

Summary

The year: 2019.

Specialty / field of study (code and full name): 40.03.01-Law

Level of study: bachelor's degree.

Institute or Higher school: Law University.

Department of criminal law disciplines and forensic expertise

The subject of the final qualifying work: “The criminal law characteristic of the main structure of fraud”.

Author: Bagomedova Diana Magomedsalomovna, 4th year student Institute of distance learning, information technology and online projects (Criminal law profile) - 331-15.

Scientific supervisor: kand.yus. sciences, associate professor, head of the Department of Criminal Law Disciplines and Forensic Expertise Yury Nikolayevich Shapovalov.

The relevance of the research topic. One of the main directions of development of Russian society today is the construction of a right-wing state, in which priority is given to the rights, freedoms and legitimate interests of citizens. The creation of such a state-political regime involves as one of the main functions the fight against crime. One of the main socially dangerous acts encroaching on this right is fraud today. According to the Russian Ministry of Internal Affairs, in 2003 87,471 frauds were registered, and in 2016 - 208926, in 2018 - 215036, and for the first half of 2019 - 143787, i.e. there has been a steady increase in criminal attacks on property committed through fraud and breach of trust. At the same time, the development of the Russian economy leads to the emergence of various types of fraud in various spheres of public life: in insurance, lending, and private entrepreneurship. Often, criminals use modern means of communication to facilitate their illegal activities, which greatly increases the consequences of such acts. Currently, the legislator has enshrined the rules on criminal liability for certain types of fraud, but many issues related to the design of the main composition of fraud remained unresolved. The growing number of fraudulent attacks and the emergence of new types of fraud are the leading factors that attract the attention of scientists and practitioners to the phenomenon of fraud in terms of criminal law research. In theory, there are still many controversial issues in the interpretation of the signs of this crime, and in practice - significant difficulties in qualifying acts and distinguishing between related compositions and civil law tortures. Problems of criminal law protection of property relations are constantly the subject of research by scientists. But there is no unity of opinion on practically any of the objective and subjective signs of the composition of fraud, which makes it possible to distinguish it from related structures. Debatable are, in particular, questions about the object of the crime, signs of property and the right to property, the nature of actions, methods of encroachment, and so on.

The purpose of the work: on the basis of a comprehensive analysis of criminal law to resolve issues related to the definition of fraud and signs of an offense under Art. 159 of the Criminal Code.

Objectives: resolve the issue of the nature and content of the object of the crime, provided for by Article 159 of the Criminal Code of the Russian Federation; consider different points of view regarding the subject of fraud; reveal signs of the objective side of fraud, including fraud as the main way to commit this crime and its types; identify subjective signs of fraud.

Theoretical and practical significance of the research: the work substantiates the need to rename Chapter 21 of the Criminal Code of the Russian Federation with a recommendation to designate it as “Crimes against property rights”; It is recommended to exclude from the disposition the norms provided for in Part 1 of Art. 159 of the Criminal Code, an indication of

such a method of committing a crime as breach of trust, and it is proposed to fix fraud only as a form of theft, excluding the indication of the acquisition of the right to another's property.

Results of the study:

1. Fraud is a form of theft distinguished by the method of taking possession of another's property - deception, and the use of such a sign as breach of trust in the definition of fraud is unnecessary, because does not contribute to the differentiation of responsibility, complicates qualifications, and causes difficulties in law enforcement.
2. One of the signs characterizing the objective side of fraud is the seizure of another's property. At the same time, in Note 1 of Article 158 of the Criminal Code of the Russian Federation, a criminal offense when embezzlement is characterized as the seizure and (or) circulation of another's property. It seems possible to agree with the opinion repeatedly expressed in the literature about the need to refuse to identify theft from an indication of the circulation of another's property or to replace the phrase "seizure and (or) appeal" with the term "possession".

Recommendations

1. In our opinion, the legislative definition of the very name of the institution of crimes stipulated by chapter 21 of the Criminal Code of the Russian Federation, as well as signs of the composition of fraud provided for in art. 159 of the Criminal Code. The title of Chapter 21 of the Criminal Code does not cover the entire range of those objects that are or may be harmed as a result of criminal acts provided for in the articles of this chapter. As a result of such acts, harm can be caused not only to property, but also to other property relations, expressed in normatively established rights of a material and obligatory nature. In this regard, it seems possible to change the name of Chapter 21 of the Criminal Code of the Russian Federation, designating it as "Crimes against property rights".
2. Consideration of the signs of the main composition of fraud, analysis of the literature on these issues and materials of judicial practice allows us to join the proposal repeatedly expressed in the scientific literature to exclude from the disposition the norms provided for in Part 1 of Art. 159 of the Criminal Code, indications of such a method of committing fraud as breach of trust, since this sign, in our opinion, does not have independent significance, being a special case of a broader concept of fraud, is ambiguously assessed in practice, and in most cases, courts qualify fraud as committed by deception or by deception and abuse of trust, without delimiting these concepts and not giving their interpretation and assessment in relation to a particular case. In addition, in many countries, criminal law associates fraud only with fraud, and breach of trust acts as an independent crime.
3. It appears that the right to property indicated in the definition of fraud in part 1 of article 159 of the Criminal Code as an independent subject of this crime, is covered by the concept of property in the civil law sense of this concept. In this regard, the complication of the concept of fraud due to the inclusion in it, along with the theft of an independent composition in the form of acquiring the right to someone else's property, does not contribute to the effectiveness of law enforcement, complicates the qualification of the deed, as a result of which reference to this method of committing fraud can be excluded from the disposition of the norm provided for in part 1 of art. 159 of the Criminal Code.