

Charity activities in Viet Nam – Issues and recommendations

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ABSTRACT

Charity is always encouraged all over the world. This humanitarian behavior shows the human value between people and helps society become better, which is in line with the spirit of the thousands of generations of Vietnamese people: "lá lành đùm lá rách - the leaves protect the tattered ones". However, besides the positive aspects achieved so far, this activity in recent years has shown many negative behaviors that distort the inherent good nature of charity activities. The violations of the law in charity activities stem from many different reasons, such as the fact that legal system governing charity in Vietnam is still incomplete and ineffective. The Vietnamese government has not yet enacted a law on charitable organizations charity activities are mainly governed by sub-law documents such as government decrees (Decree No. 93/2021/ND-CP issued on October 27, 2021, on mobilizing, receiving, distributing, and using voluntary contributions to support overcoming difficulties caused by natural disasters, epidemics, and incidents; support patients with critical illnesses). Besides, the issue of social consciousness and the impacts of the economic and social context are also causes leading to many inadequacies in charity. In particular, during the period of the COVID -19 epidemic and after, many people took advantage of the difficult situation to illegally earn money from charity activities. The consequences of these illegal actions have affected the community's trust in philanthropists and charitable organizations. In this article, the authors are going to focus on analyzing the legal regulations on charity activities in Vietnam and some of the current issues that have taken place in the last 5 years. On the basis of theoretical analysis, situation analysis, and comparison with legal regulations in some countries around the world (such as Canada and Germany), this article will offer some solutions to strengthen legal regulations and improve their effective control over philanthropy in Vietnam.

Key words: charity, Vietnam, charity activities, charity law

INTRODUCTION

Charity is an activity that has appeared and existed for a long time in society and is common in most countries around the world. Nowadays, charitable activities are not only limited to a country's territory but can also extend internationally.

By nature, charity is a voluntary activity that is usually performed by individuals and organizations with suitable economic conditions and abilities. Charity is often mentioned as a noble gesture, and the person who does it also receives love and respect from the recipient as well as the whole society. Many countries around the world have controlled and promulgated quite early legal regulations on charitable activities and community support, such as the United States, France, Germany, China, etc., and are currently implementing a management mechanism for these activities to be more efficient and transparent.

In Vietnam, as socio-economic conditions gradually developed and charity activities were promoted and got more attention, the State brought in several legal documents to regulate this issue, for example,

Decree 64/2008/ND-CP and Decree 93/2019/ND-CP. Recently, deriving from the fact that many individuals are not transparent on the use, distribution, and management of charity money for the people in the Central region who are victims of natural disasters, especially during the COVID-19 epidemic wave in recent years, the Government issued Decree 93/2021/ND-CP to replace Decree 64/2008/ND-CP with more appropriate regulations. The Ministry of Finance has also issued Circular 41/2022/TT-BTC, guiding the accounting regime applied to social and charitable activities.

Basically, Vietnam already has a legal framework to regulate charity activities however, there are still some shortcomings in law enforcement because the regulations are not complete and effective. On the other hand, today's charity activities take place more and more diversely with many new aspects. Many people or organizations take advantage of this activity for their own negative purposes, which transforms charity from a meaningful act to a tool for their unjust enrichment. Therefore, it is necessary to analyze and

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clarify the legal system that governs charity activities to see the inadequacies when applied in practice. In addition, some models of charity activities in some countries around the world are also included in the study to compare and clarify the limitations of the legal framework in the management of charity activities in Vietnam today. Beside, some recommendations are made to improve the legal framework for charity activities in Vietnam and social solutions to contribute to more effective charity activities in Vietnam in the future.

RESEARCH METHODS AND LITERATURE REVIEW

Legal issues and violations in charitable activities in Vietnam have been deeply concerned by legislators and researchers since the time of the COVID pandemic outbreak and after. The attention of the government and researchers comes from the fact that many individuals and organizations violate charity activities. Up to the present time, the charitable topic has only been discussed at seminars, talks, and articles in electronic newspapers. These studies are still fragmentary and incomplete.

In Vietnam, there has also been some research on charity activities. However, the number of researches is not many. Some typical articles written on charity activities in Vietnam are "Quản lý nhà nước về hoạt động từ thiện - Một số bất cập và định hướng hoàn thiện" (April 2023) by the author Bui Thi Thanh Thuy in State Management Review (No. 327), "Quyền và nghĩa vụ của các chủ thể tham gia hoạt động từ thiện, nhân đạo theo quy định pháp luật" (December 2022) by author Bui Thanh Thuy in State Management Review (No. 323), "Từ thiện xã hội cấp cộng đồng ở Việt Nam hiện nay" (2015) by Dang Nguyen Anh in the Vietnam Sociology Journal (No. 4 (132)). In addition, there is other research, such as the book "Nhận thức của người dân về hoạt động từ thiện và khả năng gây quỹ của các tổ chức phi chính phủ Việt Nam" (2015) by the Institute for Social, Economic, and Environmental Research (iSEE). Thus, the current works mostly focus on more social aspects instead of legal aspects, and they are not comprehensive.

