

FRAMEWORKS FOR THE LEGISLATIVE REGULATION OF CHARITIES AND THEIR TAXATION IN THE CONTEMPORARY WORLD

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Abstract. The article is devoted to a comparative study of the legal regulation of charitable organizations and their taxation in such countries as the United States, Russia, China, Brazil, Australia, the United Arab Emirates, Denmark and other countries. The article examines the legislation adopted both at the level of the national government and at the regional level. The problems of coordination of legislation at different levels in the sphere of charity regulation and related taxation, the constitutional basis for taxation of charitable organizations, and non-mandatory rules and recommendations as a substitute for legislation are in the focus of the present study.

Key words: legislative regulation of charity, taxation of charities, taxation of non-profits, national and regional legislation, non-mandatory norms, recommendations as substitute for legislation.

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I. Coordination between Levels of Regulation of Charities and Non-profits, Including Their Taxation and Fundraising

The growing importance in federal countries of federal statutes, regulations and court rulings in shaping the conduct of constituent entities and municipalities does not mean that all nations have become centralized. Even in unitary countries the central government cannot cope with regulation of all issues. For example, in China the most recent laws adopted at the all-national level are: the Law on Charities, whose official title is 中华人民共和国慈善法¹, which entered into force on the 1st of September of 2016, and the Law on the Management of the Activities of Overseas NGOs within Mainland China, whose official title is 中华人民共和国境外非政府组织境内活动管理法², which took effect on the 1st of January of 2017, while at the level of provinces and other territorial subdivisions with their

local government bodies its own regulation (of course, in consistency with laws and other acts adopted at the National level) of philanthropy and social activity is developing intensively. Thus, in province of Jiangsu its Interim Regulations on the Supervision and Management of Local Foundations adoption dated back to October 2007. In July 2009 the Ministry of Civil Affairs concluded with the local authorities of Shenzhen (the major city in the Guangdong province and a free economic zone) a cooperation agreement, according to which organizations registered in Shenzhen may work nationally. The Yunnan Province Interim Regulations Standardizing International Non-Governmental Organizations Activities was issued in December 2009. In November of 2011, the Guangdong Civil Affairs director announced that the province would be making it easier for several different categories of non-governmental organizations (social services organizations, charitable organizations, etc.) to register by doing away with the professional supervising agency requirement³. So, such local legal acts have had effect first of all in a field of regulation and support of philanthropic organizations, relating to their

¹ A bilingual (Chinese and English) text of the Law is available: URL: <http://www.chinadevelopmentbrief.cn/wp-content/uploads/2016/04/Charity-Law-CDB-Translation.pdf> (accessed: 20.01.2020).

² A bilingual (Chinese and English) text of the Law is available on: URL: <http://www.chinadevelopmentbrief.cn/wp-content/uploads/2016/05/Law-on-Management-of-Activities-of-Overseas-NGOs-CDB-Translation-.pdf> (accessed: 20.01.2020).

³ See more in: *Simon K.W.* The Regulation of Civil Society Organizations in China // *International Journal of Civil Society Law*. Vol. IX. 2011. Issue I.P. 55–84.

functioning and fundraising and touching upon the taxation issue partially and indirectly.

It is clear that in federal states constituent entities of the Federation have a broader scope of regulation than local governments. There are the division of subject matters and the separation of powers between the federal government and the governments of constituent entities: though the federal government is supreme in its spheres, the governments of constituent entities are supreme in theirs, and these two spheres should and could be kept separately although in a harmony. There are spheres that reserved for local governments both in federal and unitary countries. Meantime, in reality there are spheres, with which governments of all levels deal, and, therefore, powers of governments of all levels are concurrent, while sometimes competitive. In the latter case a hierarchy of regulative powers exists. The national government has certain supreme mandates. Most mandates concern, for example, human rights and environmental protection. For instance, constituent entities and municipalities may not discriminate in the operation of their programmes, no matter who pays for them. Initially the antidiscrimination rules applied chiefly to distinctions based upon sex, age race, and ethnicity, but of late they have been broadened to include physical disabilities. Various pollution-control laws require the sub-national units to comply with national standards regarding clean air, pure drinking water, and sewage treatment. In many cases the multilevel governmental system would work better if endless conflicts between national and sub-national governments over the hundreds of programmes for which they are jointly responsible were reduced by sorting out in a more rational manner the functions performed by governments of different levels. Institutionally in all countries coordinating bodies, permanent or periodically convoked, have been created. These bodies do their best to elaborate common policies in different fields, including non-governmental organizations activities regulation.

