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An Assessment of the Legal Framework for Volunteerism in Ukraine

May 2008



Introduction

This assessment of the Ukrainian legislation pertaining to volunteer activities, as of February 2008¹, is divided into six sections:

- 1. Definitions of volunteer activities;**
- 2. Legislative regulation of volunteer activities;**
- 3. Reimbursement of expenses and taxation of volunteer activities;**
- 4. Social guarantees and social security of volunteers;**
- 5. International volunteer activities; and**
- 6. State policy for promoting volunteer activities.**

Each section includes brief analytical conclusions. A final section includes *recommendations for introducing corresponding amendments to existing Ukrainian legislation affecting volunteerism.*

This assessment does not review legal relationships emerging within the framework of providing free public benefit services. In particular, this assessment does not consider new laws regarding alternative (non-military) options for fulfilling service requirements, volunteer fire marshal teams, emergency and rescue services, public militia formations supporting public order, volunteer formations assisting border guards in securing the state frontiers, civil defense groups, etc. Moreover, we do not review categories of uncompensated public services which have been excluded from the international treaties banning forced labor. These include, in particular, public works carried out in accordance with judicial decisions in administrative and criminal cases, services performed under conditions of states of emergency, including those aimed at overcoming the consequences of natural calamities and man-caused catastrophes. We do not bundle these unpaid public works together with volunteer activities, understood as exclusively volunteer service, because such association could reinforce traditionally skeptical attitudes toward public works in post-communist countries.

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1. Definitions of volunteer activities contained in Ukrainian legislation

Despite numerous declarations of various Ukrainian public authorities recognizing the importance of volunteer activities and the need to create a legal foundation for government support of the volunteer movement, the status of volunteers is legislatively defined only in a small number of very specific fields. Special laws on social work and social services establish that such terms as "volunteer" and "volunteer activities" refer to physical persons carrying out uncompensated, not-for-profit activities aimed at providing a public good.²

A number of essential drawbacks preclude recognizing these laws as a legal foundation for volunteer activities as a whole. First of all, these provisions may not be applied by default to all other types of volunteer activities. The standards, contained in such special laws are inconsistent with the Ukrainian legislation on labor and taxation. Moreover, a number of important legal issues pertaining to volunteer activities are not addressed by these laws at all.

At the same time, decrees of the Cabinet of Ministers regulating volunteer activities in the fields of social work and social services³ contain an important clarification, prescribing that volunteers and volunteer organizations in those fields may carry out their activities exclusively on request of government-run social service agencies, and only on the basis of agreements with the aforementioned agencies for a period of not less than three months.

The Law "On Charity and Charitable Organizations" (hereinafter, the "Law on Charity") could have laid a foundation for regulating the volunteer sector; unfortunately, as it is currently written it is far too general. Among various forms of charitable activities, the only one that has been singled out is provision of volunteer and uncompensated assistance to beneficiaries by way of directly donating one's labor or providing services.⁴ Nevertheless, the Law on Charity does not specify that any donors providing this type of assistance shall be recognized as volunteers, nor does it provide definitions of volunteer activities. For instance, the Law on Charity recognizes providing charitable assistance in the form of one-time assistance, as well as services provided by people working in a related field, or by representatives of certain professions. In terms of legal professionals, it should also be mentioned that Ukraine has not adopted a law on legal assistance, and the law on legal defense does not regulate provision of pro bono legal services. Moreover, the Law recognizes that licensing and certification of charitable activities are necessary in those cases stipulated by other laws, which means that the Law does not provide any independent regulation of the field of volunteer activities per se.

Aside from the fields of social work and social services, and this reference in the Law on Charity, the definition of voluntary activities in other fields is either not provided at all, or is deeply controversial. Certain types of volunteer activities mentioned in specific laws may be understood as volunteering only by analogy, or as a result of applying an interpretation of the Law on Charity. Volunteer work performed by members of public associations for the disabled, efforts aimed at protecting nature and restoring natural resources, preserving and improving the natural environment, and improving the quality of life in towns and villages, are all addressed by special laws, which, nevertheless, do not regulate those voluntary efforts.

² The Law of Ukraine № 966 "On Social Services" of 06/19/03 (Art. 1); the Law of Ukraine № 2558 "On Social Work with Children and Young People" of 06/21/01 (Art. 1).

³ The Decree of the Cabinet of Ministers of Ukraine № 1895 "On Voluntary Activities in the Field of Social Service Provision" of 12/10/03.

⁴ The Law of Ukraine № 531 "On Charity and Charitable Organizations" of 09/17/97 (Art. 16).

Similarly, university and high school students' self-governance in their respective educational establishments is regulated by laws on various types of education, and this type of engagement may be regarded as volunteer activities, different from both students' social work and from participation in students' volunteer labor teams.⁵

The Law "On the Red Cross of Ukraine" contains specific standards regarding volunteer emergency services, participation in which does not imply obtaining any profit or other benefit.

On the other hand, volunteer donations of human blood, body parts or organs for transplantation and other biological components pursuant to the legislation of Ukraine on protection of health may not be regarded volunteer activities because they do not imply provision of services. The use of "volunteer labor" is treated as a priority approach in providing social services to disabled people;⁶ meanwhile, in the field of protecting the rights of retirees and the disabled, volunteers have only been granted the status of "members of mutual assistance groups."

Most controversial is the regulation of volunteering in the field of sports, where volunteers are defined as "workers," "volunteer assistants," and "service persons," equated in status with ticket collectors and technicians.⁷

In general, this unconsolidated regulation of volunteer activities in national legislation cannot satisfy either theory or legal drafting. It does not provide legal definitions that would serve the practical needs of volunteers in their interactions with public authorities, non-government organizations (NGOs) or other beneficiaries or volunteers.

Meanwhile, international covenants to which Ukraine is a party do not contain any standards pertaining to volunteers and volunteer service. The European Social Charter, conventions on the status of migrant workers, and similar multilateral agreements ratified by Ukraine do not regulate the status of volunteers or volunteer activities separately from the status of hired employees. Several bilateral agreements on the prevention of double taxation and special intergovernmental agreements regarding technical assistance programs may be viewed as the only exceptions.⁸ Unfortunately, these instruments offer very limited applications related to volunteerism.

Key findings:

- 1) The national legislation of Ukraine lacks a special law or equally valid legal act that would provide general legal definitions of volunteers and volunteer activities.
- 2) Special laws regulate the status of volunteers only to a certain extent, while numerous inconsistencies in standards and unsubstantiated limitations rule out the application of those few laws to volunteer activities in other fields.
- 3) Current Ukrainian legislation does not offer any practical measures that would provide for governmental support of volunteer activities.

⁵ The Decree of the Ministry of Family, Youth and Sports № 742, "On the National Program of Supporting Young People, 2004-2008" of 11/18/03.

⁶ The President's Decree # 673 "On the Strategy of Overcoming Poverty" of 08/15/01.

⁷ The Decree of the Cabinet of Ministers of Ukraine #823 "On Adopting the Procedure for Securing Public Order during Soccer Games" of 06/29/04.

⁸ Agreement between the Government of Ukraine and the Government of United Arab Emirates on Prevention of Double Taxation and Evading Taxes on Profits and Capital (Art. 20), ratified by the Law of Ukraine #1013 of 06/19/03); Agreement between Ukraine and the Federal Republic of Germany on Prevention of Double Taxation of Profit and Property (Art. 20), ratified by the Law of Ukraine #449 of 11/22/1995; Agreement between the Government of Ukraine and the Government of Japan on Cooperation and Technical Assistance, ratified by the Law of Ukraine #1969 of 07/01/04.

