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UNIFICATION OF LEGAL APPROACHES TO THE REGULATION OF THE ACTIVITY OF CHARITABLE ORGANIZATIONS WITHIN THE EU FRAMEWORK

The article deals with problems of legal regulation of the activity of charitable organizations within the EU. Stated that current legal regime of the EU concerning non-profit organizations prevents charitable organizations from enjoying all the benefits of the common market. Analysis of the Treaty on the Functioning of the European Union showed defines companies as "companies created in accordance with civil or commercial law, including cooperative societies and other legal entities, whose activities are regulated by public or private law, except for non-profit-making organizations". Thus, the Treaty has left legal support for the activities of these organizations at the discretion of national legislations of the Member States. The author concluded that despite the absence of a comprehensive regulation of activities of charitable organizations at the EU level, it is impossible to talk about the general lack of legal regulation of activities of charitable organizations in the EU. Performed analysis indicates that some aspects of regulation of their activities are reflected in *acquis communautare* and have a tendency to fragmentation at the level of individual spheres of the EU policy.

Key words: charitable organizations, non-profit organizations, legal framework of EU, legal regulation, unification.

Problems that exist in unification of legal regulation of activity of charitable organizations within the EU framework arise from several factors. First, in some cases, for example in the field of direct taxation, the EU lacks the competence to harmonize national legislations. Second, in other areas in which the EU has such competence on harmonization, the right of companies in particular, the Union excluded non-profit-making organizations from the scope of its regulation. Thus, the current legal regime of the EU concerning non-profit organizations prevents charitable organizations from enjoying all the benefits of the common market.

This situation is due to the fact that since its establishment, the EU mainly followed the policy of noninterference in regulation of the activities of charitable organizations. Founding Treaties of the EU, starting from the Treaty of Rome in 1957[1] and ending with the last one – the Lisbon Treaty in 2007, exclude non-profit-making organizations from the EU`s domain of competence. Thus, Article 54 of the Treaty on the Functioning of the European Union (almost identical to the version of Article 48 of the Treaty establishing the European Community) defines companies as "companies created in accordance with civil or commercial law, including cooperative societies and other legal entities, whose activities are regulated by public or private law, except for *non-profit-making organizations*"[2]. Thus, the Treaties have left legal support for the activities of these organizations at the discretion of national legislations of the Member States.

However, one cannot speak of complete evening-out of regulation of the activity of charitable organizations in the EU. For example, in 1987 the European Parliament adopted a resolution on non-profit-making associations in the European Communities[3]. As noted by one of the speakers during the discussion, the focus of this initiative was the recognition by the Member States of associations located in other Member States. At the same time, the question of legal status of associations at the EU level became non-essential, but the question of legal status of "international" associations (with members outside the

1 Treaty establishing the European Economic Community (Rome, 25 March 1957). <http://www.cvce.eu/obj/treaty_establishing_the_european_economic_community_rome_25_march_1957-en-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html>.

2 Consolidated Version of the Treaty on the Functioning of the European Union. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>.

3 Resolution on non-profit-making associations in the European Communities (1987). Official Journal *C 99*, 205.

Community) had not been considered at all. There was also a warning that this initiative, having improved the situation of associations within the Community or the Member State, can lead to serious discrimination against associations outside the Community, as well as those who have offices within the EU[1].

Furthermore, the role of charitable organizations as actors in the field of the EU social policy has been recognized, although quite succinctly, in the Declaration No. 23 to the Treaty on the European Union in 1992[2]: "The Conference stresses the importance, in achieving the objectives of Article 117 of the Treaty establishing the European Community, of cooperation between it and charitable associations and foundations as institutions responsible for social welfare establishments and services".

Declaration No. 38 to the Amsterdam Treaty in 1997[3], also with reference to Article 117 of the Treaty establishing the European Community, has recognized the importance of volunteer services for the development of social solidarity. The declaration states that the Community "will promote the European dimension of public organizations, with particular emphasis on the exchange of information and experience, as well as the participation of young and older people in volunteer work".

In this context, we cannot fully agree with the opinion of the Irish researcher O. Breen that these declarations *have no legal basis in European law and thus do not provide a source of legal rights to such organizations*[4]. In our opinion, they allow us to have a clear understanding of the role of non-profit-making organizations in the EU law, in particular through the prism of Article 117 of the Treaty establishing the European Community in 1957, which sets out the basic principles underlying the EU social policy. Indeed, Article 117 has reflected conviction of the Member States that the further development of the EU social policy will be a success not only because of the functioning of the common market, which, in turn, will contribute to the harmonization of social systems, but also through the development of the procedures provided for in the Founding Treaty, and the convergence of legal provisions.

