

Fundamental Elements of Fraud Crime in Criminal Law of Iran and France

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Abstract: Fraud is among the crimes against properties and ownership and it is considered as one of the important subjects of criminal law in Iran and France. This Crime can be briefly defined as achieving other's properties using fraudulent tools. The legal pillar of this crime in criminal law of Iran is the article 1 from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud approved by Expediency Discernment Council of the System on December 6, 1988 (15th of Azar, 1367). As to the criminal law of France, it is the 313-1 article of the French Criminal Law. There is particular evolution in French Criminal Law about the admission of loss as an independent element. Nevertheless the property consignment by the loser due to delusion is treated equal to a loss by French jurists; on the other hand, the usufruct of the fraud perpetrator is not required for the realization of fraud which can bring about the particular difference with the criminal law of Iran on financial and moral elements of fraud.

[Ishmael Namvar, Mohammadtaher Eslami & Hussein Miri. **Fundamental Elements of Fraud Crime in Criminal Law of Iran and France.** *Life Sci J* 2012;9(4):3715-3721]. (ISSN: 1097-8135). <http://www.lifesciencesite.com>. 551

Keywords: fraud, maneuver, property, delusion, consignment.

Introduction

Fraud is among the crimes against properties and ownership. Although the main victims of fraud are individuals, society and government, are not safe from loss either, for fraud can shake the economic elements of the country and on the other hands, it can cause a feeling of distrust among the individuals of the society.

The other point which requires a particular attention to this crime is its high level of incidence. Instances such as the ease of fraud commitment compared to other crimes, and the tangibility of the achieved profit through this crime makes the criminals (who are usually provident and compare the pros and cons of the crime before its commitment) more prone to commit such a crime. The swindlers are usually smart and they deceive and abuse those of lower intelligence and such quality makes it more difficult to pursue and capture them.

Thus considering the significance of this crime, we decided to investigate its fundamental elements accurately and discuss its comparison with law of France as a European country in which legal basis and elements are close to ours, and indicate the similarities and differences between the criminal law of Iran and France.

Research method

This is a theoretical and desk research and different books, previous fundamental researches, and translations of the related contexts and books were applied for subject accordance. We tried to consider the opinions of jurists from both countries while comparing the topics.

Fraud (KolahBardari)

Kolahbardari (کلاهبرداری) is a Persian term which consists of two components: kolah or کلاه (hat) and bardari or برداری (taking off), its French equivalent is "Escroquerie" (Zeraat, 2006 (1385), 53), and its Arabic equivalent is "Alehtial" (الاحتیال) or "Alnasb" (النصب) (Ghafari, 1993 (1372), 54). In the

Dictionary of Islamic law, kolahbardari is translated to "swindling; Fraud" and Kolahbardar (the perpetrator) is translated to "swindling" (Mirmohammad Sadeghi, 1994 (1373), 157).

As to Persian language, Kolahbardari is to achieve something from someone through a trick or deception (Amid, 1972, (1351), 838). The concept of fraud in French law dictionaries also refers to a criminal behavior through which some damage would be done to other's ownership. Although the victim himself consigns his properties to the perpetrator because of delusion, the important point is the property assignment is derived by circumventing maneuvers of the perpetrator (Cornu, 1992, 322).

As to the legal definition of fraud according to the article one from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud approved by Expediency Discernment Council of the System on December 6, 1988 (15th of Azar, 1367) it can be said that fraud is to achieve other's properties using circumvention tools.

1. Legal element

The legal element of fraud in Iran is the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud approved on December 6, 1988 (15th of Azar, 1367). The article one from this law forms the legal element of fraud and articles four and seven are respectively about the punishment for leading fraud, embezzlement and bribery networks and the suspension of governmental employees who have committed such crimes.

