entrust host families and legally registered welfare institutions to provide life care services for special recipients by purchasing service items and other means. By cooperating with social work institutions, psychological counseling institutions, rehabilitation treatment institutions, education and training institutions and social organizations, local civil affairs departments can provide professional assistance services such as psychological counseling, education, correction behavior intervention, rehabilitation training and skills training for vagrants and beggars. By setting up volunteer activity bases, internship bases and other forms in assistance management institutions, local civil affairs departments should actively guide and support doctors, teachers, legal workers, social workers, psychological counselors and other professionals to provide professional volunteer services for vagrants and beggars</p>
2013	Ministry of Civil Affairs	Guidelines on Strengthening the Connection between Medical Assistance and Charity	<p>Exploring ways to establish a mechanism to link medical assistance with charity. First, establishing a demand-oriented mechanism. It should start from the medical security needs of the people in need, explore and establish a linkage mechanism between medical assistance and charity, make charity resources an important supplement to medical assistance, and help the people in need to pay their own medical expenses. Second, establishing an information sharing mechanism. The connection between medical assistance information and charity information is the core of the connection between medical assistance and charity. Third, establishing coordination mechanism. A coordination mechanism involving the participation of the civil affairs and other relevant government departments, as well as charitable organizations and medical institutions, should be established and improved. The problems existing in the connection between medical assistance and charity should be studied jointly. By sorting out the field of charitable organizations, the areas they are good at and the demand information of the recipients, charitable organizations can be guided to</p>

carry out assistance activities in an orderly manner. Fourth, establishing incentive and support mechanisms. Local governments should guide charitable organizations to carry out flexible and diversified medical assistance projects through the means of delegation, negotiation, awards and subsidies. Government policies and measures on purchasing services should be improved and high-quality charitable organizations to undertake medical assistance projects should be selected through bidding. For projects regarding social organizations participating in social services, local governments should give priority to areas of medical assistance. In areas where conditions permit, the government should contribute funds to set up special medical assistance funds, and at the same time receive funds from social donations, thus forming a diversified financing mechanism.

Chapter 10 Social force participation

Article 52 - The state encourages units, individuals and other social forces to participate in social assistance by means of donation, establishment of assistance projects, establishment of service organizations and the provision of voluntary services.

Article 53 - Social forces shall participate in social assistance and could enjoy fiscal subsidies, tax preferences, expense deduction and exemption in accordance with the relevant regulations of the State

Article 54 - Local governments at or above the county level may purchase services from social forces on specific service items in social assistance by means of entrustment, contract procurement, etc.

Article 55 - Local governments at or above the county level shall give full play to the role of social work service agencies and social workers, and provide specialized services such as psychological counseling, ability improvement and social integration for recipients.

Article 56 - The administrative departments of social assistance and related institutions shall establish mechanisms and channels for the social forces to participate in social assistance, provide information on the needs of social assistance programs, and facilitate the participation of social forces in social assistance.

2014      State Council      Interim Measures of Social Assistance

Article 14 - The following services shall be included in the guide list of services purchased by the government unless it has been stipulated in laws and regulations

**Basic public service.** Public education, employment, personnel service, social insurance, social assistance, old age services, child welfare service, disabled services, special care and placement, health care, population and family planning, housing guarantees, public culture, public sports, public safety, public transport, “farmer, countryside and agriculture” services, environmental governance, urban maintenance and other fields which are suitable for social forces to undertake the service responsibilities.

**Social management service.** Community construction, social organization construction and management, social work services, legal

2014      Ministry of Finance, Ministry of Civil Affairs, State Administration of Industry and Commerce      Interim Measures for the Administration of the Government’s Purchasing of Services

aid, poverty alleviation, disaster prevention and relief, people's mediation, community correction, floating population management, emplacement and education, voluntary service management, public welfare publicity and other fields which are suitable for social forces to undertake the service responsibilities.

2014	Ministry of Civil Affairs	Opinions on Establishing a Charity Behavior Oriented Mechanism in the Field of Child Welfare	<p>Guide social forces to determine the target of service. On the basis of the State's implementation of the orphan security system, the basic living security system of HIV-infected children, and the protection system of homeless children, civil affairs departments at all levels should guide social forces, especially charitable organizations, to actively explore assistance and services for children who are actually unsupported, disabled, seriously ill, with a rare disease, vagrant, migrant, deserted or from poverty-stricken families . Guide social forces to define the work contents. For children who are actually unsupported, disabled, seriously ill, with a rare disease, vagrant, migrant, deserted or from poverty-stricken families, Civil affairs departments at all levels should guide various social forces to give consideration to both economic assistance and service support, so as to not only help children meet their basic needs in life, but also to meet their needs for education, medical security, psychological health and social integration. For orphans, HIV-infected children and other groups, Civil affairs departments should strengthen their cooperation with professional charitable organizations, so that they can help supervise the implementation of policies such as basic living expenses provision, medical treatment and preferential treatment in education. Where conditions permit, social forces can be used to jointly explore the child protection system. <b>Encourage social forces to engage in medical assistance and assist social forces to obtain resources.</b> More efforts should be made to purchase services from social forces, and a certain proportion of funds purchased from social organization services should be invested in assistance programs for children in distress and medical assistance programs for children with serious diseases.</p>
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2015	Ministry of Civil Affairs Ministry of Finance	Opinions on Accelerating the Development of Social Work in the Field of Social Assistance	<p><b>Making clear the content of social work services in the field of social assistance.</b> Social work services should be carried out in a targeted way according to the characteristics of the field of social assistance and the needs of the recipients. (1) Social integration services should be provided to help the recipients adjust family and social relations, eliminate social discrimination, rebuild social support networks, and to better adapt to the community and social environment; (2) services should be provided to enhance the recipients' abilities, help them and their families change their ideas, tap their potential, learn living skills, develop livelihood programs, and eliminate dependence on assistance. (3) psychological counseling services should be carried out to help the recipients to soothe negative and hostile emotions, to relieve psychological pressure, to correct bad behaviors, to change negative views, and to establish a positive, optimistic and aspirant attitude. (4) resource link services should be carried out to help the recipients link government resources and social resources related to living, studying, employment and medical care,</p>
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			<p>and to organize other professional forces and volunteers to provide services for the recipients, so as to make up for the shortage of government resources to the greatest extent possible. (5) Publicity and advocacy services should be carried out to help recipients to have a more detailed and comprehensive understanding of the government's social assistance policies. The effectiveness and the shortcomings of the implementation of social assistance policies should be reported to the government on a timely basis and effectively, an information communication network from the superior to the subordinate level should be established, and the improvement of social assistance policies should be promoted.</p>
2016	Ministry of Finance Ministry of Civil Affairs	Guidance on Supporting the Cultivation and Development of Social Organizations through the Government's Purchasing of Services	<p>The relevant departments shall include the newly increased public service demands into the government guidance list for purchasing services and strengthen management in the light of the actual conditions and in accordance with the prescribed procedures, gradually identifying specific service programs suitable for social organizations to undertake in practice, and to encourage and support social organizations to participate in, and undertake, such programs.</p> <p>Government departments at all levels are encouraged to give priority to purchasing public services in the fields of livelihood guarantees, social governance, industry management, public welfare and charity from social organizations under the same conditions. Each region may, in light of its local conditions, specify the key areas or key programs to purchase services from social organizations. Concrete measures should be taken to increase the government's purchasing of services from social organizations, and gradually increase the share or the proportion of the government's purchasing of services from social organizations. In principle, the proportion of the government's new public service expenditure purchased from social organizations should be not less than 30%.</p>
2016	National People's Congress	Charity Law	<p>Article 30 - In the event of a major natural disaster, accident, public health event or any other emergency requiring prompt relief, the government shall establish a coordination mechanism, provide demand information and provide timely and orderly guidance in fund-raising and relief activities.</p> <p>Article 61 - The term "charitable services" used in this law refers to the voluntary services provided to society or others by charitable organizations, other organizations or individuals for charitable purposes. Charitable organizations may provide charitable services themselves, recruit volunteers to provide them, or entrust them to other organizations with special service expertise.</p> <p>Article 63 - Where specialized skills are needed for the development of charitable services such as medical treatment, rehabilitation, education and training, the standards and procedures formulated by the state or trade organizations shall be implemented.</p>
2016	State Council	Regulations on the Administration of the Registration of Social	To receive donations, a social organization must comply with the purpose and business scope stipulated in its articles of association, and must use them according to the time limit and legal use agreed with