Around the world, many researchers are also keeping an eye on philanthropy, such as the book "Law of Charity, 3rd edition" by Gino Dal Pont and Spetrow, which focuses on the law that governs and regulates the application of money or property for charity purposes "Financial Reporting Factors Affecting Donations to Charitable Organizations, Advances in Accounting" by John M. Trussel, Linda M. Parsons,

which refers to the development of the framework to identify factors in nonprofit financial reports that can impact donations. "Perceived value of charitable involvement: The millennial donor perspective" by Sandra S. Graça, Hana C. Zwick, examines the impact of six determinants of charitable giving on millennial donor perceived value received from their involvement with the charitable organization. In general, researches on philanthropy in the world are not new, and most of them refer to the philanthropy of organizations, not much to the philanthropic activities of individuals.

During the research process, authors use different research methods, including the method of analysis and synthesis which is used to analyse legal regulations, synthesize data and practical cases related to charity activities. From there, the authors analyse the achievements and limitations of charity work in Vietnam. The comparative method is used in comparing the regulations on charitable activities in Vietnam with the current organizational models in Germany and Canada.

RESULTS

Firstly, charitable activities in Vietnam are carried out by many different subjects, and most of these subjects operate spontaneously. The legal system related to conditions, processes, and handling for some subjects is not complete and logical.

Secondly, the issue of charity in Vietnam is currently only regulated by sub-law documents without any law on charity organizations. Furthermore, sub-law documents are now fragmentary and incomplete.

Finally, the laws on charity in Canada and Germany are relatively complete and valuable for Vietnam to reference.

DISCUSSION

Legal regulations on charity activities in Vietnam

Subjects of charity activities.

With the community nature of charity activities, basically anyone with aspirations and abilities can participate in this activity. However, with the goal of building a strict legal framework to regulate this issue, the law details the number of subjects to mobilize, receive, and distribute voluntary contributions in each specific field in Article 2 of Decree 93/2021/ND-CP.

Mobilizing, receiving, and distributing charitable contributions is an intermediary activity performed by organizations and individuals with rights as prescribed by law to transfer voluntary contributions

from other individuals and organizations to the recipients of support because contributors cannot always directly support people in need. This intermediary activity plays a very important role and requires high transparency. Organizations and individuals mobilizing, receiving, and distributing voluntary contributions include: the Vietnam Fatherland Front Committee the Vietnam Red Cross Society (Hội Chữ thập đỏ Việt Nam) Ministries, Ministerial-level agencies, Government agencies, provincial-level People's Committees, and district-level People's Committees The Central Steering Committee for Natural Disaster Prevention and Control (Ban chỉ đạo quốc gia về phòng, chống thiên tai) mass media agencies, medical facilities such as Lao Động Newspaper, People's Public Security Newspaper, Tuổi Trẻ Newspaper, Vietnam News Agency, Vietnam Television Station, and Voice of Vietnam, etc. and local newspapers and radio agencies¹. In addition, medical facilities such as hospitals, clinics, medical stations, etc. also play an important role in receiving donations for patients with fatal diseases.

In addition to the agencies and units mentioned above, charity funds include non-governmental organizations in which individuals and organizations voluntarily contribute a certain part of their assets. They can also contribute their cash or donate through wills to establish the fund. These charity funds are organized and operated for the purpose of assisting in overcoming incidents caused by natural disasters, fires, epidemics, accidents, and other disadvantaged people who need the assistance of society, not for the purpose of profit [2, Art 4]. Besides, enterprises, corporations and organizations with legal persons, individuals with full capacity for civil acts also have the right to receive contributions for consequences caused by natural disasters, epidemics, and incidents and to support patients suffering from fatal diseases. This is a new regulation of Decree 93/2021/ND-CP compared to Decree 64/2018/ND-CP to expand and encourage charitable activities in the community. Accordingly, the State allows legal entities with independent assets and individuals aged 18 years or older with normal cognitive ability to mobilize, receive, and distribute donations from other people.

Recently, most individuals who call for and mobilize the community to perform charity activities, receive donations, and directly distribute them to people in need of support are celebrities, artists, misses, etc. This can be considered in two aspects: they are well-known and influential people in society, so it is easier and more convenient to raise charitable donations than other individuals, however, there are many cases

of taking advantage of charity work just to make an impression in the community, not from the bottom of the heart, or even using charity, and taking advantage of the community's trust for personal gain.

Prohibited acts in charity activities.

To contribute to ensuring the effectiveness of charity activities in practice, Article 5 of Decree 93/2021/ND-CP stipulates the number of prohibited acts in charity activities.

Firstly, obstructing or forcing organizations and individuals to participate in mobilizing, contributing, receiving, distributing, and using voluntary contributions. The nature of charity is voluntary, so all acts of obstructing or forcing against the will of organizations and individuals to participate in stages of charity activities seriously affect the legitimate rights and interests of organizations and individuals to participate in charity activities, so this is a prohibited act by law. Secondly, reporting, providing untrustworthy information; usurping; distributing, using contribution property for unclear purposes at an improper time; and distributing, using contribution property for those who are not subject to support from voluntary contributions.

