

ISSUES OF QUALIFICATION OF CONTINUOUS LOOTING CRIMES

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ABSTRACT

This article analyzes the specific aspects of qualifying continuous theft and robbery offenses, the problems in legislation and judicial practice, and ways to solve them. Due to the fact that continuous theft and robbery offenses include several acts of theft and robbery, they require special attention in their qualification. The article highlights issues such as the legal completion time of such crimes, the specific elements of the crime composition, causal relationship, recurrence, and recidivism. It also presents problems encountered in practice, shortcomings in legislation, and proposals for their elimination.

Keywords: Continuous looting, property, criminal law, single intent.

INTRODUCTION

An analysis of criminal law literature shows that during attempts to implement theoretical discussions about prolonged crimes into practice, discussions arise about the signs of prolonged robbery. This is natural, as among continuous crimes, the most common are crimes of robbery. According to M.Kh.Rustambaev, "theft is the illegal and unpaid seizure of another person's property for his own benefit or for the benefit of other persons, causing harm to the owner or other owner of this property".

The Decree of the Supreme Court of the USSR of July 11, 1972, "On Judicial Practice for the Expropriation of State and Public Property," states that "the repeated illegal seizure of state or public property, consisting of a series of identical criminal acts, covered by a single intent, a common goal of the perpetrator, and together constituting one crime, should be considered prolonged embezzlement."

The Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 30, 1999, No. 6 "On Judicial Practice in Criminal Cases of theft, robbery, and theft of the property of others" does not address the concept of prolonged embezzlement.

M.Kh.Rustambaev calls continuous looting the acquisition of another person's property by several actions, which have a common purpose and are covered by a single intent of the looting person, consisting of similar criminal acts, and writes that the signs of continuous looting are the uniqueness of the intent of the guilty person, the uniqueness of the source of the looting, and the uniqueness of the method of looting.

Analysis of judicial practice shows that the uniqueness of the source of the embezzlement is determined based on several alternative criteria.

The first criterion is the territorial criterion, which implies obtaining prolonged looting from one place, that is, within the established territorial boundaries. In most cases, these territorial boundaries are determined by residential buildings, other storage facilities (garages, warehouses, pipeline systems, etc.).

For example, he entered K. T.'s apartment and stole his property worth 10 million soums and took him to a garage near the victim's house. Then, continuing his criminal plot, he returned to K. T.'s house and was caught while stealing the safe and watch he had planned in advance. As a rule, several similar criminal acts, combined from one source, with one common intent, form a continuous crime.

The actions of K. are qualified by the relevant part of Article 25, 169.

There are no special problems in determining the uniqueness of the source when the territorial boundaries of the place where the embezzlement of property is carried out are a house, building or other storage facilities. However, the situation is much more complicated when the property is located in the same area (in the same place), but is looted from different storage places, for example, from warehouses located in the same building, from different cabinets in the same changing room, from adjacent garages or field areas. Law enforcement sometimes evaluates such places as a single source, and sometimes as multiple different sources. An example of the first approach is the following statement.

Defendant A.Nigmanov, working as a driver at the private enterprise "Yasin collection," with the aim of covertly embezzling someone else's property, from April 2019 to September 26, 2019, covertly distributed various amounts of money, that is, a total of 3,000 US dollars, belonging to the private enterprise "Yasin collection," located on A.Navoi Street, Tashkent city, and attached to it through a power of attorney, using the vehicle of the brand "Spark" with state number 01 563 WCA, the owner On September 26, 2019, Ilikkan Yasin was detained with physical evidence when he stole \$700 (6,597,178 soums) and 1,400,000 soums using a Spark vehicle that belonged to the head of the enterprise, Ilikkan Yasin, and he was unable to complete his criminal actions in circumstances that did not depend on him.

In the given example, the court considers the act to be continuous, as the money received from the head of the enterprise comes from a single source.

According to the court verdict, S. was found guilty of theft of property worth \$300 each from two warehouses in early July 2008. The public prosecutor asked the court to overturn the sentence in the cassation appeal.

In the verdict, the court qualified S.'s actions as continuous theft, citing them as the basis for sequential theft from adjacent warehouses in a single night.

The criminal trial panel approved the grounds presented by the prosecutor and found it necessary to reclassify the act not as a single crime, but as a repeated crime.

According to the law, a continuous crime means the commission of identical crimes with a single intent from the same source, and they must constitute a single crime. Documents examined in court show that although these thefts were committed in one night, the property was taken from different storage locations and belonged to different victims. Therefore, the actions of the accused do not constitute a single crime, and there is no basis to assess these actions as a single ongoing crime.

In this case, the cassation court considered the adjacent warehouses as separate sources and qualified the property illegally stolen from each warehouse as an independent crime.

Due to the lack of doctrinal recommendations, the practice of legal guidance on the uniqueness of the source of property theft has not yet been established. Therefore, developing scientifically

sound recommendations for criteria to identify signs of continuous crime is of particular importance.

