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ORGANIZATION OF VOLUNTEER ACTIVITY IN UKRAINE: PARADOXES OF LEGITIMATION AND LEGALIZATION

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The main paradox of the organization of volunteer activity is the legitimation of ways of formation, management and activity of volunteer organizations based on traditions. The Law of Ukraine "On Volunteering" No 3236 provided an opportunity to regulate these relations to some extent (establishing the status of a volunteers, there rights and guarantees of activities; volunteering forms). However, another paradox is the fragmentary nature of the limits of legal influence and the search for volunteers to find other ways to achieve public (collective) interests. The realization of the right to freedom of association both in the institutional form (legal entity) and in other forms (contractual, joint activities) provides an opportunity to form different types of relations. Trends in the development of this legal institution are analyzed, as well as ways to overcome the paradoxes of the legal status of volunteer organizations.

Keywords: volunteer activity, non-entrepreneurial societies, foundations, civil society.

Introduction

The Revolution of Dignity in 2014 radically changed Ukrainian people understands 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, in fact 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.

The main paradox of the organization of volunteer activity is the legitimation of mixed ways of formation, management and activity of volunteer organizations based on military traditions (voluntary military formations), ideological heritage (individual and collective initiatives), and revival of patronage projects which were actually destroyed during

Ukraine's stay in the USSR. Gradual legalization through the adoption of relevant legal acts (mainly, updating the Law of Ukraine "On Volunteering") provided an opportunity to regulate these relations to some extent (establishing the status of a volunteers, there rights and guarantees of activities; volunteering forms). However, another paradox is the fragmentary nature of the limits of legal influence and the search for volunteers to find other ways to achieve public (collective) interests.

Only during the XIX – early XX century can be identified such patrons as: Skoropadskyi Ivan Mykhailovych, Khanenky family, Tarnovskyi Vasyl Vasylovych, Tereshchenko family, Kharytonenko Ivan Herasymovych, Konyskyi Oleksandr Yakovych, rodyna Symyrenky, Mohylevtsev Semen Semenovych, Lazar Izrailovych Brodskyi, Alchevski family, Oleksandr Danylovych Tulchynskyi, who left a huge cultural mark in the history of Ukraine.

The formation of new legal regulation should be based on existing institutions, in particular: legal entities (Civil Code of Ukraine), economic activity (Economic Code of Ukraine), taxation (Tax Code of Ukraine). However, in continuation of the general trend of the "narrow" approach to the regulation of the "third" sector in Ukraine, the Law of Ukraine "On Volunteering" uses these fragmental mistakes in regulation system, which creates new paradoxes.

Special research on the civil status of non-entrepreneurial organizations, civil law problems of civil society, as well as the Europeanization of private national law has been carried out by Ukrainian scholars quite widely. Recent professional publications indicate the direction of scientific research mainly on individual issues of the institute of non-profit organizations. Separate studies of the private status of volunteer organizations in Ukraine have not been conducted. It is necessary to single out only the analysis of the administrative and legal status of these legal entities, in particular, regarding their legalization, restrictions, assignment of a sign of non-profit, responsibility, etc.(Pietkov, Sobol, Melnyk, Olkhovskyi, & Kondratenko, 2018).

1. Formation of volunteering in Ukraine

Historical research shows that in the tenth century on the territory of modern Ukraine, peasants united in groups or communities, helping each other first on the basis of blood kinship, and in fact – the common territory(Subtelnyi, 1993, p. 74). Church activity was in the plane of public authority and was financed from the tithe, which was mandatory for both the population (paragraph 3) and the prince's court (paragraph 15), which was determined by the Statute of Prince Volodymyr on ecclesiastical courts(Muzychenko & Vitman, 2004, pp. 62–64). At the same time, it is difficult to agree with the conclusion that the work of nuns and clergy should be considered as volunteering, and tithing as a property only of non-commercial management(Zozuliak, 2017, p. 17).

The position of the church changed somewhat during the Polish-Lithuanian period, due to the confrontation between Orthodoxy and

Catholicism. The Grand Dukes, and later the Polish kings, following the practice of the time, enjoyed the right of patronage, distinguishing between state power and church affairs(Subtelnyi, 1993, pp. 122–123). This division of spheres of life was continued in Art. 26 of the Second (Volyn) Statute of the Grand Duchy of Lithuania of 1566, which distinguishes disputes in secular and spiritual legal systems(Bilousov, Kalaur, & Hrynko, 2009).

