

## OFFENCES OF ABUSE OF TRUST AND DECEPTION

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**Abstract:** *This paper analyzed the contents offenses of breach of trust, breach of trust by defrauding creditors, deception and deceit Insurance, presenting specific issues regarding pre-existing conditions for each offense, highlighting subjects such crimes, a side objective and subjective, and the penalties applicable. The new rules were laid two criminal offenses us: breach of trust by defrauding creditors and deception Insurance, which have a separate normative existence, but derived from the offenses of breach of trust and cheating respectively.*

**Keywords:** *breach of trust, breach of trust by defrauding creditors, deception and deceit Insurance.*

### **1. The offense of breach of trust**

According to art. 238 par. (1) Criminal Code offense of breach of trust of appropriating, disposal or use, unfairly, a movable another man, the one who was entrusted under a title and a particular purpose, or refusal of refund shall be punished with imprisonment from 3 months to 2 years or a fine.

The legal object is the social relations of an economic development which implies that the subjects must trust and a mutually agreed. Breach of trust is a good material object, any title held by the offender, and that he has mastered it or ordered it.

The active subject of the offense of breach of trust can be any person who has received any moveable property title. Passive subject of the crime may be any person or entity. Criminal participation is possible in any of its forms.

The material element can be achieved through one of the following: asset acquisition, disposition of property or use of property or wrongfully refusing to return it.

If the perpetrator holds more goods of the same person, if he appropriates some of them have more or refuses to surrender, he will commit a single crime.

By acquiring a movable another's good that means taking possession of the offender which, although only owner of the property, behaves towards it as if it had ownership. Assimilation is unfair because it carried over the good of another person.

It has wrongly assumed a good mood perform acts which, according to title holder was not entitled to make. There will be no infringement where, occupiers of property has good and in the legal act which was sent to detention, not banning it.

Refusal of refund is the manifestation of the will of the perpetrator not to return property which has been committed and it retains for itself; would constitute an abuse of the holder.

The refusal of the refund may be expressly declares explicitly that when the perpetrator does not want to return the property and default, when there is an express declaration of the perpetrator refusal resulting from its manifestation. Existence of the offense by refusing to refund the property is necessary that this refusal is unjustifiable intention to rely on the perpetrator to it himself.

The immediate result is to change the legal status of the property damage and creating a passive subject. Action between the perpetrator and the immediate consequence must be a causal relation. The offense of breach of trust is committed intentionally, directly or indirectly.

Attempt at crime of abuse of trust shall not be punished. The offence of abuse of trust is an instant offense, consuming them takes place concurrently with the execution of any of the actions which form element.

Attempted crime of embezzlement is not punished. The offense can commit repeated acts and depletion occurs with committing the final act constituting criminal activity.

Breach of trust is punishable by imprisonment from 3 months to 2 years or a fine. Criminal proceedings shall be initiated upon the complaint of the victim, according to art. 238 par. (2) Penal Code.

## **2. The offense of breach of trust by defrauding creditors**

In accordance with art. 239 par. (1) Criminal Code, breach of trust by defrauding creditors is to act debtor to dispose of, conceal, damage or destroy, in whole or in part, values or goods of its assets or to invoke acts or debts fictitious in order fraud of creditors . (2) art. 239 of the Criminal Code provides for a variant treated

lies in the fact that the person who, knowing that he could not pay, buy goods or services causing damage to the creditor.

Breach of trust by defrauding creditors seeks legal social relations regarding ownership, involving creditors' confidence in borrowers, under a legal obligation and a business fair, based on the good faith of the debtor, who must to reduce their assets at the expense of unsecured creditors.

The material object is the movable or immovable assets of the debtor that the debtor's shares were exercised. Also, the material object of the offense may consist of goods purchased by the perpetrator, knowing that they are unable to pay.

The active subject of abuse of trust by defrauding creditors option provided for in art. 239 par. (1) Criminal Code is the debtor, and in the manner provided for in art. 239 par. (2) Penal Code active subject of infracțiunii is unable to pay the person in acquiring goods or services. The passive subject is the lender, natural or legal person.

The offense of breach of trust by defrauding creditors is likely to be committed in criminal form of incitement and complicity.