Thirdly, taking advantage of the work of mobilizing, receiving, distributing, and using voluntary donations to profit or carry out activities infringing upon national security, social order, and safety. Charity is a community activity aimed at supporting and helping people in need, specifically with food, clothing, living utensils, etc., but to facilitate the transportation and distribution of material values, most participants usually contribute cash or a transfer. However, this can also easily become a tool and means for individuals and organizations to take advantage of it for their own gain or, more seriously, to create favorable conditions for them to infringe upon national security and public order. Therefore, to limit the above problem, it is extremely necessary to prescribe the de facto obligation to report and provide information in a detailed and honest manner to contribute to controlling the effective implementation of charity activities.

Thus, individuals and organizations calling for charity must distribute donated money, property, and goods to those in need in accordance with the law.

Measures to handle illegal acts in charity activities.

Penalties for administrative violations

Article 14(2) of Decree 03/2022/ND-CP stipulates that if an individual commits acts of misuse, causing loss of money, relief goods, or relief to the wrong

subjects, but not yet to the point of criminal prosecution; usurping relief goods without reaching the level of criminal prosecution; or failing to perform relief tasks in time, they will be fined from VND 5,000,000 to VND 10,000,000. If the organization commits the abovementioned behaviors, it will be fined twice as much as the individual fine, i.e., the organization can be fined up to 20,000,000 VND.

The statute of limitations for sanctioning in the fields of natural disaster prevention and control and irrigation is 1 year, and for the dyke field, it is 2 years. In which case, the starting time for calculating the statute of limitations for the act of usurping charitable money can be calculated from the time the act ends. If the end of the violation cannot be determined, it is determined that the violation is ongoing.

Criminal handling

When detecting violations specified at Points a and b, Clause 2, Article 14 of Decree No. 03/2022/ND-CP (that is, acts of misuse, causing loss of money, relief or rescue goods, providing assistance to the wrong subjects but not reaching the level of criminal prosecution; appropriating relief goods), the competent person who is handling the case must transfer the violation case file to the competent criminal procedure-conducting agency to consider criminal prosecution. At that time, the person who commits the violation may be prosecuted for the crime of fraudulently appropriating property [3, Art 174] or the crime of abusing credit to appropriate property [3, Art 175].

For the crime of fraudulently appropriating property [3, Art 174], a person uses deceitful tricks to deceive others with the aim of appropriating money and goods used for charity. This trick can be used to give false information, fake information to make others believe it, transfer money, deliver property, or deliver goods. The value of the appropriated property is from 2,000,000 VND or the acts specified in Clause 1, Article 174 of the Penal Code in 2015 (amended and supplemented in 2017). The penalty for this crime can be up to 20 years or even life imprisonment. In addition, the offenders may also be subject to a fine of between VND 10,000,000 and 100,000,000, a ban from holding certain posts, practicing certain professions, or doing certain jobs for 1 to 5 years, or having part or all of their assets confiscated.

For the crime of abusing credit to appropriate property [3, Art 175], the offenders legally obtained money and charity goods from others for innocent purposes but then intended to appropriate with that money or goods for their own purposes. This behavior means a receiver does not fulfill the original commitment, or

return the donated amount through deceitful tricks such as: withdrawing assets, forging documents. The value of money, property, or goods appropriated is from 4,000,000 VND or more or falls into the case specified in Clause 1, Article 175 of the Penal Code 2015 (amended and supplemented in 2017). Offenders who abuse credit to appropriate property are punishable by imprisonment for up to 12 years. In addition, the offenders may be subject to a fine of between VND 10,000,000 and 100,000,000, a ban from holding certain posts, practicing certain professions, or doing certain jobs for 1 to 5 years, or having part or all their assets confiscated.

The current status of the charity system

Starting with the story of artists doing charity from 2020 to 2021 in Vietnam, many legal and practical issues in charity activities have been raised. In 2021, the police agency received a denunciation about some artists taking advantage of charitable donations to support people in the Central region due to the impact of floods in 2020, slow disbursement, lack of transparency, and denounced them for signs of abuse and appropriation. At the same time, some people posted information on social networks and spread the information at a rapid rate. The online community pressured and asked these artists to publicize the amount of money used for charitable purposes. The Ministry of Public Security and the Public Security of Ho Chi Minh City had to intervene to investigate the case and finally concluded: the above artists did not commit fraud, did not appropriate charity money contributed by the people, hence, no one is prosecuted⁴. Although the case has been verified and clarified, the artists' reputation has been affected. In addition, researcher and the government have begun to review and evaluate the legal framework for charity activities, which already has many shortcomings.

In addition to individuals and organizations that are commended and rewarded for their benevolent actions, there are also several individuals and organizations that take advantage of charity activities to make profit, especially using social networks to metamorphose into philanthropists. From 2020 to 2021, many people took advantage of social networks to call for help due to the impact of the COVID-19 epidemic, difficult circumstances. The fraudster created an account and regularly posted pictures of people in need, thereby calling on the benefactor to transfer money to personal accounts managed by themselves. Many people, after transferring money to charity, discovered that they had been scammed, but they did not

report it to the police because the amount of money was not much. In addition, the psychology of Vietnamese people and Asians in general, often believes in karma, they believe that the money they give out for kindness will enjoy blessings and virtues later and if anyone cheats, they will be punished by karma instead of only by the law. Therefore, those who deceive and take advantage of the kindness of philanthropists continue to perform the same actions with others.