Codification processes were given to associations by a certain jurisdictional form: contractual (partnership agreement) in the Code of Laws of the Russian Empire in 1832(Muzychenko & Vitman, 2004, p. 264) or institutional (legal entity) in the Civil Code of Galicia in 1797(Bilousov et al., 2009). This difference was caused by different influences: on the Russian Empire – the French constructions, on Austria-Hungary – the German. As a result, in even now in Ukrainian science and legislation there are non-unified contractual and institutional forms of relations in the "third" sector.

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"(*Konstitutsiya (Osnovnoy Zakon) Soyuza Sotsialisticheskikh Respublik [Constitution (Basic Law) of the Union of Socialist Republics]*, 1977). That is why public organizations are still perceived in society as part (or a necessary element) of the state sector.

The analysis of modern legislative regulation and preconditions for the adoption of acts regulating the civil status of non-entrepreneurial societies and foundations provides an opportunity to identify the following periods:

1) formation of legislation on the basis of the Law of Ukraine "On Associations of Citizens", 1992, repealed) – 1991–2012;

2) formation of legislation on cooperative organizations – 1991–2003;

3) formation of legislation on the basis of the Civil Code of Ukraine("Tsyvilnyi kodeks Ukrainy [Civil Code of Ukraine]: 16.01.2003 № 435-IV," 2003) and Economic Code of Ukraine("Hospodarskyi kodeks Ukrainy [Economic Code of Ukraine]: 16.01.2003 № 436-IV," 2003) – 2003– till today;

4) formation of legislation on the basis of acts regulating financial services – 1991–2006.

Thus, in the early 2000s, legislation was formed that regulates the legal status of various types of non-entrepreneurial societies and foundations. Various grounds and preconditions for the adoption of these acts cause inconsistencies in the legislation, in particular regarding relations in non-entrepreneurial societies and foundations, the principles of regulation of which are laid down in Articles 97–103 of the Civil Code of Ukraine.

2. Condition of legislative regulation of volunteering

According to Henry Hansmann, research on nonprofits began in the early 1970s, as it was only a study of philanthropic behavior in the 1950s. These theories substantiate the grounds for the creation and functioning of these organizations in economic systems, in particular whether they are a counterweight to government and business organizations. As a result, the scientist divides the organizations (firms) according to the source of income and the order of control. Therefore, both mutual and entrepreneurial organizations can be donative and commercial(Hansmann, 2004, p. 4).

The analysis of approaches to the economic understanding of non-entrepreneurial organizations(Hansmann, 2004, p. 5) allows us to know their characteristics, which: 1) distinguish them from public bodies (entities) and business organizations; 2) determine the essence of relations within the organization, the importance of management and external influence (availability of benefits and advantages) on their activities; 3) determine the role of organizations in society and, as a result, the peculiarities of status in legal relations.

Volunteering in Ukraine received a separate legislative act – the Law of Ukraine "On Volunteering" (further – Law No 3236)("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011). According to Article 1 of the Law No 3236, "volunteering is a freewill, socially oriented, non-profit activity carried out by volunteers through the provision of volunteer assistance". In addition, this rule distinguishes between volunteer assistance – "works and services performed free of charge and provided by volunteers" and recognizes volunteering as a form of charitable activity.

Part 2 of this Article stipulates that volunteering is based on the principles of legality, humanity, equality, voluntariness, gratuitousness, non-profit.

The result of this understanding is a separate allocation of the rules governing the funding and costs of volunteering (Article 12):

"Attracting funds and other property to support volunteering is carried out in accordance with the law. Organizations and institutions that involve volunteers in their activities, independently determine the use of funds and other property involved in volunteering, except in cases of targeted provision of funds and other property by individuals or legal entities for a specific type of volunteer assistance. Expenses for volunteering are formed in accordance with the law"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

Based on the principles of volunteering, the legislation of Ukraine already has sufficient special legal regulation: the laws of Ukraine "On Public Associations", "On Charitable Activities and Charitable Organizations". The approach chosen by the parliament has a political character – to highlight the socially relevant sphere of activity today.

3. The essence of relations in a volunteer organization.

3.1. Theory of relations in non-entrepreneurial societies.

The general idea of non-entrepreneurial societies and foundations in Europe, as well as the direct relations that exist in them, is formed in accordance with the understanding of the right to freedom of association, as well as the right to create a legal entity and exercise the rights of property owner. As a result, there are two groups of organizations: 1) civil society groups / interest groups; 2) civil society organizations, which are created in accordance with the need to participate in legal relations as a full participant, for example in the case of public services(Ruzza, 2011, pp. 50–53).