The material element of abuse of trust by defrauding creditors in the version provided for in art. 239 par. (1) Criminal Code, is in one of the following: to alienate, to hide, to damage, destroy in whole or in part values or goods of their own assets or to invoke acts or debts fictitious in order fraud of creditors.

A alienate goods or values of heritage involves making available documents which have as their object such goods.

Hide valuables or goods is not to notify the existence of creditors or hiding their assets and valuables. Property damage involves failures. The destruction of values or goods brought into disuse requires them. Invoking acts or fictitious debt requires action by the debtor to the creditor debts this nonexistent.

For the existence of the offense of breach of trust by defrauding creditors option provided for in art. 239 par. (1) Criminal Code, there should be a legally binding obligation between debtor and creditor, which requires that the debtor held by achieving an obligation assumed, not a satisfying and alienating, damage, hide or destroy property belongs to his or invoke acts or fictitious debts in order to defraud the lender. The existence of the option offense provided for in art. 239 par. (2) Penal Code requires that the debtor be unable to pay and purchase goods or services to defraud creditors. In this form, it is necessary to recognize that the offender is unable to pay when purchasing goods or services.

The immediate result of the offense of breach of trust by defrauding creditors, both ways, is to change the legal situation of the debtor's property. Action between the perpetrator and the immediate consequence must be a causal link.

Breach of trust by defrauding creditors is committed intentionally. The subjective aspect of the offense is conditional on a goal pursued by the perpetrator, namely order to defraud creditors. The offense exists even if the goal was not reached.

The attempt is punishable only if the variant referred to in art. 239 par. (1) Criminal Code.

The crime occurs when executing an action provided for in art. 239 par. (1) the purpose of fraud against creditors or when procuring goods or services that cause damage by increasing the passive subject of insolvency science, in particular variant set out in art. 239 par. (2) Penal Code.

Breach of trust by defrauding creditors, both alternatives indictment, is punishable by imprisonment from 6 months to 3 years or a fine.

According to art. 239 par. (3) Penal Code, criminal proceedings shall be initiated upon the complaint of the injured party.

### **3. The offense of deception**

The offense of deception, is provided in art.244 Criminal Code, par. (1) misleading a person by presenting as true a fact false or misleading of accepted truths, in order to obtain for himself or for another a patrimony unjust and if it caused damage, punishable by imprisonment from 6 months to 3 years. According to art. 244 of the Criminal Code, the offense is more serious if it is committed by using false names or attributes or other fraudulent means shall be punished with imprisonment from one to 5 years.

The legal object of the offence of deception is the social relationships on the patrimony of the person, relationships involving legal relations, which should be based on trust and good faith. Material object of the offense of cheating can be any movable or immovable property or documents with heritage value.

The active subject of the offense of deception can be any person who meets the legal requirements for criminal responsibility. The doctrine expressed the opinion that we do not consider correct, that when the perpetrator is an official public and uses fraudulent means in the line of duty to fulfill incorrectly, then it will be responsible for the offense of abuse of office, provided for in art. 297 of the Criminal Code.

Criminal participation in the offense of deception is possible in any of its forms - co-authorship, incitement and complicity. Passive subject of the offence can be any natural or legal person, public or private has been injured as a result of the offense.

The material element of the offense of deception requires a misleading action, that action delusion passive subject. The action of deception can be achieved either by presenting facts as true a false or misleading by presenting as a true facts, so the victim perpetrator creates a false representation of reality. From the text of the Criminal Code art.244 resulting concrete ways in which a person is persuaded to believe falsehoods presented, but they can be cunning, scheming, etc. For the existence of offence of deception is irrelevant whether the victim was or was not easily misled, therefore, the ability of means to deceive depends on the person of the victim, the degree of intelligence or education, her condition psychic since committing deed, etc.

In the variant type of the offense of deception referred to in art. 244 paragraph (1), the ways by which it can be misleading not only in the form of simple passive subject untruths presented to them create a false representation of reality. But if misleading is supported by other fraudulent means - names, qualities documents so untruths shown to have a greater impact in the persuasion of the victim, then the act is circumscribed variant aggravating provided in art.244 paragraph (2) Penal Code.

