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СПОСОБЫ СОВЕРШЕНИЯ ПРЕСТУПЛЕНИЙ ПРОТИВ СОБСТВЕННОСТИ В РОССИИ И ЗАРУБЕЖНЫХ СТРАНАХ

METHODS OF COMMITTING OFFENCES AGAINST PROPERTY IN RUSSIA AND FOREIGN COUNTRIES

Аннотация. В российском уголовном праве определение способа совершения посягательства на собственность является важным этапом квалификации и зачастую влияет на разграничение разных преступлений. Основной целью данной статьи было сравнение Уголовного кодекса Российской Федерации и зарубежных правовых актов в части регулирования способов совершения таких преступлений, как кража, грабеж, растрата, мошенничество и других хищений. В результате был выявлен ряд общих положений в российском законодательстве и зарубежных правовых актах, а также неизвестные в России институты уголовного права, которые могут представлять интерес для отечественного законодателя. Представляет

Abstract. In Russian criminal law determining the method of committing offences against property is an important stage in the qualification of an offence that often affects the distinguishing between different offences. The primary objective of this article was to evaluate how theft, robbery, embezzlement, fraud, and other offenses are regulated in the Russian Criminal Code as compared to foreign legal statutes. As a result, a number of general provisions were identified in Russian legislation and foreign legal orders, as well as institutions of criminal law unknown in Russia, which may be of interest to the domestic legislator. It seems that the comparative method

ся, что сравнительный метод исследования и полученные результаты делают статью актуальной.

Ключевые слова: способ совершения преступления; преступления против собственности; кража; мошенничество; грабёж; российское уголовное право; уголовное право зарубежных стран.

of research and the obtained results make the article relevant.

Keywords: method of committing an offence; offences against property; theft; fraud; robbery; Russian criminal law; criminal law of foreign countries.

INTRODUCTION

The importance of the method of commission of theft in the process of qualifying the crime cannot be denied. Despite the fact that crimes against property have been studied in criminal law doctrine, there are still a number of unresolved issues relating to the qualification and distinction of forms of theft which differ in the way they are committed.

In order to understand these problematic aspects, the author analyses foreign legal acts (California Penal Code 2021, Fraud Act 2006 UK, German Criminal Code, Penal code France, Penal code Japan, Pennsylvania Code Title 18, Theft Act 1968 UK) and works of domestic academics (I. D. Kozochkin, N. E. Krylova, etc.), which offer a system analysis of foreign legislation on the specified problem.

Thus, Arkhipov A.V., the judge of the Tomsk Regional Court, in the article «Fraud using electronic means of payment» focuses on the challenges in enforcing Article 159.3 of the Russian Criminal Code. Professor Yani P.S. suggests criteria for differentiating this offense from theft, fraud, credit and computer fraud, and other related offenses.

Academics N.E. Krylova, A.V. Maleshina, A.V. Serebrennikova in the book «Criminal law of foreign countries» provide up-to-date information on the main institutions of the Criminal Law of the leading countries. The paper «Criminal law of foreign countries» edited by I.D. Kozochkin contains conclusions on the basis of the existing criminal legislation of England, the United

States, France, Germany, Italy, Japan, judicial practice and the criminal law doctrine of these countries.

James W. Osterburg and Richard H. Ward point out the emergence of crime in general, as well as computers and technological crime. The article «The credit card fraud detection in the era of disruptive technologies: A systematic review» is connected with the fact that credit card fraud is becoming a serious and growing problem.

Jay A. Siegel, Pekka J. Saukko, Max M. Houck consider forensic science includes all aspects of investigating a crime. Corresponding author of Sorbonne Business School Jean-Loup Richet emphasizes the need to effectively counteract ad-fraud that has received little academic attention. Issues related to the investigation of credit card fraud are discussed in the article «Fraud detection and prevention in e-commerce».

MATERIALS AND RESEARCH METHODS

The article is based on general scientific methods (analysis, synthesis), as well as private scientific methods of jurisprudence, such as the comparative law method and the formal legal method.

