METHODS OF CHARITY IN INTERNATIONAL ORGANIZATIONS: LEGAL PRINCIPLES, PROTECTION AND FOREIGN EXPERIENCE

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The scientific article is devoted to the disclosure of methods of charity in international organizations (legal principles and foreign experience). It is worth emphasizing that the above-mentioned cases of the use of SMS donations as a method of charity in Ukraine were more an exception than an established practice, and were always implemented in accordance with specific government resolutions and regulations. At the same time, the creation of a comprehensive regulatory document that would allow bringing charitable activities to a fundamentally new level, using advanced and modern methods of providing assistance, stretched for many years. The urgent need for its adoption has long been the subject of discussions among lawyers, heads of charitable institutions and telecommunications operators. The key difficulty in developing and agreeing on the provisions of the draft law was the need to guarantee the highest degree of control over the transparency and accountability of sending charitable messages, as well as over the targeted use of collected funds.

Unlike platforms developed in Europe over the past decade (JustGiving, Mobile Commons, Mobile Accord, mGiving, LikeCharity, DMS), which act as intermediaries between mobile operators and charitable organizations, in Ukraine public collection of charitable contributions using mobile technologies is carried out directly by the telecommunications operator. This is done on the basis of an agreement concluded with a non-profit organization, including a charitable organization (with the exception of political parties and credit unions), or a territorial community. The operator does not require a power of attorney.

It can be stated that after the enactment of the Law on Charity, charitable institutions have gained many opportunities that allow them to systematically increase their assets and smoothly implement charitable activities. At the same time, the number of cases of fraud and fraud aimed at misappropriating charitable funds and property has increased.

Keywords: charitable activities, charitable organizations, information technologies, foreign experience, protection, types, methods of assistance, public administration body, international charitable organizations, human rights activist, legal aid, methods of charity.

In October 2016, the Laws of Ukraine No. 1664-VIII "On Amendments to Certain Laws of Ukraine on the Creation of Favorable Conditions for the Implementation of Charitable Telecommunications Messages" [1] and No. 1665-VIII "On Amendments to the Tax Code of Ukraine on the Creation of Favorable Conditions for the Implementation of Charitable Telecommunications Messages" [1] were adopted, designed to regulate the specifics of the public collection of charitable donations using a charitable telecommunications message. These documents exempted the relevant transactions from VAT, mandatory state pension insurance contributions, and

determined that the operator's provision of public collection services and the transfer of charitable donations received using a charitable telecommunications message were free of charge, which eliminated the need for the operator to pay income tax.

Unlike various mobile platforms created in Europe over the last decade, which are intermediaries between mobile operators and charitable organizations, in Ukraine public collection of charitable donations using charitable donations is carried out directly by the telecommunications operator on the basis of an agreement concluded with a non-profit organization, including a charitable organization (except for political parties and credit unions) or a territorial community. Issuance of a power of attorney to the operator is not required.

According to clause 4-1 of part 1 of article 1 of the Law, a charitable telecommunications message is a voice, text message, dialing a specific number, using tone dialing signals initiated from the subscriber's terminal equipment, which are recorded by the telecommunications operator's equipment on a telephone number allocated for collecting funds for charitable purposes. In the event of a subscriber sending (implementing) a charitable telecommunications message, the telecommunications operator is obliged to transfer the funds previously prepaid by the subscriber but not used by him for telecommunications services (advance) within the unused balance to the relevant non-profit organization (except for political parties and credit unions) or territorial community for the purposes of charitable activities within the time limit and in accordance with the conditions specified in the agreement.

The Law defines the essential terms of such an agreement concluded between the operator and a non-profit organization, including a charitable organization (except for political parties and credit unions) or territorial community as:

1) the obligation of the relevant organization or territorial community to publish reports on the use of funds and documents (or their certified copies) confirming them on its website;

2) the deadlines for publishing the above information and documents, as well as liability for their failure to comply.

In addition to the clearly established legislative requirement for publishing on the website of a non-profit organization or territorial community relevant information and documents confirming the use of funds collected through charitable messages, the newly adopted amendments to the Law also establish the right of the telecommunications operator to exercise control over the targeted use of funds collected using charitable telecommunications messages. It is important to emphasize that the goals for which the relevant funds can be directed are fixed by the agreement between the operator and the non-profit organization or territorial community. It is believed that such an agreement must also necessarily specify the period during which the operator conducts public fundraising and the liability of the parties for violating the terms of the agreement [2, p. 281].

The norms analyzed by us above raise the question of other ways for a charitable organization to publish reports on the use of charitable donations collected through telecommunications messages, in addition to publishing on the website. Obviously, given the wording of the Law, even the publication in the media of information and documents on the use of funds will be considered a failure to comply with the legislative provisions on the reporting of a charitable organization. In addition, charitable organizations that do not have their own website will also have problems with the practical implementation of these requirements. Therefore, we believe that although the requirement for accountability of the organization that received funds collected from the operator through charitable telecommunications messages is certainly important, transparency and openness of reporting can be ensured by other methods, including through the media. Therefore, in our opinion, the issue of the method of publishing information and documents required by the Law when using the charitable telecommunications message mechanism should be determined by an agreement between the operator and a non-

profit organization or territorial community, and not at the regulatory level.