These abovementioned circumstances can arise for the following reasons:

The provision in the legal documents is not complete and consistent with charity activities.

As analysed above, the documents that directly regulate charitable activities are the sub-law documents, mainly the Government Decree. Although the amendments and supplements are more complete than the previous ones, Decree No. 93/2021/ND-CP (replacing Decree No. 64/2008/ND-CP dated May 14, 2008 of the Government on mobilizing, receiving, distributing and using voluntary contributions to support people to overcome difficulties caused by natural disasters, fires, serious incidents, and patients suffering from fatal diseases) still has a number of points is not really clear, may continue to cause confusion when implemented, needs additional consideration or appropriate guidance. For example, Article 6(5), Article 17(1) stipulate that individuals notify the media of their commitments about the purpose, scope, method, object of campaigning, form of campaigning, receiving account, receiving location, campaigning time, receiving, supporting objects, support implementation time, and distribution commitment time, then send a document to the commune-level People's Committee of their domicile. However, these regulations do not prescribe whether individuals are allowed to change the content of the campaign or not, if so, how to follow the procedure⁵.

In addition, Decree 93/2021/ND-CP also only mentions the receipt, management, and distribution of charitable resources and the obligation to publicize in the mass media the charity activities related to overcoming consequences caused by natural disasters, epidemics, incidents, and supporting patients with fatal diseases. However, fraud to profit from charity work does not only fall into the above cases de facto. For example, individuals take advantage of the kindness of philanthropists to ask them to contribute to poor children or pretend to be disabled to call for charity, etc. People donating money to charity do not have time to verify the accuracy of the story, and if they do find out, they do not have enough information to complain or

file a lawsuit. Therefore, the issues continue to happen without reasonable punishment.

There is no effective control, and specific monitoring mechanism in charity activities.

The administrative agencies that greatly support the distribution of charity resources to the needy. However, there are many cases in which local cadres and civil servants do not distribute charity resources equitably to their citizens, even when the names of their family members and their acquaintances are recorded to receive money and charity gifts. Even the identification of those who are difficult is not taken seriously, those who are difficult and those who are not difficult receive the same amount of support. Meanwhile, the purpose of charity work is to support and help those who are really in need. The inspection and supervision of local agencies in charity work are not close and effective, which easily gives rise to a loss of trust from the people, affecting the psychology of philanthropists.

For charity activities organized and mobilized by individuals, Decree 93/2021/ND-CP has regulations on the obligation to open a bank account to receive charity money, the obligation to publicize, inform, and notify in writing to the commune-level People's Committee the time, place, purpose, scope, method, and form of mobilization, the receiving account (for money), the receiving location (for the stuff), time commitment to distribution [², Art 17]. However, Decree 93/2021/ND-CP does not have specific regulations on the rights and responsibilities of inspection and supervision belonging to any agency, and there are no regulations on the supervision process since the date of organization to receive charitable assets until all charitable resources are distributed.

Regulations on the handling of illegal acts in charity activities are inadequate and not deterrent enough.

As mentioned in Section 4.1, depending on the seriousness of violations, they can be administratively sanctioned or called to account. However, there is no separate document for sanctioning administrative violations in charity activities, and for serious violations to be penalized, the crime constitutes the crime of "fraudulent appropriation of property".

Decree 03/2022/ND-CP stipulating penalties for administrative violations in the fields of natural disaster prevention and control, irrigation, and dikes. Article 14 stipulates to overcome consequences of natural disasters, the regulation mentions the issue of a maximum fine of 10,000,000 VND for: misuse, loss of money, relief goods, providing relief to the wrong subjects but not to the extent of criminal prosecution; appropriating relief goods without reaching the level

of criminal prosecution; untimely rescue missions. As for the specific obligations of individuals and charity organizations specified in Decree 93/2021/ND-CP, there is no regulation on the specific level of sanctions for each case, making the handling of the case more difficult. In addition, the above sanction is not enough of a deterrent for fraudulent acts while doing charity.

Charity organizations in some countries

Germany

Charity organizations

The condition of such charities is to exist under one of three specific legal forms : registered association (Verein), foundation (Stiftung) and limited liability company (gemeinnützige Gesellschaft mit beschränkter Haftung – gGmbH). Charities must pursue those goals altruistically (selbstlos), exclusively (ausschließlich) and directly (unmittelbar). In addition, a charity is not allowed to accumulate income (Gebot der zeitnahen Mittelverwendung).

Associations

An association (Verein) established not for profit, whose main purpose and activities are not related to business activities (for profit purposes), becomes a separate legal entity when registered with the Federal Register (Vereinsregister). When registering, an association has to put eV (eingetragener Verein) at the end of its name. To register, an association must have at least seven members. A copy of the charter of the association signed by at least seven members and a copy of the appointment of the board members must be attached to the registration form. Associations can also be unregistered, unincorporated (nichtrechtsfähiger Verein) [6, Section 54].

