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UKRAINIAN HELSINKI HUMAN RIGHTS UNION

ZMINA HUMAN RIGHTS CENTER

CHALLENGES AND THREATS FOR HUMAN RIGHTS DEFENDERS, ACTIVISTS AND VOLUNTEERS

(Regulatory Dimension)

Summary Report / 2024

Team of Authors:

Vladlena Padun, UHHRU lawyer, analyst

Aksana Filipishyna, Lawyer, Deputy Head of the Analytical Department at UHHRU

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ACRONYMS AND ABBREVIATIONS

CO	charitable organization
CF	charitable foundation
ML/FT	legalization (laundering) of proceeds of crime and financing of terrorism
IDPs	internally displaced persons
VRU	Verkhovna Rada of Ukraine
NGO	non-governmental organizations
STS	State Tax Service of Ukraine
AFU	Armed Forces of Ukraine
UBO	ultimate beneficial owner
CC of Ukraine	Criminal Code of Ukraine
CMU	Cabinet of Ministers of Ukraine
CUAO	Code of Ukraine on Administrative Offenses
NBU	National Bank of Ukraine
RLA	regulatory legal acts
NPO	non-profit organizations
CSO	civil society organizations
HOA	homeowners' association
PIT	personal income tax
TC of Ukraine	Tax Code of Ukraine
RF	Russian Federation
TIC	Temporary Investigative Commission of the Verkhovna Rada of Ukraine
UHHRU	Ukrainian Helsinki Human Rights Union
BNP	benefactors – natural persons
FATF	Financial Action Task Force
USAID	United States Agency for International Development

INTRODUCTION

Since the beginning of the full-scale invasion by the Russian Federation (hereinafter referred to as the RF), the state and society have focused on one goal: protecting Ukraine's borders, helping the victims, and defeating the invader.

The activities of activists in Ukraine have undergone changes and pivoted towards the development of volunteer movement, charity and the focus of NGOs on providing humanitarian aid to various segments of the population and the army (supplies of food, hygiene products, medicines, equipment, etc.).

Issues related to public persecution of civic activists, journalists, bloggers, human rights defenders because of their civic position have been put on the back burner. One of the reasons behind such changes may be that some civil society representatives (who actively expressed their views on the political situation in the country, fought against the attack on freedom of speech, manifestations of corruption in the government, protested against seizures and development of territories) joined the AFU or are engaged in volunteer activities after the war broke out.

The volunteer movement has gained considerable momentum and almost every citizen of Ukraine is involved in it in one way or another. On the one hand, this situation has led to the cohesion of society and readiness to come to the rescue under any circumstances, but on the other hand, due to the abuse on the part of unscrupulous persons has generated negative attitudes among people.

In late spring 2022, reports began to surface in the media about accusations against volunteers involving embezzlement of aid intended for target groups, tax evasion, and similar offenses.

Society began to speculate that volunteer and charitable activities aimed at providing humanitarian aid were being used as a means for illegal enrichment, tax evasion, avoiding mobilization, and other illicit purposes.

Public indignation began to grow, the prestige of volunteering began to decline, and trust in this sphere was becoming lower and lower. Due to a lack of resources, law enforcement agencies could not effectively investigate all cases of offenses. In response, the

state sought to regulate and control the humanitarian aid system by introducing a legal framework for volunteer activities. The state encountered resistance in its efforts to make such changes, as some initiatives risked making volunteering as a practice unviable.

Between 2022 and 2024, we observed a noticeable increase in legislative initiatives, which, in one way or another, can negatively affect or have affected the work of civic activists. First of all, this refers to pressure from fiscal authorities, criminal prosecution for alleged profiteering from the sale of humanitarian aid, and the restriction or freezing of bank accounts, among other measures.

Therefore, even in such difficult times, representatives of civil society organizations, activists and volunteers need protection and strengthening of resilience in the fight against challenges that arise not only as a consequence of the enemy's actions, but also because of decisions, actions or inaction of the authorities.

As part of the Supporting Active Citizens under Pressure in Ukraine program, the UHHRU team monitored draft regulations, adopted laws and bylaws that pose or may pose threats to human rights defenders, activists or volunteers. They also tracked cases of pressure on activists and volunteers.

The said monitoring was conducted by analyzing:

- Draft laws registered on the website of the Verkhovna Rada of Ukraine
- Adopted laws
- Bylaws
- Official announcements of the central executive authorities
- Publications posted on online media platforms and other information exchange channels
- Posts on the official and personal pages of charitable organizations/foundations and volunteers in social media
- Other open sources.

The **purpose** of this monitoring is to highlight the relations between the state and the civic sector in the context of the full-scale military invasion of Ukraine by the Russian Federation, emphasizing the problems that have arisen or could potentially arise during such interaction in order to prevent human rights violations in a democratic country.

This document highlights the main legislative initiatives, laws, and bylaws that were analyzed by the UHHRU team and contained threats to activism in Ukraine.

The findings in this report were made during the period of adoption, publication of regulatory legal acts, their drafts, etc. and highlight the threats that were relevant at the time for activists, human rights defenders and volunteers. The regulatory legal acts that came to the attention of UHHRU and the relevant conclusions may differ from the currently adopted and effective documents due to their finalization, amendment, withdrawal or invalidation.

Section I.
THREATS TO HUMANITARIAN ASSISTANCE

Recognizing public concern about the frequent misappropriation or sale of humanitarian aid, the state has taken steps to strengthen the regulatory framework for humanitarian aid. Such actions often lead to a decrease in the ability of organizations and volunteers to import goods as humanitarian aid, increased control over the channels of entry and delivery of humanitarian aid to their beneficiaries, increased responsibility for the violations of legislation in the field of humanitarian aid, etc. These levers of influence, one way or another, restrict the access of volunteers and organizations to humanitarian activities in general, resulting in a decrease in the activity of the volunteer community in the country. Below we give the analysis of regulatory acts and their drafts which potentially contain threats to activists and volunteers.

1.1. Criminal Prosecution

According to Law № 2155-IX of 03/24/2022[1], the Criminal Code of Ukraine[2] (hereinafter referred to as the CC of Ukraine) was supplemented with Article 201-2 "Illegal use for profit of humanitarian aid, charitable donations or gratuitous aid" (hereinafter referred to as Law 2155).

The sanctions outlined in this article apply to the sale of humanitarian aid goods or the misuse of charitable donations and gratuitous aid, as well as any other transactions involving such property, when conducted with the intent to generate profit and on a particularly large scale.

The range of punishment options varies from fines to imprisonment for a term of five to seven years. The most severe sanctions are stipulated for the commission of these actions by an organized group or on a particularly large scale, or during a state of emergency or martial law.

Therefore, the sale of goods (items) of humanitarian aid or the use of charitable donations, gratuitous aid or other transactions involving such property, for the purpose of making a profit and on a particularly large scale, during martial law, entails the most severe punishment

1 https://zakon.rada.gov.ua/laws/show/2155-20#Text
2 https://zakon.rada.gov.ua/laws/show/2341-14#Text

provided for by the sanction of Article 201-2 of the Criminal Code of Ukraine up to seven years of imprisonment.

Immediately following the enactment of Law 2155 in early April 2022, law enforcement agencies across Ukraine began conducting both overt and covert investigative actions against prominent volunteers. Subsequently, some of them were charged with selling humanitarian aid for profit: cars, body armor and other goods[3].

At the same time, in almost all cases that human rights defenders are aware of, volunteers spent not only donor funds, but also their own funds to purchase goods for the military.

In doing so, the volunteers, as a rule, used the Resolution of the Cabinet of Ministers of Ukraine № 174 of March 01, 2022 “Certain Issues of Customs Clearance of Humanitarian Aid in Ukraine under Martial Law”[4] (hereinafter referred to as the CMU Resolution № 174), declared the goods as humanitarian aid in order to quickly import them into Ukraine, took money for the imported goods to compensate for their own expenses, and not to earn money.

According to the above CMU Resolution, the passage through the customs border of Ukraine of humanitarian aid from donors (within the meaning of the Law of Ukraine “On Humanitarian Aid”[5]) is carried out at the place of crossing the customs border of Ukraine by submitting shipping documents or a declaration filled out by the person transporting the goods as per the form given in the annex, without the application of measures of non-tariff regulation of foreign economic activity.

The version of the investigation is usually based on the “sale” of humanitarian aid that was declared as such under the procedure of the CMU Resolution, however, in Article 201-2 of the Criminal Code of Ukraine the concept of “humanitarian aid” should be understood according to the definitions of the Laws of Ukraine “On Humanitarian Aid” and “On Charitable Activity and Charitable Organizations”[6].

3 https://zmina.info/tag/tysk-na-volonteriv/
4 https://zakon.rada.gov.ua/laws/show/174-2022-п#Text
5 https://zakon.rada.gov.ua/laws/show/1192-14#Text
6 https://zakon.rada.gov.ua/laws/show/5073-17#Text

According to Article 1 of the Law of Ukraine «On Humanitarian Aid», humanitarian aid is targeted, gratuitous assistance in cash or in kind, in the form of irrevocable financial aid or voluntary donations, or assistance in the form of work or services provided by foreign and domestic donors for humanitarian reasons to recipients of humanitarian aid in Ukraine or abroad who need it because of social vulnerability, financial insecurity, difficult financial situation, emergency, in particular as a result of a natural disaster, accidents, epidemics and epizootics, environmental, man-made and other disasters that pose a threat to the life and health of the population, or the serious illness of specific individuals, as well as to prepare for the armed defense of the State and its defense in the event of armed aggression or armed conflict.

In the current context, Ukrainian volunteers donated their services (rather than goods) to find, purchase and deliver goods to the beneficiaries (the military), and they paid the cost of the goods themselves. After all, the donors of monetary or in-kind assistance were legal entities or individuals who were outside of Ukraine and were unable to provide it to the direct beneficiaries.

Therefore, in this case, there is a deliberate incorrect application by law enforcement officers of Article 201-2 of the Criminal Code of Ukraine, as well as insufficiently clear regulation in the field of humanitarian assistance.

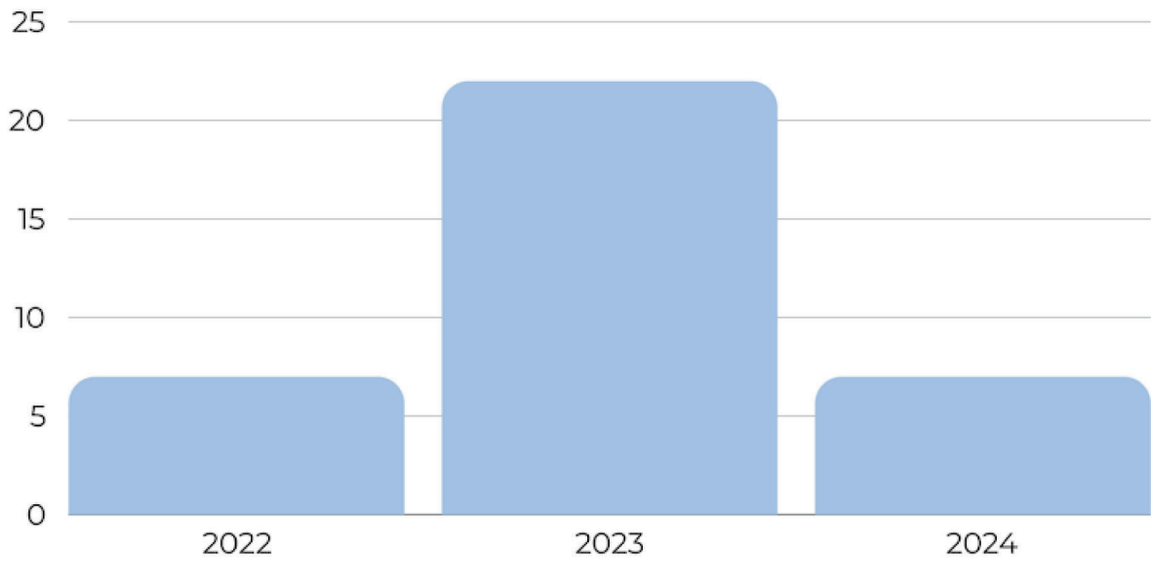
The two-year practice of law enforcement of Article 201-2 of the Criminal Code of Ukraine shows that in the time of war the law enforcement and judicial systems of Ukraine are constantly overworking themselves. Their efforts are mostly focused on documenting and investigating war crimes.