The role of charitable activities in the social dimension of the EU policy is also illustrated by the Opinion of the Economic and Social Committee on "Cooperation with Charitable Associations as Economic and Social Partners in the Field of Social Welfare[5]" dated December 10, 1997, which also marked the role of charity organizations the social dimension.

In particular, Paragraph 1.4.1 states that charitable associations may to some extent contribute to the creation of additional workplaces, even against the background of stagnation or slowly growing labor market. Financing, which charitable associations use, has a high level of value added since it focuses on those aspects of the problem, where social problems are most acute, and can be increased by the voluntary contributions from the public. In addition, the Opinion emphasized the practical dimension of introducing cooperation of the Commission with charitable organizations, including proposals to introduce a specific program of financial support under the title "Cooperation with Charitable Associations", and to develop a pilot project on cooperation with charitable associations (Paragraph 4.5). In such a way, at the sector level of social policy, the EU recognized the importance of the role and the necessity of certain harmonization of approaches to the regulation of the activities of charitable organizations.

A certain sectorial approach to the regulation of charitable organizations can be seen not only in the field of the EU social policy. In 1979, within the framework of the common agricultural policy, there was adopted the Commission Decision 79/946/EEC dated October 25, 1979, on the approval of food-aid operations carried out by a charitable organization and thereby exempting it from payment of monetary compensatory amounts[6]. Although this decision concerned solely France and granted permission for releasing these operations from the monetary compensatory amounts, but the decision defined a separate

1 Resolution on Non-Profit-Making Associations in the European Communities. <http://www.uia.org/archive/legal-status-4-12>.

2 Treaty on European Union (1992). *Official Journal C 191, 29 July 1992.* <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>.

3 Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts. <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>.

4 Breen, O.B. (2008). EU Regulation of Charitable Organizations: The Politics of Legally Enabling Civil Society. *The International Journal of Not-for-Profit Law, vol. 10, Issue 3.*

5 Opinion of the Economic and Social Committee on 'Cooperation with charitable associations as economic and social partners in the field of social welfare' (1998). *Official Journal C 73,* 92.

6 79/946/EEC: Commission Decision of 25 October 1979 approving food-aid operations carried out by a charitable organization and thereby exempting it from payment of monetary compensatory amounts (1979). *Official Journal L 288,* 39–39.

procedure for the activity of charitable organizations in the sphere of agriculture, in a particular segment of this sphere.

In 1987, there was also adopted a number of regulations[1] on free delivery of intervention stocks of processed cereals to charitable organizations.

In addition, we cannot speak of the absence of the EU-level attempts to harmonize legislation on the activities of charitable organizations. As noted by J. Smith, C. Rochester and R. Hedley[2], in the late 80-ies of XX century, the lawyers of the United Kingdom "broke out into a sweat" having heard the rumors that the Commission had proposed to "harmonize" national systems of legislation governing the activities of charitable organizations, associations, foundations and the like. In particular, there were concerns that the principle of subsidiarity as set out in the Treaty would lead to exports to the Member States of German regulatory system concerning the division of responsibilities between national and local authorities, as well as between the government and the nonprofit sector.

In the early 90s, the European Commission developed two initiatives designed to regulate the activity of the nonprofit sector organizations: proposal of the Council Regulation (EEC)[3] on the statute of the European Mutual Society and proposal of the Council Regulation (EEC) on the statute of the European Association[4]. The statute of the European Association stipulated its foundation as a nonprofit organization, and the statute of the European Mutual Society envisaged the creation of an organization whose activities were related to the fields of health, social security and insurance. In addition, for the effective implementation of these regulations, there had been developed proposals of the directives dealing with involvement of employees in the management of these companies[5].

However, in 1997, the EU officially confirmed its policy of non-interference in the sphere of non-profit-making organizations. In particular, the Commission's reply to a written question, "Does the Commission have any plans to introduce legislation on the criteria for assigning charitable status to organizations at the EU level?" submitted by Mr. Papoutsis on behalf of the European Commission, noted that "the Commission does not intend to promote the Community legislation on the establishment of a common European register of charitable organizations or the establishment of common approaches for the registration of these organizations in the Member States"[6].