The scientific literature emphasizes that there is no systematic research yet, so a better conceptual mapping of areas between the state and market sectors is needed for a wide variety of forms between household, market and state: member associations, community groups, clubs, service providers, foundations, groups self-help and other types of non-profit organizations. L. M. Salamon and H. K. Anheier suggest focusing on the following legal entities: 1) organized, i.e. have a certain institutional reality; 2) private, i.e. institutionally separated from the government; 3) do not distribute profits, i.e. do not send the profits to their owners or directors; 4) self-governing, ie those who control their own activities; and 5) voluntary, at least in part, i.e. the involvement of a significant degree of voluntary participation, either in the activities of the agency or in management. As a result of this approach, the following issues concerning a legal entity as an organization are distinguished: 1) organizational choice; 2) organizational efficiency; 3) expressive characteristics and influence of the central (main) organization(Anheier, Bielefeld, Borzaga, Granger, & Greffe, 2003, pp. 278–279).

The European private doctrine has a qualitatively better degree of scientific development of the issue of relations in non-entrepreneurial societies and foundations due to the longer historical development and the lack of certain discussions on understanding the status of a legal entity. The main purpose and direction of scientific research is the realization of fundamental rights enshrined at both the international and local levels. In Ukraine we can draw next paradox: there were no adequate correlation between entrepreneurial and non-entrepreneurial sectors; voluntary organizations (as non-entrepreneurial) were considered only in general terms of status as indirect importance.

Exercising the subjective right to self-regulation of public relations, participants must form their will accordingly, i.e., formalize their actions aimed at acquiring, changing or terminating civil rights and obligations in the form of a relevant transaction. It should be understood that the legislative structures of the relevant transactions offer legal entities only a reliable framework that defines the external boundaries of autonomy, creates regulatory programs for conflict resolution, evaluates individual interests in protection and security, creates special protection zones for the benefit of individual entities. for example, consumers (framework nature)(Hetman, Borysova, & Yevsieiev, 2012, p. 18).

Because the rules of civil law are dispositive, the parties to the relationship are given the opportunity to choose a model of their rights and responsibilities, with the exception of certain mandatory requirements to protect the public interest. However, even in cases of deviation from the "imperative" norms of civil law, there are constructions for recognizing transactions as valid.

Implementation of the principles of volunteering requires volunteers to form their own system of private relations. The participants in these relations act in a form that allows asserting the recognition of the relationship between them, consolidating this relationship in the manner prescribed by law. At the same time, it requires a separate study of the relationships that are in the legal plane, but law does not provide their content and form.

Forming the relevant relationship, the participants create a special regulator that can fully reproduce the rules of law or within the freedom of contract to establish a separate law and order at the local level. As a result, as noted by O. S. Yavorska, the parties will act as a kind of "legislators" for themselves(Yavorska, 2008, pp. 154–155), and the contract becomes a non-normative means of individual settlement of relations between the parties(Bodnar, Dzera, & Kuznietsova, 2008, p. 45).

As a result, self-regulation of civil relations is as follows. Legally equal participants or a participant based on the legislative model of legal regulation of public relations take action to establish, change or terminate civil relations. These relations may be in full compliance with the law or based on freedom of contract to be expressed taking into account the requirements of law, customs of business, the requirements of reasonableness and fairness. This model of relations will be regulated by the relevant transaction to the extent of self-regulation, which is also strengthened by state security, which gives a person the right to protect the rights and interests of the court both to confirm the legality of the model (e.g., recognition of the right).

According to the Law No 3236, there are areas of voluntary, socially oriented, non-profit activities carried out by volunteers through the provision of volunteer assistance (Part 3 of Article 1), which should be understood as socially useful, given the separate state policy (Article 3) in the following areas:

"- providing volunteer assistance to support the poor, the unemployed, large families, the homeless, the homeless, people in need of social rehabilitation;

- caring for the sick, the disabled, the lonely, the elderly and others who, due to their physical, material or other characteristics, need support and assistance;

- providing assistance to citizens affected by man-made or natural emergencies, special periods, legal regimes of state of emergency or martial law, conducting an anti-terrorist operation, implementing measures to ensure national security and defense, repelling and deterring armed aggression by the Russian Federation in Donetsk and Luhansk

oblasts, as a result of social conflicts, accidents, as well as victims of criminal offenses, refugees, internally displaced persons;

- providing assistance to persons who due to their physical or other disabilities are limited in the exercise of their rights and legitimate interests;

