



## CRIMINAL-LEGAL CHARACTERISTICS OF THE CRIME OF FRAUD

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**Abstract:** This article discusses the criminal-legal characteristics of fraud committed in the virtual world, the concepts of this type of crime, its types, and thoroughly analyzes the qualification of fraud committed virtually.

**Keywords:** fraud, deception or abuse of trust, active deception, passive deception, virtual space, fraud.

Seizure of another's property or property rights through deception or abuse of trust is considered fraud. In the explanatory dictionary of the Uzbek language, fraud means "deception, cunning"[1]. In Islam, vices such as deception, fraud, deceiving others, and deception in trade are condemned.

Fraud is expressed in the gratuitous seizure of another's property (money, car, gold items) or right to property (by concluding a power of attorney, receipt, contract) by deception or abuse of trust, under the influence of which the owner of the property or another person or an authorized body of power transfers the property or right to it to another person or allows the seizure of this property or right to it by another person."

Fraud manifests itself in unlawful deceptive actions (lie, presentation of false evidence, presentation of forged documents) committed with the aim of obtaining another's property (money, item) or the right to property, or in obtaining property or the right to it with the abuse of the victim's trust (fulfillment of an initial promise) for these purposes. Deception in fraud is understood as the deliberate actions of a person to report knowingly false information that does not correspond to reality, or to conceal real facts that should be reported to the owner of the property or another person in the circumstances of the case, or to mislead the owner of the property or another person[2].

According to part one of Article 168 of the current Criminal Code of the Republic of Uzbekistan, fraud committed without aggravating circumstances (i.e., obtaining another's property or the right to another's property through deception or abuse of trust) is punishable by a fine of fifty to one hundred times the base calculation amount or correctional labor for up to two years or restriction of liberty from one year to three years or imprisonment for up to three years.

According to part two of this article, fraud:

- a) in significant quantities;
- b) by prior conspiracy by a group of persons;
- c) using computer equipment - a fine from one hundred to three hundred times the base calculation amount or correctional labor for up to three years or restriction of liberty from three to five years or imprisonment from three to five years.

According to part three of this article, fraud:

- a) in large quantities;

b) repeatedly or by a dangerous recidivist;

c) for committing an offense using official position - a fine from three hundred to four hundred times the base calculation amount or correctional labor from two to three years or imprisonment from five to eight years with deprivation of a certain right.

According to part four of this article, fraud:

a) in a very large amount;

b) by a particularly dangerous recidivist;

c) committed by an organized group or in its interests, - a fine from four hundred to six hundred times the base calculation amount or imprisonment from eight to ten years.

Also, according to part five of this article of the Code, in case of compensation for material damage caused as a result of fraud, punishment in the form of restriction of liberty and imprisonment is not applied.

Fraud can consist of any circumstance that may lead to misleading the victim with false information, including a lie about legal facts and events, the quality, price of the property, the person himself, his authority, intentions (for example, a person presenting himself as an official or an employee of a law enforcement agency).

In fraud, intentional actions aimed at misleading the victim include the forgery of a transaction or subject of payment, the use of deceptive methods in gambling and other risk-based games.

Deception as a method of fraud is divided into the following two types:

1) active deception;

2) inactive (passive) deception.

Active deception manifests itself in misleading the owner by providing false information. For example, if a victim receives a monetary reward for adding a certain number of users to a different group on the "Telegram" social network, sends a special card code, tells them to transfer the winnings, or by other actions, leads to the transfer of property to the ownership of the fraudster.

Inactive (passive) deception - manifests itself in the fact that a person is obliged to inform the victim about factual circumstances of legal significance, but does not disclose information to him and does not convey such messages.

Abuse of trust is expressed in the second form of fraud. Abuse of trust is understood as the use by a person for malicious purposes of trust relations with the owner of the property or other persons authorized to make decisions on the transfer of the property to third parties[3]. Trust can be caused by various circumstances, such as the official position of the guilty party or his personal or family relationship with the victim.

Abuse of trust - in fraud, committed as an independent method, there is no active deception (distortion of truth), no passive deception (concealment of truth), there is only a case of abuse of relationships based on mutual trust.

As a result of relationships based on mutual trust, property can be transferred from one person to another, that is, handed over to them and simply entrusted without documentation. The content, nature, source, reasons, duration, and other aspects of the victim's trust in the perpetrator do not affect the assessment of the committed act.

During fraud committed by abuse of trust, the victim and perpetrator may be an associate, acquaintance, persons interacting in connection with the provision of services, and others.