However, the investigative authorities continue to investigate and the courts continue to consider proceedings on the illegal use for profit of humanitarian aid, charitable donations or gratuitous assistance (Article 201-2 of the Criminal Code of Ukraine).

According to the data of the Unified State Register of Judgments, during 2022, 2023 and as of 08/09/2024, the number of first instance court verdicts under this article is 36. Of these: in 2022 – 7 verdicts, in 2023 – 22 verdicts, in 2024 – 7 verdicts. Also of the above verdicts: 34 guilty verdicts, 1 acquittal (04/05/2024), and another one was not uploaded to the register due to the need to correct technical errors.

Most of the guilty verdicts are based on plea agreements between the prosecutor and the accused.

Number of verdicts under Article 201-2 of the Criminal Code of Ukraine (as of August 9, 2024)



According to the information of the Office of the Prosecutor General, cited in the report of the Temporary Investigative Commission of the VRU on the investigation of alleged violations of Ukrainian legislation in the sphere of receipt, distribution, transportation, storage, use for the intended purpose of humanitarian and other assistance, as well as inefficient use of state property that can be used for temporary accommodation of internally displaced persons and other needs of the state, approved by the Resolution of the VRU of September 21, 2023, № 3395-IX[7], the data on the investigation of these crimes is quite extensive. The TIC carried out its work in the period from September 20, 2022 to September 21, 2023.

Thus, according to the data of the Unified Register of Pre-Trial Investigations, the National Police of Ukraine is conducting pre-trial investigation into 443 criminal proceedings under Article 201-2 of the Criminal Code of Ukraine. In addition, more than 200 other criminal proceedings concerning unlawful actions with humanitarian aid initiated under other classification (fraud, embezzlement, theft, bribery, etc.) are being investigated.

7 https://zakon.rada.gov.ua/laws/show/3395-IX#Text

Based on the results of the pre-trial investigation, 168 persons in 113 criminal proceedings were served with a charge sheet, including 114 persons in 77 criminal proceedings under Art. 201-2 of the Criminal Code of Ukraine. 74 indictments were sent to the court, 48 of them under Article 201-2 of the Criminal Code of Ukraine.

Following judicial review, 28 guilty verdicts were passed, 13 of them under Article 201-2, part 3, of the Criminal Code of Ukraine.

A total of 181 criminal proceedings were closed, 96 of them under Article 201-2 of the CC of Ukraine.

Statistics on the process of investigation and prosecution under Article 201-2 of the Criminal Code of Ukraine

(according to the information stated in the report of the special TIC of the VRU, approved by the VRU Resolution of 09/21/2023)

Charge sheets were served to	**114** persons in **77** criminal proceedings
Indictments sent to court	**48** indictments
The court passed	**13** guilty verdicts under Article 201-2, part three, of the Criminal Code of Ukraine
Criminal proceedings closed	**96** criminal proceedings

Considering such statistics, we can make a conclusion both about the heavy load on investigative bodies and courts, and about possible difficulties in the process of proving. In addition, it is important that the investigation is conducted under different qualifications, which in turn may indicate the imperfection of the introduced Article 201-2 of the Criminal Code of Ukraine and the need for its revision.

1.2. **New Rules for Importing Humanitarian Aid**

In early September 2023, the Government adopted the Resolution of the Cabinet of Ministers of Ukraine №953 dated 09/05/2023 "Some Issues of Customs Clearance and Accounting for Humanitarian Aid" (hereinafter referred to as the new Procedure and Resolution № 953).[8] The said Resolution introduces a new procedure for the import of humanitarian aid, which establishes a new system of accounting for and reporting on the receipt and distribution of humanitarian aid in order to prevent abuse in this area.

However, many civil society representatives expressed concerns that the increased state control could pose significant obstacles to individual volunteer activities, complicate the operations of small charitable organizations, and hinder international organizations without official representation in Ukraine.

For example, prior to the introduction of new rules by Resolution № 953, a simplified mechanism for the customs clearance of humanitarian aid in Ukraine under martial law, defined by the CMU Resolution №174, was in effect. It was limited to the submission by the recipient of humanitarian aid or their representative (driver of the vehicle that delivers the humanitarian aid) of a declaration for customs clearance of goods as humanitarian aid at the customs border crossing point, and a letter of guarantee from the end user of such goods (military unit) for certain military goods.

Such simplified requirements, urgently introduced by the Government in March 2022 in connection with the full-scale war, allowed strengthening the state's ability to ensure defense and humanitarian support for the population, attracting thousands of people to the volunteer movement.

Resolution №953 was developed during the work of the Temporary Investigative Commission of the Verkhovna Rada of Ukraine on the misuse of humanitarian aid (the report of this TIC was approved by the Resolution of the Verkhovna Rada of Ukraine № 3395-IX of 09/21/2023[9]). The TIC carried out its work in the period from September 20, 2022 to September 21, 2023.

8 https://zakon.rada.gov.ua/laws/show/953-2023-п#Text
9 https://zakon.rada.gov.ua/laws/show/3395-IX#Text

To prevent abuse, the importation of humanitarian aid under the new rules involved the full digitalization of the processes involved:

- Registration on the electronic platform of the recipient of humanitarian aid who plans to import the goods.
- Generation of a declaration with a unique number containing information on the goods, their quantity, etc.
- Submission of a report on the distribution of humanitarian aid by the organizations that imported it.

Resolution № 953 and the new Procedure had a legitimate purpose, but the prospect of their implementation during the full-scale war caused a wave of indignation among volunteers and the military. The accounting and reporting system envisioned by the new Procedure was really aimed against abuses related to the receipt and distribution of humanitarian aid. Many civil society representatives believed that the increased state control could pose insurmountable obstacles to individual volunteer activities, complicate the operations of small charitable organizations, and hinder international organizations without official representation in Ukraine.

In accordance with Article 1 of the Law of Ukraine "On Humanitarian Aid"10, recipients of humanitarian aid are legal entities registered in the Unified Register of Humanitarian Aid Recipients in accordance with the procedure established by the Cabinet of Ministers of Ukraine. The activity of volunteers-individuals who import humanitarian aid is still outside the legal field, while the previous Procedure under the CMU Resolution №174 did not prevent the purchase and import of humanitarian aid by individuals engaged in volunteer activities.

With the new Procedure, the Government tried to bring by-laws in line with the Law "On Humanitarian Aid" and bring the process of importing humanitarian aid within the framework defined by the Law. As a way out, volunteers who do not act on behalf of their own foundation or organization – a legal entity would have to look for an intermediary – a legal entity that would agree to take responsibility for all the obligations of the recipient of humanitarian aid to comply with the requirements of the new Procedure.

Creation of a personal account in the automated system would mean registration in the Unified Register of Humanitarian Aid Recipients, with only the heads of recipients of humanitarian aid having the

10 https://zakon.rada.gov.ua/laws/show/1192-14#Text

right to create an electronic account, to take actions to generate a declaration, and to submit a report. In fact, these actions are often performed by other authorized persons of NGOs, CFs – accountants, lawyers, etc. To solve this issue, the Ministry proposed, in particular, to grant the rights of the user of the automated system to other authorized persons on an equal footing with the head through a special working group under the Ministry of Social Policy of Ukraine, which would "manually" check powers of attorney, statutory documents confirming the legality of representation of interests of the CF or NGO.

The new Procedure also questioned the ability to import humanitarian aid by international organizations that do not have a registered representative office in Ukraine. Such organizations were unable to obtain a qualified electronic signature, which would prevent them from registering in the automated system and obtaining the status of a recipient of humanitarian aid. Therefore, international organizations could not import humanitarian aid on their own.

Later this issue was regulated by amendments to the Law of Ukraine "On Humanitarian Aid", where such organizations received the status of a recipient of humanitarian aid, as well as by the CMU Resolution № 927 dd. 10/09/202011. It specifies that a diplomatic mission, a consular institution of a foreign state or a representative office of an international organization in Ukraine for registration in the Unified Register through the Automated System of Humanitarian Aid and using a qualified electronic signature of an authorized person designated by a foreign mission shall enter data, information about persons authorized to act on behalf of a foreign representative office (last name, first name, patronymic, position, country of registration of the main office of the foreign representative office, etc.).

Also, in accordance with the Law of Ukraine "On Humanitarian Aid", humanitarian aid recipients and humanitarian aid beneficiaries (legal entities) must submit monthly reports on the availability and distribution of humanitarian aid in accordance with the established procedure. Therefore, the reporting requirement in Resolution № 953 is also quite justified.

However, paragraphs 13-15 of the new Procedure stipulated that declared humanitarian aid, for which no report is submitted within 90 calendar days from the date of entering information on customs

11 https://zakon.rada.gov.ua/laws/show/927-2020-п#n13

clearance of humanitarian aid on the declaration, is considered to be the aid for which there is no record of receipt and intended use, and the aid used not for the intended purpose, and the user of the automated system (recipient of humanitarian aid) is removed from the Unified Register and their account is blocked. Re-registration and then resumption of activities in the field of humanitarian aid is possible only after 6 months.

This approach does not seem too harsh if we talk about peacetime conditions, but in the context of active war, taking into account missile attacks, power outages, etc., it should stipulate the possibility for humanitarian aid recipients to specify the reasons for failure to submit or late submission of the report and to appeal against the removal of users from the Unified Register and blocking of their accounts.

After a wave of outrage in October 2023, the Ministry of Social Policy of Ukraine initiated a joint meeting to explain and discuss the strengths and weaknesses of Resolution № 953. Volunteers, in turn, asked the Ministry to take measures to postpone the entry into force of this resolution, and then addressed the Government with a corresponding petition[12].

On November 14, 2023, a number of charitable organizations in an open petition to the President asked[13] to initiate before the Government the consideration of the issue of postponing the introduction of the new system and extending the current simplified regime of import and clearance of humanitarian aid for at least 6 months, taking into account the proposals and comments of representatives of civil society organizations and the volunteer movement.

On November 20, 2023, under pressure from civil society and volunteer organizations, the CMU[14] extended the option of using the simplified procedure (paper declarations) for importing humanitarian aid to Ukraine until April 1, 2024 and mitigated some of the levers of responsibility for the humanitarian aid recipients for violation of reporting requirements.

