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Determination of the Amount in Fraud Cases

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Abstract: With social development, new types of fraud and emerging payment methods have appeared, causing certain problems in the application of traditional rules for determining amounts in fraud cases. Therefore, it is necessary to further explore the determination of amounts in fraud crimes. This article reviews the theories and legal provisions on the determination of amounts in fraud crimes both domestically and internationally, then points out the deficiencies in existing theories and provisions through case analysis, and finally proposes that when considering the determination of property losses in fraud crimes, the victims subjective intentions should be taken into account, and the determination of amounts arising from payment method s requires case-by-case analysis.

Keywords: Fraud crime; Amount determination; Objective economic value.

1. Introduction

Article 266 of the Criminal Law of our country stipulates: Whoever defrauds public or private property of a relatively large amount shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or control, and shall also be fined or subject to fines alone; if the amount is huge or there are other severe circumstances, the person shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and fined; if the amount is particularly huge or there are other particularly serious circumstances, the person shall be sentenced to fixed-term imprisonment of more than ten years or life imprisonment, and fined or have property confiscated. Where otherwise provided by this law, the provisions shall be followed. From this article, it can be seen that the key to establishing the crime of fraud lies in the amount involved, from which it can be inferred that our country adopts a legislative model for fraud based on the amount. This means that in a fraud case, the determination of the amount becomes the core of the entire case. With the development of society and the emergence of new types of fraud and new payment methods, the traditional rules for determining the amount appear somewhat insufficient, so it is necessary to further analyze the rules for determining the amount in fraud cases.

2. Current domestic and international rules for determining the amount in fraud cases

First, there is the theory that property loss is necessary and the theory that property loss is unnecessary. The theory that property loss is necessary holds that property loss is a constitutive element of the crime of fraud; if the victim does not suffer property loss, fraud is not established. This theory requires a specific assessment of the amount involved and demands that the victims property loss reach a certain threshold in order for the crime to be considered complete. For example, Section 263 of the German Penal Code stipulates: Whoever, with the intention of obtaining unlawful property benefits for themselves or a third party, causes another to be misled or to maintain an error by means of fictitious, distorted, or concealed facts, thereby causing property loss to another, shall be punished with imprisonment of up to five years or a fine. Article 146of the Swiss Penal Code stipulates: Whoever, with the purpose of unlawfully benefiting themselves or another, by means of deceit, concealment, or distortion of facts, causes another to fall into error, or maliciously increases their error, resulting in the defrauded persons actions causing property loss to themselves or others, shall be punished by up to five years of imprisonment or a term of severe detention.

Property loss does not necessarily mean that whether the victim suffers property loss does not affect the establishment of the crime of fraud; as long as the victim has engaged in property transfer, the crime of fraud is established. Such as Article 246 of the Japanese Penal Code on fraud, Article 347, Paragraph 1 of the Korean Penal Code, and Article 159-1 of the Russian Penal Code, etc. This view holds that the establishment of the crime of fraud is only related to whether the victim has engaged in a property transfer; as long as there is a property transfer, the crime of fraud is constituted. Property loss is not an element of the crime of fraud, and the specific amount of property loss only affects the severity of the sentence.

Although Chinas Criminal Law does not explicitly stipulate that property loss is an element of the crime of fraud, it is generally believed in academia that Chinas Criminal Law has a local characteristic of quantitative factors . Moreover, the existence and amount of property loss are closely related to the determination of the amount involved. Therefore, when determining the crime of fraud, China also adopts the view that property loss is necessary, that is, only when a certain property loss is caused to the victim can it constitute the crime of fraud. [1]

On the determination of property loss. The mainstream view in our country is proposed by Professor Zhang Mingkai. He put forward his own perspective on this issue, arguing that, in principle, as long as the actor causes economic loss to others, it can be recognized as property loss. However, if causing economic loss to others leads to the recovery of greater economic benefits, it cannot be recognized as property loss. For example, as mentioned earlier, retrieving one’s stolen vehicle through fraud, while recovering one’s own economic loss, maintains social order and creates greater economic benefits, which obviously does not constitute a crime. Judicial practice in our country largely supports this view. In addition, Professor Zhang Mingkai believes that the individual property theory unreasonably expands the scope of criminal regulation, swinging from one extreme to another—from punishing inability to using the value of delivered property or transferred property interests as the amount involved in fraud—and he believes its scope should be limited.[2] Therefore, he proposes that the victim's property loss not only requires that property was delivered or property interests were transferred but also that there exists an infringement on the legal interests protected by the fraud statute in criminal law.

