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The General Offense of Fraud under Article 190 of the Ukrainian Criminal Code vs. Section 263 StGB: A Comparative Criminal Law Characteri-zation – German Perspective

Der allgemeine Betrugstatbestand nach Art. 190 des ukrainischen Strafgesetzbuches im Vergleich zu § 263 StGB: Eine vergleichend-strafrechtliche Charakterisierung – Deutsche Perspektive

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Inhaltsverzeichnis

I. Introduction 15
II. The fraud offense under Section 263 StGB 15
1. Protected asset (*Rechtsgut*) and historical development 15
2. Objective elements of the offense under Section 263 I StGB 15
3. Subjective element of the offense under § 263 I StGB 17
4. The attempt and the remaining paragraphs 17
5. Computer fraud, Section 263a StGB 18
III. The offense of fraud in Art. 190 CCU 18
1. Protected asset and historical development 18
2. Objective elements of Article 190 I CCU 18
3. Subjective element of Article 190 I CCU 19
4. Trial and qualifications 19
IV. Comparative law section 20
1. Similarities 20
2. Differences 20
3. Reasons for the differences 21
4. Practical implications 21
a) In Germany 22
b) In Ukraine 22
V. Conclusion 23

I. Introduction

With the increasing economic interdependence between Germany and Ukraine and the rising number of cross-border business relationships, property crimes with an international dimension are gaining practical significance. In particular, fraudulent activities in digital commerce raise the question of how comparable cases are assessed under German and Ukrainian criminal law. Against this backdrop, this seminar paper examines the fraud offense defined in Section 263 of the GCC in comparison to Article 190 of the Ukrainian Criminal Code (CCU)[1], analysing similarities and differences in structure, protective purpose, and criminal assessment. Specifically, it aims to demonstrate the extent to which both legal provisions pursue comparable criminological objectives and what practical consequences arise from the dogmatic differences.

II. The fraud offense under Section 263 StGB

1. Protected asset (*Rechtsgut*) and historical development

Fraud under Section 263 of the German Criminal Code (StGB, GCC in the following) is one of the most important property offenses in German criminal law. Only assets are protected.[2] This includes both private and public assets, specifically domestic and foreign state assets or assets of the EU.[3] The offense of fraud has its roots in the 19th century and is therefore relatively recent.[4] It is an expression of economic liberalism.[5]

2. Objective elements of the offense under Section 263 I StGB

Section 263 Paragraph 1 of the GCC is the basic offense. Its objective elements are structured as follows: "Deception – Error – Disposition of Property – Pecuniary Loss." [6]

First, Section 263 Paragraph 1 StGB requires deception regarding facts. Deception is any intellectual manipulation of another person's perception in order to create or maintain a false impression about facts.[7]

Facts are concrete events or conditions of the past or present that are susceptible to proof.[8] These include, for example, the authenticity of goods or a person's solvency. Pure value judgments, mere expressions of opinion views, and future events [9] do not constitute factual assertions within the meaning of Section 263 StGB , as they are subjective evaluations and therefore not subject to objective verification and thus not to proof.

Deception can occur through (express or implied) active conduct as well as through omission.[10] Express deception can be oral, written, through signs or gestures, as well as through corresponding forms of technical transmission.[11] A classic example is the sale of a wrecked car under the explicit claim that the vehicle is accident-free. Unless

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1 For the frequently used abbreviations, see above in the list of abbreviations. All non classified § are those of the German Criminal Code, StGB or non classified Art. are Articles of the Ukraine Criminal Code.
2 *Wolter*, SK-StGB-Commentary, § 263 mn. 1.
3 *Eisele*, Tübingen Commentary on the German Criminal Code, § 263 mn. 1.
4 *Erb/Schäfer*, Munich Commentary on the German Criminal Code, § 263 mn. 63.
5 *Kindhäuser/Böse,* Criminal Law SP II, § 26 mn. 6.
6 *Rengier,* Criminal Law SP I, § 13 mn. 1.
7 BGH NJW 2001, 2187.
8 Satzger/Schluckebier/Werner, StGB Commentary, § 263 mn. 15.
9 *Rengier,* Criminal Law SP I, § 13 mn. 4
10 *Renger,* Criminal Law SP I, § 13 mn. 8.
11 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 38.