Using false names by the perpetrator involves using an imaginary name that does not exist in reality, or the name of another person.

Regarding the qualities false claim perpetrator in the act of misleading a person mention that they can target a function, profession, title, rank, membership in an entity or a commission, degree of relationship with another person or marital status of the active subject. Also, qualities that may raise false perpetrator in legal relations with natural or legal persons are the representative, associate, agent, etc.

According to art. 244 paragraph (2) of the Criminal Code, if fraudulent means constitutes in itself a crime on the rules of the offenses so that the offender will be criminally liable for the offense of deception in the contest with the aggravated offense circumscribing used fraudulent means. If variant aggravated offense of cheating achieving material element of deception presupposes that the action takes place through the use of fraudulent means.

Immediate result of the offense of deception is to produce a patrimonial damage. Between the action for misrepresentation and a prejudice must be a causal link. If the damage is due to causes other than the action of misleading causal link between action and outcome of the dangerous act can not be established.

In terms of the subjective side, the offense of deception is committed with direct intent, because the active subject realizes his action for misrepresentation likely to cause deception victim seeks producerea result, which implies a certain conduct of the passive subject, based on a reality distorted, and a loss in the heritage of the victim, the perpetrator gaining an unfair patrimony to achieve the goal set in advance. By means any material benefit advantage, benefit, profit economic, monetised and unjust material benefit is that advantage, benefit, profit on the offender and appropriates it without being entitled to do so.

For the existence of the offense in terms of the subjective side, it is necessary that the action of the perpetrator to mislead the victim to be done in order to obtain for himself or for another an unjust material benefit.

Preparatory acts are not punishable by law with all that is possible, however that may be relevant in terms of seriousness. When preparatory acts have been made by another person to assist in operating the action by the delusion we are in the presence of previous acts of complicity. Attempted crime of deception is possible and punished.

The offense of deception is consumed when the perpetrator managed to persuade the passive subject, by deceit, take a decision diminishes its heritage

When the conditions set out in art. 35 paragraph (1) of the Criminal Code offense of deception may be committed in the form of continued criminal activity. The doctrine was noted that the offense of cheating against property when committed by presenting false documents or by false statements in order of receipt of money, financial aid to regular offender commits the offense of cheating applying art. 36 paragraph (1) of the Criminal Code.

According to art. 244 paragraph (1) of the Criminal Code offense of deception is punishable by imprisonment from 6 months to 3 years. For the aggravated if the act was committed by fraudulent means punishment is imprisonment from 1 to 5 years. Besides imprisonment and fine penalty can be applied in accordance with art. 62 para. (1) Criminal Code, if the offense committed was aimed at obtaining a patrimony.

The text of art. 244 par. (3) Criminal Code provided a cause for punishment that is activated by a reconciliation, which removes criminal liability. Reconciliation takes effect only on persons between intervening if it happens to read the document instituting the proceedings. For persons deprived of legal capacity, the reconciliation is made by the legal representative and persons with limited legal capacity can reconcile with the consent of persons under the law.

#### **4. The offense of deception on insurance**

Insurance deception offense is, according to art. 245 par. (1) Criminal Code into destruction, degradation, brought into disuse, concealment or transfer of property insured against destruction, degradation, wear, loss or theft, in order to obtain for himself or for another, the sum insured.

In art. 245 par. (2) provided an attenuated form of the offense, the person who is to act in order to obtain for himself or for another, sum assured, simulate, their causes or aggravates damage or injury caused by an insured risk.

Legal subject is social relationships on trust and good faith that must exist in the insurance and the protection of property interests of insurers against acts committed by the insured.

The material object consists variant referred to in art. 245 par. (1) the property on which the destruction, degradation, bringing in a state of disuse, concealment or alienation, and if the offense provided for in art. 245 par. (2) the subject material may consist of simulating a person's body, they cause or worsen damage or injury caused by an insured risk.

The active subject of the offense referred to in art. 245 par. (1) Criminal Code can be any natural person who meets the general conditions of criminal liability, while the active subject of the variant referred to in art. 245 par. (2) may not be the insured person. The passive subject is the insurance company.

