



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 48

Moscow

30 November 2017

On Judicial Practice in Cases on Fraud, Misappropriation and Embezzlement

In order to ensure the uniform practice of court application of criminal law norms regarding liability for fraud, misappropriation and embezzlement, and with regard to the issues raised by the courts, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

1. The attention of the courts is drawn to the fact that the theft of another person’s property or acquisition of rights to another person’s property during fraud, liability for which is entailed in accordance with Articles 158¹, 159, 159¹, 159², 159³, 159⁵ of the Criminal Code of the Russian Federation (hereinafter – the CrC RF), is committed through deceit or abuse of trust, acting under which the property owner or another person transfers the property or the right thereto to another person or fails to prevent the seizure of that property or the acquisition of right thereto by a different person.
2. Deceit as a way of theft or acquisition of right to another person’s property may take the form of wilful disclosure (presentation) of misleading, false information or failure to disclose true facts, or the form of deliberate actions (e.g. provision of adulterated goods or of another subject matter of a transaction, use of different

deceptive techniques during payment for goods or during gambling, imitation of accounts settlement, etc.), aimed at deceiving the owner of the property or another person.

False information disclosed during fraud (or concealed information) may pertain to any circumstances, in particular to legal facts and occurrences, the quality, price of property, the personality of the guilty person, its powers and intentions.

If the fraud is not aimed directly at seizure of another person's property and is only used to ease access to the property, the actions of the guilty person form the elements of larceny or robbery, depending on the manner of theft.

3. Abuse of trust during fraud is the profit-motivated use of trust-based relations with the owner of the property or another person authorised to make decisions about the transfer of that property to third persons. The trust may be based on different circumstances, e.g. the official position of a person or its personal relations with the injured party.

Abuse of trust also takes place when a person assumes obligations, knowingly lacking intent to fulfil them, for the purpose of uncompensated conversion of another person's property for own benefit or for the benefit of third persons or the purpose of acquisition of right to such property (e.g. receipt by a natural person of a loan, an advance payment for works, services, pre-payment of goods, if that person knowingly had no intention to return the loan or fulfil its obligations in a different way).

4. When a person receives another's property or acquires the right to it without intending to fulfil obligations pertaining to the conditions of transfer of said property or of right thereto, which results in material damage to the injured party, this should be qualified as fraud, if the intent directed at theft of another's property or acquisition of right to another's property appeared before that person received the property or the right thereto.

The existence of such intent may be indicated, in particular, by known absence of real ability to fulfil the obligation in accordance with the terms of the contract, use of forged documents during the formation of contract (including identification documents, incorporation documents, letters of guarantee, reference notes), concealment of information about the existence of debt and pledges of property,

disposal of the received property for personal purposes in violation of the contract terms, etc.

The courts should note that the aforementioned circumstances cannot by themselves predetermine the conclusions of the court regarding the guilt of the person in committing fraud. In each individual case it must be ascertained, with due regard to all the facts of the case, that the person knowingly lacked the intent to fulfil its obligations.

5. Fraud, i.e. theft of another person's property, committed through deceit or abuse of trust, is recognised as accomplished from the moment when the aforementioned property comes into the illegal possession of the guilty person or of other persons, and they become actually able to use or dispose of that property (depending on its consumer attributes) at their own discretion.

If the subject matter of crime during fraud are cashless monetary funds, including electronic monetary funds, then, by implication of Item 1 of Note to Article 158 of the CrC RF and Article 128 of the Civil Code of the Russian Federation, these actions should be qualified as theft of another person's property. Such a crime should be regarded as accomplished from the moment of seizure of the monetary funds from the banking account of their owner or from the moment of seizure of electronic monetary funds, as a result of which damage is caused to the owner of those monetary funds.

6. If fraud is committed in the form of acquisition of right to another person's property, the crime is considered accomplished from the moment when it becomes legally possible for the guilty person to take possession of or dispose of another's property as of its own (in particular, from the moment the title to real property is registered or from the moment when other property rights are registered, where subject to such registration in accordance with the law; from the moment a contract is signed; from the moment an endorsement is made on a promissory note; from the moment an entitling decision becomes effective, made by an authorised body or person deceived into believing that the guilty person or other persons have lawful grounds to own, possess or dispose of the property).

7. Theft of another person's property or acquisition of a right thereto through deceit or abuse of trust, committed with the use of an official document forged by that person, if such a document grants rights or exempts from duties, requires additional qualification under Part 1 of Article 327 of the CrC RF.

