

Subjective Signs of the Crime of Fraudulent Looting of Property in the Criminal Law of the Republic of Uzbekistan

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Abstract:

In the article, the author analyzes the subject and subjective aspects of the crime of fraud under Article 168 of the Criminal Code of the Republic of Uzbekistan and develops a proposal to include the subjective side of the crime as a necessary feature in qualifying the act in order to improve the concept of fraud.

Keywords: *fraud, looting of another's property, guilt, intention, motive, purpose, subject of crime, subjective side of crime.*

I. Introduction

The rise of economic development to a higher level in human society is creating new social relations, and the existing social relations are rising to a new level in terms of quantity and quality. However, as a social phenomenon, criminality is growing rapidly and is becoming more complex. American sociologist R. Merton explains that criminality is a payment that society has to pay for the expense of accelerating the pace of social life.

In fact, one such criminal incident is fraud. With the rapid changes in economic systems, fraud has become one of the most common latent crimes in the world. In the context of economic globalization, there is a need to combat fraud. Although the notion of “fraud” is used in the administrative and criminal laws of different countries, in international acts, they do not have a single approach. In addition, as the exchange of electronic documents continues to expand, the number of cases of fraud using various techniques on electronic platforms with the aid of computer technologies is increasing. These and other similar cases create the need for scientific research of criminal and criminological aspects of fraud, improvement of methods and tools to combat it.

It is well known that fraudulent looting of property is a relatively common type of looting of other people's property [1]. The general dynamics of fraud today, the growing number of its manifestations, also testify to the relevance of the topic [2]. In addition, a person who earns a living by deceiving people is not only dangerous as a criminal, but also causes material damage to the state and citizens, as well as the consequences of fraud have a negative impact on the behavior of the population, especially young people.

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In this regard, the President of the Republic of Uzbekistan Sh.Mirziyoyev chaired a video conference on July 27, 2018 on crime prevention, increasing the responsibility of government agencies and society. At the is video conference, the President noted that crime rate in 2017 increased by 16% compared to 2016 and during 6 months of this year decreased by 39%. However, the number of intentional homicides, causing serious bodily harm, robbery, burglary, theft and fraud remained high[3].

Also, on August 15, 2020, the Minister of Internal Affairs of the Republic of Uzbekistan P.Boboynov in an interview with UzA, entitled “Our staff do not spare their lives to ensure peace and stability”, noted that recognizing the urgency of the fight against fraud, he said, “Indeed, certain types of crime account for the bulk of the large proportion of all crimes. For example, in the first 7 months of this year (2020), one in three of the total crimes committed was fraud, theft and traffic accidents [4].

The fraud was committed by 484 previously convicted and 382 unemployed individuals. In this regard, it is necessary to identify those who are prone to this, to take legal action against them, and intensify propaganda among citizens on the victimological aspects of fraud”[5].

Main Part

The fact that the head of state and the Minister of Internal Affairs emphasized the growth of fraud indicates and the urgency of the fight against it [6].

Also, the analysis of case studies shows that this crime is mainly committed in conjunction with other crimes, in particular the production of documents, stamps, seals, forms, their forgery, sale or use, evidence of bribery and other socially dangerous crimes. Therefore, the analysis of the issue of liability for this crime, in turn, is important in the fight against other crimes.

In addition, the Conception of Improving the Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan, approved by the President of the Republic of Uzbekistan on May 14, 2018 No. 3723, creates effective legal mechanisms to eliminate legal gaps, conflicts, crime prevention the assimilation of a high legal culture of citizens has been identified as a priority of criminal law [7].

Necessary elements of the crime are the person who committed the crime and the mental attitude of that person towards his actions [8]. According to the doctrine of criminal law, the subjective signs of the composition of any crime are the subject and the subjective side of the crime.

The subject of a crime of the fraudulent looting of other people’s property

Any crime is committed by an individual, so the subject of the crime is defined in criminal law as one of the key elements of the crime. The existence of the subject of the crime is an important condition of criminal liability, i.e., criminal liability can arise only in the presence of the person who committed the crime in the first place. In accordance with the theory of criminal law and the requirements of criminal law (Article 17 of the Criminal Code of the Republic of Uzbekistan), the subject of any crime is a sane individual of a certain age who has committed a socially dangerous act prohibited by law. For this reason, from a criminal point of view, the age and mental characteristics of an individual are important [9].