		Organizations	the donor and the sponsor. Social organizations shall report to the competent authorities in charge of their operations on the acceptance and use of donated funds and shall publicize such information to the public in an appropriate manner.
2016	State Council	Opinions on Further Improving the Relief and Support System of the Extremely Poor	Public organizations, charities, and other social organizations, social service organizations, enterprises and public institutions, volunteers and other social forces should be encouraged to participate in relief and support work for the extremely poor. The public-private partnership (PPP) model should be encouraged. The construction of nursing institutions should be supported through the means of state-ownership and private management. It will increase government support for the purchase of services and projects, implement various fiscal subsidies, tax preferences and fee reductions and exemptions, and provide guidance and incentives to social work service agencies run by public welfare and charitable organizations, as well as old-age care and medical services run by social forces, so as to provide specialized and personalized services for people in extreme poverty.
2017	State Council	Regulations on Voluntary Services	<p>Article 23 - The State encourages and supports government agencies, enterprises and public institutions, people's organizations, social organizations and other organizations to establish volunteer service teams to carry out professional volunteer service activities, and encourages and supports volunteers with professional knowledge and skills to provide professional volunteer service</p> <p>Article 24 - In the event of a major natural disaster, accident, public health event or any other emergency requiring prompt relief, the government shall establish a coordination mechanism to provide demand information and guide volunteer service organizations and volunteers to carry out volunteer service activities in a timely and orderly manner.</p>
2017	Ministry of Civil Affairs	Opinions on Actively Promoting the Government's Purchasing of Services and Strengthening the Capacity of Social Assistance Handling Services at the Grassroots Level	<p><b>Regulate the content of purchase.</b> The social assistance services purchased from social forces mainly include clerical work and service work. Clerical work mainly refers to beneficiary investigations, means testing, skill training, policy publicity, performance evaluation and other work when the grassroots staff handle the minimum living standard guarantee scheme, medical assistance, temporary assistance and other assistance service. Service work mainly refers to the care, nursing, rehabilitation training, sending to hospital and caring, social integration, ability enhancement, psychological counseling and resource links which are carried out for the recipients of social assistance.</p> <p>Define the main body who undertakes the services. The main body who undertakes the services from the government is a social organization which is registered in the civil affairs department or could be exempted from registration through the approval of State Council. The social organization should be classified into the incorporation of a public institution according to the classification reform of public institutions. Social forces such as enterprises and institutions registered in the administration of industry</p>

and commerce departments according to law can also undertake the services.

2018	Ministry of Civil Affairs	Measures on the Information Disclosure of Charitable Organizations	<p>Article 9 - When a charitable organization establishes a charity project, it shall publicize the name and content of the charity project on the unified information platform.</p> <p>Article 17 - When a charitable organization recruits volunteers to participate in the charity service, it shall publicize all the information related to the charity service as well as the risks that may occur during the service.</p>
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**Table 2 Laws and regulations on the participation of social organizations in social assistance services ( local level)**

Year	Department	Name of laws and regulations	Main provisions on the participation of social organizations in social assistance services
2015	Beijing Civil Affairs Bureau	Beijing Civil Affairs Bureau's Opinions on the Participation of Charitable Forces in Social Assistance	<p>Government's dominion and social participation. It should give priority to government assistance and supplement it with charitable aid. While making government assistance fully effective, it should mobilize charity forces to participate in social assistance by means of policy support, financial support, publicity and guidance. An effective mechanism for the connection between government aid and charity aid should be established in order to realize the complementarity and positive interaction between government and society. A linkage mechanism, an information sharing mechanism and an overall planning and coordination mechanism should be established. Charitable forces shall participate in social assistance and enjoy fiscal subsidies, tax breaks and other preferential policies in accordance with the relevant State regulations. Charitable organizations should be encouraged and guided to undertake the management and operation of charitable assistance by purchasing services from the government</p>
2018	Beijing Municipal Government	Measures for the Implementation of Social Assistance in Beijing	<p>Article 6 - The municipality encourages charitable organizations to focus on all kinds of social assistance recipients, and carry out charitable relief activities such as poverty alleviation, disaster relief, orphan relief, elderly support, disabled education, student aid and medical aid. The municipal and district people's governments shall support charitable organizations in establishing special funds for social assistance, establishing charitable programs for social assistance and carrying out charitable assistance activities. The administrative departments of social assistance and the operational agencies shall promptly introduce the information on the claimants to the charitable organizations and support the charitable organizations and other social organizations in carrying out the charitable assistance.</p> <p>Article 7 - The municipal civil affairs department shall, in conjunction with the municipal financial department, formulate</p>

and publish a list of guidance for the government to purchase social assistance services, incorporate the professional services provided by social work service agencies and social workers into the list, and improve the evaluation and the supervision measures.

Chapter 5 Social Force Participation

Article 37 (major participants)

Social forces such as enterprises, public institutions, social organizations and volunteers should be encouraged to carry out social assistance in cooperation with the relevant government departments, taking into account their own advantages and the needs of the recipients.

Article 38 (participation channel)

The administrative departments of social assistance and the relevant agencies shall establish mechanisms and channels for the social forces to participate in social assistance, do a good job in releasing information, policy consultation, business guidance, project guidance, public service recording, etc., and provide convenience for the social forces to participate in social assistance.

Article 39 (participation method)

Enterprises, public institutions, social organizations and individuals should be encouraged to participate in social assistance by means of donations, setting up assistance programs, establishing service organizations, providing voluntary services, conducting comprehensive community assistance and providing a subsidy to participate in commercial insurance.

Article 40 (encouragement and regulation)

Social forces shall participate in social assistance and enjoy such policies as fiscal subsidies, tax preferences and expense reduction and exemption, in accordance with relevant regulations of the State. The participation of social forces in social assistance shall be coordinated with the work of the administrative departments for social assistance and other relevant institutions, and they shall adhere to the principle of being honest and trustworthy in accordance with the laws and regulations, and accept government guidance and social supervision.

2018 Standing Committee of Shanghai Municipal People's Congress

Regulations on Social Assistance in Shanghai

2018

Shanghai Civil Affairs Bureau

Opinions of Shanghai Municipality on Guiding Social Forces to Participate in Social Assistance Work

**Social Organization.** All kinds of social organizations should be encouraged to provide personalized and flexible services to the assistance recipients by taking advantage of their own advantages and using innovative methods and professional skills to meet the needs of people in need within the approved field.

The participation of social forces in social assistance mainly includes the following content: (1) material support which includes cash and in-kind donations, etc. (2) assistance services which aim at providing professional services for disadvantaged groups, such as nursing, domestic service, spiritual comfort,

psychological counseling, social integration, resource matching, skills training, employment assistance and legal aid (3) clerical work (4) other social assistance work which is suitable for a social forces's participation.

Chapter 11 Social Force Participation

Article 72 - Charitable organizations established according to the law are encouraged to participate in social assistance in accordance with the laws and regulations.

Article 73 - Units and individuals are encouraged to participate in social assistance by setting up sponsorship, undertaking co-branded assistance projects, or by donating to establish service institutions and providing voluntary services. Units and individuals are encouraged to participate in social assistance by setting up, sponsoring, co-hosting, titling assistance projects, or donating to establish service institutions and providing voluntary services.

Article 74 - When social forces participate in social assistance, they can enjoy preferential tax subsidies, expense reduction and exemption policies in accordance with the relevant state and provincial regulations

Article 75 - People's governments at or above the county level may purchase services from social forces on specific service items in social assistance by means of entrustment, contract procurement, etc. The social assistance administrative department shall promptly determine and publish the directory of specific items of services purchased by the department from social forces in accordance with the guiding directory of purchasing services from social forces by the government at the corresponding level.

Article 76 - The social assistance administrative departments and related institutions shall establish mechanisms and channels for social forces to participate in social assistance and provide information on the needs of social assistance programs in order to facilitate the participation of social forces in social assistance.

