



LARCENY OF PROPERTY AND THE CONCEPT OF AN INSTRUMENT OF CRIME

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Abstract: *In this article, by author considered and analyzed the crime of larceny of property by using a computer and noted to differ this type of crime from other types of theft and similar crimes in the IT sphere in terms of the object and the objective side, and the subject and the subjective side of the corpus delicti. Moreover, author mentioned, while studying the corpus delicti of a certain crime, a detailed analysis of its objective features allows drawing conclusions that are more precise. However, in the article there are some suggestions and recommendations to improve the mechanism in this area.*

Keywords: *larceny of property, IT, computer, corpus delicti, instrument of crime, hardware tools, software tools, crime weapon.*

The right of ownership is one of the most fundamental economic rights, which applies to everyone and is universally recognized by international norms, whose fundamental rules and principles are enshrined in the current Constitution of the Republic of Uzbekistan.

Unfortunately, in recent years, the increasing numbers of property crimes, such as robbery and larceny represent a violation of people's constitutional rights, and a serious obstacle to the implementation of the law. In particular, according to information obtained from the Supreme Court of the Republic of Uzbekistan, in recent years, larceny using computer equipment corresponds to the following offenses listed in the Criminal Code articles (Abduqodirov and Mirzayev, 2011, p. 4):

167 a. Part 3 paragraph "g" (using a computer for larceny by embezzlement or misappropriation), 168 a. Part 2 paragraph "g" (fraud involving larceny using computers), 169 a. Part 3 paragraph "b" (theft involving larceny using computers)

1) 167 a. Part 3 paragraph "g" (using a computer for larceny by embezzlement or misappropriation): in 2013 – seventy nine cases; in 2014 – seventy one cases;

2) 168 a. Part 2 paragraph "g" (fraud involving larceny using computers): in 2013 – seventeen cases; in 2014 – eighteen cases;

3) 169 a. Part 3 paragraph "b" (theft involving larceny using computers): in 2013 – six cases; in 2014 – ten cases (Information of the Supreme Court of Republic of Uzbekistan).

This data demonstrates that this type of crime is increasing year on year. Furthermore, larceny of property using a computer is more common than that involving theft or misappropriation, making up 75% of all crime in this category.

This is especially true owing to the increasing use of computers in all spheres of everyday life. Although larceny using a computer seems relatively new, its level of social



danger and unique corpus delicti mean this type of crime is causing serious damage on a personal, social and national level. Using a computer to commit the crime of larceny belongs to the category of serious crimes (Allaberganov, 2008, pp. 70-80).

It should be noted that when qualifying the crime of larceny of property using a computer, its specific content should be taken into consideration. In particular, this type of crime differs from other types of theft and similar crimes in the IT sphere in terms of the object and the objective side, and the subject and the subjective side of the corpus delicti.

While studying the corpus delicti of a certain crime, a detailed analysis of its objective features allows us to draw conclusions that are more precise. As a rule, the objective features of a crime imply the object and the objective side of a specific offense.

Alongside some indispensable features of the corpus delicti of the objective side (a socially dangerous act, its consequences, and the causal relationship between them), which are shared with other types of crime, larceny of property using a computer also has some other characteristics which can be considered essential.

Amongst these, the means of committing the crime, as mentioned above, plays the most essential role in qualifying the act and is the necessary mark of the corpus delicti.

The theory of criminal law defines the notion of an instrument of crime as a means or object used to facilitate the act of committing a crime (Rustambayev, 2010, p.161).

In a larceny of property using a computer, the means for committing the crime is computer technology.

Thus, in identifying larceny of property using a computer, the means of computer technology can be divided into two large groups: 1) hardware tools; and 2) software tools.

Hardware is the equipment used for data processing. This is: personal computers, mobile communication devices (the sum of the technical means for automatic processing of data and information), peripheral equipment (external devices associated with a PC) and material data carriers (floppy disks, audio cassettes, CD-ROMs, etc.).

Generally, these hardware devices are considered a means of committing a crime.

Software tools are the objective form of the sum of data and orders aimed at managing a computer and other hardware tools, in order to achieve a certain result, as well as material data carriers used to process them and to record the audio-visual data formed with their help. They include: software (the sum of the managing and processing applications) including system programs (operating systems and maintenance programs), additional software applications (programs designed to solve certain problems, such as text editors, antivirus programs, etc.), as well as appliance software (programming systems, programming languages: Turbo C and Microsoft Basic, etc.) and translators (a collection of programs that provide automatic translation of algorithmic and sign language into software codes); machine data of the user and the computer owner. A distinctive feature of these kinds of computer equipment is that they are used simultaneously and cannot be used separately, having been specially designed to complement one another (Rustambayev, 2003, pp. 307-308).



Usually, hardware devices are regarded as the instrument of a crime, while software is a tool in the commission of a crime; the two simultaneously participating in larceny of property of others using a computer.

The current legislation of the Republic of Uzbekistan defines some of these concepts. In particular, in accordance with "the Law of the Republic of Uzbekistan on Informatization" (Article 3), information technology is all the means, devices, methods and processes of data collection, storage, searching, processing and distribution; the information system is all the information resources, information technology and communication tools that are used to organize data collection, storage, searching, processing and usage.

Here, let us differentiate the means and the instrument of larceny. When a crime is committed, the weapon is a material object used by a person to directly impact the subject of the crime or another person, whereas the instrument of a crime is an object used to facilitate committing the crime or destroying evidence of the crime. This constitutes the difference between the means of committing a crime and the crime weapon (Rustambayev, 2009, p.217; Usmonaliyev, 2005, pp.187-193).

Today, some scientists claim that cases of larceny involving computer technology should be qualified as larceny of property using a computer (Rustambayev, 2010, p.52; Abduqodirov and Mirzayev, 2011, p.138) (for example: Internet fraud or forging documents on a computer with the aim of embezzlement).

We partially disagree with this view, and believe that a more precise approach to the means of the committing a crime is necessary with respect to larceny of property using a computer.

This is because if larceny is carried out with the help of a computer means, using the modification of data regarding property stored in a computer this criminal act can only be classified as larceny of property using a computer.

Based on the abovementioned comments and suggestions I would like to propose the following:

Defining the crime weapons and crime instruments in cases of larceny of the property using a computer does not comply with the definition of crime weapons and crime instruments for other types of larceny, as stated above. In fact, in this type of crime, the means of crime is a computer, and only if the act of larceny is committed by modifying data stored on a computer using computer software, which are the crime weapons, is it considered a larceny of property of others using a computer; certain computer programs and/or viruses, which do not constitute material objects, are considered crime weapons, and thus differ from the crime weapons of other types of larceny.

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