

PROBLEMS OF CRIMINAL-LAW QUALIFICATION IN THE APPLICATION OF ARTICLE 167 OF THE CRIMINAL CODE OF UZBEKISTAN: A COMPARATIVE LEGAL ANALYSIS**Normaxammadov Davronbek Dilshodjonovich**

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Abstract

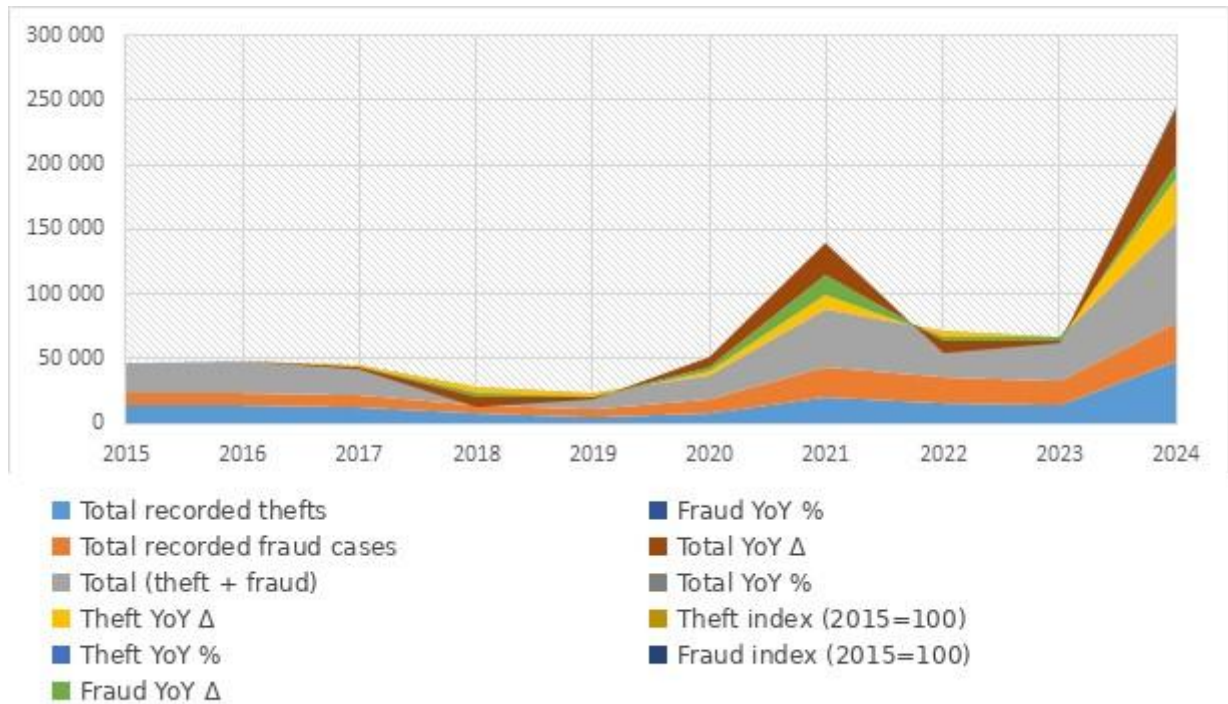
This article examines the problems of criminal-law qualification arising in the practical application of Article 167 of the Criminal Code of the Republic of Uzbekistan (misappropriation or embezzlement of entrusted property). The relevance of the study is conditioned by the growth in property-related crimes and the increasing need to correctly distinguish related corpus delicti, particularly under Articles 167, 168, 169, and, in certain cases, Article 170 of the Criminal Code. Using official statistical indicators as contextual evidence, the study highlights the practical risks of hasty qualification based on shortages, documentary inconsistencies, or the formal presence of a “trust” element. The article identifies four key groups of qualification problems: (1) determining the practical boundaries between “entrusted property” and property merely under the offender’s factual control; (2) distinguishing criminal misappropriation/embezzlement from inventory shortages and breaches of economic/management discipline; (3) delimiting Article 167 from official/malfeasance crimes and resolving issues of concurrence of crimes; and (4) ensuring uniform application of the General Part norms in sentencing, including the proper use of rules on individualization of punishment. The study applies a systemic approach, formal-legal analysis, logical-analytical examination of law-enforcement practice, comparative legal analysis, and the analysis of official statistical indicators. A comparative review of the legislation of Russia, Kazakhstan, and Germany demonstrates both conceptual similarities and differences in normative drafting techniques. The findings show that while the Uzbek model is conceptually consistent with the post-Soviet codification tradition, further methodological clarification of key criteria and a more consistent interpretation of qualifying features are necessary to improve uniformity and accuracy in law enforcement practice.

