Criminal, Legal, Procedural and Forensic Means of Charity Fraud Control

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Abstract

Improving the criminal-legal, criminal-procedural and criminalistic means of countering fraud in the field of charity can significantly reduce the damage caused by the considered type of criminal deception to individuals and legal entities. One of the most important directions of organizing an effective counteraction to fraud in the field of charity is to optimize the criminal-legal and criminal-procedural bases of the prosecution's activities in this category of criminal cases. Further development of international cooperation between law enforcement agencies of different countries is a major help in countering charity fraud. Improving the quality of evidence in criminal cases of fraud in the field of charity is difficult to imagine without analyzing the current judicial and investigative practice and developing proposals based on the analysis carried out to improve the tactical and methodological support for the activities of the subject of investigation. A well-balanced, well-thought-out and properly scientifically justified activity of the legislator in the field of countering the considered type of criminal deception determines a significant reduction in the risks of harming the legitimate interests of both benefactors and persons who are in need, and often very badly, of charitable assistance.

Keywords: "criminal proceedings", "charity", "fraud", "investigation", "charity fraud", "investigator", "criminal case", "forensic methodology", "forensic tactics"

1. INTRODUCTION.

Effective counteraction to fraud involves the use of a whole range of different measures. In this complex, a special place is occupied by measures of a criminal-legal, criminal-procedural and criminalistic nature. Charity fraud is no exception to this general rule. It is possible to effectively resist this type of criminal deception only when the subjects of counteraction have a sufficient criminal legal base, legal procedures optimized for the tasks of initiating a criminal case, preliminary investigation and judicial proceedings, as well as high-quality forensic support for these procedures.

Describing the activity of fraudsters in the field of charity, it should be noted that it manifests itself in a variety of forms. Thus, the literature describes fraud in the field of charity as a kind of crowdfunding (Popescu, 2021). Charity fraud can be directly linked to the fight against tax evasion (Sodnomova, 2013). Specialists identify as an independent position loss from abuse of the organization's personnel in the field of charitable activities social programs (Vinokurov & Kuznetsova, 2014). As a special type of criminal deception, the so – called toxic charity is considered - the case when parents of sick children themselves turn to charitable foundations, to volunteers, who collect the money and hide (Kleymenov & Senokosova, 2017). It should be noted that the literature describes cases of terrorism sponsored from funds collected for charitable purposes (Bachmann Sascha-Dominik, 2012). Various types of fraud can also be classified on other grounds (Antonov, 2012).

The COVID-19 pandemic has also made its distinctive contribution to the protection of charitable work from crime at all levels. The FATF pointed out the very important role of charitable and non – profit organizations in combating COVID-19 and its consequences, and, accordingly, the risks of using the institute of charity for criminal purposes by malefactors (Fazilov, 2020).

The COVID – 19 pandemic "predetermined" changes in the ways of committing criminal deception in the field of charity - impersonating hospital officials for fraud with payments for treatment and creating fraudulent charities that allegedly specialize in providing assistance to sick people and their relatives (Fazilov, 2021). The Russian Federation currently has a certain legal framework for performing charitable activities. Federal Law No. 135-FZ dated August 11, 1995 "On Charitable Activities and Volunteerism" is a key law that defines the features of legal regulation of charitable activities, possible forms of their support by state authorities and local self-government bodies, and features of the creation and operation of charitable organizations (Federal Law No. 135-FZ dated 11.08.1995).

Analysis of the current legal and other means of countering fraud in the charity sector does not allow to assess their potential as sufficient to protect the legitimate rights and interests of both benefactors and persons in need of charitable assistance. The Concept of promoting the Development of charitable activities in the Russian Federation for the period up to 2025 does not accidentally explicitly indicate the need to achieve effective prevention and suppression of fraudulent activities carried out under the guise of collecting charitable donations (Decree of the Government of the Russian Federation No. 2705-r dated 15.11.2019). At the same time, it is obvious that countering charity fraud will only become acceptably effective when it is implemented not only at the state level, but also at the international level.

