

THE CONCEPT OF BRIBERY BROKERING CRIME AND ITS SIGNS

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Abstract: Bribery crimes form a whole, one cannot exist without the other. Because "if there is no bribe-giver, there is no bribe-taker" and in the same way "if there is no bribe, there is no bribe." Of course, this "unity" can be viewed differently. It is self-evident that if no bribe is given, no bribe can be taken. In addition, in practice, bribery, bribery and bribery are often considered "connected" crimes. Article 212 of the Criminal Code of the Republic of Uzbekistan defines criminal liability for mediation in bribery. Intermediation in bribery is understood as activity aimed at reaching an agreement on bribery or bribery, as well as direct transfer of bribes on behalf of interested parties. A person who, at the initiative of the bribe giver or recipient, helps to establish a relationship between them, to reach an agreement on bribe giving (intellectual mediation) or who directly hands over the bribe (physical mediation) is considered an intermediary in bribe giving.

Keywords: Bribery crimes, taking a bribe, giving a bribe, brokering a bribe, an official, an employee, mediation.

In the criminal law literature, the concept of "bribery" often has different meanings. In the narrow sense - this is bribery, that is, of JK

It is a crime provided for in Article 212. In a broad sense, "bribery" includes three types of crime: bribery, bribery and mediation in bribery (Articles 210, 211, 212 of the Criminal Code). There are also different views on the relationship between these criminal attacks. Some scholars consider them to be the only crime - bribery. Others consider them to be independent crimes. Some scientists see in them necessary participation - a special form of committing a crime.

At the same time, the point of view presented and considered the priority in the legal literature does not completely exclude the legitimacy of another point of view based on a broader approach within the framework of traditional criminal-legal analysis. Such an approach takes into account the essence and character of the phenomenon, the actual manifestations of bribery more fully and more accurately. In fact, it is thought that the concept of "bribery" covers independent but related crimes. "Bribery", unlike most other crimes, implies the existence of at least two criminal entities (either a bribe taker and a bribe giver, or a bribe giver and an intermediary).

In other words, the criminal activities of several subjects are combined with a single criminal goal and complement each other in this whole crime.

In particular, on August 20, 2015, in accordance with Article 5 of the Law of the Republic of Uzbekistan "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan aimed at further strengthening the reliable protection of private property and business entities, eliminating obstacles to their rapid development", Article 210 of the first The disposition of part "Bribery, i.e. it is unlawful for an official of a state body, an organization with state participation, or an official of a citizen's self-governance body to perform or not perform a certain action in the interest of the person giving the bribe, personally or through an intermediary, using his official position. receiving material valuables or having a property interest, knowing that it is " In exchange for performing or not performing a specific act that should or may be performed by the person using his/her official position, knowing that it is against the law, directly or through an intermediary, material values or making him/her a property interest"[1]

Bribery crimes form a whole, one cannot exist without the other. Because "if there is no bribe-giver, there is no bribe-taker" and in the same way "if there is no bribe, there is no bribe." Of course, this "unity" can be viewed differently. It is self-evident that if no bribe is given, no bribe can be taken. In addition, in practice, bribery, bribery and bribery are often considered "connected" crimes. For example, when bribe-takers themselves give bribes to other criminals, when criminals themselves give bribes to other criminals, when intermediaries in accepting and giving bribes receive bribes at the same time, finally, when bribe-givers are intermediaries (or even agents) in accepting and giving bribes at the same time. gives The correct identification of the object of criminal aggression in the criminal-legal description of bribery crimes leads to the correct legal qualification of the committed crime. In criminal law, the object of a crime is social relations protected by the criminal law.

Article 212 of the Criminal Code of the Republic of Uzbekistan defines criminal liability for mediation in bribery. Intermediation in bribery is understood as activity aimed at reaching an agreement on bribery or bribery, as well as direct transfer of bribes on behalf of interested parties.

A person who, at the initiative of the bribe giver or recipient, helps to establish a relationship between them, to reach an agreement on bribe giving (intellectual mediation) or who directly hands over the bribe (physical mediation) is considered an intermediary in bribe giving.