The article one from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud and its notes set that "anyone who deceives people through deception and circumvention, about the existence of unreal corporations, firms, factories or institutions or having unreal properties or authorities, or makes them hopeful for unreal affairs, or scares

them from unreal incidents and events, or adopts a false name or title and achieves money, properties, documents, draft, bill or clearance, etc through one of the mentioned or other circumvention tools, and takes other's properties in this way, is considered a swindler and besides giving back the original property to its owner, he would be sentenced to imprisonment for one to seven years and paying a fine equal to the taken properties. If the perpetrator has taken an unreal title, position or mission on behalf of governmental organizations and institutions, organs related to the government, governmental corporations or councils, municipalities, revolutionary institutions, and in general, Three (Legislature, Executive and Judicature) Forces, Armed Forces, and institutions responsible for public services, or the crime has been committed through public advertisement in mass mediums such as radio, television, newspaper, and journals, or through a public speech or issuance of printed or handwritten advertisement, or the perpetrator has been among the employees of government or governmental institutions and organizations, related organs to the government, municipalities or revolutionary institutions for public services, besides giving back the original property to its owner, he would be sentenced to imprisonment for two to ten years, a lifetime dismissal from service, and a fine equal to the taken property.

Note 1: if there were lesser sakes and qualities in all of the mentioned cases in this article, considering the criteria for mitigation of punishment, the court can reduce the perpetrator's punishment to the minimum level of punishment determined in this article (imprisonment) and lifetime dismissal from governmental services but it can't suspend the punishment implementation.

Note 2: depending on the case, the punishment for beginning a fraud would be the minimum punishment for that particular case and if the act is a crime itself, the beginner would be sentenced to the punishment of that crime as well. In addition to the mentioned punishments, governmental employees who are in position of general manager and higher or equal level of positions would be sentenced to a lifetime dismissal from governmental services and those in lower positions his dismissal would be from six months to three years."

Even in French law, after the revision of the French penal code in 1992, article 313-1 the sentence of fraud is described as following: "fraud is a behavior which ends in deception of a natural or legal person whether through using a false name or title or abusing a real position, or applying circumventive maneuvers to determine the mentioned person to deliver sums of money, securities, or any kind of property, make them provide a service, or talking them into doing any action which brings commitment for him, or termination of obligations which can be harmful for him or a third person." Fraud can cause five years of imprisonment and a fine of €375000.

As it was observed, the extensions of the fraud subject has been generalized in the foresaid law and it includes providing services, or doing any action which brings commitment or being committed to any action, and termination of obligation as well. As to the criminal result, besides the damage done to the victim, a third person's damage is also known as a cause of crime realization.

According to the article 313-2 of the discussed law, the penalty is increased to seven years of imprisonment and a fine of €750000 when the fraud is committed:

- 1) by a person who is a governmental employee or holds a public service mission, in the exercise of mission or as a result of that;
- 2) by a person untruly assuming the title of a person who is a governmental employee or holds a mission of public service;
- 3) by a person making a public appeal, proceeds to issue securities or collect money for humanistic or social supports;
- 4) to damage a person whose particular vulnerability, due to age, sickness, infirmity, physical or psychological disability or pregnancy, is apparent or known to the perpetrator;
- 5) in an organized network.

Although the recent criminal law uses the same definition of the old one, some slight changes have been applied. Admission of public services as a fraud subject besides the properties is among these changes (Pelletier, 2003, 541).

2. Financial element

The financial element of fraud consists of several components which are required to be realized altogether for the occurrence of the crime and considering the achieving a criminal result which is necessary for realization of the crime, fraud is a conditional crime and for its realization, in addition to the criminal behavior, a criminal result should be realized, and there should also be a causal relationship between them.

A. Criminal behavior

The criminal behavior in fraud is a positive financial action. The use of delusion and swindle a clear sample of which is a circumventive maneuver and taking other's properties through such activities are the main bases of the financial element of fraud, both of which represent a positive financial action (Habibzade, 2010 (1389), 86); and omission (failure to act) or silence can't cause the fraud to be realized. The silence itself, even if it is based on particular causes, cannot be considered as an exterior action, financial pretense and a positive financial action, that's why the third branch of the Supreme Court of Iran indicates in a part of its verdict 2496 on July 22, 1958 (31th of Tir, 1337): "if an employee takes the subvention for his married daughter, his action wouldn't be considered as fraud." Because in fact, the mentioned employee had avoided informing the responsible authority about his daughter's marriage which would exclude him from taking her subvention and it is clear that this avoidance or silence is nothing but omission, thus it doesn't realize fraud (Salari Shahreabaki, 2007 (1386), 51).

