

# THEORETICAL AND LEGAL BASES OF QUALIFICATION OF ROBBERY OF THE PROPERTY OF OTHER PERSONS USING COMPUTER EQUIPMENT

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**Annotation:** This article analyzes the issues related to theft of other's property by using computers, differentiation of similar crimes, the effectiveness of the criminal procedure,

judicial practice, the statistics of such crimes in Uzbekistan, and the views of scholars on criminal law.

**Key words:** theft of another's property, computer, fault, intent, purpose, motive, intellectual and volitional symptom, modification of computer information, cybercrime, theft of another's property with help of computers.

**ЎЗГАЛАР МОЛ-МУЛКИНИ КОМПЬЮТЕР  
ВОСИТАЛАРИДАН ФОЙДАЛАНИБ ТАЛОН-ТАРОЖ  
ҚИЛИШНИНГ НАЗАРИЙ ВА ҲУҚУҚИЙ АСОСЛАРИ**

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**Аннотация:** ушбу мақолада ўзгалар мулкини компьютер воситаларидан фойдаланиб талон-торож қилиш билан боғлиқ жиноятларни квалификация қилиш, ўхшаш таркибли жиноятлардан фарқлаш, жиноят содир этиш усулини квалификацияга таъсири, суд амалиёти, Ўзбекистондаги ушбу турдаги жиноятлар статистикаси ҳамда жиноят квалификациясига оид олимлар қарашлари масалалари таҳлил қилинган.

**Таянч сўзлар:** ўзгалар мулкини талон-торож қилиш, компьютер, айб, қасд, мақсад, мотив, тафаккурий ва иродавий ҳолат, компьютер ахбороти модификацияси, компьютер фрибгарлиги, компьютер воситаларидан фойдаланиб ўзгалар мулкини талон-торож қилиш.

**ТЕОРЕТИЧЕСКИЕ И ПРАВОВЫЕ ОСНОВЫ  
КВАЛИФИКАЦИИ ОГРАБЛЕНИЯ ИМУЩЕСТВА ДРУГИХ  
ЛИЦ С ИСПОЛЬЗОВАНИЕМ КОМПЬЮТЕРНОЙ ТЕХНИКИ**

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**Аннотация:** В данной статье анализируются вопросы хищения чужого имущества путем использования компьютера, отличия подобных преступлений, судебная практика, статистика таких преступлений в Узбекистане и мнения ученых по квалификации преступлений.

**Ключевые слова:** хищение чужого имущества, компьютер, вина, умысел, цель, мотив, интеллектуальный и волевой признак, модификация компьютерных информации, компьютерное мошенничество, хищение чужого имущества путем использования компьютера.

An essential indicator of normal functioning of the legal system in the country is the level of legality. Majority of the principle of legality in the criminal law: the criminal liability of each person found to have a criminal offense, as well as the non-application of a criminal penalty or other offense by an innocent person, is characterized by the existence of a criminal offense. It is also important that this provision is set out in the second part of Article 16 of the Criminal Code.

In addition to the principle of legitimacy in the qualification of any of the socially dangerous acts committed, the law of equality of the citizens, the principle of justice and the degree of guilt are separately studied. In general, criminalization of offenses means ensuring that the provisions of criminal law and criminal procedure legislation are applied in a holistic, comprehensive way.

Crime qualification (Latvian "qualis" - quality) means the implementation of the provisions of the Criminal Code, which describes one of the stages of the criminal law application and imposes penalties or other penalties for the accused. Criminal qualifications are the assessment of the criminal law from the point of view of the criminal law, which is a concrete real-life case<sup>1</sup>.

From this point of view, the use of CC's current articles of responsibility, which is currently responsible for these acts is a bit more difficult to qualify for crimes related to the spoiling of others by using computer facilities. This is primarily due to the fact that articles of the Criminal Code, which are liable for these acts, are dispersed, that is, the responsibility for the total plunder (as separate items); Secondly, the failure to address this issue in the field of new information technology crimes is included in the criminal law; Thirdly, the peculiarity of the criminality component of the possession of others' property by means of computer facilities (that differs from general penalties and crimes in the field of information technologies); Fourthly, the tendency to increase the number of cases of spoofing of the property of others by the use of computer equipment in the practice of judicial investigation; Fifthly, the plenum of the Supreme Court of the Republic of Uzbekistan is the acquisition or embodiment of the property of others by using computer equipment, fraud or theft of a special decision on crimes of extortion; Sixthly, it can be explained by the fact that the existing CC implies that the plundering of property of others by means of computer hardware aggravates liability.