2. METHODS.

The methodological basis of our research consists, first of all, of the fundamental dialectical method of cognition of socio-legal phenomena in the field under consideration, methods of analysis and questionnaires. Statistical and comparative legal methods were used in the study.
Various aspects of countering fraud in the field of charity were considered in the works of such scientists as I. O. Antonov (2012), V. B. Malinin (2015), I. A. Novikov (2021), P. V. Stepanov (2020), Kh. V. Idrissov (2019) and others.

The key method in the study was the analysis of forensic and published data of charitable organizations that are trying to resist criminal manifestations in the field of charitable activities on their own. According to The All-Russian Public Opinion Research Center, 69% of Russians took part in charitable activities in one form or another. Every fifth participant is engaged in charity work on an ongoing basis (The All-Russian Public Opinion Research Center). According to the conclusions contained in the " Recommendations of the Public Chamber of the Russian Federation on the results of public hearings on the topic "Internet fraud in the field of charity: ways to fight and problems of bringing to justice" (Public Chamber of the Kamchatka Territory) the availability of modern Internet technologies and platforms for attackers, as well as gaps in the control system for them, have created favorable conditions for committing deceptive actions and abusing trust in the charity sector.

One of the means of studying legal phenomena is considered to be the comparative legal method, since the need to analyze foreign experience in regulating and applying the means of countering criminal deception in the field of charity remains very interesting from the point of view of its practical application in Russia, which, accordingly, predetermined our interest in a wide range of foreign research in this direction. These include the work of scientists such as D. J. Cooper (Cooper et al., 2013), J. Greenlee (2007), S.Y. Huang (2017), Tyge-F. Kummer (2015), D. McDonnell (2018), A. Maulidi (2021), T.J. Mock (2017), P.R. Murphy (2011), P. Ohalehi (2019), K. Goel Rajeev (2020), S. Webber (2018).

3. RESULTS AND DISCUSSION.

A. The system of counteraction to fraud in the field of charity, like any other system of counteraction to crime, includes several components. Some of the most important ones are criminal law, criminal procedure and criminalistics. The content of each of them is designed to significantly contribute to achieving the desired result of countering, in particular, reducing the numbera of frauds of this type committed, increasing the effectiveness of procedures for exposing and bringing to criminal responsibility persons guilty of fraud in the field of charity.
When developing measures for each of these three areas, it is necessary to assume that they are closely interrelated. Accordingly, the regulation of such measures to counter fraud in the field of charity should be carried out by the legislator, taking into account the degree of their (measures) interpenetration and

interdependence. The legislator should also take into account the fact that fraud in the field of charity is often committed in organized forms (from ordinary complicity – to organized criminal communities) and may be associated with the commission of otherx criminal acts (Sodnomova, 2013).

B. The widespread occurrence of charity fraud, the invention of new and improvement of old methods of fraud, the special cynicism of individuals (often open speculation on the grief of people) who choose this type of criminal deception for their illegal enrichment, cannot but raise questions about the sufficiency of the currently available criminal law tools in the arsenal of law enforcement officers.

In this regard, one cannot but agree with the opinion of experts who more than reasonably believe that criminal liability for committing fraud in the field of charity shoulda be tightened (Idrissov & Gaitamirova, 2019).
Possible directions of improvement of the criminal law, first and foremost, it is advisable to consider: a) the introduction in the criminal code independent of the article providing for criminal liability for committing fraud in the sphere of charity; b) the classification characteristics under consideration of the variety of criminal fraud committing fraud against tweens and teens beneficiaries, as well as adults are in critical condition; C) the use to commit fraud in the field of charity symbolism existing charitable organizations.
It makes sense to study the possibility of bringing to criminal responsibility persons who have previously been held accountable for administrative offenses in the field of charity. Moreover, the legislator has recently been very active in developing administrative and legal measures to prevent fraud when collecting donations for charitable purposes (https://sozd.duma.gov.ru).