Even in French law, the financial element of fraud can't be based on omission. This approach has always existed in old and modern French Criminal Law. Yet the perpetrator's omission can be included in another criminal topic (Larguier, 2008, 197). Besides, according to French Law, lying itself can't realize the financial element of fraud and a simple lie can't be included in fraud topic even if it ends in consignment of the property by a victim (Pradel, 2001, 864) and juridical verdicts in France have emphasized on this approach.⁴

B. The subject of crime

What is achieved by the swindler through a fraud should be taxable and financially and economically valuable or, it should have some rights or benefits and be supported by the government. Unlike theft the subjects of which are always movable properties, the subject of fraud can also include immovable properties. According to French Law, Property (Bien) refers to any material which can be owned (Cornu, 1992, 100).

As to the article one from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud, money, properties, documents, etc are all allegorical and considering the term "etc" which can be widely interpreted, it can be stated that the subject of the mentioned crime includes both movable and immovable properties. Thus the limitation of fraud subject about being taxable is among the differences of this crime with theft.

As to the French Criminal Law, according to the legislator's specification, the considered property in fraud should be movable. But in criminal law of Iran, any material including those which are naturally or pertinently movable and those which are naturally or pertinently immovable can be a subject of crime. If someone takes a piece of land, building or any movable properties from his owner using circumventive tools and make them owned by himself or buy them in a lower price than they really cost, through circumventive maneuvers, the action would be considered a fraud if other conditions have been realized as well (Habibzade, 2006 (1385), 128).

Just immovable properties are excluded from the subjects of fraud in French Law. Yet there is no difference of view about swindling objective rights of immovable properties such as money or the funds of such properties. Any subject that is financially considerable, such as bonds, purchase agreement, loan receipt, and whatever considered movable by civil law can be a subject of fraud. Furthermore, unlike the old criminal law, the recent criminal law (article 405), receiving services in a circumventive way is also considered as fraud. Thus the subject of fraud has been extended (Gattegno, 2007, 259).

In the article one from the law of enhancement law, the examples of fraud are mentioned as money, properties, documents, drafts, bills or clearance. As to France, if a person exempts himself from paying what he should pay or pays less than what is required, through applying a circumventive tool, he has achieved a sort of clearance according to the French Court and considering the wide interpretation of the terms "bills and clearances, his action can be compatible with fraud. Wide comprehension of the term "clearance" enables the foresaid court to consider the abuse of electricity power as fraud when it is not in accordant with the criminal description of theft (Habibzade, 2010 (1389), 150-151).

Considering the use of the term "etc" in the article one from law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud by the legislator, blank signed document, declaration, letter of intent, and any documents which cause or removes a right or commitment, can be among the allegorical examples of the legislator.

Considering the indicated subjects, what seems right and admitted by most of jurists, the legislator and juridical procedure is that the subject of fraud can include both

movable and immovable properties. For in the article one from law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud, the legislator generalizes the fraud subjects to movable and immovable properties by using the term "property" and there is no reason to make it specific to movable properties, on the contrary, the unconditional use of the term "property" indicates that it includes all properties, whether movable or immovable.

To confirm this, in the notion 7.8227, approved on March 1, 1995, (10th of Esfand, 1373), Administration of Legal Affairs of Juridical System announced that generality and predication of property includes movable and immovable properties.

As to the matter that a virtual property can be a fraud subject or not, there are some differences between the viewpoints of law professors, but what seems right and admitted by most of them (same, 154) is that a virtual property can't be a subject of fraud.