- carrying out activities related to environmental protection, preservation of cultural heritage, historical and cultural environment, historical and cultural monuments, burial places;

- assistance in holding events of national and international importance related to the organization of mass sports, cultural and other entertainment and public events;

- providing volunteer assistance to eliminate the consequences of emergencies of man-made or natural nature;

- providing volunteer assistance to the Armed Forces of Ukraine, other military formations, law enforcement agencies, public authorities during a special period, legal regimes of state of emergency or martial law, conducting an anti-terrorist operation, implementing measures to ensure national security and defense, repel and deter Russian aggression Federations in Donetsk and Luhansk oblasts;

- assisting the authorized body on probation in supervising convicts and conducting social and educational work with them;

- providing volunteer assistance in other areas not prohibited by law"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

Most of these areas should be implemented by the state, but private initiatives provide an opportunity to effectively implement the public interest. As a result, private self-regulatory norms are formed in public activity. As an example, as of August 2021 only Fund "Return Alive"[1] raised UAH 182 622 360,66("Income and expenses 2021," n.d.) (about 6,789 million US dollars), which is 48.95% of the total budget of the Ministry of Veterans of Ukraine (according to the Law of Ukraine "On State Budget for 2021").

Community interest is part of the public interest, which means reflected in the law, balanced in some way the interests of the state as an organization of public power, as well as the interests of society (common interests of its members), much of it, including territorial communities, social groups, especially those who are not able to protect their interests by legal means and therefore need state support, in the absence of which there is a high probability of crises in society, strikes and other collective forms of protest and self-defense(Vinnyk, 2004, p. 48). The community interest, in turn, is separated from the public one, as it is not realized directly by public entities (state, territorial community, autonomy), but is carried out by third sector institutions.

[1] The Fund supplies and repairs equipment, trains the military and officers, helps change the Armed Forces, tells the story firsthand, and curbs the flow of propaganda and misinformation.

L. H. Pyshna substantiates the conclusion that the realization of public interests in the functioning of public associations is ensured by legislative establishment of the order of formation and state registration (legalization) of public associations, ensuring the benefits of the principle of lack of property interest of members (participants), establishing restrictions on the formation and operation of public associations, the purpose (goals) or actions of which are aimed at eliminating the independence of Ukraine, forcible change of the constitutional order, violation of sovereignty and territorial integrity of the state, etc., and the requirement that business activities the association must meet the goal (goals) of the association and contribute to its achievement(Pyshna, 2016, p. 5).

It is possible to agree with this conclusion in part, because the restrictions on the establishment of public associations are identical to the establishment of any legal entity. It is a matter of "deforming" the norm on freedom of association of any organization, which is not unlimited, and these prerequisites in the constitutional and legal regulation are reflected in Ukraine only in relation to political parties and public organizations (Part 1 of Article 37 of the Constitution of Ukraine). Such restrictions are designed to: 1) ensure the interests of national security or public order; 2) prevention of riots or crimes; 3) health or morals; 4) protection of the rights and freedoms of others(Airish, 2007, p. 391).

In sociological and political science research, third sector institutions mainly include public associations (in their broadest sense) or non-governmental organizations. The term "community association" («громадське об'єднання»), in our opinion, is formed as a result of using the term "community" («громада») as a group of people united by certain relations due to historically variable ways of producing material and spiritual goods(Busel, n.d., p. 262) and not the concept of "citizen" («громадянин») as a person in a legal relationship with the state. Special attention should be paid to the understanding of the concept of "public association" in a broad and narrow sense.

A public association is considered in a broad (scientific) and narrow (regulatory) sense. In the first case we are talking about all the subspecies of legal entities covered by this organizational and legal form (public association, political party, charitable organization, religious organization)(Kucherenko, 2004, p. 240; Vashchuk, 2004, p. 3); in the second – legal regulation, which is divided into general and special. Thus, in the legislative consolidation in Ukraine there is a rejection of this approach with the adoption of the Law of Ukraine "On Public Associations", as a result of which Yu. I. Paruta proposes to expand the scope of this Law for legal entities(Paruta, 2015, pp. 3–4).

Public associations that pursue socially useful interests include so-called "umbrella organizations", which are "homogeneous" non-entrepreneurial organizations. The paradox is that within the framework of public regulation a private core is formed, the activity of which is sometimes in the "shadow" of the relations of administrative supervision and control.

