

Relationship between Criminal Law and Operational Search Activities in Detection, Investigation and Prevention of Motor Insurance Frauds

Oleg Pavlovich Gribunov¹^a, Ekaterina Anatolyevna Malykhina²^b,
Anatoly Vasilievich Malykhin²^c and Sergey Igorevich Usachev²^d

¹*Baikal State University, st. Lenina, 11, Irkutsk, Russia*

²*Federal State Treasury Educational Institution of Higher Education East Siberian Institute of the Ministry of Internal Affairs of the Russian Federation, Irkutsk, Russian Federation*

Keywords: Criminal law, operational search activities, motor insurance fraud, criminal law legislation, compulsory third party motor liability insurance, ways of committing motor insurance fraud.


Abstract: The article reveals the features of the operational search activities in the detection, investigation and prevention of motor insurance frauds, which were identified in the analysis of the forensic practice in cases of this category. The goal of the research is to establish the significance of conducting operational search activities in the context of the prevention and detection of motor insurance frauds, as well as to identify the close relationship between criminal intelligence activities and criminal law. The methodological basis of the work is based on general scientific methods, the dialectical method of cognition, as well as private scientific methods. The research showed that crime detection is inextricably affiliated with knowledge and analysis of the criminal characteristics of motor insurance fraud. This information makes it possible to establish the main elements of the unlawful act and, above all, to formulate the circumstance in proof. It is the knowledge of the criminal law characteristics that helps to determine the further vector of development and specification the nature of the activities of law enforcement agencies in countering this category of crimes. Furthermore, the norms of criminal law allow to determine the structure of the crime committed, and such information is needed by operational officers for the effective detection and investigation of motor insurance fraud. The indivisibility of operational search activities and criminal law is also determined by the need to ensure the rights and freedoms of individuals and citizens, and, notoriously, it is a criminal law that regulates the observance of the rights of specific individuals, whose interests may be violated in the implementation of the CIA.


1 INTRODUCTION


The fight against crime on the territory of the Russian Federation is a state priority. At the same time, in the conditions of current social and economic development of society, this activity becomes more and more difficult if additional resources are not used to achieve the objectives of criminal prosecution and legal proceedings in general (Popova I.P., Protasevich A.A. and Smirnova I.G., 2017). Fraud is one of the major types of crime in the country. The number of


criminal acts committed in the form of fraud is constantly increasing, only in the period of 2020 it increased by 20.4%.

It should be noted that quite a large number of crimes qualified as fraud is committed in the insurance industry. Currently, the crime produced on the insurance market is characterized by a wide range of different crimes encroaching on a variety of objects (Hasanov A.M., 2015). Anti-fraud methods are developed and implemented in many states. Thus, these issues are studied in the works of various

^a <https://orcid.org/0000-0002-9288-1364>

^b <https://orcid.org/0000-0002-4770-1133>

^c <https://orcid.org/0000-0002-0247-3739>

^d <https://orcid.org/0000-0002-4306-0535>

foreign scientists (Alfejeva J., 2012; Kuller J., 2011; Hymes L., 2014; Lichter J., 2002).

At the same time, we cannot fail, either, to mention the fair remark of the Minister of Internal Affairs of the Russian Federation V.A. Kolokoltsev at an expanded meeting of the board of the Ministry of Internal Affairs of Russia, held on March 3, 2021, concerning the lack of efforts in relation to counteract economic crime, including fraud, since the set of measures being implemented does not really correspond to the scale of criminal manifestations in the economy and the capacities of the units of the Ministry of Internal Affairs responsible for the combating them.

Among the many different types of fraud, we consider it appropriate to focus on one of them: motor insurance fraud. It is an entire cluster of criminal activity that requires careful study and analysis. According to the official data of the Autostat analytical agency, as of January 1, 2021, 45 million cars are registered in the territory of the Russian Federation, while cars account for 76% of all vehicles. There are no official statistics on motor insurance fraud, however, an analysis of statistical data on fraudulent actions committed in the country under Articles 159-159.6 of the Criminal Code of the Russian Federation showed that in the period of 2020, more than half of all registered crimes (55.3%) are theft of other people's property, among which fraud amounts to 335.6 thousand (+30.5%), while it should be noted that there is a continuous increase in such crimes. Thus, in the reporting period of 2018, there were 215,036 recorded crimes, 257,187 in the period of 2019 and 335,631 in the reporting period of 2020.

The motor insurance market is one of the country's problem sectors (Shanikhina N.N., Okuneva A.A., 2018). Certainly, the modern world market is organized in such a way that fraud prevention is a kind of guarantee of the financial system stability (Skipin D., Sakhno Y., Badenova L. and Kuznetsov M., 2019). In this regard, it is obvious that the detection, investigation and prevention of the designated crimes require special efforts from law enforcement officers, in particular from operational units, because it is their activity that is an affiliate with the detection of crimes, which is a rather complicated process in relation to motor insurance fraud, in view of the fact that that criminal schemes are extremely difficult to recognize.