The targeted use of donations collected through charitable telecommunications messages is also supported by the legislative prohibition of their allocation to finance administrative and other expenses of a charitable organization that are not stipulated in the contract. At the level of the Law, a mechanism has been developed that maximally excludes the possibility of appropriation of collected charitable donations by any entity (primarily a charitable organization) involved in the process of public collection and transfer of donations to the beneficiary through charitable telecommunications messages. On the other hand, this norm is a kind of exception to the general rule that allows a charitable organization to use up to 20 percent of its income in the current year for administrative expenses (Part 3, Article 16 of the Law). In our opinion, this position of the legislator is rather ambiguous, because it turns out that charitable donations collected through telecommunications messages are more protected from the standpoint of targeted use and allocation of the full amount of the donation to the beneficiary than other publicly collected charitable donations. That is, a charitable organization has the right to use part of the donations collected in charity boxes to support its own activities within the limits established by the Law. While the funds received from operators after a public collection using a charitable telecommunication message must be transferred in full to the beneficiary. We hold the opinion that since a charitable donation is funds and other property that are transferred to achieve a clearly defined goal, even their partial use to cover administrative expenses is a violation of the charitable donation agreement, and therefore is unacceptable. In addition, the relevant norm in the legislation of Ukraine not only provides an opportunity for significant abuses by the charitable organization, but also does not stimulate them to develop and search for other sources of increasing their own assets, in addition to collecting charitable donations. Therefore, we consider it appropriate to enshrine in the Law a ban on charitable organizations using earmarked funds and other property to cover administrative expenses, i.e. received as charitable donations, grants, etc. Due to the widespread use of the Internet, charitable organizations are actively using this mechanism not only to ensure openness, transparency, and accountability of their activities, but also as a way to attract additional funds from donors. This service is convenient for cardholders and provides an instant transfer of funds to the corresponding bank account of the charitable organization. It would seem that a transparent mechanism for transferring funds should exclude the possibility of committing fraudulent acts in the process of collecting donations. However, in practice, thanks to Internet resources, abuse in the field of charity has become cross-border and has become one of the most common types of online fraud. For example, there are known cases when, literally a few hours after the disaster on the island of Haiti, Internet users around the world received e-mails with a proposal to donate funds to earthquake victims. Examples of charity fraud committed via the Internet in Ukraine include the creation of clone sites that contain information from real charity resources about specific charity projects or beneficiaries, or are generally an exact copy of them [3]. However, the account numbers indicated on the clone sites differ from those to which charitable donations are collected by real organizations or benefactors. Thus, the funds collected by fraudsters are misappropriated. Unfortunately, such cases of online fraud are not uncommon, and it is impossible to prevent them by adopting regulatory legal acts. Only a thorough check of all data provided on the Internet, comparing them with information from other resources, will prevent donations from being transferred to the accounts of pseudo-charitable organizations.

Given the aggravation of social problems in Ukrainian society, as well as the exhaustion of the resources of philanthropists who are ready to donate funds and other property for charitable purposes, there is a need to develop alternative sources of financial income. A special place among them is occupied by a mechanism that has been actively functioning

and developing in the USA, Great Britain and a number of other countries for several centuries. This is an endowment, the possibility of forming which was introduced into Ukrainian legislation relatively recently. Unlike many foreign countries, the domestic regulatory and legal framework is only at the initial stage of introducing such a category as an endowment. However, it should be noted the importance of taking the first steps towards forming a high-quality and effective mechanism for replenishing the assets of not only charitable organizations, but also a number of other legal entities such as educational institutions, medical institutions, etc [4].

Although the Law of Ukraine "On Charitable Activities and Charitable Organizations" classified the management of charitable endowments as a type of charitable activity, it has generated a number of questions and problems related to its practical application [5].