3.2. Membership relations in a volunteer organization

The division of legal entities that have members (participants) and which do not have known since Roman law, where a distinction was made between universitates personum (modern understanding of association and corporation) and universitates bonorum (modern understanding of institution) (Verrucoli, 1985, p. 16). Today, the existence of non-entrepreneurial societies and foundations in the world is not limited to these two characteristics in the conceptual apparatus. Thus, customary law countries use the concept of "charitable" (charities), regulating relations with the participation of these organizations within the framework of charity law. In addition, non-entrepreneurial associations and foundations may have been private or public law organizations. However, the essence remains the same regardless of the state legal order – the possibility of creating an association of persons or allocating appropriate property for non-entrepreneurial purposes, resulting in the division of all non-entrepreneurial legal entities into associations and foundations(Hemström, 1998, pp. 8–5).

The choice of one or another form of existence of relations is also caused by the formation of the internal structure of the organization itself. Thus, Richard Steinberg connects such a structure with such factors as: 1) the choice of financing methods (sale and advertising or donations and fundraising) as a result of which the private or public purpose of the activity is determined; 2) the choice between fundraising or contact basis, which is difficult to assess due to the imperfection of the theory of contract failure theory; 3) the choice of fees and charges, in particular for membership similar to a franchise relationship or a "network of benefits"; 4) access to capital as a form of grant foundations; 5) features of labor participation of members, as well as the possibility of realization of personal non-property interests; 6) realization of property rights of founders concerning creation of establishment or owing to use of forms of fundraising; 7) a combination of both personal non-property rights in relation to the association, as well as property rights in relation to the foundation(Steinberg, 2004, pp. 22–26).

According to the definition of a society proposed by Thomas von Hippel, it is a legal form composed of members, and usually has legal personality and typically pursues the common good. Such companies have different legal nature and may differ in structure, size, purpose, etc., but the development trend remains the opportunity to participate in legal relations in accordance with its purpose, resulting in a division into entrepreneurial and non-entrepreneurial to provide a separate legal regime of relations within the business (commercial) law(Hippel, n.d., p. 78).

According to Piero Verrucoli, the need to differentiate between non-entrepreneurial and entrepreneurial legal entities in civil law is the differentiation of economic behavior of the founders (participants) of these legal entities, different economic and political influence on their activities, unequal ability to adapt to market conditions and different reasons. in law(Verrucoli, 1985, pp. 1–3).

In addition, the author distinguishes the goals of creating non-entrepreneurial organizations, in particular distinguishing their general understanding of investment, which is characteristic of entrepreneurship. Non-entrepreneurial organizations are characterized by the acquisition of certain functions of the state (which will be discussed below) in contrast to the theories of social responsibility characteristic of entrepreneurship. As a result, non-profit organizations have so-called "self-interest", which allows them to adapt to any goals as "ideal" organizations (for example, Idealverein or economic / idealistic Wirtschaftlicheverein – in Germany) or not distribute profits until the organization collects and centralizes profits (for example, France). Thus, the general provisions remain: a) a ban on the distribution of profits between participants; b) in the case of profit, it accumulates in the organization(Verrucoli, 1985, pp. 5–9).

According to Article 5 of the Law No 3236, organizations and foundations that are non-profit may involve volunteers in their activities, as a result of which they receive the following rights:

"to carry out activity with the conclusion of the agreement on carrying out volunteer activity with the volunteer or without such agreement;

receive funds and other property for volunteering;

independently determine the areas of volunteering;

to issue certificates to volunteers, certifying their identity and type of volunteer activity within the organization;

reimburse volunteers for the costs associated with providing them with volunteer assistance;

to insure the life and health of volunteers for the period of their volunteer activities;

to invite foreigners and stateless persons to carry out volunteer activities on the territory of Ukraine, to send citizens of Ukraine abroad to carry out volunteer activities;

to acquire other rights provided by law"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

In addition, the implementation of organizations and foundations that involve volunteers in their activities requires:

"to provide volunteers with safe and appropriate for life and health conditions for volunteering;

to train volunteers;

provide volunteers with reliable, accurate and complete information on the content and features of volunteering;

provide free access to information related to volunteering by organizations and institutions that involve volunteers in their activities"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

In turn, according to Article 7 of the Law No 3236, "a volunteer is a natural person who voluntarily carries out socially oriented non-profit

activities by providing volunteer assistance". Thus, the volunteer is entitled to (part 4 of Article 7):

"appropriate conditions for volunteering, in particular, obtaining reliable, accurate and complete information on the procedure and conditions of volunteering, providing special means of protection, equipment and facilities;

crediting the time of volunteering to the training and production practice in case of its passage in the direction corresponding to the received specialty, with the consent of the educational institution;

reimbursement of expenses related to volunteering;

other rights provided by the agreement on volunteering and legislation"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