2017 Standing Committee of Guangdong People's Congress Regulations on Social Assistance in Guangdong Province

2018 Department of Civil Affairs of Guangdong Province Opinions of the Department of Civil Affairs of Guangdong Province about Actively Implementing the Government's Purchasing of Services to Strengthen Grass-roots Social Assistance Organization's Handling Service

The requirements of the Opinions on Actively Promoting the Government's Purchasing of Services and Strengthening the Capacity of Social Assistance Handling Services at the Grassroots Level issued by Ministry of Civil Affairs, etc. should be implemented in order to strengthen the ability of community-level social assistance agencies to provide services and increase the effective supply of social assistance services.

Regulate the content of purchase. The social assistance services purchased from social forces mainly include clerical work and service work. Clerical work mainly refers to beneficiary investigation, means testing, skills training, policy publicity, performance evaluation and other work when the grassroots staff handle the minimum living standard guarantee scheme, medical assistance, temporary assistance and other assistance

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services. Service work mainly refers to the care, nursing, rehabilitation training, sending to hospital and caring, social integration, ability enhancement, psychological counseling, resource links which are carried out for the social assistance recipients.

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Chapter 10 Social Force Participation

Article 51 - Units, social organizations, enterprises, individuals and other social forces should be encourage to participate in social assistance by sponsoring, co-sponsoring, jointly donating, setting up projects, establishing service organizations, and providing voluntary services. When social forces participate in social assistance, they can enjoy preferential tax subsidies, expense reduction and exemption policies in accordance with relevant state and provincial regulations

Article 52 - Governments at or above the county level may purchase services from social forces through entrustment, contracting and procurement of some of the service items included in social assistance. A government at or above the county level shall formulate and publish the list of social assistance service items purchased by the government. The evaluation, assessment, competition and exit mechanism of socialized operation of social assistance programs should be established.

Article 53 - The social assistance administrative departments and related institutions shall establish mechanisms and channels for social forces to participate in social assistance and to provide information on the needs of assistance recipients in order to facilitate the establishment of platforms for social forces to participate in social assistance.

Article 54 - Governments at or above the county level should actively cultivate and develop public welfare and charity social service organizations that can participate in social assistance and provide social assistance services.

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Chapter 10 Social Force Participation

Article 41 - Encourage social forces to participate in social assistance by means of donation, fee reduction or exemption, establishment of assistance projects, establishment of service organizations, provision of voluntary services, etc. All kinds of charitable organizations should make public the conditions and procedures for assistance applications.

Article 42 - People's governments at or above the county level shall draw up and publish the list of social assistance services purchased by the government, and purchase services from social forces by means of delegation, contract and procurement. The evaluation, entrance and exit mechanism of socialized operation of social assistance programs should be established.

Article 43 - People's governments at the county level and sub-

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2014 The People's Government of Yunnan Province Measures for the Implementation of Social Assistance in Yunnan Province

2014 The People's Government of Sichuan Province Measures for the Implementation of Social Assistance in Sichuan Province

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district offices of people's governments at the township level shall set up social work posts in community service institutions, give play to the role of social workers, and provide services such as social integration, ability enhancement and psychological counseling for social assistance recipients.

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Chapter 10 Social Force Participation

Article 41 - Encourage social forces to participate in social assistance by means of donation, reduction or exemption, establishment of assistance projects, establishment of service organizations, provision of voluntary services, etc. All kinds of charitable organizations should make public the conditions and procedures for assistance applications.

2015 Standing Committee of Gansu People's Congress

Regulations on Social Assistance in Gansu Province

Article 42 The people's government at or above the county level shall formulate and publish the list of social assistance services purchased by the government, purchase services from social forces through entrustment, contract and procurement of specific service items in social assistance. The evaluation, entrance and exit mechanism of socialized operation of social assistance programs should be established.

Article 43 People's governments at the county level and sub-district offices of people's governments at the township level shall set up social work posts in community service institutions, give play to the role of social workers, and provide services such as social integration, ability enhancement and psychological counseling for social assistance recipients.

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### **Box 1 Foreign experience of legislation for social organizations' participation in social assistance services**

The foreign legislation on the social organizations' participation in social assistance services is mainly about the legal system of charity. The legislative model can be divided into two categories: one is the centralized legislative model, that is, the formulation of a comprehensive charity law as the basic law of charity, and is supplemented by several separate laws and regulations, such as the United Kingdom, Singapore and New Zealand. The second is the decentralized legislative model, which stipulates various systems of charitable organizations and charitable activities in several laws, such as the United States, Japan and Germany.<sup>33</sup> Here, the centralized legislative model of Britain and the decentralized legislative model of Germany are analyzed respectively:

#### **Experience of legislation in Britain**

Britain was the first country in the world to pass charity legislation. This can be traced back to the Charity Use Act of 1601. The preface of the law lists in detail the major charity activities in British society at that time which include assisting the elderly and the poor, looking after an old man, seriously wounded soldiers and sailors, establishing free private schools and sponsoring scholars at a university, repairing bridges, wharves, refuges, roads, churches, seawalls and avenues, educating orphans, running and supporting labor workhouses, helping poor maids to marry, providing funds for young businessman, artisans and the weak, aiding the redemption of prisoners and assisting poor residents to pay tax, etc. The above enumeration is not a well-worded legal provision, but it is the first time that the main scope of philanthropy had been defined in the law, which had groundbreaking significance and far-reaching influence.<sup>34</sup>

Currently in the UK, charitable organizations refer to organizations aiming at the realization of charity (public interest). The charity law of the UK was revised in 2011 and listed 13 goals of charitable organizations, including: promoting education, religion, health or saving lives; promoting civic or community development; promoting art, culture, heritage or science; promoting amateur sports; promoting human rights progress, resolving conflicts, religious and ethnic harmony, equality and diversity; promoting environmental protection or improvement; helping the young, the elderly, sick people, the disabled, the economically disadvantaged or other vulnerable groups; promoting animal welfare; promoting greater efficiency in the royal army or in the police, fire brigade, rescue or ambulance services; any other purpose as prescribed by law.<sup>35</sup> It can be seen from the above that the goal of helping the young, the elderly, the sick people, the disabled, the economically disadvantaged or other vulnerable groups mainly involves the provision of corresponding social assistance services. No matter whether an organization is registered or not, as long as it aims at charity, it is a charitable organization. The registration only represents the recognition of the charitable organization by the State.<sup>36</sup> The charity law also stipulates that charitable organizations earning less than

<sup>33</sup> Gao, Q. Brief analysis of the enlightenment of international charity law to our country, *People's Tribune*, 2013(14).

<sup>34</sup> Gao, W. The third amendment to the Charity Law in Britain, *China Philanthropy Times* 2015-11-11.

<sup>35</sup> Wang, S. How does the UK manage charitable organisations ? China Development Brief Website, <http://www.chinadevelopmentbrief.org.cn/news-5356.html>

<sup>36</sup> Wang, S. How does the UK manage charitable organisations ? China Development Brief Website, <http://www.chinadevelopmentbrief.org.cn/news-5356.html>



£5,000 a year are voluntarily registered, which means that small charitable organizations earning less than £5,000 a year are exempt from registration.