In 2006, the Commission withdrew its proposals for the statutes of the European Mutual Society and

1 Council Regulation (EEC) No 230/87 of 26 January 1987 on the free supply of intervention stocks of processed cereals to charitable organizations (1987). *Official Journal L 25*, 2–2; Commission Regulation (EEC) No 734/87 of 13 March 1987 amending Regulation (EEC) No 392/87 laying down detailed rules for the application of Council Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organizations (1987). *Official Journal L 71*, 21–22.; Commission Regulation (EEC) No 392/87 of 9 February 1987 laying down detailed rules for the application of Council Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organizations (1987). *Official Journal L 40*, 5–8.; 3 Council Regulation (EEC) No 961/87 of 31 March 1987 amending Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organizations (1987). *Official Journal L 91*, 1–1.; 4 Commission Regulation (EEC) No 979/87 of 3 April 1987 amending Regulation (EEC) No 392/87 laying down detailed rules for the application of Council Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organizations (1987). *Official Journal L 92*, 14–14.; 5 Commission Regulation (EEC) No 1212/87 of 30 April 1987 amending Regulation (EEC) No 392/87 laying down detailed rules for the application of Council Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organizations (1987). *Official Journal L 115*, 32–32.

2 Smith, J.D., Rochester, C., Hedley, R. (1995). *An Introduction to the Voluntary Sector*. Psychology Press, 140.

3 Amended proposal for a COUNCIL REGULATION (EEC) on the Statute for a European mutual society /* COM/93/252FINAL – SYN 390 * (1993). *Official Journal C 236*, 40–56.

4 Amended proposal for a COUNCIL REGULATION (EEC) on the Statute for a European association/* COM/93/252FINAL – SYN 386 * (1993). *Official Journal C 236*, 1–13.

5 Amended proposal for a COUNCIL DIRECTIVE supplementing the Statute for a European association with regard to the involvement of employees /* COM/93/252FINAL – SYN 387 * (1993). Official Journal *C 236*, 14–16.; Amended proposal for a COUNCIL DIRECTIVE supplementing the Statute for a European mutual society with regard to the involvement of employees /* COM/93/252FINAL – SYN 391 * (1993). *Official Journal C 236*, 56–56.

6 Written Question E-2041/97 by Bill Miller (PSE) to the Commission (13 June 1997). *Official Journal C 045*, 0148.

the European Association, giving as a reason that "they do not meet the Lisbon criteria and the criteria of "better regulation", are unlikely to have a perspective in the legislative process or are recognized as no longer relevant due to objective reasons"[1]. Nevertheless, these arguments are pretentious and may be used to withdraw any act. As noted by some researchers, one of the real reasons that slowed down the process of adoption of these regulations was the mandatory provision of directives (which were offered together with the regulations) to attract employees to the management process[2].

Thus, the attempts to regulate the activity of charitable organizations at the level of the subsidiary EU legislation were not successful. More productive in this respect was the practice of the EU Court of Justice that was formed by cases that were reviewed according to the pre-judicial appeals of the Member States.

Decision in the case of "Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia"[3] has recognized the special status of charitable organizations. The EU Court, inter alia, decided that, in accordance with the EU legislation, any Member State in organizing its social security system might engage private operators as providers of social welfare services, upon condition that they are non-profit-making. Moreover, this condition shall not put a profitable company from other Member States in a less favorable factual or legal position in relation to non-profit-making companies founded in this state.

At the same time, in the case of "Ambulanter Pflegedienst Kügler GmbH v Finanzamt für Körperschaften I in Berlin"[4], the EU Court has confirmed the exclusive competence of the states on the recognition of charitable organizations. The case concerned the provisions of Article 13A(1)(g) of the Sixth Directive 77/388 on the exemption from taxation of goods and services that are closely related to the sphere of social protection, including those provided in nursing homes, provided by bodies whose activities are governed by public law or by other organizations recognized as charitable in the corresponding Member State.

The EU Court has given a ruling that a taxpayer may refer to the exceptions provided for in Article 13A(1)(g) of the Sixth Directive 77/388, in the national courts for appealing national rules that are inconsistent with this provision. However, only the national court may determine, in the view of all relevant factors, whether a taxpayer is an organization recognized as charitable in terms of the above rule. In a dissenting opinion regarding this decision, Advocate General A. Tizzano said that "one cannot exclude that 13A(1)(g) of the Sixth Directive has direct effect, even in the absence of proper legislation in the corresponding state, if the national court is able to determine, based on all credible evidence, that a taxpayer is an organization recognized as charitable"[5].