In addition, the volunteer is obliged (part 5 of Article 7):

"perform conscientious and timely duties related to volunteering;

in cases specified by law, undergo a medical examination and provide a certificate of health;

if necessary, undergo further training (retraining);

to prevent actions and deeds that may negatively affect the reputation of the volunteer, organization or institution on the basis of which the volunteer activity is carried out;

adhere to the legal regime of information with limited access;

in case of concluding an agreement on volunteering and unilateral termination of the agreement on the initiative of the volunteer to reimburse the direct losses caused by him, if it is provided by the agreement;

to reimburse property damage caused as a result of his / her volunteering activities, in accordance with the law"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

Thus, private initiative is limited by law due to its "narrow" interpretation. On the other hand, the state can reimburse certain costs, which is not inherent in private relations. So, the Civil Code of Ukraine establishes special torts (for example, damages for a crime, illegal actions of public bodies), but compensation in accordance with the Law No 3236 does not provide for a general rule that raises doubts about the realization of the right to compensation.

3.3. Contractual relations in a volunteer organization.

The legislative model of self-regulation of private relations provides for its recognition by the participants, which is supported by the comprehensive application of the rules of law (law and contract) as an intermediate goal of implementing the rules to ensure the process of self-regulation. The legal regime of this relationship is characterized as dispositive, based on permits, prohibitions and obligations that allow participants to apply a generally permitted type of regulation.

Contractual regulation in a broad sense plays a dual role: first, it organizes society from small groups to the formation of a separate

institution – the state (contractual theory of the origin of the state and social contract(Tsvik, Petryshyn, & Avramenko, 2011, p. 55); secondly, it self-regulates social relations within the limits provided by legal regulation, as a result of which it provides (in addition to the regulatory function) social interaction of independent subjects(Hetman et al., 2012, p. 25). As a result, the state is institutionally formed, as well as civil society, which also has certain "natural" prerogatives, based on relatively autonomous mechanisms of self-regulation, as well as the need to supplement public functions by stakeholders(Skrypniuk, 2008, pp. 54–55).

Article 9 of the Law No 3236 defines the features of the agreement on volunteering. Thus, the agreement on volunteering is necessarily concluded:

"in the case of providing volunteer assistance in the manner prescribed by the Cabinet of Ministers of Ukraine, in the following areas:

a) providing volunteer assistance to eliminate the consequences of emergencies of man-made or natural nature;

b) providing volunteer assistance to the Armed Forces of Ukraine, other military formations, law enforcement agencies, public authorities during a special period, legal regimes of state of emergency or martial law, conducting an anti-terrorist operation, implementing measures to ensure national security and defense, repelling and deterring armed aggression Of the Russian Federation in Donetsk and Luhansk oblasts;

at the request of the volunteer or his / her legal representative, if the volunteer is a person aged 14 to 18 years"("Pro volontersku diialnist [On Volunteering]: Law of Ukraine. 19.04.2011 № 3236-VI," 2011).

Under the agreement on volunteering, one party (volunteer) undertakes to provide volunteer assistance to its recipients personally free of charge on behalf of the other party (organization or institution that involves volunteers in its activities), and the specified organization or foundation is to provide the volunteer with opportunities to volunteer. The contract may specify the procedure for reimbursement to the volunteer of expenses related to the performance of the contract (part 2 of Article 9).

The contract on volunteering is concluded in writing. A contract for volunteering may be concluded with a person who has reached 18 years of age. Children who have reached the age of 14 may enter into agreements with the written consent of parents (adoptive parents), adoptive parents, foster parents, and guardians (parts 3-4 of Article 9).

According to Part 5 of Article 9, the agreement on volunteering must contain: a description of volunteering (tasks); period of volunteering; rights and duties; liability for damages; terms of contract termination.

A separate provision of the Law No 3236 defines the agreement on the provision of volunteer assistance (Article 10). The agreement on the provision of volunteer assistance must be concluded at the request of the recipient of volunteer assistance. The agreement on the provision of volunteer assistance is concluded in writing (parts 1-2).

According to Part 3 of Article 10, the agreement on the provision of volunteer assistance must contain: a description of volunteer assistance (tasks); period of volunteer assistance; rights and duties; liability for damages.

All in all, the state creates special conditions that create atypical limits of contractual freedom, different from the norms of the Civil Code of Ukraine.

