



Specific Characteristics of the Crime of Robbery by Employment or Distribution

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Abstract: This article analyzes the characteristic features of the crime of embezzlement or robbery, its concept, its social danger, and the history of its development. The article also discusses the scientific debate with the views of national and foreign scientists. The legislation of foreign countries on the crime of embezzlement or expropriation was studied, and proposals and recommendations for national legislation were developed.

Keywords: Embezzlement, rastrata, robbery, suspect, accused, enterprise, institution, organization, investigator, investigator, prosecutor.

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Taking into account that appropriating and alienating other people's property are two independent concepts, it is appropriate to consider each of them separately.

When developing the definition of the concept of embezzlement, first of all, it is necessary to take into account which social relations protected by the criminal law will be harmed as a result of its commission, because it is the violation of the social relations protected by the criminal law that is the basis for finding the action a crime. Therefore, it is one of the necessary signs of appropriation, and it is considered a social-property relationship that arises in connection with entrusting ownership, use or disposal to other persons without giving them the right of ownership. The material appearance of the object of the crime is recognized as the subject of the crime. The subject of the crime of embezzlement, based on its object, is the material value entrusted to a person or at his disposal, and these objects are the remaining characteristics of the subject of robbery, that is, physical, economic and legal. must also be unique.

Plenum of the Supreme Court of the Republic of Uzbekistan dated April 17, 1998 According to the decision No. 11 "On certain issues arising in the judicial practice of criminal cases in the field of economy", the property entrusted to a person or at his disposal, according to official duties or contractual relations or a special assignment In connection with this, the property of another in the possession of a person exercising legal authority to dispose, manage, deliver or keep another's property is understood. From a legal and technical point of view, the property entrusted or at one's disposal is the ownership of this property according to a civil-legal contract, an employment contract or other legal grounds, but not related to the transfer of the owner's property rights. it is the property of another in the possession of a person entrusted with making, disposal or use or

administrative-economic powers. An in-depth analysis of the subject of appropriation (rastrata) will be given in detail in the next paragraph of our research work.

Thus, the property of another entrusted to a person or at his disposal is recognized as a necessary sign of appropriation.

Article 167 of the Criminal Code of the Republic of Uzbekistan, in the first part of its disposition, is defined as looting by means of misappropriation or misappropriation of someone else's property entrusted to or at the disposal of the offender. Therefore, according to this rule, embezzlement or distribution are not independent forms of robbery, but rather a way of committing it. It seems to us that it is not correct to define embezzlement or embezzlement as a method of committing robbery in the criminal law. Because, in the theory of criminal law, together with Uzbek scientists, other scientists emphasize that embezzlement or distribution are independent forms of robbery. It is true that in the Criminal Code of 1959, in the norms that provide for criminal liability for the robbery of other people's property, the forms of robbery, such as the methods of committing direct robbery was defined, for example, robbery by theft. However, in the current Criminal Code, the legislator, abandoning the old method, defined the methods of committing robbery in their independent forms, leaving only embezzlement and embezzlement as a method of robbery.

In our view, embezzlement and embezzlement have their own way of being committed, like theft - covertly, robbery - openly, fraud - cheating or breach of trust. As S. V. Bogdanchikov rightly stated, "forms of robbery are understood as taking possession of someone else's property through a set of legally significant methods and techniques. "That's why we suggest that Article 167 of the Criminal Code should not be called "Theft by embezzlement or embezzlement", but "Empropriety or embezzlement" as an independent form of embezzlement.

Thus, appropriating someone else's property, entrusted to a person and at his disposal, is not a separate method of robbery, but rather an independent form of it.

That is why, when clarifying the essence of the concept of appropriation, it is necessary to consider it as an independent form of robbery.

In the definitions of the concept of appropriation in the legal literature, the methods of its implementation are expressed in different ways. One group of authors emphasizes that "appropriation is the illegal retention of someone else's property that is entrusted to or at the disposal of the culprit" and is committed through inaction, while the second group of scholars states that "appropriation is the they consider it to be the refusal to return the property entrusted to or in his possession for the purpose of illegally confiscating it", according to the third group of scientists, "taking away, separating material assets entrusted to the culprit and his is a form of robbery of other people's property, which is carried out by active actions manifested in the establishment of illegal ownership over it".

