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FUNDAMENTAL CHALLENGES OF STATE POLICY TO PROMOTE THE DEVELOPMENT OF CIVIL SOCIETY IN THE FRAMEWORK OF ENSURING CONSTITUTIONAL RIGHTS

The need to implement the Sustainable Development Strategy in Ukraine is due to internal and external factors, in particular, in connection with the adoption at the UN Summit on Sustainable Development 17 global Sustainable Development Goals for 2030 needs to be updated Sustainable Development Strategy «Ukraine – 2020» and summing up objective results of its implementation.

The strategy is designed for the end of 2020. That is, now is the time to assess how fully within 4 years the key tasks and priorities for the development of civil society institutions have been met [2, p. 5].

During 2016–2020, a characteristic trend of reforming the legislation on the establishment and functioning of civil society organizations is the inconsistency of some decisions in this area with the priorities of public policy.

Thus, against the background of the adoption of favorable for the institutional development of civil society regulations, public authorities tried to limit certain rights of civil society organizations and strengthen control over their activities.

The most resonant and negative for civil society was the process of introducing electronic declaration for civil activists. Even at the stage of project initiatives, the government's attempts to oblige members of civil society organizations to be subjects of e-declaration, to introduce a number of additional rules on the accountability of public associations provoked a rather sharp public reaction. In particular, in the Joint Statement of the Commissioner for Human Rights, the Ukrainian Helsinki Human Rights Union and the Kharkiv Human Rights Group on draft laws, the analysis of the International Center for Non-Commercial Law on the content of draft laws called the new requirements discriminatory [2, p. 6]. Critical statements about the bills were made public by the international human rights organizations Freedom House and Article 19. A number of Ukrainian NGOs also said they saw significant risks to the development of civil society if such bills were passed. However, on March 23, 2017, the Verkhovna Rada

amended Art. 3 of the Law «On Prevention of Corruption» and obliged to submit declarations of representatives of the Public Council of Integrity, formed in accordance with the Law «On the Judiciary and the Status of Judges», public councils, public control councils formed under state bodies and participating in the preparation of personnel decisions issues, preparation, monitoring, evaluation of anti-corruption programs. In the summer of 2018, two petitions were sent to the Constitutional Court of Ukraine by the Commissioner for Human Rights of the Verkhovna Rada of Ukraine Lyudmila Denisova and 65 deputies to declare unconstitutional the norms of the Law of Ukraine «On Prevention of Corruption» of October 14, 2014 representatives of public anti-corruption organizations to submit electronic declarations [8]. However, only on June 6, 2019, by its decision, the CCU declared unconstitutional the norms of the law «On Prevention of Corruption» on electronic declaration for public activists. Finally, the decision of the CCU is enshrined in the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine to Ensure the Effectiveness of the Institutional Mechanism for Preventing Corruption» of October 2, 2019, which excluded the obligation to submit declarations by public activists, individuals engaged in anti-corruption activities [3].

Project initiatives to regulate lobbying activities are ambiguous in terms of providing favorable conditions for advocacy by public organizations. Currently, four bills have been registered in the parliament: «On lobbying» (from 03.03.2020 № 3059-3) [6]; «On legal and transparent regulation of lobbying activities» (from 02.03.2020 № 3059-2) [7]; «On state registration of lobbying entities and lobbying in Ukraine» (from 11.02.2020 № 3059) [4]; «On Lobbying» (from 28.02.2020 № 3059-1) [5]. According to experts, the bills do not contain clear definitions that would distinguish, for example, the advocacy of human rights defenders and activists from forms of lobbying [1].

Thus, the draft Law «On Legal and Transparent Regulation of Lobbying» defines advocacy, according to which, advocacy is a non-profit activity on issues of public interest aimed at representing and/or protecting the rights, freedoms and legitimate interests individuals and legal entities in forms not prohibited by the legislation of Ukraine. It also regulates the list of forms of lobbying and activities that are not related to lobbying. In particular, according to the norms of the Bill, lobbying is not a form of direct participation of citizens in solving issues of local importance, other instruments of participatory democracy and public participation in decision-making by subjects of power at the state level; advocacy; participation in public consultations during the formation of state and regional policy and addressing issues of local importance, preparation of draft regulations and public policy documents; activities of public associations, charitable organizations or professional groups that have a statutory right to participate in the formulation of state policy and local self-government [2, p. 7].

The draft law «On Lobbying» also offers a definition of public advocacy. «Public advocacy (advocacy) – without signs of business or advocacy activities to protect the rights and freedoms, satisfaction of public, including economic, social, cultural, environmental and other interests guaranteed by the

Constitution of Ukraine.» According to the authors of the Bill, communication on the initiative of the subject of power with professional specialists on those issues that require appropriate consultations for the exercise of power by the relevant subjects is not lobbying; notifications of officials, media, messages contained in a report, article, publication or other materials openly distributed by the media – in the absence of signs of advertising or lobbying, notifications, etc. At the same time, the wording of the norm on the list of activities that are not lobbying contains a logical error of *circulus vitiosus*, as the condition «absence of signs of lobbying» is used to distinguish them. It is under this condition that public advocacy and activities regulated by citizens' associations will not be considered lobbying [2, p. 7].

Thus, the initiators of draft laws № 3059 and № 3059-1 extend their norms to the activities of public organizations engaged in the promotion of reforms, which creates opportunities for unjustified strict control over activism and discrediting the relevant civil society organizations.

The authors of Bills № 3059-2 and № 3059-3 propose not to extend the law to non-governmental organizations, but the rules on non-lobbying activities are vague and need to be revised.

These legislative initiatives create discriminatory conditions for public organizations, as the current Commercial Code of Ukraine does not provide any restrictions on candidates for the position of heads of state, municipal and state-owned enterprises: neither for representatives of business structures with foreign capital, nor for former civil servants in previous positions. carried out activities in the areas identified by the author of the Bill as a criterion for determining a public organization with foreign support [2, p. 6].

A positive result of the change in the legal environment for civil society organizations is also the settlement of the right of a public association with the status of a legal entity to conduct business and the Ministry of Finance of Ukraine to explain to the State Fiscal Service associations to the Register of non-profit institutions and organizations.

At the same time, during the period of the Strategy – 2020 implementation the following problems were not solved:

- 1) burdensome procedure of liquidation of public associations with the status of a legal entity;
- 2) lack of opportunity to carry out activities on the basis of the model charter;
- 3) insufficient regulation of protection of the name and symbols of public associations and international organizations;
- 4) imperfection of the legislation on the legal status, the order of creation, the organization of activity and the termination of bodies of self-organization of the population, and also their participation in the decision of questions of local value.

Analysis of the state of implementation of the Strategy's tasks in the direction of creating favorable conditions for the formation and institutional development of civil society organizations allows us to note that the most successful was the improvement of the registration of civil society

organizations. In particular, the terms and simplification of registration procedures were reduced, the Unified State Register of Legal Entities, Individuals – Entrepreneurs and Public Associations was created, and the service of submitting documents for state registration of civil organizations with the status of a legal entity was launched electronically.

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Ключові слова: конституційні права, державна політика, стратегія, фундаментальні виклики, методологічні принципи, дослідження, порівняльно-правовий метод.

Ключевые слова: конституционные права, государственная политика, стратегия, фундаментальные проблемы, методологические принципы, исследование, сравнительно-правовой метод.

Key words: constitutional rights, state policy, strategy, fundamental challenges, methodological principles, research, comparative legal method.