What is achieved by the swindler through fraud should be a property owned by another person. About this, one of the law professors, states: "the ownership of the taken property including movable and immovable properties by another person as a condition for fraud. Thus if someone takes his own property out of someone else's hands, through using circumventive tools, lies, maneuvers and delusion, (even if the property have been legally held by that possessor) the convict hasn't committed fraud" (Mir Mohammad Sadeghi, 2006 (1385), 81).

Of course if one takes any properties from others through trick or wile, the French Supreme Court would consider it as fraud even if the swindler is rightful (Habibzade, 2006 (1385), 129).

As to atonement, it would be right if the perpetrator is rightful owner of the original property and if the original property exists and the possessor avoids giving it back, he can take it back through using deception and circumventive maneuvers. As to the religious atonement, it seems to be fraud and wrong, because here, the perpetrator doesn't have an objective right about the property and in fact, the taken property is not his but someone else's, besides, at the present age and under the dominance of law on society, one can't enforce the law himself and this might cause an anarchy and inconsistency within the society. Besides the willingness and consent of the possessor has been violated here and if all of the fraud conditions are realized, it would be an example of fraud.

There is a difference between viewpoints of jurists about the possibility of the fraud realization on shared ownership properties by the partners, and even the law has remains silent about this. Of course, from the viewpoint of the author, the fraud can be realized, for in the crimes against properties, the legislator of the Islamic Republic of Iran basically supports the individual ownership. Thus each partner can apply the shared properties equal to his own share which would be right if other partners are content and this content is not achieved through delusion and deception, though the partner can only possess his own share. As to French criminal law, just as stealing shared properties is placed under the criminal title of theft and there are no different viewpoint toward this, fraud follows this procedure as well, and swindling shared properties is considered fraud (Gattegno, 2007, 215). In fact, as a result of a great number of verdicts approved by criminal

branches of French Supreme Court, there is no difference of view toward this matter in French Law.

Another point which should be considered is that the existence of an owner is required for the ownership of property by others in fraud, so that the swindler can deceive him through using circumventive maneuvers and make him consign his properties. Thus, fraud can't be realized on properties which have no owner or those with unknown owners, also public properties which are owned by all members of society and not a particular owner.

As to French Criminal law, according to article 313-1 of Penal Code, it is specified that fraud is also possible about providing services or accepting actions, but in Iran, what can apparently be understood from the article one of the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud, is that the subject of crime should be materialistic which doesn't include services (Zeraat, 2006 (1385), 70).

C. the tool and its qualities

In some crimes such as fraud, the applied tool and its qualities affect the realization of crime. As to fraud, it seems that the Persian legislator has used this term intentionally following the French legislator, and seeks some purposes through this choice, though terms "action" or "act" haven't been used and the legislator has used the term "tool" instead.

Tools include material and tangible items such as document, statute, etc and an immaterial and estimative item like a lie or a contract (a mere contract which is not reflected in an objective and material affair) can't be called a tool. The article one recounts some items and assigns them as tools and considering the phrase "and through one of the mentioned tools" and the concept of tool itself, it can be said that the rule aims to reflect all of the counted items such as name forgery, or unreal authorities besides a tool (an objective and tangible one), otherwise they can't be called tools.

Juridical procedure of Iran also emphasizes on this matter, and the Supreme Court has approved a verdict about that. The verdict 307 approved by second branch of Supreme Court of Iran on December 24, 1941 (third of day, 1320) indicates: "According to article 238 from General Criminal Law, in its verdict, the court should declare how the convict have taken the money from the complainant in order to reveal the applied circumventive tool." Therefore, considering the definition of fraud, the circumvention and unreality of the tool, whether in its form or nature, is delimited and it is among the most important bases which forms the fraud crime.

The circumvention of the fraud tool can be characterizes through conferring to traditions. I.e. it should potentially be able to divert the minds of ordinary people in such condition and deceive them; the whole society should cognize it as a circumventive action but not in a way that its unreality can be easily recognized.

