



CRIMINAL LAW METHODS IN THE COUNTERACTIONS AGAINST CORRUPTION

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Abstract

One of the main lines of the National Anti-Corruption Strategy, approved by the Decree of the President of the Russian Federation is the further development of the legal basis of such counteracting. The analysis of the supervisory work indicates that the bribery is one of the most common crimes in the area of corruption. Bribery is a typical and distinguishing manifestation of corruption, the most dangerous criminal phenomena that undermines power bases and administration, discredits and impairs their authority, affecting citizens' rights and interests. Bribery is a collective juridical term that includes three independent formal components of an official crime: against state power, interests of the state service and bodies of local self-government, receiving and giving bribe, as well as bribe agency. Receiving and giving bribe are two interrelated criminal acts; they cannot be committed independently, without interrelationship, which means they are always in the state of indispensable implication, where the absence of the fact of the giving bribe means the absence of the fact of receiving it. Legislatively the fact of receiving bribe considers as a serious crime, with all ensuing penal and legal consequences, and relates to gravest crime according to the article 290 of The Criminal Code of the Russian Federation. The novelty of the legislation is the introduction into the criminal law the responsibility for promising and offering the assistance in bribery. According to the law, responsibility for this crime comes with the fact of promise or offer of bribe agency.

Keywords: bribery, corruption, responsibility, offer of bribe, receiving bribe

1 INTRODUCTION

Criminal policy of the state is variable; at present the issues of improvement of legislation and law enforcement in the field of combating corruption through the development of their scientific and methodological foundations being its priorities. Burning topic to counteract corruption behavior

subjects to careful investigation by the executive bodies and is a subject of public scrutiny.

Among the tools of combating corruption are the issues of implementation of requirements of international anti-corruption legal acts in the framework of national legislation, the search of optimal technologies to fight corruption, the scientific basis of measurement of corruption level. The Russian Federation has made fundamental steps in this direction: the UN Convention against Corruption and the Convention of the European Council on the

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amenability for corruption have been signed and ratified, a number of anti-corruption laws have been adopted, anti-corruption standards have been formulated, the Presidential Council for Combating Corruption has been formed, activities of law enforcement authorities in this regard have intensified.

2 METHODS OF THE ANTI-CORRUPTION DRIVE IN RUSSIA

At present the improvement of the legal framework of combating corruption both at the federal and regional levels is continuing.

Thus, the Federal Law of 04.05.2011 № 97-FL "On the Amendments to the Criminal Code of the Russian Federation and the Code of the Russian Federation on Administrative Offences in connection with the improvement of public administration in the field of combating corruption" (Federal Law №-97, 1996) has made a number of significant changes to the criminal and administrative legislation of Russia.

In particular, the Criminal Code of the Russian Federation (Federal Law №-63, 1996) regulates restriction of liberty and imprisonment as well as a new procedure for calculating fines - up to one hundred times the amount of commercial graft or bribery (from 25 thousand rubles up to 500 million rubles) for such crimes as commercial graft (art. 204 of the Criminal Code), giving a bribe (art. 291 of the Criminal Code), receiving a bribe (art. 290 of the Criminal Code). Criminal liability is differentiated depending on the size of the bribe - in a simple amount, in a significant amount or in a large or very large amount.

Criminal liability has been introduced for the mediation in bribery (art. 291.1 of the RF Criminal Code), i.e. for the direct transfer of bribes on behalf of the bribe-giver or taker or any other activity that enables them to achieve the agreement on the giving or receiving a bribe in a large (extra-large) amount, for promise or offer of mediation in bribery.

The CC of the RF doesn't include a provision under which foreign officials and officials of public international organizations that have committed crimes against the state, the interests of public service and service in local government, are criminally liable in cases stipulated by the

international treaties of Russia. It's been provided that the mentioned above foreign officials and officials of public international organizations are criminally responsible for giving and receiving bribes and mediation in bribery on a common basis.

At the same time according to the Code of the Russian Federation on the Administrative Offences (Federal Law №-195, 2001) the statute of limitations for the bringing to administrative responsibility for the violation of the Russian legislation on combating corruption has been increased - from 1 to 6 years from the date of the administrative offense, and administrative responsibility has been introduced for the illegal transfer and illegal offer or promise on behalf or for the benefit of a legal person to the official of money, securities or other property, rendering him property-related services, provision of property rights for his actions (or inaction) associated with the occupied office. Besides, the procedure for the provision of legal assistance in cases of administrative offenses has been defined.

The Federal Law of 21.11.2011 № 329-FL "On the Amendments to Certain Legislative Acts of the Russian Federation in connection with the improvement of public administration in the field of combating corruption" (Federal Law №-329, 2011) has made changes in the field of banking secrecy. Thus, lending institutions are now required to issue, on request, information on transactions, accounts and deposits of individuals determined by the President of the Russian Federation to the officials of federal government agencies and top officials of the subjects of the Russian Federation (heads of the supreme executive bodies of the subjects of the Russian Federation) in the case of checking information about the income, property and property obligations.

Tax authorities must also give available information about the income, property and property obligations on the requests of the officials of federal government agencies.

Another innovation was dismissal of state and municipal employees due to the loss of trust; it was the only possible form of responsibility in case of failure to prevent and (or) regulate the conflict of interests; in case of failure to provide information on income, property and property obligations or deliberate submission of false or incomplete

information; participation in the management body of the commercial organization, carrying out entrepreneurial activity; participation in the management bodies, trustees or supervisory boards, other bodies of foreign non-profit non-governmental organizations.

The list of administrative offenses that require administrative investigation includes violations of the law on combating corruption.

Federal executive authorities and law enforcement agencies adopted a considerable amount of legal acts aimed at the organization of the anti-corruption activities (including the General Prosecutor's Office, Investigation Committee, the Ministry of Justice, Ministry of Internal Affairs, Federal Drug Control Service of the Russian Federation, and other departments).

The main areas of the departmental legal regulation of combating corruption have been the following questions:

- ethical behavior of civil servants;
- the order of the anti-corruption expertise of departmental regulations and their projects;
- the formation and activities of the commissions on compliance to the official conduct of employees and resolving conflicts of interests.

Studies show that the decrease in the reported crimes of corruption is caused not by the decrease of the level of corruption in the country, but by the lack of results in the work of law enforcement bodies in a very high latency of corruption environment.

This conclusion is confirmed by both the results of numerous sociological surveys and by the studies of latent delinquency.

Combating corruption has become an independent trend of public policy recently. Therefore, forms, methods and tools for its implementation are still in the formative stage. Meanwhile, defining the efficiency criteria of the state policy in the field of combating corruption is the essential point. We must not forget that the efficiency is a meaningful sign of any social activity. Not being correlated with the specified criteria for certain legal, social, organizational basis of content, it is an abstract category and has no value in terms of social practice. Scientists have made successful attempts to classify and

organize the general terms of efficiency, to delimit its conditions and factors, to develop a common and private research methods of the terms of efficiency (D.N. Kapovich (2012), A.V. Makarov & A.S. Zhukov (2014), V. Mikhailov (2013), M.A. Shalimova (2014), T.V. Filonenko (2014) and others). Criteria and techniques evaluating the performance of various state and legal institutions have been offered. Besides, technologies of detection and improving performance efficiency of individual public bodies have been designed and extensively used. However, it is obvious that the fight against corruption has many specific features that must also be taken into account, as well as the diversity of the phenomenon under investigation. Thus, a systematic analysis of the Federal Law of December, 25, 2008, № 273-FL "On Combating Corruption" (Federal Law №-273, 2008) reveals the following areas of combating corruption:

1. prevention of corruption: anti-corruption analysis of the legislation and its improvement; improvement of the personnel policy of the state, methods of selection and training officials, monitoring their activities, social security of the officials; identification and elimination of conditions and factors that contribute to the commission of corruption crimes; formation of legal culture of society, creating an atmosphere of intolerance towards corrupt behavior; promoting the development of the institutions of parliamentary and public scrutiny;
2. fight against corruption: detection, suppression and investigation of the corruption offenses; bringing the perpetrators to justice;
3. elimination or minimization of the effects of corruption: compensation for damage caused by illegal actions; creating effective mechanisms to protect the rights of citizens and organizations, violated by the acts of corruption; Increasing the citizens' trust in government and its officials.

The mentioned above areas are closely connected and can be implemented only comprehensively as a single mechanism, including regulatory, institutional and dynamic components. Therefore, the criteria for evaluating the effectiveness of anti-corruption policy should be associated with the results of the activities of

specific government agencies, local government officials, organizations in these areas and as well as with the general social effects of this mechanism.

The research of the condition and problems of fighting corruption in the RF conducted by the SRI of the Academy of the General Prosecutor of the Russian Federation suggest that the population of the country, civil society institutions, international organizations and experts still evaluate the degree of corruption in all spheres of relationships and levels of state power in Russia as high.

And the level of corruption in the field of access to the state order, passing inspections and allocation of land is the highest.

According to the Fund "Public Opinion", overwhelming number of respondents assesses the level of corruption in Russia as high - 81%, as average - 10%, and only 2% of the respondents believe that the level of corruption is low.

The study of jurisprudence in criminal cases of bribery shows that citizens actively use the bribe as a means of getting rid of responsibility, administrative penalty for any offense or criminal prosecution. Simultaneously, in the minds of citizens most law enforcement bodies in charge of fighting corruption are corrupters themselves. At the same time there is the need for public awareness of citizens in the exposure and arrest of high-ranking corrupters. However, the reason for this is not an outrage that someone is violating the law but mostly traditionally inherent dislike of officials in the minds of Russian citizens. According to some experts, this attitude to corruption is not a legal consciousness but a class feeling; they have different origins and different consequences.

Studies of public opinion showed a high degree of social tolerance towards corruption. Here we can see a certain gap of perception reality on abstract and household levels. Citizens support public accusations of corruption, as well as strict government measures to respond to it eagerly, but they prefer to settle personal problems through bribes. To combat corruption effectively the establishment of an effective system of financial control and audit of the property and sources of income of officials is necessary, as in its current state, it does not allow delimiting the illegal income

and assets reliably. An essential element of this control should be a legislative solution to the issue of controlling costs, since the declaration of income is only one component that facilitates the identification differences between actual and unspent funds received.

Among the anti-corruption standards aimed at preventing corruption in the public service the obligation of state and municipal employees to provide information on income, property and property obligations in respect of himself, his spouse and juvenile children has the leading position. The implementation of this institution is a prerequisite and necessary institutional basis to identify the corruption income of the officials.

3 DEFECTS OF THE ANTI-CORRUPTION LAW

Bribery is the most typical and characteristic manifestation of corruption, of this dangerous criminal phenomenon that undermines the foundations of power and control, discredits and undermines their credibility, affects the legitimate rights and interests of citizens.

Bribery is a collective legal term that encompasses a composition of two independent malfeasance against the state, the interests of public service and service in local government - accepting a bribe and giving it.

Accepting a bribe and bribery are two interrelated criminal acts, they cannot be committed by themselves, independently, i.e. they are complicities: the absence of giving a bribe means the absence of its acceptance. But according to the law, bribe-taking is regarded as much more socially dangerous act, which refers to the category of very serious crimes with all negative penal consequences for the guilty official (in accordance with the provisions of Art. 290 of the Criminal Code of the RF).

The law formulates signs of receiving a bribe (Art. 290 of the Criminal Code of the RF) as obtaining a bribe in the form of money, securities, or other property by an official, a foreign official or an official of a public international organization in person or through the intermediary, or in the form of rendering illegal services of a material nature, providing other property rights for action (inaction) in favor of the briber or individuals represented by

him, if such actions (inactions) are included in the official powers of the official or if he can promote such actions (inaction) due to his official position as well as general protection or connivance in the service.

The Federal Law of 04.05.2011 № 97-FL “On Amendments to the Criminal Code and the Code of Administrative Offences of the Russian Federation in connection with the improvement of public administration in the field of combating corruption” (Federal Law, 2011) has made significant changes in the criminal law concerning punishment for bribery crimes.

The Law has introduced criminal responsibility for mediation in bribery (Art. 291.1 of the Criminal Code), i.e., for the direct transfer of bribes on behalf of a bribe-giver or taker or any other actions facilitating to achieve or implement the agreement on giving and receiving a bribe in a large (large, extra-large) amount, promise or offer of mediation in bribery.

The mediator, acting as a link between the briber and the bribe taker, performs one of the actions, directly transmits bribe to the appropriate official or promotes implementation of the agreement and the receipt of a bribe between them (for example, property-related services, or other property rights, time and place of execution of documents about it, etc.). He always acts on behalf of one of these persons.

The absolute novella of the Law N 97-FL is an introduction to the criminal law the provisions on liability for a promise or offer of mediation in bribery (part 5, Art. 291.1 of the Criminal Code). This norm criminalizes two forms of criminal behavior. The difference between them, according to V.I. Tyunin (2011), is in that who is the initiator of committing acts of mediation. If the initiative comes from the potential mediator, it is an offer of mediation, if it comes from the potential bribe – giver or taker, it is the promise of mediation.

According to the meaning of the Law, responsibility is incurred for mere promises or offers of mediation actions. At a time when a potential mediator in verbal or any other form expresses the intention (at the offer) or agrees

(with promises) to commit acts constituting *Actus reus*, under Part1, Art. 291.1 of the Criminal Code, the crime is considered ended.

In this connection, the question arises concerning the legal nature of this crime (in terms of its relationship with the act, the signs of which are described in Part 1, Art. 291.1 of the Criminal Code). Views of some researchers, having appeared in legal literature, considering offer or promise of mediation in bribery as a step to bribery can hardly be sustainable.

According to paragraph 11 of the current Resolution of the Plenum of the Supreme Court on February 10, 2000 N 6 “On judicial practice in cases of bribery and commercial bribery” (Bjulleten' Verhovnogo Suda RF, 2000), expressed intention of a person to give (or receive) cash, securities, other property or allow illegal use of material resources in cases when a person hasn't taken any actions to implement his intentions cannot be characterized as an attempt to give or receive a bribe or as a commercial bribery. Thus, it appears that a person that has expressed an intention to give a bribe and get it, is not subject to liability, whereas a person who has expressed an intention to pass this bribe directly can be sentenced up to 7 years of imprisonment according to part 5, Art. 291.1 of the Criminal Code of the RF.

4 CONCLUSIONS

Summarizing it should be noted, that the problem of corruption is not confined to national borders and international debate, exchange of experiences and best practices of combating corruption are very important.

It should be indicated that the vagueness or ambiguity of rules, duplication or excessive variability of legal prescriptions provoke corruption risks, since they create a field for arbitrariness on the part of law enforcers.

Strict compliance with the rules of legal techniques that would eliminate the ambiguity of interpretation of the law, strengthen the expert support of the legislative process and expand the field of public debate on key bills should be achieved.

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