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PHILANTHROPY IN UKRAINE DURING MARTIAL LAW

Abstract. Purpose. The article examines the conditions of charitable activities in Ukraine during unjustified military aggression and the ability of legislation to regulate the provision of charitable assistance. **Research methods.** The article is executed by applying the general and special scientific research methods. **Results.** The paper examines the origins of the charitable activities in Ukraine that have become an instrument of national self-identification. Special attention is paid to provisions of the Law of Ukraine «On charitable activities and charitable organizations», particularly the legislative barriers that impede an effective provision of charitable assistance. In addition, the possibility of introducing new types of charitable activities that could effectively complement the activities of the state in the sphere of assistance to victims of military aggression. **Conclusions.** It stated that the intentions of legislators to create a favourable environment for charitable activities affect only the tax relief sphere and eschews the introduction of new types of charitable activities that could be viable in wartime. In our opinion, to increase the flexibility of the «third sector» representatives, it is worth abandoning an exhaustive list of philanthropic activities in the Law of Ukraine «On charitable activities and charitable organizations». Thus, during wartime, many civil organizations have reoriented from their main activities to assist the army and the victims. Still, now, this could only be done by amending the organization's statute, which is not always possible in wartime conditions. In addition, it is worth exploring the possibility of introducing a new type of charitable activity, namely percentage philanthropy. Also, due to the growing popularity of donations in the form of virtual assets, this way of filling the resources of charitable organizations also deserves further research.

Key words: charitable activity, spheres of charitable activity, types of charitable activity.

1. Introduction

The military aggression of the Russian Federation turned out to be the bifurcation point that unified the civil society in Ukraine. The splashing of private charitable giving can be illustrated by large-scale examples of successful fundraising campaigns (less than in a day, private fundraisers in Ukraine have raised 30 million hryvnias (nearly 1 million dollars) for the purchase of a modern aviation complex for the armed forces). Philanthropy has become the most efficient way not only to support armed forces but also to contribute to national self-determination. To some extent, its growth may appear to be unanticipated, however, it is worth noting that the cornerstone of philanthropy was laid centuries ago and has become an integral part of the national culture.

Thus, the origin of philanthropy traditions in Ukraine is closely linked to the undeniably remarkable period of governing of Volodymyr the Great, who in 988 baptized Kyivan Rus. During the flourishing period of Yaroslav

the Wise governance, gradually began to appear numerous private schools, libraries, and prominent examples of architectural heritage. The period of glory was interrupted by continuous sieges of Mongol-Tatars and feudal lords, but the absence of statehood did not affect the nation's self-determination. Mostly, further philanthropists were the patrons of promoting Ukrainian art and culture, even being the part of other countries. The beginning of the 20th century was a landmark for the revival of philanthropy activities on the territory of Ukraine.

Only during the XIX – early XX century can be identified such patrons as: Skoropadskyi Ivan Mykhailovych, the Khanenkos, Tarnovskyi Vasyl Vasylovych, the Tereshchenkos, Kharytonenko Ivan Herasymovych, Konyskyi Oleksandr Yakovych, the Symyrenkos, Mohylevtsev Semen Semenovich, Lazar Izrailovich Brodskyi, the Alchevskis, Oleksandr Danylovych Tulchynskyi, who left a huge cultural mark in the history of Ukraine (Kochyn, 2021, p. 44).

After the October coup and the establishment of Soviet statehood, the development of legislation on non-entrepreneurial societies can range from the flowering of freedom of association to the actual nationalization of civil society. For example, according to Art. 6 of the USSR Constitution of 1977 «the leading and guiding force of Soviet society, the core of its political system, state and public organizations is the Communist Party of the Soviet Union». That is why public organizations are still perceived in society as part (or a necessary element) of the state sector (Kochyn, 2021, p. 44).

At the same time, in European countries, the non-profit organisational typologies that emerged from the 1970s display the following main characteristics:

- they are characterised by productive and entrepreneurial behaviour: since their aim is the provision of services to meet needs often not recognised by public authorities, and not simply to advocate, they must organise a productive activity and find the economic resources; since the beginning, most of the new non-profit organisations have based their activity on a mix of resources (donations, volunteers, and public funds) and are market-oriented;

- they show a high propensity to innovate the supply of social services from several points of view: in the types of services provided, in the target groups (often the more marginalised) and in the organisation of services provision (great attention to active policies and to the empowerment of users);

- they pay particular attention to the creation of new jobs, especially for hard-to-place people (long-term unemployed youth, for example). They stress the local dimension of their activity, the strong link with a well-defined community and with its needs (OECD, 2003).

2. Legislative regulation of charitable activities in Ukraine

After gaining independence in 1991, Ukrainian legislators challenged to create a democratic and sustainable society, but legislative and cultural «recovering» from a communist regime to a democratic one is always placed in its own specific context.