If a person forged an official document, but did not actually use that document for reasons beyond its control, that action should be qualified under Part 1 of Article 327 of the CrC RF. That action should be qualified in accordance with Part 1 of Article 30 of the CrC RF as preparation for fraud, if the facts of the case indicate that the person intended to use the forged document to commit crimes stipulated in Parts 3, 4, 6 or 7 of Article 159, Parts 3 or 4 of Article 159¹, Parts 3 or 4 of Article 159² of the CrC RF or Parts 3 or 4 of Article 159⁵ of the CrC RF.

If a person used a self-made forged document for the purposes of theft of another person's property through deceit or abuse of trust, but failed to seize the property of the injured party or acquire the right to another's property for reasons beyond its control, these actions should be qualified cumulatively as crimes stipulated in Part 1 of Article 327 of the CrC RF and Part 3 of Article 30 of the CrC RF and, depending on the facts of the concrete case, stipulated in the corresponding article of the Special Part of the Criminal Code of the Russian Federation, stipulating liability for fraud.

Theft of another person's property or acquisition of right to that property through deceit or abuse of trust, perpetrated with the use of a forged official document made by another person, is incorporated by the elements of crime of fraud and does not require additional qualification under Article 327 of the CrC RF.

8. Unlawful seizure of monetary funds, other property belonging to another person or acquisition of right thereto through submission (presentation) of another person's personal documents or other official documents (e.g. passport, pension certificate, birth certificate) is qualified as fraud, correspondingly under Articles 158¹, 159, 159¹, 159², 159³, 159⁵ of the CrC RF, depending on the object of offence and other facts of the case.

If the guilty person has previously stolen the aforementioned documents, these actions are subject to additional qualification under Part 1 of Article 325 of the CrC RF (if an official document was stolen) or under Part 2 of that Article (if a passport or another important personal document was stolen).

9. If a citizen lost its right to residential premises as a result of fraud, the actions of the guilty person should be qualified under Part 4 of Article 159 of the CrC RF, independent of whether those residential premises were the only ones that the

injured person had and (or) whether the injured person used them for own residency.

By implication of the aforementioned criminal law norm in its correlation with the Note to Article 139 of the CrC RF and Article 16 of the Housing Code of the Russian Federation, the notion of residential premises includes a residential house, a part of a residential house, an apartment, a part of an apartment, a room in a residential house or an apartment, independent from the form of ownership, constituting a part of the housing funds. The fact that the aforementioned premises do not meet sanitary, technical or other norms, are not fit for living does not have any effect on qualification. Objects that are not real property (tents, trailers, caravans, accommodation cabins, other premises, buildings and constructions not constituting a part of the housing funds) cannot be regarded as residential premises.

For the purposes of Part 4 of Article 159 of the CrC RF, a right to residential premises is the property right to residential premises or the right to use them, belonging to a citizen at the moment of perpetration of the crime (in particular, right of use by family members of the owner, right of use based on testamentary devise, right of use based on a rent and life estate contract, right of use based on a social rent contract).

10. If a citizen was not deprived of the right to residential premises as a result of fraud, but of the possibility to acquire such a right (e.g. if money is stolen when a person enters a fictitious housing rent contract or in case of theft of money under the pretence of attraction of funds for participation in shared construction of multi-flat houses), then the element of deprivation of a citizen of the right to residential premises is not present in the actions of the guilty person.

The liability for attraction of citizens' monetary funds in violation of legislation of the Russian Federation on participation in shared construction of multi-flat houses and (or) of other property objects in the absence of elements of fraud is entailed in accordance with Article 200³ of the CrC RF.

11. The courts need to take into account that the elements of fraud, stipulated in Parts 5–7 of Article 159 of the CrC RF, are present, if:

- the actions of the person contain elements of theft of another person's property or acquisition of right to another person's property through deceit or abuse of trust;

- the aforementioned actions are conjoined with deliberate failure of the guilty person to fulfil obligations assumed under a contract in the sphere of entrepreneurship, the parties to which are only individual entrepreneurs and (or) commercial organisations;
- the guilty person is an individual entrepreneur or a member of the managing body of a commercial organisation.

