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## **DIFFERENCES IN THE CRIMINAL LAW REGULATIONS OF LIABILITY FOR FRAUD IN THE LEGISLATION OF SOME FOREIGN COUNTRIES**

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**Abstract.** During the last decade, there has been an interest in comparative legal studies concerning the science of criminal law. A significant change in the conditions of social life and the desire to adhere to the principles accepted by the peoples of developed countries require the study of foreign experience and sometimes taking information from international law.

Comparative research makes it possible to reveal and take into account other people's mistakes and achievements when solving questions about criminality and the punishment of specific acts, helps to understand the role and significance of criminal law as a tool of social regulation.

Recently, comparative legal studies of norms concerning property criminal offenses have appeared in science, but they pay unjustifiably little attention to the investigation of fraud. In this article, without pretending to be an exhaustive analysis, we will focus attention on the most significant differences in the criminal law regulation of liability for fraud in the legislation of some foreign countries.

**No society can exist without property, which, being the economic basis, largely determines political, moral, legal, and other relations. According to the modern idea of the system of social values, the right to property is regarded as the greatest of the social benefits of an individual. Therefore, encroachments on these benefits are encroachments on personality.**

**Fraud occupies a special place among criminal offenses against property. Even though in quantitative terms, fraudulent crimes are inferior to theft and robbery, in terms of the growth rate of the number of registered cases of fraud, this type of criminal offense is significantly ahead of other crimes against property.**

**A feature of foreign legislation is the presence, along with the general regulation concerning liability for fraud, of an extensive system of special regulations concerning liability for fraud in financial markets, in insurance, lending, and circulation of actual objects, goods, and services.**

**Key words: fraud; international law; criminal offense; liability.**

International legislation establishes uniform standards for the protection of state and private property against fraud. The exception is a few countries that have retained a “socialist” approach to solving this problem. In particular, the Criminal Code of the Republic of Yemen contains two norms concerning fraud. Chapter Three ‘Crimes that threaten the National Economy’ contains Sub-section Two ‘Defrauding and Violation of the Duties of Employment/Service; Types of Fraud’, in which Article (162) states that any public employee who steals what he does not originally possess due to his position or illegally embezzles government funds/property or that of any of the authorities, corporations, or units of the government or facilitates such actions for others shall be punished. In turn, Chapter Twelve ‘Crimes Involving Property’ contains Section Three ‘Taking People’s Money Dishonestly’, in which Article (310) establishes liability for illegal obtaining a material benefit for himself or for others, using fraudulent means (misappropriation), or a false name or false characteristic or capacity [6].

At the same time, we note that imprisonment as a form of punishment is established only in case of fraudulent encroachment on public property.

The most widespread concept of fraud in Europe is found in German legislation. Section 263 (1) of the Criminal Code of the Federal Republic of Germany provides for punishment for a person who “with the intent of obtaining for himself or a third person an unlawful material benefit damages the property of another by causing or maintaining an error by pretending false facts or by distorting or suppressing true facts” [3]. Such a person is liable to imprisonment or a fine.

The law recognizes qualified types of fraud cases if the offender:

1. acts on a commercial basis or as a member of a gang, whose purpose is the continued commission of forgery or fraud;
2. causes a major financial loss of or acts with the intent of placing a large number of persons in danger of financial loss by the continued commission of offences of fraud;
3. places another person in financial hardship;
4. abuses his powers or his position as a public official; or

5. pretends that an insured event has happened after he or another have for this purpose set fire to an object of significant value or destroyed it, in whole or in part, through setting fire to it or caused the sinking or beaching of a ship.

From an objective point of view, fraud is a complex causal chain. This chain begins with deception.