4. Legal consequences of a person's participation in the activities of a volunteer organization

Civil law protection of rights and interests is considered as an institution of civil and civil procedural law. As a result, some scholars consider it an element of subjective civil law, others – an isolated subjective law(Dzera, Luts, & Kuznietsova, 2008, pp. 34–35).

According to Art. 15 of the Civil Code of Ukraine, every person has the right to protection of his civil rights in case of its violation, non-recognition or challenge; and the right to protection of one's interest, which does not contradict the general principles of civil law. Given the regulation of general provisions on legal entities by civil law (Articles 80–112 of the Civil Code of Ukraine), we assume that these relations are civil, so the protection of the rights and interests of their participants should be based on civil law principles.

Ways to protect civil rights and interests can be: 1) recognition of the right; 2) recognition of the transaction as invalid; 3) termination of the action that violates the right; 4) restoration of the situation that existed before the violation; 5) compulsory performance of duty in kind; 6) change of legal relationship; 7) termination of the legal relationship; 8) compensation for damages and other methods of compensation for property damage; 9) compensation for moral (non-pecuniary) damage; 10) recognition of illegal decisions, actions or omissions of a body of state power, a body of power of the Autonomous Republic of Crimea or a body of local self-government, their officials and officials.

In addition, the dispositive nature of civil law is manifested in the fact that the court may protect civil law or interest in another way established by contract or law.

The division of non-entrepreneurial societies into private and socially useful also affects the possibility of protecting the subjective civil rights of members (members) of these societies, as it is possible to distinguish:

a) direct rights of participants existing within the legal entity (internal corporate / membership rights);

b) collective rights of participants (members) united by the society (rights of a legal entity).

Collective subjective rights are a group of independent subjective civil rights, which are combined as a result of joint actions of individuals or as a result of the activities of a legal entity. In turn, the exercise of collective civil procedural rights is possible in the form of legal

representation or by applying to a legal entity to protect the rights of its members / participants or the public interest provided by law.

Studying the specialization of non-entrepreneurial society, which aims to realize socially useful interests, we should pay attention to the possibility of its participation in the so-called "human rights defender relations", which arise in connection with the proclaimed values, which primarily determine the source of man, and – external phenomena (objects of the material and spiritual world, ecology, socially useful actions and their results), which are important for her dignified life.

The subjects of "human rights defender relations" are those persons who have a legal relationship with the subject (object) of human rights relations, i.e., have legal personality (competence), which allows them to act as participants in this relationship. At the same time, it is clear that the range of subjects of human rights activities is wider than the subjects of the right to protection of human rights(Anisimov, 2010, pp. 516–517).

Thus, the protection of subjective civil rights and interests of members of non-entrepreneurial societies and foundations is carried out at the level of internal relations (including through the resolution of internal disputes), as well as through the exercise of collective rights (including by going to court). The protection of subjective rights and interests corresponds to the legal model of protection with a reservation on the substantive jurisdiction of disputes, which must be of a legal nature.

Article 6 of the Law No 3236 establishes the specifics of payment of one-time financial assistance in case of death or disability of a volunteer due to injury (contusion, trauma or injury) received during the provision of volunteer assistance in the area of anti-terrorist operations, national security and defense measures and deterring the armed aggression of the Russian Federation in the Donetsk and Luhansk oblasts, hostilities and armed conflicts. In particular, in the event of death, a one-time cash benefit in the amount of 500 subsistence minimums established by law for able-bodied persons is paid. And in case of establishing the disability of the volunteer, he is paid a one-time cash benefit in the amount of 150 to 250 subsistence minimums, depending on the disability group.

Separately, the Law No 3236 provides for reimbursement of expenses related to the provision of volunteer assistance (Article 11). Thus, volunteers for volunteering may be reimbursed for travel expenses in Ukraine and abroad within the norms of reimbursement of travel expenses established for civil servants and employees of enterprises, institutions and organizations, which are fully or partially maintained (financed) by the budget. funds.

5. Prospects for the development of legal regulation of volunteering in Ukraine

Opening the discussion on the legislation that will regulate the status, internal organization and economic activity of non-entrepreneurial societies and foundations, it is necessary to answer the key question about the place of these norms in the legislation of Ukraine

and what values should be regulated at a certain level of regulation and influence. No less important factor is the European integration aspirations of Ukraine, the impact of which should be limited to the need to adequately preserve cultural identity(Kharytonov & Kharytonova, 2019, p. 682).