The subject as an element of the corpus delicti is a much more complex category that requires in-depth scientific study and understanding [10]. In particular, the age and mental health problems of the offender require a comprehensive study of them not only by legal scholars, but also by representatives of other disciplines,

experts in various fields of knowledge [11]. Law enforcement practice shows that the study of the subject of a crime is one of the most important areas of criminal law theory. The need for it is determined by life itself, and its practical significance is beyond doubt [12]. The subject matter of this study is the subject of fraud, and we will consider in detail the characteristics of a person who should be prosecuted for the commission of an act under Article 168 of the Criminal Code of the Republic of Uzbekistan.

The concept of the subject of the crime implies the identification of legal features that characterize the subject of fraud and the disclosure of the socio-political, moral image of a offender [13].

In accordance with Article 17 of the Criminal Code of the Republic of Uzbekistan, liability for the fraud arises when the offender reaches the general age of criminal liability – 16 years from the moment of the criminal commitment. “The subject of the crime of fraud can be any sane individual over 16”[14]. According to K.R.Abdurasulova, the lower age limit of criminal liability is determined by the legislature by the level of medical-biological (level of physical and mental development, etc.), socio-psychological (level of development of mental, volitional and emotional characteristics of the individual, etc.), sociological (degree of socialization of the individual) criteria, as well as criminological indicators (for example, the prevalence of this type of crime among people of this age, its severity, social danger, etc.), the principles of criminal law (e.g. expediency of the designation) [15].

While the legislator strengthens the age of liability for a crime under Article 168 of the Criminal Code, it is based on the fact that a person can understand the social danger of this crime from that age, depending on his level of mental and spiritual development. This implies that at this age, each individual is able to understand both the factual and social features of the acquisition of another’s property or the right to another’s property through fraud, that is, deception or abuse of trust. “A teenager realizes very early that it is impossible to take someone’s property or kill someone (the first socialization process allows that). However, legal consciousness emerges in adolescence only when it reaches a certain age. In this case, the teenager will be able to understand not only the factual side of their actions, but also their social significance [16].

Also lying, cheating, and misunderstanding the essence of self-confidence are also common for children under 16. Therefore, Article 27 of the Civil Code specifically distinguishes the legal capacity of fourteen and eighteen years of juveniles [17].

This can be explained by the fact that the legislature considered that people between the ages of 14 and 16 were incapable of realizing that their actions were aimed precisely at looting the property of others as the object of criminal aggression. People who commit this act between the ages of 14 and 16 may not be criminally prosecuted for fraud, that is, for the acquisition of another’s property or the right to another’s property by deception or abuse of trust. According to most scholars, this solution is absolutely correct, given the “age-related mental retardation”. In particular, 14-16-year-olds are not able to fully understand the negative consequences of what is happening, to adequately assess the social risk of what they are doing. As V.G.Pavlov noted, in the current context of the fight against crime, from the point of view of improving criminal law, it is the age that is most mobile and changeable among the characteristics of the subject of crime [18].

Most scientists believe that the age of 16 is a certain physiological stage in the development of any person, and at this age he will be able to observe and control his behavior. According to O.N.Petrova, the legislator set the age of criminal responsibility for intentional crimes at the age of 16 not because they are

particularly socially dangerous acts, but because everyone is aware of their social danger and “harm” in the early stages of life [19]. O.D.Sitkovskaya notes that despite the existing differences, most authors describe the period from 11 to 15 years as a period of transition from childhood to adolescence. According to them, this stage is characterized by the rapid development of the mind and psyche, as well as the personality of the adolescent, which allows him to align his goals and objectives with the social norms of behavior [20].

The sanity of the subject of the crime is a necessary condition of criminal liability. A different view has also been put forward in the science of criminal law, which suggests that reason should be viewed primarily as a sign of subject [21]. “Sanity is a sign that an act committed by an individual is punishable. Whether a crime is punishable under criminal law depends on common sense”. For this reason, the doctrine of sanity is one of the main issues in the theory of criminal law. In general, sanity is always recognized as an integral feature, a characteristic of a person who should be prosecuted. As V.S.Komissarov noted [22] that the sanity represents a state of mind of the person who has committed the crime, in which he/she understands the true nature of his actions and the degree of social danger, and is able to control them. For this reason, attention should be paid to the level of mental health of the person accused of committing the crime in question during prosecution.

