

SOCIAL DANGER OF EMBEZZLEMENT BY PLUNDERING

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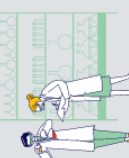
Abstract

This article explores and analyzes the category of social danger of the act in the theory of criminal law, specifically focusing on the degree and nature of the social danger of embezzlement by plundering. The opinions of leading scholars in this field have been studied and analyzed, and the author expresses opinions on determining the degree and nature of the social danger of embezzlement by plundering.

Keywords: Plundering, openly, embezzlement, degree of social danger, nature of social danger, violence.

Introduction

Comprehensive reforms aimed at establishing democratic market relations and ensuring the rights and interests of property owners are being implemented in our country. At the same time, as a result of the increase in the security of personal property and the improvement of the welfare of the population, the activity of citizens in social and political life has further increased. According to the resolution of the General Assembly of the United Nations adopted on December 10, 1948, in Article 17 of the Universal Declaration of Human Rights, everyone has the right, individually and in association with others, to own property, and no one shall be arbitrarily deprived of his property. It is emphasized that in Uzbekistan, in accordance with the relevant provision of the Constitution, the basis of the economy of Uzbekistan is the formation of various forms of ownership, the inviolability of all forms of ownership, especially private property, and the protection by the state, and the deprivation of property from its owner is possible only in cases established by law. In line with this constitutional principle, issues of preventing encroachments on private property and combating offenses against it are regulated as part of the special section of the Criminal Code of the Republic of Uzbekistan in Section X (plundering of private property) as a set of criminal-legal norms aimed at ensuring economic security. As our President Shavkat Mirziyoyev said: "To strengthen constitutional control in all spheres of our life to ensure the democratic legal state and the free society in our country is necessary. This will lead to ensuring human rights and freedoms, its dignity, value, inviolability of its property, as well as the full provision of the most fundamental rights of citizens such as work, education, and medical care" [3]. In the context of market relations, the legal protection of property leads to the comprehensive realization of the rights of the individual in the system of social values, that is, the protection of life, health, dignity, value, and freedoms along with the fundamental property rights becomes a priority. Because it is difficult to imagine any area



or sector of social life without the individual's property rights. Therefore, encroachment on property rights in the system of social benefits can be assessed as a direct encroachment on the individual. Consequently, ensuring effective protection of property from criminal encroachments is considered indispensable for criminal law enforcement and judicial practice. Article 166 of the Criminal Code holds accountable for the plundering of private property by embezzlement. At the beginning of the 20th century, the famous criminologist Cesare Lombroso proved the necessity of defining the social danger of a criminal act with criminal-legal precision. [226-P. 4].

The majority of scholars who have expressed opinions on the issue of criminalizing an act in criminal-legal terms consider any crime's inherent social risk as an essential indication of its social danger [72-76-P.5]. Therefore, the phenomenon of embezzlement by plundering is considered one of the main factors in criminalizing it due to its social peril. However, it should be emphasized that, in the theory of criminal law, the necessary condition for recognizing social danger is not the sole and sufficient evidence for criminalizing an act. The category of social danger has been discussed and debated for several decades in criminal law theory, emerging as one of the unresolved and complex issues. Because there is still no unanimous opinion among legal scholars about defining the category of social danger. Legal literature defines the structure of social danger in various ways. According to the majority of scholars, social danger consists of the sum of all signs that describe the danger of encroachment [6]. O.G. Zokirova and M. Usmonaliev consider the degree of social danger of a crime as an indicator of its quantitative significance, taking into account the severity of the inflicted damage, the degree of the resulting consequence's severity, the degree of involvement of several persons, the method of committing the crime, the use of weapons, and the characteristics of the offense [72-P. 7].

In the 1960s-1970s, researchers such as P.S. Dageļ, V.N. Kudryavtsev, K. Lyutov, P.P. Osipov suggested that the social danger of a crime emerges directly from its objective content. Supporting this view, A.S. Yakubov emphasized, "the objective characteristic of social danger is determined by the objective characteristic of the inflicted harm resulting from the commission of the crime" [88-P. 8]. According to legal scholar Q.R. Abdurasulov, "the social danger of a crime is comprised of the social danger of the act (action or inaction), the social danger of the resulting consequence, and the social danger of the culpable person" [10-P. 9]. Legal scholar M.X. Rustamboev suggests that the social danger of a crime is determined by its broad scale [321-P. 10]. Some scholars argue against integrating an individual's social risk into the system of social danger. Specifically, according to M.I. Kovalyov, "we need to study the social danger of an individual and the social danger of an act separately from each other because the social risk of the offender arises before the commission of the crime and, in some cases, directly during the commission of the offense" [24-P. 11]. However, M. Abdusalomov and Yu. Karaketov argue that it is impossible to separate the social danger of the crime from the offender [15-P. 12]. This perspective suggests that designating an individual as a socially dangerous recidivist or an especially socially dangerous recidivist indicates the independent significance of their social danger. Nevertheless, it is imperative to emphasize that an