In the modern sense, fraud consists in concealing or distorting facts, since facts cannot be false. A fact is defined as an event that actually happened, or a statement presented as objective truth. "Future facts" do not exist; fraud concerning such facts is deception about the conditions of their occurrence in the future, most often – fraudulent intent. Intentions, beliefs, motives of behavior, and other mental facts of a fraudster or other person can be facts in the sense of Section 263 of the Criminal Code of the Federal Republic of Germany, but an "evaluation" is not a fact, because "an evaluation has its subjective basis and it is not an objective circumstance that can be known". For example, false advertising can be considered a fraudulent deception only when it is not an "evaluation" but contains a deception about facts. Deception can be manifested in action or omission. The action includes both verbal deception and misleading conduct. Deception by omission is possible if there is a legal obligation to report or explain anything [3].

Fraud must lead to a person's error, and it is about the causal connection between fraud and deception. In the event that a person became a victim of an error not due to fraud, responsibility for using someone else's error does not arise if the person has no obligation to dispel this error (that is, there is no deception by omission).

Not only misleading but also maintaining this state of the object is punished, when the fraudster's behavior increases the deception, continues it, or strengthens it.

The error may cause "disposal of property". "Disposal" in criminal law is interpreted more broadly than in civil law, includes binding relationships, and can occur in the forms of action, permission, and deterrence. The last type of disposal of property takes place, for example, in the case when the fraudster, in order to avoid satisfying the claim, falsely affirms that the victim has expired the statute of limitations for this claim. Property disposal can also be a state act, for example, in the case of procedural fraud, which consists of the fact that a person "deceives a judge with the help of false statements" and the judge "with the help of his decision regarding the property causes damage to the losing party."

Property disposal may cause property damage, which consists in the reduction of property benefits. Property damages are defined as the difference between the price of the property before and after the criminal offense. Even the creation of a threat to property interests can be recognized as fraud, since the objective (market) value of the property put in danger decreases (although formally its price remains unchanged), and the owner is actually unable to realize the acquired right or can do so with difficulty. The loss must correspond to the benefit purchased by the fraudster, which is established in the law in the form of a lucrative goal (a person's intention to get rich or to enrich another person). The intention in this case is not the only or predominant motive of the guilty party's actions.

It is sufficient that the criminal offense is committed with direct intent.

Thus, the main features of German-type fraud are:

a) broad understanding of fraud;

- b) broad understanding of damage;
- c) a broad understanding of a lucrative goal.

Studying the development of norms concerning fraud in the law of other countries, one can call the gradual convergence of these norms to the German model.

The general regulation concerning fraud (Section 263 of the Criminal Code of the Federal Republic of Germany) is supplemented by special regulations (Section 264 – Subsidy fraud; Section 265 – Insurance fraud), as well as specialized regulations that extend the criminal law prohibition to actions that are not covered by the concept of fraud: Section 263a – Computer fraud; Section 264a – Capital investment fraud; Section 265a – Obtaining benefits by deception; Section 265b – Credit fraud) [3].

The regulation concerning computer fraud is formulated in the Criminal Code of the Federal Republic of Germany (Section 263a) as follows: Whoever, with the intention of obtaining an unlawful pecuniary benefit for themselves or a third party, damages the property of another by influencing the result of a data processing operation by incorrectly configuring the computer program, using incorrect or incomplete data, making unauthorized use of data or taking other unauthorized influence on the processing operation incurs a penalty of imprisonment for a term not exceeding five years or a fine [3].

In computer fraud, there is no deception, but there is an undue influence on the data processing operation. The computer cannot be deceived, because it is devoid of the psyche. You can mislead a person but you cannot do it with an inanimate object.

The First and Second Laws on Combating Economic Crime introduced most of these regulations into the Criminal Code in 1976 and 1986, respectively. Computer fraud was not liable due to a lack of deception. It was also not possible to apply the rule concerning theft since most often this criminal offense was aimed at acquiring non-cash money that was not the subject matter of theft. The absence of deception is also characteristic of machine abuse (telephone machine, turnstile machine in the subway, vending machine, etc.).