In the definition of the concept of "appropriation" given by the authors of the first and second groups, this point of view is sufficient for the opinion that appropriation is defined as the illegal retention or refusal to return the property of another entrusted to or at the disposal of the guilty party. We do not fully agree for lack of justification. Because in this definition it is pointed out that appropriation can be done through inaction. Such a point of view, in our opinion, is wrong, because embezzlement has already been recognized as an independent form of robbery in the theory of criminal law and judicial investigation practice. Any looting is done only through active action. Changing the place of permanent storage of the property against the will of the owner during appropriation of another's property. Even R. Kabulov and M. Kh. Rustamboyev, abandoning their previous definitions of embezzlement, later embezzlement is "the act of taking away, separating and establishing illegal ownership of material assets entrusted to the guilty admitted that it is a form of looting of the property of the people.

In the definitions given to the concept of “appropriation” in the theory of criminal law, there are also such cases, that is, when the author emphasizes that appropriation is carried out only through active action, when defining it, two methods of the act (action or inaction) also defines. For example, U. Mirzayev defines embezzlement as follows: “Unlawfully, without compensation, taking away, withholding and causing material damage to the owner, turning this property to one’s own interests.” It can be seen from this that the commission of even one of the three acts defined above constitutes the crime of embezzlement. “Separation” and “focusing on one’s own interests” show the method of carrying out the actions of appropriation, while “holding” constitutes the method of inactivity, in this regard, as R. Kabulov rightly noted, withholding or returning non-giving is essentially a passive behavior of a person, a type of inaction. Therefore, appropriation of another’s property entrusted to the culprit or at his disposal is carried out only through active actions.

At the same time, in our opinion, the case of “illegal transfer of someone else’s property entrusted to the guilty party for certain purposes” mentioned by M. M. Kadirov and V. A. Kladkov in their definitions of the concept of embezzlement. One cannot fully agree with this interpretation of the authors, because the crime under analysis is, firstly, the possession of another’s property legally entrusted to a person according to professional duties or contractual relations, that is, for disposal, management, delivery or storage. is handed over, and using this very situation, a person illegally appropriates another’s property entrusted to him. Secondly, except for the Criminal Code of the Republic of Uzbekistan, the criminal legislation of almost all other CIS countries has a legal definition of robbery, according to which, robbery is the act of maliciously taking the property of others. unlawfully, free of charge (without compensation) for the benefit of the guilty party or for the benefit of other persons, to the owner or other owner of the property, and (or) taking away material damage. It can be seen from this that when committing some of the forms of robbery with the connective “or”, the owner or other owner of the property does not require a sign of seizure of another’s property. Appropriation and distribution can be considered as such forms of robbery, because the owner or other owner of the property legally entrusts the property to a person with his own hand. Therefore, appropriating someone else's property is carried out only by directing the action to oneself.

The act of taking another person’s property entrusted to the offender or at his disposal cannot be considered as full appropriation. That is why illegality and non-compensation are emphasized as important signs of appropriation (rastrata) in legal literature. In our opinion, in developing a legal definition of embezzlement (rastrata), it is not necessary to express the sign of illegality, and it is superfluous to define it. Because, first of all, in the first part of Article 167 of the current Criminal Code, the expression of the word “other’s property” determines that the person committing the relevant crime does not have property values based on the right of ownership. Secondly, the sign of illegality is not only a sign of embezzlement or embezzlement, but also a sign of all types of crimes provided for in the Special Part of the Criminal Code, but this sign is not directly indicated in the legal definition of any crime, because this The sign is defined in Article 14 of the Criminal Code of the Republic of Uzbekistan because it is a general sign for all types of crimes. The fact that any socially dangerous act is prohibited by law means that this act is illegal. Therefore, it is not necessary to express this sign when developing a legal definition of appropriation. And finally, thirdly, the legislator rightfully did not directly express the sign of illegality in the legal definition of any crime provided for in the Special Part of the Criminal Code. Thus, it is superfluous to express the sign of illegality in the legal definitions of the concepts of appropriation or distribution. After all, we have prevented repetition of words in the Criminal Code (taftology).

Another important sign of appropriation (rastrata) is the sign of non-compensation. In the theory of criminal law, as a sign of robbery, the words “free” or “free” are used instead of compensation.

