

About counteraction to mediation at bribery in the Russian Federation and in legal foreign States (comparative legal aspect)

Fyodor Myshko
*Doctor of Law, Head of Private Law
State University of Management
Moscow, Russia*

Anatoly Olimpiev
*Professor of Private Law, Doctor of
Historical Sciences, PhD of Law
State University of Management
Moscow, Russia
a.olimpiev@yandex.ru*

Kseniya Vasilieva
*Associate Professor at the
Department of Private Law, PhD in
Law
State University of Management
Moscow, Russia*

Irina Strelnikova
*Associate Professor at the
Department of Private Law, PhD in
Law
State University of Management
Moscow, Russia*

Elena Tomilina
*Associate Professor at the
Department of Private Law, PhD in
Law
State University of Management
Moscow, Russia*

Abstract—In the article on the basis of the analysis of literature and legislation on combating bribery mediation in the Russian Federation and in legal foreign States several judgments are made: bribery as a crime is regulated in the criminal legislation of the Russian Federation and other foreign States; bribery involves conditions and grounds, which are usually covered by the concept of «mediation»; bribery, as an ineradicable negative phenomenon, involves only the use of countermeasures.

Keywords—*Russian Federation, a foreign country, the laws, the Constitution of the Russian Federation, criminal legislation, normative legal act, the Federal law of the Russian Federation, criminal code of the Russian Federation, the offence, the offence, the offence of intermediation in bribery*

I. INTRODUCTION

The subject of this article is bribery and measures to counter mediation in bribery in the Russian Federation and in foreign legal states.

Originally about the state of the theory. Thus, the subject of S.I. Weibert's research "is the controversial issues of qualifications of receiving and giving bribes, the practice of sentencing for these types of crimes, the relevant criminal and legal norms, their content, development trends, and forensic investigators in this area." [1].

The subject of A.A. Anikin's research is "the current legislation, the practice of their application, data on the state, structure, dynamics of bribery and other types of corruption crimes, deterministic their factors, measures to counter them" [2] The authors are like-minded people (A.I. Belsky, R.S. Yagodin and E.N. Lykov) criminal responsibility for "petty bribery" ("Corruption now covers almost all areas of our society, it is a pressing problem of the state with which it is forced to fight. In the fight against corruption crimes,

the Russian Federation participates in international anti-corruption conventions and is a member of the anti-corruption group of countries. National Anti-Corruption Plans are being developed and approved, and that is a precondition for the law.") [3].

P.S. Yani discusses "the problems associated with the concept of object of attraction [4].

II. MATERIALS AND METHODS

D.A. Tymoshenko considers the problems of corruption, as well as its component - bribery as a negative phenomenon in the life of Russian society: "still not eradicated in full remain the causes of bribery ... That's why an official is forced to take bribes because he is a biological organism that needs food, housing that wants to have a family, children; moral degradation of society, when money and the possibility of unpunished rudeness were almost the only values of mass ethical consciousness; low cultural level of the official, focusing him on meeting almost exclusively animal needs; the authorities' disinterest in the fight against corruption, because it is easier to work with a corrupt, morally degrading official (without pretensions, moral principles, self-esteem and unlimited subordination); lack of democratic institutions, lack of effective forms of social control, low legal and political culture and passivity (according to the fact-"cloggedness") of the population, its detachment from the population participation in the management of the affairs of society and the state, authoritarian political regime, uncontrollability and arbitrariness on the part of the authorities and, in particular, law enforcement agencies, excessive fascination with the methods of "secret police". Agency and other non-procedural methods, which leads to the splicing of law enforcement agencies with organized crime; monopoly and oligarchy in the economy, media corruption; the low quality of legislation, which is focused not on legal but on the

administrative methods of regulating almost all spheres of public life, detachment of legislation from the real conditions of public life; excessive apparatus of public power, especially the apparatus of local government (for example, at the district level it is even more uncontrolled and detached from voters than the apparatus of the federal government, whose activities are covered in the media)"[5].