explicit deception is involved, implied deception must be examined first, before considering deception by omission.[12] Here, the deception occurs not through explicit words, but through conclusive deceptive conduct.[13] The decisive factor is the meaning that common understanding ascribes to the perpetrator's behavior.[14]

For example, someone who boards public transportation implicitly declares that they possess a valid ticket. This type of deception is particularly relevant in practice because many everyday frauds occur through conclusive conduct.

Finally, deception can also occur through omission. Such deception can be committed if there is a duty to disclose information, whether by law, contract, a special relationship of trust, or good faith (§ 242 of the German Civil Code).[15] Deception by omission occurs, for example, when a seller deliberately conceals a significant defect in an item, even though he is obliged to disclose it.

The perpetrator's deception must cause or maintain an error in the victim. An error, as defined in Section 263 of the GCC , is any incorrect perception of facts that does not correspond to reality.[16] A causal link is required between the deception and the error.[17]

According to the prevailing view, doubts on the part of the deceived party regarding the truth of the presented fact do not preclude an error; for an error to exist, it suffices if the deceived party considers the truth of the statement possible and is thereby motivated to act accordingly.[18] According to case law, it is wrong to reject an error simply because of the victim's credulity and the recognizability of the deception.[19] Rather, the offense of fraud is intended to protect inexperienced, superstitious, and other easily seduced individuals from readily apparent deception.

The error must have led to a disposition of assets. A disposition of assets is understood to mean any action, acquiescence, or omission by the deceived party that directly reduces their assets.[20] A defining characteristic of this unwritten element of the offense is that the victim actively participates in their own financial loss. Within this criterion, it is crucial that the disposition is voluntary. While the victim may be mistaken, they nevertheless make a decision about their assets independently. The criterion of voluntariness distinguishes fraud from theft.[21] In theft, the perpetrator takes the property against or without the rightful owner's will, whereas in fraud, the transfer of assets is carried out by the victim themselves. Therefore, fraud is considered a self-harming offense, and theft a harm-inflicted offense, which is why the two offenses are mutually exclusive.[22]

A prerequisite for the person disposing of the assets is that they are identical to the deceived party. However, the victim can also be a third party, which gives rise to the possibility of triangular fraud.[23]

Triangular fraud is a specific form of fraud. It occurs when the victim, the person disposing of the assets, and the victim are not the same person. In cases of triangular fraud, a problematic issue is whether the deceived party's disposition can be attributed to the victim. Various theories have been developed to resolve this problem. The most

12 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 40.
13 *Schmidt*, Criminal Law SP II, mn. 540.
14 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 40.
15 *Weber*, Legal Dictionary, mn. 1a).
16 *Wessels/Hillenkamp/Schuhr*, Criminal Law SP II, mn. 578.
17 *Kindhäuser/Böse* , Criminal Law SP II, § 27 mn. 36.
18 *BGH* NJW 2003, 1198 f.
19 BGHSt 34, 199, 201 f.
20 BGHSt 14, 170.
21 *Erb/Schäfer*, Munich Commentary on the German Criminal Code, § 263 mn. 453
22 JuS 2024, 308.
23 *Matt/Renzikowski*, German Criminal Code Commentary, § 263 StGB, mn. 111.

important view in jurisprudence and prevailing legal literature is the so-called "storage theory."
According to this theory, it suffices if the disposing party was actually in a position to dispose of the other party's assets, provided that they were already considered part of the victim's "storage" before the offense.[24] This is particularly relevant for cashiers or bank employees. A different view is held by the so-called" authorization theory". According to this view, the disposing party must have been legally authorized to do so under civil law, either expressly, tacitly , or at least ostensibly.[25]
The prevailing opinion does not follow the "authorization theory" because it would fail to cover many fraud cases. Finally, the disposition of assets must result in financial loss. Financial loss is a reduction in assets that is not compensated by an equivalent.[26]
However, what exactly constitutes assets protected under criminal law is disputed. The main point of contention is two concepts of assets: the economic concept, advocated by the Federal Court of Justice (BGH) and some legal scholars, and the legal-economic concept, advocated by the prevailing legal opinion. While the economic concept of assets encompasses all of a person's assets of monetary value, the legal-economic concept protects only those economic assets protected by law.[27] The fraud is complete once the financial loss has occurred.[28]