These methods made it possible to consider certain issues related to the qualification of crimes depending on the method of their commission. In particular, using the method of analysis, the author examines the properties of the concept of the method of committing certain crimes against property.

Using the method of comparative law the author analyses and compares the legal regulation related to crimes against property in Russia, USA, France, Germany, Japan and other states. The formal legal method allows to study and draw conclusions on the topic of research based on the current legislation of the Russian Federation and foreign states.

RESEARCH RESULTS

It seems appropriate to consider the findings in relation to specific types of property crime, in particular theft, fraud, robbery, misappropriation and embezzlement.

THEFT METHOD

The theft of someone else's property is considered secret appropriation under Article 158 of the Russian Criminal Code¹. The method of committing this offence against property is characterized as «secret»², which in accordance with the Resolution of the Supreme Court of the Russian Federation involves the property appropriation in the absence of the owner or unauthorized persons or in their presence, but unnoticed by them³. That is, the question of whether the theft is secret must be decided on the basis of the perpetrator's subjective perception of the situation [3].

In most foreign countries, there is no «secrecy» as a characteristic of theft. Similarly, in the United Kingdom, Theft Act 1968 states that a person commits theft when he or she dishonestly takes someone else's

property with the intention of permanently depriving it⁴. In other words, this act of theft is characterized by five key elements, including the appropriation of property that belongs to another person, and the presence of mens rea indicators such as dishonesty and the intention to permanently deprive the owner of their property⁵.

In France, theft is defined as the deceitful seizure of an object that belongs to someone else, as stated in the Criminal Code's Articles 311-1 and 311-2⁶. This definition encompasses the presence of deceitful intent and the act of seizing an object that belongs to another person. Therefore, theft is characterized by the appropriation of a tangible or intangible item through fraudulent means [5, p. 135], which in Russia is more typical for fraud. In some cases, however, it is difficult to distinguish between theft and fraud [10].

In the Criminal Code of China there is no theft as a separate offence, but it is mentioned in Article 269 along with fraud and robbery. The Article 269 states that individuals who engage in theft, fraud, or forcible seizure and use violence or threats of violence to conceal stolen goods, evade arrest, or destroy evidence will be prosecuted and penalized⁷.

FRAUD METHODS

According to the Criminal Code of the Russian Federation, if someone takes another person's property without permission or deceives them into giving up their property rights or abuse of trust is regarded as fraud⁸.

¹ Criminal Code of the Russian Federation of 06/13/1996 No. 63-FZ (as amended on 03/25/2022), available at: http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed 15 April 2023).

² Criminal law of Russia. Parts General and Special: textbook. Ed. prof. A.V. Brilliantov. 3rd ed. Moscow, Prospect, 2021, available at: <https://search.rsl.ru/ru/record/01008026480?ysclid=lits3nzm iu689554890> (accessed 13 April 2023).

³ Resolution of the Plenum of the Supreme Court of the Russian Federation of December 27, 2002, no. 29, available at: http://www.consultant.ru/document/cons_doc_LAW_40412/ (accessed 16 April 2023).

⁴ Theft Act 1968 UK Public General Acts, available at: <https://www.legislation.gov.uk/ukpga/1968/60/contents> (accessed 20 April 2023).

⁵ Ibid.

⁶ Penal code France, available at: <https://www.legislationline.org> (accessed 14 April 2023).

⁷ Criminal Law of the People's Republic of China, available at: <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm> (accessed 15 April 2023).

⁸ Criminal Code of the Russian Federation

Deception can take various forms, including intentionally conveying false information that does not align with reality, withholding the truth, or intentionally misleading someone who owns property or another individual⁹.

In the UK, fraudulent activities are considered criminal offenses under the Fraud Act 2006. The first type of fraud outlined in Article 1 of this law is known as fraud by false representation, which involves a person dishonestly making a false representation with the intention of benefiting themselves or others, causing harm to another, or exposing them to a risk of loss¹⁰. This offence lies in reporting information that does not correspond to reality, which also corresponds to one of the options for fraudulent deception according to the Russian doctrine of criminal law [5, p. 145].