Thus, the Government has mitigated the liability for the failure to meet reporting deadlines. If the CF violates the norm for the first time, the recipient will lose the status of humanitarian aid recipient

12 https://petition.kmu.gov.ua/petitions/5606
13 https://www.pravda.com.ua/columns/2023/11/14/7428770/
14 https://zakon.rada.gov.ua/laws/show/1216-2023-п#n250

for three months. And the recipient has the opportunity to restore the status subject to the submission of the report within one month from the date of blocking the account in the electronic system.

In case of repeated violation of reporting requirements, re-registration is carried out not earlier than six months after the entry on the loss of the recipient's status.

Thus, the Government, pursuing its own goals, tried to limit the opportunities for volunteers to perform their activities. However, under public pressure, it came to a constructive dialog, which yielded positive results for both sides.

Therefore, in order to optimize and redistribute resources, including human resources, it is especially important to establish public dialogues in the development of regulatory acts with the public at the stage of their drafting. This will have a positive effect in the form of a well-tested and effective regulatory legal act, which will establish a system of humanitarian aid in Ukraine, rather than block the work of people who deliver aid.

1.3. Amendments to the Law of Ukraine "On Humanitarian Aid"

On January 23, 2024, the Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Import, Accounting, Distribution of Humanitarian Aid, Features of Taxation of Relevant Transactions and Reporting» [15] (hereinafter referred to as Law 3448-IX) entered into force. It introduced a number of changes that determine the specifics of the regulation of humanitarian aid.

According to the wording of the Law of Ukraine "On Humanitarian Aid" before the amendments, legal entities, in particular charitable organizations/foundations and NGOs, regardless of the country of their incorporation/origin, which had undergone the registration procedure in Ukraine, were considered to be recipients of humanitarian aid.

15 https://zakon.rada.gov.ua/laws/show/3448-IX#Text

According to the Law 3448-IX (amendments to Article 1) the **list of recipients was supplemented** by separate subdivisions of foreign non-governmental charitable organizations accredited in Ukraine and representative offices of international intergovernmental organizations in Ukraine (without establishing a legal entity).

Also under this law, **recipients of humanitarian aid may be as follows:**

- Diplomatic missions, consular offices of foreign states in Ukraine
- Non-profit state and municipal institutions and local self-government bodies
- Providers of medical and/or rehabilitation services
- Providers of social services, etc.

The recipients envisaged by the law could obtain the **status of beneficiaries of humanitarian aid**.

Despite the significant changes, the issue of recognizing individuals as recipients of humanitarian aid remained unsettled.

During the simplified procedure for importing humanitarian aid approved by the CMU Resolution № 174, the de facto principle of importing humanitarian aid was generally permissive, in particular for volunteers-individuals. But de jure under the Law of Ukraine "On Humanitarian Aid" they had no right to do so as they were not recognized as recipients of humanitarian aid.

Such "extra-legal field" of volunteers' activity was caused by the acute needs of the population and the army that arose after the full-scale invasion of Ukraine by the Russian Federation.

Law 3448-IX did not outline the status of recipients of humanitarian aid who are natural persons. Therefore, the consequences of such activities for citizens (accounting, reporting, liability, etc.) remained uncertain.

However, it is worth paying attention to the amendments introduced by Law 3448-IX to Article 3 of the Law of Ukraine "On Humanitarian Aid".

The norm stipulated that during the period of martial law or state of emergency and within three months after its termination or abolition, the Cabinet of Ministers of Ukraine is vested with the right to "consider and make a decision on expanding the list of recipients of humanitarian aid".

Therefore, it can be assumed that the issue of recipients-individuals will be settled by the Government in the future.

Also, the Law 3448-IX established that during the period of martial law and within three months after its termination or abolition, the recipients, which are defined in Article 1 of the Law of Ukraine "On Humanitarian Aid" (as amended), acquire the status of recipients of humanitarian aid regardless of their registration in the Unified Register of Humanitarian Aid Recipients (amendments to Article 15). Therefore, at the level of the law, the issues previously provided for in the by-laws, in particular in Resolution № 953, have been regulated.

Among the norms confirming the provisions of the by-laws are the powers of the Cabinet of Ministers of Ukraine to establish a **simplified procedure for recognizing aid as humanitarian** on a declarative principle, without the adoption of a relevant decision by a specially authorized state body on humanitarian aid, for the period of martial law or state of emergency and within three months after its termination or cancellation (amendments to Article 3).

Now the simplified procedure is already provided for by Resolution № 953. However, it should be noted that the Government has the right to establish additional special rules for certain categories of goods. Therefore, before importing aid to the territory of Ukraine, volunteers need to make sure whether the exceptions on the recognition of their goods as humanitarian aid have been approved.

Law 3448-IX provided that humanitarian aid in a simplified procedure is recognized as vehicles intended for military personnel who will use the vehicles for the defense of Ukraine. This procedure is also determined by the Cabinet of Ministers of Ukraine (amendments to Article 15).

Law 3448-IX "legalized" the automated system of registration of humanitarian aid introduced by Resolution № 953. It allowed importing goods into the territory of Ukraine until 04/01/2024 according to the declarative principle without using the automated system of registration of humanitarian aid.

However, recipients of aid are obliged to **report** to the automated system even if the aid is imported on a declarative basis (paper declaration). Recipients of humanitarian aid imported without using the automated system for the registration of humanitarian aid, had to upload to the system a copy of the paper report on the use and distribution of imported humanitarian aid until 03/31/2024.

Since 04/01/2024, the use of the automated system for the registration of humanitarian aid for assigning a unique number and importing into the customs territory of Ukraine became **mandatory**.

In addition, Law 3448-IX established the **specifics of humanitarian aid distribution and provision**.

Thus, as a general rule, a change in the recipient of humanitarian assistance is possible only with the written agreement of the donor. Exceptions are cases when the donor has provided such an approval at the time of its offer to provide humanitarian assistance or when it is stipulated in the transaction on humanitarian assistance.

The Law provided that the proper (donor-approved) recipients have the right to carry out distribution or redistribution of humanitarian aid among the recipients of humanitarian aid, respecting its intended purpose, without further agreement with the donor.

Also important is the norm introduced by Law 3448-IX regarding the redistribution of humanitarian aid.

If the recipients stipulated by the law are also beneficiaries of humanitarian aid, they have the right to transfer the received humanitarian aid to other beneficiaries, subject to the below:

- Approval of the recipient of such aid (the procedure is determined by the Cabinet of Ministers of Ukraine)
- Compliance with its intended purpose.

On the one hand, if necessary, this mechanism allows quickly redirecting the available humanitarian aid to those who need it. But at the same time, when it arrives to a beneficiary other than the primary beneficiary for whom it was intended, the question of the intended use of such humanitarian aid may arise.

Summing up, we can conclude that by the adopted Law the state tried to confirm (legalize) the novelties introduced by the by-laws.

Such an algorithm of regulation of relations looks rather illogical, since resolutions, orders and decrees, as acts of lower legal force, should be adopted in pursuance of the provisions of laws, and not the other way around, which is

determined by paragraph five of part two of Article 19 of the Law of Ukraine "On Lawmaking Activity"[16].

After all, according to Article 34 of the said Law, the norms must comply with the principle of legal certainty, one of the signs of which is predictability (foreseeability). However, can we talk about foreseeability if the Government is reforming certain sphere without supporting its own actions with the norms of the law?

In addition, the amendments to the Law of Ukraine "On Humanitarian Aid" do not bridge the gaps regarding the activities of individual volunteers as recipients of humanitarian aid, nor do they outline the consequences for the redistribution of humanitarian aid and the specifics of its targeted use in case of such redistribution.

16 https://zakon.rada.gov.ua/laws/show/3354-20#Text

Section II.
TAXATION AND REPORTING THREATS

2.1. Tax Pressure

On November 16, the Verkhovna Rada of Ukraine adopted the Law № 2747-IX dd. 11/16/2022 "On Amendments to paragraph 165.1.54 of Article 165 of the Tax Code of Ukraine concerning exemption from taxation for certain types of charitable aid collected by volunteers" [17] (hereinafter referred to as Law 2747).

The purpose of these legislative amendments is to exempt from taxation the individuals who, since February 24, have been raising funds on their private bank card accounts for charitable assistance, but were not included in the Register of the Antiterrorist Operation Volunteers, and/or implementation of measures to ensure national security and defense, repulse and deter armed aggression of the Russian Federation (hereinafter referred to as the Register of ATO Volunteers).

The law was allegedly supposed to exempt from taxation all donations made to the bank card account of individual benefactors who will enter the Register of ATO Volunteers until January 1, 2023.

However, in accordance with subclause b, subclause 165.1.54 clause 165.1, Art. 165 of the Tax Code of Ukraine[18], benefactors - natural persons (hereinafter referred to as BNPs) must also have documentary evidence of their expenses. Therefore, simply being on the ATO Volunteer Register is not enough for tax exemption.

The right not to have these supporting documents is allowed by the legislation only in the period from February 24, 2022 to May 1, 2022 in accordance with Part 9 of the Law of Ukraine "On Amendments to the Tax Code of Ukraine Concerning Taxation of Transactions with Real Estate to be Built in the Future"[19] (№ 2600-IX of 09/20/2022). Therefore, Law 2747 itself did not exempt BNPs from taxation. After all, it is people's lack of supporting documents, rather than difficulties in entering the Register, that is the key problem now.

17 https://zakon.rada.gov.ua/laws/show/2747-20#Text
18 https://zakon.rada.gov.ua/laws/show/2755-17#Text
19 https://zakon.rada.gov.ua/laws/show/2600-20#Text

During martial law, assistance is usually provided under extreme conditions and in a critically short timeframe, when there is no time to collect all kinds of documentation. Cars and quadcopters are often repaired by people who do not have any state business registration, many things are bought privately, through resellers and the OLX platform, etc. Individual philanthropists cover thousands of needs of both troops and civilians, where charitable foundations or the state, for various reasons, are unable to help.

The above legislative changes could potentially lead to prosecution by the state tax authorities of BNPs who do not have documentation to support their relevant expenses from May 1, 2022, but have applied to be included in the ATO Volunteer Register. Tax authorities, having received up-to-date data on these persons, may start checking their activities to ensure that they have all the necessary documents.

Regarding the exemption of BNPs from the obligation to enter the Register of Volunteers and collect documents to confirm expenses, attention should also be paid to the ability of STS bodies to conduct tax audits.

According to clause 69.1 of Section XX "Other Transitional Provisions" of the Tax Code of Ukraine, in case the taxpayer is unable to timely fulfill its tax duty to meet the deadlines for the payment of taxes and fees, submission of reports and/or documents (notifications), including those provided for by Articles 39 and 39-2, clause 46.2 of Article 46 of this Code, registration in the relevant registers of tax or excise invoices, adjustment calculations, submission of electronic documents containing data on actual fuel or ethyl alcohol flow, etc., taxpayers are exempted from responsibility under this Code with mandatory performance of such duties within six months after the termination or abolition of martial law in Ukraine.

Therefore, the key issue for BNPs filing assets and income declarations, and thus paying taxes, is whether a particular benefactor has the ability to do so.

The issue of availability of such an opportunity is reflected in the Order of the Ministry of Finance of Ukraine dated 07/29/2022 № 225[20], where the inability to fulfill tax obligations for BNPs is reduced to 2 aspects:

20 https://mof.gov.ua/storage/files/Оприлюд_Наказ_225.PDF

- Stay on the territory of hostilities or temporarily occupied territory (blocked)
- Force majeure confirmed by a CCI (Chamber of Commerce and Industry) certificate.