3. Subjective element of the offense under § 263 I StGB

In addition to the objective elements, Section 263 StGB also requires subjective elements. The perpetrator must act intentionally with regard to all elements of the objective offense; conditional intent is sufficient.[29]
Beyond intent, the offense of fraud requires a specific subjective objective, namely an intent to enrich oneself. Intent to enrich oneself is the intention to obtain an unlawful financial advantage for oneself or a third party.[30]
A financial advantage is defined as any improvement in one's financial situation, at least temporarily.[31] Fraud is a result-oriented crime with an overriding internal intent. Whether the perpetrator actually obtains a financial advantage is therefore irrelevant.[32] The intended financial advantage must also be unlawful. A financial advantage is unlawful if there is no legal entitlement to it.[33] Furthermore, fraud requires the so-called "identity of subject matter" between the financial loss and the financial advantage. This necessitates that the advantage is detrimental to the damaged assets and is directly based on the same disposition of assets.[34]

4. The attempt and the remaining paragraphs

Attempted fraud is punishable under Section 263 Paragraph 2 of the GCC. The perpetrator must have the intent to commit the crime with regard to all objective elements of the offense. The commencement of the act is presumed upon the start of the deceptive act.[35]
Section 263, paragraph 3 of the GCC governs particularly serious cases of fraud and provides for an increased penalty (imprisonment from six months to ten years). This is not an independent criminal offense, but rather a rule

24 *Rengier* , Criminal Law SP I, § 13 mn. 108.
25 *Rengier* , Criminal Law SP I, § 13 mn. 107.
26 *Kindhäuser/Böse* , Criminal Law SP II, § 27 mn. 59.
27 *von Heintschel-Heinegg/Kudlich*, Beck'scher Online-Commentary StGB, § 263 StGB mn. 39.
28 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 310.
29 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 303.
30 *Cirener/Radtke/Rissing-van-Saan/Rönnau/Schluckebier*, Leipziger Commentary, mn. 248.
31 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 311.
32 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 310.
33 *Wessels/Hillenkamp/Schuhr*, Criminal Law SP II, § 15 mn. 701.
34 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 314.
35 *Wessels/Hillenkamp/Schuhr*, Criminal Law SP II, § 15 mn. 707.

for sentencing. A particularly serious case is generally assumed, due to the indicative effect of the examples provided, if the circumstances listed in numbers 1-5 have objectively materialized and the perpetrator acted intentionally in this regard.[36]

Unlike paragraph 3, section 263 paragraph 5 of the German Criminal Code contains a qualified offense for simple fraud.

Section 263, paragraph 4 of the GCC declares the requirement of a formal criminal complaint pursuant to Sections 247 and 248a of the GCC applicable as a prerequisite for prosecution in cases of domestic and family fraud as well as petty fraud. In cases of petty fraud, the decisive factor is the objective market value; the upper limit is approximately €50.[37]

5. Computer fraud, Section 263a StGB

Section 263a of the GCC was added as a catch-all provision to close loopholes in Section 263 StGB. The offense of fraud requires the deception of a person, meaning it is not applicable if a technical device is deceived instead of a person. Section 263a StGB was introduced to cover these cases.[38]

III. The offense of fraud in Art. 190 CCU

1. Protected asset and historical development

The offense of fraud under Article 190 CCU is one of the most important provisions in Ukraine.

Article 190 CCU protects both assets and property rights.[39] The creation of Article 190 CCU is closely linked to the development of Ukrainian criminal law after independence in 1991.