Thus, in Australia charities, in order to publicly raise money, are required to achieve registration under the State jurisdiction within which they intend to raise funds and must be registered in each and any State within which they intend to publicly raise funds. So, charities with the aim to raise funds in the remaining seven Australian States and Territories would need to register in each State or Territory individually⁴. And, of course, tax exemption status of charities depends upon their compliance with requirements set forth in federal and each State's legislation respectively. In the USA registration of an organization is produced at the level of a state and it is enough to be incorporated or to acquire status of formally recognized entity in other way with the authorities of one state and then it may work within

the whole territory of the USA and abroad; meanwhile, at the federal level and in each state, where such organization claims to have a tax exempted status it must meet requirements of federal or respective state tax legislation. For example, at the federal level the requirements for tax exemption are exposed in Section 501(c) of the Internal Revenue Code (IRC)⁵ of the USA. In states usually charities are registered as legal entities by a secretary of state and are licensed by an attorney general of a respective State. Each state has its own administrative structure, and in certain states a competence to oversee charities is entrusted to the State's attorney general, whose office may have a separate department (division or bureau) dealing with charities exclusively or house the charities oversight unit within the consumer protection division, while in 23 states the authority to regulate public fundraising campaigns by and on behalf of charities is shared by the attorney general and another state-level office, usually the office of the secretary of state, whose authority is conferred by state charitable solicitation statutes⁶. Laws of some states may exempt those or that charities from registration and submission of annual financial reports with competent state bodies. Such laws vary state to state. Usually exemptions are applied to religious organizations, educational institutions, and hospitals. Certain organizations may be exempt from registration for specific purposes but are required to register for others. For instance in the State of New York, registration is required for organizations, which hold charitable assets in this very State or solicit charitable contributions in it. Not all organizations fall into both categories: hospitals are only required to be registered in New York if they collect contributions (even if they hold charitable assets in the mentioned State), and educational institutions are required to be registered to gather contributions in New York unless they file annual reports with New York State's Department of Education. Even if a state may not require registration, this state attorney general's oversight authority takes place over the charitable assets the entity holds⁷.

In Brazil status and functioning of non-profit non-governmental organizations are regulated only at the federal level by the Brazilian Civil Code⁸. But powers to levy specific taxes, to establish rates of respective taxes and to give exemption benefits belong to the federal and to the state and the Federal District authorities (as well as to the local authorities). Within their powers bodies

⁵ In the present article the USA Internal Revenue Code is cited from: URL: <https://www.law.cornell.edu/uscode/text/26> (accessed: 18.01.2020).

⁶ See: State Regulation and Enforcement in the Charitable Sector. Washington, 2016. P. 5–7.

⁷ See: *ibid.* P. 18.

⁸ See: Código Civil Brasileiro e Legislação Correlata. 2a ed. Brasília, 2008. P. 151, 152 (artigos 53–61 – “Associações”), p. 152, 153 (artigos 62–69 – “Fundações”).

⁴ See: URL: <https://www.acnc.gov.au/for-charities/start-charity/before-you-start-charity> (accessed: 25.01.2020).

concerning the Establishment of the Zakat Fund¹², the 2008 Federal Law No. 2 concerning the National Societies and Associations of Public Welfare¹³), there are laws and regulations, approved in this or that emirate: for example, Decree No. 9 (2015) regulating Fundraising in the Emirate of Dubai¹⁴, Law No. 12 of 2017 regulating Civil Societies in the Emirate of Dubai¹⁵; Emiri Decree No. 1 (1989) concerning the Establishment of the Charity Works Associations in the Emirate of Sharjah¹⁶, Law No.4 (2011) concerning Waqf in the Emirate of Sharjah¹⁷; Law No. 999 (1981) of Municipality of the Emirate of Ras-Al-Khaimah¹⁸ (establishes the Committee of Public Benefit and assigns it the duty of regulating the collection of donations from the public for charitable purposes with public benefit), etc.