Keywords

Article 167 of the Criminal Code of Uzbekistan; misappropriation; embezzlement; entrusted property; criminal-law qualification; corpus delicti; delimitation of crimes; concurrence of crimes; comparative legal analysis; law-enforcement practice

Introduction

In recent years, the upward trend in crimes against property has made the issue of their correct criminal-law qualification increasingly relevant. According to the official open indicators of the National Statistics Committee, the number of registered theft cases increased from 13,436 in 2015 to 48,375 in 2024, while the number of fraud cases rose from 10,150 in 2015 to 29,252 in 2024. During this period, a relative decline was observed in 2018–2020, followed by a sharp growth trend beginning in 2021. This situation, alongside the increase in the number of cases involving property crimes, also intensifies the need to correctly distinguish related corpus delicti, in particular Articles 167, 168, 169, and in some cases Article 170 of the Criminal Code. In such a practical background, errors of hasty qualification may arise on the basis of shortages, documentary inconsistencies, or the “trust” element. Therefore, analyzing the problems in the practical application of the legal construction of Article 167 CC and developing ways to improve it through a comparative legal approach determines the relevance of this study.



1-Figure : Dynamics of Theft and Robbery Offenses and Related Indicators (2015–2024)

Research Objective: The objective of this study is to identify qualification problems arising in the practical application of Article 167 of the Criminal Code, particularly to analyze the difficulties in distinguishing it from Articles 168, 169, and in certain cases Article 170, and to develop practical proposals based on a comparative legal approach.

Methodology

The study employs a systemic approach, formal-legal analysis, logical-analytical examination of law-enforcement practice, and the comparative legal method (using the legislation of Uzbekistan, Russia, Kazakhstan, and Germany as examples), as well as the method of analyzing official statistical indicators.

Results and Discussion

The first problem concerns determining the practical boundaries between the concepts of “entrusted property” and “property under the offender’s control/disposal.” A person’s contact with property by virtue of official duties does not always amount to legal authority in the sense of Article 167 CC. For example, having the right to enter a place where property is stored is not the same as having authority to safeguard or dispose of that property. If this distinction is overlooked in practice, the act may be incorrectly classified under Article 169 CC or another provision instead of Article 167 CC. This aspect is also indirectly reflected in the approaches of the Plenum. **1-Table . Foreign experience: Comparative analysis of misappropriation/embezzlement**

Country	Legal model / provision	Core qualification criterion	Typical aggravating factors
Russian Federation	Art. 160 of the RF Criminal Code (“misappropriation or embezzlement”)	Appropriation/embezzlement of property entrusted to the offender	Group commission ,

			abuse of official position, large / especially large amount
Republic of Kazakhstan	Art. 189 of the Criminal Code of Kazakhstan (misappropriation/embezzlement of entrusted property)	The formula “entrusted another’s property” is expressly defined as the core element	Amount of damage, official position, group commission, other qualifying circumstances
Kyrgyz Republic	Commonly treated as misappropriation/embezzlement of entrusted property (often referenced in practice under a separate article)	Misappropriation/embezzlement of entrusted property as a distinct corpus delicti	Large / especially large amount, abuse of office, organized group
France	Abus de confiance (Code pénal, Art. 314-1)	Misuse/diversion (détournement) of property handed over subject to return, delivery, or specific use	Damage/prejudice, and in some cases special status/context
Germany	StGB §246 (misappropriation) and §266 (breach of trust)	Normative separation: unlawful appropriation and breach of trust/authority are regulated through different legal constructions	Fiduciary duty, amount of damage, abuse of authority/position

The second problem is the distinction between shortage (inventory deficit), breach of хозяйственная discipline (economic/management discipline), and the corpus delicti of embezzlement/misappropriation. The existence of a shortage does not automatically mean that a criminal offense is present. For a criminal-law assessment, there must be evidence confirming selfish intent (mercenary purpose), unlawful disposal of the property, and appropriation of the property for one’s own benefit (or for the benefit of another). Otherwise, there is a risk of criminalizing relationships that should remain within the sphere of civil law or disciplinary liability.