However, limiting the intermediary's activity only to giving bribes, as well as treating it as "giving or helping to receive bribes" is often confused with other forms

of participation in giving or receiving bribes, in particular with participation in bribery crimes.

B.V. Volozhenkin explains the main difference between mediation in receiving and giving bribes and giving bribes is that the mediator helps the bribe-giver or the bribe-taker in the commission of actions that are not in his own interest. According to it, if the interests of the intermediary with the support of one of the parties correspond to the interests of the bribe giver, then it is not mediation, but participatory bribery. [2]

However, in our opinion, some types of bribery facilitation cannot be considered bribery mediation. That is, giving a loan with the intention of being a bribe, giving advice to the bribe-giver and the bribe-taker on receiving or giving bribes, etc. Because "mediation" itself implies assistance to the agreement of the parties, a transaction, naturally, mediation related to both subjects of bribery is criminal in nature, that is, it is simultaneous assistance in giving and receiving bribes.

It is not possible to consider the fact that the mediator is giving bribes and (or) helping the bribe taker to commit acts that are not in their interests for the sake of the bribe. The interests of the bribe-giver are not only his personal interests, but also the interests of his relatives, the misunderstood interests of the state or public organization, etc. The same can be true in mediation. Therefore, giving (participating in) a bribe cannot be a specific sign of mediation in giving or receiving bribes. The difference between these two crimes is to be found in the nature and direction of the actions of giving and receiving bribes and participating in them, on the one hand, and on the other hand, in mediation in receiving and giving bribes.[3]

It should be noted that the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated September 24, 1999 "On the judicial practice of bribery" gives a much narrower interpretation of mediation in the giving and receiving of bribes: "a person who, acting on the instructions of the bribe taker or the bribe giver, directly gives a bribe "intermediary".

At the same time, Article 212 of the Criminal Code provides for "activities aimed at reaching an agreement". Suggesting such an understanding of mediation in bribery unduly narrows the concept. Outside its scope are all actions considered to be aiding and abetting bribery, with the exception of the physical transfer of the object of bribery.[4]

As mediation is interpreted in this way, keeping this norm in criminal legislation is not important at all. Because handing over the subject of a bribe is one of the types of participation in receiving or giving a bribe.

The point of view of scholars who consider a mediator to be a person who helps to reach an agreement about giving and receiving a bribe or its implementation is correct.[5]

Any mediation in bribery is a special type of assistance expressed in objective assistance to both criminals (the bribe giver and the bribe taker). This indicates the need to include an independent norm in the criminal law on mediation in accepting and giving bribes.[6]

In practice, an intermediary is often a person who connects the bribe giver with the bribe taker and helps them to get to know each other and reach an agreement on the payment of the bribe. Usually, the official knows the briber and the briber knows the official. However, there are cases where the bribe giver did not meet the bribe taker directly or they did not know each other at all, and the agreement on giving the bribe, as well as the giving of the bribe itself, is carried out through an intermediary.[7]

However, the above does not rule out the possibility of giving or helping to receive bribes as well as mediation in receiving or giving bribes. In this regard, it is necessary to distinguish mediation in bribery from participation in bribery.[8]

The characteristic of mediation in bribery is, first of all, that the subject helps to commit two crimes at the same time: giving bribe and receiving bribe. Bribery is considered as a link between two main subjects (bribe giver and bribe taker), it helps to reach an agreement between them and its implementation.[9]

Unlike an intermediary in bribery, a briber is only associated with the bribe giver or the bribe taker.