The aforementioned crime is regarded as committed with direct intent, aimed at theft of another person's property or acquisition of right to such property, which appears before the guilty person acquires such property or the right thereto. Herewith, it does not matter how the guilty person planned to dispose or disposed of the stolen property (e.g. used it for personal purposes or for entrepreneurship).

Fraud in conjunction with deliberate failure to fulfil contract obligations in the sphere of entrepreneurship is regarded as punishable by criminal law, if it results in damages to an individual entrepreneur or a commercial organisation amounting to 10 000 rubles or more. The amount of damage caused is to be calculated based on the value of stolen property at the moment of perpetration of the crime. By virtue of Item 2 of Notes to Article 158 of the CrC RF, significant damage caused to the injured person as a result of a crime stipulated in Part 5 of Article 159 of the CrC RF is established without regard to the injured person's material status.

12. If the intent of the guilty person is directed at theft of another person's property through deceit or abuse of trust under the pretence of attraction of monetary funds or other property of citizens or legal persons for the purposes of investment, entrepreneurship or other lawful activities, in which that person does not actually engage, this, depending on the facts of the case, comprises the elements of fraud (Parts 1, 2, 3 or 4 of Article 159) or of fraud in conjunction with deliberate failure to fulfil contract obligations in the sphere of entrepreneurship (Parts 5, 6 or 7 of Article 159 of the CrC RF) and does not require additional qualification under Article 172² or 200³ of the CrC RF.

13. If a borrower receives cash or cashless monetary funds by presenting a bank or another creditor with misleading and (or) false information for the purpose of uncompensated conversion of monetary funds for own benefit or the benefit of third persons, while knowingly lacking intent to return them in accordance with the contract terms, such actions are subject to qualification under Article 159¹ of the CrC RF.

For the purposes of Article 159¹ of the CrC RF, a borrower is a person that applies to a creditor with an intent to receive, that receives or received a loan in the form of monetary funds in its own name or in the name of a legal person lawfully represented by him/her.

By implication of the law, a creditor under Article 159¹ of the CrC RF may be a bank or another credit organisation that is authorised to enter credit contracts (Article 819 of the Civil Code of the Russian Federation).

Deceit during fraud in the credit sphere is committed by presenting the creditor with misleading or incorrect information about the circumstances, the existence of which is stipulated in the contract as a precondition for receipt of a credit (e.g. information about one's job, income, financial condition of an individual entrepreneur or organisation, existence of unsettled accounts payable, about the property that is subject matter of a pledge).

14. Where a person misrepresents itself as a different person for the purpose of theft of monetary funds, e.g. by presenting another person's passport when getting a loan or by acting on the basis of forged documents in the name of a non-existent natural or legal person or by using other persons, who do not know about its criminal intentions, in order to get a loan, there are no grounds for qualification of those actions under Article 159¹ of the CrC RF; liability is entailed under Article 159 of the CrC RF.

If an individual entrepreneur or a head of an organisation provides the creditor with misleading information about the business situation or financial condition of the individual entrepreneur or organisation, not for the purpose of theft of monetary funds, but for the purpose of obtaining credit or getting more preferential credit terms, thereby intending to fulfil contract obligations, such actions do not form the elements of fraud in the credit sphere. If the aforementioned actions of that person cause significant damage to the creditor, they are qualified under Part 1 of Article 176 of the CrC RF.

15. Theft of monetary funds or other property through fraud is qualified under Article 159² of the CrC RF, if it involves illegal receipt of social payments, i.e. payments stipulated in federal laws, laws of constituent entities of the Russian Federation, normative legal acts of federal executive bodies, normative acts of local self-government bodies for citizens in need of social support.

For purposes of Article 159² of the CrC RF, social payments include, in particular, unemployment benefits, compensation for food, healthcare, subsidies for procurement or construction of residential premises, for payment for residential premises and communal services, funds of maternity (family) capital, as well as provision of medical products, means of technical rehabilitation (artificial limbs, wheelchairs, etc.), special transport, trip vouchers, food products.

By implication of Article 159² of the CrC RF, grants, education allowances provided to natural persons and organisations for the support of science, education, culture and art, subsidies for the support of agricultural producers, support of small and medium entrepreneurship are not regarded as social payments. Fraudulent receipt of these payments is qualified under Article 159 of the CrC RF.