The second type of fraud in France, namely fraud by failing to disclose information, occurs when a person intentionally withholds information that they are legally obligated to disclose in bad faith. This act is committed with the intention of benefiting, causing harm or exposing to a risk of loss¹¹. This type of fraud is similar of deception in the form of «silence about the true facts» as outlined in a resolution by the Supreme Court of the Russian Federation¹².

The offense of fraud by abuse of position occurs when an individual, who holds

a position that requires them to protect or not work against someone else's financial interests, intentionally exploits that position in a dishonest manner. The aim of this exploitation is to either benefit themselves or another person, cause loss to someone else, or subject someone else to the possibility of loss. It is logical to draw a parallel with Russian law in terms of a method of «abuse of trust» which is distinct from deceit, and involves taking advantage of a relationship of trust for personal gain. This could be due to a person's official position or a personal relationship with the victim¹³.

Swindling is a different offense from fraud in the French Criminal Code, when a person buy something, knowing they are completely unable to meet the payment, or having the firm intention not to pay¹⁴. French law also distinguishes specific types of fraud, including fraud during the public sale or tender process, rejecting bids or tenders or restricting bids or tenders through gifts, promises, arrangements or any other fraudulent means¹⁵.

In the United States, the criminal codes of most states provide for separate types of fraudulent criminal acts, which are usually formulated in a casuistic manner. For instance, the major fraudulent offenses in Chapter 41 of the Pennsylvania Criminal Code include deceptive or fraudulent business practices, defrauding secured creditors, fraud in insolvency, receiving deposits in a failing financial institution, insurance fraud and others¹⁶.

of 06/13/1996 No. 63-FZ (as amended on 03/25/2022), available at: http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed 15 April 2023).

⁹ Resolution of the Plenum of the Supreme Court of the Russian Federation of November 30, 2017, no. 48, available at: http://www.consultant.ru/document/cons_doc_LAW_283918/ (accessed 15 April 2023).

¹⁰ Fraud Act 2006 UK Public General Acts, available at: <https://www.legislation.gov.uk/ukpga/2006/35/contents>

¹¹ Penal code France, available at: <https://www.legislationline.org> (accessed 10 May 2023).

¹² Criminal Code of the Russian Federation of 06/13/1996 No. 63-FZ (as amended on 03/25/2022), available at: http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed 15 April 2023).

¹³ Resolution of the Plenum of the Supreme Court of the Russian Federation of November 30, 2017, no. 48, available at: http://www.consultant.ru/document/cons_doc_LAW_283918/ (accessed 15 April 2023).

¹⁴ Penal code France. Article 313-5, available at: <https://www.legislationline.org> (accessed 10 May 2023).

¹⁵ Ibid.

¹⁶ Pennsylvania Code Title 18 2010 Crimes and offenses, available at: <https://law.justia.com/codes/pennsylvania/2010/title-18> (accessed 11 May 2023).

Like the clarifications of the Plenum of the Russian Supreme Court in the United States, it is necessary to distinguish between the unlawful appropriation of someone else's property by deception or by making false pretenses and larceny by trick. If a fraudulent method is utilized to retain or gain access to someone else's property without transferring ownership of the property, the act is considered theft. However, if the fraudulent method involves the transfer of ownership of the property, it is categorized as fraudulent theft of property [5, p. 140–150].

Section 263 of the German Criminal Code defines fraud as an intentional act with the aim of obtaining an illegal material benefit for oneself or another person, while simultaneously causing harm to the property of another. This is achieved by either creating or perpetuating an error through false pretenses or by misrepresenting or concealing important information¹⁷. In France breach of trust is committed when an individual accepts funds, valuables, or any property with the understanding that they must return, transfer, or use it in a specific manner, but instead misappropriates it for their own benefit, they are committing embezzlement to the detriment of the rightful owner (314–1)¹⁸.

In addition, Section 22 of the German Criminal Code lists several criminal acts that share similarities with specific elements of fraud in the Russian Federation, including computer fraud and subsidy fraud; insurance fraud; credit fraud and some others¹⁹. Interestingly, many Russian scholars criticize the addition of these crimes to the law [1]. According to Article 640 of the Italian

Criminal Code a person commits fraud when he or she, by means of artifice or deception and by misleading someone, procures for him/herself or others an unjust profit to the detriment of others²⁰.