2. The legislative regulation of volunteer activities

In the absence of any special legislative act regulating volunteer activities in Ukraine, the application of provisions of civil, labor, commercial, or administrative law depends, as a rule, on the discretionary authority vested in various government agencies. This analysis focuses on major issues arising from this legal uncertainty in regard to volunteer activities.

2.1. Presumption of legal labor relations

In regard to services provided within the framework of volunteer activities, unless a law or a written contract prescribes otherwise, legislation and judicial practice in Ukraine recognize the presumption of a legal labor relationship in the form of an employment contract for an unlimited period of time.

Since the proclamation of independence of Ukraine in 1991, the country's labor legislation has still not been subject to any serious restructuring. The "permission to perform certain work"⁹ is still regarded as the basis for legal relations in the field of employment, and, consequently, for the right of physical persons to claim social guarantees including monetary compensation in an amount which is not lower than the minimum allowable wage. This means that an entity may hire a person without executing any documentation pertaining to the fact of employment. This standard of the labor law has been repeatedly referred to in court cases, including claims against NGOs. Additionally, any employee has the right to insist on signing a labor contract. This is why a number of entities, trying to minimize their risks, conclude *written* agreements for performing certain jobs "on voluntary basis," or enter into similar arrangements that document a volunteer's pledge not to claim any compensation for work performed.

Significantly, this practice does not protect the rights of organizations, in particular, vis-à-vis the following peculiar features of the labor legislation in Ukraine:

- 1) In relation to any labor activities, there exists a presumption of mandatory payment in an amount that is not lower than the minimum wage allowed by the law;¹⁰
- 2) There is no statute of limitations in regard to claims demanding compensation for work performed, and this type of court claim is not subject to the state filing duty;¹¹ and
- 3) Unless a law or a contract stipulates otherwise, a legal entity can be held liable, to the full extent of its assets, for any harm incurred by physical persons while carrying out their work in compliance with their scope of responsibilities; meanwhile, the liability of a physical person within the framework of labor relations, as a rule, is capped at a certain percentage of his or her salary.

It deems impossible to accept the practice of concluding temporary or fixed-time labor contracts, which is done for the purpose of minimizing remuneration of labor, as even one-time renewal of a fixed-time labor contract (for instance, a renewal resulting from the entity's acquiring some external financing for a specific project) may be recognized as a conclusion of an employment contract for an unlimited period of time.¹²

⁹ Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Art. 24).

¹⁰ Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Art. 2).

¹¹ Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Art. 233); Decree of the Ukrainian Cabinet of Ministers #7-93 "On the State Duty" of 01/21/93 (Art. 4).

¹² Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Art. 39-1).

The opportunity for employees to use unpaid leave for volunteer activities is limited to 15 calendar days within one calendar year.¹³ Neither the Law "On Paid Leave" nor the Code of Labor Laws stipulates any special school vacations that could be used for volunteer activities. With the exception of special agreements with accredited institutions of higher learning regarding student internships during school breaks, entering into agreements with volunteers, defined as "interns" or "trial period employees," seems to do little to diminish a hiring entity's risks. The legal status of these categories of employees according to Ukrainian legislation is only different from the status of regular employees by virtue of a simplified procedure for firings. Meanwhile, a "trial period" is limited to three months,¹⁴ which makes it next to impossible to use this legislation to regulate any long-term volunteer activities.

In general, any volunteer possessing documented or other admissible evidence supporting the fact that he or she was allowed to perform certain work at a specific workplace may file a claim against an NGO or any other entity in a court of law demanding the following:

- 1) Payment of the minimum wage for the period (with no statute of limitations, covering the time period until the individual held new full-time employment); and
- 2) Compensation for material and non-material (moral) damages incurred as a result of the former employer's failure to compensate the claimant's labor, provided the state filing duty has been duly paid.¹⁵

Moreover, in the event that a court should decide that an entity which used the services of a volunteer violated labor laws, the entity will face penalties for failing to pay the compensation and for firing the individual according to a procedure inconsistent with existing legislation. Based on the established minimum wage of 515 hryvnias (around US\$100 as of February 2008), the penalties that could be assessed constitute a risk factor likely to be deemed unacceptable to most Ukrainian NGOs. Should a court decide that a particular volunteer should be treated as a hired employee, total penalties and litigation expenses are likely to exceed US\$1,500. Considering that in 2005, 60% of all Ukrainian NGOs declared annual revenues of under US\$10,000,¹⁶ these potential costs raise very real risks of financial insolvency, especially if an entity is mandated to satisfy several claims. On the other hand, enforcement of a court decision against an NGO may only be feasible in the case of entities possessing adequate property or financial resources. Consequently, organizations which have the greatest potential for attracting and supporting volunteers turn out to be the most vulnerable to legal disputes based on the presumption of employer-employee relations.

2.2. Legal issues related to underage volunteers

Legal uncertainty and related risks seem to be especially serious in the case of volunteers under 18 years of age. First of all, "permission to perform work" without entering into a contractual arrangement with a minor may well be interpreted as use of child labor, which is banned by the law.¹⁷ Sanctions for this type of violation are described below. Moreover, labor relations with minors may only be recognized as legitimate if certain conditions are met: mandatory conclusion of a written contract; written consent of a parent or a legal guardian (if a minor is under 16 years of age); limited working hours; a special procedure for firing, etc. Additionally, when a working relationship requires a person under 16 to move away from his or her place of permanent residence, it is mandatory to obtain the parents' or legal guardians' special consent.

¹³ The Law of Ukraine # 504 "On Paid Leave" of 11/19/96 (Art. 25).

¹⁴ Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Art. 27).

¹⁵ Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Art. 237-1).

¹⁶ "The state and dynamics of Ukrainian NGO development - 2002-2006," Counterpart Center, Kiev: 2006.

¹⁷ The Law of Ukraine № 2402 "On Protection of Childhood" of 04/26/01 (Art. 21); Code of the Ukrainian Labor Laws № 322 of 12/10/71 (Arts. 187-200).

It should be noted that some voluntary activities of minors are specifically regulated by provisions of the Special Law on Youth and Children's Public Associations. The Law "On the National Program of Supporting Young People 2004-2008" does not seem to be too consistent itself either. Volunteer labor groups of college students and other youths created within the framework of this legislation do not possess the status of a legal entity but they are, nevertheless, mandated to pay salaries to team members, conclude employment contracts on the basis of provisions regulating work conditions of persons under 18 years of age, and comply with other requirements of the employment-related legislation.¹⁸ Meanwhile, the above mentioned Decree of the Ukrainian Cabinet of Ministers establishes that relations between a group's founders (including NGOs), its members and customers shall be governed by civil law agreements, which only adds to the general legal uncertainty.

2.3. Civil legal relations

Unlike the legislation of most European countries, the Civil Code of Ukraine does not contain any special definitions of "jobs" or "services," thus enhancing the presumption of employment-related legal relations in the field of voluntary activities. At the same time, civil law provisions may establish adequate legal relations regulating volunteer activities based on a physical persons' refusal to claim their compensation stipulated by law or contract. Article 312 of the new Civil Code, effective in January 2004, bans forced labor and guarantees physical persons freedom to choose a profession and change their main occupation, provided this freedom is not limited by law or court decision. Articles 901-907 of the Code regulate provision of services.

*In particular, uncompensated service provision is allowed on the basis of reimbursement by the customer of all actual expenses incurred by the service provider while performing jobs within the framework of an agreement.*¹⁹ It must be noted that this provision is drastically different from the existing standards contained in the legislation regulating employment and social services.