When analyzing different approaches to assessing the source used in repeated illegal misappropriation of property, it is necessary to consider that the main characteristic is the criminal's single intent, that is, the subjective connection of legally identical encroachments on property. Regarding the uniqueness of the source in the piecemeal misappropriation of property, this feature is an external manifestation of subjective unity and is one of the factors proving a single intent. From the standpoint of subjective responsibility, the source of repeated illegal acquisition of property should be assessed through the criminal's mental attitude. If a person steals property from different storage locations with a single intent and perceives them as a single source, the committed crime should be recognized as continuous theft from the same source. In other words, when there are legally identical actions aimed at encroaching on subjectively connected property, it is impossible to equate physically identical storage locations with a single storage location. In this case, multiple closely spaced storage locations should also be recognized as a single source.

For example, if property is stolen from multiple warehouses located in the basement of a multi-story building with a single intent, the basement should be recognized as the source of the theft. If theft is committed with the sole intent of stealing from multiple adjacent garages, the garages should be considered as the sole source. Here, the unity of the place (territory) plays an important role, not the unity of storage areas. In some cases, law enforcement agencies justify the presence of signs of continuous theft by stating that it was committed "in one place." When determining the uniqueness of the source from which continuous misappropriation is carried out, judicial practice applies not only the location-based criterion but also the legal criterion. This criterion means that the property stolen through repeated actions belongs to the same owner (which can be an individual, a legal entity, or the state). In such cases, the sole source is equated with the sole property of the victim.

According to P.S. Yani, "the existence of a single source creates grounds for qualifying identical actions that harm only one victim as a single continuous crime." If a person steals the property of several victims even in a short period of time, for example, steals money from the bags of several citizens on public transport, each theft is qualified separately based on the value of each citizen's property. A similar position is supported by N.A. Lopashenko: "If the perpetrator committed the same actions against different victims with a single intent, there are no signs of continuous theft."

In our opinion, it is difficult to fully agree with these views. There are many critics of this approach. For example, the well-known Polish criminologist

S. Budzinsky states: "The number of victims is often the result of random events that are not directly related to the intent of the perpetrator and fall outside the scope of his will. For example, in one case, a thief decides to steal something from a hotel, but his intent is not directed at a specific person: he collects whatever items he can grab and runs away. In another case, the thief first steals clothes from one hotel room, and two days later, he steals another item from a different room, but the victim turns out to be the same person because they changed their room after the first theft. In the third case, the criminal steals wine from the same cupboard several times, but between the two thefts, the owner of the cupboard changes.

If we evaluate the uniqueness of the crime based on having a single victim, we are forced to admit that in the second case there is only one crime, while in the first and third cases, several crimes were committed. However, it is clear that such a conclusion is unfair and illogical".

N.S.Tagantsev also expressed a similar opinion, stating that "the characteristic that distinguishes continuous theft from repeated crime cannot be recognized as the uniqueness of the victim, because theft from a trunk containing items belonging to different victims is not considered multiple thefts for this reason. On the other hand, burning houses belonging to the same person at different times or stealing different things from the same person at different times is not a single continuous crime, but rather a repeated crime."

If these actions were carried out in the same place and (or) by the same person, the source of the embezzlement should be recognized as singular.

When examining the issue at hand, namely the characteristics of ongoing thefts, the singularity of the source is of particular importance. This raises the question of whether the singularity of the source can be considered a characteristic feature of all ongoing thefts, or if it is specific only to certain forms of theft. It is difficult to provide a definitive answer to this question, which can be confirmed by consulting expert opinions, as their views are almost equally divided and differ.

On the one hand, the Resolution of the Supreme Court of the Russian Federation No. 29 of December 27, 2002, "On Judicial Practice in Cases of Theft, Robbery and Brigandage," indicates that it is aimed at resolving issues related to theft, robbery, and brigandage in judicial practice. Therefore, it can be assumed that the singularity of the source mentioned in paragraph 16 of this resolution might only apply to ongoing thefts in the form of theft, robbery, and brigandage. At the same time, the Resolution of the Supreme Court of the Russian Federation No. 51 of December 27, 2007, "On Judicial Practice in Cases of Fraud, Misappropriation and Embezzlement," discusses in paragraph 27 "the large or very large scale of theft of something," but provides no information on the singularity of the source.

This suggests that the singularity of the source may be characteristic only of certain types of theft.

Paragraph 16 of Resolution No. 29 of the Supreme Court of the Russian Federation dated December 27, 2002, cites the singularity of the source as a feature of ongoing theft, and this principle applies to all ongoing thefts, regardless of their form or type. This perspective, while applied to cases related to theft, robbery, and brigandage, is also considered applicable to other forms of theft. There are several examples in judicial practice where the principle of source singularity is also applied to other forms of theft, such as fraud or misappropriation.

This situation indicates that the principle of source singularity is used as a broader and universal criterion for distinguishing between different forms of theft and for identifying ongoing theft. This implies that it can be used as a general principle in judicial practice, even for different crimes or their various forms.