If registered as a charitable organization, the organization can benefit in the following aspects: one is to gain public recognition and trust, because a charitable organization is for the public good, which can help the organization to raise money. Second, asset locking. Organizations with charitable qualifications can prevent their assets from being misappropriated for private interests or other purposes and can only be used for charitable purposes. Third, tax reduction and exemption. Charitable organizations do not have to pay tax on profits generated in the process of providing services for the purpose of charity. Local taxes are also much lower than commercial tax rates. Stamp duty on purchases of real property or leases can be waived. Fourth, it is beneficial to obtain financial support. Some funds of the government or foundations are only open to organizations with charitable qualifications. Fifth, free advice and support from the UK charity council. After registration, charitable organizations also face some restrictions. The first is restrictions on non-charitable activities. The activities that charitable organizations can carry out will be restricted to the scope of public interest activities, and political and commercial activities will be strictly restricted. A trustee in a charitable organization shall not receive any financial benefit or reward unless it is prescribed by the constitution of the organization or approved by the board of charity. Charitable organizations are required to submit annual reports and financial statements to the Charity Commission every year and are subject to strict supervision.<sup>37</sup>

In respect of carrying out activities and providing services, charitable organizations can only be established for charitable purposes, and their activities must be to promote the realization of this goal and not to engage in certain commercial or political activities. In economic activities, the charity law allows a charitable organization to conduct commercial activities in the process of the implementation of the primary goals, charity schools or colleges provide education services and charge fees. A charitable organization may not engage in any business or economic activity other than a defined commercial activity, but it may engage in such commercial activity through a for-profit branch, and the profits made therefrom shall be turned over to the charitable organization. In terms of political activities, charitable organizations cannot be established for the purpose of political activities, but they can engage in some political activities for the purpose of achieving charitable goals. For certain legislation or policies that may affect charitable organizations, charitable organizations can lobby the legislative body and mobilize the public to communicate with the legislative body.<sup>38</sup>

It can be seen from the above that the charity law of the UK has undergone several amendments, and its provisions are detailed and keep pace with the times. The purpose is to manage, protect and promote the development of charity. In particular, the law regulates large charitable organizations while relaxing control over small ones. That is to say, it relaxes the regulation of small charitable organizations on the basis of managing large ones, and promoting small charitable organizations' development, so as to give full play to their role in providing social services for grassroots communities and the public.<sup>39</sup>

<sup>37</sup> Wang, S. How does the UK manage charitable organisations ? China Development Brief Website, <http://www.chinadevelopmentbrief.org.cn/news-5356.html>

<sup>38</sup> Wang, S. How does the UK manage charitable organisations ? China Development Brief Website, <http://www.chinadevelopmentbrief.org.cn/news-5356.html>

<sup>39</sup> Gao, W. The third amendment to the Charity Law in Britain, China Philanthropy Times 2015-11-11

**Experience of the legislation in Germany**

Germany is the birthplace of the modern social security system. In the ‘Basic Law of Federal Republic of Germany’, Article 1 “the dignity of the human being”, article 2 “the protection of the fundamental rights of the free development of the individual and the inviolability of the body” and article 20 “the principle of social state” are the constitutional basis for German citizens to receive state social assistance. At the same time, there is also special legislation on social assistance, which stipulates the entities and procedural matters related to social assistance. The German Social Assistance Law was published in 2003 and incorporated into the 12th part of the social code (Sozialgesetzbuch). The current version was revised in September 2005, with a total of 17 chapters and 136 articles, which stipulate the principles of social assistance, assistance agencies, benefits, eligibility of recipients, the basic types of assistance, and the assistance procedures.

There are special provisions in the German Social Assistance Law for charitable organizations’ participation in social assistance services. Article 5 of chapter 1 of the Social Assistance Law is entitled the relationship with charitable organizations. Paragraph 1 stipulates that the activities of the church, religious and charitable organizations under public law are not regulated by this law when they fulfill their social tasks. In other words, the Social Assistance Law only regulates the activities of government assistance agencies. Paragraph 2 stipulates that social assistance agencies shall cooperate with church, religious and charitable organizations under public law when fulfilling their assistance obligations stipulated in this law, and church, religious and charitable organizations under the public law shall maintain their independence in the process of setting goals and completing tasks. Paragraph 3 stipulates that the cooperation must be committed to making the activities of church, religious and charitable organizations under public law effectively supplement the assistance undertakings, and the social assistance agencies must provide appropriate support for the assistance activities of church, religious and charitable organizations under public law. Paragraph 4 stipulates that in individual cases where charitable organizations have provided assistance services, social assistance agencies should refrain from taking measures on their own, excluding the provision of assistance benefits. Article 5 stipulates that social assistance agencies can let charitable organizations participate in their social assistance services, or entrust social assistance tasks to charitable organizations under the premise of unified charitable organizations, and social assistance agencies should be responsible for the assistance recipients.<sup>40</sup>

It can be seen from the above that although there are only a few provisions on the participation of charitable organizations in social assistance in the German Social Assistance Law, the provisions on the relationship between charitable organizations and government assistance agencies as well as their rights and obligations are relatively clear. First, the government has the legal obligation to implement social assistance, and its behavior is subject to the adjustment of the social assistance law, while the social assistance service provided by charitable organizations is not a legal obligation, but an effective supplement to the government’s assistance. Second, the government can make charitable organizations participate in government assistance through entrustment and other means, and the government must provide financial support and supervision on qualifications. Third, regardless of the degree of cooperation between government assistance agencies and charitable organizations, the independent status of charitable organizations cannot be changed. Charitable organizations

<sup>40</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8).



cannot become quasi-government organizations because they undertake the assistance tasks of the government. Fourth, social assistance is legally the responsibility of the state. The social assistance services provided by charitable organizations will not reduce the amount of cash benefit provided by the state.<sup>41</sup>

In addition, German social organizations obtain legal status because of the provisions of the basic law on the right of association, that is, all Germans have the right of association, not because of the approval of the state, but most social organizations will still choose to register. It is estimated that the current number of social organizations in Germany should be between 600,000 and 700,000, among which the total number of registered social organizations is generally more than 80%. The purpose of registration is not to obtain legal status, but to obtain more resources, obtain tax-exempt status, and obtain financial subsidies from the government.<sup>42</sup> Entities and procedural provisions are mainly regulated by the civil law, which fully reflects the association is the union between private people, basically belonging to the category of private law adjustment. The registration of a social organization in Germany is not a necessary requirement for its legitimacy. Social organizations without registration also have the legitimacy of existence, but their rights and abilities are limited. Article 54 of the Civil Code stipulates that social organizations without rights and abilities (also known as unincorporated social organizations) are applicable to the provisions on partnership.<sup>43</sup> In Germany, the daily supervision of social organizations is relatively loose, and there is no annual inspection system. The administrative organs should try their best to reduce their interference, so as to avoid a negative impact on the independence of social organizations. In addition, the registration organs are separated from the supervision and punishment organs. Social organization's supervision and punishment rules are mainly regulated in German Civil Code and the Association Act. The German Civil Code stipulates that the articles of a social organization shall at least stipulate the purpose, name and location of the organization, and at the same time, it shall also have the membership of the organization, the withdrawal of the organization, whether the member shall make an investment and the amount of money, the composition of the board of directors, the convening form of the membership meeting and the notarization certificate of the resolution. When the number of members is reduced to less than 3, the district court must, upon the application of the board of directors, or if the application is not submitted within 3 months, deprive the organization's right and ability in accordance with its authority and after hearing the opinions of the board of directors. The Law on the Adjustment of the Right of Public Association, which was passed by the German Federal Parliament in August 1964, is abbreviated as the Associations Act (amended in December 2007). The main provisions are the restrictions and punishments on the abuse of freedom of association, which can be divided into general provisions, provisions on prohibition of associations, special provisions on the seizure and confiscation of the prohibited properties of associations, and the winding-up provisions. There are 5 chapters and 33 articles in total, with the procedural law as the main part, which mainly restricts the abuse of freedom of association.<sup>44</sup>

<sup>41</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8).

<sup>42</sup> Zhang, W. & Huang, H. German non-profit organizations: current situation, characteristics and development trend, *Germany Studies*, 2012(2).

<sup>43</sup> Chen, W. etc. Translation. *German Civil Code (3rd edition)*. Beijing law press, 2010

<sup>44</sup> Gao, Y. Participation of non-profit organizations in social assistance: a model for German legislation, *Journal of Fujian Provincial Party School*, 2016(8)

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**Topic: 3.1.1B**

**The Legal Framework For Social Assistance Focusing On Social Organizations' Participation In Social Assistance Services**

**EU Best practices and Policy recommendation report**

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*May 2019*



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## 1. A GENERAL OVERVIEW OF SOCIAL ORGANIZATIONS

The involvement practices of social organizations in providing social services are closely related to their role, nature and their purpose within society.

European society uses the terms of “civil society organizations” or “non-governmental organization” (NGOs) for the Chinese term “social organizations”.

Who are these organizations? They are civil society products made within a defined legal framework.

Civil society refers to all forms of social action carried out by individuals or groups who are not related with the State i.e. with the government.

Civil society organizations are organizational structures whose members serve the general interest through a democratic process, which mediate between public authorities and citizens.

Examples of such organizations include:

- non-governmental organizations (NGOs)
- social partners (trades unions & employers' groups);
- grassroots organizations (e.g. youth & family groupings).