The expressions “free” or “gratuitous taking” of another’s property have a narrower meaning than the expression of non-compensation, and the expressions “free” or “gratuitous” externalize part of the concept of “non-compensation”. In the legal literature published in Russian, the expression “bezvozmeznost” of robbery according to the direct translation in Uzbek is free or free, according to the definition of the concept of robbery its direct application is, in our opinion, incorrect. Because the use of these expressions does not fully reveal the essence of robbery. If we limit ourselves to the phrase “free taking” of someone else’s property, then it becomes difficult to distinguish robbery crimes from other similar crimes. Therefore, if in the process of acquiring the property, the owner is provided with the necessary expenses or the guilty person spends his labor, then it is considered that the victim was not financially harmed. For example, cases where an official officially appoints another person to a position, but earns an increase in his-her salary by himself-herself, make official crimes external, because in this case, taking money as “salary” is not compensated. is not implemented with Therefore, non-compensation means not performing any work equal to the value of the property being occupied, or not compensating at all with another equivalent object (or money). The sign of non-compensation is also necessary in the case of embezzlement and distribution, which is defined as a form of looting.

Expropriation of other people’s property without compensation is inextricably linked with the socially dangerous consequences of appropriation. This consequence is defined as direct damage, manifested in tangible (real) material damage to the owner or other owner of the property, which is measured by the value of the item (thing) taken over. These damages are called actual material damages.

When assessing the misappropriation committed as a result of misappropriation of someone else’s property entrusted to a person or at his disposal for his own benefit, causing real material damage to the owner or other owner of the property without compensation, the subjective, revealing the inner content of the crime identifying the signs is also important.

Based on the essence of the criminal legal norm provided for in the first part of Article 167 of the Criminal Code of the Republic of Uzbekistan, it can be noted that the person who commits the crimes of embezzlement and embezzlement acts intentionally with malicious intent.

He realizes that he is taking the property of another person entrusted to him or in his possession without compensating for his own benefit, he realizes that he is causing real material damage to the owner or another owner of the property, and he intends to cause such damage for malicious purposes. will do it.

The commission of the crime of misappropriation (rastrata) in the form of proper intention is formed by the legal status of this crime, and the person manifests his desire to benefit materially at the expense of the property of another entrusted to him or at his disposal. Iadi, this socially dangerous act cannot be done carelessly. In addition, the presence of this sign requires the commission of a socially dangerous act in the initial criminal activity and participation in embezzlement (rastrata), as they can only be in intentional crimes, as well as to distinguish embezzlement (rastrata) from other crimes. allows.

According to U. Mirzayev, the necessary signs of the subjective side of embezzlement and distribution are the necessary signs, apart from the intentional nature of the crime, it is emphasized that it is committed with the intention of not returning another’s property and with the intention of malice. the purpose of not giving

Unreasonably cited by U. Mirzayev, because failure to return is, as we noted above, embezzlement. But not giving back is a passive behavior of a person and shows inaction. That is why we refuse to express it in the definition of the concept of “appropriation”. At the same time, after a person

appropriates someone else's property without compensation, he certainly does not return this property upon demand, because the person previously acted with the desire to benefit materially at the expense of someone else's property. It is sufficient to express the non-substitutability feature inherent in appropriation as a necessary feature, and it includes non-returnability. Also, the purpose of "non-return" can be expressed not only as the purpose of appropriation or distribution, but also in the case of intentional destruction or damage to another's property, the purpose of non-return may be. For example, intentionally destroying someone else's property by openly or secretly taking away a certain part of their property or all of it. Therefore, the property of someone else, entrusted to a person or at his disposal, is always looted for malicious purposes.

At the same time, in our opinion, we cannot fully agree with the opinions of scientists who consider the determination of malicious intent (motive) as a necessary sign of the subjective side of the crimes of embezzlement and distribution. Because according to the opinion of most legal scholars, a criminal can commit robbery of another's property with malicious intent, but the person who commits robbery can also act with other motives (intentions), including participating in the case of robberies, the organizer acts with the intention of taking revenge on another person, and the remaining members of the group intend to acquire material wealth, or a minor, as a member of a criminal group, "presents himself in front of others" intention, as well as greed, wealth and other motives can commit robbery.