For centuries until its independence in 1991, Ukraine was part of the Russian Empire and thus had very similar legal systems in its criminal code to those of the former Soviet Union and present-day Russia.[40] The Ukrainian Criminal Code was reformed in April 2001. This reform modernized the offense and extended its protection to state, municipal, and private property. Since then, Article 190 CCU has been further developed several times to better address new forms of economic activity.

2. Objective elements of Article 190 I CCU

Article 190 I CCU is the basic provision. The objective elements of Article 190 I CCU consist of the appropriation of another's property or the acquisition of property rights through deception or abuse of trust.[41]

The objective elements of the offense encompass deception or breach of trust as a means of obtaining another person's assets. Deception is understood as the dissemination of false information or the deliberate concealment of certain circumstances, the disclosure of which was mandatory and of great importance to the victim's conduct.[42] Deception can be both active and passive.[43] Active deception is further subdivided into verbal and action-based deception. Verbal deception can be oral or written. Action-based deception includes the actions, gestures, and

36 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 378.
37 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 375.
38 *Kindhäuser* /Hilgendorf, LPK-StGB, § 263a StGB mn. 1.
39 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 88.
40 *Zaikina*, Juvenile Criminal Justice in Ukraine, p. XV
41 *Melnyk/Khavronyuk*, Commentary on the Criminal Code of Ukraine, p. 594.
42 *Emelyanov*, PF 2012-3, p. 186.
43 *Serbeniuk*, ibid, op. cit. p. 264.

movements of the deceiver.[44] Passive deception, on the other hand, consists of concealing circumstances that are essential to the victim's decision; the mere exploitation of an error is insufficient.[45]

In addition to deception, the law identifies abuse of trust as a second form of fraud. Abuse of trust is based on exploiting existing relationships of trust between victim and perpetrator.[46] Such relationships can arise through recommendations from acquaintances, the perpetrator's social status, specific aspects of the employment or personal relationship, or familial or friendly connections.[47] In this case, the perpetrator exploits the existing trust to obtain assets or property rights. Typical examples include loan fraud and advance payment fraud.[48]
There must be a causal link between the perpetrator's actions or omissions and the victim's error.[49]
The defining characteristic of fraud is the voluntary transfer of assets by the victim while under a state of deception.[50] The victim mistakenly believes they will suffer no loss. Therefore, the voluntariness is not based on a free, conscious decision, but rather on a flawed perception of reality.
The victim's direct involvement in the asset transfer and the voluntariness of their actions are essential characteristics of fraud, distinguishing it from theft and other property offenses.[51] If the victim, due to age, physical or mental disabilities, or other circumstances, cannot properly assess and understand the content and significance of their actions, the asset transfer cannot be considered voluntary.[52] A causal link must exist between the deception or breach of trust and the asset transfer.[53]
Furthermore, the victim must have suffered a financial loss. This loss refers to material damage, meaning the victim's property is unlawfully removed, destroyed, or damaged.[54] However, the damage caused must exceed at least 0.2 of the citizen's minimum tax-free income. Otherwise, the offense is reclassified from a minor infraction to an administrative offense.[55]

3. Subjective element of Article 190 I CCU

The subjective element of Article 190 I CCU requires intentional conduct. Direct intent is necessary.[56] The perpetrator must recognize and intend that he will obtain another person's property or a property right through deception or by abusing an existing relationship of trust .
Furthermore, Article 190 I CCU requires a self-serving intent.[57] The perpetrator must act with the intention of obtaining an unlawful financial advantage for himself or a third party.

4. Trial and qualifications

Attempted fraud is generally a criminal offense. This follows from Article 15 of the CCU. According to this article, a punishable attempt exists if a person, with direct intent, immediately begins to commit a crime, but the act is not completed for reasons beyond their control.