Speaking of the importance of operational search activities for the crimes under consideration, its close relationship with criminal law cannot be ignored, since it is obvious that the disclosure of crimes is inextricably linked with knowledge and analysis of

the criminal legal characteristics of motor insurance fraud. This information will make it possible to establish the main elements of the unlawful act and, above all, to formulate the circumstance in proof. It is the knowledge of the criminal law characteristics that will help to determine the further vector of development and to specify the nature of the activities of law enforcement agencies in countering this category of crimes. Furthermore, the norms of criminal law allow to determine the nature of the crime committed, and such information is necessary for operational officers both when drawing up and modeling a plan of operational search measures necessary for the effective detection and investigation of motor insurance fraud. The indivisibility of operational search activities and criminal law is also determined by the need to ensure the rights and freedoms of individuals and citizens, and, notoriously, it is a criminal law that regulates the observance of the rights of specific individuals, whose interests may be violated in the implementation of the CIA. In this regard, we consider it appropriate to agree with the statement, that without the existence of criminal law, the provisions of the Federal Law "On Operational Search Activities" are not viable in a legal state (Pleshakov A.M. and Shkabin G.S., 2019).

Thus, in this study, we attempted to establish such a significant intersectoral connection between criminal law and operational search activities in the detection, investigation and prevention of motor insurance fraud.

2 MATERIALS AND METHODS

In this research, general scientific methods such as comparison and modeling were used. In addition, the specificity, comprehensiveness and objectivity of the applied dialectical method of cognition played a special role in solving the set goals of this article.

The relevance and reliability of the conclusions became possible due to the use of a whole range of methods: statistical, comparative legal, sociological, as well as a set of private scientific methods such as surveys, questionnaires, interviews, collection, analysis and study of forensic practice, regulatory legal acts, literary and Internet sources covering various issues of the relationship between operational search activities and criminal law in the context of the detection, investigation and prevention of motor insurance fraud.

3 RESULTS AND DISCUSSION

Currently, there are significant gaps in the detection, investigation and prevention of motor insurance fraud, as evidenced by judicial and investigative practice. This state of affairs is due to the high level of organized criminal activity, the wide range of persons involved and the complexity of the criminal activity schemes. Thus, the quantitative indicator of organized groups or criminal associations increased almost sevenfold (Teunaev A.S.-U., 2019). In addition, it should be borne in mind that car insurance fraud in one way or another related to various sectors of the economy, the financial and credit sector, etc., which require special skills and abilities from employees of operational units.

The purpose of motor insurance is to provide services for the implementation of insurance coverage to a motor vehicle insurer for a certain cost, which is a profit for the insurance company. At the same time, experience shows that car insurance is based on money turnover, which creates the basis for criminal activity, the essence of which is to obtain the insurance company's money by fraudulent means. In other words, the criminals are aimed at illegally obtaining insurance payments from the insurance company. Such criminal activity in this insurance area falls under the provisions of the criminal law and is subject to criminal legal qualifications as motor insurance fraud and provides for the imposition of sanctions for its committing. The emerging complex of objective and subjective factors contributed to the creation of conditions for the emergence of fraudulent schemes (Ermolaev E. and Zavyalov Yu., 2020). In this regard, Federal Law No. 207 dated November 29, 2012 established criminal liability under Article 159.5 of the Criminal Code of the Russian Federation, which regulates the onset of criminal liability for insurance fraud, which, according to the current criminal law, means theft of another's property by deception regarding the occurrence of an insurance event, as well as the amount of insurance compensation to be paid in accordance with the law or a contract to the policyholder or other person.

An analysis of the motor insurance industry showed that thousands of accidents occur every day on the territory of the Russian Federation, for which insurance must be paid. Compulsory motor third party liability insurance is the main type of motor insurance in the country market, and damage caused by accident, arson, theft, etc. is not always fully compensated by insurance companies, which gives rise to complaints from policyholders. In addition, corrupt practices by law enforcement officials,

insurance companies and other persons, such as conducting independent examinations, are not uncommon. Currently, there is a wide variety of ways of committing the crimes under consideration (Bogma K.A., 2019), while fraud in cases involving vehicles clearly characterized by deception and abuse (Kuznetsov A.A., 2017).

Thus, in recent years, in the practice of detecting these frauds, there are more and more cases when an ordinary traffic accident is registered by traffic police officers who are members of a criminal conspiracy to fake traffic police officers in order to obscure the traces of a crime, which complicates the process of conducting a preliminary check.