The Form of an Agreement. A verbal agreement for the provision of uncompensated services may not be contested in the event that payment for the services, were it due, would not exceed ten minimum allowable non-taxable salaries. As of February 2008, such sum constituted 170 hryvnias or US\$35, which is deemed equivalent to being engaged 12 hours per week at the minimum allowable rate. Additionally, this provision allows for entering into verbal agreements on short-term volunteer activities with persons of 14-18 years of age. In cases where the value of an agreement exceeds the aforementioned minimum, a written contract is mandatory. Agreements for the provision of uncompensated services are not subject to mandatory notarization and/or state registration for the purpose of confirming their validity. With the consent of both parties, legalization of such agreements by a notary public may be executed at any time.

Special conditions, including the time period of service provision and protection of confidential information, are regulated by an agreement between a volunteer and an entity or other beneficiary, unless legislation stipulates otherwise. The same is applicable to the grounds for (and procedure of) termination of an agreement; for instance, a unilateral cancellation of an agreement for uncompensated service provision is allowed by law. Additionally, civil legal agreements can include references to standard terms of agreements and customary conditions of business intercourse, or incorporate standardized contractual provisions.²⁰

¹⁸ Decree of the Ukrainian Cabinet of Ministers № 899 "On Adoption of Standard Regulations regarding Youth Labor Teams" of 01/16/03 (Art. 904).

¹⁹ Civil Code of Ukraine # 435 of 01/16/03 (Art. 904).

²⁰ Civil Code of Ukraine № 435 of 01/16/03 (Arts. 630, 634).

Material liability stipulated by an agreement. Liability of a volunteer, as well as of any other person providing services free of charge, is limited to the amount of two minimum non-taxable salaries for an individual (34 hryvnia or US\$7), unless another amount is prescribed by a relevant agreement.²¹ An agreement may stipulate a volunteer's liability to a third party, or an entity's liability vis-à-vis volunteers; it may also specify cases which may require mandatory volunteer insurance against legal liability, or that mandate insuring property used in the course of volunteer activities, etc. Material liability of volunteers, organizations, beneficiaries and third parties for any damages, as well as non-contractual liabilities, are regulated in a sufficiently detailed manner by Articles 1161-1211 of the Civil Code of Ukraine.

An important peculiar feature of agreements for service provision is that, despite the presumption that a volunteer provides services personally, a volunteer, while retaining potential liability to a customer, may delegate the provision of services to another party by so specifying in an agreement.²²

Under civil law, a more traditional approach would involve transfer, per consent of the contracting parties, of civil and legal contractual agreements to a third party (Art. 636 Civil Code). In the case of volunteers' services, we frequently encounter uncertainty when defining whether the beneficiaries of such services are physical persons in general, or a certain "recipient organization" (a school, hospital, social institution, local body of self-governance, etc.), to which the physical persons belong.

Such transfers of agreements are especially relevant in circumstances when volunteers participate in activities in the territory of other countries they are similarly relevant to the work of some public and communal institutions which require legal agreements for international travel of volunteers and/or their physical presence at certain sites during business hours and, especially, off-duty hours.

2.4. Legislative regulation of sanctions in the field of volunteer activities

In Ukraine, the essence of a violation, as well as the procedure for applying sanctions by government agencies, is regulated by various special statutes. In particular, the Code of Administrative Violations of 1984 stipulates grounds for *administrative liability* in the field of volunteer activities. Sanctions against an organization's executives would most probably be imposed for the following infringements:

- 1) violation of the legislation on employment and labor safety (Art. 41 Code of Administrative Violations), including a failure to pay or late payment of salaries; and violation of sanitary and hygiene standards and regulations (Art. 42);
- 2) violation of the rules of protection and use of historic and cultural sites (Art. 92);
- 3) illegal distribution or purchase of gas and other fuels and lubricants (Art. 161);
- 4) failure to submit or late submission of documentation confirming the execution of mandatory payments, such as taxes, duties, etc. (Art. 163-2); violation of the procedure for deducting individual income tax from salaries and transferring it to the Treasury (Art. 163-4); and
- 5) violation of the procedure for carrying out economic activities (Art. 164), including being engaged in such activities without acquiring a proper license or state registration.

This last vulnerability may also be applicable to volunteers engaged in providing uncompensated professional social services.

²¹ Civil Code of Ukraine № 435 of 01/16/03 (Art. 906).

²² Civil Code of Ukraine № 435 of 01/16/03 (Arts. 618, 902).

Any criminal liability is regulated exclusively by the Criminal Code of Law (Art. 3 of the Ukrainian Criminal Code of 2001). In the field of volunteer activities, criminal liability may be imposed based on the following provisions of the Criminal Code:

- 1) violations related to movement and participation of volunteers, especially minors: improper fulfillment of responsibilities in regard to the protection of the lives and health of children (Art. 137); exploitation of minors under the minimum legal age of employment (Art. 150); trafficking in humans or other legal agreements pertaining to human beings (trafficking and movement of individuals for the purpose of forced labor, including forced provision of services) (Art. 149); illegal trafficking of individuals across the national frontier of Ukraine (Art. 332, which includes providing such individuals with advice and instructions, as well as assistance in overcoming obstacles arising from the trafficking);
- 2) infringement on the principle of equality of rights of individuals on the basis of their race, ethnicity or religious affiliation (Art. 161);
- 3) violations pertaining to compensation for and safety of labor: gross violation of the employment legislation (Art. 172); gross violation of an employment contract (Art. 173, i.e., coercion into performing jobs not specified by an employment contract); deliberate failure to pay salary for over one month (Art. 175);
- 4) violation of requirements contained in the labor safety legislation (Art. 271); violation of labor safety regulations when carrying out hazardous jobs (Art. 272); violation of traffic safety regulations and rules of operating vehicles (Art. 286);
- 5) violations related to the procedure of carrying out volunteer activities: illegal or unlicensed healthcare practice (Art. 138); engagement in illegal medical, biological, psychological and other experimental activities involving humans (Art. 142);
- 6) violations related to taxation and other mandatory payments: deliberate larger-scale tax evasion (exceeding 1,000 minimum non-taxable salaries) (Art. 212); deliberate evasion of mandatory payments to the state social security system (Art. 212-1); and
- 7) violations related to volunteer activities carried out on the sites of government agencies: seizure of public and government buildings for the purpose of their illegal use or disruption of the corresponding agencies' activities (Art. 341); forcible assertion of authority (Art. 356); illegal tampering with the systems of automated data processing and protection of information (Arts. 361-363); abuse of power (Art. 364); negligence at work (Art. 367).

Ukraine has not adopted a Tax Code, and the procedure for determining the financial liability of tax-payers vis-à-vis the State Budget is regulated by a special law, which prescribes sizeable fines (5% to 30%) for a failure to pay taxes or execute other mandatory payments on time or in full.²³

Key findings:

- 1) In the absence of a written contract between a public or private entity and a volunteer, legislation and judicial practice tend to treat long-term volunteer activities as a violation of the labor legislation; as a rule, organizations accept services of volunteers in violation of law.
- 2) Long-term volunteer activities are not recognized or regulated by legislation as a type of activity that is separate from legal relations regulating employment, with the exception of activities related to the social provision of services.
- 3) Ukrainian legislation establishes additional limitations on volunteer activities for minors under the presumption of legal labor relations.

²³ The Law of Ukraine #2181 "On the Procedure of Mandatory Payments to the Budget and the State Funds-in-Trust" of 12/21/2000 (Article 17).