Some of the law professors have issued another condition about this matter indicating that when in a particular condition, deceiver who is aware of the credulity of his addressee, applies a trick which can affect no ordinary human being but that particular addressee, and he obtains a property through that deception, he has clearly committed a fraud (Darvish, 2005 (1384), 138). They consider the action of the

perpetrator who has used circumventive maneuvers (which are not typically deceptive even according to tradition) being aware of the credulity of the victim, a crime, and they have somehow accepted a typical criterion among the community, but for particular individuals like the one in the foresaid example, they admit personal criteria. However what seems accepted by most of the law experts and in accordance with the restrictive interpretation of criminal law is that the circumventive maneuvers and tools should be typically deceptive, i.e. they should be able to deceive an ordinary human being.

Thus, in his verdict for any case, the court judge should investigate and evaluate the perpetrator's action based on the tradition and habits of the society in order to reveal if the circumventive tool applied by the perpetrator is traditionally considered unreal and circumventive or not. If it is not merely unreal, the case is not included by fraud sentence.

According to the general principal, "the proof is on the complainant", the investigation form to prove the circumvention of the tool and the use of circumventive tool is on complainant and prosecutor's office and they should prove the use of circumventive tools by the fraud culprit through one of the mentioned methods in article 238 of the general public penal code.

The circumvention of the tool should be reasoned by sensible and tangible exterior histrionics. Besides, the use of circumventive tool should be the final and single cause to achieve other's property, providing that this property wouldn't be achieved or in other words that fraud wouldn't be realized without the application of that circumventive tool.

Meanwhile, the application of circumventive tools and maneuver should happen be prior to the achievement of property, and occurs before that. Therefore the twentieth branch of the Supreme Court of Iran emphasizes on the necessity of the priority of circumventive maneuvers to the delusion and in the verdict 670, approved on November 7, 1992 (8th of Aban, 1371) comments: "the priority of circumventive tools to other's properties, is legally among the main conditions of fraud realization and its differences with other financial crimes."

The fact that circumventive tools are not delimited and they should be distinguished by the judge, might be criticized since it causes a juridical anarchy or it is against the principal of legality of crimes and punishment. But, these criticisms are rejected, and the move of legislator to make these methods allegorical is admirable, for as a result of the improvement of technology and instruments, each day, there would be new maneuvers and methods and their delimitation prevents the persecution of professional swindlers, and the Persian legislator who has delimited the circumventive maneuvers have been also criticized by jurists of his country. The article 336, of the criminal law of Egypt and the article 417 from the criminal law of Jordan, has also delimited the circumventive maneuvers (Zeraat, 2006 (1385), 37).

In fact, considering the improvement of technology and mess mediums and development of computer, satellite and Internet, in order to prevent crimes, it is necessary to adjust the law in a way that firstly, it regards the principal of the legality of crimes and punishments and not to waste individual rights,

and secondly, professional swindlers can't use the legal vacuums for financial abuse because of the lack of law or inclusion of law or a law which include new examples. Thus it would be very useful not to delimitate the examples of circumventive tools in a law. The allegorical examples of circumventive tools indicated in the article one from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud are:

- A) Deceiving people about the existence of corporations, firms, factories or unreal institutions.
- B) Deceiving people about having unreal properties or authorities.
- C) Making them hopeful about unreal affairs.
- D) Scaring them from unreal incidents or events.
- E) Adopting a false name or title.

Other circumventive tools (undefined circumventive tools) used in considered actions in fraud are usually circumventive maneuvers. Circumventive maneuvers are among the main elements of the financial element of fraud. In fact, the swindler deceives the individual and takes his properties through these circumventive maneuvers. Circumventive method or maneuver refers to a combination of exterior actions and conspiracies along with particular skills which can be called a subtle deception and includes expository moves aiming to materialize the deception and make the unreal affairs seem right and real (Habibzade, 26, 1377).