A Local Government almost everywhere within its taxation and budgetary powers issues regulations giving exemptions or other benefits or/and granting money to non-profits, including charities, for social projects or programmes. One of the examples has been given earlier in the present article, describing Chinese provincial regulations dealing with non-governmental organizations, including charities. The majority of local governments in the USA, for instance, are inter-acting with charities¹⁹, providing them support and/or giving certain incentives because of non-profits' assistance in resolution of social problems at the municipal level. And in general, practically everywhere (including Russia) many problems are settled at a grass-level while not-for-profit organizations are normally one of the important actors in such a problem solution, which foments issuance of certain local regulations in consistency with legislation based on constitutional and international principles.

¹² The text of the Law in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/3_UAE_FedLaw4_2003.pdf (accessed: 03.02.2020).

¹³ The text of the Law in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/AssoclawUAE.pdf (accessed: 03.02.2020).

¹⁴ The text of the Decree in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/9_UAE_Decree9_2015.pdf (accessed: 31.01.2020).

¹⁵ The text of the Law in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/Dubai%20Law%20No.%2012%20of%202017%20-%20English%20version.pdf (accessed: 31.01.2020).

¹⁶ The text of the Decree in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/16_UAE_Decree1_1989.pdf (accessed: 31.01.2020).

¹⁷ The text of the Law in Arabic language is available on: URL: <https://ec.shj.ae/upload/legislationContainer/114/4.%20أنش%20نقراشال%20فقرام%20إقرار%20قوله>.pdf (accessed: 31.01.2020).

¹⁸ The text of Law in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/17_UAE_Khaimah_1981.pdf (accessed: 31.01.2020).

¹⁹ For instance, information about charities in the city of New York is available on: www.newyorkcityextra.com/new-york-city-charities.html (accessed: 03.02.2020).

¹⁰ The text of the Budget Code of Russian Federation in Russian language is cited from: URL: http://www.consultant.ru/document/cons_doc_LAW_19702/ (accessed: 31.01.2020).

¹¹ The text of the Act in English language is available on: URL: www.icnl.org/research/library/files/United%20Arab%20Emirates/7_UAE_FedRes8_1974.pdf (accessed: 03.02.2020).

bodies. In Russia, for example, the Ministry of Economic Development also promotes best practices of non-commercial organizations and assists the exchange of non-commercial organizations experience²⁶, although it is not a regulator in the sphere of non-commercial organizations' activities in general, or charities' activities in particular. Non-governmental and quasi-non-governmental organizations play in Russia a very important role in disseminating best practices and educating leaders and militants of various non-commercial organizations at the regional and local levels. These are some examples of non-governmental organizations, working as resource centres at the regional and inter-regional levels: Siberian Centre for Civic Initiatives Support, Southern Russian Resource Centre, Moscow Charitable Reserve, Kostroma Centre for Civic Initiatives Support. Moscow Centre of Social Partnership serves as an example of resource centre, which began to function as a quasi-non-governmental organization (for five years since 1998 it worked as a joint project of the Moscow Government and the United Nations Development Programme, then for several years it worked as a non-commercial organization, among founders of which was the Moscow Government) and which later (in 2002)²⁷ was transformed into non-governmental organization.

In Russia there are federal and regional civic chambers, who are composed of representatives of the civil society, and who are organizing interaction between governmental bodies and non-governmental organizations and are monitoring and promoting the civil society development. The Federal Law on the Civic Chamber of Russian Federation was adopted in 2002²⁸, and the Civic Chamber began its activities in 2003.

In the UK four Compacts between the Government and civil society organizations (in England²⁹, Wales³⁰, Scotland³¹ and Northern Ireland³²) were concluded in 1998 (in 2010 it was renewed³³) to promote best practices and formalize to an extent cooperation between the

governmental bodies and the civil society (the Compact is not considered as a binding legal act, however, its application is being monitored and is evaluated annually). Later compacts at the local level were concluded³⁴, and in 2001 Local Compact Guidelines³⁵ were issued. Later the Guidelines were re-edited.