individual's social risk (whether as a socially dangerous recidivist or an especially socially dangerous recidivist) or the formation of any criminal intent does not necessarily imply any criminal-legal consequences. Therefore, the occurrence of a crime with social danger, i.e., objective social danger in the commission of a criminal act, is considered the basis for criminal liability according to criminal law [13]. Another group of scholars incorporates certain elements of the social danger of an act into the social danger level and specificity. For instance, Yu. Truntsevskiy emphasizes that the social danger of a crime arises from the violation of legal relations, encroachment, and the formation of social danger [72-P. 14]. T.V. Tsereteli introduces factors such as the purpose of the action, the social significance of the object, and the degree of social harm caused into the series of indicators shaping social danger [23-P. 15]. Some scholars advocate for distinguishing the structural elements of social danger into objective or subjective indicators within the framework of the social danger formation. For example, T.V. Tsereteli emphasizes that motives and purposes should be considered in cases affecting the social danger of an act [16]. Moreover, according to the decision of the Supreme Court Plenum in 2006, the social danger of a crime is determined by the object of encroachment (human life and health, property, public safety, etc.), the form of harm, and the type of offense (Article 15 of the Criminal Code). The degree of social danger of a crime indicates the circumstances of the crime (the stage and level of intent, the method of committing the offense, the severity of the consequences, the participation of several persons, the use of weapons, and the characteristics of the crime). The analysis of the above-mentioned opinions shows that some authors perceive the main elements of social danger formation as only objective signs, while another group of scholars considers subjective indicators. The third group emphasizes the necessity of combining a certain part or all essential components of objective and subjective signs in the formation of social danger. In our opinion, the objective and subjective indicators of social danger should be defined based on their legal nature [17]. The structural elements directly identifying societal vulnerability, determining the amount and consequence of harm caused by a crime, the manner, method (sophistication), and the purpose of the crime, as well as the social relations and objects protected by law, are considered objective indicators that can directly influence societal vulnerability. Introducing certain characteristics of the subject that can be directly observed in the composition of the crime, such as intent, motive, and purpose, falls within this category.

Therefore, any crime committed through deception, such as theft by fraud, involves a violation of social relations regulated by law. The violation occurs at the expense of the victim's property. The "Law of the Republic of Uzbekistan on Property" states that ownership, use, and disposal rights over property can only be transferred to other persons when legally justified, and the owner may only be deprived of property in cases specified by law [18]. This provision indicates the significance of a person's property rights to society and the economy.

Legal literature has presented various perspectives on the societal vulnerability of theft by fraud. For instance, according to M.R. Rustambaev, the societal vulnerability of theft by fraud lies in the open violation of property rights and the extreme audacity of the perpetrator, along with the disregard for established order, legal and ethical rules, and societal values [257-P. 19].

P. Bakunov and M. Usmonaliyev argue that theft by fraud involves a high level of societal vulnerability because it occurs openly, in plain view of the property owner or any other third party, indicating that the perpetrator's audacity is significant, and the victim or any third party has witnessed the blatant seizure of property [17-P. 20].

Legal scholar R. Kabulov emphasizes that the societal vulnerability of theft by fraud is evident through its overt commission. In this context, the degree of theft committed openly, unlike other forms of theft (robbery, embezzlement, misappropriation, fraud), is not evaluated based on Article 61 of the MJTK but rather under Article 166 of the CC.

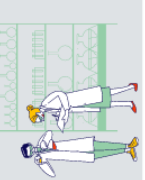
From the analyses, it is evident that while some scholars argue for attributing societal vulnerability solely to the overt commission of theft by fraud, others compare the societal vulnerability of this crime with other forms of theft, examining the perpetrator's actions.

In conclusion, it is necessary to emphasize that the societal vulnerability of theft by fraud is evident in its overt commission, meaning that the perpetrator, the victim, or any other third party witnesses the perpetrator's open violation of property rights without considering the victim's perspective. If the person attempting to fraudulently take property is met with resistance from the victim or any other third party, physical force may be used against them. The commission of theft by fraud involves the perpetrator's actions being openly coercive, indicating a higher societal risk compared to other forms of theft. The perpetrator's actions in committing theft are characterized by a disproportionate relationship with the victim or other surrounding individuals, along with a disregard for legal and social order and laws. The perpetrator does not refrain from committing the crime, and upon encountering resistance or opposition from the victim or any other third party, they may resort to using force, knowing that their actions are unconventional. Committing theft by fraud increases the societal vulnerability of the subject by openly violating property rights, evaluating theft by fraud in terms of the amount of property taken through fraudulent means, and rejecting the legal assessment of the law as administrative misconduct, classifying it as a crime.

Understanding the unique characteristics of theft by fraud allows for the identification of any existing resistance to its commission by other parties, thereby indicating any significant societal risk associated with acquiring property and identifying the subjective factors, such as the vulnerability of the perpetrator or the extent of the victim's vulnerability, that define it, enabling a conclusion to be drawn.

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