Almost the same question for pre-judicial judgment was brought up in the case "Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen"[6]. The subject of legal recourse concerned

1 Breen, O.B. (2008). EU Regulation of Charitable Organizations: The Politics of Legally Enabling Civil Society. *The International Journal of Not-for-Profit Law, vol. 10, Issue 3*.; Withdrawal of Commission proposals following screening for their general relevance, their impact on competitiveness and other aspects (2006). *Official Journal C 064*, 0003 – 0010.

2 Кібенко, О., Пендак Сарбах, А. (2006). *Право товариств (company law): порівняльно-правовий аналіз acquis ЄС та законодавства України*. Київ: Юстініан, 72.

3 Judgment of the Court of 17 June 1997. Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia. Reference for a preliminary ruling: Tribunale amminstrativo regionale per la Lombardia – Italy. Freedom of establishment – Freedom to provide services – Old people's homes – Non-profit-making. Case C-70/95. (1997). *European Court reports*, I-0339.

4 Judgment of the Court (Sixth Chamber) of 10 September 2002. Ambulanter Pflegedienst Kügler GmbH v Finanzamt für Körperschaften I in Berlin. Reference for a preliminary ruling: Bundesfinanzhof – Germany. Article 13(A)(1)(c) and (g) of the Sixth Directive (77/388/EEC) – Exemption of care provided by capital companies – Services closely linked to welfare and social security work supplied by organisations, not being bodies governed by public law, recognised as charitable by the Member State concerned – Direct effect. Case C-141/00 (2002). *European Court reports*, I-06833.

5 Opinion of Mr Advocate General Tizzano delivered on 27 September 2001. Ambulanter Pflegedienst Kügler GmbH v Finanzamt für Körperschaften I in Berlin. Reference for a preliminary ruling: Bundesfinanzhof – Germany. Article 13(A)(1)(c) and (g) of the Sixth Directive (77/388/EEC) – Exemption of care provided by capital companies – Services closely linked to welfare and social security work supplied by organisations, not being bodies governed by public law, recognised as charitable by the Member State concerned – Direct effect. Case C-141/00 (2002). *European Court reports*, I-06833.

6 Judgment of the Court (Fifth Chamber) of 6 November 2003. Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen. Reference for a preliminary ruling: Bundesfinanzhof – Germany. VAT – Article 13A(1)(b) and (c) of the Sixth Directive 77/388/EEC – Exemption – Psychotherapeutic treatment

13A(1)(b) and (c) on exemption from taxation of: (b) hospital and medical care and closely related activities undertaken by bodies whose activities are governed by public law, or under social conditions comparable to those that apply to the bodies, whose activities are regulated by public law, in hospitals, treatment or diagnostics centers and other duly recognized institutions of a similar type; (c) delivery of medical assistance in the course of medical and paramedical professional activities, as defined in the Member State concerned. A question was raised in the EU Court, whether psychotherapeutic treatment comes within the purview of these subparagraphs, provided on an outpatient basis in an institution, which is regulated by private law, qualified psychologists who are not doctors.

According to the EU Court, for the purposes of Article 13A(1)(b) of the Sixth Directive 77/388, recognition of an institution shall not necessarily include a procedure of the "official recognition", and shall not necessarily result from provisions of national tax legislation. If national rules on the recognition contain restrictions, which exceed the limits of the discretion of Member States under that provision, the national court, in the view of all the relevant facts, shall independently determine whether a taxpayer should be regarded as "a duly recognized institution".

In the case of "Kingscrest Associates Ltd and Montecello Ltd v Commissioners of Customs & Excise"[1], a question was raised in the EU Court concerning the meaning of the term "charitable organization". The national court applied to the EU Court with questions: 1) does the phrase "organization recognized as charitable in the Member State concerned" include private non-profit-making legal entities, and 2) do Member States have discretion to recognize a profit-making private legal entity, which does not have charitable status under the national legislation, as "charitable" within the meaning of Article 13A (1)(g) and (h) of the Sixth Directive.