According to the French juridical procedure, maneuver means a combination of exterior actions and conspiracies along with particular skills which can be called a "subtle deception"; but in fact, circumventive maneuvers illustrate the basic concept of a deception which ends in fraud and other deceptive methods are also deduced from this concept (Alkhani, Yosof Alhakim, 1994 (1415), 366).

In its verdict approved on February 27, 1880, France Court of Appeal states: "the purpose of circumventive maneuver is to perform expository actions in order to make the trick and deception more tangible and reflect it in a materialistic form and make a right and real appearance for his stated unreal affairs (same, 367)." Although the term maneuver hasn't been used in the old or modern criminal law of France, according to the French law, jurists have required the realization of makeover for the realization of fraud (Pradel, 2001, 566).

In the Law of Iran, the criterion applied to distinguish circumvention of maneuvers or tools depends on tradition and juridical view which is indicated in several verdicts of Supreme Court and a set of theories by Administration of Legal Affairs of Judiciary System. Of course, according to the authors, a typical criterion shouldn't be considered in order to distinguish the circumvention of tools and maneuvers. For the individuals of a society are in different levels of education and awareness and there are differences between an old simple villager and a university professor, or a callow youth and an experienced police officer. Besides, swindlers are usually smart and intelligent and they go to individuals who can be easily deceived, and give their properties. In some cases, these individuals are very smart and they can deceive experienced people as well and if it wasn't like that, swindlers would easily be recognized, introduced to police and captured. The legislator intends to support all members of society in which

there are credulous and simpleminded individuals who should be supported as well. They shouldn't remain legally unprotected just because they are credulous and they haven't watched their properties, or the applied maneuvers by the swindler haven't been typically circumventive. It seems that in fact, swindlers are being supported by law, not the fraud victims. Thus, they investigate the status of each victim and then smartly decide about the circumvention of their maneuver considering his personal and educational condition. In fact, a combination of two criteria can be in accordance with justice. Of course, the legislator hasn't pointed out any particular example of fraud in the French law.

D. victim's delusion

Discontent of the owner is required for the realization of all crimes against properties, the difference of fraud is that the victim consigns his properties with absolute content which seems to be real, but in fact, it has been resulted through delusion and deception of the victim and derived by the use of circumventive tools and maneuvers by the swindler. In fact, this condition (victim's delusion) is distinct from the condition which requires the circumvention of the applied tools by the swindle, for not only the applied tools by the swindler should be "traditionally" circumventive, but also the victim should be "actually" deceived and "contently" comprise hid property to the swindler and the requirement of victim's delusion and deception should be his unawareness of the circumvention of the applied tools by the swindler, otherwise, no delusion has taken place and fraud hasn't been realized.

Even the juridical procedure notifies this matter in verdict 73 approved by the second branch of Supreme Court of Iran on April 9, 1957 (first of Farvardin, 1336): "if several investigation discovery officers confer to the criminal to buy forged Dollars, although he offers them some, this is not beginning a fraud, for the unawareness of individual of the intention of perpetrator to use circumventive tools, is required for the beginning a fraud."

Considering the fact that from the beginning, the officers intend to achieve some forged Dollars which is realized, and they mainly go to the seller of forged Dollars with this purpose, and they have been aware that those Dollars are forged, no delusion has taken place and the officers haven't been deceived, therefore, the owner of forged Dollars hasn't committed a fraud and if other conditions of the crimes subjected to the article 525 from Islamic Penal Law are realized, his charge can be investigated and punished under other criminal titles such as forgery and issuance of forged money.

On the other hand, regarding the existing rules and regulations, the necessity of victim's delusion and deception in fraud requires him to be only a natural or legal person, for animals and objects can't be subjected to deception and no one can actually deceive a car or a dog.

But the question raised here is that considering the necessity of the commitment of fraud against human beings and that the term "people" have been mentioned in law, is it also possible to commit fraud against government? About this matter, in theory 7.2350 approved on June 25, 1994 (fourth of Tir, 1373), the Administration of Legal Affairs of Juridical System

indicates comments: "considering the definition of fraud in article one from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud, the adverb "other" which has been mentioned in that article, includes government and other individuals, so it can be said that there are examples of fraud against government performed by ordinary individuals, and the law mentions the term "people" because of its predominance, for the fraud is usually committed against people but it is not limited to non-governmental targets."