The third problem concerns the borderline between Article 167 CC and official/malfesance crimes. Abuse of official position may in some cases appear as a qualifying element of the corpus delicti under Article 167, or as a method of commission, while in other situations it gives rise to the issue of a concurrence of crimes with other official offenses. In such cases, it is necessary to correctly apply the general rules on concurrence of crimes provided in the General Part of the Criminal Code.

The fourth problem relates to the uniform application of the norms of the General Part in sentencing practice. In identical or similar factual circumstances, differing assessments of the amount of damage, whether it has been compensated, the offender's role, and other criteria may affect the quality of sentence individualization. Therefore, when analyzing sentencing under Article 167 CC, it is necessary to study not only the provision itself, but also the real mechanism of applying Articles 54–56 CC and other general norms.

To more clearly analyze the above gaps and propose solutions, comparative legal analysis is an important methodological tool in addressing the improvement of national legal norms. This is because, in different legal systems, the criminal-law description of this act, its distinguishing features, qualifying circumstances, and sanction policy are expressed through different techniques of normative drafting. At the same time, many states preserve the same general core idea: the selfish and unlawful appropriation or spending of entrusted property. This creates an important argumentative basis for assessing the legal nature of Article 167 CC of Uzbekistan through comparative criteria and for improving its application in practice.

States selected for comparative analysis and methodological approach

In this subsection, the comparative analysis is conditionally carried out in three directions:

1. Post-Soviet (continental) model — the Russian Federation;
2. Post-Soviet model with independent codification renewal — the Republic of Kazakhstan;
3. Continental European model (conceptually different normative technique) — the Federal Republic of Germany.

The reason for this selection is that the Russian and Kazakh models are conceptually close to Article 167 CC of Uzbekistan, whereas the German model expresses the approach to embezzlement / misappropriation through other legal constructions (for example, Unterschlagung and Untreue). Thus, the comparative analysis reveals not only similarities, but also alternative solutions in terms of normative drafting technique.

First, the experience of the Russian Federation should be noted as one of the clearest examples of the post-Soviet legal model. Article 160 of the RF Criminal Code formulates embezzlement and misappropriation within one norm as: “присвоение или растрата, то есть хищение чужого имущества, вверенного виновному”

(“misappropriation or embezzlement, that is, the theft of another's property entrusted to the guilty person”). In this formula, “вверенное имущество” (“entrusted property”) is established as the central constructive element, which makes it substantively close to the approach in Article 167 CC of Uzbekistan. A noteworthy feature of the legal drafting technique of Article 160 RF CC is that, while misappropriation and embezzlement are retained as distinct forms of theft within a single norm, the qualifying circumstances are differentiated progressively across the parts of the article. In particular, such features as commission by a group, abuse of

official position, and large-scale damage are expressed as normative criteria for aggravating sanctions. This approach makes it possible to stratify the social danger of the act within the article itself and, on that basis, to carry out qualification and sentencing more precisely.

The experience of the Republic of Kazakhstan is also comparatively significant for Uzbekistan within the framework of the post-Soviet codification model. Article 189 of the Criminal Code of Kazakhstan regulates misappropriation/embezzlement in relation to “вверенного чужого имущества” (“entrusted property belonging to another”), and here too the criterion of entrustment is preserved as the core element of the norm. The normative structure of this article demonstrates a sequential arrangement of the basic corpus delicti and the qualified corpus delicti, while sanctions are differentiated according to the amount of damage, the mode of commission, and certain aggravating circumstances. Such a drafting technique allows the court to assess the degree of social danger of the act not only through the norms of the General Part, but also through the gradation built into the article itself. The significance of the Kazakh experience for Uzbekistan lies in the fact that it shows the possibility of arranging qualifying features consistently and sequentially without overcomplicating the disposition.

