

# PROBLEMS OF NATIONAL PUBLIC AND PRIVATE LAW

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## **LEGAL REGULATION OF NON-GOVERNMENT ORGANIZATIONS ACTIVITY IN UKRAINE: PROBLEMS AND WAYS TO IMPROVE**

The article reveals the problems and ways to improve the legal regulation of non-government organizations activity in Ukraine. Analyzes legislation in the sphere of public associations in Ukraine, along with suggestions for improvement. Defines the system of legal acts regulate the activities of non-governmental organizations in Ukraine. Provides analysis of the Law of Ukraine “On Social Associations” of 22 March 2012. Offers some areas of improvement certain rules governing legal issues formation, registration and operation of NGOs in Ukraine, including all acts that constitute the legal basis for legal regulation of non-governmental organizations in Ukraine should be divided into two groups: 1) general acts that are acts that establish and ensure the availability of each individual right to association; 2) specific acts, those which regulate the activities of government on the establishment, registration and activity of non-governmental organizations in Ukraine.

Significant changes in the political, social and economic spheres, that have taken place in Ukraine since the early 1990s, actualized the issues related to the establishment and maintenance of human rights. It must be recognized, that one of the basic principles of our country at the present stage of its development is the priority of a personality with rights and freedoms. In this regard, mechanisms to ensure the possibility of implementation of human rights and freedoms proclaimed by the Constitution of Ukraine, a system of protection in accordance with generally recognized principles and norms of international law are actively forming.

The world experience shows that the implementation of human rights is largely dependent upon meaningful participation of the public, who takes advantage of the universally recognized right to association, creates non-governmental organizations, reflecting a growing in the global community striving to democracy<sup>1</sup>. The development of national legislation, aimed at the effective standards for the protection of human rights

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<sup>1</sup> Наливайко, Л.Р., Грицай, І.О., Дніпров, О.С. (2014). *Неурядові правозахисні організації України*. Київ “Хай-Тек Прес”, 5.

and able to guarantee the right of every individual to realize the right to association, has now a prior nature and requires careful study.

The scientific basis to solve the tasks stated in the article, was the works of N. Yu. Beliaeva, Yu. V. Botnev, O. M. Vaschuk, M. Yu. Vikhli-  
aev, O. O. Darkov, E. E. Dodin, L. O. Emets, V. M. Kravchuk, T. D. Mat-  
veeva, M. M. Novikov and other native and foreign scholars who have  
studied the legal regulation of non-governmental organizations. In the  
works of these professionals can be found quite interesting and informed  
generalizations concerning the formation of associations, realization of  
the right to associations and its guarantee by the government. However,  
the change in the 2013 in the law concerning the non-governmental or-  
ganizations activity in Ukraine, activation of the public towards the for-  
mation and registration of associations raise the necessity for a thorough  
study of the problems of application of the rules in this area, search for  
ways to improve national legal acts that regulates the formation, registra-  
tion and activity of non-governmental organizations in Ukraine.

The main goal of the article is to analyze the legislation of non-gov-  
ernmental organizations in Ukraine and to provide suggestions for im-  
provement. To achieve this goal it is necessary to solve the following  
*tasks*: a) to define the system of legal acts that regulate the activities of  
non-governmental organizations in Ukraine; b) to analyze the Law of  
Ukraine “On Social Associations” of 22nd March, 2012 identifying its  
strengths and weaknesses and areas of improvement to offer some spe-  
cific ways to improve definite norms which regulates the legal issues of  
creation, registration and activity of non-governmental organizations in  
Ukraine.

The Constitution of Ukraine not only proclaimed the rights and free-  
doms of a person and a citizen among the constitutional order, but also  
defined guidelines for establishment of an appropriate to international  
standards system of their implementation. The Basic Law states clearly  
the rights and freedoms that get the highest legal protection, that are pri-  
marily based on the direct action of the Constitution of Ukraine. One of  
the fundamental human and civil rights is the right to association.