The EU Court has given a ruling that the term "organization recognized as charitable in the Member State concerned" does not exclude private profit-making legal entities. In addition, the EU Court noted that the national courts shall have discretion to recognize a profit-making private legal entity that does not have charitable status under the national legislation as "charitable", for the purposes provided for in Article 13A(1)(g) and (h) of the Sixth Directive 77/388. However, such recognition should be based on the principles of equal treatment and financial neutrality, taking into account the essentials of provision of the relevant services and conditions of their acceptance.

Problematic issues related to the unsettledness of the transboundary activities of charitable organizations at the EU level are reflected in the case of "Centro di Musicologia Walter Stauffer v Finanzamt München für Körperschaften"[2].

The case concerned the question of taxation of a charitable foundation, which had received charitable status in accordance with Italian legislation and was the owner of commercial premises in Munich. Federal Finance Court of Germany appealed to the EU Court with the question whether the provisions of the EC Treaty on the right of establishment, freedom to provide services and/or free movement of capital prohibited the Member State, which exempted from income tax rental income received on its territory by charitable foundations founded in that Member State, to refuse granting the same exemption to a charitable foundation, which was governed by private law, on the grounds that it was founded in another Member State and had such exemption from taxation solely on its territory.

The EU Court has given a ruling that Article 73b of the EC Treaty, in conjunction with Article 73d of the EC Treaty shall be interpreted as prohibiting the Member State, which exempts from income tax rental

given in an out-patient facility provided by a foundation governed by private law (charitableestablishment) employing qualified psychologists who are not doctors – Direct effect. Case C-45/01 (2003). *European Court reports,* I-12911.

1 Judgment of the Court (Third Chamber) of 26 May 2005. Kingscrest Associates Ltd and Montecello Ltd v Commissioners of Customs & Excise. Reference for a preliminary ruling: VAT and Duties Tribunal, London – United Kingdom. Sixth VAT Directive – Article 13A(1)(g) and (h) – Exempt transactions – Supplies closely linked to welfare and social security work – Supplies closely linked to the protection of children and young persons – Supplies made by bodies other than those governed by public law and recognised as charitable by the Member State concerned – Private, profit-making entity – Meaning of «charitable». Case C-498/03 (2005). *European Court Reports,* I-04427.

2 Judgment of the Court (Grand Chamber) of 27 January 2009. Hein Persche v Finanzamt Lüdenscheid. Reference for a preliminary ruling: Bundesfinanzhof – Germany. Free movement of capital – Income tax – Deduction of gifts to bodies recognised as charitable – Deduction restricted to gifts to national bodies – Gifts in kind – Directive 77/799/EEC – Mutual assistance by the competent authorities of the Member States in the field of direct taxation. Case C-318/07 (2009). *European Court Reports,* I-00359.

income received in its territory by charitable foundations, to deny a charitable organization such exemption solely on the grounds that it was founded in another Member State.

The EU Court has also recognized similar prohibition on the taxation of gifts that have been made as a charitable donation to an organization founded in another Member State, in the case of "Hein Persche v Finanzamt Lüdenscheid"[1]. The EU Court was questioned whether a taxpayer could request the Member State to provide deduction for the purposes of taxation of the value of gifts made by institutions that were founded and recognized as charitable in another Member State, and whether such gifts were subject to the provisions of the EC Treaty on the free movement of capital, if they were made in kind in the form of everyday consumer goods.

The Court explicitly recognized that the effect of provisions of the Treaty should apply to such gifts, and noted that the provisions, which provided for exemption from taxation of gifts made solely by charitable institutions founded in that Member State, restricted the freedom of capital movements and, therefore, contradicted Article 56 of the EC Treaty.

In addition, in the view of this Article and Article 40 of the Treaty dated May 2, 1992 on the European Economic Area, the EU Court considered the claim of the European Commission on failure of Austria to comply with obligations under the provisions on free movement of capital. The Court has given a ruling that the legislative provisions in Austria, which create tax benefits for donations to research and educational institutions, upon condition that the beneficiary was founded on the national territory, contradict the EU law[1].

The Court stated that by introducing such provisions the Republic of Austria failed to fulfill its obligations under Article 56 of the EC Treaty and Article 40 of the Treaty on the European Economic Area. Moreover, this judgment automatically obliges Austria to change its national legislation, since, as the EU Court has explained in the decision of "Commission of the European Communities v Italian Republic", the supremacy and direct effect of the provisions of EU law impose the obligation on Member States to eliminate in their domestic legal order any rules incompatible with rights of communities"[2]. In other words, a Member State, after the EU Court`s statement of infringement by the State of the EU law, is obliged a fortiori to cancel any rules of domestic law incompatible with the EU law.