Thus, almost every country in Central and Eastern Europe guarantees the freedom of association in their Constitutions. In some countries, the freedom of association extends solely to citizens (Article 20, Constitution of Macedonia; Article 40, Constitution of Romania), but in others, this right is explicitly granted to «all persons» (Article 2(3) (g), Constitution of Bosnia and Herzegovina; Article 43, Constitution of Croatia; Article 48,

Constitution of Estonia; Article 63, Constitution of Hungary; Article 58, Constitution of Poland; Article 29, Constitution of Slovakia). Constitutional frameworks often draw a distinction between the right to form associations (available to everyone) and the right to form political parties (extended to citizens only) (Rutzen, 2009, p. 12).

The Constitution of Ukraine in Article 36 guarantees citizens the right to freedom of association in political parties and public organizations to exercise and protect their political, economic, social, cultural, and other interests (Konstytutsiia Ukrainy [Constitution of Ukraine], 28.06.1996).

Further consolidation of that right has been reflected in the Law of Ukraine «On Associations of Citizens», 16.06.1992, № 2460-XII (further – Law № 2460-XII) («Pro obiednannia gromadian [On Associations of Citizens]», 1992). However, significant shortcomings of the Law № 2460-XII led to the decision of the European Court of Justice to the case «Koretsky and Others v. Ukraine» («Koretsky and Others v. Ukraine», 2008). The new Law «On Public Associations» was adopted in 2012 and settled the issues identified in the Koretsky case («Pro gromadski obiednannia [On Public Associations]», 2012).

As for regulation of charitable activities, in 1997 it was adopted the Law of Ukraine «On Charity and Charitable Organizations» № 531/97 («Pro blahodiinytstvo ta blahodini orhanizatsii [On Charity and Charitable Organizations]», 1997), and the need for constant changes prepared the background for the Law of Ukraine «On Charitable Activities and Charitable Organizations», 05.07.2012, № 5073-VI (further – Law № 5073) («Pro blahodiinu diialnist ta blahodiini orhanizatsii [On Charitable Activities and Charitable Organizations]», 2012). Law № 5073, for the first time, defined the spheres of charitable activities and its types as well as outlined the legal forms of charitable organizations.

The Revolution of Dignity in 2014 radically changed the Ukrainian people's ideas of public initiatives, the essence and importance of self-organization of individuals, as well as the boundaries of the «third sector». The need to protect the sovereignty and territorial integrity of Ukraine, ensuring economic and information security of state, in accordance with Part 1 of Art. 17 of the Constitution of Ukraine, in the situation of implementation of governmental functions, provided an opportunity to implement the principle laid down in the norm of the Basic Law of Ukraine – the protection of Ukraine is the case of the entire Ukrainian people (Kochyn, 2021, p. 43).

3. Amendments to the legislation on charitable activities due to martial law

Due to the military aggression against Ukraine, on the 24th of February the decree «On the imposition of martial law in Ukraine» № 64/2022 was signed by the President («Pro vvedennia voiennoho stanu v Ukraini [On the imposition of martial law in Ukraine]», 2022). The ongoing unprecedented situation demanded the reaction from the civil sector in Ukraine as well as from the international philanthropists.

On the international level, it seems the European Union (EU) strategy of providing international technical assistance by defining «democratic conditionality» and reinforcement by reward is not more relevant in conditions of full-scale military aggression. Such an approach has been replaced by a more reactive and clear stance on providing help to Ukraine, where people are fighting for democratic values with their lives. Besides, the commitment of Ukraine to become a member of the EU reflects its consistent steps since independence which led to the application for EU candidate status.

At the national level, the government's main goal now is to create a favourable environment for charitable activities in Ukraine. Such legislative easing as tax exemption of income tax for charitable assistance provided in favour of military personnel, internally displaced persons, or persons living on the territories affected by military action have been successfully enacted by the changes to the Tax Code of Ukraine, namely by the Law of Ukraine «On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the validity of the norms for the period of martial law», 15.03.2022, № 2120-IX. Another no less important step was made regarding financial monitoring, in the amendments to the Tax Code of Ukraine it was indicated that banks are not obliged to establish the origin of funds (in the amount of 400 thousand hryvnias and more), which are deposited in cash by individuals to their account, however such funds can be used only to help the armed forces of Ukraine and for humanitarian aid («Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy shchodo dii norm na period dii voiennoho stanu [On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the validity of the norms for the period of martial law]», 2022).

At the same time, in our opinion, consideration should also be given to some legal impediments regarding charitable regulation that also require increased attention to meet the challenges of wartime.