As has developed in practice, the following should be attributed to the number of sources of receipt of operatively significant information on the facts of motor insurance fraud:

data from individuals involved in the auto business, such as resellers, service station employees, owners of auto parts stores, car washes, car alarm installation services, etc.;

- expert opinions on the assessment of damaged vehicles with signs of fictitiousness;
- information from internal security units of the Ministry of Internal Affairs of the Russian Federation on the facts of involvement in criminal activities of police officers;
- information on confidential persons, auxiliary apparatus, volunteers, vigilantes, etc.;
- information from subdivisions of the Ministry of Emergency Situations of the Russian Federation based on the results of reviewing materials and conducting research on the facts of arson of cars with signs of fictitiousness and staging;
- information from the owners of vehicles under contracts with signs of fictitiousness, overstating the value of a vehicle, etc.;
- information from the materials of criminal cases, preschool educational institutions on the facts of hijacking, theft, deliberate damage and destruction of property with signs of "setup", fictitiousness, staging of committed illegal acts.

At this stage, the role of operational search activities is sharply increased, with their invaluable potential for transparent and covert operational search activities to be carried out when criminal activities of fraudsters are detected. At the same time, it is important to remember that this activity must meet the existing requirements of the criminal law and be closely related to it.

Any crime has an information trail when the information is recorded in accordance with objective patterns on material objects, items, substances, human memory, etc. When detecting crimes, the operative officer shall take measures to reconstruct the events, facts or phenomena for use in combating crime.

There is a specificity in the verification of reports or detection of motor insurance fraud due to the fact that the fraud itself is replaced by another action and is based on knowingly false information on road traffic vehicle accident, theft, arson, deliberate destruction or damage of a vehicle, etc. Therefore, the operational officer must solve a very difficult task of thoroughly checking and comparing facts, events and conditions, to understand their reliability, or to reveal signs of fictitiousness and deceit of an insured event through operational search measures and investigative actions. The evolution of modern legal science is influenced by a number of universal trends predetermined by general laws for the development of scientific knowledge (Vardanyan, A.V., 2016), for example, modern criminal and operational search legislation are closely related (Vardanyan A.V., 2018). At the same time, the norms of criminal law may be fully implemented within the operational search activities only in forms of compliance or use. We would like to point out that compliance, as a form of implementation of criminal law norms, is typical for almost any type of operational search activity. This takes place within the positive legal relationships and consists in the fact that the criminal law establishes the boundaries that are observed by persons carrying out operational search activities. Thus, criminal legislation can and should influence the social relations between subjects and objects of operational search activities, be their regulator, therefore, criminal law has a fundamental place among the sources of law of the CIA.

In addition, it should be noted that parts 3-5 of Art. 15 of the Criminal Code of the Russian Federation reveal the signs of crime categories. Without their knowledge, the operational officer cannot decide whether it is possible or impossible to carry out separate operational search activities. It is obvious that in order to determine the correct tactics for the detection of motor insurance fraud, the operative officer needs to obtain information from various sources (Ovchinnikov Y.G., 2008).

The studied materials of forensic practice indicate that most of the information received on the preparation, perpetration or outright illegal motor insurance fraud consists of reports and signals from the security services of insurance companies. This

makes it necessary to properly organize the interaction of law enforcement agencies with representatives of the security services of insurance companies, while remaining within the scope of criminal legislation.

The primary information received from the previously mentioned sources of operatively significant information should be verified, correlated, evaluated and used for its intended purpose. Experience has shown that, this procedure is preceded by a set of measures to identify signs of criminal activity.

4 CONCLUSION

Certainly, fraud in Russia should be considered not as local manifestations of latent relations between representatives of government, society and business, but as a basic system-forming institution of its economy (Lomsadze D. and Udovichenko A., 2018).

The process of detecting, investigating and preventing such crimes is extremely complex and requires special skills and abilities from law enforcement officers. It is obvious that in order to ensure a high level of counteracting fraud that meets modern requirements, it is necessary to use only the latest approaches and technologies (V. Krutikov, S. Arakelyan, T. Dorozhkina, S. Volkhin, 2019). However, we should bear in mind that the adoption of operational approaches to detection is often closely bordering on the violation of human and civil rights and freedoms, which necessitates the constant strict observance of the norms and limits of the current legislation.

It should be remembered that the purpose of operational search activities is to protect public relations from criminal attacks, which coincides with the protective task of criminal legislation (Shkabin G.S., 2017). Sources of operatively significant information on motor insurance fraud are public and private, and it is important to understand that the information received must be implemented strictly in accordance with the current operational search and criminal procedural legislation in accordance with Art. 144 and 145 of the Code of Criminal Code of the Russian Federation. The main source of operatively significant information about the prepared, perpetuated or committed motor insurance fraud is information and data received from the established cooperation of representatives of the security services of insurance companies, regardless of the stage of commission of the crime. The efficiency of detecting and disclosing motor insurance fraud directly

depends on the level of cooperation established between the operational units and representatives of the security services of insurance companies, investigative authorities (Khalikov A.N., 2006), as well as on the situationally determined optimal and tactically verified sequence of actions (Belyakov D Yu., 2007).