As a result, the following question arises regarding the levels of legal regulation: codified act, general or special laws. The experience of EU member states shows that there are different approaches to solving this problem. First of all, we turn to the need to enshrine the provisions on non-entrepreneurial societies and foundations within the process of recodification in Ukraine.

Directions for improving the Civil Code of Ukraine are set out in the Concept of updating the Civil Code of Ukraine(*Kontseptsiia onovlennia Tsyvilnoho kodeksu Ukrainy [The concept of updating the Civil Code of Ukraine]*, 2020), which in relation to legal entities proposes:

- consolidation of an exhaustive list of organizational and legal forms of legal entities (§ 1.8);

- objectification of general provisions on all forms of legal entities (in particular, return of general provisions on limited liability companies, as well as consolidation of basic provisions (for example, on corporate rights, corporate agreement, liability of the company's management to its members, etc.) for all the forms of legal entities provided by it) (§ 1.9).

Given that freedom of association is not understood as a personal non-property right, the implementation of which may lead to the creation of a legal entity or informal organization, the minimum legal regulation should still be at the level of the Civil Code of Ukraine. Also, the Civil Code of Ukraine should enshrine provisions on the interaction of civil society and the economic sphere, in particular, by changing the freedom of entrepreneurial activity to the principles of free movement of goods, services, labor and capital.

Helmut K. Auheier describes the "third sector" models depending on their participation in the public sphere of social welfare and the weight of the sector's participation in the state economy:

a) static (low level of participation in the public sphere – participated in the economy) – the state declares the right to association, but legal regulation does not provide the opportunity to use the tools of civil society (non-democratic states);

b) liberal (low level of participation in the public sphere – significant participation in the economy) - insufficiently detailed legal regulation, which is compensated by the initiatives of civil society (UK);

c) social-democratic (high level of participation in the public sphere – less participation in the economy) – the state promotes the involvement of civil society in the public sphere, resulting in conditions for low initiative for participation in the economy (Sweden);

d) corporate (high level of participation in the public sphere – significant participation in the economy) – the state interacts with civil

society and creates conditions for its institutionalization (France, Germany)(Anheier & Ben-Ner, 2003, pp. 249–250).

So, legal regulation should focus on a certain model, such as corporate, given the historical connection of the Civil Code of Ukraine with the BGB.

We offer the following system of legislation on non-entrepreneurial societies and foundations:

1) The Civil Code of Ukraine contains: a) general provisions that develop the right to freedom of association and disposal of property; b) provisions on corporate acts, the regulator of civil relations; c) general model of civil law status of legal entities of private law with establishment of features for entrepreneurial / non-entrepreneurial societies and foundations; d) the general model of the system of governing bodies, determining the conditions of need for a two-tier model; e) provisions on the establishment of institutions in the book "Inheritance Law";

2) the Economic Code of Ukraine provides for: a) general provisions on state regulation of economic activity; b) special provisions on state regulation of non-entrepreneurial (non-commercial) activities;

3) the Tax Code of Ukraine: provides for unconditional recognition of non-profit organizations by non-entrepreneurial societies and foundations;

3) special laws: establish the peculiarities of the activities of non-entrepreneurial societies and foundations (i.e., Law No 3236) in accordance with the codified acts.

More attention should be paid to the implementation of state policy in the field of volunteering, defined by Article 3 of the Law No 3236, in particular in the development of state targeted programs in the field of volunteering, and assistance to public associations and charitable organizations in their activities aimed at volunteering.

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ОРГАНІЗАЦІЯ ВОЛОНТЕРСЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ: ПАРАДОКСИ ЛЕГІТИМАЦІЇ ТА ЛЕГАЛІЗАЦІЇ

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Ключові слова: волонтерська діяльність, непідприємницькі товариства, установи, громадянське суспільство.

Стаття аналізує проблематику парадоксів легітимації та легалізації волонтерської діяльності в Україні. Головним парадоксом організації волонтерської діяльності є легітимація шляхів формування, управління та діяльності волонтерських організацій на основі традицій. Закон України «Про волонтерство» № 3236 надав можливість певною мірою врегулювати ці відносини (встановлення статусу волонтерів, прав та гарантій діяльності; форми волонтерства). Однак інший парадокс – фрагментарність меж правового впливу та пошук волонтерів для пошуку інших шляхів досягнення громадських (колективних) інтересів. Реалізація права на свободу об'єднання як в інституційній формі (юридична особа), так і в інших формах (договірна, спільна діяльність) дає можливість формувати різні види відносин. Проаналізовано тенденції розвитку цього правового інституту, а також шляхи подолання парадоксів правового статусу волонтерських організацій.