NGOs help society work properly. They educate and they get information for people about how their country is being run. They help the public communicate with authorities. NGOs help people form opinions and take decisions based on all the relevant information.

NGOs help the public talk to governments. NGOs give the people the power to take part within public decision-making process, to express their point of view on legislative drafts or other political initiatives. Social organizations also have an active role as a promoter or coordinator of community development and through the implementation of legislative proposals.

NGOs explain to governments the views of the people they represent, for example, people with disabilities, elderly and other vulnerable people.

Typically, NGOs work to protect people’s rights and liberties. Social organizations have both the role of replacing or complementing social services provided by public institutions which are often insufficient or of a low quality, as well as a key role in social innovation, by targeting new social needs (home care services, 24 hours free telephone counseling service for elderly, child abuse, violence against women, human trafficking).

The Romanian Social Assistance Law no.292/2011 specifies that civil society is made up of people associated in different forms on the basis of common interests and devoting their time, knowledge and experience to promoting and defending their rights and interests; associative forms can be mainly associations and foundations, trade unions and employers' organizations, cultural and cult organizations, as well as informal community groups.



## 2. THE LEGAL RECOGNITION OF SOCIAL ORGANIZATIONS

The majority of the European Union member states, including Romania, recognize within their Constitutions the right of free association.

More specific, in Romania, the legal framework for the exercise of the right to free association and the promotion of civic values of the rule of law, in order to achieve a general, local or group interest, is ensured by Government Ordinance 26/2000 on associations and foundations, with additional amendments.

In accordance with this normative act, individuals and legal entities may form associations to pursue activities in the interest of specific collectivities or in their own non-profit interest. The conditions are:

- to register in the Register of Associations and Foundations of the Court in the area where the organization will have its headquarters
- to prove the availability of the name by a document issued by the Ministry of Justice
- to present the Constitutive Act and the Statute
- to prove the existence of a material or financial patrimony of minimum 200 RON (316 CNY).

The individuals and legal entities may form foundations if they pursue a general interest. In this case, a special condition relating to establishment is to prove the existence of a material or financial patrimony of a minimum of 100 times the gross minimum wage

Associations and foundations are private legal entities with no patrimonial purpose.

Political parties, trade unions and religious cults are not covered by this normative act.

## 3. THE INSTITUTIONAL FRAMEWORK OF STATE – SOCIAL ORGANIZATION COOPERATION

The relationship between social organizations and European governments and European institutions can take various forms ranging from "informal" lobbying (e.g. grassroots campaigns) to more formal and structured civic dialogue interactions.

In Romania, like most of the European Union member states, the State, represented by the central and local public administration authorities as well as the civil society, has the responsibility to intervene in social assistance.

The Romanian social assistance normative framework specifies provisions on promoting and encouraging the dialog and cooperation between public stakeholders and social organizations.

As regards State/Civil Society cooperation, the national social assistance system is based on the following values and general principles:

- social solidarity, according to which the whole community participates in supporting vulnerable people who need social protection measures to overcome or limit situations of difficulty in order to ensure the social inclusion of this population;
- the partnership, according to which central and local public authorities, public and private institutions, non-governmental organizations, cult institutions recognized by law, and community members set common goals, co-operate and mobilize all the resources needed to ensure decent and decent living conditions for vulnerable people;



- beneficiaries' participation within the formulation and implementation of policies with a direct impact on them, in the implementation of individualized social support programs. They are actively involved in the life of the community through association forms or directly through voluntary activities for the benefit of vulnerable persons.

The central public administration authorities ensure the development of the legal framework in the field of social assistance, provide support for disadvantaged groups, fight against poverty and social exclusion and support the development of family support policies that take into consideration the life cycle of all families' members (from birth to old age). The central public administration authorities also transfer the powers and financial resources necessary for the necessary social assistance actions to the local administration authorities and civil society.

Government Decision no. 797/2017 approving the framework regulations for the organization and functioning of the public social assistance services lists the following among the responsibilities of the General Directorates of Social Assistance (which operate at county level):

- communicating and collaborating with representatives of civil society working in the field, representatives of private providers of social services, as well as with the beneficiaries;
- signing, under the law of public-private partnership, contracts for the financial and technical support of the local public administration authorities to support the development of social services at the county level
- supporting the department responsible for contracting social services, elaborating the contract award documentation and applying the award procedures, according to the law;
- permanent collaboration with civil society organizations representing the interests of different categories of beneficiaries.

Moreover, in order to ensure efficiency and transparency in the planning, financing and delivery of social services, the General Directorate for Social Assistance has the following main obligations:

- to ensure community information;
- to organize consultation sessions with representatives of beneficiary organizations and social service providers to substantiate the social services development strategy and the annual action plan;
- to collaborate with non-governmental organizations that carry out activities in the field of social assistance, family protection and child rights, preventing and combating domestic violence or economic operators by concluding collaboration agreements with them to grant and diversify services for preventing and combating domestic violence.

The Social Assistance for the Elderly (Law no.17/2000) establishes:

- at the request of non-governmental organizations, retirement organizations or recognized worship units in Romania, residential homes can provide social services (household help, legal and administrative counseling, ways to prevent social marginalization and social reintegration), socio-medical services for maintaining or rehabilitating physical or intellectual capacities, providing ergo therapy programs, support for the achievement of body hygiene), medical services (consultations and treatments, within specialized medical institutions or at the person's home, if

immobilized, medical care, dental consultation), homecare for elderly. The local budget allocates funds to finance these assistance activities based on specific conventions with the social organizations.

- a team of 2 social workers from the local council (and a specialist in the case of the dependent elderly) is responsible for carrying out the social investigation to establish the right to social assistance can be supplemented by representatives of pensioners' organizations, worship units recognized in Romania or other non-governmental organizations providing activities related to social assistance for the elderly.

Law no. 208/1997 on Social Canteens stipulates that local councils may grant subsidies from their own budgets to accredited associations and foundations which have as their object the organization of social canteens.

The Local Public Administration Law (no. 215/2001) provides that the county council decides, according to the law, to cooperate or associate with civil society partners in order to finance and jointly carry out some public works, services or projects of public interest.

#### **4. SOCIAL PARTICIPATION IN THE DECISION – MAKING PROCESS**

Social organizations have a permanent concern to improve the current legislation on social assistance (by supporting regulations, by modifying and completing legislation, by updating and improving specific regulations). There are organizations actively involved in working groups at the level of the EU's institutions, aiming at reviewing and improving the legislation in their fields of activity.

In Romania, harmonization of the policies aimed at preventing and combating poverty and the risk of social exclusion is carried out within the framework of the National Mechanism for Promoting Social Inclusion, made, according to the law, with the participation of the central and local public administration authorities and the representatives of civil society organizations.

Within the decision-making process regarding development of social services for the elderly, the central and local administration authorities are obliged to consult the elderly's representative bodies, constituted according to the law.

In drafting the national and sectorial strategies, the Ministry of Labor and Social Justice consults the central and local public authorities with responsibilities in the financing and delivery of social services, as well as the representatives of civil society with activities in the field.

Sectorial strategies in the field of social assistance (the National Strategy for the Protection and Promotion of Children's Rights for 2014-2020, the National Strategy for the Promotion of Social Inclusion and Poverty Reduction, the Strategy for An Active Aging Promotion and the Protection of the Elderly, the Strategy for the Protection of People with Disabilities, the Strategy for Preventing and Combating Trafficking of Human Beings) refer to the promotion of community partnerships with social organizations, the inclusion of public-private partnerships in public policies, the involvement of civil society in the process of identifying



social needs, analyzing and developing public policies, implementing strategies and promoting volunteering.

At the county level, the County Council, following consultations with the public and private providers of social services, professional associations and representatives of the organizations of beneficiaries, draws up the annual action plans for social services managed and financed from the budget of the County Council / Local Council / General Council of Bucharest, containing detailed data on the number and categories of beneficiaries, the existing social services, the proposed social services to be set up, the public service contracting program, the estimated budget and the sources of funding.

## 5. PUBLIC – PRIVATE PARTNERSHIP

The partnership of the public sector with the private sector is an essential element for the development of social services quality.

Robert Putnam's research on social capital shows that through collaboration and cooperation, the social cohesion of a community is made and developed. This is the so-called social capital which is considered the main catalyst of economic development and effective and solidarity response in the face of community problems.