Section 264 Subsidy fraud covers events of obtaining a benefit from public funds under federal or Länder law for businesses or enterprises which, is granted without market-related consideration and is intended to promote the economy; a benefit from public funds under the law of the European Union which is granted, at least in part, without market-related consideration. Fraud in this case may be as follows: when whoever 1) furnishes an authority which is competent to approve a subsidy or another agency or person involved in the subsidy procedure (subsidy giver), for themselves or another person, with incorrect or incomplete particulars regarding facts which are advantageous for themselves or the other person, such particulars being relevant for the granting of a subsidy; 2) uses an object or cash benefit the use of which is restricted by legal provisions or by the subsidy giver in relation to a subsidy contrary to that restriction; 3) withholds from the subsidy giver, contrary to the legal provisions relating to grants of subsidies, facts relevant to the subsidy; or 4) uses a certificate of entitlement to a subsidy or about facts relevant to a subsidy which was obtained by furnishing incorrect or incomplete particulars in a subsidy procedure.

Liability for receiving a subsidy through fraud is significantly enhanced in three cases, where offenders 1) acquire, out of gross self-interest or by using forged or falsified documentation, an unjustified, large subsidy for themselves or another; 2) abuse their powers or position as a public official

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or European official; or 3) take advantage of the assistance of a public official or European official who abuses his or her powers or position.

In the Criminal Code of the Netherlands, liability for fraud in the field of insurance is contained in two articles. According to Section 327, any person who, by cunning maneuvers, misleads an insurer as to the circumstances relevant to the insurance, causing him to enter into an agreement that he would not have entered into, or that he would have entered into under different conditions, had he known of the true state of affairs, shall be liable to a term of imprisonment not exceeding one year or a fine of the fifth category. In addition, according to Section 328, any person who, with the intention of benefitting himself or another unlawfully, to the detriment of an insurer, sets fire to or causes an explosion inside any property insured against fire or sinks a vessel or aircraft that is insured or on board of which the property or freight to be earned is insured or causes the same to run aground or to be wrecked, destroyed, rendered unusable or damaged, shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category [4].

The German Criminal Code, in Section 265 Insurance fraud, establishes liability for a person who damages destroys, impairs the usefulness of, disposes of, or gives to another an object which is insured against destruction, damage, impairment of use, loss, or theft to obtain for themselves or a third party payment from the insurance.

A wide list of fraudulent actions is also found in England. Fraud in English law is presented as a single crime. This name combined several independent crimes (deception offenses). The Theft Act 1968 provides for liability for a person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, or obtains for himself or another any pecuniary advantage. The Theft Act 1996 establishes liability for fraud resulting in financial transactions on credit institution accounts. In addition, fraud is directly related to regulations on false reporting and misuse of documents.

Under French criminal law, fraud or fraudulent obtaining (in the French Criminal Code) is the act of deceiving a natural or legal person by the use of a false name or a fictitious capacity, by the abuse of a genuine capacity, or by means of unlawful maneuvers, thereby to lead such a person, to his prejudice or to the prejudice of a third party, to transfer funds, valuables or any property, to provide a service or to consent to an act incurring or discharging an obligation. This definition should be evaluated positively, since it defines in sufficient detail the methods of committing an illegal act, its purpose, and even the circle of victims [2].

Fraudulent obtaining is punished by five years' imprisonment and a fine of €375,000.

According to Article 313-2, the penalty is increased to seven years' imprisonment and a fine of €750,000 where the fraudulent obtaining was committed:

1) by a person holding public authority or discharging a public service mission, in the exercise or at the occasion of the exercise of the functions or mission;

2) by a person unlawfully assuming the capacity of a person holding a public office or vested with a public service mission;

3) by a person making a public appeal with a view to issuing securities or raising funds for humanitarian or social assistance;

4) to the prejudice of a person whose particular vulnerability, due to age, sickness, infirmity, a physical or psychological disability or to pregnancy, is apparent or known to the perpetrator.

The penalties are increased to ten years' imprisonment and to a fine of €100,000 where the fraud is committed by an organized gang.

In French criminal law, there are also offences similar to fraudulent obtaining. They include fraudulent abuse and swindling.