Therefore, the analysis of Section XX «Other Transitional Provisions» of the TC of Ukraine and clause 69.1. shows that despite martial law, if the BNPs have the opportunity (in practice it means that you have to "prove otherwise"), they have an obligation to file assets and income declaration and pay taxes from the funds raised for charitable activities on their bank card account. Provided that BNPs are not on the ATO Volunteer Register and do not have documents confirming the expenditure of funds for charity, such BNPs must file a declaration by May 1, 2023 for the year 2022 and pay personal income tax and military levy by July 1, 2023.

Now, the only statutory barrier to the implementation of STS inspections of BNPs is clause 69.2. of Section XX "Other Transitional Provisions" of the TC of Ukraine, which establishes a moratorium on audits except for certain groups of audits. Clause 69.2. of the section in the current version does not apply to clauses 78.1.1. and 78.1.2. of the TC of Ukraine, and therefore temporarily prevents the tax authorities from conducting BNP audits.

However, amendments to the TC of Ukraine may be introduced at any time, which will allow the STS to audit BNPs.

If BNPs do not have documents confirming the expenses, the tax authorities will be able to demand payment of taxes at the rate of 19.5% (18% personal income tax and 1.5% military levy), as well as bring them to responsibility.

As of May 1, 2022, the legislator has forced BNPs that raise funds through personal bank accounts without complete supporting documentation to choose between 'bad' and 'worse' options. On the one hand, they can get on the Register of ATO Volunteers, report themselves to the tax authorities, be under the threat of possible inspection and become an offender; on the other hand, they have the option of not getting on the said register, not declaring receipts on the card account and being under the threat of liability as well (clause 120.1 Art. 120, clause 123.1 Art. 123 of the TC of Ukraine, Art. 164-1 of the CUAO, part 1 of Art. 212 of the Criminal Code of Ukraine).

In view of this, Law 2747 does not achieve its stated goal of exempting volunteers from taxation. After all, it does not solve the main problem faced by volunteers delivering aid to the AFU: lack of documents confirming the costs of the aid. Instead, it creates a situation that leads to tax pressure on the specified persons and their administrative or criminal liability.

A possible solution to this situation could be the adoption of legislative amendments that would extend the time BNP has to get on the ATO Volunteer Register, as well as extend the moratorium on reporting documents. The optimal required period is one year. This time would allow them to develop the necessary policies in the sphere of BNP reporting and to conduct an awareness raising campaign among them about the need to join the ATO Volunteers Register and collect reporting documents.

2.2. Need for NGOs, Charitable Organizations and Charitable Foundations to Submit Information about UBOs

On December 29, 2022 the Law № 2571-IX dd. 09/06/2022 "On Amendments to Certain Laws of Ukraine Concerning Improvement of Regulation of Ultimate Beneficial Ownership and Ownership Structure of Legal Entities"21 (hereinafter referred to as Law 2571) came into force, which amended the laws "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations"[22] and "On Prevention and Counteraction of the Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction"[23].

Law 2571 maintained the requirement for NGOs, charitable organizations and charitable foundations that are nonprofits to register ultimate beneficial owners ("UBO").

21 https://zakon.rada.gov.ua/laws/show/2571-20#Text

22 https://ips.ligazakon.net/document/view/T030755?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl03

23 https://ips.ligazakon.net/document/view/T190361?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl03

Certain legislative changes introduced to Law 2571:

- It has been established that verification of information on the UBO is carried out during registration (except for registration of termination), but only if the legal entity submits the relevant information on the UBO;
- It is clearly stated that each certain document on UBO is submitted only in case of registration of corresponding changes in the UBO
- The rule regarding the requirement for legal entities to annually confirm information about the UBO, namely Article 17-1 of the Law «On the State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations» has been removed
- Legal entities are obliged to keep information on UBOs, ownership structure up to date and submit documents on changes within 30 business days from the date of such change
- Founders (participants) of legal entities are obliged to provide (at the request of legal entities, as well as on their own) the information necessary for the legal entity to submit/update the information on UBO within 5 business days from the date of such changes
- Should legal entity discover incompleteness, inaccuracies or errors in the submitted information on UBOs, such entity is obliged to submit corrected information not later than three business days from the date of the discovery
- If there are no UBOs, the legal entity is obliged to inform the state registrar thereof during the state registration of establishment, inclusion of information and amendments to the information on a legal entity
- Liability for failure to submit/submission of inaccurate information on UBO by a legal entity has been strengthened.

The ultimate beneficial owner for legal entities means any natural person exercising decisive influence on the activities of the legal entity (including through the chain of control/ownership) (in accordance with clause 30 of part one of Article 1 of the Law of Ukraine “On Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction”).

Public associations are obliged to keep and regularly update information sufficient for the identification of the ultimate beneficial owners (controllers) according to the requirements of the law, as well as to provide it to the state registrar in cases and to the extent provided for by the law (in accordance with clause 1 of part seven of Article 23 of the Law of Ukraine "On Public Associations"[24]).

If the legal entity does not have any ultimate beneficial owners of the legal entity, including the ultimate beneficial owner of its founder (if the founder is a legal entity), **the application shall include a justified reason for the absence thereof**. This usually happens when there are many founders and the share of each does not exceed 25%.

NGOs, charitable foundations, cooperatives and any other legal entities that have obtained the appropriate status from the tax authorities and are included in the register of non-profit institutions and organizations are obliged to submit information to the state registrar within the prescribed period of time confirming that there are no persons in the organization who correspond to the status of the ultimate beneficial owner. Controllers of enterprises are beneficial owners with a clearly defined minimum share in the authorized capital. Therefore, the only information in relation to non-profit organizations that can be recorded in the Unified State Register is a statement confirming the absence of UBOs. The state registrar must enter only the information that accurately reflects reality and complies with legal provisions. In other words, if an organization is non-profit, the register cannot include any list of individuals who are UBOs. In this case, you will either have to pay a fine (if imposed) or promptly correct the record in the state register, or say goodbye to the non-profit status in the tax office.

At the same time, Law 2571 expands the list of legal entities that do not have to file information on the UBOs.

In particular, as before, this list includes political parties, structural formations of political parties, trade unions, their associations, trade union organizations provided for by the charter of the trade unions and their associations, creative unions, local branches of creative unions, employers' organizations, their associations, bar associations, state bodies, local self-government bodies, their associations, state and municipal enterprises, institutions, organizations, chambers of commerce, homeowners' associations.

24 https://zakon.rada.gov.ua/laws/show/4572-17#Text

At the same time, religious organizations and water users' organizations have been removed from the list.

It should be noted that the following have been added to the list of legal entities that should not submit information on UBOs: housing and construction cooperatives, dacha cooperatives, gardening cooperatives (associations); law offices; associations of residential building owners; organizations that carry out professional self-governance in the field of notary services; public companies (legal entities created in the form of a public joint-stock company whose shares are admitted to trading on at least one stock exchange (regulated market) from the list of foreign stock exchanges (regulated markets), which is formed under the procedure determined by the CMU, which are subject to the requirements regarding disclosure of information on ultimate beneficial owners, equivalent to those adopted by the European Union); state pension funds, etc.

However, intentionally or accidentally, the legislator did not include NGOs, charitable organizations and charitable foundations in this extended list, which puts them in a more vulnerable position compared to political parties which are established on similar grounds.

In fact, back in October 2021, a public statement[25] of 305 Ukrainian civil society organizations was sent to the Verkhovna Rada of Ukraine on the need to revise the provisions of the legislation regarding their obligation to submit information on UBOs.

At the same time, activists noted that the requirement to submit information on ultimate beneficial owners for NGOs and charitable organizations is an unjustified interference with freedom of association. CSOs work for the public, not the private interest, and their benefits are aimed at the public. Objectively speaking, there is no UBO for 99% of NGOs and charitable organizations. And imposing this burden on all NGOs, COs and CFs is out of proportion and generally makes no sense.

At the same time, the liability for non-submission or late submission, as well as submission of knowingly false information on UBOs has been strengthened.

Therefore, Law 2571 amended part four of Article 35 of the Law of Ukraine «On State Registration of Legal Entities, Individual

25 https://docs.google.com/document/d/154d5XtXRny30_Lx_QAe1KA4ovVr32Wg9kzL1YUFDrpo/edit

Entrepreneurs and Public Organizations»[26] and gave the right to the Ministry of Justice of Ukraine to prosecute persons for providing knowingly false information about the ultimate beneficial owner of a legal entity or about its absence (fine in the amount of one thousand to twenty thousand non-taxable minimum incomes); non-submission or late submission of information about the ultimate beneficial owner of the legal entity or its absence (fine in the amount of one thousand to twenty thousand non-taxable minimum incomes) by persons authorized to act on behalf of a legal entity.

And although sanctions for failure to provide the state registrar with information about the UBOs and the ownership structure will not be applied during the period of martial law and within 3 months from the date of its termination or cancellation, this does not solve the problem as a whole.

The above-mentioned regulation adds further pressure on NGOs, COs and CFs. The state has created conditions under which public associations, despite their non-profitability and lack of information on UBOs, are obliged (under threat of inspections and fines) to submit information, justify any reasons for the absence of UBOs, etc. At the same time, similar legal entities with many founders/owners (political parties, HOAs, cooperative organizations, etc.) are exempt from such an obligation.

In view of the above, taking into account the need to consolidate the efforts of state authorities and civil society organizations to ensure the rights of business entities, it would be advisable to put public associations with the legal entity status and charitable organizations on the list of legal entities that do not submit information on the ultimate beneficial owners of the legal entity (clause 9 of part two of Article 9 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”).

26 https://zakon.rada.gov.ua/laws/show/755-15#Text

2.3. Assets and Income Reporting for the NGO Heads

On September 11, 2023 the Draft Law "On Amendments to Article 23 of the Law of Ukraine 'On Public Associations' Regarding Certain Issues of Ensuring Openness of Information on Financial Statements of Public Associations" (reg. № 10035 of 09/11/2023). The draft required NGO leaders to submit annual income and property declarations by April 1 for publication on the official State Tax Service web portal.

According to the author, the draft law was to improve the mechanism of control by the state over the income of the heads of NGOs probably obtained by means that do not correspond to the declared statutory activity of a non-profit organization, in accordance with the Fundamental Principles on the Status of Non-Governmental Organizations in Europe, adopted by the Council of Europe on July 5, 2002[27] (hereinafter referred to as the Fundamental Principles).

The initiative to require the heads of NGOs to submit information on their income and property for publication could not be supported because it contains signs of excessive and unjustified interference by the state in the activities of the organization and also infringes on the right to freedom of association.

Generic allegations of a threat to state and/or public interests cannot be used as a reason to limit the right to freedom of association

The right to freedom of association is guaranteed by Article 22 of the International Covenant on Civil and Political Rights[28] and Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms[29]. To achieve their non-commercial goals, associations must be able to attract financial, material and human resources within the limits of the law. Interference in these processes should be justified and legitimate if there have been specific proven unlawful acts (Guidelines on Freedom of Association developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission)[30]. Excessive state interference in these processes poses a threat to this right as a whole.