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<sup>1</sup>Жиноят квалификацияси ҳақида батафсил қаранг: Российское уголовное право. Особенная часть / Под ред. В.С.Комиссарова. – М.: Питер, 2008. – С. 19-33; Уголовное право России. Часть Особенная. Учебник / Под ред. Л.Л.Кругликова. – М.: Волтерс Клувер, 2005. – С. 9-13; Уголовное право. Особенная часть. Учебник / Под ред. Л.Д.Гахумана, С.В.Максимова. – М.: Эксмо, 2005. – С. 15-37.

The crime situation in 2010-2017 years of the Republic of Uzbekistan related to "robbery of others' property by a means of computer facilities" <sup>2</sup>							
	2010 year	2011 year	2012 year	2013 year	2014 year	2015 year	2016 year
Article 167 Section 3 "g"	55	52	59	87	76	53	82
Article 168 Section 2 "b"	15	16	25	20	20	32	31
Article 169 Section 3 "б"	1	3	5	7	10	2	14

First of all, it is difficult to imagine that today it is impossible to activate any sphere from government to everyday life without computers. Therefore, we cannot ignore a huge difference in the role and role of computer technology in the community in the time of the adoption of the SC in 1994 and their role and role in today's society.

In this sense, accepting and penalizing these offenses as an aggravating circumstance (without regard to the amount of damage inflicted) on the robbery of others' property by means of computers contravenes with the modern criminal law tendency, and adheres to the

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<sup>2</sup>The letter of the Supreme Court of the Republic of Uzbekistan dated July 18, 2017, No. 07 / 19-64.

principles of law, humanity and justice will result in failure.

It is important to underline the importance of the crime scene, which is a component of the offense component in understanding of the importance of criminal offenses, as at the same time as the principal object of the offense to commit others' property using computer facilities is the property rights of others and the security of the information system social relationships. Naturally, the crime is the only criminal offense that is not considered as a set of crimes against two or more articles. In the case of a single article of the Criminal Code of the Supreme Court of the Republic of Uzbekistan of 15 May 2008, "On matters related to the qualification of a number of offenses", all criminal offenses covered by a single clause (article of the Criminal Code) (part of the substance). When several offenses are committed, if one of the offenses is a means or tool to do another the offenses must be qualified by one article of the Criminal Code, which only imposes a burden on a grave crime, if both offenses are specified in the relevant article of the criminal code. It does not require<sup>3</sup> additional qualification with the single article expressing responsibility for a mitigating crime. Depending on the requirements of this rule, the wrongful possession of a person's property by a computer user is a method of extortion, and does not require that his actions be qualified as a criminal offense.

Based on the objective side analysis of the crime, we must clarify some of the controversial aspects of this qualification. In order to evaluate the robbery of property using of computer facilities, it is necessary to first determine that robbery was committed directly by using computer facilities (such as a crime). That is, the guilty

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<sup>3</sup>Clause 9-10 of the Supreme Court Plenum No. 13 of May 15, 2008 "On matters relating to the qualification of several offenses".

verdict is that they carry out their actions related to embezzlement, misleading or abuse of power, clandestine or open spell, directly by computer means. In this case, the concept of the crime tool in the theory of the right of criminal law should be fully followed. If the offender fails to take actions related to acquisition of property by computer, his actions are not considered as computer spoofing. That is, in this case, computer techniques should be viewed as a means of crime, and special computer programs designed to perform certain actions should be regarded as weapons of crime. The main distinctive feature of the offender is that it is detected on the basis of the possibility of causing harm to the objects protected by the criminal law.

Today plastic crime has developed in foreign countries. However, the issue of qualifying the transactions related to the plundering of the plastic card, which is the electronic device, is quite controversial.