Article 643 of the Criminal Code separately provides for liability for deception of incapacitated persons. Similarly, criminal acts amounting to fraud in Japanese criminal law include such as exploiting the inattention of a minor or taking advantage of someone's mental incapacity, inducing someone to transfer property, and obtaining or encouraging a third party to obtain illegal profits (Article 248 of the Criminal Code of Japan)²¹.

Responsibility for computer offences, including fraud, is provided not only in the Russian Federation, but in the Criminal Code of China the Article 287 refers to the use of a computer for financial fraud, theft, corruption, misappropriation of public funds, theft of state secrets or other offences that are subject to conviction and punishment under the relevant provisions of this law²².

Identity theft or identity fraud is often seen in combination with an individual's personal identifiers that people possess for getting access to a system [7]. The credit card fraud is the most explored fraud type in Brazil [9]. Fraudsters are using increasingly sophisticated approaches to conduct illegal transactions, resulting in significant losses for cardholders and banks in Saudi Arabia [2]. According to French researchers, ad-fraud directed by cybercriminals is becoming widespread also [8].

¹⁷ German Criminal Code, available at: https://www.gesetze-im-internet.de/englisch_stgb/ (accessed 10 May 2023)

¹⁸ Penal code France, available at: <https://www.legislationline.org> (accessed 12 May 2023).

¹⁹ German Criminal Code, available at: https://www.gesetze-im-internet.de/englisch_stgb/ (accessed 9 May 2023).

²⁰ Financial crime in Italy, available at: https://content.next.westlaw.com/1-520-8645?_lrTS=20200910184443148&transitionType=Default&contextData=sc.Default&firstPage=true (accessed 12 May 2023).

²¹ Penal code Japan (Act No.45 of 1907), available at: <https://www.cas.go.jp> (accessed 12 May 2023).

²² Criminal Law of the People's Republic of China, available at: <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm> (accessed 10 May 2023).

MISAPPROPRIATION AND EMBEZZLEMENT METHODS

Article 160 of the Criminal Code of the Russian Federation defines the crime of misappropriation or embezzlement as the act of stealing property entrusted to an individual by another person²³. Misappropriation involves the unauthorized use of the property for personal gain, while embezzlement refers to the act of using the property for personal gain by consuming, spending, or transferring it to other individuals²⁴. These actions are committed without the consent of the owner, and therefore, are considered theft²⁵.

In the United States embezzlement as a separate offence is a fairly new crime that covers cases where property is converted from legal possession to illegal possession, without prior appropriation. This crime distincts from theft and is intended to address situations that are not covered by the current definition of theft [5, p. 163]. The concept of this offence varies from state to state. For example, under the California Criminal Code embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted (§ 503)²⁶.

Japanese Penal Code have no definition of «embezzlement», but there are three types of appropriation. Under Article 252 embezzlement assumes that a person embezzles property in his possession that belongs to another person. In addition, a person who embezzles property belonging

to another person while carrying out public activities (art. 253), as well as a person who embezzles lost property, drift property or any other property which belongs to another person and is in no one's possession (Article 254)²⁷.

ROBBERY METHOD

Article 161 of the Criminal Code of the Russian Federation defines robbery as the act of stealing someone else's property in the presence of either the owner or other individuals, whether known or not, and with the knowledge that those present recognize the criminal nature of the act, regardless of whether they attempt to intervene or not²⁸.

The crime of robbery in English law differs significantly from the offense outlined in Article 161 of the Criminal Code of the Russian Federation, and instead, it bears more resemblance to the offense described in Article 162 of the Russian Criminal Code, as far as it is accompanied by violence or the threat of violence. According to Section 8 of the Theft Act 1968, an individual can be charged with robbery if he or she uses force against another person with the intention of committing theft or causes or attempts to cause any person to fear that force will be used against him then and there²⁹. So, robbery involves either violence or the threat of violence, and the theft of property [6].