27 https://zakon.rada.gov.ua/laws/show/994_209#Text
28 https://zakon.rada.gov.ua/laws/show/995_043#Text
29 https://zakon.rada.gov.ua/laws/show/995_004#Text
30 https://www.osce.org/files/f/documents/1/2/233076.pdf

Paragraph 77 of the Fundamental Principles notes that government agencies may work with non-governmental organizations to achieve public policy objectives, but should not attempt to own or force them to work under their control. It should be emphasized that in the conditions of the open military aggression of the Russian Federation against Ukraine, the activity of NGOs significantly strengthened the ability of the state to meet the basic needs of citizens who found themselves in extremely difficult conditions.

However, in order to justify the need to strengthen state control, the initiator of the draft law referred to certain "journalistic investigations", but does not support his position with court guilty verdicts against specific individuals or facts of violation of non-profitability requirements by a public organization, confirming harm to state or public interests.

Consequently, the establishment of additional obligations for the heads of NGOs is unjustified and testified to the desire of the state to control all activities of NGOs, which is not typical of a democracy.

However, the author of the draft law did not take into account the fact that the tax legislation of Ukraine now contains clear and effective mechanisms of control over the implementation of activities by NGOs in accordance with their constituent documents and sanctions in case of violation of the legislation: regular reporting, payment of profit tax in case of violation of non-profitability requirements, removal from the Register of non-profit institutions and organizations (paragraph nine of cl. 46.2 of Article 42, cl. 133.4 of Article 133 of the TC of Ukraine).

As an alternative, the explanatory note to the draft law provided that NGOs that refused to disclose information on income should switch to the general taxation system and receive the status of an enterprise established to make profit. However, the draft law does not provide for the possibility of such refusal and there are no consequences for making such a decision. The proposed control mechanism raises doubts as to its effectiveness.

The draft law proposed to consolidate the provisions that were previously recognized as contradicting the Constitution of Ukraine.

In its Decision № 3-r/2019 of June 6, 2019, in case № 1-231/2018 (2980/18, 3728/18))[31], the Constitutional Court of Ukraine declared certain

31 https://zakon.rada.gov.ua/laws/show/v003p710-19#Text

provisions of the Law of Ukraine “On Prevention of Corruption” unconstitutional. These provisions, similar to those in draft law №10035, had proposed the declaration and disclosure of income and property information for NGO heads. “The state is obliged to exercise control over the activities of public associations..., however, such control should not be excessive and should not hinder the lawful activities of these associations and the exercise by the citizens of their constitutional right to freedom of association (Article 36 of the Constitution of Ukraine)”[32].

Thus, by forcing the heads of NGOs to submit additional income and property reports, one can observe an attempt of excessive state interference in the activities of NGOs, despite the existence of effective mechanisms of control over their activities. Such actions of the state can be regarded as pressure on the civic sector and a violation of the right of citizens to freedom of association. The draft law is under consideration in Parliament.

2.4. **Detailed Financial Monitoring**

Recently, in addition to tax, criminal and administrative pressure, civil society organizations have faced financial pressure from the banking system. First of all, this is manifested in unannounced account blocking, sometimes for more than 30 days, under the pretext of financial monitoring.

During this monitoring, banks request a wide range of documents from non-profit organizations, with no defined limit to the list.

Unannounced account blocking, the verification duration, lack of a clear list of documents to be submitted during financial monitoring, lead to complications and sometimes to suspend or block the activities of NGOs.

Many NGOs have reported being subjected to monitoring and the associated challenges.

32 https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text

In order to answer the question whether these actions of banking institutions can be regarded as pressure on civil society organizations because of their active human rights position, it is necessary to understand the legal basis of such financial monitoring and whether it offers opportunities for manipulation on the part of inspectors.

As per Article 6 of the Law of Ukraine "On Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction" (hereinafter referred to as the Law), the financial monitoring system consists of primary and state levels. Banks are the primary reporting entities, in particular.

According to part 3 of Article 7 of the above Law, the primary reporting entity, i.e. the bank, establishes risk criteria and, accordingly, the need to carry out checks.

Also the National Bank of Ukraine established risk criteria and defined measures in respect of non-profit organizations for the primary reporting entities, in respect of which the National Bank of Ukraine (according to Article 18 of the Law) performs the functions of state regulation and supervision in accordance with the NBU Resolution of 05/19/2022 № 65 "On Approval of the Regulation on the Implementation of Financial Monitoring by Banks"[33] (hereinafter referred to as the Regulation).

For example, the bank is obliged to prevent that accounts of non-profit organizations, including charitable organizations, from being used for money laundering, financing of terrorism and/or financing of proliferation of weapons of mass destruction. To this end, the financial institution should take into account the identified risk criteria as well as indicators of financial transaction suspiciousness.

When performing customer due diligence on a non-profit organization, the bank should understand the nature of its activities, using a risk-based approach. In doing so, attention is focused on the aspects of the non-profit organization's activity such as: the main purpose (mission) of the activity; founders of the organization; assets; main sources of funds and types of donors/persons transferring funds for its benefit; types of its key expenses and the proportion of items for the maintenance of the non-profit organization within such expenses; types of its beneficiaries – recipients of funds;

33 https://zakon.rada.gov.ua/laws/show/v0065500-20#n794

scope of activity; donor search methods; existing achievements of the organization, in particular completed (implemented) projects / programs; transparency of mechanisms for the distribution of funds and channels for transferring funds to beneficiaries; targeted use of funds; correspondence of the scope of information about the organization's activities in open sources to the scope of such organization's activities, etc.

In other words, the list of questions as part of the above financial monitoring that can be posed to an NGO is quite long. Answering them can be time-consuming, as it involves not only the submission of existing documents but also the generation of new information.

Also, in accordance with Annex 1 of the above Regulation, the bank is obliged to ensure the update of customer data (received and available documents, data and information about the customer), if the risk of business relations with the customer is high – once a year, medium – once in three years; in other cases, provided there are no suspicions – once in five years.

In addition, the bank is obliged to ensure the update of data on the customer in case of significant changes in the activity (in particular, in case of change in the UBO, head, location of the legal entity; expiration, loss of validity or invalidation of the submitted documents, loss of validity/exchange of the identification document of the customer (customer's representative), etc.).

So, the above suggests that the bank is authorized to verify its clients and keep information about them up to date. The law allowed banks to independently choose the grounds for inspections, which in itself carries corruption risks, including the implementation of «on-demand» financial monitoring.

For example, according to some activists, banks, with reference to the Regulation, required NGOs to update all information about the founders in the Unified State Register: change of last name, registration address, etc.[34]

However, according to cl. 7 of Article 7 of the Law of Ukraine «On Public Associations», the powers of the founder of a public association shall expire after the state registration of the public association in the manner prescribed by the law, and this requirement is unlawful.

34 https://zmina.info/articles/chomu-banky-blokuyut-rahunky-gromadskyh-organizaczij-i-chy-mozhna-z-czym-shhos-zrobyty/

Despite this, banks, using their monopoly on the right to demand any documents as part of verification, do not unblock accounts until they receive the requested information.

They do not take into account the fact that that making changes to the State Register requires the NGO to convene a meeting. In time of war, this is a problem because a certain part of people serve in the AFU, others are engaged in volunteer activities, etc.

In accordance with Articles 22 and 23 of the Law, the bank may take the following actions:

- Immediately, without prior notice to the client (person), freeze assets related to terrorism and its financing, proliferation of weapons of mass destruction and their financing.
- Has the right to suspend transactions if they are suspicious, and is obliged to suspend such financial transactions in case of suspicion that they contain signs of committing a criminal offense defined by the Criminal Code of Ukraine.

The Regulation outlines similar clear procedures for banks to suspend transactions and freeze assets.

The total period of financial transaction suspension may be up to 30 days. If during this period of time the law enforcement authorities do not start pre-trial investigation and do not seize the assets as part of criminal proceedings, then, according to Part 10 of Article 23 of the Law, the bank resumes financial transactions.

Therefore, if the representatives of the organization are unwilling to update the necessary information, the bank has the right to suspend the transaction, i.e., to block the account for a long period of time.

The problem is that the Regulation is quite broad and leaves a lot of room for abuse and manipulation by banks. After all, despite the fact that a significant part of the requirements for non-profit organizations are enshrined at the level of laws and by-laws, the Regulation clearly defines the right of banks to determine at their discretion what to request from the NGO if they lack something to identify a legal entity or verify a certain transaction and start a protracted in-depth verification.

In practice, legal requirements without an exhaustive list of documents or information required for financial due diligence lead to abuse by financial institutions.

Although this applies not only to NGOs but to all legal entities, the difficulty arises specifically for representatives of the non-profit sector. Since Annex 7 of the Regulation requires that the audit of non-profit organizations should focus on the founders.

However, as noted earlier, in the case of NGOs, the duties of founders cease after the registration of the organization. After the registration, they have no influence over the organization's activities unless they hold specific positions within its governing bodies. The status of the founder itself does not affect the activity of the NGO in any way.

The above suggests the need to amend the Regulation removing the rules concerning the necessity to check the founders of non-profit organizations. This rule in the Regulation should be replaced by the verification of members of the NGO governing bodies.

Another problem affecting the grounds for financial monitoring by banks is that non-profit organizations in Ukraine are recognized by the National Risk Assessment 2019 (which is compiled by the State Financial Monitoring Service) as posing a high risk of being used for money laundering and terrorist financing. Therefore, NGOs are subject to annual inspections.

Approaches to risk assessment of non-profit organizations are not quite clear. For example, an organization is considered automatically risky if it cooperates with international donors. Obviously, the vast majority of NGOs that are active in the field of human rights or humanitarian aid in times of war fall under this criterion.

Now, in order to conduct the next round of the National Risk Assessment, which was scheduled for 2022, taking into account the requirements of the updated FATF recommendations, the State Financial Monitoring Service of Ukraine analyzed the global experience of conducting National Risk Assessments of money laundering, terrorism financing and financing of proliferation of weapons of mass destruction, updated the Methodology of the National Risk Assessment of Money Laundering and Terrorism Financing in Ukraine.

The updated Methodology was coordinated with the Ministry of Finance of Ukraine in accordance with the procedure established by the legislation and approved at the 12th meeting of the Council on the prevention and counteraction to legalization (laundering) of proceeds of crime, financing of terrorism and financing of proliferation of weapons of mass destruction[35] (hereinafter referred to as the Methodology) on November 30, 2021.

The updates to the Methodology concern, in particular, the improvement of the mechanism for assessing the risks of using non-profit organizations and various organizational and legal forms of legal entities for the purpose of money laundering and terrorist financing.

It is specifies that the risk assessment of non-profit organizations is carried out jointly with the State Fiscal Service of Ukraine, the Security Service of Ukraine, and the Office of the Prosecutor General. At the initial stage of assessing the risks of money laundering or terrorist financing involving NPOs, it is necessary to analyze the NPO sector of the country in accordance with the register of NPOs and identify those types of NPOs that are vulnerable to use for ML/FT crimes.

Risk factors for the NPO sector may include:

1. Funding sources:

- International: State-owned and private foundations, significant amounts of funds from individuals, foreign public figures (PEPs), corporations;
- National: National PEPs, individuals, anonymous sources, corporations;
- Donors without clear humanitarian objectives;
- Foreign donors with complex global logistical networks; · Donors with a religious or ideological focus;
- NPOs operating in areas with active terrorist threats;
- NPOs that are largely controlled by PEPs

35 https://fiu.gov.ua/assets/userfiles/310/%D0%9D%D0%9E%D0%A0/%D0%94%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/metodyka2021.pdf

2. Industry risk:

- • Healthcare;
- Humanitarian aid;
- Social service;
- Education;
- Housing;
- Sports and recreation;
- Representation of interests;
- Religion;
- Gender, human rights and governance, fight against corruption;
- Education;
- Sanitation.