- 4) The Civil Code of Ukraine allows for entering into contractual relations for providing uncompensated services, including provision of services benefiting a third party, provided the volunteer is reimbursed for his or her actual expenses.
- 5) Essential provisions of civil legal agreements between an entity and a volunteer may also be regulated by individual contracts or standard agreements.
- 6) Civil and legal verbal agreements with volunteers may only be used for short-term volunteer activities or in the case of an absence of any considerable actual expenses.
- 7) Sanctions for most violations in the field of volunteer activities, as a rule, do not involve incarceration, but the large values of fines imposed on organizations' executives and the organizations themselves are considerable enough to potentially paralyze an NGO's activities.

3. Reimbursement of expenses and taxation of volunteer activities

Many NGOs and other beneficiaries in Ukraine do not reimburse volunteers for their expenses simply because they cannot afford to cover these expenses in full or even in part. This situation does not run counter to the existing laws on social services and charitable activities, and, as a rule does not lead to disputes with volunteers, but it obviously impedes the success of outreach to and involvement of volunteers. Even in those cases when organizations are capable of paying reimbursements, they rarely take advantage of civil legal agreements with volunteers that would enable the NGO to reimburse volunteers for their tax-exempt expenses pursuant to the legal provisions mentioned in Section 2.3.

3.1. Absence of special standards in the legislation regarding reimbursement for volunteers' expenses

Article 7 of the Law of Ukraine "On Social Services" stipulates that physical persons providing social services are eligible for reimbursement of expenses in the amount and in compliance with the procedure established by the Cabinet of Ministers. In reality, as of February 2008, the aforementioned procedure had not been established. Moreover, the compensation payments, prescribed by the legislation, may be fundamentally inconsistent with the sums to be reimbursed to a volunteer for his or her actual expenses.

3.2. Personal Income Tax

In 2007, Ukraine introduced a unified rate of personal income tax in the amount of 15%;²⁴ lower tax rates for certain types of income are also stipulated, as well as certain tax privileges and credits. Still, the administrative practice of the Ukrainian Revenue Service is such that sums payable as reimbursement may only be free from taxation if they are directly specified as such by the labor legislation or a civil legal agreement.

In particular, the amount of non-taxable income is capped at 1,4 of the amount of the minimum allowable wage (or about US\$170).²⁵ In the event that a volunteer is not employed by an organization and within one calendar year the volunteer is reimbursed for expenses in cash or in kind in an amount that exceeds the aforementioned cap, the excess compensation is subject to taxation. Reimbursement of expenses is even more complicated due to an additional limit applied to taxing in-kind income (accommodations, meals, etc.). For example, in the event that a volunteer's lodging expenses amounting to \$500 are covered by an organization, the taxable amount will constitute 117% (about US\$590) of the sum exceeding the aforementioned US\$170. As a result, the overall reimbursement of the volunteer's accommodations to be paid by the organization will include an additional tax amount of \$65 if the volunteer does not have any other sources of income, or \$85 if he or she has a taxable income besides the reimbursement for expenses incurred when carrying out volunteer activities.

The Ukrainian tax legislation does not contain any provisions regarding "pocket money" or similar sums provided for volunteers' expenses; which do not require that volunteers submit supporting documentation or receipts. Only in the case of existing legal employment relations between the volunteer and the organization is the volunteer's per diem subject to any tax incentives. Such per diem amounts, payable when the volunteer is away from home on a business trip, are not taxable up to US\$1,55 per day within the territory of Ukraine, or up to US\$55 within the territory of other countries.²⁶

²⁴ The Law of Ukraine "On Personal Income Tax" № 889 of 05/22/03 (Art. 7).

²⁵ The Law of Ukraine "On Personal Income Tax" № 889 of 05/22/03 (Arts. 4.3.5, 6.5, 9.7.3).

²⁶ Decree № 663 of 04/23/99; Ordinance of the Ukrainian Ministry of Finance № 59 of 13.03.98.

Any per diem reimbursements exceeding the aforementioned amounts are taxed as personal income tax at a regular rate. Moreover, these sums may not be deducted as the cost of doing business or overhead, and may only be paid by organizations out of their net profits after tax. Reimbursement of volunteers' expenses incurred in their area of permanent residence may not be deducted from the volunteer's taxable income. These expenses (i.e., meals) are referred to as "additional benefits" for workers who are not engaged in the organization's main activity, and as such, they are taxed as any other income. It goes without saying that if volunteers are compensated for their expenses as employees, this fact alone suggests that they may claim payment of the minimum allowable wage. Obviously, this vulnerability is less than attractive to either public entities or NGOs, even those that actually possess the capacity to reimburse volunteers for their expenses.

In those cases when a written civil agreement with a volunteer has been legally entered into by the parties, the total reimbursement or advance payment towards expenses is non-taxable, so long as the expenses are not "out of pocket" or per diem expenses. These sums should be accounted for, irrespective of the amount, in the event that a volunteer produces documentation confirming the expenses not later than three days after expiration of the agreement.²⁷

The issues related to taxation also include the absence of tax credit for in-kind services. An individual filing tax returns with the internal revenue authorities may receive a tax credit for the value of monetary donations to an NGO in the amount of 2% - 5% of the individual's taxable revenues; nevertheless, the amount of tax credit may not include the value of uncompensated services provided or the work performed.²⁸ Additionally, the sum of an individual's tax refund may not exceed the amount that individual obtained during the year as a salary, which for practical purposes deprives unsalaried volunteers the opportunity to receive a tax credit.

Legal entities are entitled to include in their gross expenses part of the compensation paid to employees for their volunteer hours donated to public entities or other non-profits. This tax credit, though, may not be lower than 2% or higher than 5% of the taxable revenue of the entity in question in the previous fiscal year.²⁹

Key findings:

- 1) The Ukrainian legislation does not contain any special standards that regulate reimbursement of volunteers' expenses.
- 2) Reimbursement of expenses on the basis of employment contracts is exempt (up to a certain sum) from personal income taxation; reimbursement for expenses incurred while fulfilling civil legal agreements is not limited, provided the said expenses are confirmed by supporting documentation.
- 3) The value of work or services provided by volunteers are not exempt from the personal income tax.

4. Social guarantees and social security of volunteers

The Ukrainian legislation stipulates various social guarantees and types of mandatory social security for volunteers in the event that their relations with recipient organizations are recognized as employee-employer relationships. In the event that an organization enters into a civil legal agreement with a volunteer, the volunteer's participation in the system of mandatory social security is regulated in

²⁷ The Law of Ukraine #889 "On Personal Income Tax" of 05/22/03 (Art. 9.10).

²⁸ The Law of Ukraine #889 "On Personal Income Tax" of 05/22/03 (Art. 5.3).

²⁹ The Law of Ukraine №334 "On Corporate Income Tax" of 12/28/94 (Art. 5.2.2).

accordance with the volunteer's wishes and/or in compliance with a special agreement with the organization.

4.1. Mandatory retirement plans for volunteers

Recognition of the fact of employment obligates an "employer-organization" to pay installments to a mandatory state retirement plan for a volunteer in the amount of the minimum allowable mandatory payment (in 2008, such payment could not be less than 33.2% of the amount of the minimum allowable wage), irrespective of the actual compensation for the donated labor.³⁰ Thus, taking into account a mandatory payment of additional 2% of this sum, it seems that an organization might be deemed to be required to pay around US\$35 per volunteer to the mandatory state retirement plan, even though the organization does not pay the volunteer a salary. Similar situations arise when an organization pays compensation (not to be confused with reimbursement for expenses) on the basis of civil legal agreements with physical persons who are not registered as private entrepreneurs.