According to the Article 36 of the Constitution of Ukraine, citizens  
of Ukraine have the right to freedom of association into political parties  
and public organizations to exercise and protect their rights and free-  
doms and to satisfy their political, economic, social, cultural and other  
interests, except for the limitations established by the law in the interests  
of national security and public order, public health or the rights and free-  
doms of others<sup>1</sup>. This statement meets international human rights, includ-  
ing the European Convention for the Protection of Human Rights and

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<sup>1</sup> Конституція України 1996 (Верховна Рада України). *Відомості Верховної Ради України*, 30, 141.

Fundamental Freedoms, Article 11, which guarantees everyone the right to freedom of non-aggressive association and to freedom of association with others<sup>1</sup>.

Activities of an associations of people are diverse in nature, it can be directed to participation in the forming of national policy, development of science, culture and revival of spiritual values, solving specific social problems of certain categories of citizens and groups, charitable activities, environmental protection, that depends on professional and other interests of citizens etc.

Legal regulation should implement such functions as fixing socio-economic grounds of public administration, competence of bodies which constitute the system of public administration, should establish procedures for the activities of public authorities bodies, enterprises, institutions, organizations, officials, and the relationship between citizens and non-governmental organizations. Establishment of non-governmental organizations in Ukraine is regulated by legal provisions contained in the various regulations. All regulations that constitute the legal basis for legal regulation of non-governmental organizations in Ukraine should be divided into two groups:

- 1) general regulations are regulations that establish and ensure the right to association available for every person;
- 2) specific regulations, which means the regulations that control activities of government in the sphere of an establishment, registration and activity of non-governmental organizations in Ukraine.

Both groups contain regulations that are at different levels of the hierarchy of legal acts, they are international law, laws, decrees of the President of Ukraine, resolutions of Verkhovna Rada and the Cabinet of Ministers, regulations of executive and other sub-legislative regulations. To the first group, which includes regulations of constituent imperative nature should be put international agreements and the Constitution of Ukraine.

International standards of approval and ensuring of the right of a person to association are contained in many regulations, including: the United Nations Charter, the Universal Declaration of Human Rights of the 10<sup>th</sup> of December, 1948, Convention for the Protection of Human Rights and Fundamental Freedoms of the 04<sup>th</sup> of November, 1950, International Covenant on Civil and political Rights of the 16<sup>th</sup> of December, 1966, International Covenant on Economic, Social and cultural Rights of the 16<sup>th</sup> of December, 1966, European Convention on the Recognition

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<sup>1</sup> Конвенція про захист прав та основоположних свобод 1950, (Зі змінами та доповненнями, внесеними Протоколом № 11 від 11 травня 1994 року, Протоколом № 14 від 13 травня 2004 року). *Офіційний веб-сайт Верховної Ради України*. <[http://zakon2.rada.gov.ua/laws/show/995\\_004](http://zakon2.rada.gov.ua/laws/show/995_004)>.

of the Legal Personality of International Non-Governmental Organizations (ETS No.124), International Labor Organization Convention for freedom of association and protection of the right to organize of the 9<sup>th</sup> of July, 1948 № 87 and others.

World-class standards related to non-governmental organizations vary greatly. Some of them regulate freedom of association at all (the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights, 1966), some are devoted to particular aspects of freedom of association and membership in non-governmental organizations of the certain categories of people (Convention on the Rights of the Child of 1989, Convention on the Rights of Persons with Disabilities of 2006). However, on the global level there are no standards for the internal structure of non-governmental organizations. D. Volkova suggests that this may be due to difficulty to generalize international experience in this field, or inexpediency to generalize international experience in this field<sup>1</sup>.

In addition, an important role in the issue of establishing of general principles of non-governmental organizations in Ukraine plays a Fundamental principles of the status of non-governmental organizations in Europe, adopted by the participants of a multilateral meeting organized by the Council of Europe on the 5<sup>th</sup> of July, 2002, with an Explanatory memorandum to them and Recommendation of the Committee of Ministers of the Council of Europe to the member states on the legal status of non-governmental organizations in Europe № CM/REC(2007). Both acts are not international agreements, that means they do not need ratification and subsequent implementation of the norms by the respective states.