3. Geographic risk:

- Donors from jurisdictions with weak AML/CFT management and control for NPOs;
- Donors in jurisdictions where there is significant financial and ideological support for terrorists;
- Suppliers of materials to NPOs from high-risk jurisdictions or jurisdiction prone to criminal activity, such as drug trafficking, official corruption, smuggling, etc.;
- Supplier owned by PEP;
- Supplier on the list of countries engaged in terrorism;
- NPOs from countries subject to embargoes, sanctions, etc.;
- NPOs from countries that do not or do not adequately implement the AML/CFT recommendations of international organizations;
- NPOs operating in areas with active terrorist activity;

4. Product/service risk:

- Use of travel vouchers;
- Use of cooperative and community groups;
- Direct electronic transfer to beneficiaries;
- Transfer through a bank account.

The review of the non-profit sector, which is regularly conducted by the FIU, plays an important role in the Methodology's risk assessment of NPOs.

For a comprehensive and accurate assessment of the ML/FT risks involving NPOs, it is important to assess risk factors that will help determine a weighted risk level by listing each component and assigning a rating or score that will establish the overall risk of the NPO sector.

For example, a risk factor such as the small number of NPOs in the sector that has systems and procedures in place to verify the legitimacy of their clients, their UBOs, close and associated persons is categorized as high risk, which is defined as vulnerability with a score of 7-9 on a scale of 1 to 9.

Also, an organization is considered automatically risky if it cooperates with international donors.

However, in order to properly assess the existing balance between the level of risks in the activities of NGOs on the one hand and the effectiveness of the bank financial monitoring on the other hand, we have to conduct an appropriate study. First of all, the below question should be answered: How effective bank checks are in terms of detecting/preventing money laundering or terrorist financing? How many criminal cases have been brought against NGOs and what have been their outcomes?

Thus, if an NGO works in the field of human rights protection or provides humanitarian assistance to the AFU and, as an example, has USAID as an international donor and at the same time notified the state registrar of the absence of UBOs, it is automatically classified as an organization with a high risk of money laundering or terrorist financing and falls under the annual financial monitoring resulting in negative consequences.

Therefore, at this stage, unfortunately, NGOs have to prove to the state that they do not pose any risks. And this hinders the effective activity of NPOs, especially now, when the civic sector is actively helping Ukraine to defeat the Russian aggressor.

Although there have been no reported cases of financial monitoring of NGOs being used as a means of pressure due to their human rights activities, the current legislation does not preclude the possibility of such actions in the future.

Therefore, the Methodology should be changed and the Law and Regulations should be amended in order to liberalize them in relation to the civic sector.

2.5. **Restriction of Card-To-Card Transfers**

Despite the large number of regulatory restrictions on volunteers and benefactors, the work of law enforcement agencies to investigate abuse and fraud among unscrupulous individuals is insufficient.

Therefore, the NBU has started public discussions on setting limits on the number and amounts of card-to-card money transfers.

Thus, on July 4, 2023, a meeting of the Verkhovna Rada Committee on Finance, Tax and Customs Policy was held, at which the Chair of the NBU of Ukraine confirmed the steady intentions of the NBU to set limits for card-to-card transfers.

The need to introduce such limits is associated with a large number of fraudulent activities, in particular shadow payments as part of miscoding, when the real purpose of payment is substituted with a fake one.

While supporting the NBU's attempts to minimize the unlawful actions of fraudsters and unshadow the income of individuals, such restrictions may have certain risks for the volunteer community.

In more than two years of full-scale war, the volunteer movement in Ukraine has reached a new level and has become the most common source of meeting the immediate needs of both civilians and the military.

Fund raising through the so-called 'jar' accounts is an effective and convenient source of funds for volunteers to purchase vital vehicles, drones, ammunition, military equipment and the like for the military during the war. In addition, such fundraisers are often organized by the relatives of military personnel.

Citizens are ready to donate ‘a cup of coffee’ or even more every day. Many are ready to forgo birthday or holiday gifts in favor of donations for the defenders.

Setting limits on the number and amounts of transfers could become an obstacle in the functioning of well-oiled and fast algorithms of charitable fundraisers, including small ones, for the AFU, as well as for civilians affected by the actions of the Russian Federation and the like.

On August 27, the National Bank of Ukraine (hereinafter referred to as the NBU) adopted the Resolution of the Board of the National Bank of Ukraine dated August 27, 2024 № 102 “On Amendments to the Resolution of the Board of the National Bank of Ukraine dated February 24, 2022 № 18”[36] (hereinafter referred to as the Resolution).

Restrictions apply to natural persons regarding card-to-card transfers. The limit of such transfers is UAH 150,000 per month (note: the limit of UAH 100,000 and no more than 30 times a month had been previously discussed).

The limits apply to outgoing transfers from all accounts of a person opened with the same bank to the accounts of other individuals. These limits are temporary and will be in effect from October 1, 2024 to March 31, 2025.

In drafting the regulation, the NBU held several discussions with the volunteer community to minimize the restrictions on their activities.

Therefore, the limits will not be applied, in particular, to the accounts of volunteers that meet the criteria defined by the Resolution (when replenishing accounts and transferring money from them).

The final decision on the non-application of the limit will be made by the payment service provider (bank) on the basis of the resolution, which entered into force on August 28, 2024, and its own internal documents to be developed for its implementation.

Thus, the provisions of the regulation provide the payment service provider with the right (opportunity) not to apply restrictions if the activity of the person-customer is identified by it as volunteer activity.

36 https://bank.gov.ua/ua/legislation/Resolution_27082024_102

Such identification is possible if at least two of the following criteria are met:

1) The natural person-user is officially registered as a volunteer
2) Volunteer fundraisers are a typical activity on the accounts of the natural person-user in the provision of payment services
3) The natural person-user has submitted a letter from a government agency/military unit/charitable foundation on cooperation in organizing fundraising
4) The natural person-user has provided information about the planned amounts and timing of fundraising, indicating the purpose of such fundraiser and the further use of the raised funds
5) Information from open sources, social media and the Internet by comparing it with other information available to the payment service provider, confirming the user's volunteer activities and the purpose of the fundraiser as part of volunteer activities.

However, it is worth noting that the main leverage for setting such a restriction is given to the banks (payment service providers). After all, according to the NBU resolution, the NBU has given them the authority to assess the appropriateness (correctness) of certain documents, photos, screenshots from social media, etc. as valid evidence for identifying a person as a volunteer, thereby allowing them to avoid restrictions on their accounts.

Therefore, the bank may establish its own procedure for submitting "proof of volunteering": online, in paper form, by letter or in person, as well as procedures for comparing and matching information, etc.

In addition, the regulation has given payment service providers the right to take into account any negative information about the business reputation, as well as unscrupulous volunteer activities of an individual user regarding the reality and transparency of volunteer fundraisers or the discrepancy between the stated purpose of fundraising and the actual expenditures of the raised funds.

Availability of any negative information, including information from open sources, regarding unscrupulous volunteer activities of an individual user may serve as the basis for refusal to carry out further transfers in the amount exceeding UAH 150,000.

These provisions may be interpreted in different ways and the decision to apply the restriction will depend on the bank, and more precisely on the employee who will identify the individual as a volunteer.

For example, the situation when the fundraiser was organized for the purchase of a car for the military, its cost turned out to be less than the amount raised and the rest of the funds was spent by the volunteer on the purchase of drones or ammunition can be assessed negatively. The stated purpose of the fundraiser – raising funds for a car – did not align with the actual expenses incurred. However, de facto it is not a sign of bad faith on the part of the volunteer.

This may lead to various misunderstandings and conflicts, as the lack of clear criteria could result in bank employees applying transfer restrictions based on their subjective assessments. These restrictions might be imposed due to the information submitted identifying the individual as a volunteer being assessed as inappropriate or because of availability of any negative information associated with the volunteer. Therefore, in the future we may face a wave of complaints to the NBU about the banks' decisions. However, the advantages and disadvantages of these changes can be analyzed later.

Section III.
THREATS TO LOBBYING AND INTERNATIONAL COOPERATION

3.1. New Law of Ukraine "On Good Lobbying"

On February 23, 2024, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Good Lobbying".[37]

It aims to legalize the lobbying market in Ukraine and is part of Ukraine's EU accession commitments.

This Law was repeatedly criticized at the drafting stage. However, despite numerous remarks and comments, it still does not meet international lobbying standards and involves risks of public pressure.

Recommendations of the Parliamentary Assembly of the Council of Europe 1908 (2010) dated April 26, 2010[38] highlight the main principles (requirements) of lobbying: this activity should be professional and paid for, as well as separate from the activities of civil society organizations (clause 11.1).

With this document, the European community required the state to define, at the level of law, a clear framework for lobbying, in particular:

- Remunerability (commerciality) of lobbying activities
- Separation from the activities of NGOs.

However, these requirements are not reflected in the Law.

Article 1 of the Law defines lobbying as "an activity carried out with the aim of influencing (attempting to influence) the object of lobbying in the commercial interests of the beneficiary (for remuneration received directly or indirectly and/or with payment of actual necessary expenses) or in the commercial interests of a person and which concerns the object of lobbying".

The wording of this concept emphasizes the commerciality of the beneficiary's interests and describes the lobbyist's remuneration rather ambiguously: "and/or with the payment of the actual costs" of lobbying. Therefore, the beneficiary may cover the actual expenses

37 https://zakon.rada.gov.ua/laws/show/3606-IX#Text
38 https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17832&lang=en

of the hired lobbyist (travel, meals and paper for analytical materials), but the efforts of such a specialist to develop a strategy to promote interests, organize meetings with the objects of lobbying, etc. may be absolutely free of charge.

Article 4 of the Law, which established an exhaustive list of lobbying principles (legality, transparency, accountability, responsibility, professionalism and ethics), does not contain the principle of "remuneration" for lobbying as the main requirement for such activities.

The possibility of providing lobbying services free of charge is also confirmed in clause six of part five of Article 9 of the Law, where the price is considered an essential condition of a lobbying contract only if it is remunerative.

Obviously, the optionality of the requirement to pay for such services in the Law not only contradicts international standards, but also begs the question: is it thus possible to avoid the formation of "shadow" commercial ties between the "actors" of the lobbying process and to ensure its transparency and integrity?

In addition, the presence of such vague rules in the Law contradicts the principle of legal certainty, which requires clarity and unambiguity of legal norms, in particular, their predictability (foreseeability) and stability in accordance with the Law of Ukraine "On Legislative Activity".

The lawmakers tried to form directions in Article 3 that would not be considered lobbying. In particular:

1. "activities of public associations, other non-profit enterprises, institutions and organizations aimed at influencing (attempting to influence) subjects of power (state authorities, other state bodies, local self-government bodies, legal entities of public law vested with authority, their officials) for the purpose of decision making or refraining from decision making by such entities within their authority, except when such activity concerns commercial interests;

2. personal (on own behalf) representation by an individual or legal entity of his/her interests in relations with state authorities, other state bodies, local self-government bodies, their officials, except when such representation is carried out by a subject of lobbying and/or is carried out in the commercial interests of such a person".