Charity foundation

A Foundation according to The Civil Code (Sections 80 to 88) has a legal personality recognized by the competent authority (Stiftungsaufsichtsbehörde) in the state (Bundesland) where the foundation is legally headquartered. The competent authority will recognise the foundation if [6, Section 80(2)], [6, 81(1)]: (i) The trustee's statement (Stiftungsgeschäft) meets certain legal requirements (the name of the foundation, the seat of the foundation, the objects of the foundation, the assets of the foundation, the composition of the foundation board); (ii) the long-term and sustained achievement of the object of the foundation appears guaranteed and if the object of the foundation does not endanger the common good. In most cases, it takes two - four weeks to recognise foundation. Although the law does not prescribe a minimum capital,

authorities usually require at least 50,000 to 100,000 EUR.

When operating, the foundation is subject to constant supervision by the state agency that decides to recognize it. The state agency has the power to exercise regulatory oversight without a court order. The main task of state supervision is to ensure that the foundations' function as they were originally intended. The state agency is only allowed to check whether the funds meet the requirements of the law on their establishment and not related to the governance of the fund. Foundations that have no legal personality are called nichtrechtsfähige or unselbstständige Stiftungen. The establishment of such foundations is subject to common contract law. A contract between the trustor/transferor (settlor) and the trustee (individual or legal personality). Since they are not registered, the number of these foundations cannot be clearly and accurately counted. However, this type of foundation is becoming increasingly popular and is often managed by other charities looking for additional funding.

Limited companies

Finally, the charity operates in the form of a company/enterprise. To form a limited liability company, the memorandum and charter of enterprise must be signed at the Commercial Register (Handelsregister), notarized and the executives must be appointed by the founding members. The notary then files a company registration application with the local commercial register. In addition, the charter of enterprise must comply with the minimum substantive requirements of the Limited Companies Act. At least 50% of the legal capital must be paid before submitting the application. A limited liability company is considered to exist only when it is registered. A limited liability company must have a minimum capital of 25,000 EUR. For limited liability companies that is eligible for tax incentives, the tax authority must confirm that there is no objection to the tax incentives.

The mandatory structure of a limited liability company is the meeting of the board of members (Gesellschafterversammlung) and directors (Geschäftsführung). There must be at least one executive director (Geschäftsführer). The responsibility for running and managing the company is delegated by the members to the executive director, who must comply with the company law and the company's charter. The executive director can only be an individual, including a foreigner. There is no precedent stipulating whether a legal personality can be a member of the supervisory board of a limited liability company. All individuals and legal personality including foreigners with legal personality can become members of the company.

Regulations on financial reporting of charities

Entities that are tax-exempt must submit statements on activities, an account of the use of funds, and reports on the accumulation of reserves to tax authorities. In general, accounts must be filed annually. When approved by the tax authorities and depending on the extent of business activity, associations and foundations may file accounts every three years.

For associations and foundations, they can prepare a cash accounting scheme with an inventory, or a commercial annual financial statement with a balance sheet and profit and loss account. They usually do not need to be published. An association that knowingly or recklessly issues a donation receipt is responsible for the tax revenue shortfall brought on by the deduction of 30% of the donation for income or corporation tax and 15% for trade tax⁷.

For charitable companies, annual account requirements vary depending on the size of the company. Small companies only need to disclose their annual accounts. Bookkeeping, annual accounts and business reports of large and medium-sized companies are audited by qualified auditors.

In January 2019, the Association for the Taxation of Financial Transactions and for Citizens' Action (ATTAC) was stripped of its charity status by the German Fiscal Court (Bundesfinanzhof) because the organization pursues political goals that deviate from the German tax code. According to the ruling, ATTAC is not allowed to perform educational work that is politically biased, which is the task of political parties that have been mandated by the nation, if it wants to benefit from its charitable status⁸. This requires that associations and charitable organizations operate solely for the benefit of the public and not for any other political objectives.

Canada

Subjects of charity activities

In Canada, there are many types of registered charities, including charities, community foundations, and private foundations, to help promote social activities and benefit the public⁹. Once incorporated, the charity becomes a separate legal entity (a company) and the company is generally responsible for its debts and obligations¹⁰.

The designation a charity receives depends on its structure, its source of funding, and its mode of operation. A registered charity is notified of its designation by the CRA^a when it receives a notice of registration. If a charity has only one director, trustee,

^aFor charities, the Canada Revenue Agency (CRA) registers charities in Canada and ensures that they continue to comply with the requirements of the common law and Income Tax Act.

or other official, it will automatically be designated as a private foundation upon registration. To be designated as a charitable organization or public foundation, more than half of the directors, trustees, or other officials must be at arm's length. If there is only one, this is not possible¹¹.

Registered charities are established as corporations, trusts, or under a constitution (for charitable organizations), and they have only charitable purposes. Under Section 230 of the Income Tax Act, registered charities are required to keep books and records to allow amounts deductible, or subject to be collected, to be determined, and to verify donations to the charity for amounts eligible for deductions or credits under the Income Tax Act¹². A registered charity is only allowed to carry out its charitable purposes both inside and outside of Canada in two ways: (i) carrying out its own charitable activities and (ii) giving grantees eligible funding. A registered charity must maintain direction and control over its activities (whether conducted by the charity or an intermediary on its behalf)¹³.