A necessary element of fraud is the owner's voluntary transfer of property or property rights to the perpetrator. Fraud aimed at seizing property is considered completed from the moment the said property is transferred to the unlawful possession of the guilty or other persons and they have a real opportunity to use or dispose of it at will.

If a person acquired or possessed another's property or right to it with the intention of not fulfilling obligations related to the transfer of this property or right to him, the act should be qualified as fraud only if the intent to acquire another's property or right to it arose before the acquisition of another's property or right to it.

It is expressed in the use by a person of forged documents or letters of guarantee, concealment of information about the existence of debt or the pledge of property, the creation of a fictitious enterprise (organization) to participate in the transaction as one of the parties, the misuse of credit funds or their cashing out.

Theft of another's funds using a stolen (forged) credit card or accounting card should be considered as theft of another's property, if the cash was acquired through an ATM. However, theft of funds held in another's bank account using a stolen (forged) credit or accounting card can be qualified as fraud only if the person misleads an authorized employee of a credit, trade, or service organization through deception or abuse of trust (for example, in a shopping or service center, when paying for goods or services using a bank card, a person signs a purchase ticket instead of the legal owner of the card or presents a forged passport in their name).

Obtaining a social payment, benefit, other monetary payment (for example, compensation, insurance payment) or property by submitting knowingly false information to executive authorities, local self-government bodies, institutions, or organizations authorized to make appropriate decisions about the existence of other circumstances, the emergence of which, according to the law, is the basis for receiving payments or property (including the recipient's identity, disability, the presence of dependents, participation in hostilities, the impossibility of employment, the occurrence of an insured event). Similarly, the actions of a person who continues to receive social payments, benefits, or other monetary payments without deliberately notifying the relevant authorities of the expiration of the legal grounds for receiving these payments should be assessed.

From fraud, it is necessary to distinguish the crime of causing property damage by deception or abuse of trust (Article 170 of the Criminal Code). In causing property damage through deception or abuse of trust, a person, without directly seizing another's property and not having the right to it, attempts to appropriate commodity-money valuables that, according to the law (contract), are expected to pass into the possession or disposal of the owner in the future. In fraud, property or money at the disposal of the victim is obtained through deception or abuse of trust.

Deception is used by a person to facilitate the seizure of another's property. In cases where, during the seizure of property, the owner or other person senses his true intentions, and the perpetrator, although aware of this, continues to seize or retain the property against the owner's will, the act should be qualified as robbery (for example, a person borrows a mobile phone from its owner for temporary use, and then hides with the stolen phone).

When qualifying the actions of a person who has committed a continuous fraud consisting of several episodes and committed with a single intent, it is necessary to determine the amount of embezzlement based on the total value of the embezzled property.

If the perpetrator committed not one, but several acts of fraud, in each of which there was an independent intent aimed at obtaining another's property, the value of the plundered property should not be counted together.

If the intent of the person was aimed at the seizure of another's property in a large (extremely large) amount, which was not completed due to circumstances beyond the control of the guilty party, the act should be qualified as an attempt to commit fraud in a large (extremely large) amount, based on the content of the intent, regardless of the value of the actually stolen property.

The difference between fraud and theft (Article 169 of the Criminal Code) is that in fraud, the perpetrator does not seize property from someone else's possession, but rather the victim who was misled by them obtains the property or rights to the property themselves.

Fraud differs from extortion (Article 165 of the Criminal Code) in that in extortion, the victim's will is violated and they act under the influence of fear, while in fraud, the victim's will is mistaken as a result of deception.

The crime of counterfeiting money, excise stamps, or securities (Article 176 of the Criminal Code) differs from fraud by its intent and the nature of forgery. In this case, the money sign or foreign currency is counterfeited for inclusion in monetary circulation. In fraud related to counterfeiting securities (for example, adding several zeros to a banknote, using souvenir banknotes, photocopies of banknotes or securities, etc.), intent is aimed at deceiving a specific person and obtaining property benefits.

Subjectively, fraud is committed only with direct intent.

The subject of the fraud crime is a sane individual who has reached the age of 16.

When studying the experience of developed countries, it was revealed that in the criminal legislation of many foreign countries, there are special norms on liability for fraud. According to a comparative legal analysis of the criminal legislation of European countries, deception is presented as the only method of fraud. Abuse of trust is defined as an independent crime or not defined as a crime at all (for example, in Dutch and Georgian legislation).

In European countries, the method of committing fraud is only deception. Abuse of trust has been recognized as a separate crime.

In Uzbekistan, as in other CIS countries, when qualifying the crime of fraud, deception or abuse of trust continues to be considered as an act. In the future, in order to prevent the violation of the rights of the accused in the process of qualifying their actions, it is advisable to separate the act of abuse of trust.

### References:

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