In Denmark the Danish Charter of Interaction (det Danske Interaktionspakt) was adopted by the Government³⁶ after intensive public consultations between the governmental bodies and civil society organizations, having been drafted under the aegis of the Ministry of Social Affairs and Ministry of Culture by a working group composed of representatives of five ministries and local governments and representatives of numerous non-governmental organizations.

Non-governmental organizations may borrow and use best practices of other non-governmental organization from abroad too, but not only within their country's frontiers. For example, so called telecottages³⁷, which actually serve as telecommunication, educational and resource centres for dwellers of remote settlements and are maintained by non-profit organizations, appeared in Sweden in 1985. But shortly telecottages were created in several other countries, and now non-governmental organizations of more than seventy five countries are involved in the telecottages' movement.

REFERENCES

1. Código Civil Brasileiro e Legislação Correlata. 2a ed. Brasília, 2008. P. 151, 152 (artigos 53–61 – “Associações”), p. 152, 153 (artigos 62–69 – “Fundações”).
2. Constituição da República Federativa do Brasil. Brasília, 2016. P. 93–108.
3. Constitution of the Russian Federation. M., 2018. P. 18 (in Russ.).
4. Constitution of the United States of America. Washington (DC), 2017. P. 14.
5. *Simon K.W.* The Regulation of Civil Society Organizations in China // *International Journal of Civil Society Law*. Vol. IX. 2011. Issue I.P. 55–84.

²⁶ See materials, including archives on: URL: <https://www.economy.gov.ru/minec/main> (accessed: 03.02.2020).

²⁷ See (in Russian language): URL: <https://pandia.ru/text/78/266/38891.php> (accessed: 01.02.2020).

²⁸ The text of the Federal Law in Russian language is available on: URL: www.consultant.ru/document/cons_doc_LAW_52651/ (accessed: 01.02.2020).

²⁹ See: URL: <https://www.homeoffice.gov.uk/acu/compact.pdf> (accessed: 01.02.2020).

³⁰ See: URL: <https://www.official-documents.co.uk/document/cm41/4107.htm> (accessed: 01.02.2020).

³¹ See: URL: <https://www.scotland.gov.uk/library/documents-w3/comp-00.htm> (accessed: 01.02.2020).

³² See: URL: <https://www.nicva.org/compact.htm> (retrieved 01.02.2020).

³³ See: URL: <https://www.gov.uk/government/news/government-and-voluntary-sector-agree-new-compact> (accessed: 01.09.2019).

³⁴ As an example see: Kent Partners Compact. An Agreement for Mutual Benefit between the Voluntary & Community Sector and the Public Sector in Kent (Final 15.01.09). Available on: URL: <https://www.dover.gov.uk/Community/Community-Groups/PDF/Kent-Partners-Compact.pdf> (accessed: 01.02.2020).

³⁵ See: URL: <https://www.ncvo-vol.org.uk/main/gateway/compact.html#4> (accessed: 01.02.2020).

³⁶ See (in Danish language): URL: <https://www.regeringen.dk/> (accessed: 01.02.2020).

³⁷ See: URL: <https://web.archive.org/web/19961104071334/http://www.eto.org.uk/faq/faqctvc.htm> (accessed: 01.02.2020).

6. State Regulation and Enforcement in the Charitable Sector. Washington, 2016. P. 5–7, 18.
7. The United Arab Emirates. Philantropy Law Report. Washington, 2018. P. 4.
8. *Vieira Martins D. da Gama Vital de Oliveira G.* Competição tributária ou guerra fiscal? Do plano internacional à Lei Complementar No. 160/2017 // Revista Estudos Institucionais. 5 Agosto, 2018.
9. 中华人民共和国宪法。北京，2018年，第21页。
10. تارام إلى أيبرعل اقدحتمل. يبظوبأ، ٢٠١٦، ءحفص ١٣–١٤. روتس

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