The main act in the Ukrainian legal system that guarantees the right to association is the Constitution of Ukraine, in particular an article 36, the content of which have been already given here. Other articles of the Constitution guarantee the right to freedom of thought and speech, freedom of expression of views and believes, the right to freely collect, store, use and disseminate information in any form (Article 34), the right to assemble peacefully and to hold meetings, rallies, marches and demonstrations (Article 39), freedom of creativity and intellectual property protection (Article 54)<sup>2</sup>.

Legal regulation of non-governmental organizations in Ukraine first of all goes through the action of acts of the Verkhovna Rada of Ukraine, within the concept of “law”. These are the Laws of Ukraine “On social associations”, “On youth and children non-governmental Organizations”,

<sup>1</sup> Волкова, Д. *Міжнародні стандарти про внутрішню структуру громадських організацій*. <<http://www.pravoznavec.com.ua/period/article/5838/%C4>>.

<sup>2</sup> *Конституція України 1996* (Верховна Рада України). *Відомості Верховної Ради України*, 30, 141.

“On the employers’ organizations, their associations, rights and guarantees of their activity”, “On main states of governmental supervision (control) in the sphere of economical activity”, “On creative workers and creative unions”, “On trade unions, their rights and guarantees of their activity”, “On state registration of legal bodies and individuals-entrepreneurs”, “On the principles of regulatory policy in the sphere of economic activity”, “On entrepreneurship”, “On enterprises in Ukraine”, “On foreign economic activity”, “On business associations”, “On citizens’ appeals”, the Civil Code, Commercial Code etc.

Legal regulation of the activity of non-governmental organizations in Ukraine can not be imagined outside the jurisdiction of the executive bodies, first of all it concerns the Cabinet of Ministers of Ukraine and the Ministry of Justice of Ukraine. Among the defining acts that regulate the creation, registration and activity of non-governmental organizations in Ukraine the following Resolutions of the Cabinet of Ministers of Ukraine should be sorted out “On the approval of the Order of promotion the civic expertise of executive bodies activity” of the 5th of November, 2008 № 976, “On the approval of samples of certificates for registration of public association as a non-governmental organization or civil union and on the accreditation of a separate unit of foreign non-governmental organization” of the 5<sup>th</sup> of November, 2008. № 976, “On registration of a non-governmental organization symbols” № 1209 of the 19<sup>th</sup> of December, 2012; Warrants of the Ministry of Justice of Ukraine “On approval of the Provision of the Unified Register of non-governmental organizations” of 19.12.2008 № 2226/5, “On approval of the order of preparation and execution of decisions regarding the legalization of non-governmental organizations and other social organizations” of 08.07.2011 № 1828/5, «On approval of registration cards forms” of 14.10.2011 № 3178/5, “On approval of forms of documents, providing (sending) of which is established by the Law of Ukraine “On public associations” of 12.14.2012. № 1842/5, “On approval of Requirements for writing the name of the legal body or its separate subdivision” of 05.03.2012 № 368/5, “On approval of forms of applications and reports, providing (sending) of which is established by the Law of Ukraine “On state registration of legal bodies and individuals-entrepreneurs” of 04.17.2013 № 730/5 etc.

Within our scientific analysis the paramount importance belongs to the Law of Ukraine “On Social Associations” of the 22<sup>nd</sup> of March, 2012. The provisions of the previous Law of Ukraine “On Social Associations” of 1992, which regulated the activity of non-governmental organizations till 2013, were criticized by the international and national experts, and therefore in 2008 the European Court of Human Rights proclaimed it to be undemocratic and it became invalid. It should be noted that the change in the law on associations led to improvements in the

implementation of the law, particularly in regard to the non-governmental organizations registration procedure. So, after the entry into force of the new Law of Ukraine “On Social Associations” only during the first 3 months of 2012 there were registered about 250 non-governmental organizations, and during the first quarter of 2013 there were about 450 non-governmental organizations. Last year the Department of Justice refused to register about 50 % of non-governmental organizations, now it is below 10 %<sup>1</sup>.