Therefore, it should be said that legal individuals and government can't be deceived but the governmental fraud is distinguished to be possible considering the mentioned consultative theory, because the representatives and their employees who are all human beings can be deceived and consign the governmental properties.

There are two theories issued about the criterion of circumvention of maneuvers and tools used by the fraud perpetrator: typical (objective) theory, and personal theory. According to authors, unlike distinguishing the circumvention of maneuvers, here we shouldn't apply a typical criterion to distinguish deception, for in this way, we exclude many members of society from the legal support, for swindlers are generally smart and they track simple minded people who can be easily deceived. It must be mentioned that there are differences between a simple old villager and a university professor, or between a simple worker and a police officer. Therefore, in order to support such individuals, the court shouldn't be limited in cases related to their delusion, so that it can investigate the personality and social and educational situation of the victim.

E. Criminal result

Fraud is among conditional crimes and the realization of result affects on the realization of crime itself. According to the legislator's specification in the article one from the law of enhancement of punishment for perpetrators of embezzlement, bribery and fraud, taking other's property is the required result for the fraud realization which places this crime among conditional crimes. On the other hand, it is not the swindler, who takes one's property, but the owner himself, who voluntarily consigns his property to the swindler; but this consignment, is caused by his deception, i.e. the owner's content is incorrect.

Anyhow, we should pay attention to the purpose of a criminal result in fraud, is to take (possess) other's property which often damages the victim, and even if in some cases, the damage hasn't been realized, and the victim hasn't undergone any loss, the possession of his property by the swindler can merely realize the crime of fraud. Therefore, the dispassion of victim from his own property is enough to realize fraud, whether he undergoes a loss or not. But it seems that if the swindler's possession is not realized, neither is fraud, even if there are some damages.

There is particular evolution in French Criminal Law about the admission of loss as an independent element. In 1810, there was no mentioning of loss element among the legal elements as an independent condition, but in the recent Criminal Law, it has been clearly predicted by the legislator. Nevertheless,

French jurists have considered the consignment of the property (by the victim because of delusion) equal to realization of the loss. On the other hands they haven't necessitated the swindler's profit for the realization of fraud (Pradel, 2001, 576) which can be a particular difference of financial and moral element of fraud between the criminal laws of France and Iran. That's why some of the verdicts approved by the penal branch of French Supreme Court emphasize that fraud can be proved by victim and it doesn't depend on the realization of any damages while the property was being consigned to the perpetrator because of a delusion derived by circumventive maneuvers.⁵

F. Causal relationship

The existence of a cause-and-effect relationship (causal relationship) between the use of circumventive tools and maneuver by the perpetrator, victim's delusion and deception, and the consignment of the property by him is required for the realization of fraud. In fact, here are two causal relationships, one between circumventive maneuvers and victim's delusion, another, between the victim's delusion and property consignment; if, for any reason, there is no causal relationship between these components, the fraud wouldn't be realized.

Twentieth branch of the Supreme Court of Iran emphasizes on the necessity of the priority of the use of circumventive maneuvers to the delusion and in verdict 670 approved on November 7, 1992 (8th of Aban, 1371), it comments: " the priority of circumventive tools to other's properties, is legally among the main conditions of fraud realization and its differences with other financial crimes."

Besides, the persistent penal vote 1374.28 approved by general council of Supreme Court of Iran on November 7, 1995 (8th of Aban, 1374) indicates: "... for the realization of fraud, the use of circumventive tools should be prior to achieving other's property ..."

Of course, the existence of a causal relationship should be proved in the court, so that perpetrator's action can be considered as fraud, and, the proof of the causal relationship is on prosecutor's office. If the causal relationship is not proved, the fraud wouldn't be realized.