In the course of our research, we can see that the type of fraud committed by juveniles is relatively rare. There are several reasons for this:

first, the complexity of developing a fraud scenario;

secondly, the formation of confidence in the identity of the offender, which is considered a guarantee of the success of the offender. Naturally, it is difficult for a juveniles to gain trust. In addition, the fact that the participation of minors in property relations is limited by law makes it difficult for juveniles to commit fraud. Therefore, the legislator has set the age of fraud subject at 16 years, which is higher than the age of aggression, extortion, robbery and theft. Also, unlike aggression, extortion, robbery and theft, fraud requires mental capacity, in-depth knowledge and persuasiveness. For this reason, in some literatures, fraud is called a “white collar” crime.

The subject of the crime of fraud is characterized by the general characteristics of the subject, and if a person commits fraud on the basis of his official position, it entails a heavier liability as an aggravating feature of the crime.

Thus, any person who has reached the age of criminal responsibility, i.e. 16 nd characterized by common sense: a citizen of the Republic of Uzbekistan, a foreign citizen and a stateless person can be the subject of the crime of fraud.

For example, during a joint operation by the Namangan Regional Department of the State Tax Service and the Department of the Prosecutor General’s Office, a Turkish citizen living in Namangan was arrested for fraudulently taking 200dollars and 2 million sums, with material evidence at the time of receiving the money from a local citizen in exchange for a biometric and exit passport through acquaintances working in the Migration and Citizenship Registration Department [23].

The subjective side of the crime of fraudulent looting of other people’s property

The subjective side of a crime is the mental activity of a person directly related to the crime, which includes a specific mental attitude to the socially dangerous act committed by the person, the specific form of

guilt, as well as the person's motives, goals and mental state at the time of the crime. The subjective side of the crime is the mental attitude of the offender towards the socially dangerous act, which is considered a crime in the criminal law, and represents his guilt, motive, purpose and feelings [24]. According to A.S.Yakubov and R.K.Kabulov, the subjective side of the crime is the mental attitude of the perpetrator to the socially dangerous act committed by him, which is defined in the criminal law as a crime. This is an important element of the corpus delicti, the absence of which leads to the absence of the corpus delicti. The subjective side of the crime is a set of important features that characterize the mental attitude of a person to the crime at the time of the commission of the crime under the criminal law [25].

Crimes of looting the property of others are committed with the correct form of intent. In particular, the subjective side of the crime of fraud is direct intent [26]. V.I.Lesnyak admits that fraud is committed by an act of deception, and writes that deception is committed with the direct intent, that it is impossible to deceive carelessly or to abuse trust. It also means that if a person gives a false impression to another person without knowing it, but has no intention of misappropriating another's property, his or her act should not be considered fraud [27].

The subjective side of a criminal act is characterized by a certain ratio of factors of consciousness and will, whether the crime was committed intentionally or recklessly, the motives and purposes of the subject of the crime. Guilt is a necessary sign of the subjective side of the crime.

Regardless of the role defined by the legislature, each feature of the subjective side of the crime has an absolutely clear content and significance, none of which includes the other as an integral part. This is especially important in assessing the subjective side of the crime of fraud, which includes guilt, motive, and purpose.

A crime that characterizes a person's mental attitude toward the fraudulent looting of another's property is a key feature of the subjective side of the crime in question. Definitions of forms of guilt in Articles 21 and 22 of the Criminal Code of the Republic of Uzbekistan describe a person's mental attitude to both socially dangerous acts and socially dangerous consequences. However, fraud is a material crime. The subjective side of the act in material crimes determines the nature of the perpetrator's mental attitude to the socially dangerous act and its consequences in the form of fraud, ie the acquisition of another's property or the right to another's property through fraud or abuse of trust.

For example, the defendant U.Rayimov, on the basis of his pre-arranged criminal plan, abused the trust of others, obtained others' property and rights to the property, and then sold the property to someone else, earning a small income. On May 5, 2018, at 19:30, he arrived at the cafe "Uch-Bakalak" located in the 12th district of Yunusabad district of Tashkent and called Mahamadaminov Alokxon Akmalxon ogli under the pretext of being guest in his birthday. He deceived A.Mahamadaminov by saying that he would buy a Samsung-Galaxy S-8 mobile phone for 4,440,000 soums in cash and abused his trust. Taking advantage of A.Mahamadaminov's distraction, he hid from the scene with a criminally obtained Samsung-Galaxy S-8 mobile phone. According to the criminal plan, he will sell the phone for a total of \$ 440 and use the money for his own needs [28].