Finally, it is the determination of the amount of property loss. In China, the specific rules for determining the amount are mainly as follows: 1. The amount of fraud is the amount of direct loss suffered by the victim; 2. If the amount of fraud is difficult to determine but the victims loss can be determined, the amount of fraud shall be determined based on the victims loss; 3. If the victims loss amount is higher than the fraud amount, the amount of fraud is generally determined according to the victims loss; 4. If the victims loss amount is lower than the fraud amount, it is necessary to consider whether to deduct the cost of fraud; 5. The amount of fraud is calculated based on the actual amount defrauded, and the amount already returned before the case occurred should generally be deducted.[3]

3. Issues with the Current Standards for Determining the Amount in Fraud Crimes

There are slight differences between domestic and international views on whether property loss exists, but each has its own limitations. The mainstream view in our country regarding the identification of property loss cannot adequately explain certain fraud cases. For example, if a perpetrator fraudulently obtains donations from others and engages in some public welfare activities in order to better embezzle the donations, keeping the vast majority for themselves. For the victims of the case, their subjective purpose was to contribute to public welfare through the actions of the perpetrator, and it was a voluntary contribution. Moreover, the perpetrator did indeed carry out public welfare activities, so the victims' subjective purpose was essentially achieved, and from the victims' perspective, they feel that their property was not actually lost. From the perspective of the general public, this behavior is clearly a crime, particularly from the standpoint of maintaining social order, and such behavior should be stopped. However, since the victims do not subjectively consider themselves to have suffered property loss, it cannot be identified as fraud. From whichever theoretical perspective, the victims have not suffered property loss; the underlying reason is that existing theories and regulations do not take the victims' subjective purpose into account when assessing property loss.

In addition, with the emergence of new payment methods, traditional standards for determining amounts have also encountered problems. For example, if a victim is scammed into transferring 3,000 yuan to the perpetrator, but because it is an online payment and there is a bank promotional discount, every 1,000 yuan paid is reduced by 1 yuan, the victim ultimately pays 2,997 yuan, but the perpetrator receives 3,000 yuan. In this case, does the perpetrator constitute the crime of fraud? As mentioned earlier, according to the fourth point of Chinas standards for determining amounts, if the victims loss is less than the fraud amount, consideration should be given to whether the cost of fraud should be deducted. However, the missing 3 yuan in this case is not the cost of the perpetrators crime, but arises from the change in payment method, so this rule clearly cannot be applied. Therefore, in judicial practice, it is generally believed that the act in this case does not constitute fraud. From the perspective of the restraint principle in criminal law, it seems more reasonable not to consider it a crime. However, from the victims perspective, the 3,000 yuan obtained by the perpetrator is indeed the victims property benefit, and the victim would certainly hope that the amount be recognized as 3,000 yuan, so it also seems unreasonable not to consider it a crime. This creates a certain contradiction.

4. New Insights on the Determination of Amounts in Fraud Crimes

For new types of fraud cases, such as those involving unilateral transfers like donations or gifts, consideration of the victims subjective intent should be added on the basis of traditional viewpoints. In the case [4] from "Criminal Case Trial Review and Evaluation," the relevant unit did receive training and also paid the associated training fees. From the perspective of objective economic value alone, the relevant unit did not suffer an economic loss, so it cannot be classified as fraud. However, if we examine the victims subjective intent, the essence of this case can be understood more clearly. The relevant unit did not voluntarily participate in the training; it merely mistakenly believed that the training was a task assigned by a higher authority and therefore mandatory, prompting it to undertake the training. The perpetrators subjective intent was also to use fabricated illusions to make the victim believe that the training was necessary. The victim was indeed "deceived." In terms of the nature of the act, this behavior constitutes fraud. Actions taken by the victim to fulfill obligations that inevitably damage their own property should be regulated by criminal law. In this case, although the relevant unit received the training, it believed it had no choice, and its property interests were indeed harmed, so Xie and Shen should be recognized as committing fraud. This case demonstrates the need to consider the victims subjective intent; analyzing it solely from an objective economic perspective clearly shows that the perpetrator would not constitute fraud.

It is worth noting that examining the victims subjective intent does not mean assessing it solely from the victims perspective. On the basis of the parties involved, it is also necessary to analyze it from the objective perspective of a third party. [5] For example, in the above case, it is necessary to judge from the third-party perspective whether the relevant unit truly had no choice but to damage its own property in order to fulfill its obligations. If the victim could have either not fulfilled the obligation or fulfilled it in a better way, it should not be recognized as fraud, or the amount involved should be reassessed.