C. The effectiveness of criminal prosecution of persons who commit fraud in the field of charity largely depends on the perfection of the procedural regulation of the activities of the subjects of investigation at the stages of initiation of criminal proceedings and preliminary investigation.
The criminal procedure framework of an investigator's work in cases of this category is now generally consistent with the existing challenges. At the same time, it cannot be said that, in our opinion, the improvement of certain procedural aspects on the part of the legislator can make it easier for law enforcement agencies to solve theи tasks of identifying, disclosing and investigating fraud in the field of charity to a certain extent.
In particular, we believe that the efficiency and quality of the preliminary investigation will be positively affected by the transfer of cases of charity fraud to the Investigative Committee of the Russian Federation, if the victims of the actions of criminals in the case are minors and minors, as well as adults who are in urgent need of prompt medical care.

Given that charity fraud can often be cross-border in nature, international cooperation with international law enforcement organizations and law enforcement agencies of foreign countries, as well as foreign charitable organizations, is of particular importance. It cannot be said that at present this cooperation is carried out absolutely without problems. Accordingly, the legislator should focus on improving the norms of criminal procedure law in the above-mentioned area.
D. The variety of methods of fraud in the field of charity, the complexity of the implementation of evidence in the investigation of the considered category of criminal cases and the exposure of malefactors who are engaged in criminal deception when collecting donations for charitable purposes, determine high requirements for methodological and tactical-forensic support of the preliminary investigation.
Of course, when conducting a pre-investigation check and organizing a preliminary investigation within certain limits, you can successfully use recommendations from the methods of investigating fraud, crimes in the field of computer information, tax and other economic crimes. At the same time, the target development of methodological support for the investigation of fraud in the field of charity (fully taking into account the specific features of this type of criminal deception) it can significantly increase the effectiveness of investigative activities.

From the point of view of a detailed study of tactical and forensic support, the procedure for pre-investigation verification of the facts of illegal fundraising for charitable purposes using the opportunities provided by social networks deserves special attention. This is due to the fact that in many respects the ability to initiate criminal prosecution and create prerequisites for the formation of an exhaustive incriminating evidence base is determined by the success of law enforcement actions at the stage of pre-investigation verification.
Interaction procedures should be considered as relevant areas for improving the tactical and forensic support of the fraud investigation process in the charity sector: a) between law enforcement agencies and charitable organizations; b) between law enforcement agencies and owners of social networks (where information about fundraising for charitable purposes was provided) etc.

4. SUMMARY.

A. As a result of our research, we conclude that the current system of legal, procedural and criminalistic measures to counter fraud in the charity sector is generally effective. We believe that it is quite reasonable that the system of measures to counter fraud in the field of charity should include several subsystems, among which a prominent place is occupied by criminal law, criminal procedure and criminalistics.

B. The criminal law subsystem for countering charity fraud should be supplemented with a separate article Criminal Code of the Russian Federation, which provides for criminal liability for criminal deception in the field of charity.

C. The criminal procedure subsystem of anti -fraud measures should be improved in the direction of more detailed and precise regulation of a number of procedures in cases of charity fraud at the stages of initiation of criminal proceedings and its preliminary investigation, as well as procedures for international cooperation in criminal cases of this category.

D. Improving the effectiveness of the forensic subsystem of measures to counter fraud in the field of charity is impossible without further improving the methodological and tactical-forensic support for preliminary investigation of this category of criminal cases.

5. CONCLUSIONS.

Currently, in the Russian Federation, the legislator has generally formed a sufficient basis for countering fraud in the field of charity. At the same time, the implementation of the existing potential for further improvement of the criminal-legal, criminal-procedural and criminalistic components of this system can certainly increase the level of protection of the legitimate rights and interests of both benefactors and persons in need of charitable assistance.

ACKNOWLEDGEMENTS.

This paper has been supported by the Kazan Federal University Strategic Academic Leadership Program.

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