Determining a person's mental attitude towards acquiring others' property or a right to property through deception or abuse of trust is especially important in qualifying the act. It can be noted that the act committed only if the form of guilt required by law is defined, has the elements of a crime and the grounds for criminal liability.

While the literature describes the subjective side of fraud, it is noted that the crime of gaining others' property or a right to property through deception or abuse of trust is committed with the direct intent [29].

In the legal literature, the idea that the concept of direct and indirect intent is defined in the Criminal Code for crimes of a material nature is accepted as an axiom, and in this regard, it is suggested that the law does not have the concept of direct and indirect intent for crimes of a formal nature. In our opinion, A.I.Martsev's definition of the notion of intentional crime in the criminal law fully covers the structural aspects in both material and formal crimes [30].

The perpetrator of fraudulent looting of the property of others understands the nature of his actions, sees the consequences of his actions, and then makes conscious actions, wanting the consequences to happen. The offender not only understands his socially dangerous act, but also anticipates the real consequences in the form of material damage to the victim as a result of his actions. The fact that a person fully understands his or her actions and carries out a chain of conscious actions implies that the crime was committed with subjective correct intent.

That is, a fraudster deceives the victim by distorting the truth, concealing the truth, or keeping silent about the truth, and achieves the transfer of property or property rights by the victim. In abusing trust, the fraudster misappropriates the property of others without knowing that he is abusing the trust. The fraudster knows that the property or property right being appropriated does not belong to him and wants to appropriate that property for malicious purposes. "Deliberately committing an act and at the same time allowing it only consciously are mutually exclusive", meaning that the act is committed with the direct intent" [31].

In the theory of criminal law, intent is divided into premeditated and sudden intent, depending on the time of occurrence. Of course, the longer the time between a sudden intent and a criminal intent and the commission of a crime, the higher the level of social danger of the crime and the perpetrator [32]. Because in the past, measures such as preparation for a crime, methods of committing, and then the disappearance of traces of the crime are carefully considered [33].

Of course, the long interval between the occurrence of a criminal conspiracy and the time of the commission of a crime means that the person acted with a firm intention, knowing that a criminal consequence would occur, and that he wanted such a consequence to occur. Of the more than 200 judgments studied by us, 96 per cent had premeditated intent and only 4 per cent had sudden intent. This analysis suggests that fraud cases often have premeditated intent [34].

Although it is a difficult process to prove the mental attitude of the perpetrator to his actions, it is possible to determine the subjective side of the crime by making a legal assessment of the actions and behavior of the perpetrator in each case. For example, 1) concluding an agreement on the provision of services in the event that the defendant is unable to perform [35]; 2) registration in one's own name on the condition of payment of the value of the property in installments, which in practice is insolvent; 3) persuading the victim to bet on the business by offering a lucrative business on the basis of false or misleading information; 4) transfer to the victim, using the ignorance and inexperience of the victim, concealing information about the quality and type of certain types of products; 5) to convince the victim that important decisions will be made or that the problem will be solved through the acquaintances of the official, etc.

The emergence of intent is a complex mental process. The psyche goes through the following stages: 1) the emergence of a certain demand; 2) the emergence of motivation and desire in the mind to understand this requirement and achieve a clear goal; 3) struggle of motives (motivating reasons, excuses); 4) to come to a decision, to make a decision; 4) implementation of the decision [36].

Although the motive and intent are not explicitly stated in Article 168 of the CC as a necessary feature of the subjective side in qualifying the crime of fraudulent looting of others property, based on the general concept of maliciously taking someone's property on purpose.

II. Results and Discussion

According to Rustambayev, the perpetrator realizes that he is distracting the victim or deliberately abuses his trust in order to seize someone's property, and wants this to happen. Also, the perpetrator of this crime commits it for the purpose of gaining property and enrichment. The existence of a malicious purpose is a necessary sign of fraud, however, if the property was acquired by fraud without a malicious purpose (e.g., receiving a monthly salary on behalf of another person for the purpose of giving it to him), the act cannot be qualified as fraud.

It should be borne in mind here that the purpose of acquiring another's property may arise not only before the execution of property transactions, but also in the course of their execution. Based on the above, the actions of a person who, for good reason, did not repay the debt on time and did not intend to acquire others property free of charge, cannot be considered fraud.

Motive and intent are of particular importance in the crime of fraud. First the motive is formed, then the intent is formed. Usually, the motive influences the formation of intent, goal setting, the choice of means to achieve the goal.

Motive is the purpose to commit certain actions, in particular, the motive of the crime itself reflects a very difficult emotional (feeling) and volitional process that takes place in the human psyche. Thus, the motive gives rise to the desire for criminal activity with force and intensity, which is an active motivating factor (stimulus) of a person [37].

So, a motive is a desire, inclination, or purpose to commit a crime, and the feelings that direct a person's mind to commit a crime. Any person may have a need to own property, to gain wealth, but the means to achieve this need, the desire to acquire property, motive, goals will be different. Based on the judgments analyzed, it can be seen that the main part of the crime of fraud was committed for the purpose of rapid enrichment. Fraud was also committed in the motives of satisfying daily needs and having the necessary financial means to live [38].

Every conscious action of man takes place in the way of some purpose. The purpose can be formed in the way of criminal intent, on the basis of criminal motive. In some cases, the criminal intent may include purposes beyond the scope of the criminal motive.

According to Rustambaev, the purpose of the crime is the perception of the perpetrator to achieve the desired result by committing a crime [39].

The motives and purpose are clearly stated in the norms of the Special Part of the Criminal Code, it becomes a necessary sign of the subjective side of the crime, as well as the corpus delicti. For example, intentional homicide on the basis of religious prejudice (Article 97, part 2, section “m”) or intentional homicide for the purpose of amputation and transplantation or use of parts of a corpse (Article 97, Part 2, section “n”). However, the motive given in some articles of the Special Part of the CC has a generalized, such as bias or malicious intent (Articles 124, 125, 131, 133, etc. of the CC) or other personal interest (Articles 209, 212, 2281 of the CC, etc.).

K. Abdurasulova said that “at the time of committing a crime, malice is based on committing a socially dangerous act and the desire to gain material benefits. The purpose of malice is a necessary sign of fraud [40].

M.Kh.Rustambaev noted that fraud is subjectively committed with the direct intent, the existence of a malicious purpose is a necessary sign of fraud.

The perpetrator realizes that he is misleading the victim or knowingly abusing his trust in order to seize someone else’s property, and wants this to happen. Also, the perpetrator of this crime commits it for the purpose of gaining property and enrichment. The existence of a malicious intent is a necessary sign of fraud, however, if the property was acquired by fraud without a malicious purpose (e.g., receiving a monthly salary on behalf of another person for the purpose of giving it to him), the act cannot be qualified as fraud [41]. Also V.I.Lesnyak [42] and L.M.Prozumentova [43] also emphasize that fraud is intentional. However, in contrast to these authors, M.Kh.Rustambaev emphasizes that fraud is committed with prejudice, and emphasizes the necessary character of the subjective side of prejudice. K.Abdurasulova also proved in her research work that fraud is committed with malice. Supporting the opinion of M.Kh.Rustambaev and K.Abdurasulova, we believe that the intention of malice should be included in the definition of fraud of the Criminal Code as a necessary sign. Today, the lack of clear indication of the subjective side of fraud is causing problems in qualifying the act.

III. Conclusion

In the current definition of fraud in the Criminal Code, the method of committing a crime (deception and abuse of trust) is a necessary sign of qualifying the act. Article 123 of the Civil Code also contains a provision stating that an agreement entered into under the influence of fraud, coercion, intimidation, misconduct of a representative of one party with the other party or the occurrence of serious circumstances is invalid. Therefore, there is debate on the establishment of a clear boundary that distinguishes an act from a criminal or civil legal relationship [44].

This, in turn, creates practical problems in qualifying the act, in the legal assessment of the act. We have the misconception that any relationship related to a transaction is a civil legal relationship and that disputes arising out of the transaction must be resolved under civil law. We believe that the reason for this misconception is that the definition of fraud in our Criminal Code is not perfect. Investigative and judicial bodies make a legal assessment of the situation by determining the purpose of the perpetrator in order to criminalize the act [45].

The errors of judicial investigators in the proper qualification of an act are often related to a misjudgment of the content of the subjective side of fraud. There are no contradictions in the approach of

scientists in determining the subjective aspect of the crime of fraud in criminal law, almost all scientists recognize that fraud is committed intentionally.

In conclusion, it should be noted that in practice, it would be expedient to improve the definition of fraud in Article 168 of the Criminal Code of the Republic of Uzbekistan by the legislator, to include the definition of fraud as a prerequisite for qualifying subjective side of the crime.

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