A public-private partnership project has effects first of all on the beneficiaries, because it is recognized that in the social assistance field, the beneficiaries' needs are often complex and require continuity over several years. An NGO has a limited funding source over time and partnership with a public structure contributes to the sustainability of the project - either through public co-financing, or by increasing the credibility of NGOs in situations where they receive external support from part of another foundation or a group of donors. Most funding lines, specifically the non-reimbursable European ones, can be accessed for the development of social services with the condition of establishing an official partnership with the City Hall, with the General Directorate for Social Assistance and Children's Protection, to prove that the social service will be sustainable.

Examples of benefits:

- Achieving difficult goals by the intervention of a social organization
- Rational use of resources, lowering costs services or investments, cost sharing, but also of the risks
- Increasing the chances of accessing new resources
- Providing better services tailored to beneficiaries' needs
- Encouraging an exchange of experience and information and the dissemination of positive practices
- Improving the image of each "actor" in the partnership
- Increasing the possibility of influencing policies in the domain at different levels
- Creating organizational development opportunities for both "actors" in the partnership
- Ensuring a more integrated approach
- Involving the community

Examples of partnership agreements between social organizations and the central or local authorities:



- ❖ with the Ministry of Education - programs to prevent school dropouts and school reintegration, to facilitate the access to education of disadvantaged categories and to prevent and limit the school violence phenomenon
- ❖ with the Ministry of Health - programs for the prevention of infant mortality by organizing courses and seminars;
- ❖ with the Bucharest Prosecutor's Office and the General Directorate for Social Assistance - prevention programs on child abuse, child trafficking, counseling and legal assistance.

In order to develop social services, the local public administration authorities can conclude public-private partnership contracts under the terms of the Public-Private Partnership Law (no. 178/2010).

There are some success factors regarding the public-private partnership from the perspective of NGOs:

- ✓ Transparency and good communication, respect and honest cooperation. These all contribute to a favorable climate for collaboration;
- ✓ Involving public institutions in solving community problems; identifying the specific needs of the community and finding solutions together with civil society; the concern for attracting funds and projects;
- ✓ Seriousness, respect for promises and transparency;
- ✓ Thinking of long-term and strategic partnerships; if the success factors are respected, mutual trust increases;
- ✓ Acceptance of different opinions;
- ✓ The existence of a common goal - the understanding that two actors, the public and the private sectors are agents of change;
- ✓ Permanent dialogue. The exchange of information, experiences and best practices leads to a qualitative increase in the services provided by both NGOs and the public sector;
- ✓ A good image in the community of both the public institution and the NGO. It is essential for both partners to be perceived as competent, responsible and fair structures;
- ✓ Good organization within the partnership by identifying common objectives, identifying resources, by planning activities according to objectives and resources and participating in joint events;
- ✓ Opening up local authorities for the transfer to the civil society of the attributions and financial means necessary for the social assistance actions

There are also some success factors regarding the public-private partnership from the perspective of public authorities:

- ✓ Trust and mutual respect;
- ✓ Establishing the principles of collaboration before starting a partnership relationship
- ✓ Seriousness on both sides;
- ✓ Formalized, clear written partnerships with both sides and dedicated collaborators;
- ✓ Acceptance by the partners of the common rules and the operating rules;
- ✓ Proper risk sharing among partners;
- ✓ Transparency, the fulfillment of legislative standards by NGOs in the provision of services;
- ✓ Opening local authorities to transfer to civil society the attributions and financial means necessary for the social assistance actions;
- ✓ Quality communication, mutual support and compliance with commitments



- ✓ Real needs identification, with the involvement of both parties, to design services that specifically address the needs of the community;
- ✓ Planning long-term and strategic partnerships;
- ✓ Open to mutual collaboration and support - both from NGOs and public institutions;
- ✓ Delegation of management from the state sector to the private sector;
- ✓ Monitoring the private partner at all stages of project / investment realization and exploitation.

## 5.1 Contracting social services

### Romania

The county councils have the possibility, according to the law, to establish public-public and public-private partnership contracts for the financial and technical support of the local public administration authorities with a view to supporting the development of social services.

The contracting of social services by the private providers from the public finances aims at achieving the following objectives in conformity with the national and local strategies in the field:

- promoting public-private partnerships;
- the development and diversification of local interest social services;
- the development of a national social services network;
- ensuring the stability and continuity of the functioning of social services;
- ensuring the quality of social services;
- community involvement in identifying, preventing and solving social problems;
- ensuring access, based on non-discriminatory criteria, of private and public providers of social services to public funds;
- ensuring the beneficiary's right to the free choice of social service provider;
- optimizing the results obtained from the provision of social services;
- performance in the administration of social services.

In order to contract the supply of social services, the local public administration authorities draw up, and publish annually, the list of social services they intend to contract with the public and private social service providers.

At the same time, the local public administration authorities elaborate the criteria that underpin the types of social services to be contracted in cooperation with the local public and private providers. The types of social services that can be contracted are defined in the Social Services Nomenclature, approved in 2015.

Contracting authorities have the obligation to provide in their own budgets the funds necessary to finance the social services established in the Annual Action Plans.

Public funding of social services provided by public and private providers of social services is based on the principles of competition, efficiency and transparency and is subject to the public procurement legislation.

### United Kingdom

In the United Kingdom, public funding for social service providers is based on both local needs identified and on performance criteria when assessing providers to which public funds are



allocated. Public funds come from both the central level (national programs, by category of beneficiaries) as well as from local councils. Local councils are periodically evaluated in their capacity to respond to the social needs of the population and receive annual scores that are transparent to the population as a whole.

Individually, service recipients can contract these services themselves, or through brokers, family members, social workers, case managers, or case coordinators. There are many ways in which beneficiaries can purchase social services: personalized budgets, vouchers, dedicated funds by type of needs, etc. Service providers may be: private, volunteer or beneficiaries' associations.

The acquisition of social services at the strategic level is made for the entire population from one or more localities and covers an interval of 5-10 years.

This type of acquisition takes into account:

- the assessment and anticipation of the vulnerable groups' social needs over a longer period of time,
- how the capacity of local actors to decide and monitor these services can be developed
- how the response to the social needs can be delivered in a flexible, efficient and sustainable way through the involvement and partnership of several sectoral agencies
- transparency of the actors who are planning, delivering and implementing these services.

France

Contracting of private providers of social services is made at very well-defined intervals during the year ("contracting windows") to corroborate the decision on the approved volume of local budgets with the annual needs for services identified locally. Public funds are used only to purchase those services that are included in the local social needs map. Services that are estimated to be necessary for the community but for which no funds are yet available are put on hold and do not receive the operating consent until their public funding is secured. Service financing is negotiated over a period of 1-3 years, and service providers must deliver detailed annual reports to update the next year's funding.

## 5.2 Public Utility Status

An advanced level of public-private partnership represents the recognition by specific public authorities of the public utility status of the NGOs in certain conditions.

In Romania, the 32 non-governmental organizations involved in providing social services are on the top position of the public utility status beneficiaries.

For the first time in Romania, Government Ordinance no. 26/2000 on Associations and Foundations establishes the notion of "public utility status" granted to associations and foundations fulfilling a minimum set of conditions and subject to additional transparency obligations.

Basically, this status means:



- recognition by the authorities of the fact that some organizations are distinguished from others by the range of interests they promote and the services they provide to the community;
- the authorities' willingness to give these organizations certain facilities on a preferential basis.

This does not mean restricting the access of other organizations to public resources.

In order to obtain the status of “public utility”, the associations and foundations have:

- to prove that they have been working for at least three years, prior to the application date,
- to prove that they have achieved most of their established objectives,
- to submit an activity report showing the results of carrying out specific programs or projects,
- to submit annual financial statements and revenue and expenditure budgets for the last 3 years,
- to prove a patrimonial asset These documents, together with those relating to the establishment of the organization, must be submitted to the relevant Ministry, depending on the area in which the association or foundation operates.