The wording of these provisions does not take into account the situation when public associations engage experts who, while performing the technical task of analyzing a regulatory legal act, express not only their own position, but also the position of the employer (NGO). Will the expert have a commercial interest? Yes, because the expert gets salary from the NGO for the work performed. However, this interest is formal and is not related to lobbying processes. Are we talking here about the commercial interest of a public association that has engaged an expert to perform the tasks stipulated in the organization's AoA? No, since the NGO does not make profit.

It is worth noting that the lobbying methods proposed by the Law (Article 7) are broad and intertwined with the activities carried out by the vast majority of NGOs.

Thus, according to this Law, lobbying methods cover:

- Any direct or indirect communication with the object of lobbying on issues related to the subject of lobbying
- Preparation and dissemination of advertisements, proposals, program and position papers, analytical materials, results of sociological and other studies on issues related to the subject of lobbying, in particular through the media or the Internet
- Participation in events on issues related to the subject of lobbying in order to influence (attempt to influence) the object of lobbying
- Inviting the object of lobbying to participate in meetings, conferences or events, etc.
- Organizing public events, awareness raising campaigns and other activities not prohibited by law related to the subject of lobbying
- Other methods, not prohibited by the Constitution and laws of Ukraine, which consist in exerting influence (attempted influence) on the object of lobbying as to the subject of lobbying.

NGOs, independent experts engaged by them, who criticize or propose to improve legislation in a certain way (including based on the results of studies, surveys, analytics, etc.) may find themselves in the field of legal regulation of lobbying processes. Consequently, they, as lobbying subjects, are obliged to register in a separate Register of Transparency, file additional reports on their activities, etc. After all, the so-called lobbying by a person who has not received the status of

a lobbying subject gives grounds for the NACP to take measures to hold such persons liable (part five of Article 18).

This may have risks for the functioning of public associations, which directly or indirectly will be infringed in their right to freedom of thought and expression in the implementation of activities defined by the AoA of the organization.

The European Community, anticipating the possibility of the existence of such pressure, noted the limits of the legal field of lobbying in the Recommendations of the Committee of Ministers of the Council of Europe CM/Rec(2017)2 of March 22, 2017[39].

Principle 4 provides that the legal regulation of lobbying activities should not, in any form or manner, infringe on the democratic right of individuals to freedom of expression, political activity and participation in public life.

Otherwise, people may refrain from exercising their democratic right to express their opinions and participate in the political activities of the state for fear of it being prohibited and penalized by legislation.

Thus, the lack of clear legislative protection of the right to freedom of expression may become a threat not only to civil society's participation in the life of the state, but also generally undermine the foundations of democracy in the country.

After all, the lack of legal certainty in the norms of this Law creates opportunities for Government pressure on those public associations that express criticism of legislative initiatives. In the mode of "manual" management, the public voice will be stifled by possible sanctions for unscrupulous lobbying.

Realizing the importance of introducing legislative lobbying tools to accelerate Ukraine's accession to the EU, it should be stated that the Law does not meet international standards in the field of lobbying. Accordingly, it may become a tool for potential pressure on the civic sector and human rights violations.

39 https://rm.coe.int/legal-regulation-of-lobbying-activities/168073ed69

Currently, the Law has been signed by the President of Ukraine, but it will enter into force only two months after the the Transparency Register from the NACP starts functioning, but no later than on January 1, 2025.

3.2. Draft Law on Special Missions and Criminal Liability for Actions Undertaken Outside the Authorized Scope

In March 2024, two interrelated draft laws were registered in Parliament: "On Special Missions" (reg. №11103 dd. 03/20/2024) (hereinafter referred to as draft law 11103) and "On Amendments to the Criminal Code of Ukraine on Establishing Liability for Misappropriation of State Functions" (reg. №11104 dd. 03/20/2024) (hereinafter referred to as draft law 11104).

Draft Law 11103 envisaged legal regulation of foreign relations – through the functioning of special missions of Ukraine that represent Ukraine abroad.

At first glance, it may seem that the draft law did not contain any risks and was aimed solely at establishing a special procedure for the formation of groups of representatives of various state bodies and branches of power and coordination of joint actions to establish external relations with international partners.

However, based on the norms of the Convention on Special Missions of 1969[40], , the authors of the draft laws decided to introduce a monopoly on establishing relations with foreign organizations and states by introducing criminal liability for activities outside the special mission.

According to the Convention, special or ad hoc missions are temporary representations of the state which are sent by one state to another with the consent of the latter to deal with special matters or to perform a special task.

The main function of the special mission is the representation of the state or a kind of projection of a part of the international legal personality of the state. That is, the activities of the special mission

40 https://zakon.rada.gov.ua/laws/show/995_092#Text

may give rise to rights, duties and responsibilities for Ukraine as a state subject to international law.

According to this international instrument, special missions meet three main criteria:

1) Representative
2) Temporary
3) Specifically targeted

According to Article 2 of Draft Law 11103, special missions may be established by decision of the Chair of the Verkhovna Rada of Ukraine, the President or the Prime Minister of Ukraine for certain purposes.

The Convention does not impose restrictions on the functions and fields (spheres) in which a special mission may operate. The main condition is mutual agreement between the sending state and the receiving state (Article 3 of the Convention).

At the same time, the authors of the draft laws proposed that a fairly broad list of functions in which special missions could operate should be enshrined in law.

These functions have both a special nature peculiar to the state only (preparation for the conclusion of international treaties, identification of threats and challenges to Ukraine's national interests) and a general one, which may be carried out by Ukrainian citizens alone or through NGOs (dissemination of information about Ukraine, promotion of scientific and technical cooperation) (article 2 of draft law 11103).

However, despite the special status of special missions in the context of acquiring rights and obligations for the state, the authors of the draft law proposed to introduce criminal liability for any contacts with the representatives of foreign states and international organizations carried out by citizens of Ukraine outside special missions.

The dispositions of Article 13 of Draft Law 1110^3 and Article 1113 of the Criminal Code of Ukraine under Draft Law 11104 are set forth in such a way that due to the absence of a clarifying note to the article of the Criminal Code, any communication, correspondence, other contacts with foreigners, governmental bodies of other countries, international organizations, except for cases related to compensation of harm to the citizen (or even without such harm) is punishable for a citizen of Ukraine.

The lack of correlation between these norms, clarity and comprehensibility of these norms do not comply with the principle of legal certainty.

For example, Article 13 of Draft Law 11103 provided that a **citizen of Ukraine, wherever he or she may be, who, without authorization by the subject of establishment of a special mission of Ukraine, directly or indirectly, initiates or maintains any correspondence or communication with any foreign government or any official or agent thereof with the intent to influence the measures or conduct of any foreign government or any official or agent thereof with respect to any dispute or controversy of Ukraine or to cancel the measures of Ukraine, shall be liable as provided for by law.**

The only exception is if a citizen of Ukraine or their representative contacts any foreign government or its agents to seek redress for any damage he/she may have sustained from such government or any of its agents or entities.

Actions of citizens outside the special mission will be considered misappropriation of state functions. In particular, it is proposed to recognize such actions as representing Ukraine at international events, before authorized persons or agents of foreign states, as well as representatives of international organizations, including by means of correspondence, telephone conversations, telegraphic and other correspondence, and other forms of communication, without authorization and approval in the manner prescribed by law (new Article 111^3 of the Criminal Code of Ukraine under Draft Law 11104).

In addition, such activities will be considered a **particularly serious crime**, as it provides for a penalty of imprisonment for a term of ten to twelve years with deprivation of the right to hold certain positions or engage in certain activities for a term of ten to fifteen years and with or without confiscation of property. Under martial law, such activities will be punishable by imprisonment for a term of fifteen years or life imprisonment, with confiscation of property.

Taking into account the fact that in the context of armed aggression a significant part of our citizens are on the territory of other states, contacts between the citizens and representatives of the authorities of the host countries or representatives of international organizations are inevitable.

Due to the lack of opportunity to return home due to the war, many expats have decided to stay in the host countries: building careers, putting their children in educational institutions, etc. With such norms in place and with a legal connection to Ukraine in the form of citizenship, Ukrainians would not have the opportunity to fulfill their potential (integrate in the community) abroad due to the prohibitions (threat of criminal liability) proposed by these draft laws.

Due to such norms, Ukrainian citizens could potentially be restricted in asserting their rights, as this could be considered as an activity outside a special mission formed by the President, the Speaker of Parliament or the Government.

In particular, citizens would be subject to infringement of:

- The rights to freedom of speech, to address and access to information
- The right to freedom of movement (any visa contacts will be banned)
- The right to emigrate (registration of documents for permanent residence abroad, the issue of the special status of Ukrainians abroad)
- The right to education (enrollment in educational institutions of other countries for both children and adults)
- The right to health care and medical care
- The right to work (including correspondence with employment authorities in other countries, procedures for starting a business, etc.)
- The right to freedom of association.

Special attention should be paid to the risks of violation of the right of Ukrainians to freedom of association.

The right to freedom of association is guaranteed by Article 22 of the International Covenant on Civil and Political Rights[41] and Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms[42] and Article 36 of the Constitution of Ukraine.[43]

41 https://zakon.rada.gov.ua/laws/show/995_043#Text
42 https://zakon.rada.gov.ua/laws/show/995_004#Text
43 https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text

In the conditions of the open military aggression of the Russian Federation against Ukraine, the activity of NGOs, charitable foundations significantly strengthened the ability of the state to meet the basic needs of citizens who found themselves in extremely difficult conditions. During the critical period for the country, Ukrainians in Ukraine and abroad managed to establish channels of supply of necessary resources for the population affected by the attacks of the Russian army.

Reality still forces Ukrainians to join forces to help the military and civilians under martial law, to create public associations, charitable foundations, etc.

Now public associations can independently establish connections with public associations abroad, work with the world giants – international structures of the UN, governments of Europe and America – for a sole purpose of ensuring and protecting human rights (as part of statutory activities).

However, under the proposed wording of the draft laws, any contacts with the representatives of foreign governments or international organizations, although not directly, could fall under the sanction of the proposed new Article 111^3 of the Criminal Code of Ukraine under Draft Law 11104.

Obviously, there is a significant difference between the representation of a state as a subject of international law and the representation of its own interests by a citizen or the interests of a particular category of citizens by an NGO. The key difference lies in the international legal personality of the state and the legal personality of a public association that acts under its AoA.

The legal nature of special missions in the sense of the Convention on Special Missions is the representation of the state and is not aimed at limiting the ability of persons to represent their own interests independently or through the mediation of an NGO.

When communicating, participating in international events, exhibitions and conferences, public associations do not have the main purpose of representing Ukraine as a state subject of international law, but are representatives of Ukraine in the context of origin (place of registration), region of activity and reflecting the interests of individuals or legal entities exclusively as part of their statutory activities.

Therefore, special missions should be differentiated from various kinds of non-governmental but official visits of NGOs, charitable organizations, trade union organizations, etc.

For example, participation of a separate agrarian organization in an international exhibition of agricultural machinery does not give rise to rights, duties and responsibilities for Ukraine as a state, but allows establishing friendly ties between agrarian organizations of different countries at the level of legal entities.

The visit of the Minister of Agrarian Policy and Food of Ukraine with the Minister of Agriculture and Rural Development of Poland to resolve issues related to the export of Ukrainian agricultural products and the situation on the Ukrainian-Polish border will be considered a special mission. In this case, the decisions taken within this mission will have consequences for Ukraine as a state as a whole.