According to Article 223-15-2, fraudulently abusing the ignorance or state of weakness of a minor, or of a person whose particular vulnerability, due to age, sickness, infirmity, a physical or psychological disability, or pregnancy, is apparent or known to the offender, or abusing a person in a state of physical or psychological dependency resulting from serious or repeated pressure or from techniques used to affect his judgment, to induce the minor or other person to act or abstain from acting in any way seriously harmful to him, is punished by three years imprisonment and a fine of €375, 000. Thus, the main difference between fraudulent abuse and fraud is the particular vulnerability of the victim of the crime.

According to Article 313-5, swindling is when a person, knowing himself to be wholly unable to meet payment or being determined not to pay:

- 1) orders food or drink in premises where food or drink are sold;
- 2) books and effectively occupies one or more bedrooms in an establishment letting rooms, where the occupation does not exceed ten days;
- 3) orders fuel or lubricants with which he has the tanks of a vehicle partly or completely filled by a professional distributor;
- 4) causes himself to be transported by a taxi or rental vehicle [2].

Swindling is punished by six months' imprisonment and a fine of €7,500.

The Criminal Code of Spain, adopted in 1995, entered into force on May 25, 1996, in Title XIII Criminal offences against property, and against social-economic order, contains Chapter VI On fraud. In three sections of this chapter, the components of swindling, misappropriation, and electricity theft and the like are formulated [1].

In conclusion, fraud, as a structural element of “white-collar” and general criminal crimes, belongs to common encroachments on property relations. It is proved by the detailed regulation of liability for this type of criminal offense in the legislation of almost all foreign countries. A feature of foreign legislation is the presence, along with the general regulation concerning liability for fraud, of an extensive system of special regulations concerning liability for fraud in financial markets, in insurance, lending, and circulation of actual objects, goods, and services.

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### **ВІДМІННОСТІ У КРИМІНАЛЬНО-ПРАВОВІЙ РЕГЛАМЕНТАЦІЇ ВІДПОВІДАЛЬНОСТІ ЗА ШАХРАЙСТВО У ЗАКОНОДАВСТВІ ДЕЯКИХ ЗАРУБІЖНИХ ДЕРЖАВ**

**Анотація.** Протягом останнього десятиліття у науці кримінального права виникла зацікавленість до порівняльно-правових досліджень. Суттєва зміна умов суспільного життя та прагнення дотримуватися принципів, прийнятих народами розвинутих країн, потребує вивчення іноземного досвіду, а часом запозичень із міжнародного права.

Порівняльне дослідження дає можливість виявити і врахувати чужі помилки та досягнення при вирішенні питань про злочинність та караність конкретних діянь, допомагає зрозуміти роль та значення кримінального права як інструменту соціального регулювання.

Останнім часом у науці з'являються порівняльно-правові дослідження норм про майнові кримінальні правопорушення, проте питанням вивчення шахрайства у них надається невивпрано мало уваги. У цій статті ми, не претендуючи на вичерпний аналіз, звернемо увагу на найбільш значні відмінності у кримінально-правовій регламентації відповідальності за шахрайство у законодавстві деяких зарубіжних країн.

Жодне суспільство не може існувати без власності, яка, будучи економічною основою, значною мірою визначає політичні, моральні, правові та інші відносини. Згідно з сучасним

уявленням про систему соціальних цінностей, право власності розцінюється як найбільше із соціальних благ особистості. Отже, посягання цього блага є, у сенсі, посяганнями на особистість.

Серед кримінальних правопорушень проти власності особливе місце посідає шахрайство. Незважаючи на те, що в кількісному відношенні шахрайські посягання поступаються крадіжкам та грабежам, за темпом зростання кількості зареєстрованих випадків вчинення шахрайства цей вид кримінального правопорушення значно випереджає інші правопорушення проти власності.

Особливістю зарубіжного законодавства є наявність поряд із загальною нормою про відповідальність за шахрайство розгорнутої системи спеціальних розпоряджень про відповідальність за шахрайство на фінансових ринках, у сфері страхування, кредитування, обігу справжніх предметів, товарів та послуг.

Ключові слова: шахрайство; міжнародне законодавство; кримінальне правопорушення; відповідальність.