Participation in a mandatory retirement plan is of considerable value to volunteers, especially to those who do not have any permanent employment. It should be noted that within the framework of personification of payment plans, the procedural regulations on mandatory retirement plan settlements and payments allow volunteers to make payments to the Pension Fund of Ukraine independently,³¹ without the participation of their "employers." The payment by volunteers of 33.2% of the minimum allowable wage is equated to a full year employment, making the volunteer eligible for a state pension, but this pension amount may be decreased proportionally to the actual retirement plan payment made by the volunteer. A volunteer with an agreement to provide uncompensated services to an organization may specify in the agreement that the sums he or she pays into the mandatory pension plan are general expenses to be reimbursed by the organization.

4.2. Mandatory social security

Payments to mandatory social security funds are lower than those to mandatory retirement plans, but the actual amount tends to change each year. For instance, in 2008 the Law on the State Budget stipulates payments amounting to 4% of general labor expenses to the social security funds. In addition to payments executed by organizations viewed as employers, the Ukrainian legislation allows volunteers to make payments on their own, as in the case of payments to the retirement plan.³² Additionally, pursuant to Law № 1382 "On the Freedom of Movement and Free Choice of Place of Residence" of 11/21/03, a volunteer may submit an application for participation in the social security system not only at his or her location of permanent residence, but also in an area where the volunteer resides temporarily for less than six months in a given year. This standard is also applicable to volunteers aged 16-18, who are regarded as minors.

Notwithstanding these provisions, the lack of a documented work record (a work record book) may present a legal obstacle for individuals wishing to make social security payments on a voluntary basis by submitting an application to a corresponding state fund. This is because submission of a copy of the work record book is mandated under all of the aforementioned regulations. To acquire such documentation, an individual who has never held a regular paid job or a foreign volunteer would need to

³⁰ The Law of Ukraine № 1058 "On General Mandatory State Retirement Insurance" of 07/09/03 .

³¹ Ordinance of the Board of the State Pension Fund № 21-1 of 12/19/03;

³² Procedure for participation in the mandatory state social security on volunteer basis in connection with temporary disability and expenses related to births and deaths. (Ordinance of the Fund's Board № 62 of 06/02/05); Regulations on the procedure for payment, accounting and disbursement of insurance funds by the Social Security Fund in connection with accidents at the workplace and occupational diseases in Ukraine (Ordinance of the Fund's Board № 36 of 07/12/07), and corresponding standard agreements.

enter into a labor contract with an NGO or a different type of entity. This requirement should therefore be annulled, and, even more importantly, the administrative practice that imposes such limitations should be terminated.

4.3. State social benefits

The Law of Ukraine "On Employment" stipulates that voluntary unemployment, or the absence of any gainful activity, may not constitute grounds for liability within the framework of administrative or criminal law. At the same time, persons engaged in continuous education or professional development are classified as employed. This Law also establishes grounds for denying an individual the status of "unemployed" or "seeking employment." [Irrespective of participation in the system of mandatory social security, volunteers are entitled to state social benefits in those cases stipulated by law: a one-time allowance in the event of childbirth; allowance to care for children under three years of age; disability, etc. Still, according to the provisions creating a unified state registry of persons eligible for state social benefits, in a number of cases the right of volunteers to obtain public assistance may be suspended. In particular, if a minor is engaged in long-term volunteer activities, authorities may request proof that the volunteer work engagement does not preclude this person from obtaining a formal education; otherwise this youth's parents or legal guardians may lose their entitlement to state social benefits as a "family with children."

4.4. Volunteers' insurance

The existing Ukrainian Law "On Insurance" provides for the right of NGOs and volunteers to freely enter into personal insurance contracts (life, medical, disability, and retirement) as well as insurance against civil and legal liability and insurance of property (belonging to a volunteer, an NGO or a third party) with licensed insurance companies. With the consent of the insured volunteers, an NGO may enter into agreements regarding insurance on the volunteers' behalf (in favor of a third party) or appoint the volunteers as beneficiaries in the event of an insured accident. As a rule, if an organization does not pay a volunteer's insurance, payment of insurance by the volunteer him or herself is considered a recommended practice. Additionally, Article 7 of the Law mentions circumstances in which insurance is mandatory, some of which may be applicable to volunteers (athletes, certain occupations, traffic accidents, and professional liability in accordance with a list provided by the Cabinet of Ministers of Ukraine). It should also be noted that the amounts of insurance payments, policies and the redemption premium payable to an insurer (as long as the insurer is a Ukrainian resident) are not subject to taxation and inclusion on volunteer's annual tax returns, with the exception of long-term life insurance and private retirement insurance.³³ Additionally, contributions of legal entities to cover the expenses of voluntary medical and retirement insurance of their employees and their family members are not considered labor expenses and are not subject to deductions available for general mandatory social and retirement insurance³⁴.

Key findings:

- 1) In those cases where a volunteer has established labor relations with an NGO, the volunteer can independently make payments to the mandatory state retirement and social insurance funds, and, subsequently, include these sums as reimbursable expenses pursuant to their agreements for uncompensated service provision.
- 2) Voluntary retirement and social insurance contributions are also allowed in Ukraine.

³³ The Law of Ukraine "On Personal Income Tax" № 889 of 05/22/03 (Art. 4.3.32).

³⁴ Regulations regarding statistics of salaries and wages (Ordinance of the State Committee on Statistics № 5 of 01/13/05), Section 3.5.

3) The right of volunteers to receive state social benefits may be limited.

5. International volunteer activities

As of February 2008, the Ukrainian national legislation and international agreements to which Ukraine is a party contain only a small number of standards pertaining to the status of foreign volunteers in Ukraine and the volunteer service of Ukrainians in the territory of other countries.

5.1. Activities of Ukrainian volunteers in other countries

Currently, volunteer activities of Ukrainian citizens in the territory of other countries are regulated by either bilateral agreements or the general standards of the legislation of each respective recipient country. Ukraine has entered into bilateral agreements with some countries, for instance, with Latvia, regarding free medical care for volunteers in extreme situations. When a volunteer leaves Ukraine for a country which is not party to an agreement for free medical care, the volunteer is required to purchase health insurance, which can be paid for independently by the volunteer, a third party, or an organization.

In the absence of any special legislative standards or government entity that is authorized to promote the service of Ukrainian volunteers in other countries, many volunteers face a number of legal limitations of general character. In connection with the unified state registry of all persons receiving social benefits and payments, Ukrainian volunteers leaving the country in order to carry out voluntary service abroad lose their entitlement to those benefits for the term of their stay outside of Ukraine. In the absence of an agreement with the recipient country regarding prevention of double taxation, a volunteer's income earned outside of Ukraine during a period of less than six months in a calendar year is subject to personal income tax in Ukraine as revenue earned abroad.³⁵ Additionally, movement of underage volunteers across national borders requires the notarized written permission of the minor's parents or legal guardians.

5.2. Foreign volunteers in Ukraine

As mentioned above, Ukraine has special agreements with several countries pertaining to the status of foreign volunteers. In 2001, Ukraine marked the International Year of Volunteering under the auspices of the United Nations, but Ukrainian regulation of foreign volunteers' activities still abounds in legal uncertainties and does not always comply with the United Nations' principles.