44 *Emelyanov*, ibid, op. cit., PF 2012-3, p. 186.
45 *Emelyanov*, PF 2012-3, p. 186.
46 *Serbeniuk*, p. 264.
47 *Serbeniuk*, p. 264.
48 *Emelyanov*, PF 2012-3, p. 187.
49 *Emelyanov*, PF 2012-3, p. 187.
50 *Serbeniuk*, p. 265.
51 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.
52 *Melnyk/Khavronyuk*, Commentary on the Criminal Code of Ukraine, p. 594.
53 *Serbeniuk*, p. 262.
54 *Serbeniuk*, p. 262.
55 *Serbeniuk*, p. 263.
56 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.
57 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.

Article 190, paragraphs 2 to 4, of the CCU contain the aggravating circumstances of fraud.[58] Paragraph 2 of Article 190 CCU applies if the fraud is committed repeatedly, is carried out through prior collusion between several persons, or results in substantial financial loss to the victim. Paragraph 3 of Article 190 CCU applies if the fraud is committed on a large scale or using electronic or information technology systems. Article 190, paragraph 4, CCU applies if the fraud is committed on a particularly large scale or by an organized group.

IV. Comparative law section

1. Similarities

Section 263 of the GCC and Article 190 of the Italian Civil Code (CCU) pursue the same protective purpose: the protection of assets from fraudulent interference. Both provisions cover situations in which the perpetrator, through deception, induces the victim to transfer their assets or property rights to the perpetrator or a third party. Furthermore, in both offenses, the victim's transfer of assets does not occur through taking or coercion, but rather through a decision influenced by deception. Both offenses therefore require the element of "voluntariness."
Furthermore, both legal systems require proof of pecuniary damage. The victim must suffer an economic disadvantage.
Under both German and Ukrainian law, fraud requires intent. The perpetrator must know that their statements are false and that they are therefore creating or maintaining a misunderstanding in the victim, and they must at least intend to transfer assets. Furthermore, both offenses require an objective aimed at gaining financial advantage.
Attempting fraud is also a criminal offense under both German and Ukrainian law.
Furthermore, both offenses include provisions for increased penalties in particularly serious cases, such as repeated offenses or joint commission.

2. Differences

Despite the similarities, the two offenses exhibit significant differences.
Article 190 of the CCU defines fraud as the unlawful acquisition of another's assets or property rights through deception or abuse of trust. The focus is therefore on the fact that the perpetrator obtains assets based on deception or a special relationship of trust. The offense is concisely formulated and includes the manner in which the assets are acquired. Thus, Article 190 CCU is more results-oriented. A key difference is that Article 190 CCU explicitly mentions abuse of trust as a form of fraud. German law does not have such an element of the offense.

Section 263 of the GCC , however, is structured in more detail. According to this section, fraud requires that the perpetrator deceives the victim about facts, thereby creating an error in the victim's mind, and that the victim, based on this error, makes a disposition of assets and consequently suffers financial loss. German law thus places greater emphasis on the chain of causality between the elements of the offense. Section 263 StGB is therefore more process-oriented.

Another difference concerns the legal definition of attempted fraud. Under German law, attempted fraud is punishable under Sections 263 Paragraph 2 and 23 Paragraph 1 of the GCC . Under Ukrainian law, attempted fraud is also a punishable offense. However, this punishability does not arise directly from Article 190 of the Ukrainian

[58] *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.

Criminal Code (CCU), but rather from the general provisions (Article 15 CCU).

The penalties also differ. The basic offense under German Section 263 of the Criminal Code (StGB) provides for a prison sentence of up to five years or a fine. The Ukrainian fraud offense provides for a more lenient prison sentence of three years, as well as other sanctions, such as community service or alternative civilian service. However, in both cases, the maximum penalty is increased in aggravated cases.

Another key difference is that fraud using computer-based systems is regulated as a qualified offense in Article 190 III CCU, whereas in Germany computer fraud is a separate offense under Section 263a of the Criminal Code.