16. Deceit as a way of committing fraud in receipt of payments, stipulated in Article 159² of the CrC RF, takes the form of provision of an executive body, institution or organisation, authorised to make decisions regarding payments, with misleading and (or) incorrect information about the facts that, in accordance with a law or another normative legal act, precondition the receipt of corresponding payments in the form of monetary funds or of other property (in particular, information about the identity of the recipient, her/his disabilities, children, dependents, participation in military actions, lack of employment opportunities), as well as the form of concealment of the fact that the grounds for receipt of those payments ceased to exist.

If by providing misleading and (or) incorrect information or by concealing certain facts a person received a document (reference note, identity document, certificate, etc.) confirming its right to receive social payments, but did not actually use that document to receive social payments for reasons beyond its control, these actions are qualified in accordance with Part 1 of Article 30 of the CrC RF as preparation for fraud in receipt of payments, if the facts of the case indicate that said person intended to use that document to commit crimes stipulated in Parts 3 or 4 of Article 159² of the CrC RF.

Both a person who does not have the corresponding right to receive social payments and a person that has such a right (e.g. in case of deceit about the facts determining the amount of payments) may be subjects of the crime stipulated in Article 159² of the CrC RF.

17. If theft of property is perpetrated with the use of a credit, debit or another payment card that is forged or belongs to another person, when the guilty person provides an employee of a credit, trade or another organisation with misleading information that the card lawfully belongs to her/him or conceals that he/she owns the payment card illegally, such actions should be qualified under Article 159³ of the CrC RF.

Theft of monetary funds belonging to another person through the use of a previously stolen or forged credit card does not constitute fraud, if the cash monetary funds were issued by an automatic teller machine without participation of an authorised employee of a credit organisation. In such circumstances the crime is to be qualified as larceny.

If a person steals cashless monetary funds using confidential information of the payment card holder, necessary to gain access to those funds (e.g. personal data of the holder, payment card data, control information, passwords), that was given to the violator by the payment card holder him-/herself, these actions are qualified as larceny.

18. If a person produced, acquired, stored, transported forged payment cards, money transfer requests, documents or payment means (except where Article 186 of the CrC RF applies), as well as electronic means, electronic information storage devices, technical devices, computer software designed for unlawful receipt, issue, transfer of monetary funds for the purpose of him-/herself committing a crime stipulated in Part 3 or 4 of Article 158 of the CrC RF, Part 3 or 4 of Article 159 of the CrC RF, Part 3 or 4 of Article 159³ of the CrC RF or Part 3 or 4 of Article 159⁶ of the CrC RF, which that person could not accomplish for reasons beyond its control, these actions are to be qualified cumulatively as preparation for the aforementioned crime and an accomplished crime stipulated in Article 187 of the CrC RF.

Dealing of forged payment cards, money transfer requests, documents or payment means (except where Article 186 of the CrC RF applies), as well as of electronic means, electronic information storage devices, technical devices, computer software designed for unlawful receipt, issue, transfer of monetary funds, which are patently unfit for use, forms the elements of fraud and is subject to qualification under Article 158¹ of the CrC RF or under the corresponding part of Article 159 of the CrC RF. If a person produced, acquired, stored, transported the aforementioned payment means, patently unfit for use, for the purpose of selling them, but could

not sell them for reasons beyond its control, this, in accordance with Part 1 of Article 30 of the CrC RF, should be qualified as preparation for fraud, if the facts of the case indicate that these actions were aimed at commission of crimes stipulated in Part 3 or 4 of Article 159 of the CrC RF.

19. When considering cases regarding crimes stipulated in Article 159⁵ of the CrC RF, the courts should note that fraud in the sphere of insurance is committed through deceit regarding the occurrence of the insured event (e.g. provision of misleading information about the facts indicating the occurrence of the insured event, staging of a traffic accident, accident, theft of insured property) or regarding the amount of the payable insurance benefit (provision of false information with an overstated amount of damages in regard of a real insured event).

The subject of crime stipulated in Article 159⁵ of the CrC RF may be a person that performed the objective aspect (*actus reus*) of the crime (e.g. the policy holder, the insured person, another beneficiary, a representative of the underwriter or an expert conspiring with the beneficiary).

20. By implication of Article 159⁶ of the CrC RF, interference into the functioning of means of storage, processing or transfer of computer information or of information and telecommunication networks is the purposeful attack of software and (or) hardware-software means upon servers, computer technology means (computers), including transportable (portable) ones – laptops, tablet computers, smartphones carrying the corresponding software, or upon information and telecommunication networks, which disturbs the established process of processing, storage, transfer of computer information, allowing the guilty person or another person to illegally take possession of another's property or acquire a right thereto.

