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RESPONSIBILITY FOR MEDIATING BRIBERY

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Annotation: The article examines the evolution of responsibility for mediation in bribery in Russian criminal law. Some problems of the qualification of this crime are considered.
Keywords: bribery, the subject of a bribe, complicity in a crime, intermediary, instigator, accomplice.

Introduction

In the latter case, an additional element appears in the mechanism of the crime - a person providing intermediary services for the transfer of the subject of a bribe from the bribe giver to the bribe recipient. This raises the question of the legal nature of mediation in bribery.

First of all, it should be noted that the Criminal Code of the Russian Federation of 1996, unlike the previously existing criminal legislation, does not contain an independent rule on liability for mediation in bribery. Such a rule was provided for by the Criminal Code of the RSFSR in 1922 and 1926 in the article on liability for bribery. When the Criminal Code of the RSFSR was adopted in 1960, this rule was excluded, but later restored in the form of a separate article 1741 "Mediation in bribery"[1]. The expediency of separating mediation in bribery into an independent article was justified by the fact that it.It has its own specifics - it contributes not only to giving, but also to receiving a bribe, and at the same time represents an action different from complicity in a crime[2]. At the same time, mediation was defined as an action expressed in the direct transfer of the object of the bribe on behalf of the bribe giver or the bribe recipient[3].

This position was also followed by judicial practice, which consistently distinguished mediation and complicity in bribery. Thus, in paragraph 5 of the Resolution of the Plenum of the Supreme Court of the USSR dated September 23, 1977."On judicial practice in cases of bribery" it was explained: "Courts need to distinguish mediation in bribery from giving and receiving a bribe, given that the mediator is a person who, acting on behalf of the bribe-giver or the bribe-taker, directly transfers the subject of the bribe.

A similar line was drawn in Resolution No. 3 of the Plenum of the Supreme Soviet of the USSR dated March 30, 1990 "On Judicial practice in cases of bribery". It actually repeated the above-mentioned provisions of the Decree of September 23, 1977, however, the assessment of the actions of the intermediary-accomplice in it was more specific. In particular, it was noted that "a person who organizes the giving or receiving of a bribe, incites to it or is an accomplice to giving or receiving a bribe and at the same time performs intermediary functions is responsible for complicity in giving or receiving a bribe. At the same time the question of the qualification of an accomplice's actions should be decided taking into account the direction of his intent, based on whose interests, on whose side and on whose initiative - the bribe-giver or the bribe-taker - he acts" (paragraph 8).

At the same time, the doctrine expressed a different point of view regarding the legal nature of mediation in bribery – it was considered as a special type of complicity in a crime[4]. Some authors have identified mediation in bribery with complicity[5]. From these positions, the existence in the criminal law of an independent norm on responsibility for this act did not have sufficient grounds. Moreover, according to the legal consequences, mediation in bribery was equated to giving a bribe:The Criminal Code of the RSFSR provided for deprivation of freedom for a term of two to eight years (the difference in the minimum amount of punishment was 1 year); the sanction of part 2 of this article provided for a similar basic punishment as the sanction of part 2 of .

The legislator's refusal to regulate the institution of mediation in bribery in the Criminal Code of the Russian Federation in 1996 is perceived differently in the modern doctrine of criminal law.

Thus, according to O. Kachmazov, "the current criminal legislation reasonably refused to separate mediation in bribery into an independent structure"[6]. Assuming that the actions of the intermediary according to their content, they are complicity in the form of complicity, the author at the same time notes that these actions do not fall under the legally established signs of complicity (part 5 of Article 33 of the Criminal Code of the Russian Federation), in connection with which proposes to change the wording of this norm[7].

However, some scientists have expressed the opposite point of view on this issue.Thus, B. V. Volzhenkin believes that the decision of the legislator to exclude from the criminal law the norm on liability for mediation in bribery seems unjustified and makes it difficult to qualify such an act. In his opinion, the absolute disadvantage of qualifying the actions of the mediator as complicity in giving and receiving a bribe is that "it does not reflect the actual participation of the mediator in bribery in the commission of two crimes - receiving a bribe and giving a bribe, i.e. there is an ideal combination of crimes when one action contains signs of crimes provided for in two articles of the Criminal Code"[8]. It is this circumstance, the scientist believes, that explains the need to restore the norm in the Criminal Code of the Russian Federation containing the composition of mediation in bribery.

In this regard, it is appropriate to note that such a rule is available in the Model Code of the CIS member states (Article 307), which defines mediation in bribery as facilitating the bribe recipient and the bribe giver in reaching or implementing an agreement between them on receiving and giving a bribe[9]. This norm is also contained in the criminal legislation of a number of CIS and Baltic countries: the Criminal Code of Belarus (art. 432); the Criminal Code Uzbekistan (Article 212); the Criminal Code of Kazakhstan (Article 313);The Criminal Code of Lithuania (art. 226), etc. It is characteristic that in the legislation of many foreign countries There is no separate rule on liability for mediation in bribery. In the Criminal Code of some countries containing such a norm, its content corresponds to the traditional understanding of this act adopted in the CIS countries (for example, Article 305a of the Criminal Code of Bulgaria). More often, mediation in bribery has a broader meaning in the sense of "influence peddling" (for example, art. 230 of the Criminal Code of Poland, art. 197-1V of the Criminal Code
Japan) or is equivalent to receiving a bribe (Article 295 of the Israeli Criminal Law Law).

The definition of the term "mediation" in a broad sense comes from its semantic meaning as facilitating an agreement, a transaction between the parties (for example, when hiring). Accordingly, an intermediary is someone who mediates between someone, facilitates an agreement, a transaction between someone[10]. In a later edition of the dictionary of the Russian language S.I. Ozhegova, an intermediary is defined as a person or organization with whose participation negotiations are conducted between the parties[11]. This is exactly the definition of mediation in bribery that was given in the Resolution of the Plenum The Supreme Soviet of the USSR dated July 31, 1962. "On judicial practice in cases of bribery," which stated that "an intermediary is someone who, acting at the request or on behalf of a bribe-giver or a bribe recipient, contributes to the achievement or implementation of an agreement on giving or receiving a bribe." It also prevailed in the scientific literature[12]. According to this approach, two types of mediation were distinguished: intellectual (assistance in reaching an agreement between the parties on giving and receiving a bribe) and physical (implementation of the agreement by direct transfer of a bribe). Based on this understanding of mediation in bribery.The modern criminal legislation of some CIS countries is also based. Thus, according to Article 313 of the Criminal Code of Kazakhstan, mediation in bribery is the facilitation of a bribe recipient and a bribe giver in reaching or implementing an agreement between them on receiving and giving a bribe[13].

In Article 212 of the Criminal Code In Uzbekistan, mediation in bribery is defined as an activity aimed at reaching an agreement on receiving or giving a bribe, as well as the direct transfer

of a bribe on behalf of interested parties[14].Thus, mediation in bribery in the legislation of these countries is removed from the scope of the institution of complicity in a crime,more precisely, it forms the institution of "necessary complicity" provided for in article A special part of the Criminal Code.

The idea is defined as the actions of a person expressed in the direct transfer of the object of a bribe on behalf of a bribe giver or a bribe recipient. This position, reflecting the established judicial practice, was fixed in the Resolution of the Plenum of the Supreme Court USSR No. 3 dated March 30, 1990, where an intermediary was recognized as a person who, acting on behalf of a bribe giver or a bribe recipient, directly transfers the subject of a bribe. The legislator of some CIS countries proceeds from a narrow understanding of mediation in bribery.Thus, in Article 432 of the Criminal Code of the Republic of Belarus, mediation in bribery is defined as the direct transfer of a bribe on behalf of a bribe giver or a bribe recipient. Accordingly, in the note to this article, which establishes the grounds for exemption from criminal liability, persons guilty of mediation in bribery and accomplices in giving or receiving a bribe are distinguished. With this approach, the responsibility of intermediaries and accomplices in bribery is of a different (differentiated) nature.

In the Criminal Code of the Russian Federation, due to the exclusion of the norm providing for liability for mediation in bribery, the relevant actions are evaluated through the prism of the institution of complicity in a crime. In the Resolution Plenum of the Supreme Court of the Russian Federation on February 10 2000. the following clarification is provided on this issue: "Courts should bear in mind that the criminal liability of an intermediary in bribery, depending on the specific circumstances of the case and his role in giving or receiving a bribe, occurs only in cases provided for in Article 33 of the Criminal Code of the Russian Federation" (paragraph 8).

It seems that such an explanation is insufficient to assess the form of crime under investigation. First of all, it does not specify what should be understood by mediation in bribery. Apparently, these are the actions of a person corresponding to the functions of an organizer, instigator and accomplice,enshrined in Article 33 of the Criminal Code of the Russian Federation. In this case, a situation is indeed found where the actions of the intermediary - organizer or instigator are covered by the concept of complicity, and the actions of the intermediary - accomplice (in the narrow sense of the word), being such de facto, de jure are not they fall under the legislative definition of this type of accomplice, fixed in Part 5 of Article 33 of the Criminal Code of the Russian Federation[15]. An intermediary may be recognized as an accomplice in bribery only if, in addition to performing a purely technical role in the transfer of a bribe, he will assist in reaching an agreement between the parties to the bribe or perform other actions specified in Part 5 of Article 33 of the Criminal Code of the Russian Federation. There is a gap in the legislation, which should be eliminated either by supplementing Part 5 of Article 33 of the Criminal Code of the Russian Federation,or by including in the Criminal Code of the Russian Federation rules on liability for mediation in bribery.

Thirdly, the said resolution does not say anything about which article of the Special Part The criminal Code must be responsible for the intermediary – for complicity in giving or receiving a bribe. The solution of this issue depends on the specific circumstances of the case. It is appropriate to note that in the Resolution of the Plenum of the Supreme The USSR Court of March 30, 1990 No. 3 proposed to resolve this issue taking into account the orientation of the accomplice's intent based on whose interests, on whose side and on whose initiative -a bribe-giver or a bribe-taker - he acts. According to some scientists, such qualification in accordance with this explanation should also be resorted to in cases where the role of an accomplice consisted only in performing the function of an intermediary on the part of the bribe giver or the bribe recipient[16]. However, this resolution was adopted during the period of validity of the Criminal Code The RSFSR in 1960, which contained art. 1741 on liability for mediation in bribery. In accordance with the Criminal

Code of the Russian Federation of 1996, these actions, as already noted,do not constitute a crime. Therefore, this explanation seems relevant only when evaluating mediation in bribery in a broad sense. Based on this, if the intermediary acts on the initiative and in the interests of the bribe-giver, he is responsible for complicity in giving a bribe, and, conversely, when committing similar actions on the side of the bribe-taker, for complicity in receiving a bribe.

However, in such cases, there is inevitably a coincidence in the mediation of two functions at once - the organizer (or instigator) and the accomplice in relation to two crimes - giving and receiving a bribe. For example, an intermediary who, on behalf of an official, inclines someone to give a bribe, and then transfers it to the recipient, is simultaneously an accomplice to two crimes: in relation to giving a bribe, he acts as an instigator, and in relation to receiving it, an accomplice.

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