Careful examination of the text of the Law of Ukraine “On Social Associations” allowed to establish its positive aspects and to identify, in our opinion, certain disadvantages. One of the major novelty of the law is to enable legal bodies of private law to establish non-governmental organizations. This is the so-called secondary right to freedom of association (through the creation of other legal bodies and collective membership). This corresponds with the European trends and this is a step towards the harmonization of national legislation with the EU law. The idea that the rights of people, of particular citizens are implemented through the activities of the legal bodies is long ago accepted by the European Court of Human Rights. Thus, “legal bodies of private law” not only other associations, but also commercial companies, cooperatives, etc. will be able to participate in non-governmental organizations. Above all is the fact that the purpose and meaning of the union activity corresponds with the law about non-profit organization, but not about the business companies.

Among positive aspects of the new law it is worth to note the ban to demand specified information on membership (participation) of a person in a non-governmental organization, if the requirement is not related to the implementation of his or her rights as a person who is entitled to represent the non-governmental organizations. This statement underlines the democratic character of the law, its difference from the legal acts of the Soviet era, which regulated the order of non-governmental organizations. Non-governmental organization is created at the initiative of individuals or groups of citizens, not the government or public bodies, demonstrating the ability of civil society to self-organization, overcoming social problems without interference of the public authority. Thus, in these approaches there is no need to require specified information on membership (participation) of a person in a non-governmental organization, if the requirement is not related to the implementation of his or her rights as a person who is entitled to represent the non-governmental organization.

The new law greatly simplified a procedure of registration of non-governmental organizations, representatives of the non-governmental

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<sup>1</sup> Лациба, М.В., Шимчук, А.О. (2013). *Як розуміти новий закон «Про громадські об'єднання»*. Київ: Укр. незалежн. центр політ. досліджень, 5.

organization now do not need to communicate with the public registrars from registration chambers. In fact, on the bases of the municipal and district departments of Justice there is an organized “single point of contact” through which non-governmental organization is registered as a legal body, as a taxpayer, it is put to the record of the State Tax Inspectorate, Pension Fund and Committee of Legal Statistics. Organizations, registered before the moment when this law came into force, have to choose according their location the Territorial Department of Justice and through it to get registration services.

In contrast to the previous one, the new Law of Ukraine “On Social Associations” introduced a new requirement which is the register of people who participated in the constituent assemblies, which is an integral part of the constituent assemblies report. In the registry it is a must to indicate personal information that identifies individuals or legal bodies which should become the members of the non-governmental organization, all these documents should be certified by personal signature or the signature of a person authorized to participate in the constituent assembly. This requirement prevents the creation of “dead” or fictitious non-governmental organizations which do not fulfill the functions laid down in the Charter or which were created to achieve the goals that are not provided by the law.

The Law of Ukraine “On Social Associations” has its drawbacks. Thus, the legislator in Art. 2 specifies the object of this Act, pointing out that it applies to public relations in the field of establishment, registration, activity and termination only non-governmental organizations in Ukraine. However, according to the part 3. 2, specific issues of regulation of public relations in establishment, registration, activity and termination of certain types of associations may be determined by other laws. M. Bulgakova and A. Petrov correctly emphasized that in this formulation it is not clear whether the new law will extend to these organizations or their activities will be regulated by applicable special laws only<sup>1</sup>. Particularly it concerns non-governmental organizations with the status of a legal body.

Some ambiguities can be viewed in an effort of the legislator to eliminate mandatory division of non-governmental organizations by territorial status inside of the country, which is characteristic only for post-Soviet countries. European laws (such as the Czech Republic, Estonia) emit only international association. Territorial status and distribution of the other organizations in the country are neither defined nor limited. However,

<sup>1</sup> Булгакова, М., Петрів, А. (2012). Новий Закон України «Про громадські об'єднання». *Експертно-дорадчий центр “Правова аналітика”*. <<http://legalanalytics.com.ua/uk/zakonodavstvo0/novynyzakonodavstva0/110-publicassociations.html>>.

this principle can be interpreted ambiguous because in practice it is unclear whether local non-governmental organizations, registered in one of the administrative-territorial body, can spread their activities outside the defined area or in several areas, without having there their separate units.