Fraud in the sphere of computer information committed through unlawful access to computer information or through creation, use and distribution of malicious software requires additional qualification under Article 272, 273 or 274¹ of the CrC RF.

21. Where theft is performed through the use of personal account data of the owner or another holder of the property (independent from the way in which this data was accessed; whether the guilty person used the injured person's phone with a "mobile bank" service in secret or through deceit, authorised in an Internet payment system using another person's account data, etc.), such actions are subject to qualification as larceny, unless the guilty person engaged in an illegal attack upon the software

of servers, computers or upon the information and telecommunication networks as such. Herewith, the change of data pertaining to the state of the banking account and (or) the movement of monetary funds, which occurs as a result of use of the injured person's account data, cannot be regarded as such an attack.

If theft of another person's property or acquisition of right to another's property is performed through distribution of misleading information in information and telecommunication networks, including the Internet (e.g. creation of fake websites of charity organisations and Internet shops, use of e-mail), such fraud should be qualified under Article 159, not 159⁶ of the CrC RF.

22. Fraud should be differed from property damage through deceit or abuse of trust in the absence of elements of theft (Article 165 of the CrC RF). In the latter case, such obligatory elements or fraud as unlawful, uncompensated, profit-motivated seizure and (or) conversion of another person's property for the benefit of the guilty person or of third persons are absent, collectively or discretely.

When resolving whether the actions of a person contain the elements of crime, liability for which is stipulated in Article 165 of the CrC RF, the court needs to ascertain whether the owner or another holder of property suffered material damages or damages in the form of lost profits (underived income that the injured person would receive in normal civil turnover, had its rights not been violated through deceit or abuse of trust), and whether the sum of damages exceeds two hundred fifty thousand rubles (Item 4 of Notes to Article 158 of the CrC RF).

Deceit or abuse of trust for the purpose of illegal material gain may, for example, take the form of submission of forged documents that exempt a person from making statutory payments (except for those stipulated in Articles 194, 198, 199, 199³, 199⁴ of the CrC RF) or from paying for communal services, or the form of unauthorised access to power grids, which makes possible the unregistered consumption of energy, or the form of use of entrusted transport for personal purposes.

23. Unlawful uncompensated conversion of property entrusted to a person for the benefit of that person or of other persons, if it caused damages to the owner or another lawful holder of that property, must be qualified by the courts as misappropriation or embezzlement, if the stolen property was lawfully held by that person, who, by virtue of its official position, another employment status, a

contract or a special mandate, was executing powers of disposal, management, delivery, use or storage of another person's property.

When resolving whether the crime in question is misappropriation (embezzlement) or larceny, the courts must ascertain whether the person was vested with the aforementioned powers. Secret theft of another's property by a person that did not have such powers, but had access to the stolen property due to the nature of work it was performing or other circumstances, must be qualified as larceny.

24. When considering cases on crimes stipulated in Article 160 of the CrC RF, the courts should note that misappropriation is unlawful, uncompensated, profit-motivated conversion of property by a person entrusted with it, for own benefit and against the will of the owner.

Misappropriation is accomplished from the moment when legal possession of property entrusted to a person becomes unlawful, and this person begins to perform actions directed at conversion of that property for own benefit (e.g. from the moment when a person conceals the entrusted property through falsification or from the moment when a person fails to perform the duty to deposit the monetary funds, entrusted to it, to the bank account of the owner).

Unlawful actions of a person who, for motives of profit, spends the property entrusted to it against the will of the owner through consumption, expenditure or transfer of that property to other persons, must be qualified as embezzlement.

Embezzlement is an accomplished crime from the moment when the person begins to spend the entrusted property (to consume, expend or dispose of it).

If a person commits theft of entrusted property with a single intent, and then partly misappropriates and partly embezzles it, this does not form a cumulation of crimes.

25. When resolving, whether there are elements of theft in the form of misappropriation or embezzlement in a person's actions, the court must ascertain the facts indicating that the person's intent included the unlawful and uncompensated nature of actions, performed in order to convert the entrusted property for own benefit or the benefit of other persons.

The direction of intent must be established by the court in every such case based on the concrete facts of the case, such as whether the person had a real opportunity to

return the property to its owner, whether the person tried to conceal her/his actions through falsification or in a different way.