First, it is worth noting that Article 3 of the Law № 5073 establishes an exhaustive list of the spheres of charity activities, among them: 1) education; 2) health care; 3) ecology, environmental protection and protection of animals; 4) preventing natural, technological disasters elimination of their effects, providing help to people affected by disasters, armed conflicts and accidents, refugees and individuals in difficult life circumstances; 5) custody and guardianship, legal representation and legal assistance; 6) social protection, social welfare, social services and poverty alleviation; 7) culture and art, protection of cultural heritage; 8) science and research; 9) sport and physical culture; 10) human and citizens' rights; 11) development of territorial communities; 12) development of international cooperation of Ukraine; 13) stimulating the economic growth of Ukraine; 14) promoting regional, local and international programs aimed at improving the socio-economic situation in Ukraine; 15) increasing the country's defence capability and mobilization readiness, protection of the population in emergency situations under conditions in peace and martial law («Pro blahodiinu diialnist ta blahodiini orhanyzatsii [On Charitable Activities and Charitable Organizations]», 2012).

However, the existence of an exhaustive list of charitable activities spheres, which met the opposition of many scientists, has already shown its negative sides. Thus, in martial law conditions, many charitable organizations had to refocus on military spending and support for internally displaced persons. In order to realize it and not lose the non-profit status, these spheres of activity must be enshrined in the charter of charitable organizations. According to paragraphs 133.4.2 part 133.4 of Article 133 of the Tax Code of Ukraine, the mandatory condition for non-profit organizations is to use their income (profits) exclusively to realize goals and activities defined by its constituent documents («Podatkovyi kodeks Ukrainy [Tax Code of Ukraine]», 2010).

So far, in the limited operation of the registrations bodies (that are regulated by the Resolution of the Cabinet of Ministers «Some issues of state registration and functioning of unified and state registers held by the Ministry of Justice under martial law», 06.03.2022 № 209) («Deyaki pytannya derzhavnoyi reestratsiyi ta funktsionuvannya yedynykh ta derzhavnykh reyestriv, derzhatelem yakykh ye Ministerstvo yustytsiyi, v umovakh voyennoho stanu [Some issues of state registration and functioning of unified and state registers held by the Ministry of Justice under martial law]», 2022), it seems more appropri-

ate to amend the tax laws and allow charities not to change their charter if their assistance will be directed to the army needs. Furthermore, abandoning the exhaustive list of charity activities and focusing on its principles in the Law № 5073 would help ease the pressure on state registration bodies, accelerate providing assistance, and, foremost, promote a deeper understanding of the charitable activity.

No less significant novelties of the Law № 5073 were to embed in article 5 the types of charitable activities. In the realities of military aggression, the urgent issue is to address the necessities of target groups reactively and the most efficient way is to collect charitable donations by volunteers. According to article 7 of Law № 5073, public collection of charitable donations is a voluntary collection of targeted assistance in the form of funds or property. In the next subparagraphs, it is specified that persons who are exercising such activity to the benefit of charitable organizations should act on the basis of an agreement on charitable activities with a charitable organization (paragraph 3, article 7). The same condition is mentioned in case such activity is carried out to the benefit of other beneficiaries (paragraph article 7) («Pro blahodiinu diialnist ta blahodiini orhanizatsii [On Charitable Activities and Charitable Organizations]», 2012).

Nevertheless, in the ever changing reality, volunteers mainly raise funds for the army's needs independently and without concluding a contract with beneficiaries, which generates problems related to taxation of such activity and fraud prevention. From tax legislation, such revenues are perceived by the State Tax Service as personal income with the subsequent accrual of 18% of personal income tax and 1.5% of the military tax on the received amounts. It can be assumed that creating a more transparent mechanism for individual fundraising activity will be beneficial for both sides (philanthropists and benefactors). Introducing a special tax regime and verification of such persons with requirements of publication of further reports might be the solution to the problem.

Another type of charitable activity that is actively applied in European countries but has still not been introduced in Ukraine is the percentage philanthropy. The central idea is that taxpayers may designate a certain percentage of their income tax paid to a specific non-governmental organization (NGO). Among the reasons for introducing percentage legislation, NGOs and governments alike have emphasized two primary objectives: to increase resources flowing into the non-profit sector and to develop a philanthropic culture among

taxpayers. Currently, the following countries have adopted such a tool: Hungary (1% for NGOs and 1% for religious organizations from personal income tax), Poland (1% from personal income tax), Lithuania (2% of personal income tax) and Romania (2% of personal income tax) (Bullain, 2004).

In Ukraine, several attempts were made to introduce that type of philanthropy in 2010 and in 2015; however, such initiatives were not supported. In our opinion, launching such a mechanism might also be beneficial for mobilizing wider support and promoting paying taxes.

Law № 5073 also defines such types of charitable activities as providing charitable grants and charitable donations. According to Article 6 of Law № 5073, charitable donations are a transfer of funds, property, or property rights to the beneficiaries in order to achieve predetermined goals. A charitable grant is a targeted aid in the form of currency values, which must be used by the beneficiary within the period specified by the benefactor («Pro blahodiinu diialnist ta blahodiini orhanizatsii [On Charitable Activities and Charitable Organizations]», 2012).