All countries bordering Ukraine are members of the Council of Europe (CE) and/or of the European Union (EU), and it would seem natural that the provisions of the CE and the EU regarding volunteer activities should be applicable to the majority of foreign volunteers. Nevertheless, Ukraine has not joined various European conventions related to the status of volunteers, which makes it difficult to recognize residents of the member-countries as volunteers. For instance, the Decree of the Cabinet of Ministers of Ukraine #193-p of 03/31/03 stipulates adoption of a law on Ukraine's ascension to the European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People, but the referenced draft law has never been considered. Ukrainian legislation does not reflect the standards of the CE Directive of 2004/114 regarding accepting citizens from third countries coming for the purpose of education, student exchanges, no-cost professional training, or volunteer activities. The Law on International Technical Assistance has not been adopted either; consequently, participation of volunteers in the developmental programs financed by international and transnational organizations is not regulated by any special legal act.

³⁵ The Law of Ukraine "On Personal Income Tax" № 889 of 05/22/03 (Art. 3.1.1).

Ukrainian legislation on migration does not contain any special standards regarding volunteers; consequently, general rules apply. Citizens of the EU countries, USA, Canada, Switzerland, and most of the Commonwealth of Independent States countries do not need entry visas to Ukraine; the mandatory possession of a certain minimum amount of currency is also waived for those citizens provided their stay in Ukraine does not exceed 90 days. Citizens from these countries are obliged to register within three days of their arrival with an agency of the Ministry of Interior in charge of citizenship, visas and immigration, at the branch that corresponds to the administrative area of their stay.

Citizens of countries requiring entry visas in order to travel to Ukraine may stay in the country for the period of time specified in their visas, which will not exceed six months. Persons possessing the status of refugees and stateless persons and legitimately staying in Ukraine may participate in volunteer activities, provided they observe any imposed limitations on travel.

In cases of longer-term volunteer activities, a residence permit may be required, which can be extended for a period of up to one year, depending on the visa regime and the type of visa.

Regarding residents of countries which do not have special agreements with Ukraine on the status of volunteers, the prevailing presumption of labor relations implies the necessity of obtaining a work permit for a period of up to one year from the State Employment Center. Such permits can be issued in response to an employer's request³⁶ for a fee of around US\$35; the permit is not required for participants in educational programs, elected executives of NGOs and persons providing services to embassies and other diplomatic outposts. A foreign national commencing work without obtaining the aforementioned permit is subject to expulsion from Ukraine; an NGO's executive is subject to a fine of around US\$170 for each illegal volunteer.

In this legal context, an NGO may reduce its expenses and avoid potential sanctions by entering into a civil legal agreement with its foreign volunteers for the provision of uncompensated services. Nevertheless, in the absence of special standards regarding the status of such volunteers, such agreements may not accommodate long-term volunteer activities, nor can they guarantee that in practice these volunteers will not be subject to legislation on employment of foreign nationals.

In order to reimburse a volunteer who is a nonresident alien in Ukraine for his or her expenses through a direct payment or via a bank transfer, the volunteer must obtain an individual tax ID number from the internal revenue service of Ukraine.

Ukraine does not have a law on general mandatory state medical insurance. Medical care is provided free of charge to residents by state and local institutions in accordance with the administrative criteria of an individual's place of residence. Consequently, in those cases where a foreign volunteer does not have either prepaid medical insurance or a residence permit, the volunteer may find him or herself in an extremely vulnerable situation in the event of an illness or injury while serving in Ukraine.

Key findings:

- 1) To date, Ukraine has not joined multilateral international agreements regulating volunteer activities in the territory of other countries.
- 2) The national legislation of Ukraine does not contain any special standards pertaining to promotion of volunteer activities of Ukrainian citizens abroad, or of foreign citizens in the territory of Ukraine.

³⁶ Ordinance of the Cabinet of Ministers of Ukraine #2028 of 11/01/99, "The procedure for obtaining a work permit in Ukraine for foreign nationals and stateless persons."

- 3) The presumption of labor relations implies a risk of additional sanctions to be imposed on foreign volunteers and their recipient organizations for any violations of legislation on the employment of foreign nationals.
- 4) Any long-term volunteer activities contemplated to last over 90 days require foreign nationals to apply for an extension of their visa term or to obtain a permanent residence permit.

6. State policy for promoting volunteer activities

Despite numerous political declarations regarding the necessity of developing a standardized legal foundation for the promotion of volunteer activities, the current state policy of Ukraine in this field is neither systematic nor consistent. Unfortunately, this is true about all of the key elements of the national policy mentioned below. The absence of special legal standards and a unified state policy in the field of volunteer activities negatively impacts the efficiency of the administrative practice and management of volunteer activities by Ukrainian nonprofits.

6.1 The purpose and goals of the state policy

The development of goals and purposes is obviously decentralized, which can be explained by the public authorities' lack of a clear understanding of the advantages obtainable by supporting volunteer activities. This refers not only to the field of social services but also to volunteerism in the context of entering and/or returning to the employment market and professional training, which are topics of special importance to Ukraine. Equally important are volunteer activities aimed at protection of the environment and Ukrainian cultural heritage.

In any case, a state policy must be based on the voluntary nature of the activities, and should not be limited to the civic duties just mentioned. It is unacceptable to limit participation in volunteer activities to simply the disabled, unemployed individuals, young people and representatives of at-risk groups, etc. Combining volunteer activities with paid work in the private or public sector should not be limited.

The use of indicators and standards for developing the national policy in Ukraine seems to be rare.

6.2 The development and adoption of a special law on volunteer activities

Measures aimed at implementation of the Resolution of the UN General Assembly dated 11/20/91, which calls on member-countries to create networks for volunteerism, adopt corresponding legal acts, and observe the International Year of Volunteers under the auspices of the United Nations in 2001, led to the development of a number of draft laws in the field of volunteer activities. Since 1999, the need to develop a special law and other legal acts regulating volunteer activities have been repeatedly confirmed by the lawmaking body of Ukraine, which included these issues in parliamentary hearings and legislative plans. Nevertheless, the draft laws initiated by certain Parliament members and supported, in particular, by the EC, have not been passed by the Parliament, nor have they resulted in the adoption of any special national programs.³⁷

The Cabinet of Ministers adopted the concept of the draft law of Ukraine "On the Volunteer Movement,"³⁸ which was intended to resolve a number of issues related to the inadequate legal regulation of the status of volunteers and the lack of the government support of volunteer service. Nevertheless, the final document did not meet expectations. In February 2006, the Parliament adopted a bill on volunteerism (Draft Law #7550), developed by the Cabinet of Ministers, but the President vetoed it and expressed a great deal of criticism, in particular, related to the limitations of the rights of citizens, and the complete absence of any specific forms of state support for the volunteer movement. The issue of promotion of the volunteer movement was subsequently defined as one of the main themes to be covered

³⁷ For instance Draft Law # 807 "On the Volunteer Movement" was turned down by the Parliament in December 2006; the Draft Law #3372 "On Volunteering" was recalled by the drafters in November 2007.

³⁸ Decree of the Cabinet of Ministers #748-p of 10/15/04. Additionally, the Program of the Cabinet's Activities (the Cabinet's Decree #14 of 01/16/08, Section 1.1) stipulates developing amendments to the Law "On Charity" aimed at providing definitions of the legal status of volunteers.

in the Concept of Support to be Granted by the Executive Branch of Power for the Development of Civil Society.³⁹

Besides determining the status, rights, and duties of volunteers, the law being developed must establish criteria for differentiating between employment and volunteer activities. It should also provide definitions of short-term and long-term activities; establish the procedure for adopting standards and assessing volunteer service; provide specifics for reimbursement for certain type of expenses, including those incurred within the framework of corporate volunteering; and establish guarantees of protection of the rights of volunteers and third parties.