3. Moral element

Fraud is among the intentional crimes and a fraud derived by a fault or negligence is not imaginable. For the realization of fraud, besides a general malice (to use a circumventive tool), there should be also a particular malice (to take other's property); the swindler should be aware of the circumvention of the tool while the victim shouldn't.

A general malice in fraud is a voluntary and deliberate use of circumventive tools and maneuvers in order to deceive or tempt another person, so the mentioned crime would be realized if the person intentionally and deliberately applies some tools aiming to deceive others, while being aware of their circumvention (Shambayati, 1993 (1372), 377). Thus, the fraud perpetrator should be aware that what is he doing is a circumventive maneuver and he should also know that this circumventive maneuver can deceive or mislead the victim and make him consign his property, besides, he must know that the subject of circumventive maneuvers is a quack and

unfounded. As we have mentioned before, the perpetrator should also know that the property he is planning to take is owned by another person.

D.R Ardabili, one of the Iranian jurists indicates: "Besides the general malice to commit deceptive actions in fraud, the perpetrator should also have a particular intent to take other's property, otherwise, for example if one uses circumventive tools in order to entrap his rival in unreal transaction and then them makes him bankrupt, this action can't be considered a fraud (Ardabili, 2005 (1384), 242)."

Therefore, the particular malice in fraud is the intention to "take other's property". An important point about the "mental element" is that the proof of the existence of malice in perpetrator is on complainant and persecutor's office. Thus if they are not able to proof this malice, the perpetrator would be discharged from fraud conviction.

As to French Criminal Law, possession of other's property through circumventive maneuvers is the moral element of fraud. Yet the perpetrator can possibly have different motives which are not effective. Nevertheless, the proof of perpetrator's malice for different subjects is on the Judge (Larguier, 2008, 202). In the criminal law of Iran and France, the motivation of fraud can't justify or avoid the realization of the crime, even if it is acceptable, justifiable and benevolently. Thus, one who uses tricks and circumventive maneuvers to collect people's money and vows to be expended as charity to help poor people or directly distributed among needy ones, would be prosecuted as a swindler.

Conclusion

Fraud is among the crimes against properties and ownership and the most important factor which makes it different from other crimes against the properties (theft, betrayal of trust, overdraft, etc) is the apparent content of the victim in paying money or delivering his property to the swindler. In fact, the swindler acts in a way that the owner or possessor of property would be deceived and consigns his property to the swindler contently. Even in French Law the consignment of victim's property is presumable with a content derived by delusion. Realization of such condition requires a performance of circumventive maneuvers and histrionics by the criminal and swindlers takes other's properties through tricks, circumvention and delusion considering the available tools and facilities. Of course, all of the tools applied by the perpetrator are not necessarily circumventive, and what he usually needs to meet his goals and deceive his victim, is a combination of circumventive and none-circumventive tools. There is certainly no doubt that the use of circumventive tools should be prior to possession of property and it should be done in order to achieve this property. Fraud is among conditional crimes, which requires the realization of its result i.e. taking other's property.

In comparison of fraud in criminal laws of Iran and France, it was observed that there are a lot of similarities between the elements of this crime in these countries and the conditions are almost the same, except for some differences between the criminal law of Iran and France due to some items such as crime subject. For instance, the subject of fraud in French Criminal Law is an object, but in Criminal Law of Iran the

subject is a property. As to French Law, the legislator considers the fraud of shared properties as a crime, but in Iran, the law has remained silent. Unlike the law of Iran, benefit can be a subject of fraud in French Law.

There is particular evolution in French Criminal Law about the admission of loss as an independent element. French jurists consider the consignment of the property (by the victim because of delusion) equal to a loss and on the other hand, they don't require the fraud perpetrator's benefit for the realization of fraud which can cause a particular difference with the financial and moral element of fraud in Criminal Law of Iran. That's why some of the verdicts of the criminal branch of French Supreme Court emphasize on the matter that fraud can be proved by the victim and it doesn't depend on the realization of any damages while the property was being consigned to the perpetrator because of a delusion derived by circumventive maneuvers.

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