The EU Court has also clarified that in the case where the judgment indicates a mismatch between a certain provision of the domestic law of the Member State with the EU law, this means that the state authorities are obliged to take all necessary measures to change these provisions and bring domestic law in accordance with the requirements of the EU legislation, and judicial organs of the state must draw the appropriate conclusions from the decision of the EU Court[3].

In the pre-judicial judgment in the case of "Verein Radetzky-Orden v Bundesvereingigung Kameradschaft" Feldmarschall Radetzky"[4] concerning the interpretation of the First Directive 89/104/EEC dated December 21, 1988 on the approximation of the laws of the Member States relating to trademarks, the EU Court addressed the issue of the right of a charitable organization for registration of a trademark. The Court noted that the trademark registered by a non-profit-making association had *raison d'être*, because it protected the association against the possible use in business of identical or similar marks by third parties. The fact that a charitable association does not seek to make a profit does not mean that it cannot have the task of creation and further promotion of its goods or services. In particular, there are paid services of social security. In addition, in today's society, there have emerged various types of non-profit-making organizations, which, at first sight, offer their services for free, but which actually are funded through subsidies or receive payment in various forms.

1 Judgment of the Court (Fourth Chamber) of 16 June 2011. European Commission v Republic of Austria. Failure of a Member State to fulfil obligations – Free movement of capital – Deductibility of gifts to research and teaching institutions – Deductibility limited to gifts to institutions established in national territory. Case C-10/10 (2011). *Reports of Cases,* I-05389.

2 Commission of the European Communities v Italian Republic (National taxes contrary to Community law). (1988). *European Court reports*, 01799.

3 Фесенко, В.І. (2012). *Інституційно-правові засади судової системи Європейського Союзу*. Київ.

4 Judgment of the Court (Grand Chamber) of 9 December 2008. Verein Radetzky-Orden v Bundesvereingigung Kameradschaft «Feldmarschall Radetzky». – Reference for a preliminary ruling: Oberster Patent- und Markensenat – Austria. – Trade marks – Directive 89/104/EEC – Article 12 – Revocation – Marks registered by a non-profit-making association – Concept of 'genuine use' of a trade mark – Charitable activities. – Case C-442/07 (2008). *European Court Reports,* I-09223.

In the case of "Finanzamt Steglitz v Ines Zimmermann"[1], the EU Court has interpreted the provisions of German law "On General Sales Tax", which allow for exemption from taxation of transactions that are closely related to the work of organizations that provide assistance on an outpatient basis for those who are sick or in need of care, if during the previous calendar year for organizations that provide outpatient care for those who are sick or in need of care, medical and pharmaceutical costs were covered in at least two-thirds of cases, in whole or mainly, by social security or social care authorities.

If to interpret the provisions of Article 13A(1)(g) of the Sixth Council Directive 77/388/EEC in the view of the principle of financial neutrality, the condition for exemption from VAT for outpatient services provided by commercial agents cannot be the fact that the expenses associated with these services during the previous calendar year must have been fully or partially covered by the social welfare authorities or guardianship authorities in at least two thirds of the cases, since such a condition cannot ensure equal treatment with regard to recognition of the "charitable" nature of the organization, which is not an institution under public law.

Thus, despite the absence of a comprehensive regulation of activities of charitable organizations at the EU level, it is impossible to talk about the general lack of legal regulation of activities of charitable organizations in the EU. Performed analysis indicates that some aspects of regulation of their activities are reflected in *acquis communautare* and have a tendency to fragmentation at the level of individual spheres of the EU policy.

This fragmentation is explained by situational solution of problems in certain spheres, which creates a situation of "fragmented unification". In fact, we are talking about individual convergence criteria in the field of legal regulation of activities of charitable organizations that are most comprehensively represented in the social policy of the EU and certain aspects of exemption from taxation in the context of freedom of establishment and free movement of capital. At the same time, it creates certain obstacles for non-profit-making organizations engaged in transboundary activities, related to different national legal regimes. Accordingly, various tax laws, various laws on companies and various laws on charity create unfavorable business environment for charitable organizations, which would like to work in a number of European Member States.

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