The authors are like-minded people (J.P. Garmayev, D.A. Stepanenko and R.A. Stepanenko) identified content «private of forensic of Techniques and" investigations of bribery-related crimes commercial bribery: " formed on the basis of and in addition to more general investigative methods (bribery, other corruption, official crimes), an auxiliary set of scientifically sound recommendations criminal-legal (Article 291, 204, 159 of the Criminal Code of the Russian Federation and other "related" compositions) and a criminally significant basis, reflecting the patterns of the mechanism of crimes, perpetrated by intermediaries and imaginary intermediaries, as well as the means and techniques of investigating and re-establishing these crimes."

M.S. Kochina discussed "separate questions about the history of Russian legislation on the responsibility for mediation in [6] bribery."

III. DISCUSSION

In the favourism it is necessary to consider in connection with organized crime (corruption, etc.) [7, 8].

Conflicting judgments of scientists and practitioners largely prejudice the imperfection of the criminal law of the Russian Federation [9] on mediation in bribery and its place in the system of crimes.

First of all, we pay attention to the Criminal Code of the Russian Federation on May 24, 1996 [10] Introduced July 1, 1997 [11] In this legal act, which is legally equivalent to the federal law of the Russian Federation, there are several articles that define the composition of crimes Regarding bribery:

290 "Getting abribe" ("1. Receiving bribes in the form of money, securities, other property or illegal property services by an official, foreign official or official of a public international organization in person or through an intermediary other property rights (including when a bribe at the direction of an official is transferred to another individual or entity) for acts (inaction) in favor of the briber or the persons represented by him, if these actions (inaction) are within the official's authority or if it, by virtue of an official position, may contribute to the actions (inaction) as well as for general patronage or authorization of service...");

Article 291 "The Bribery Dacha" ("1. Giving a bribe to an official, a foreign official or an official of a public international organization in person or through an intermediary (including when a bribe at the direction of

an official is transferred to a different person or Legal entity)");

Article 291¹ "Bribery Mediation" ("1. Mediation in bribery, i.e. the direct transfer of bribes on behalf of the briber or the bribe-taker or other assistance to the briber and/or the bribe-taker in reaching or implementing an agreement between them on receipt and giving bribes in a significant amount - punishable by a fine of up to seven hundred thousand rubles, or in the amount of wages or other income of the convict for a period of up to one year, or in the amount of twenty-fold to forty times the amount of bribes with deprivation of the right to borrow certain positions or engage in certain activities for up to three years or without such or imprisonment for up to four years with a fine of up to twenty times the amount of the bribe or without it.

2. Mediation in bribery for knowingly illegal acts (inaction) or by a person using his official position is punishable by a fine of up to one million rubles, or in the amount of wages or other income convicted for up to one year, or between twenty-fold and fifty times the amount of bribes with deprivation of the right to hold certain positions or engage in certain activities for up to three years or without such or imprisonment for a period of time three to seven years with a fine of up to thirty times the amount of the bribe or without it and with the deprivation of the right to hold certain positions or engage in certain activities for up to three years or without. 3. Bribery mediation committed (a) by a group of persons under preliminary collusion or an organized group; b) on a large scale - is punishable by a fine of one million to two million rubles, or in the amount of wages or other income of the convict for a period of one to two years, or in the amount of fifty to seventy times the amount of bribes with the deprivation of the right to hold certain positions or engage in certain activities for up to five years or without such or imprisonment for a period of five to ten years with a fine of up to sixty times the amount of bribes or without such and with deprivation of the right to hold certain positions or engage in certain activities for up to five years or without.

4. Bribery, committed on a particularly large scale, is punishable by a fine of one million five hundred thousand to three million rubles, or in the amount of wages or other income of a convict for a period of two to three years, or in amounting from sixty-fold to eighty times the amount of bribes with deprivation of the right to hold certain positions or engage in certain activities for up to seven years or without such or imprisonment for a period of seven to twelve years with a fine of amount of up to seventy times the amount of bribes or without such and with deprivation of the right to hold certain positions or engage in certain activities for up to seven years or without.