First of all, it is worth paying attention to the novelty of the very concept of "charitable endowment" and its absence in the Law. Unlike France, Japan, the USA and a number of other countries, Ukraine has not adopted any special legislative or regulatory legal acts that would regulate the endowment. However, this term itself is contained in clause 170.7.5 of the Civil Code of Ukraine, according to which it means the amount of funds or securities that are deposited by a benefactor in a bank or non-bank financial institution, due to which the recipient of charitable assistance receives the right to use interest or dividends accrued on the amount of such an endowment. Since the term «endowment» is stable for understanding regardless of the sphere of public life in which it is used, it can be concluded that the terms «endowment» and «charitable endowment» are identical and can be used as synonyms. Although the above definition is imperfect from the point of view of legal technique, since it uses the concept of the recipient of charitable assistance, which is absent in the relevant special regulatory legal act, it seems that a charitable organization can be both a benefactor and a recipient in legal relations regarding the establishment of a charitable endowment. However, it should be emphasized that the recipient in the analyzed legal relations can only be a benefactor, and not a beneficiary within the meaning of the Law of Ukraine «On Charitable Activities and Charitable Organizations». Such a conclusion can be made given the exclusive list of directions for using interest and income from the management of charitable endowments, established in Part 1 of Article 9 of the Law. They can be intended for:

1) providing charitable assistance to beneficiaries designated by benefactors or persons authorized by them;

2) implementation of charitable programs;

3) joint charitable activities [6].

Since the above are separate types of charitable activities that are exclusively authorized by benefactors, it can be concluded that the formation of an endowment is possible only for the benefit of benefactors, including charitable organizations. On the other hand, the legislation of Ukraine does not exclude the situation when the benefactor and the acquirer are the same person. For example, a charitable organization, independently or jointly with other benefactors, can form a charitable endowment, the income from which it will use in the areas determined by it. It is worth paying attention to the fact that the formulation of the concept of an endowment, as well as its legal essence, does not actually exclude the possibility of the existence of a plurality of parties in the relevant legal relations. Despite this, the legislation of Ukraine does not limit the number of endowments that can be created for the benefit of one acquirer. In addition, several endowments can be created with the same goals. This is due to different time frames for the formation of the endowment's fixed capital, the terms of its replenishment, etc. However, it should be noted that a significant number of small endowments may require higher costs for their management. As a result, this will reduce the efficiency and effectiveness, and accordingly, the income from the management of such endowments.

Since situations in which an endowment is formed by a charitable organization for the benefit of other benefactors are not

common in practice, we will further analyze the procedure for forming an endowment, the recipient (beneficiary) of the income from management of which is the charitable organization itself. Legal relations regarding the formation of a charitable endowment, its transfer to management, replenishment of its principal amount, use of the income received from management, etc. are contractual in nature [7].

Summarizing all that has been said, it can be stated that after the enactment of the Law on Charity, charitable institutions have gained many opportunities that allow them to systematically increase their assets and smoothly implement charitable activities. At the same time, the number of cases of fraud and fraud aimed at misappropriating charitable funds and property has increased. In view of this, it is necessary to emphasize the key role of clear mechanisms for supervising how a charitable organization uses, first of all, the assets involved. Submission by charitable organizations of various reports on the work performed, funds received or other property, methods of their use and other aspects - all this forms stable trust in those organizations that operate in accordance with the principles of openness, transparency and accountability.

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СПОСОБИ БЛАГОДІЙНОСТІ В МІЖНАРОДНИХ ОРГАНІЗАЦІЯХ: ПРАВОВІ ЗАСАДИ, ЗАХИСТ ТА ЗАРУБІЖНИЙ ДОСВІД

Наукова стаття присвячена розкриттю способам благодійності в міжнародних організаціях (правові засади та зарубіжний досвід). Варто наголосити, що згадані вище випадки застосування в Україні СМС-пожертв, як способу благодійності, були швидше винятком, ніж усталеною практикою, та завжди реалізовувалися відповідно до конкретних постанов і нормативних актів уряду. Водночас, створення всеосяжного нормативного документа, який би дозволив вивести благодійну діяльність на принципово новий рівень, використовуючи передові та сучасні методи надання допомоги, розтягнулося на довгі роки. Нагальна потреба у його прийнятті тривалий час була

предметом обговорень серед юристів, керівників благодійних установ і операторів зв'язку. Ключова трудність у розробці й узгодженні положень законопроекту полягала у необхідності гарантувати найвищий ступінь контролю за прозорістю та підзвітністю відправлення благодійних повідомлень, а також за цільовим використанням зібраних грошових коштів.

На відміну від платформ, розроблених у Європі за останнє десятиліття, які виступають посередниками між мобільними операторами та благодійними організаціями, в Україні публічний збір благодійних внесків з використанням мобільних технологій здійснюється безпосередньо оператором телекомунікацій. Це відбувається на основі договору, укладеного з неприбутковою організацією, включно з благодійною організацією (за винятком політичних партій та кредитних спілок), або територіальною громадою.

Можна констатувати, що благодійні установи після введення в дію Закону про благодійництво здобули багато можливостей, котрі дають змогу системно збільшувати свої статки та безперебійно реалізовувати благодійну діяльність. Водночас зросла кількість випадків шахрайства та махінацій, спрямованих на присвоєння благодійних коштів і майна.

***Ключові слова**: благодійна діяльність, благодійні організації, інформаційні технології, зарубіжний досвід, захист, види, методи допомоги, орган публічної адміністрації, міжнародні благодійні організації, правозахисник, правова допомога, способи благодійності.*