3. Reasons for the differences

The differences between Section 263 StGB and Article 190 CCU are partly due to historical reasons. The German offense of fraud originated in the 19th century. German legal scholarship was characterized by the idea of making the criminal code as concrete and systematic as possible in order to limit state arbitrariness. The historical development of Ukrainian law, on the other hand, was quite different. It follows the tradition of Soviet criminal law, which was less characterized by dogmatic systematization. The focus was on the effective combating of property crimes and the protection of economic interests. Therefore, the offenses were often formulated more generally and less subdivided into individual legal requirements. For criminal liability, the decisive factor was primarily that another person's assets were obtained through deception or breach of trust.

One reason for the differences lies in the differing objectives of criminal policy. German law aims for a clear distinction between criminal and non-criminal conduct in order to offer a high degree of legal certainty. In contrast, Ukrainian law focuses more on the unlawful acquisition of assets or property rights in order to better combat various forms of fraud and protect assets more effectively.

Another possible reason could be the different functions of criminal law. In Germany, criminal law is considered a "last resort" (*ultima ratio*). This principle of *ultima ratio* is understood as one reason why criminal offenses are narrowly defined, as can be clearly seen in the fraud offense under Section 263 of the German Criminal Code. Ukrainian law, on the other hand, is more strongly oriented towards comprehensive protection of assets and property rights, which is why the offense is defined more broadly.

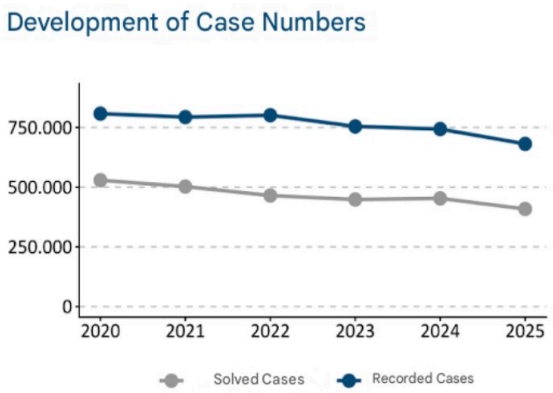
Furthermore, in Germany, many details of the offense of fraud are specified through case law.
For example, the courts have developed the concept of triangular fraud. This makes the offense of fraud complex in modern times. In Ukraine, continuing judicial training plays a rather minor role.

4. Practical implications

Fraud can take many different forms. Besides classic fraud offenses such as goods, services, or insurance fraud, digital forms of fraud are becoming increasingly important. These include phishing attacks, fake online shops, identity theft, and various forms of investment fraud on the internet. At the same time, technological developments

and the emergence of new economic sectors contribute to the development of new fraud methods.[59] This has not only changed the ways in which crimes are committed, but has also significantly increased the challenges for law enforcement agencies.

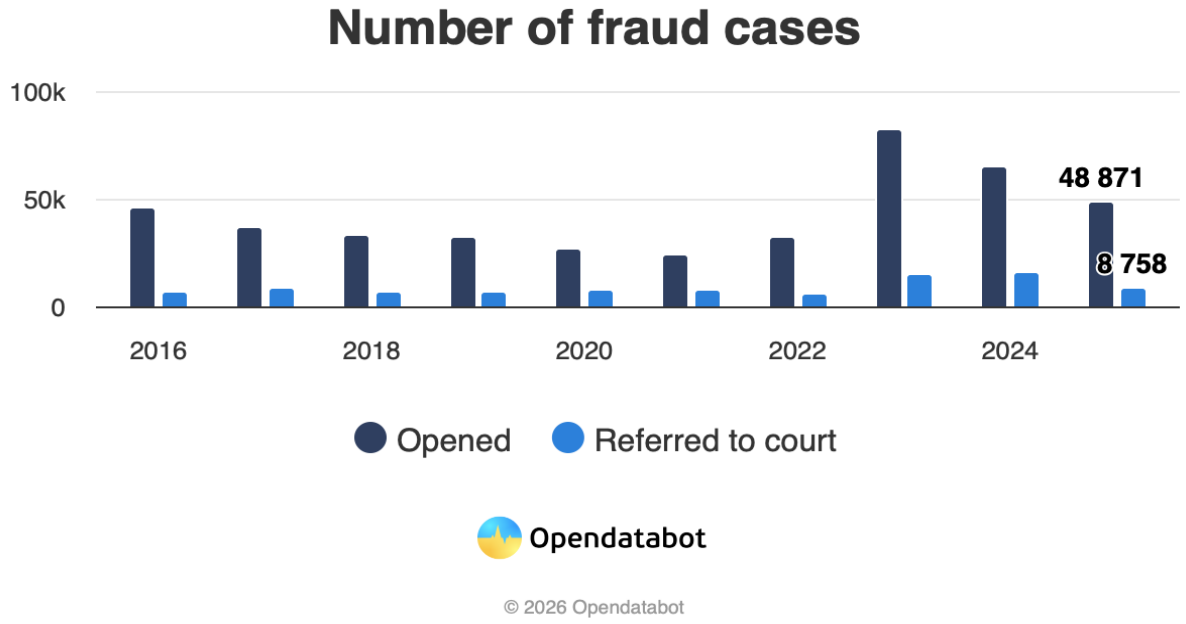
a) In Germany



Year	Cases Recorded	Cases Solved	AQ
2020	808.074	529.031	65,5
2021	793.622	502.506	63,3
2022	801.412	464.971	58,0
2023	754.489	448.359	59,4
2024	743.472	453.137	60,9
2025	681.354	408.705	60,0

The practical relevance of fraud in Germany is particularly evident in the number of cases. According to the Federal Criminal Police Office's crime statistics, a total of 681,354 fraud cases were registered in 2025.[60] While this number is down compared to the peak of 801,412 cases in 2022, it remains at a high level. However, the number has decreased compared to previous years. The clearance rate for this offense is usually between 58 and 65%. Although more than half of the cases have been solved in recent years, fraud still has a significant number of unreported cases.

b) In Ukraine



[59] *Serbeniuk,* p. 258.
[60] Federal Criminal Police Office, Police Crime Statistics 2025.

Fraud is also a common crime in Ukraine. Combating fraud is particularly challenging during times of economic crisis, high inflation, or martial law. [61]The number of fraud cases peaked in 2023, with 82,609 offenses registered. Only 14,838 cases were referred to court. [62]In subsequent years, the number of fraud cases declined. In 2025, only 48,871 cases were registered, of which 8,758 were referred to court.

V. Conclusion

A comparison of Article 190 of the CCU and Section 263 of the German Criminal Code shows that both provisions serve to protect assets from fraudulent acts, but are based on different legal concepts. While German fraud law is characterized by a detailed dogmatic structure, Article 190 focuses more clearly on the unlawful acquisition of assets or property rights through deception or breach of trust.

The differences stem primarily from the differing historical developments and criminal policy objectives of the two countries. German law is more process-oriented and places particular emphasis on the concrete limitation of criminal acts. In contrast, Ukrainian law is more outcome-oriented and focuses primarily on the unlawful transfer of assets.

Against the backdrop of Ukraine's European integration, the protection of the European Union's financial interests is also gaining considerable relevance. The significance of European influence is particularly evident in Directive 2017/1371 on Financial Instruments (PIF), which establishes common minimum standards for the protection of the European Union's financial interests.[63]

The comparison reveals that, despite a shared protected legal interest, different legislative approaches can be taken to criminalize fraud. Both sets of regulations have their own strengths and weaknesses: While the German fraud offense offers a high degree of legal certainty through its dogmatic precision and concrete differentiation, the Ukrainian fraud offense is characterized by its simpler and more flexible application in practice.

61 *Serbeniuk*, p. 258.
62 Opendatabot.ua, The number of fraud cases decreased by a quarter in 2025, January 30, 2026.
63 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 6. In this study could not be identified that either the German model or the Ukraine model explicitly refer in their generic fraud offences „by name or wording" to the PIF Directive as both stem from more generic fraud offences aiming at the protection of private gain and money, but Germany and Ukraine have special laws that protect foreign money and subsidies as well as finances, such as in the Abgabenordnung or the State Budget Act as well as in administrative laws.

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