If criminal participation in the offense referred to in paragraph. (1) it is possible in all its forms. Variant in para. (2) can commit to participation, but it is necessary for the existence coautoratului authors have ensured the quality of the action being committed.

The situation is no prerequisite to both crimes provided for in art. 245, and it is the existence of an insurance contract [of goods if the act referred to in paragraph. (1); the person if the offense referred to in paragraph. (2)] in writing (art. 2200 Civil Code), the date of the offense. At the time of the offense, the insurance contract shall be valid, ie not hit any nullity. The offense does not exist if the contract expired or if it contains clauses available on the property which is the subject matter of the offense.

The material element of the first variant consists in the destruction brought into disuse, concealment or alienation of the object of insurance, and if the offense referred to in paragraph. (2) it is the simulation, causing or worsening lesions or injuries.

Destruction presupposes the abolition of all or part of the property and degradation involves damage to property. Bringing in a state of disuse relate to the decommissioning of the asset, which can not be used.

Hiding insured property involves generating an appearance on the disappearance or theft and ensure the object alienation means the sale or donation insured property.

The option provided for in art. 245 par. (2) the material element consists of simulating, causing or aggravating existing injuries or injuries caused by an insured risk. Simulation of damage or injuries involves the generation of appearance that he suffered an injury in order to get the sum insured for himself or another. Action perpetrator may consist of causing injury or harm one's body in order to obtain the insured amount. Worsening damage or injuries requires a deepening of existing lesions or injuries due to the action of the perpetrator.

For the existence of the offense in both versions it is necessary to have a valid insurance contract, covering goods or people and to have effect. The immediate result is a state of danger to protected values and social relations. Causal link must exist between the perpetrator and the action or inaction of immediate consequence, this resulting from the facts.

The facts set out in art. 245 par. (1) and (2) were committed with direct intent. The offense is conditional on a purpose.

The attempt is possible and punished. The offense of attempted fraud on the insurance form, committed by individuals and legal persons shall be punished within the limits prescribed for the offense consumption reduced by half, according to art. 33 paragraph (2) of the Criminal Code offense. Consuming the offense takes place by the time the sequel occurred immediately.

The penalty applied to par. (1) shall be imprisonment from one to five years, and if par. (2) închi-soare from 6 months to 3 years or a fine. A legal person can be convicted only penalty fine form day fine from 120 lei to 240 lei, the amount corresponding to the day fine ranging between 10 lei and 500 lei depending on the turnover, the value of the assets or based other obligations of legal entities. In setting the fine will take into account and value patrimony sought or obtained. If the offense was aimed at obtaining a patrimony, and the punishment prescribed by law is only a fine or court opts to apply this punishment, special limits of the day-fine may be increased by a third.

According to art. 245 par. (3) Criminal proceedings shall be initiated upon the complaint of the injured party.

## **5. Conclusions**

Reporting to the old regulatory investigation we can say that, in case of abuse of trust, was dedicated to a new way of committing the offense, the unlawful use of property entrusted to

a specific purpose by the person who received it. The current text of art. 238 of the Criminal Code provides for both the situation where a person not entitled to use the property, but the situation in which the receiving good has the right to use it, but use it for purposes other than that for which it was entrusted.

The current Criminal Code, in the chapter on crimes against property through disregard of confidence has been introduced a new criminality, breach of trust by defrauding creditors who may commit in two ways, either by the debtor to dispose of, conceal, damage or destroy, in whole or in part, of its heritage values or goods, or to invoke acts or fictitious debt.

Referring to the current content of the offense of deception referred to in art. 244 of the Criminal Code, in relation to the previous regulation, it is found that variants were eliminated from qualifying for the offense during the conclusion or performance of a contract, which is criminalized in a special art form. 239 of the Criminal Code, only about buying or purchasing goods or services at deception and deceit uncovered checks with serious consequences. A new element included in the new regulation is that, although criminal proceedings set in motion by default, reconciliation of the parties removes criminal liability.

The new Criminal Code criminalizes art. 245 Insurance deception, as distinct variant of the crime of fraud, alternatively offense be committed by destruction, degradation, brought into disuse of property insured; concealment of property insured; alienation of property insured or simulation, causing or aggravating injury or injuries.

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