The rules of charitable initiatives

Registered charities in Canada have rules to follow such as Sticking to the charitable mission; Maintaining control over the activities, or giving to qualified donees; respecting the rules on social activities; keeping proper books and records; filing an annual information return; notifying the CRA of changes and getting permission when required; meet the annual spending requirement; issue proper donation receipts, and follow the rules on fundraising.

There are two prohibited activities:

- Avoid prohibited political activities: Charities cannot have political purposes, only political activities; all "partisan"^b political activities are prohibited. Non-partisan political activities are allowed; Any non-partisan political activities must directly help the charity accomplish its purposes.
- Avoid prohibited business activities: A registered charity categorized as either a charitable organization or a public foundation can carry on a business related to its purposes. But charities categorized as private foundations are not allowed to carry out any business activities. "Business" refers to activities carried out on a regular basis that generate money from providing goods or services with the intention of earning a profit.

^bPartisan means activities that involve support for, or opposition to, a political party or candidate for public office.

The most important rule during the operation is “keeping proper books and records”. Registered charities must keep adequate books and records, in English or French, at the Canadian address listed with the CRA. Books and records include financial statements, bank statements, income tax records, expense accounts, copies of official donation receipts, governing documents (constitution, trust document, letters patent, etc.), minutes of meetings, annual reports, annual information forms, accounting ledgers, fundraising materials, and written agreements¹⁴. The principal purpose of this rule is to ensure the operational efficiency of registered charities by controlling their revenues and spending on charitable activities.

Measures to handle illegal acts in charity activities.

Fundraising activities that are illegal or contrary to public policy are prohibited and may result in the revocation of registered charity status. Examples of illegal fundraising activities are activities that are criminally fraudulent or violate federal or provincial statutes governing charitable fundraising, charitable gaming, the use of charitable property, or consumer protection. In particular, fundraising that includes the issuance of improper donation receipts is contrary to the Income Tax Act and can lead to revocation. The CRA takes the position that fundraising is not acceptable even where the fundraising activity is not in itself illegal but is associated with illegal conduct. This is the case where a charity knows, or ought to have known, that it is furthering illicit practices or transactions¹². If the CRA is concerned about a charity’s fundraising activities, it can do several things to bring the charity into line. CRA generally looks at the seriousness and persistence of the misconduct, and whether it was intentional or not, in determining what its response will be. The measures include assessing a monetary penalty; suspending a charity’s tax-receiving privileges; revoking a charity’s registered status. Revocation is allowed at any time, but generally it is the last resort used by the CRA¹⁵.

Some recommendations for charity activities in Vietnam

Recommendations on legal aspects

It is necessary to develop a law on the organization of volunteer activities. Currently, the documents directly regulating charitable activities are only sub-law documents, there is no separate legal document for this activity. The stability of sub-law documents is not high and does not provide general principles of stability and long-term orientation like legal documents.

Meanwhile, charity activities have meaning and play an important role in connecting social relationships between people, helping society stabilize and develop. Therefore, the enactment of the law on voluntary activities is necessary. Models can be found from countries that have laws on charities with different names, such as China’s Charity Law, the US Law on Charities, and the US Non-Profit Organization law from which there is a complete legal framework for charities, individuals calling for charity, as well as the use and disclosure of the money raised, and finally sanctions for acts that violated the original purpose.

In addition, legal documents in related fields should also have regulations to encourage organizations and individuals to participate in charity activities, such as regulations on tax exemption or reduction for charitable businesses and organizations that carry out charitable activities, etc. For businesses with registered charity funds, the state should have tax incentives or support in terms of human resources, other technology, etc. In addition, charities are required to report the use of charitable funds to the tax authorities as German law. Reporting or using charity funds for illegal purposes will result in arrears and the deprivation of the right to organize charity activities.

Raising the level of handling violations in charity activities. Violations in charity not only cause property damage but also lead to a greater loss of value, which is the trust of philanthropists. In order to limit the situation of organizing charitable activities for profit, it is necessary to raise the level of administrative violations three times higher than the current one. In addition, there should be strict sanctions for fraudsters who appropriate other people’s money for charity. It is necessary to include framing and aggravating circumstances in the case of “using charity money for improper purposes or for personal purposes”. According to the provisions of Clause 3 Article 174 of the Penal Code 2015 (amended and supplemented in 2017), “taking advantage of natural disasters and epidemics” to commit fraud and appropriate property is a very serious crime framing circumstance with a very serious crime level. The maximum penalty is 15 years in prison. However, fraud and appropriation of property in the name of charity work not only appear in the case of natural disasters and epidemics but also occur in normal conditions. Charity for the wrong purpose or for personal purposes” is necessary and consistent with current practice.

Strengthening state management activities in the activities of charity organizations and individuals calling for charity. Inspection and supervision activities need to be carried out in both the digital environment

and the actual environment. It is a check on the legitimacy of the charity, on the use of charity money and on the disclosure of papers and documents related to the performance of charity work.

Recommendations from a practical perspective

Currently, the law allows individuals and organizations that meet the statutory requirements to mobilize, receive, and distribute voluntary contributions; however, there are only regulations on opening a separate account at the State Bank of Vietnam or a commercial bank. There is no official regulation on registration. The laws of countries around the world such as Germany and Canada, all regulate the registration of charitable organizations and are subject to supervision under their own mechanisms throughout their operation. The Vietnamese government needs to regulate the charity registration process of charitable organizations to make it more convenient for management, improve the efficiency of charity activities, and limit profiteering.