So, the first main sign of mediation is the connection with both subjects of bribery. The organizer of the bribery, as well as the witness, can also perform mediation tasks at the same time. For example, paying a bribe. But his crime is not limited to this. The agent criminalizes the bribe-giver or bribe-taker, respectively.[10]

The organizer of bribery is usually associated with both criminal entities. But unlike intermediaries, he introduces the bribe giver and the bribe taker not on their initiative, but on his own initiative. Thus, the second distinguishing feature of mediation in bribery is that the mediator acts not on his own initiative, but on the initiative (request or assignment) of the bribe giver or bribe taker. In addition, the intermediary helps the briber by obtaining the commission of acts in exchange for bribes.[11]

1999 of the Plenum of the Supreme Court of the Republic of Uzbekistan As explained in the September 24 decision "On the judicial practice of bribery cases", a person who organizes the giving or receiving of a bribe, performs various activities aimed at it, or is an assistant in receiving and at the same time performs intermediary

actions, is responsible for participation in giving or receiving a bribe. At this point, it is necessary to solve the question of characterizing the action of the participant based on whose interest, on whose behalf, and on the initiative of the bribe giver or receiver, taking into account what his intention is. In such cases, recharacterization of the act by Article 212 of the Criminal Code is not required.

It is necessary to determine whether the committed crimes do not constitute a complex, because mediation is one of the forms of assisting in receiving and giving bribes.[12]

In this decision, the rule of law, which stipulates responsibility for mediation in the theory of criminal law, is considered special in relation to assisting in receiving and giving bribes. If the committed act goes beyond the scope of assistance, then this intermediary, regardless of whether he is a general or special subject (official), should be qualified as organizing or witnessing bribery. Basharti, if the subject does not use his service position for the benefit of the bribe giver, but performs only the (intermediary) technical role (no special powers are required for this), then there is no participation in giving bribes.

Based on the analysis of the characteristics of brokering bribery, we come to the conclusion that the opinion of our legislators regarding bribery brokering as an independent crime is correct.[13]

As R.A. Zufarov noted, "the special feature of mediation in bribery is that the subject helps to commit two crimes at the same time: bribery and bribery. Being considered a connecting link between the two main subjects of bribery (the briber and the bribe taker), he helps to reach an agreement between them and to implement it. Unlike an intermediary in giving or receiving a bribe, an assistant in giving or receiving a bribe communicates only with the giver and recipient of the bribe.[3]

Accordingly, mediation in receiving and giving a bribe is an activity aimed at reaching an agreement on receiving or giving a bribe, as well as directly giving a bribe at the request of interested parties. Thus, accepting and giving a bribe is in two forms: 1) reaching an agreement on receiving or giving a bribe; 2) manifests itself in forms of direct bribery.[14]

To reach an agreement in receiving or giving a bribe is understood as various activities aimed at receiving or giving a bribe.

The organizer of bribery is usually connected with both criminal entities, but unlike the intermediary, he introduces the bribe giver and the bribe taker on his own initiative.

Therefore, the second distinguishing feature of mediation is that the mediator does not act on his own initiative, but on the initiative (request or assignment) of the person who diverts or unlawfully receives payment. In addition, the intermediary

helps the victim by getting him to perform actions for a fee in the interests of the victim.[5]

Summing up from the above, it can be said that another form of mediation in receiving and giving bribes is characterized by direct receipt of a bribe item on behalf of interested parties.

Taking into account that the person who directly gives the bribe, acting on the instructions of the bribe taker or the giver, becomes an intermediary, mediation in receiving and giving bribes is different from receiving and giving bribes. At this point, in describing the actions of an intermediary under Article 212 of the Criminal Code, it is not important whether he received a reward for his services from the bribe taker or the giver.[15]

A person who organizes the giving or taking of a bribe, performs various activities aimed at it, or is otherwise an assistant in giving or receiving a bribe and at the same time performs intermediary actions, shall be liable for participation in giving or receiving a bribe. At this point, it is necessary to solve the question of characterizing the action of the participant, based on whose interest, by whom, and on whose initiative - bribe giver or receiver, and taking into account what his intention is aimed at. In such cases, JK's

Article 212 does not require recharacterization.

According to the instructions of the heads of the enterprise, institution, organization or their departments, the actions of subordinates who understand the essence of these assignments and do not agree with them in advance to perform an action, but only pay bribes, should be evaluated as mediation.

Bribery mediation is a completed crime from the moment only a reasonable part of the bribe is received. In the absence of a bribe, the mediator's actions must be characterized as an attempt to commit mediation.

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