6.3. The coordination body for state policy in the field of volunteer activities

The traditional approach for the formation of national policy in Ukraine implies that a coordination body would adopt decisions pertaining to the government policy on the basis and within the framework of the authority vested in it by the Cabinet of Ministers. A coordination council on the issues of development and support of the volunteer movement was created pursuant to the Decree of the Cabinet of Ministers of Ukraine #225-p of 4/23/03, but in August 2005 this body was disbanded and its authority has not been transferred to any other executive agency. This is why ministries and other bodies of central executive power, have, in essence, developed their own individual policies regarding volunteers. Coordination of volunteer activities in the field of social services is vested in the Ministry of Labor and Social Security and the Ministry of Family, Youth, and Sports (Decree of the Cabinet of Ministers of Ukraine # 1895/2003). Nevertheless, this Decree only refers to the right to adopt certain measures aimed at encouraging volunteer activities, with no budgeted financial support.

Local bodies of self-governance also need methodological and other assistance because the unitary structure of the Ukrainian government limits the possibility of standardized regulation on the part of the local government bodies. As of February 2008, pursuant to the Decree of the Cabinet of Ministers # 225, coordination councils were created in only six regional administrations, and their main goal is to implement periodic monitoring of volunteers' activities. *A coordination board possessing adequate authority is also needed for coordination and facilitation of volunteer activities carried out by Ukrainian citizens and organizations abroad; the issue of creating organizations similar to the Peace Corps of the USA or the Friendsdienst of Austria has not even been discussed yet.*

6.4. Forms of state support of volunteer activities

In view of the inefficient procedures for budgeting public financing in Ukraine, the best strategy for obtaining government support is to include a project in an earmarked government program with separate financing allocated in national and/or local budgets. Even prior to the adoption of such earmarks, public support may be provided in a variety of contexts, including the following:

- Holding seminars for volunteers working with children, young people and persons of various at-risk groups, as stipulated in government programs on the prevention of AIDS, substance abuse, trafficking in women and children, and a number of other legal acts adopted in 1998 - 2003.

Public authorities are not obliged to reimburse organizations or volunteers for their expenses. It seems obvious, however, that even partial (50-70%) reimbursement of expenses would considerably encourage participation of volunteers in international programs and in the work of the public and community institutions. Nevertheless, any reimbursement within the framework of public procurement procedures is inefficient and very costly.

³⁹ Decree of the Cabinet of Ministers #1035-p of 11/21/07.

- As a rule, volunteers of active employment age have an interest in obtaining written confirmation of their work experience or documentation of mastering certain work skills. Meanwhile, existing Ukrainian legislation regulating the provision of such official documentation permits execution and issuance of only one such document per request. This documentation serves as the individual's work record, thus confirming the presumption of labor relations with volunteers. Creation of a unified state registry or databank regarding long-term volunteer activities would be much more efficient for these purposes than issuing a work record book.

The practice of creating and administering unified government registries and databanks in Ukraine is long-standing and supports the assertion that such official records can be very efficient for the coordination of long-term volunteer activities and for resolving any disputes arising in the field of volunteer service. In any case, creation of an automated databank would considerably ease the search for appropriate volunteers for various organizations; it would also facilitate generation and access to reliable official documents and certification of volunteers as stipulated by law.

6.5. Regulatory policy in the field of volunteer activities

The biggest threshold regulatory issue is the lack of a differentiated approach to short-term vs. long-term volunteer service. It seems obvious that mandatory certification and participation in periodic training and other professional upgrading programs, as well as many other regulatory procedures, are of practical relevance only to long-term volunteer service.

Formulation of legislative criteria for long-term volunteer activities is of great importance for the efficient public support of such activities. In particular, this includes execution of official documents confirming the nature and terms for providing certain services and obtaining necessary certifications; standard agreements or contractual arrangements regarding volunteer activities (as mentioned above, long-term voluntary activity may not be implemented on the basis of a verbal agreement); procedures for confirmation that long-term volunteer activity does not preclude the volunteer from engaging in various other lawful activities (e.g., search for gainful employment by the unemployed, obtaining formal education by underage volunteers, complying with the eligibility criteria for receiving state social benefits, etc

Long-term volunteer activities may also necessitate special requirements regarding life and health insurance, as well as mandatory insurance against the liability of volunteers and/or their organizations. Of special importance for minors and foreign volunteers is the need for regulatory procedures on movement across borders, medical care issues, and other matters.

Additionally, although each volunteer may provide services free of charge on a short-term basis, agreements between organizations and/or beneficiaries might be of a long-term nature as well, as is allowed under existing regulations in the field of social service provision. Providing and accounting for these uncompensated services, as well as the possibility of volunteering after normal work hours and during holidays, also require special coordination in the case of long-term volunteer activities. It seems that unless a standard agreement prescribes otherwise, the parties should apply relevant legislative provisions regulating employment issues.

The aforementioned lack of state standards leads to doubts regarding the appropriateness of volunteer certification as a way of *controlling the volunteers' ability to provide certain services and as a means of protecting the rights of beneficiaries*. There are legitimate doubts as to whether certification may be mandatory for most types of volunteer activities, even in the field of social services, because this runs counter to the Law "On the Basis of the State Regulatory Policy in the Field of Economic

Activities." State financing of training and certification of volunteers is not stipulated either. The experience of Switzerland and other European countries using this type of certification has not been taken into account in any of the legislative and regulatory drafts thus far. The requirement of licensing of professional activities in the field of social services, prescribed by the existing legislation, conceptually may not be applicable to physical persons who are not self-employed entrepreneurs. Moreover, charitable activities *per se* in Ukraine are not recognized as social services, and, consequently, may not be subject to licensing.⁴⁰

6.6 Compliance with the legislation of the European Union

Since 2006, while the special law and by-laws of the executive branch regarding volunteer activities were being developed, all legislation of Ukraine has been subject to mandatory review by the Ministry of Justice to ensure compliance with EU legislation (*aquis communautaire*) and the practice of the European Court of Human Rights. Besides the aforementioned Directive 2004/114/EC, the most important international legal act of this type, a number of specific documents should also be taken into account while developing the Ukrainian national policy on volunteerism. For instance, Recommendation # R(81)3 of the Cabinet of Ministers of the CE "On Upbringing and Education of Children from Birth to the Age of Eight Years" includes volunteers on the list of persons engaged in upbringing and educating children; Directive 96/29 of the *Euroatom* defines the allowable doses of radiation for volunteers participating in medical and biomedical research, etc.

Key findings:

- 1) In the absence of a special law and a coordinating government body, mapping out the state policy in the field of the volunteer movement in general, as well as the development and implementation of the national policy in this field in particular, can be characterized as decentralized and branch-specific.
- 2) The state policy aimed at supporting volunteer activities is not enhanced by efficient procedures for reimbursement of expenses, financing of international volunteer activities and training of volunteers.
- 3) Proposed regulatory policy regarding volunteers primarily prescribes limitations: the legislative drafts stipulate certification, licensing and other similar procedures as mandatory, even though these are not required by existing special laws on regulatory policy, permits and licensing;
- 4) Development of the national policy on volunteerism is being carried out without proper attention to compliance with international agreements and standards, or to best practices in the field.

⁴⁰ Recommendation of the State Committee on Regulatory Policy and Entrepreneurship № 10307 of 11/23/2005.

7. Recommendations regarding introducing amendments into current Ukrainian legislation

The most acute issues related to legislation regulating volunteer activities in Ukraine as of February 2008 seem to be the following:

- 1) the presumption of labor relations in the absence of a general definition of volunteer activity that would be applicable in different fields;
- 2) the absence of criteria for defining long-term volunteer activities and special standards to regulate those activities;
- 3) considerable limitations regarding the volunteer activities of certain groups, in particular, minors and foreign nationals; and
- 4) the absence of a specialized government agency in charge of developing national policy and providing public assistance to long-term volunteer activities.