The issue of determining the amount arising from emerging payment methods also requires further discussion. Article 1, Item 5 of the "Notice of the State Taxation Administration on Certain Issues Concerning the Confirmation of Corporate Income Tax Revenue" stipulates that the price deductions given by enterprises on commodity prices to promote sales are considered commercial discounts. From this regulation, in the above bank "full reduction" case, the "full reduction" service provided by the bank to users seems to have some characteristics of a commercial discount, because the bank's "full reduction" service is also intended to attract users to use its payment system for profit. However, commercial discounts are reductions based on commodity prices, whereas the banking services provided are not the bank's product sales services but are merely for promotion or marketing. Therefore, this service cannot be referred to as a commercial discount. Regarding the bank-provided "full reduction" service, I lean towards considering it a vested benefit for the victim. When the victim does not use the service, it cannot be included as part of the victims property loss. Once the victim uses the service, the difference generated due to the "full reduction" should be considered the victims property loss. Although the essence of the bank's provision of services is profit-making, it cannot be denied that the user does indeed gain some benefit. From the bank's perspective, as long as the victim uses the service, the victim receives the benefit. Thus, if the perpetrator infringes on the victim's property, it is the difference caused by the "full reduction." Therefore, in the above case, I believe that even if the victim only lost 2,997 yuan, since the perpetrator actually received 3,000 yuan, the amount for the crime of fraud should be recognized as 3,000 yuan, not 2,997 yuan.

So, similarly, if a bank payment causes the victim's property loss to exceed the actual gain of the perpetrator, does the perpetrator constitute the crime of fraud? Taking the fraud case of the defendant Zhou as an example, Zhou falsely claimed to be a returned overseas student and running a company, and after gaining the trust of a young female victim, deceived her of money and property. Among this, Zhou withdrew 1,000 yuan from the money he defrauded via the China Construction Bank Long Card through an ATM across banks, which incurred a handling fee of 2 yuan. [6] Whether these 2 yuan should be regarded as part of the criminal amount is still somewhat controversial. From the perspective of Chinas legislative model for the crime of fraud, fraud is a result crime in China, meaning that only when the perpetrator infringes the victim's property and causes property loss is the crime considered completed. The perpetrator's illegal acquisition of the victims property is the most obvious feature of fraud. The 2 yuan incurred due to the handling fee is income for the bank, not income for the perpetrator, nor is it the perpetrator's cost of the crime. From the perspective of the criminal result, the perpetrator only illegally obtained 1,000 yuan from the victim, not 1,002 yuan; from the perspective of the perpetrator's subjective intent, the perpetrator only intended to withdraw 1,000 yuan, and the additional 2 yuan was not within the scope of their subjective intention. If the 2 yuan is recognized as illegal criminal income, it obviously violates the principle of consistency between subjectivity and objectivity. Therefore, I believe the 2 yuan handling fee should not be recognized as the perpetrator's illegal income.

5. Conclusion

With the development of society, new types of fraud and emerging payment methods have had a certain impact on the traditional theory of determining the amount involved in fraud crimes. Including the victim's subjective intent in the assessment of property loss, while judging the victim's subjective intent from an objective third-party perspective, can better regulate new types of fraud cases under criminal law and better interpret the law; for the determination of the amount involved in cases arising from emerging payment methods, it is necessary to discuss on a case-by-case basis based on existing regulations. The difference caused by the bank's "discount" services should be recognized as the amount of the crime, whereas the difference caused by transfer fees should not be recognized as the amount involved in fraud. Due to the continuous updating of payment methods, more situations will arise. Therefore, such cases need to be analyzed individually, exploring the intrinsic legal relationships of the cases, rather than merely determining the amount involved in the crie based on the victim's loss or the amount obtained by the perpetrator.

Reference

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[2] Zhang Mingkai. On Property Loss in Fraud [J]. China Legal Science, 2005 (5).

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[4] In 'Criminal Case Litigation Review,' such a case is mentioned: Defendants Xie and Shen, in order to seek profit, carried out a series of training activities for relevant units. They issued notices under the guise of a government training center, deliberately using terms commonly found in official documents, such as 'publicity and implementation class,' and coupled with the professional nature of the training notification content, this led the relevant units to mistakenly believe that such training classes were mandatory, and therefore they participated and paid the fees.

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