The criminal legislation of the Federal Republic of Germany, by contrast, demonstrates a different model—namely, a continental European model of normative separation. The German Criminal Code does not contain a single article identical to

Article 167 of Uzbekistan CC or Article 160 RF CC titled precisely “misappropriation or embezzlement.” Instead, property-related offenses are distributed across several provisions according to their legal content. In particular, StGB §246 (unlawful appropriation / misappropriation) covers the unlawful appropriation of another’s movable property, and paragraph 2 specifically identifies the situation where the property was entrusted to the offender as a more serious form. At the same time, StGB §266 (breach of trust / embezzlement) defines, as an independent corpus delicti, the causing of damage to another person’s property interests through abuse of authority or breach of fiduciary/asset-management obligations. Thus, in the German model, the elements of entrusted property, breach of trust, and exceeding/abusing authority are not regulated within a single article, but are separated into different normative constructions. This is precisely what gives the model its comparative value: it seeks to ensure precision in legal qualification not primarily through stricter sanctions, but first and foremost through conceptual and normative clarity of separation. A comparison of these three models shows that in the legislation of Russia and Kazakhstan, the core construction close to Article 167 CC of Uzbekistan—namely, the theft of another’s entrusted property—has been preserved. This confirms that the Uzbek model is conceptually sound and consistent with the post-Soviet codification tradition. At the same time, in some foreign provisions, the qualifying circumstances are graded more clearly within the article itself, especially with respect to such criteria as the amount of damage, commission by a group, and use of official position; this is noteworthy from the standpoint of normative drafting technique.

On this basis, several practical conclusions may be drawn for improving the legislation and law-enforcement practice of Uzbekistan. First, it is necessary to further clarify, in methodological terms, the interpretation of the criteria “entrusted property” and “property under the offender’s control/disposal” in order to ensure their uniform application in judicial and investigative practice. Second, when applying qualifying features, a consistent interpretation of the internal logic of the parts of Article 167 is needed—especially a clear explanation of the relationship between official position, amount of damage, and mode of commission—which would strengthen the uniformity of law enforcement.

Conclusions

1. The central qualification problem in applying Article 167 CC of Uzbekistan lies in distinguishing “entrusted property” from property that is only factually accessible to the offender due to employment or service functions. In practice, failure to apply this distinction consistently may lead to misclassification of the act under Article 169 CC or another provision instead of Article 167 CC.

2. An inventory shortage (deficit) does not automatically constitute the *corpus delicti* of misappropriation or embezzlement. For criminal-law qualification under Article 167 CC, there must be sufficient evidence of: (a) selfish/mercenary intent, (b) unlawful disposal of the property, and (c) appropriation for the offender’s own benefit or for the benefit of another person. Otherwise, there is a risk of criminalizing conduct that should remain within civil-law or disciplinary liability.

3. The borderline between Article 167 CC and official/malfeasance crimes requires a structured qualification approach. Abuse of official position may function either as a qualifying feature (or method of commission) within Article 167, or as a basis for concurrence with other official crimes. Therefore, proper qualification requires the coordinated application of both the Special Part provisions and the General Part rules on concurrence of crimes.

4. Uniformity in sentencing practice under Article 167 CC remains a practical challenge. Divergent assessments of damage amount, compensation, the offender’s role, and the mode of participation in similar factual situations may negatively affect the quality of sentence individualization. For this reason, analysis of Article 167 practice should include not only the disposition of the article itself, but also the actual application of General Part provisions (including Articles 54–56 CC).

5. Comparative legal analysis confirms that the Uzbek model is conceptually consistent with the post-Soviet codification tradition, while also showing clear directions for improvement. The Russian and Kazakh models preserve the same core construction (misappropriation/embezzlement of entrusted property), whereas the German model demonstrates a more differentiated normative approach through separate legal constructions. This comparison supports the need in Uzbekistan to clarify the criteria of “entrusted property” and “property under the offender’s control/disposal,” and to strengthen consistent interpretive guidance for law-enforcement practice.

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