With the growth of charitable donations, among novelties that have been widely used by world-known charitable organizations is the acceptance of charitable donations via crypto. Some of the world's biggest charitable organizations – including the Red Cross and United Way – accept cryptocurrency.

Regarding the Ukrainian legislation that regulates circulations of crypto, a huge step forward was made by signing the Law of Ukraine «On Virtual Assets», 15.03.2022, 2074-IX. The abovementioned law will come into force only from the date of entry into force of the amendments to the Tax Code of Ukraine on taxation of transactions with virtual assets and the Civil Code of Ukraine. The Law «On Virtual Assets» has identified virtual assets as objects of civil rights, in particular, the owner of cryptocurrencies has the right to own, use and dispose while the content of such rights is very limited and includes only the transfer of ownership. In addition, the Law stipulates that virtual assets are not a means of payment in Ukraine and cannot be exchanged for goods and services («Pro virtualni aktyvy [On Virtual Assets]», 2022).

While the foreign practice shows a tendency to expand the status and ways of using virtual assets, its legal status in Ukraine is still very limited. The cryptocurrencies could be donated, but their use for the purposes of charitable organization activities significantly needs legislation embedding and further research.

4. Conclusions

Because of military aggression, charitable assistance became a grass-root tool that helped defend the country's sovereignty and contributed to national self-determination. Nowadays, to promote charity, the government is trying to ease its conditions, and accents are mostly focused on taxation issues. In our opinion, attention should also be paid to introducing particular amendments to the Law № 5073. First of all, an exhaustive list of charitable spheres embedded in the Law № 5073 and the necessity to make a state registration of the amendments to the statute of charitable organization are not in line with the urgent challenges of war-time. Furthermore, abandoning the exhaustive list of charity activities and focusing on its principles in the Law № 5073 would help ease the pressure on state registration bodies, accelerate providing assistance, and, foremost, promote a deeper understanding of the charitable activity.

In addition, there is a need to revise the norms regulating the activities of private philanthropists who are exercising public collection of money by themselves. During war-time, such an immediate response contributed to addressing the most urgent necessities, but at the same time, there is a high risk of fraud from the side of such philanthropists, not to mention that such revenues should be taxed with personal income tax. It can be assumed that introducing a special tax regime as well as a mechanism of verification of private philanthropists with requirements of publication of further reports might be the solution to the problem.

Among the innovations that could be implemented, special attention should be paid to introducing percentage philanthropy to mobilize more comprehensive support for urgent needs. Further regulation is also required to create a legal framework for the procedure of donation and use of virtual assets by the charitable organizations.

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БЛАГОДІЙНА ДІЯЛЬНІСТЬ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. Мета. У статті досліджуються умови здійснення благодійної діяльності в Україні під час військової агресії та спроможність законодавства ефективно регулювати надання благодійної допомоги. **Методи дослідження.** Під час дослідження використовувався загальний та спеціальний методи дослідження. **Результати.** У статті досліджуються витоки благодійної діяльності в Україні, яка на сьогодні стала інструментом національної самоідентифікації. Особливу увагу приділено положенням Закону України «Про благодійну діяльність та благодійні організації» від 05.07.2012 № 5073-VI (далі – ЗУ № 5073-VI), зокрема законодавчим бар'єрам, які перешкоджають ефективному наданню благодійної допомоги. Крім того, вивчається можливість впровадження нових видів благодійної діяльності, які могли б ефективно доповнити діяльність держави в умовах воєнного стану. **Висновки.** Зазначається, що наміри законодавця створити сприятливе середовище для здійснення благодійної діяльності стосуються лише сфери податкових пільг, поряд з цим подальшого вдосконалення потребує і законодавство про благодійну діяльність, зокрема щодо впровадження нових видів благодійної діяльності, які могли б бути ефективними під час воєнного стану. На нашу думку, для покращення ефективності діяльності представників «третього сектору» варто відмовитися від вичерпного переліку благодійної діяльності в ЗУ № 5073-VI. Так, під час військового вторгнення багато громадських організацій переорієнтували свою основну діяльність на надання допомоги армії, внутрішньо переміщеним особам тощо. Проте, щоб не втратити статус неприбутковості, такі зміни мають бути внесені до статуту організації, що не завжди є можливим під час воєнного стану. Крім того, на нашу думку, слід розглянути можливість впровадження такого виду благодійної діяльності, як відсоткова філантропія. Також у зв'язку із прийняттям Закону України «Про віртуальні активи» від 17.02.2022 № 2074-IX подальшого дослідження потребує можливість здійснення пожертв у вигляді віртуальних активів.

Ключові слова: благодійна діяльність, сфери благодійної діяльності, види благодійної діяльності.

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