Herewith, the courts should note that partial restitution of damages cannot by itself serve as evidence that the person had no intent of misappropriating or embezzling the entrusted property.

26. When resolving whether a person is guilty of fraud, misappropriation or embezzlement, the courts must note that an obligatory element of theft is the profit motivation of the person, i.e. the intention to seize and (or) convert another person's property for own benefit or to dispose of the aforementioned property as of one's own, in particular by transferring it to the possession of any other persons.

Theft should be differed from situations where a person, seizing and (or) converting another's property for own benefit or the benefit of other persons, acts so for the purpose of executing its actual or supposed right to that property (e.g. if a person converted the property entrusted to it, for own benefit, in order to secure a credit obligation that was not performed by the property owner). Where there are grounds stipulated in Article 330 of the CrC RF, such actions form the elements of the crime of arrogation of power.

27. When considering criminal cases on fraud, misappropriation or embezzlement committed by two or more persons, the court, taking into account the provisions of Articles 32, 33, 35 of the CrC RF, should ascertain, exactly what actions directly aimed at performing the objective aspect (*actus reus*) of the crime were committed by each of the accomplices.

Only a person that has the features of a special subject of the corresponding crime may be regarded as the perpetrator of fraud in conjunction with deliberate failure to fulfil contract obligations in the sphere of entrepreneurship (Parts 5, 6, 7 of Article 159 of the CrC RF), fraud in the credit sphere (Article 159¹ of the CrC RF), misappropriation or embezzlement (Article 160 of the CrC RF). Based on provisions of Part 4 of Article 34 of the CrC RF, persons who do not have the corresponding status or authority, but directly participate in the theft of property based on prior arrangement with an individual entrepreneur or a member of a management body of a commercial organisation, a borrower or a person entrusted with property must be held criminally liable under Article 33 and, correspondingly, Part 5, 6 or 7 of Article 159, Article 159¹, or Article 160 of the CrC RF as organisers, instigators or accessories.

28. Fraud in conjunction with deliberate failure to fulfil contract obligations in the sphere of entrepreneurship, fraud in the credit sphere, misappropriation or embezzlement should be regarded as perpetrated by a group of persons by prior conspiracy, if two and more persons, who have the features of special subjects of those crimes, participated in the crime on the basis of a prior arrangement to jointly commit it.

In contrast to a group of persons acting upon a prior arrangement to commit a crime, an organised group in the sense of Part 3 of Article 35 of the CrC RF may also be comprised by persons, who do not have the features of special subjects stipulated in Parts 5, 6 or 7 of Article 159, Article 159¹, or Article 160 of the CrC RF, who united in advance in order to commit one or several crimes.

If fraud, misappropriation or embezzlement are recognised as perpetrated by an organised group, the actions of all its members that participated in preparing or committing the crime, independent of their actual roles, should be qualified under the corresponding parts of Articles 159, 159¹, 159², 159³, 159⁵, 159⁶, 160 of the CrC RF, without reference to Article 33 of the CrC RF.

29. Persons using their official position in fraud, misappropriation or embezzlement (Part 3 of Article 159, Part 3 of Article 159¹, Part 3 of Article 159², Part 3 of Article 159³, Part 3 of Article 159⁵, Part 3 of Article 159⁶, Part 3 of Article 160 of the CrC RF) are officials that have the features stipulated in Item 1 of Notes to Article 285 of the CrC RF, civil and municipal servants who are not officials, as well as persons meeting the requirements stipulated in Item 1 of Notes to Article 201 of the CrC RF (e.g. a person who uses her/his powers, including organisational, managerial or administrative duties in a commercial organisation, in order to commit theft of another person's property).

The element of commission of crime with the use of official position is absent, if a person misappropriates or embezzles property that belongs to a natural person (including an individual entrepreneur) and is entrusted to it under a civil law contract of lease, work and labour, commission agency, carriage, safe-keeping, etc. or under a labour contract. The aforementioned actions are comprised by Part 1 of Article 160 of the CrC RF, unless they contain any other qualifying elements stipulated in that Article.

The actions of organisers, instigators and accessories to fraud, misappropriation or embezzlement, knowingly committed by a person with the use of its official position, are qualified under the corresponding part of Article 33 of the CrC RF and, accordingly, under Part 3 of Article 159, Part 3 of Article 159¹, Part 3 of Article 159², Part 3 of Article 159³, Part 3 of Article 159⁵, Part 3 of Article 159⁶ or Part 3 of Article 160 of the CrC RF.