The change in the regulating of the opening of separate units of non-governmental organizations in Ukraine is one of the innovations that are caused by the Law of Ukraine “On Social Associations”. In general, the new law made easier almost all the procedural aspects of the opening of separate units, but some can cause a number of problems. Thus, in the new law the procedure of opening of a separate division is called “accreditation” of a separate subdivision of a foreign non-governmental organization instead of more usual “registration”. However, the procedure of changing the name doesn’t have such key value as the changing of another key point which is the authorized body. Accreditation is one of the few acts of registration, the authorized body of which remained the State Registration Service, but the majority of registration actions were moved from State Registration Service to the local justice bodies.

In addition, on February 3, 2013 The Law of Ukraine “On Charity and Charitable Organizations” came into force, Article 25 of which stipulates that accreditation of offices and branches of foreign charitable organizations should be conducted in the manner prescribed by the Law of Ukraine “On Social Associations”. And it would not cause any questions, if not the part 2, Art. 3 of the new Law, which is read as follows “This law cannot be applied to public relations in the field of establishment, registration, activity and termination: ... 6) non-business companies (non-public organizations) established under other laws”<sup>1</sup>. That is, the Law of Ukraine “On Social Associations” implies inability to regulate the issues of accreditation of charity organizations units to its norms (assuming that “non-profit organizations are organizations which are not intended to make a profit for its subsequent distribution among participants” Art. 85 the Civil Code of Ukraine). Of course, treating literally ch. 2, Art. 3 of the new law, it can be said that the list of areas of relations “establishment, registration and termination”, which the new law can not be applied to, does not exclude the concept of accreditation and therefore the mentioned conflict does not exist. However, this position cannot stand up critics because this list corresponds with an exactly formulated in part 1 of Art. 3 of the new Law the scope of the law (where the term “accreditation” is not used).

Among the shortcomings of the new law there is too laconic content of the Article 24, which defines the property of a non-governmental organizations. It would be appropriate to specify the property, which

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<sup>1</sup> Закон про громадські об'єднання 2012 (Верховна Рада України). *Відомості Верховної Ради України*, 1, 1.

non-governmental organizations have the right to possess, use and dispose of. For example, the Article 30 of the Federal Law of the Russian Federation “On Social Associations” provides the meaningful list of the property: non-governmental organization, which is a legal body can own the land, buildings, structures, houses, housing stock, transport, equipment, inventory, property of cultural, educational and recreational purposes, funds, stocks, other securities and other property necessary for financial support of the activity of this non-governmental organization, specified in its charter. The property of a non-governmental organization can also include agencies, publishers, media created and purchased at the expense of the non-governmental organization in accordance with its statutory objectives<sup>1</sup>. This specification allows to a non-governmental organization to understand the limits of the unification of the property assets which can be found on the balance of non-governmental organization and assist in achieving of its goals.

One of the basic principles of the development of Ukraine as an independent democratic state is the priority of a person, his or her rights and freedoms. At the present stage of the Ukrainian state establishment, the legal mechanisms to secure the right of each individual to association are actively formed. All acts that constitute the legal basis for legal regulation of non-governmental organizations in Ukraine should be divided into two groups: 1) general acts that are acts that establish and ensure the availability of each individual right to association; 2) specific acts, those which regulate the activities of government on the establishment, registration and activity of non-governmental organizations in Ukraine.

In 2012, Ukraine adopted the Law “On Social Associations”, which provided a lot of new opportunities for the creation, activity and development of non-governmental organizations. In particular it introduced new quality standards and approaches to non-governmental organizations, territorial restrictions of their activities are removed, the range of the founders is expanded, an opportunity to carry out business is given to non-governmental organizations. At the same time, the new Law of Ukraine “On Social Associations” contains some flaws that create additional inconvenience in the implementation of the right to association. The situation of legal regulation of non-governmental organizations in Ukraine can possibly be fixed for the better by making a comprehensive review of all the acts which govern relations in this area and their codification.

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<sup>1</sup> *Федеральный Закон о общественных объединениях 1995.* <<http://www.consultant.ru/popular/obob/>>.