5. Promise or offer of mediation in bribery - punishable by a fine of up to three million rubles, or in the amount of wages or other income of a convict for a period of up to three years, or up to sixty times the amount of bribes with deprivation of the right to hold

certain positions or engage in certain activities for up to five years or without such or imprisonment for up to seven years with a fine of up to thirty times the amount of bribes or without such and with deprivation of the right to occupy certain positions or engage in certain activities for up to five years or without. Note A person who has committed a crime under this article is exempt from criminal liability if he actively facilitated the disclosure and/or suppression of the crime and voluntarily reported the crime to the authority, has the right to initiate a criminal case");

291²"Small Bribery"("1. Receiving a bribe, giving a bribe in person or through an intermediary in the amount not exceeding ten thousand rubles - are punishable by a fine of up to two hundred thousand rubles or in the amount of wages or other income of the convict for a period of up to three months, or correctional work for up to one year, or a restriction of liberty for up to two years, or imprisonment for up to one year. 2. The same acts committed by a person with a criminal record for crimes under Articles 290, 291, 291¹ of this Code or this article are punishable by a fine of up to one million rubles or in the amount of the salary or other income of a convict for a period of up to one year, or correctional work for up to three years, or restriction of liberty for up to four years, or imprisonment for up to three years. Note A person who has committed a bribe of the amount specified in this article is exempt from criminal liability if he actively facilitated the disclosure and/or investigation of the crime and or was subject to extortion of a bribe, or that person voluntarily reported to the authority, which has the right to initiate criminal proceeding son bribery, after the crime has been committed.

IV.RESULTS

The law enforcement practice regarding these articles of the Criminal Code of the Russian Federation is summarized in the plenary of the Supreme Court of the Russian Federation "On the jurisprudence in cases of bribery and other corruption proceedings. No. 24, July 9, 2013. It's not a (Theinternational community, seeking to develop effective measures to prevent and eradicate corruption, has adopted a number of documents, which include the United Nations Convention (e.g. the Convention Against Corruption), The Council of Europe Convention on Criminal Responsibility for Corruption, the Convention against Bribery of Foreign Officials in International Commercial Transactions of the Organization for Economic Cooperation and Development, etc. These documents indicate that corruption has become a transnational phenomenon that affects all countries. This is due to the critical importance of international cooperation in preventing and combating corruption. In the Russian Federation, the legal basis for the fight against corruption is the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties of the Russian Federation, federal [12] law of December 25 2008 No. 273-Fz"OnAnti-Corruption", Federal Law of August 7,2001daNo. 115-Fz "Onthe Prevention of Legalization (Laundering) of Income Received

criminally, and to finance those" rristm" and other regulations aimed at countering corruption. International [13] obligations. The Criminal Code of the Russian Federation establishes responsibility for the commission of corruption crimes. normal management activities of state and municipal bodies and institutions, undermines their authority, distorts the legal consciousness of citizens, creating an idea of the possibility of satisfying personal and collective interests by means of bribing officials, hindering competition, hampering economic development. Justice in cases of bribery and other corruption crimes must be carried out on the basis of respect for the principles of judicial independence, adversarial and equality of the parties, respect for human rights and freedoms, in strict compliance with the requirements of criminal and criminal procedure law" - preamble).

Also pay attention to the departmental act: Information letter of the Central Banka RF "On the issues of the use of risk-oriented under the course in the field of AD/FT" No. IN-014-12/64December 27, 2017 [14] ("Risk-oriented approach to counter the legalization (laundering) of proceeds of crime and the financing of terrorism ... is the basis of the International Standards for Anti-Money Laundering, Terrorism Financing and The Proliferation of Weapons of Mass Destruction by the Financial Action Group (FATF). The recommendations of 1 FATF financial institutions are required to identify, evaluate and take measures to reduce their own risks of money laundering and financing of terrorism [15]").

Bribery, as a negative manifestation, is inherent in the whole subject of international law, and on this we turn to the legislation of a number of foreign [16] states.

Thus, the 1992 Code of Criminal Code (acting since March 1, 1994) used the terms "passive corruption" and "active corruption" (v. 435¹ and 435²)[17].

The Criminal Code of Switzerland of December 21, 1937 provides for criminal liability for bribery in Articles 322ter and 322septis) [18].

The German Criminal Code (editorial dated 13 November 1998 and as of 15 May 2003) uses other terms: "receiving benefits" (331); "corruption (receiving a bribe)" (332);"providing benefits" (333);(bribery)" (334);"particularly serious cases of corruption and bribery"(335) [19].