Thus, the necessary signs of the subjective side of appropriating and appropriating are the intentional form of guilt and malicious purpose.

Based on the analysis of the above-mentioned opinions and the analysis of the current views in modern criminal law theory and forensic practice, we believe that it is appropriate to give the following legal definition of embezzlement.

Appropriation is the illegal use of the right entrusted to a person on legal grounds or in the possession of someone else's property.

The second independent form of looting of someone else's property entrusted to a person or at his disposal is *rastrata*. The definitions given to the concept of "*rastrata*" in the legal literature are almost similar to each other in terms of content. However, there are some differences in the conclusions presented by some authors. These cases can be understood from the following definitions of the concept of "*rastering*".

Expropriation is alienation or consumption of this property for one's own benefit or for the benefit of third parties through illegal use of rights entrusted to a person on legal grounds or at his disposal in relation to another's property.

It would be appropriate if the proposed definitions of the concepts of "appropriation" and "distribution" were taken into account by the legislator and included in the Eighth Section of the Special Part of the current Criminal Code.

Thus, based on all the cases described above, it can be concluded as follows: the expression of today's legal definition of the appropriation and distribution of the property of others in the current criminal legislation is in front of the theoretical and practical staff. It has solved several pressing issues that need to be resolved, namely: first, appropriation or distribution are independent forms of looting; secondly, in the theory of criminal law, it creates a unified opinion among practitioners about the concepts of appropriation and distribution; thirdly, to protect these forms of robbery from similar robberies (fraud, theft), especially during the illegal appropriation of other people's property in the financial and credit and banking sectors, when economic processes based on market relations are taking place today. robbery and fraud and embezzlement crimes are closely related, making it easy for practitioners to distinguish them from differentiating cases and other similar crimes;

fourthly, it makes it possible to identify the similarities and differences between mastering and rendering.

References:

1. Criminal law. General part: Textbook / Yakubov A. S., Kabulov R. et al. - T., 2004. - pp. 128-129.
2. Collection of decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan 1991-2006. The first volume. - T., - 2006. - p. 115.
3. More Rustamboev M. Kh. Criminal law. Special part. Textbook for higher educational institutions. - T., 2003. - p. 239; Hakimov E. H. The Criminal Code should be supplemented with the concept of "robbery" // In the name of the law. Bulletin of the Supreme Court of the Republic of Uzbekistan. - T., 1997. - No. 4. - p. 43;
4. Kadrov M. M. Ugolovnoe pravo Republic of Uzbekistan. Osobennaya chast: Uchebnik - T., 1997. - S. 167; Kabulov R. Legal-pravovye mery borby s khishcheniyam: theory and practice: Dis. ... doc. walk science - T., 1997. - S. 137; Niyozova S. S. Problems of criminal responsibility for the robbery of other people's property in participation: Law. candidate of sciences. dis ... autoref. - T., 2006. - p. 24. and others.
5. Уголовное право России. Общая и Особенная части: Учебник / Под ред. доктора юрид. наук, профессора В. К. Дуюнова. - М., 2008. - С. 401; Севрюков А. П. Хищение имущества: криминологические и уголовно-правовые аспекты. - М., 2004. - С. 124-125; Бакрадзе А. А. Присвоение и растрата как формы хищения // Российский следователь. - М., 2004. - № 8. - С. 7;
6. Инагамова-Хегай Л. В., Корнеева А. В. Уголовное право. Особенная часть / Под ред. Л. В. Инагамова-Хегай. - М, 2004. - С. 72-73; Гаухман Л. Д. Квалификация преступлений: закон, теория, практика. 2-е изд., перераб. и дополн. - М., 2003. - С. 391; Солиев К. Х., Рахимов Р. Х. Комментарий к преступлениям в сфере экономики // «Универсал-3». - Д., 2001. - С. 52 ва бошқ.
7. Богданчиков С. В. Формы хищения чужого имущества по российскому уголовному закону / Вестник Московского университета МВД России. - М., 2008. - № 2, - С. 82.
8. Батафсил Семенов В. М. Признаки объективной стороны хищения // Российский следователь. - М., 2005. - № 4. - С. 15; Гаухман Л. Д. Квалификация преступлений: закон, теория, практика. 2-е изд., перераб. и дополн. - М., 2003. - С. 391;