The reason is that the guilty person has the right to claim that the payment instrument is spoiled in any way by the means of payment, then by removing the available funds, or paying for some goods or services, whether it is computing or not. However, usually cashless cash on a plastic card is cashed or saved by using computer equipment.

In this case, there is every reason to believe that the actions of the guilty will be the plundering of their property by means of computer facilities. The reason for this is that cashless cash on the plastic card can only be cashed off or consumed by the computer. Therefore, the basic requirement to seize the offense is the use of computer-assisted means to seize the property by the use of computer-assisted means.

The primary requirement is the realization of socially dangerous acts (illegal possession of property) by

computer technique, which is a necessary indicator of the objective side of the offense. Fraudulently executes the guilty verdict, If a victim uses a computer tool to transfer non-cash funds or use a false information to deliver to the victim, the actions of the offender will not constitute a fraudulent criminal offense. To find out that the actions of the perpetrator are computer fraud, it is necessary to deceive or misuse confidence by modifying the information stored on the computer information system, which is a necessary mark of crime. Thus, in the above case, the actions of the perpetrator must be qualified as ordinary trial. It should be noted that in computer fraud, in contrast to other computer spots, personally involved in the subject of the offense, in which deception or misuse of confidence is made directly by computer facilities is sufficient to evaluate the behavior of computer fraud (eg. guilty computer the information stored in the system is misleading, so the service personnel are misleading the product personally before departure). In this case, one must pay attention to the fact that if a guilty person fraudulently misappropriated or misappropriated a plastic card and seized money, then it would be necessary to assume that his actions are stolen by means of a computer.

It is worth mentioning that there are also disputable aspects related to the subject of plagiarizing the use of computer facilities. For example, in today's theory of criminal law, the responsibilities of participants in special crime are different. Firstly, if a person without a special trade mark signs a spoilage with a particular subject, and that he is deemed to be an accomplice, and that the offense is found to have been committed by a group of persons<sup>4</sup>;

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<sup>4</sup>Аветисян С. Проблемы соучастия в преступлении со специальным субъектом (специальным составом) // Уголовное право. – Москва, 2004. - №1- С. 4-6.; Волженкин Б.В. Некоторые проблемы соучастия в преступлениях, совершаемых специальными субъектами // Уголовное право.– Москва, 2000.- № 1.–С. 15.

the latter, in the case of persons with no special seal of personality in special offenses, is subject to criminal liability under the criminalized offense of the offense committed by a private subject of the criminal law. A person without a private label may be required to act as a facilitator, a witness, or an accomplice<sup>5</sup> in a committed crime.

We would also like to conclude that this rule should be applied to the traditional cultivation and ritratification by partially adding to the ideas of the second group of scholars expressed in this regard. However, the use of this rule is somewhat inappropriate when you use a computer or utilize it. The reason is that a person who has been entrusted or a person who is in charge of the property (bank director) may not be able to fulfill the objective aspect of the offense as he does not know how to use the computer. It can only help in the seizure of property, losing or otherwise obstructing certain obstacles, and may not be involved in the functions of the party actions that should be taken by auxiliary in offenses committed by participations. Hence, in this case it would be expedient to qualify the actions of the perpetrators as computer slaughter committed in the presence of the requirements of the first part of Article 30 of the current Code.

Persons who are legally entitled to the property (special subjects) must be co-opted by the objective side of the offense to qualify for use as a result of the use of the computer or co-conspiracy by a group of persons. If any of these private entities does not directly participate in the objection of the offense, the actions of that person shall be deemed as acquisition or embezzlement.