After being granted public utility status under O.G. no. 26/2000 on Associations and Foundations, as amended and supplemented, organizations have the following rights and obligations:

- the right to receive free of charge public goods (for example, headquarters);
- the right to mention in all official documents that it is recognized as being of public utility;
- the right to obtain specific tax incentives provided in the Fiscal Code: the exemption from the payment of profit tax for the obtained income from advertising and advertising revenue from rental of advertising space on buildings, land, t-shirts, books, magazines, newspapers
- the obligation to maintain at least the level of activity and the performance that led to recognition;
- the obligation to provide to the competent administrative authority the annual financial statements;
- the obligation to publish their activity reports and their annual financial statements in the Romanian Official Gazette and in the National Register of Legal Entities without Patrimonial Purpose;
- the obligation to register separately in the accounting records the goods purchased or built from the public money.

Also, a common obligation for all organizations, whether public or not, is to submit their annual financial statement / balance sheet.

In Belgium, non-profit associations have been defined since 1921 as bodies which do not carry out commercial activities or do not intend to obtain material benefits for their members. Organizations carrying out cultural activities benefit from the status of public utility by royal



decree. The public utility status is granted to all non - governmental organizations pursuing an action with philanthropic, religious, scientific, artistic or nonprofit teaching objectives.

In Denmark, there are two laws (April and July 1996) laying down the conditions necessary for an association, foundation or other institution to acquire the status of public utility. They must have a charitable or general purpose of public utility and to make available their financial resources for activities in the following areas: humanitarian, research or environmental protection.

In France, the Conseil d'État - the highest administrative court - has the authority to decide whether associations and foundations qualify for "public utility status".

In Finland, the status of public utility is conferred on the basis of the Tax Law no.1535/1992, provided that the following criteria are met:

- Exercise an exclusive and direct activity in favor of a public good in the material, intellectual, moral or social sense;
- Salaries and allowances should be reasonable.

In Germany, conditions are provided for public utility status by the Tax Code, and the organization must have a charitable or religious purpose, or a public benefit.

In many European countries, public benefits are determined by the fiscal authorities who provide the organizations with the right to tax privileges based on their goals and their public activities. Countries that adopt this approach for some categories of public interest activities include: Denmark, Finland, Germany, Greece, Ireland, the Netherlands, Portugal and Sweden.

## **6. SOCIAL ORGANIZATIONS AND THE DEVELOPMENT OF SOCIAL SERVICES**

### **6.1 Added value**

Social services provided by social organizations have certain characteristics:

- High quality of service. Due to their nonprofit character, social organizations can spend more and more time to solve the problems that arise. Flexibility allows them to react more quickly and differentiate themselves according to needs. Also, complementary and supportive services can be provided for the beneficiaries (e.g. socio-medical services);
- Equity. Voluntary, philanthropic support and a lack of bureaucracy allow social organizations help those in need;
- Reduced costs. Being institutions based on volunteering and philanthropy, social organizations can provide services at a lower cost than other providers;
- Innovation. Being flexible and responsive, social organizations are pioneers in specific areas by identifying new needs and by formulating new, complex approaches and alternative solutions.

In the recent years, in Romania the social organizations and the community associations have been playing an increasing role in the provision of social services.

## 6.2 Conditions to be met by the social organizations for them to provide social services

In Romania, the organization, administration and provision of social services are the responsibility of the local public administration authorities, but may be outsourced to the non-governmental sector, cult institutions and other natural and legal persons under public or private law, under the law.

Social services are a component of the national social assistance system and aim to support vulnerable people in overcoming difficult situations, preventing and combating the risk of social exclusion, increasing the quality of life and promoting social inclusion. Social services contribute to social cohesion, with the main purpose of promoting the rights of vulnerable people.

In accordance with the Social Assistance Law (no. 292/2011), the measures and actions of social assistance shall be carried out in such a way that:

- a) the benefits of social assistance and social services constitute a unitary package of correlated and complementary measures;
- b) social services should take precedence over the benefits of social assistance if their cost and impact on beneficiaries are similar;
- c) they are periodically evaluated from the point of view of their effectiveness and efficiency in order to be permanently adapted and adjusted to the actual needs of the beneficiaries (by the Social Inspection agencies at the county level and based on the Minimum Qualitative Standards)
- d) they contribute to the integration into the labor market of the beneficiaries;
- e) they prevent and limit any form of dependence on the State or on community support.

The main conditions for a social organization to provide social services are:

1. the social service provider is to be authorized by the Ministry of Labor and Social Justice,
2. the social service provider is to be authorized by the competent authority (Ministry of Labor and Social Justice, National Authority for Children's Rights Protection, National Authority for Protection of Persons with Disabilities, National Agency for Equal Opportunities between Women and Men) so that they accomplish the Minimum Qualitative Standards.

The social service provider demonstrates within the accreditation process its own functional, organizational and administrative capacity in delivering social services.

This accreditation is based on the requirements that highlight the abilities of a social service provider to set up, manage, and provide social services:

- the legal statute and registering in Associations and Foundations Register
- at least one person employed/contracted with experience/qualifications in social services or social assistance management

### 6.3 The minimum quality standards for social services

The Romanian minimum quality standards for social services were elaborated taking into account the European quality model of excellence regarding the provision of the social services. This model refers to:

- organization and administration,
- rights,
- ethics,
- comprehensive approach,
- person-centered,
- participation,
- partnership

Quality assurance in the field of social services is beneficiary-centered, needs-based and respects the beneficiaries' rights as a priority.

According to the law, the quality of social services is a set of requirements and conditions that are met by providers and the social services provided by them meet the needs and expectations of the beneficiaries.

#### I. Organization and administration

The provider has an efficient organization and the efficient internal processes necessary to deliver quality social services designed to respect human dignity. The provider constantly communicates with other suppliers and the entire community, promotes a positive image of beneficiaries, best practices, innovation and the concept of an inclusive society.

#### II. Rights

Suppliers are committed to protecting and promoting the rights of beneficiaries in terms of equal opportunities and treatment, equal participation, self-determination, autonomy and personal dignity. Suppliers undertake non-discriminatory and positive actions with regard to the beneficiaries. It is also important for beneficiaries to be helped to know their own rights and to know how to use them. The notion of "rights" as a value promoted by the social service primarily to the vulnerable person it carries in its care contributes to its capacity in the sense of self-determination and autonomy. A person aware of his or her rights has increased chances of social integration.

#### III. Ethics

The provider operates on the basis of a Code of Ethics to respect the dignity of beneficiaries and their families or legal representatives, as well as to protect them against possible risks. Regardless of the category of beneficiary for which the social service is conceived, in addition to the support provisions, greater importance is given to increasing the capacity and developing the beneficiaries' autonomy.

The current trend of a quality social service is to shift from a focus on aid and priority support to the capacity of the beneficiaries.

#### IV. Comprehensive approach

In order to provide a wide range of social services, the provider must benefit from multidisciplinary teams and develop multilateral partnerships with other providers to harness



the contributions of all social service users and potential partners, including the local community, employers and other stakeholders of interest. Individual work with the vulnerable person who is the beneficiary of a service is carried out on several levels: physical well-being (health, nutrition and housing, recovery); psychological assistance (counseling, therapy); support for finding a job; school and professional orientation, etc. All of these dimensions involve interdisciplinary teams and external collaborators since the quality social service has to be provided in a flexible manner and for a relatively long time.

#### V. Beneficiary - centered

The provider provides social services according to the needs of the beneficiaries and consider permanently the evolution of the risk situations and the profile of the potential beneficiaries, for the development of individualised intervention plans. It is important to involve the beneficiary in his / her individualized project at all stages, from the initial assessment and planning to the implementation and periodic evaluation / readjustment of their individualized project.

#### VI. Participation

The provider promotes the participation of the beneficiaries in the activities carried out by the provider as well as in the community. The provider involves the beneficiaries both in the concrete process of providing social services and in the decision-making process regarding the development of the service or the formulation of community development proposals alongside of other citizens. To that end, the provider shall cooperate and consult with bodies and groups of beneficiaries' representatives.

#### VII. Partnership

The provider operates in partnership with other providers, employers and funders in the public or private sector and with representative associations of beneficiaries, local groups, families and supporters, in order to create a diverse range of social services and to ensure a more effective impact on beneficiaries. Public-private partnership is a condition for the sustainability of the social service.

#### VIII. Results orientation

The primary goal of the provider is to deliver results for the benefit of the servants, their families or their legal representatives and the community. The impact of social services is permanently monitored and evaluated and is an important element of continuous improvement, transparency and accountability.