In the Criminal Code of the Republic of Armenia of April 18, 2003, the criminal responsibility for bribery was actually similarly settled: Article 312 of the Bribery Dacha; Article 311 "Getting a bribe" and article 313 "Bribery Mediation" [20].

It would seem appropriate to use the foreign experience of regulating criminal responsibility for bribery in the Federal Republic of Germany.

V.CONCLUSION

Bribery, as a crime, is thus a fairly common negative phenomenon on which the authorities of the

state authorities are making efforts to counter the offence.

The above allows us to make a few judgments.

First, bribery as a crime is settled in the criminal law of the Russian Federation and in other foreign countries.

Secondly, bribery presupposes conditions and grounds that are usually covered by the concept of "mediation".

Thirdly, bribery, as an ineradicable negative phenomenon, involves only the use of countermeasures.

- [20] "Criminal Code of the Republic of Armenia". Transl. by R. S. Avakiana. Saint-Petersburg: Press Law Center, 2004. On the names of all the CIS member states, including the Republic of Armenia.

REFERENCES

- [1] S. I. Weibert, Bribery (skills and sentencing problems): Author's dissertation. Chelyabinsk, 2007, p. 5.
- [2] A. A. Anikin, Bribery as a corruption crime and measures to counter it: Autoreferat diss. ... Author's dissertation. ... It's A Legal. Sciences. Vladivostok, 2009, p. 5.
- [3] A. I. Belsky, R. S. Yagodin, and E. N. Lykov, "Criminal responsibility for petty bribery", in *Russian investigator*, 2018, pp. 59-61.
- [4] P. S. Yani, Bribery: disputes about the contents of the novella of the criminal law and the position of the Supreme Court. *Legality*, 2017, pp. 23-28; 2018, No 1, pp. 33-38.
- [5] D. F. Tymoshenko, "Bribery is currently in the Russian Federation and measures to prevent it", in *Legal peace*, 2013, 3 6, pp. 29-34.
- [6] M. S. Kocina, "Mediation in bribery: a history of legislation and practice of countermeasures", in *Current problems of Russian law*, 2017, No 4, pp. 117-123.
- [7] A. Y. Olimpiev, "On some problems of defining the concept of "organized crime" and countering it in the Russian Federation", in *Herald of the Moscow University of the Russian Interior Ministry*, 2012, No 9, pp. 93-95.
- [8] "On the use of the term "corruption" in the legislation of the Russian Federation", in *Herald of the Moscow University of the Russian Interior Ministry*, 2013, No 7.
- [9] "For more information, see more about this. On the system of criminal law in the Russian Federation", in *Convention beginnings in criminal law: International Practical Conference November 22, 2013*. Ed. by B. V. Yazelenko. Moscow: RPA of the Russian Ministry of Justice, 2014, pp. 99-104.
- [10] RF SW, 1996, No 25. Art. 2954; 2018. No 41. Art. 6192.
- [11] "On the introduction of the Criminal Code of the Russian Federation: RF FP from 24.05. 1996mr", in *SWRussia*, 1996, No 25, p. 2955.
- [12] A. Cassese, "International criminal law", in Antonio Cassese. Oxford: Oxford univ. press, 2003, LVI, 472 p.
- [13] "Dispositions and sentences in the criminal process: Guidelines", in *Law reform commiss. Of Canada. Ottawa (Ontario)*, 1976,X, 74 p.
- [14] *Herald of the Central Bank of the Russian Federation*, 2018.
- [15] C. S. Kenny, *Outlines of criminal law: based on lectures delivered in the University of Cambridge*. 5 edition. At the University Press, 1911, 536 p.
- [16] A. S. Autonomists, R. James, "On the names of some European states in the Russian Federation (legal aspect)", in *State and law*, 2016, No 4, pp. 45-51.
- [17] "French Penal Code". Transl. by N. E. Krylova. Saint-Petersburg: Press Law Center, 2002.
- [18] "Swiss Penal Code". Transl. German. A. V. Serebrennikova. Saint-Petersburg: Press Law Center, 2002.
- [19] "Criminal Code of the Federal Republic of Germany". Transl. German. N. S. Rachkova. Saint-Petersburg: Press Law Center, 2003.