In summary, it is clear that the activities of the operational units play a significant role in the detection, investigation and prevention of motor insurance fraud. It is the operative officers who are subject to search, collect and analyse initial information on the characteristics of the considered unlawful acts. In this regard, it is important to remember that strict compliance of the norms and requirements of the current legislation has a direct impact on the outcome of all the professional activities of operational units aimed at protecting life, health, human and civil rights and freedoms, to ensure the security of society and the State against criminal offences.

REFERENCES

- Alfejeva, J., 2012. Criminal and Criminological Aspects of Insurance Fraud: Insurance Fraud: Criminological Phenomenon. In *LAP LAMBERT Academic Publishing Germany. Germany*. p. 104.
- Belyakov, D. Yu., 2007. *Motor insurance fraud control: criminological and criminal legal aspects*. p. 167.
- Bogma, K. A., 2019. The social nature of vehicle fraud. In *the Central Russian Bulletin of Social Sciences*. 6. pp. 54-57.
- Ermolaev, E., Zavyalov, Yu., 2020. Fraudulent Investment Schemes. In *the Financial Market (historical overview)*. 5. pp. 50-60.
- Hasanov, A. M., 2015. Motor insurance as an object of criminal law protection. In *the Scientific Research journal: From Theory to Practice*. 3(4). pp. 392-394.
- Hymes, L., 2014. *Insurance fraud. Casebook: Paying a premium for crime*. NEW YORK. p. 288.
- Khalikov, A. N., 2006. Detection and investigation of motor insurance crimes committed with the participation of traffic police officers. In *the Legitimacy journal*. 1. pp. 22-25.
- Krutikov, V., Arakelyan, S., Dorozhkina, T., Volkhin, S., 2019. Improvement of public policy in the fight against corruption and fraudulent schemes. In *the Improving the instruments of state stimulation of the development of the region*. 3(104). pp. 26-28.
- Kuller, J. M., 2011. Defending Against Insurance Fraud Claims: Leading Lawyers on Representing Insurers. In *Investigating and Preventing Fraudulent Activity*. NEW YORK. p. 308.
- Kuznetsov, A. A., 2017. Delineation of fraud from similar crimes. In *the Trends in the development of science and education journal*. 26(3). pp. 41-44.
- Lichter, J. M., 2002. *Personal Injury Insurance Fraud: The Process of Detection: A Primer for Insurance and Legal Professionals*. ARIZONA. p. 190.
- Lomsadze, D., Udovichenko, A., 2018. Shadow Economy: Experience in Combating Corruption and Fraud in the EU1. In *the Modern Economics journal: Problems and Solutions*. 10. pp. 44-51.
- Ovchinnikov, Yu. G., 2008. Ways to falsify the circumstances of an accident when committing fraudulent actions in the field of compulsory car insurance. In *the Law and Right journal*. 9. pp. 80-81.
- Pleshakov, A. M., Shkabin, G. S., 2019. Problems of scientific research in the field of relationships between criminal law and operational search activities. In *the collection of materials of the interdepartmental scientific practical conference "Criminal and operative-search legislation: problems of intersectoral relations and prospects for improvement"*. pp. 85-89.
- Popova, I. P., Protasevich, A. A., Smirnova, I. G., 2017. A verdict rendered in absentia. In *the Siberian criminal procedure and criminalistic readings*. 2(16). pp. 42-51.
- Shanikhina, N. N., Okuneva, A. A., 2018. Problems and prospects for the development of auto insurance in the Russian Federation. In *the International journal of advanced studies*. 1. pp. 169-179.
- Shkabin, G. S., 2017. Implementation of the norms of criminal law in the implementation of operational search activities. In *the Law and State journal: Theory and Practice*. 7(151). pp. 115-118.
- Skipin, D., Sakhno, Yu., Badenova, L., Kuznetsov, M., 2019. Corporate fraud: concept, essence, risks, impact on economic security. In *the journal of International economic relations*. 2. pp. 759-770.
- Teunaev, A. S.-U., 2019. Statistical measurement of criminal activity in the insurance sector in modern Russia. In *the Police and Investigative Activities journal*. 4. pp. 32-41.
- Vardanyan, A. V., 2016. The subject of the crime and the personality of the criminal as interdisciplinary categories of criminal law sciences: issues of correlation and integration. In *the Journal of Criminology of the Baikal State University of Economics and Law*. 10(2). pp. 244-251.
- Vardanyan, A. V., 2018. Forensic prevention in the system of state measures to prevent crime. In *the Bulletin of Tomsk State University*. 430. pp. 169-173.