A very specific legal institution in the United States is burglary, which has no

²³ Criminal Code of the Russian Federation of 06/13/1996 No. 63-FZ (as amended on 03/25/2022), available at: http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed 15 April 2023).

²⁴ Resolution of the Plenum of the Supreme Court of the Russian Federation of November 30, 2017, no. 48, available at: http://www.consultant.ru/document/cons_doc_LAW_283918/ (accessed 15 April 2023).

²⁵ Ibid.

²⁶ California Penal Code 2021, available at: <https://law.justia.com/codes/california/2021/code-pen/part-1/title-13/> (accessed 13 April 2023).

²⁷ Penal code Japan (Act No.45 of 1907), available at: <https://www.cas.go.jp> (accessed 12 May 2023).

²⁸ Criminal Code of the Russian Federation of 06/13/1996 No. 63-FZ (as amended on 03/25/2022), available at: http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed 15 April 2023); Resolution of the Plenum of the Supreme Court of the Russian Federation of December 27, 2002, no. 29, available at: http://www.consultant.ru/document/cons_doc_LAW_40412/ (accessed 16 April 2023).

²⁹ Theft Act 1968 UK Public General Acts, available at: <https://www.legislation.gov.uk/ukpga/1968/60/contents> (accessed 1 May 2023).

analogues in other legal systems. At common law, it is breaking and entering another person's residential, inhabited premises with the intent to commit a felony there. In this case, a serious offence may not be related to property offences. In this regard, the assignment of burglary to the group of property offences is rather controversial [5, p. 139]. At the same time, at present, this concept is interpreted broadly [4, p. 732].

If someone enters a building or part of a building as an intruder in the UK with the intention to commit an offense, or steals or attempts to steal something from the building or inflicts or attempts to inflict serious bodily harm on anyone present, this person will be guilty of burglary³⁰. Robbery is unknown to German criminal law, as well as the Criminal Code of Japan, where the concept of «theft» covers this offence³¹.

Responsibility for robbery in the Criminal Code of China is provided for by several articles, depending on the circumstances of its commission and the amount of the stolen. In particular, the robbing public or private property using force, coercion or other methods is singled out (Article 263)³². In addition, an aggravating circumstance is committing robbery using guns³³.

Use of violence or threat of violence to appropriate another's property

In Russian legislation this offence is recognized as an attack for the purpose of stealing property committed with violence

that poses a danger to life or health or with the threat of such violence³⁴. The use or threat of force is also a constitutive feature of English robbery, with the level of physical violence ranging from minor to life-threatening. It is crucial that the violence or threat of violence be used as a means to seize property and to coincide in time with it or precede it, otherwise criminal conduct should be qualified as theft and assault [5, p. 139].

In German doctrine and criminal law (§ 249 of the Criminal Code) a person who seizes movable property belonging to another through the use of force or threats of harm to life or limb, with the intention of keeping the property for themselves or a third party, will face imprisonment for at least one year³⁵. The German Criminal Code also recognizes this act as theft through the use of force or threats to maintain possession of stolen property (§ 252), which involves using force against a person or threatening present danger to life or limb³⁶.

CONCLUSION

To sum up, it should be noted that the Russian legislation on crimes against property is unique in many aspects and does not contain analogues in foreign countries. However, certain criminal institutions, in particular fraud, are committed in similar ways in various countries. Of course, criminal law regulation largely depends on the legal system to which the state belongs. All of the above makes a comparative legal analysis of criminal law very relevant and useful.

³⁰ Ibid.

³¹ German Criminal Code, available at: https://www.gesetze-im-internet.de/englisch_stgb/ (accessed 9 May 2023); Penal code Japan (Act No.45 of 1907), available at: <https://www.cas.go.jp> (accessed 12 May 2023).

³² Criminal Law of the People's Republic of China, available at: <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm> (accessed 9 May 2023).

³³ Ibid.

³⁴ Criminal Code of the Russian Federation of 06/13/1996 No. 63-FZ (as amended on 03/25/2022), available at: http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed 15 April 2023).

³⁵ German Criminal Code, available at: https://www.gesetze-im-internet.de/englisch_stgb/ (accessed 10 May 2023).

³⁶ Ibid.

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