Most of the post-communist EU member-countries do not have any special laws on volunteer activities. The only exception is the Law of the Czech Republic on Volunteer Service, but even this law does not regulate all forms of volunteer activities, nor is this law of a framework nature. With this in mind, and taking into account the issues related to the adoption of a special law on volunteer activities in Ukraine, one should note that the adoption of a law *per se* will not resolve all of the aforementioned problems. The reason for this lies in the fact that legislation regarding the legal status of foreign volunteers, taxation, mandatory insurance or the procedures for budgetary allocations, have, or may have, legal prevalence over the provisions contained in a law on volunteer activities. Within the framework of this new law on volunteers, it deems impossible to stipulate any special visa regime for foreign volunteers, or a special procedure for imposing taxation on reimbursement of volunteers' expenses, especially if the relevant payments are to be made from the national budget.

With this background, the following recommendations do not focus on the development of any special law on volunteer activities, but rather on introducing amendments into a number of existing legal acts.

7.1. It seems expedient to introduce a definition of "volunteer activities" that would rule out the presumption of labor relations in Article 16 of the Law on Charity and create a special form of charitable activity. The definition should make clear that the provisions contained in the Code of Labor Laws (or the draft Labor Code), or the Law "On the Employment of Population" may not be applied as legal grounds for recognizing volunteer activities as paid employment. This clarification would also resolve the issue of the mandatory work permit for foreign volunteers.

Specific fields of charitable activities are listed in detail in Article 4 of the Law on Charity and include participation in local, national and international programs of social and economic development, social rehabilitation of persons in need of special care and assistance, environmental activities and protection of cultural heritage, etc. This description could be added to the definition of "volunteer activities," and would thus help to eliminate the threat of treating volunteers as hired employees.

Recommendation: In Section 1 of Article 16 of the Law on Charity, "the forms of exercising charitable activities by the subjects of philanthropy," the paragraph reading "assistance on the basis of agreements and contracts on charitable activities" should be complimented by words "including uncompensated provision of services and long-term voluntary activities." In Section 2 of Article 16 of this Law, the words "charitable organizations" should be substituted by the words "subjects of charitable activities" because the name of the Article deals with all subjects of philanthropy, including physical persons. In addition, the phrase "certification or licensing" should be complimented by words "or insurance."

7.2. As a rule, the laws of the EU countries define long-term volunteer activities based on a volunteer's service over a period of an established minimum number of consecutive months (as a rule, three to six months), or on a minimum number of hours of volunteer activity over a period of 12 calendar months. It is these long-term volunteer activities to which various regulatory policies are applied (e.g., mandatory insurance of volunteers, required training and other forms of specialized education, certification, official documentation, confirmation of certain qualifications, etc.). Similarly, various forms of state support (e.g., complete or partial reimbursement of expenses, financing of certain programs and projects, entry into official databanks, simplified procedures for extensions of permitted stays in Ukraine for foreigners, etc.) may only be applied to long-term volunteer activities.

Recommendation: A definition of "long-term volunteer activities" could be included in Article 16 of the Law on Charity, perhaps specifying a minimum term of three months. Nevertheless, special standards would require additional clarification in existing legal acts at several different levels, including state indices, norms and standards. From a long-term perspective, the best option would be adoption of *a national program aimed at supporting long-term volunteer activities* that would be confirmed by the Parliament in the form of a special law remaining in effect over a period of four to five years. Within the framework of existing budget legislation, only the adoption of such a national program would allow for the full or partial public financing of the program and of long-term volunteer activities.

7.3. Along with providing a framework definition of "volunteer activities" in the Law on Charity, it would be advantageous to regulate the issue of social benefits and social security for volunteers. Article 2 of this Law states unequivocally that activities of the subjects of philanthropy are aimed at achieving public good, and that those subjects should not be deprived of their entitlement to receiving state assistance. Regulation of long-term volunteering on the basis of agreements for charitable activities or uncompensated provision of services could appropriately avoid suspension of state social assistance over the period of time when a volunteer's only compensation is for incurred expenses.

Article 27 of the Law directly guarantees the right of foreign nationals and stateless persons to exercise any charitable activity in the territory of Ukraine, independently or jointly with other subjects of philanthropy. This should remove the necessity of applying for a work permit, but it would not impact the permissible length of stay in Ukraine.

If the standards of the Civil Code regarding uncompensated provision of services could be applied to volunteer activities, then existing legislation on taxation may not need to be amended, except to include the value of volunteer services provided by physical persons to non-profits as tax credits extended to those volunteers. Still, this issue tends to be rather controversial in Ukraine, and requires certain clarification of the criteria for assessing the value of such services and of the impact of the tax credit on receiving state social assistance. At the same time, the requirement that an individual possess a work record book in order to voluntarily pay into the systems of mandatory national retirement and social insurance in essence requires volunteers to enter into employment contracts with their receiving organization, irrespective of the volunteer's legal status (minors, foreign nationals, recipients of public social benefits, etc.). This practice should not impose limitations on volunteers.

Recommendation: The words "work record book" and "notarized work record book" should be excluded from the Ordinance of the Pension Fund № 21-1 of 21/19/2003 (Section 3.1.6, Addenda 2), Ordinance of the Board of the Fund of mandatory state social security regarding temporary disability and expenses related to births and deaths № 62 of 06/02/2005 (Sections 5.2.5, 17), and from corresponding standard agreements.

Recommendation: Encourage the Parliament to include in the draft law on mandatory medical insurance provisions that would guarantee the rights of volunteers engaged in long-term activities to participation in this type of insurance plan, and the right of non-profits to make corresponding payments on behalf of volunteers, including foreign nationals.

Recommendation: The draft law regarding Ukraine's ascension to the European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People should be re-submitted to the Parliament for consideration.

7.4. It seems obvious that, irrespective of the terms of adoption of the all-national program supporting long-term volunteer activities, the Cabinet of Ministers should once again define the composition and the authority of a special coordination body in charge of developing and implementing state policy in this field.

Recommendation: The Cabinet's Decree regarding a coordination body in charge of long-term volunteer activities should, in particular, stipulate the following authorities to be vested in this body: 1) pursuant to the procedures prescribed by law, establish national standards, standard agreements and other regulatory provisions that would facilitate long-term volunteer activities; 2) maintain an automated databank with information on participants in long-term volunteer activities, and provide access to this databank to public agencies and other non-profits; and 3) coordinate financing of training provided to volunteers within the framework of various national programs.

Reference materials

Information pertaining to legislative acts, state programs in the field of volunteer activities, and relevant projects is published on a regular basis on the websites of the Ukrainian Parliament, the Verkhovna Rada (<http://portal.rada.gov.ua>) and the Government of Ukraine (<http://www.kmu.gov.ua>).

Information regarding various opportunities and issues related to volunteer activities in different fields is regularly published on the following sites:

Center for Volunteering "Dobraya volia" (Good Will)
(<http://www.volunteering.org.ua>)

"Alternative – V," the All-Ukrainian Association of Youth Cooperation
(<http://www.alternative-v.com.ua>)

"Svit," the Union of Volunteers in the Field of Information Technology
(<http://www.isu.org.ua>)

The Union of Ukrainian Young People
(<http://www.sym.org>)

PLAST, the National Scout Organization of Ukraine
(<http://www.plast.org.ua>)

World Volunteer Web
(<http://www.unv.org>)

International Association for Volunteer Effort
(<http://www.iave.org>)