30. When determining the cost of property stolen as a result of fraud, misappropriation or embezzlement, the court should proceed from its actual cost at the time of perpetration of the crime. Where there is no information about the cost of the stolen property, it may be established on the basis of a conclusion of a specialist or expert.

When determining the cost of property stolen as a result of fraud, misappropriation or embezzlement, the courts should note that if property is stolen and simultaneously replaced by property of lesser value, this is qualified as theft in the amount of the seized property.

If the cost of property stolen through fraud (except where Part 5 of Article 159 of the CrC RF applies) does not exceed two thousand five hundred rubles, and the guilty person was subject to administrative punishment for petty theft in the amount exceeding one thousand rubles but not exceeding two thousand five hundred rubles, and her/his actions do not contain the elements of crimes stipulated in Parts 2, 3 and 4 of Article 159, Parts 2, 3 and 4 of Article 159¹, Parts 2, 3 and 4 of Article 159², Parts 2, 3 and 4 of Article 159³, Parts 2, 3 and 4 of Article 159⁵, Parts 2, 3 and 4 of Article 159⁶, Parts 2 and 3 of Article 160 of the CrC RF, these actions are to be qualified under Article 158¹ of the CrC RF.

31. Fraud, misappropriation or embezzlement that caused significant damage to a citizen may be qualified as accomplished crimes under Part 2 of Article 159, Part 2 of Article 159³, Part 2 of Article 159⁵, Part 2 of Article 159⁶ or Part 2 of Article 160 of the CrC RF accordingly, only if actual significant material damage was caused, which, in accordance with Item 2 of Notes to Article 158 of the CrC RF, cannot be less than five thousand rubles.

When resolving whether a person's actions contained the qualifying element of significant damage, the courts should, in addition to the cost of the stolen property, take into account the property status of the injured person, in particular whether he/she has a source of income, the amount and periodicity of income, whether the

injured person has dependants, the joint income of family members with whom that person maintains a common household. The opinion of the injured person regarding the significant or insignificant nature of damage resulting from the crime must be assessed by the courts in conjunction with the materials of the case, confirming the cost of stolen property and the property status of the injured person.

32. The issue whether the actions of the guilty persons contain the qualifying elements of fraud, misappropriation or embezzlement in a significant or especially significant amount must be resolved in accordance with Item 4 of Notes to Article 158 of the CrC RF for the purpose of Parts 3 and 4 of Article 159, Parts 3 and 4 of Article 159², Parts 3 and 4 of Article 160 of the CrC RF; in accordance with Items 2 and 3 of Notes to Article 159 of the CrC RF for the purpose of Parts 6 and 7 of Article 159 of the CrC RF; and in accordance with Note to Article 159¹ of the CrC RF for the purpose of Parts 3 and 4 of Article 159¹, Parts 3 and 4 of Article 159³, Parts 3 and 4 of Article 159⁵, Parts 3 and 4 of Article 159⁶ of the CrC RF.

If several thefts of other persons' property were committed, and the overall cost of that property forms significant or especially significant amount, these actions are qualified with regard to the corresponding element of crime, if the thefts were committed in one manner and in circumstances that show intent to commit theft in significant or especially significant amount.

When resolving whether to qualify the actions of persons, who committed fraud, misappropriation or embezzlement by a group of persons by prior conspiracy or as an organised group, using the element of "causing significant damage to a citizen" or the elements of "significant amount" or "especially significant amount", the courts should proceed from the overall cost of property stolen by all members of the criminal group.

33. If although the actions of a person engaged in fraud, misappropriation or embezzlement formally contained the elements of the aforementioned crime, but presented no public danger due to their petty nature, the court terminates the criminal case by virtue of Part 2 of Article 14 of the CrC RF.

34. It is recommended to the courts considering criminal cases on fraud, misappropriation or embezzlement to uncover the circumstances that enabled the commission of the aforementioned crimes, violations of rights and freedoms of citizens, as well as other violations of law committed during inquiry or preliminary

investigation, and to direct the attention of the corresponding organisations and officials to these circumstances and violations of law requiring necessary measures, by a special decree or a ruling.

35. Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 51 of 27 December 2007 “On Judicial Practice in Cases on Fraud, Misappropriation and Embezzlement” is abrogated.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov