

**SUBJECTIVE SIGNS OF FRAUDULENT ROBBERY OF
OTHERS' PROPERTY****Elomonov Bekzod Alimardon o'g'li**

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Anatatsiya: maqolada firibgarlik jinoyatining subyekti va subyektiv tomonlari har tomonlama xalqaro va mahalliy olimlarning fikrlari bilan tahlil qilingan holda o'rganildi. Shuningdek, ijtimoiy xavfli qilmishning subyektiv xususiyatlari ahamiyati, jinoyatni kvalifikatsiya qilishdagi o'rni ko'rsatib o'tildi.

Kalit so'zlar: firibgarlik, subyekt, subyektiv tomon, kvalifikatsiya, javobgarlik;

Annotation: The subject and subjective aspects of the crime of fraud are studied in the article, they are comprehensively analyzed taking into account the opinions of foreign and domestic scientists. The value of the subjective characteristics of a socially dangerous act and its role in qualifying a crime is also shown.

Key words: *fraud, subject, subjective side, qualification, responsibility;*

Аннотация: в статье изучен предмет и субъективные аспекты преступления мошенничества, комплексно проанализированы с учетом мнений зарубежных и отечественных ученых. Также показано значение субъективной характеристики общественно опасного деяния и его роль в квалификации преступления.

Ключевые слова: мошенничество, субъект, субъективная сторона, квалификация, ответственность.

In order to understand the full concept of any norm, first of all, it is necessary to fully understand the criminal aspects of the crime. When talking about the criminological aspects of fraud, it is necessary to study the object of the crime, the objective side, the suspect and the subjective side, which are important data sets from the criminological point of view.

Subjective aspects should also be taken into account when choosing the right responsibility for a crime according to criminal law. The subject of the crime is divided into the subject of the crime and the side of the subject of the crime.

The subject of crime is defined as the person who committed a socially dangerous act. In other words, individuals become invisible as subjects. The subject of the crime is a sane individual who has reached the age set for a socially dangerous act according to Article 17 of the Criminal Code. It is clear from this that in order to hold a natural person responsible for any crime, he must be of a certain age and of sound mind. A natural person can mean not only citizens of the Republic of Uzbekistan, but also all foreign citizens and stateless persons living here. Another noteworthy aspect is that under the legislation of Uzbekistan, only natural persons are held criminally liable. Legal entities may also be held criminally liable in some foreign countries, in particular, under the Law on Liability of Legal Entities for Crimes in Croatia. Only if the crimes committed by them directly affect a legal entity, the question of punishment for the act arises.

Considering the general theory, any crime is committed by a physical person, that is, a person. Even if an organization established by a person is considered criminally responsible for

enterprises, those persons themselves are responsible for the crimes committed by the employees of the enterprise. Based on the fact that a legal person does not have a human character, the criminal law of the Republic of Uzbekistan considers a person who has committed a socially dangerous act, i.e. a natural person. According to the laws of our country, legal entities are not held criminally liable.

The subject of the crime can be made up of not only one person but also several people. According to the criminal law, the number of subjects more than 1 is considered as a case of theft of the crime. In the case of the crime of fraud, if the act is committed by a group of persons with a prior collusion or by an organized group, a more severe punishment is used.

The first sign of a criminal subject is age. According to the criminal law, the general age of the subject is 16 years. But this does not mean that all types of crimes have been committed, depending on the characteristics of the crimes, the persons who committed them are required to reach a certain age. For example, to commit the crime of theft, a person must be 14 years old. Since Article 17 of the Criminal Code does not provide for a specific age range for the crime of fraud, we can assume 16 years based on the age of the general subject. Therefore, if the individual who commits the crime of fraud has turned 16, the sanctions for the crime of fraud shall be applied to him. This age is determined by the law makers based on the psychological, medical, social and the prevalence of fraud crimes at this age. At this age, every person will be able to understand the consequences of his illegal actions. It is not for nothing that Article 27 of the Civil Code does not specify the legal capacity of minors (from 14 to 18 years old). At this age, a person partially, if not fully, understands the consequences of cheating and abuse of trust.

It can also be said that the age of the general subject of the crime is 16 years old, because at this age people understand the consequences of the socially dangerous act that can be committed.

The second important feature of the subject is sanity. Sanity is a necessary factor in determining criminal liability. Sanity is a factor that determines the punishment of a socially dangerous act committed by a person. From this point of view, the mental state should be taken into account when considering the issue of prosecution. According to Article 18 of the Criminal Code, a person who is aware of the socially dangerous nature of his actions (inaction) at the time of committing a crime and is able to control them is a sane person.

A person who was mentally deranged at the time of committing a socially dangerous act, i.e. a person who could not understand the importance of his actions (inaction) or was unable to control them due to chronic or temporary mental disorder, mental weakness or mental disorder in some other way, shall not be held liable.

In the case of mental deficiency, the court may impose coercive medical measures against a person who commits a socially dangerous act.

Based on the above, it can be concluded that "the subject of the crime of fraud can be any sane individual over the age of 16" ¹. Russian scientist Kolokolov also said that the subject of the fraud crime is a 16-year-old sane person ².

According to the general theory, the subject is divided into two types: general and special. The term "special subject" is indicated in the disposition of the article of the Civil Code in addition to the general subject symbols. As an example of special subjects, it is specified that the person

¹ Rustambeyev. Republic of Uzbekistan criminal law course. Volume 4. Textbook 2nd edition, 2018. -529

² A. V. Arkhipov. Journal of Tomsk State University. 2014. No. 378. S. 162

who commits the socially dangerous act provided for in the crime of state administration must be an official, and the guilty of crimes related to military service must be military servicemen.

According to the opinions of some foreign scholars, the subject of the crime of fraud is called a special one ³, while some others call it a general subject ⁴. We think that the subject of fraud should be general rather than specific. After all, if the subject of the fraud crime is determined by a special subject, the possibility of preventing and reducing this type of crime reduces the scope of crime.

In the JK of the Republic of Uzbekistan, there is no question of responsibility that should be applied to a special subject in the disposition part of the crime of fraud. In the second, third, and fourth parts, if a certain category of persons (by a group of persons, using the official position, etc.) commits a crime of fraud, a more severe punishment is specified for them. But this category of persons is not a separate disposition, but an addition. For this very reason, it is not considered a special subject.

According to some of our scholars, special subject signs can be classified as follows:

- *Citizenship*
- *demographic characteristics (gender, age)*
- *career*
- *military service*
- *the work he is doing*
- *professional obligation*
- *personal commitment*
- *the state of the subject*⁵

The subjective side

The subjective side of the crime includes the internal features of the committed crime, the mental state of the person, that is, the mental attitude to the crime, the formal structure of the crime, motives and goals. The subjective aspect of accountability is important. After all, the punishment may be lighter or, on the contrary, heavier, in the case of subjective reasons. **The subject side** of the criminal structure is the mental attitude of the guilty person towards the socially dangerous act he committed, which is defined as a crime in the criminal law, and expresses his guilt, motive, purpose and feeling ⁶. According to AS Yakubov and RKKabulov, the subjective side of the crime is the mental attitude towards the socially dangerous act, which is designated as a crime by the criminal law ⁷. In a word, the subjective side is the mental and spiritual experiences of a person.

One of the most important from the subjective side and, if necessary, in the matter of responsibility is the forms of guilt. Guilt is a mandatory feature of a criminal act. The absence of fault does not create liability. According to Article 20 of the Criminal Code, the forms of guilt are divided into two types, such as intentional or negligent. Socially dangerous acts of any kind are committed intentionally or recklessly, regardless of the reasons for leaving the bride.

³A.V. Arkhipov . Journal of Tomsk State University. 2014. No. 378. S. 162

⁴. Shesler A.V. Moshennichestvo: problemy realizatsii zakonodatel'nykh novell // Ugolovnoe pravo. 2013. No. 2.

⁵Rustambayev MX, Ahrorov.BJ Criminal law General part.—Tashkent, Ilm zia. 2011. Page 122

⁶Rustambayev Republic of Uzbekistan criminal law course. Volume 4. Textbook 2nd edition, 2018, page 176

⁷Criminal law. General part. Textbook. ASYakubov, R. Kabulov. — Tashkent, IIB Academy of the Republic of Uzbekistan, 2009. B160



A socially dangerous act is called an intentional crime if a person is aware of its nature while committing it and consciously wants it. Intent exists in crimes of material content and in crimes of formal content. The intention may have been premeditated or it may have occurred suddenly. Premeditated intention and sudden intention indicate the level of social danger of a person. A person's level of danger is much higher with pre-existing intent. Because before committing the crime, the culprit had a careful plan, long-term careful preparation, and thought of ways to avoid responsibility. Not only serious and extremely serious crimes are committed intentionally, but also crimes with a low social risk and not very serious crimes. Qasd, in turn, consists of two types, that is, oblique and straight qasd. According to Article 21 of the Civil Code:

if a person is aware of the socially dangerous nature of his act, sees its socially dangerous consequences and wants them to occur, such a crime is considered to have been committed intentionally;

if a person is aware of the socially dangerous nature of his act, sees its socially dangerous consequences and consciously allows them to occur, such a crime is considered to have been committed intentionally.

Thieves and crooks are almost the same, but they differ in the way they deal with the crime. If the desire to commit a socially dangerous act is considered a right intention, knowingly allowing it is called a wrong intention. For example, manslaughter can be both intentional and malicious. Fraudulent recruitment is done with intent. A person, knowing that his actions are illegal, fulfills his desire to acquire the property of his brother by means of deception and abuse of trust. In this case, the guilty person allows the commission of the crime of fraudulent theft of property, fully aware of the consequences.

The next sign of guilt is carelessness. The person guilty of carelessness does not want criminal consequences to arise as a result of his actions. According to Article 22 of the Civil Code, carelessness is committed in 2 ways, i.e. self-confidence or carelessness. Some scholars believe that liability for crimes committed due to carelessness arises only if it is directly specified in the criminal law ⁸.

Such an act cannot be committed due to carelessness, because it is not even logical for the guilty to steal someone else's property by fraud. A fraudster spends a lot of time preparing to deceive and gain the trust of the victim. This indicates that the act committed was intentional.

The optional sign of the subjective side consists of motive and purpose. They encourage the development of a fantasy-realistic model of the crime to be committed. Any crime is committed for some motive or purpose. When a person's behavior fully encompasses the characteristics of the crime committed, and is committed only intentionally, then it is considered a motive ⁹. Motive and purpose are evident in premeditated crimes. Crimes committed through negligence do not have such characteristics. Motive and purpose, provided by the norms of criminal law, become a necessary sign of the subjective side.

Motive and purpose are different from each other. Motive shows what is the basis for committing a crime, i.e. what are the reasons. Jealousy, revenge, personal grudges are examples of motives. The purpose is considered an important factor in determining the direction of the crime and embodies the intention of the guilty party. Sometimes, in JK norms,

⁸ Rustambeyev Republic of Uzbekistan criminal law course. Volume 4. Textbook 2nd edition, 2018. p-138

⁹ Rarog A.I. Qualification prestupleniy po sub'ektivnym priznakam. - SPb.: "Yuridichesky Tsentr Press", 2003. - S. 137-141

the motives and goals of the act are specified directly in the disposition. For example, intentional homicide, if the motive of the perpetrator is revenge or jealousy, then it is qualified by Article 97, part 1 of the Criminal Code. If the person guilty of moboda killed a person with the intention of embezzlement, for the purpose of concealing another crime or facilitating its commission, then the act is punished by Article 97, Part 2. Motive and intent are aggravating factors in a crime.

The crime of fraud is committed with malicious intent. From this point of view, malice should be considered as a necessary sign of fraud. If someone else's property is taken without malicious intent (for example, the performance of one person's property relations for another person), the act cannot be considered fraud. Because in such situations, the goal is not to loot other people's property, but to carry out actions related to a certain property characteristic. For example, taking motor vehicles from one place to another on the basis of the right of temporary driving, receiving monthly and other payments on behalf of the second person, as well as making payments on behalf of the second person's funds. Q. Abdurasulova said that "the purpose of profiteering is a necessary sign of fraud".¹⁰ Here we can consider greed as a malicious goal. Rustambayev also states that "malice is a necessary sign of the crime of fraud".¹¹ With this in mind, we must mention that malice or other low intent should be considered as necessary elements of the crime of fraud. It would be counterproductive to include a sign indicating sedition or other low intentions in Article 168 of the Criminal Code.

Some parts of the article on fraud of the Criminal Code specify some of the purposes of the crime. In particular, part 4 contains the sentence "committed by or for the benefit of an organized group". The purpose is to serve the interests of an organized group, and for this, a heavier punishment is provided, unlike the 1st, 2nd, and 3rd sections. But if some additions are made to the norms given here, we think it would be appropriate for the purpose. In particular, in the second part, we think that it is necessary to add the sentence "perpetrating fraud for the benefit of others", because in this article, fraud for the benefit of others is committed only in the fourth part, if it is also defined as an organized group of interests. If the person guilty of fraud is not only interested in himself, but also in the interest of a third party. Committing fraud on others should be considered an aggravating circumstance. The reason for this is that the guilty party realizes the inevitability of the punishment for the act he is doing and expects additional material benefit from the second person.

In conclusion, the subjective characteristics of the crime are important in determining the issue of responsibility for the act. After all, there must be some purpose or intent in committing the act, otherwise we cannot consider such actions as a crime. When qualifying the crime of fraud, it is necessary to take into account the presence of the goal, that is, malicious intent. For this reason, it would be appropriate to include the concept of fraud with malicious intent in our proposed legislation.

¹⁰ Abdurasulova.QX Criminal legal problems of fraud. Candidate of juridical science.diss. — Tashkent; 1996. B-66-67.

¹¹ Rustambayev.MX. Uzbekistan _ Republic Crime the right course part 4. Tashkent 2018- B-66.

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