Thus, the ban on any communication with international organizations or representatives of foreign states can be considered as interference in the activities of citizens and public associations created by them.

There is a risk that public associations will be indirectly subjected to pressure from the state if their activities are "inconvenient" for the authorities. Because of the threat of criminal liability directly for the leaders of these public associations or individual activists, volunteers, they will not be able to implement their activities.

It is worth noting that clause 77 of the Fundamental Principles on the Status of Non-Governmental Organizations in Europe of July 5, 2002 states that[44] governmental bodies may work with non-governmental organizations to achieve public policy goals, but should not try to take them over or force them to work under their control.

If draft laws 11103 and 11104 were adopted, we would face the risks of excessive state intervention in these processes, which would have a potential threat to the right to freedom of association in general.

Currently, under the pressure of a wide public outcry regarding the negative consequences, both draft laws 11103 and 11104 have been withdrawn.

44 https://zakon.rada.gov.ua/laws/show/994_209#Text

CONCLUSIONS

Based on the results of the screening of legislative initiatives and enacted legislation, the UHHRU team came to the following conclusions.

The changes to the legislation proposed by the state are not systemic in nature.

In an attempt to stop abuses by unscrupulous CSO actors, the state applies the methodology of "selective" influence on separate spheres of legal relations: by introducing criminal liability, or by changing the rules for importing humanitarian aid, or by restricting banking operations. At a time when the development of such changes requires a thorough and balanced approach that takes into account the complexity of the issue, which may affect not only the sphere of, for example, criminal law, but also the activities of activists and volunteers in general.

The logic of changes to the legislation is broken.

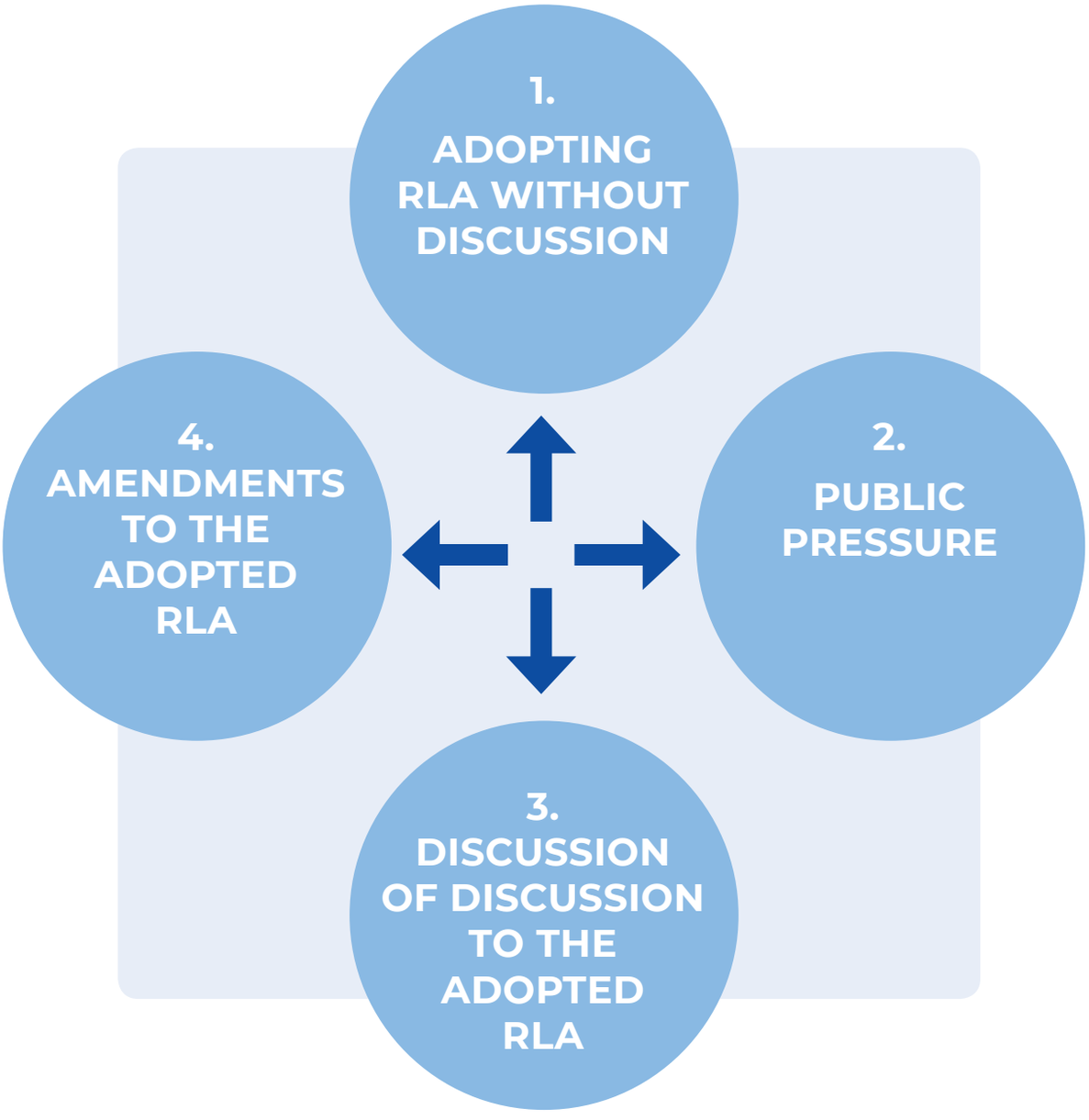
This conclusion serves as a continuation and confirmation of the previous one. After all, trying to quickly and selectively address the force majeure case, the Government makes prompt or even hasty decisions, which are not supported by the rule of law and have questionable effectiveness. As a consequence, laws are adopted on the basis of bylaws, not the other way around. A vivid example of this is the governmental changes regarding the rules for the import of humanitarian aid and further adoption of amendments to the Law of Ukraine "On Humanitarian Aid". The norms of the latter de facto reinforced what the CMU introduced (e.g., digitalization of the processes of import and distribution of humanitarian aid).

Lack of stable communication between government officials and CSOs.

Analysis of the processes of adoption of the above-mentioned regulatory legal acts showed the absence of communication processes between the authorities and CSOs at the stage of draft laws. RLAs are developed and adopted quickly, while discussion with the public takes place with limited or no CSO representatives.

Therefore, following the adoption and promulgation of such RLAs, public outrage and dissatisfaction are likely, especially from those whose work in the field is significantly hindered or rendered impossible by the new regulations. Faced with mounting pressure, the state is reaching out to the public and is finally ready to accept criticism. This leads to the development of new changes to an already adopted document.

And now we face a vicious circle: adoption of the RLA without any discussion – public pressure – discussion of amendments to the RLA – introduction of amendments to the adopted RLA.



Establishing public dialogues around RLAs during their drafting stage is essential for optimizing and reallocating resources, including human resources. The above will have a positive effect in the form of a well-tested and effective regulatory legal act, which will establish a system of humanitarian aid in Ukraine, rather than block the work of people who deliver aid.

Deficiencies in adopted legislation.

Changes in legal regulation should be supported by clear, understandable, stable and predictable future legal norms.

However, the RLA monitoring has shown that the adopted provisions of laws or bylaws, their drafts are often characterized by:

- Vagueness of wording, which leads to discretionary powers of certain bodies (amendments to the Criminal Code of Ukraine regarding criminal liability – for law enforcement bodies; norms of the Law of Ukraine «On Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction» – for banks, etc.)
- Detachment from the realities of martial law (amendments to the Tax Code of Ukraine regarding tax exemptions fail to take into account the need to urgently meet civilian and military needs)
- Excessive government interference in the activities of CSOs at all levels (restriction of freedom of speech through the Law of Ukraine “On Good Lobbying” due to the inability to criticize legislation; inability of CSOs to implement their statutory activities due to the prohibition of contact with international partners through the draft law “On Special Missions”; the need for additional reporting on activities (submission of information on UBOs, income and property of the NGO head)
- Frequent changes in norms (constant changes in the rules of the game force, in particular, volunteers to be attentive, flexible and patient. After all, in such a complex environment it is necessary not only to adapt to the “will” of lawmakers, but also to explain these changes to both donors and humanitarian aid beneficiaries)
- Indiscriminate nature (often the proposed regulations establish requirements that are difficult enough to fulfill, leading to the suspension of activities not only of unscrupulous persons, but also of those who perform their work in good faith).

Burden on law enforcement agencies and the judiciary.

Statistics of criminal proceedings and convictions under articles on abuse by volunteers in the field of humanitarian aid show both a heavy burden on investigative bodies and courts, and possible difficulties in the process of proving the case. Additionally, a significant factor influencing the investigation of crimes and the prosecution of offenders is that investigations are conducted under different qualifications. This inconsistency highlights the shortcomings of Article 201-2 of the Criminal Code of Ukraine and underscores the need for its revision.

Significant influence of activists, human rights defenders and volunteers

Despite state actions that exert pressure on CSO representatives, their voices carry significant weight and influence. Thanks to the proactive and persistent efforts of activists, human rights defenders and volunteers, a significant number of threatening/risky legislative initiatives have been rejected, while others have been revised and improved.

The vast majority of activists, volunteers, human rights defenders are doing their best performing their mission and help not only civilians and military, but also the state as a whole. Because it is CSOs that support the state in situations when it cannot cope with today's challenges.

Therefore, reinforcing organizations focused on activism, volunteering, and human rights as key institutions of civil society is essential for safeguarding the rights to freedom of speech and expression, as well as the right to freedom of association – fundamental elements of a democratic state.

Links:

[1] https://zakon.rada.gov.ua/laws/show/2155-20#Text
[2] https://zakon.rada.gov.ua/laws/show/2341-14#Text
[3] https://zmina.info/tag/tysk-na-volonteriv/
[4] https://zakon.rada.gov.ua/laws/show/174-2022-п#Text
[5] https://zakon.rada.gov.ua/laws/show/1192-14#Text
[6] https://zakon.rada.gov.ua/laws/show/5073-17#Text
[7] https://zakon.rada.gov.ua/laws/show/3395-IX#Text
[8] https://zakon.rada.gov.ua/laws/show/953-2023-п#Text
[9] https://zakon.rada.gov.ua/laws/show/3395-IX#Text
[10] https://zakon.rada.gov.ua/laws/show/1192-14#Text
[11] https://petition.kmu.gov.ua/petitions/5606
[12] https://www.pravda.com.ua/columns/2023/11/14/7428770/
[13] https://zakon.rada.gov.ua/laws/show/1216-2023-п#n250
[14] https://zakon.rada.gov.ua/laws/show/3448-IX#Text
[15] https://zakon.rada.gov.ua/laws/show/3354-20#Text
[16] https://zakon.rada.gov.ua/laws/show/2747-20#Text
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[24] https://docs.google.com/document/d/154d5XtXRny30_Lx_QAe1KA4ovVr32Wg9kzL1YUFDrpo/edit
[25] https://zakon.rada.gov.ua/laws/show/755-15#Text
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[37] https://rm.coe.int/legal-regulation-of-lobbying-activities/168073ed69
[38] https://zakon.rada.gov.ua/laws/show/995_092#Text
[39] https://zakon.rada.gov.ua/laws/show/995_043#Text
[40] https://zakon.rada.gov.ua/laws/show/995_004#Text
[41] https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text
[42] https://zakon.rada.gov.ua/laws/show/994_209#Text