Building a public portal of charity funds for people to easily access and track. Although there are regulations on publicity of voluntary contributions [2, Art 14] such as publicly posting at the headquarters of organizations, agencies, units, community activities and points publicized on the website, being announced in the mass media, and on radio and television programmes, this regulation is still general. Therefore, it is necessary to build a separate portal that focuses on unifying content related to charity activities nationwide. When donations are public, transparent, and there is a tool for philanthropists to track and monitor charity funds more easily. Then, negativity in the charity process will be limited. Public information should be regularly updated, especially regarding the allocation of charitable resources. In order to ensure the effectiveness of the public portal funds on charity activities, the government should promulgate regulations that require charities to keep and be transparent about documents and books, like the way to manage charitable activities in Canada. These documents and books include financial statements, bank statements, expense accounts, copies of official donation receipts, annual reports, annual information forms, fundraising materials, and written agreements, etc. The government agencies may require the presentation of financial documents and records when necessary.

The government should step up propaganda and mobilize people in difficult circumstances to make efforts to improve their lives and limit begging. Besides those

who are really in financial difficulty, are sick, disabled or critically ill and need help; there are plenty of people who take advantage of the kindness of philanthropists to refuse to work hard and rely on the love of others. Therefore, the government needs to take measures to propagate and mobilize people in difficult circumstances to overcome difficulties. The concrete solution could be to create local job centers and take more control over the problem of begging. Those who pretend to be beggars should be strictly punished, as should those take advantage of the kindness of others. In addition, attention should be paid to educational activities, teaching children awareness and responsibility for their lives and to be cautious of bad people. In addition, charitable people should put their kindness in the right place.

Building and managing charity funds according to specific fields such as education, health care, natural disasters, epidemics, etc. The charity management by each field will help philanthropists send money and assets to the right places for people in need, and at the same time, limit individuals and organizations taking advantage of charity to distribute charity resources to the wrong people.

CONCLUSION

Charity activities are always encouraged in every society because they show the precious bond between people's affection for each other. The nature of charity activities is voluntary, comes from compassion, but without a regulatory legal mechanism, and a lack of state control and supervision, charitable activities may be distorted and negative. To contribute to the promotion of charity activities in accordance with their nature, limiting the current negatives, it is necessary to improve the regulatory legal framework and strengthen the state's inspection and supervision. In addition to people doing charity work, people receiving charity also need to raise their awareness so that charity work can be done effectively, with the right people, and enhance positive humanitarian values for society.

ABBREVIATIONS

Canada Revenue Agency: CRA

EURO: EUR

The Association for the Taxation of Financial Transactions and for Citizens' Action: ATTAC

Vietnam Dong: VND

CONFLICT OF INTEREST

The authors declare that he has no conflicts of interest.

AUTHORS' CONTRIBUTION

- Trần Kiều Nhi is responsible for the content: Ideation for the article; Abstract, Introduction; Status of charity activities; Some recommendations for charity activities in Vietnam; Conclusion.

- Hồ Trần Bảo Trâm is responsible for the content: Legal regulations on charity activities in Vietnam; Prohibited acts in charity activities; Charity organizations in some countries; Some recommendations for charity activities in Vietnam.

- Trần Nguyễn Quang Hạ is responsible for the content: Measures to handle illegal acts in charity activities; Charity organizations in some countries; Some recommendations for charity activities in Vietnam; translation.