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<sup>5</sup>Абдурасулова Қ.Р. Жиноятнинг махсус субъекти. – Тошкент: ТДЮИ, 2005.-Б. 98-99.; Комиссаров В.С. // в кн.: Курс уголовного право. Общая часть. Т. 1/ Под. ред. Н.Ф. Кузнецовой, И.М. Тяжковой. –М.: Зерцало-М, 2002. – С. 399, 434.; Мирзаев У. Ўзлаштириш ёки растрата йўли билан талон-торож қилганлик учун жавобгарлик муаммолари. Юрид. фан. ном. ... дисс. – Тошкент, 2009. – Б. 99

We also should take attention to the responsibility of the recipients and the recipients of the program by committing a crime that violates the PC security system. In the event that a person has created such a program he shall be deemed to have committed an offense solely for the sake of utilization of others' property by means of computer facilities, in addition to the provisions of No. 278<sup>3</sup> (Intentional preparation or transfer of a device for the unauthorized use of the computer system) or 278<sup>6</sup> (creation, use or distribution of damaging software). Also, it is not necessary to qualify in addition to the article 278<sup>5</sup> (computer sabotage) under the circumstances when the person intentionally violates the computer system to exploit the property of others and uses it to commit extortion. Or, stealing with the use of a computer, property is also seized by illegal unauthorized use of computer information, which constitutes a criminal offense under Article 278<sup>2</sup> (unauthorized use of computer information). However, in this case, there is no need to qualify with the provisions of Article 278<sup>2</sup> of the code. In all of the above-mentioned cases, information technology crimes are a means of extortion. This excludes the addition of these offenses in addition to a separate item in the Criminal Code.

In case of committing an offense from others, the person giving the program is aware of the criminal intent of the accused, as an assistant, based on the specific circumstances of the case, are charged with Article 278<sup>3</sup> of the Criminal Code of the Republic of Uzbekistan (for the purpose of the unlawful use of the computer system, for the purpose of convening or transferring special means) or Article 278<sup>6</sup> (creation, use or distribution of damaging software).

The subject of crime is also a matter of controversy when plundering property by computer facilities. The

reason for this type of offense is that the non-cash loans, as well as computer information, are spoiled. Non-cash loans are kept in the memory of the permanent and migratory devices and equipment and in the accounts in the specialized agencies.

Nowadays, in developed countries independent crypto-currency (virtual numerical currency) (bitcoin, litcoin) which does not comply with any country's law or banking system, comes in the form of computer information and is considered by some countries (Japan) as a legitimate means of payment. The robbery of these crypto-currency do not imply criminal liability under the Criminal Code of the Republic of Uzbekistan. The reason is that cryptosystems have not been recognized as a payment instrument in any normative document in our country.

It is advisable to distinguish the following specific features of the computer information, which are considered as the subject of crime in the spoiling of the property of the persons using computer equipment:

First of all, computer information is regarded as intellectual property and personal property;

Secondly, the information that has been subjected to criminal offenses excludes the sign of ownership (physical form) as the subject of looting;

Thirdly, computer information affecting the perpetrator is a set of other laws (eg, "On Information", "On Legal Protection of Electronic Applications and Databases", "On Telecommunications", "On Electronic Payments", etc.) protected;

Fourth, the fact that this information is stored on the media (plastic card), computer, as well as computer system or network, and recognized by the state as an official payment instrument.

In summary, the criminal law of the Criminal Code that criminalizes the use of computer equipment in

accordance with Article 167 (slaughtering or embezzlement), Part 3 (g), Article 168 (fraud) of Part 2 of the Criminal Code and Article 169 (Theft), Part 3 (g), "Unauthorized entry into the computer system" are given in a very scattered forms.

Taking into account the fact that the crime of spoiling the property of others is characterized by the nature of the offense (object of crime, objectivity), it is necessary to combine the criminal proceedings into a single article and sanction it for the information technology crimes, it is desirable to set heavier.

This practice shows that a number of countries are effectively applied in the legislative practice, and that the above suggestion is beneficial. Specifically, although in our country this crime acts as part of other offenses, many foreign countries (including the United States, Germany, Belarus and Ukraine) have enshrined criminal law to seize the property of others by using computer facilities as a separate offense.

Learning the experience of foreign countries helps to make our criminal law a perfect legal system. The implementation of the above provisions in our legislation also provided for the effective enforcement of criminal-law enforcement measures in the fight against socially dangerous acts. In this regard, we believe it is appropriate to establish a separate article for the crime that is being investigated, given that the Criminal Code should be simple, clear, perfect and fully reflect the hazardous malfeasance.