#### IX. Continuous improvement

The provider has a proactive approach to meeting the social needs of the community and to making the use of available resources more efficient. It has an obligation to continually improve its social services, ensure staff training, and achieve effective communication, sustained by harnessing the responses received to the funding bodies, beneficiaries and other stakeholders.

The request for the provision of social services may be addressed directly to a private social services provider. If the service contract is concluded with the requesting person, the provider has the obligation to inform the administrative-territorial authority wherever the beneficiary has their residence.



The provision of social services is based on a contract concluded between the social services provider and the beneficiary, stipulating the services rendered, the rights and obligations of the parties, as well as the financing conditions.

## 7. FINANCING SOCIAL ORGANIZATIONS

### 7.1 Tax incentives

The Romanian Fiscal Code provides a number of tax incentives for non-profit organizations, such as tax exemptions on income from:

- membership fees, cash or in-kind contributions of members and supporters; registration fees established under the law in force;
- visas, sports fees and penalties or participation in competitions and sports demonstrations;
- donations, sponsorships
- dividends, interest, foreign exchange differences related to non-taxable assets and incomes
- resources obtained from public funds or non-reimbursable funding;
- tightening actions participatory funds, holidays, raffles, conferences, used for social or professional purposes,
- procedure of tangible assets owned by non-profit organizations,
- Value Added Tax (VAT) exemption on:
  - supplies of services and / or supplies of goods to members in their collective interest for sports, cultural services
  - buildings where organizations carry out social, cultural, educational, sports, social services, non-profit activities;
  - on land
  - on means of transport for organizations which have as their sole activity the free provision of social services in specialized units providing accommodation, social and medical care, assistance, protection, rehabilitation, rehabilitation and social reintegration activities for the child, the family, the disabled, the elderly, as well as for other people in difficulty,
  - on the issuing of certificates, permits and authorizations

### 7.2 Subsidies

Since 1998, the Ministry of Labor and Social Justice has been running a grants program for the associations, foundations and cults for social services on the basis of the Law no. 34/1998 on the granting of subsidies to Romanian associations and foundations with a legal persona and which establish and manage social assistance units.

Starting from 2016 the program has been run through the National Authority for Social Inspection.

Cults became eligible from 2018.



The subsidies are provided for residential centers, day care centers, home care units, social canteens or other food services.

In 2018 – NGOs received grants to finance the social services for 8,729 beneficiaries.

### 7.3 Other financial sources

- Non-reimbursable funds granted by county or local councils, based on Law 350/2005;
- Public funds used for the concession, respectively development of some of the services provided by public authorities, based on Governmental Ordinance 68/2003 on social services
- Public funds for the purchase of social services on the basis of the Law 98/2016 on public procurement
- Targeting 3.5% of income tax by individuals - every person has the right to transfer 3.5% of their income tax to an association, foundation or non-governmental organization. Targeting this percentage can be done between January and May by any employee completing a simple form.
- An important source of income comes from the sponsorships made by companies to the NGO.

These sponsorships are made on the basis of a contract, and legal sponsors benefit, according to the law on sponsorship and the law of libraries, from the deduction from their corporation tax due equal to the corresponding amounts if the following conditions are cumulatively fulfilled:

- a) they are within 3 % of their turnovers; and
- b) they do not exceed more than 20% of the income tax due.

## 8. POLICY RECOMMENDATIONS

The following policy recommendations were made taking into the considerations in Prof. Zhang Haomiao's paper – "*The Legal framework for Social Assistance Focusing on the Social Organizations' Participation in Social Assistance Services*" and conclusions from the exchange meetings of Prof. Gang Shuge, with the Ministry of Civil Affairs of the P.R. China, the Jilin Ministry of Civil Affairs and the Da'An Ministry of Civil Affairs.

The recommendations were defined on the basis of European leading practices regarding social policies, with the main common features:

- comprehensive social protection systems
- active inclusion approach for addressing poverty, social exclusion and inequality
- aim to cover the needs of all age groups in a future oriented way
- integrated approach to social services policy designed starting from the real needs of different categories of socially disadvantaged people, beneficiary – centered systems



- the social organizations have the indispensable tools of legitimacy, motivation and resources in view to develop qualitative social services
- specific legal provisions which ensure the efficient participation of the social organizations in the decision-making process, within the elaboration process of the normative acts
- quality management systems on social services (sets of minimum quality standards / types of services / types of beneficiaries, quality monitoring systems, social audit systems)
- specialized human resources in the social assistance field, employment field, health field.

The functioning of European social market economies is based on comprehensive social protection systems, the Member States of the European Union (EU) spending on average about 30% of their GDP – or at least half of the public budget – on social protection. Social policies underpin the welfare and well-being of citizens, but they also play an important part in economic performance.

The European modern social protection policies are designed to support the deployment of skills and competences that are key for future growth and competitiveness in a knowledge-based society. The adequate access to benefits and care services and the important role for prevention and activation measures help enhance, mobilise and maintain labour force potentials, thereby enabling more people to participate actively in the society and the economy and achieve a proper livelihood.

These social protection systems follow the outcomes established at European level. All Member States have agreed upon a common social policy agenda in the framework of the social Open Method of Coordination (social OMC). The EU priorities in the social area are reflected in the common objectives. The overarching objectives of the OMC for social protection and social inclusion are to promote:

- (a) Social cohesion, equality between men and women and equal opportunities for all through adequate, accessible, financially sustainable, adaptable and efficient social protection systems and social inclusion policies,
- (b) more and better jobs and greater social cohesion,
- (c) good governance, transparency and the involvement of stakeholders in the design, implementation and monitoring of policy.

The active inclusion approach remains a highly relevant European policy framework for addressing poverty, social exclusion and inequality. Adequate income support is combined with access to quality enabling services and inclusive labour markets to support those who can work to enter and advance in the labour market, thus helping them out of poverty.

Integrated support is provided for people who cannot work to ensure a life in dignity and their active participation in the society. The lessons the most European countries have learned over the past decade underline the need to combine effective tax and benefit systems to allow appropriate redistribution with access to various services provide universally or in a personalized manner.

Social services provision entails personalized support and implementation in an integrated manner increases the impact on the beneficiaries' life. There is no one-size-fits-all solution but the European states teste different approaches for ensuring an integrated service provision.



Based on the particular context, initial set-up, or specific target groups, integrated service delivery can be achieved through, for example loose cooperation, formal cooperation of stakeholders or one-stop-shops. A key aspect is that the integrated approach allows for the delivery of interventions that are best suited with regards to the scope (services needed), time (order of interventions) and follow-up (to avoid revolving doors).

The success of the active inclusion approach depends on the strong and transparent coordination between national, regional and local levels, as well as on the involvement of relevant stakeholders – social organizations (NGOs, social partners) and the beneficiaries of social measures, those affected by poverty and social exclusion in the design, implementation and evaluation of the policies.

In this regard, the recommendations are:

- elaborate the legal provisions regarding the definition, role, rights and the financing of social organizations
- improve the legislative provisions on public-private partnerships regarding the development of social services and the contracting of social services
- establish a co-decision, co-financing, co-implementation model between local authorities and social organizations
- develop a national map of existing social services, as well as an estimation of the necessary social services
- identify all examples of good practice developed at regional/local level regarding the development of social services and the involvement of social organizations
- establish a network of professionals working in the field of social assistance
- organize conferences at the local / regional level to analyze the social services sector, the community's needs, opportunities, limitations and solutions with the participation of all interested social actors, including the citizens' representatives
- develop legal instruments to enable local authorities to support the work of active social organizations by offering space, tax incentives or grants for specific projects
- create a national database of active social organizations
- improve communication between the local authorities and the social organizations by designating a representative responsible for the dialogue with them and by establishing effective communication channels
- develop social intervention mechanisms at the local level with the participation of the representatives of the local authorities with attributions in the sphere of social assistance, as well as research institutions and university education institutions, with the participation of citizens' representatives of the potential beneficiaries.

The Government of the People's Republic of China will get a strategic partner to strengthen its social assistance system by the empowerment of the social organizations whilst at the same time increasing their accountability in terms of developing quality social services.

The vital ingredients can be found at the very grassroots level, within the local human resources.



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