REFERENCES

1. Từ điển tiếng việt "cơ quan thông tin đại chúng" là gì? [Internet]. Từ điển tổng hợp online. [cited 2023Feb27]; Available from: <https://vtudien.com/viet-viet/dictionary/nghia-cua-tu-c%20C6%A1%20quan%20th%20C3%B4ng%20tin%20%20C4%91%E1%BA%A1%20ch%20C3%BAng>.
2. Government, Decree no. 93/2019/NĐ-CP Decree on prescribing organization and operation of social and charity funds, Ha Noi, 2019;.
3. National Assembly, Penal Code (amended and supplemented), Ha Noi, 2017;.
4. Phạm Dự. Bộ Công an: Ca sĩ Thủy Tiên, Đàm Vĩnh Hưng không chiếm đoạt tiền từ thiện [Internet]. vnexpress.net. VnExpress; 2022 [cited 2023Mar8]; Available from: <https://vnexpress.net/bo-cong-an-ca-si-thuy-tien-dam-vinh-hung-khong-chiem-doat-tien-tu-thien-4416902.html>.
5. Gia Nguyễn. Nghị định 93/2021: Vẫn còn những bất cập trong hoạt động thiện nguyện [Internet]. <https://diendandoanhngiep.vn/>. 2021 [cited 2023Mar10]; Available from: <https://diendandoanhngiep.vn/nghi-dinh-93-2021-van-con-nhung-bat-cap-trong-hoat-dong-thien-nguyen-214255.html>.
6. Bundestag, Bürgerlichen Gesetzbuches (Civil Code), Berlin, 2013;.
7. Organisation for Economic Co-Operation and Development. Report on abuse of charities for money-laundering and tax evasion [Internet]. [cited 2023 Jun 20]; Available from: <https://www.oecd.org/tax/exchange-of-tax-information/42232037.pdf>.
8. Schulz F. German charities fight to stay "Politically active" despite Attac ruling [Internet]. 2019 [cited 2023 Jun 20]; Available from: <https://www.euractiv.com/section/energy-environment/news/german-charitable-organisations-fighting-for-their-political-rights/>.
9. Canada Revenue Agency (CRA). Top 10 facts about the regulation of charities [Internet]. Canada.ca. / Gouvernement du Canada; 2019 [cited 2023Mar9]; Available from: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities-media-kit/top-10-facts-about-regulation-charities.html>.
10. Indeed Editorial Team. Foundation vs. Charity vs. Non-profit: What's the Difference? [Internet]. 2022 [cited 2023Mar9]; Available from: <https://www.indeed.com/career-advice/career-development/foundation-vs-charity-vs-nonprofit>.
11. Canada Revenue Agency. Types of registered charities (designations) [Internet]. Gouvernement du Canada; 2016 [cited 2023 Jun 15]; Available from: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/establishing/types-registered-charities-designations.html>.
12. Blumberg M. What are illegal fundraising activities or activities contrary to public policy for CRA? [Internet]. 2019 [cited 2023 Jun 15]; Available from: https://www.canadiancharitylaw.ca/blog/what_are_illegal_fundraising_activities_or_activities_contrary_to_public_po/.
13. Canada Revenue Agency (CRA). Basic guidelines [Internet]. Canada.ca. / Gouvernement du Canada; 2019 [cited 2023Mar9]; Available from: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/checklists-charities/basic-guidelines.html>.
14. Educaloi. Rules registered charities must follow [Internet]. 2023 [cited 2023 Jun 15]; Available from: <https://educaloi.qc.ca/en/capsules/rules-registered-charities-must-follow/>.
15. Charity Central [Internet]. [cited 2023 Jun 15]; Available from: <https://www.charitycentral.ca/fundraising/fundraising-faqs/illegal-and-prohibited-activities/>.

Hoạt động từ thiện ở Việt Nam, thực trạng và một số kiến nghị hoàn thiện

Trần Kiều Nhi*, Hồ Trần Bảo Trâm, Trần Nguyễn Quang Hạ

TÓM TẮT

Hoạt động từ thiện luôn được khuyến khích ở mọi nơi trên thế giới. Hành động tốt đẹp này thể hiện giá trị nhân văn giữa người với người và phần nào giúp cho xã hội trở nên tốt đẹp hơn, đúng với tinh thần của người Việt Nam từ ngàn đời: "lá lành đùm lá rách". Tuy nhiên, bên cạnh những mặt tích cực đạt được từ xưa đến nay, hoạt động này trong những năm gần đây đã xuất hiện nhiều hành vi tiêu cực bóp méo bản chất tốt đẹp vốn có của hoạt động từ thiện. Những vi phạm trong hoạt động từ thiện xuất phát từ nhiều nguyên nhân khác nhau, trong đó có liên quan đến việc hệ thống quy phạm pháp luật điều chỉnh về vấn đề từ thiện ở Việt Nam chưa đầy đủ và chưa đạt hiệu quả khi áp dụng. Việt Nam vẫn chưa ban hành luật các tổ chức từ thiện, hoạt động từ thiện chủ yếu được điều chỉnh bởi các văn bản dưới luật như Nghị định của chính phủ (Ví dụ: Nghị định số 93/2021/NĐ-CP ban hành ngày 27/10/2021 về vận động, tiếp nhận, phân phối và sử dụng các nguồn đóng góp tự nguyện hỗ trợ khắc phục khó khăn do thiên tai, dịch bệnh, sự cố; hỗ trợ bệnh nhân mắc bệnh hiểm nghèo). Bên cạnh đó, vấn đề ý thức xã hội và những tác động từ bối cảnh kinh tế, xã hội cũng là những nguyên nhân dẫn đến nhiều bất cập trong từ thiện. Đặc biệt, trong giai đoạn diễn ra dịch bệnh covid 19 và sau đó, nhiều người đã lợi dụng hoàn cảnh dịch bệnh để trục lợi phi pháp từ hoạt động từ thiện. Hậu quả của những hành động bất hợp pháp này đã làm ảnh hưởng đến niềm tin của cộng đồng vào những người làm từ thiện và những tổ chức thực hiện hoạt động từ thiện. Bài viết của nhóm tác giả tập trung phân tích những quy định pháp luật về hoạt động từ thiện ở Việt Nam, đồng thời phân tích một số thực trạng diễn ra trong thời gian 5 năm gần đây. Trên cơ sở phân tích lý luận, thực trạng và so sánh với quy định pháp luật ở một số quốc gia trên thế giới, bài viết sẽ đưa ra một số giải pháp góp phần hoàn thiện quy định pháp luật và kiểm soát hiệu quả hơn về từ thiện ở Việt Nam.

Từ khoá: từ thiện, Việt Nam, hoạt động từ thiện, luật từ thiện

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