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SOME LEGAL PROBLEMS OF BRINGING TO CRIMINAL RESPONSIBILITY FOR CORRUPTION CRIMES

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Abstract

One of the main ways to identify and prove crimes related to bribery is the operational search event "operational experiment". In accordance with the Federal law "on operational search activity", an operational experiment is not allowed to detect crimes of minor gravity. This may lead to the fact that most cases will be initiated for actions related to the giving of a bribe, and its recipients will avoid criminal liability. There are many ways to solve this problem. First, you can change the relevant legislation. Secondly, you can use expert recommendations to document the cases in question without using an operational experiment. There is also a problem related to the subject of the bribe. In particular, the legislator, describing the size (amount) of a bribe, does not characterize its maximum and minimum values. This leads to difficulties with the implementation of the principle of justice in determining punishment, as well as to the question of the possibility of applying the provisions on the nullity of the act. The solution to this issue is seen in the revision of the system of maximum maximum values of the subject of crimes provided for by the criminal law. The minimum amount of a bribe should not and cannot be legally defined. Such decisions will lead to the legalization of this negative phenomenon.

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1. Introduction

Anti-corruption issues are of great interest to society and the state, which is confirmed by a significant volume of publications on this topic. For example, according to some of them, more than 6.9 thousand accused were brought before the court in 2019 for the Commission of the considered crimes, most of them (752) are employees of the Ministry of internal Affairs. Among the other defendants, 181 employees of the Federal penitentiary service and nine employees of the Prosecutor's office. In addition, cases were sent to the court against 27 employees of the UK. Criminal cases were also initiated against 84 employees of the Federal bailiff service, 34 representatives of the Federal customs service, 51 employees of the Ministry of emergency situations and 476 representatives of local governments (Anisimova, 2019).

According to official statistics, in 2015, 30143 corruption – related crimes were recorded, in 2016-27050, in 2017-29634, in 2018-23234, in January-October 2019-27644 (Ministry of Internal Affairs Russian Federation, 2019). The figures indicate a consistently high level of the negative phenomenon under consideration. The legislator does not ignore this problem, as evidenced, for example, by the changes made to the relevant legislation FZ of 03.07.2016 No. 324 FZ. The Supreme Court of the Russian Federation also draws attention to this problem in its decision of July 9, 2013 N 24.

You should also pay attention to the huge volume of scientific papers devoted to solving many problems with corruption crimes, including in foreign publications (Hellmann, 2019; Dasgupta, 2019; Jahnke & Weisser, 2019; Mocetti & Orlando, 2019; Reynolds, 2019). The above indicates the relevance of the topic under consideration.

2. Problem Statement

The following tasks are set for this study. To explore some of the digital features of the crimes connected with bribery. Identify problems of legislative regulation of the fight against corruption. To determine the possibilities of solving the identified problems by formulating organizational and legal recommendations.

3. Research Questions

One of the main ways to identify and prove crimes related to bribery is the operational search event "operational experiment".

For example, in the sentence of the magistrate of the court district No. 330 Babushkinsky district of Moscow under part 1 of article 291.2 of the criminal code of the Russian Federation from 08.06.2017, the following is indicated. Khakimov Sh. committed petty bribery.

So he, Khakimov Sh., in an unspecified investigation exactly time, but not later than 16 hours. 40 min., while in the duty of Department MVD in the Babushkinskiy district of Moscow (hereinafter OMVD Russia's Babushkinsky district of Moscow), located at: acting in the interests of a friend he is detained previously for violation of the regime of stay in the Russian Federation, aware of the fact committed by him an administrative offense, and for fear of bringing him to administrative responsibility for hours 3 tbsp. 18.8 of the Russian code of administrative offences (hereinafter Cheap), decided on giving a bribe to a public official – the chief duty of the OMVD Russia's Babushkinsky district of Moscow, captain of police

for committing the last acts of concealment are revealed administrative offense, and not compiling against Protocol about the administrative offense according to part 3, article 18.8 Cheap, and for ensuring the subsequent evasion of the last from the statutory responsibility by his release.

Khakimov Sh. A., while in class services, the duty of OMVD Russia's Babushkinsky district of Moscow, located at: directly in the course of conversation with the chief duty of the, ignoring the latest clarification about the illegality of it actions with the purpose of transfer of a bribe, acting on the basis of the decision on conducting operational-search activities "Operational experiment" together with the staff of the NEB and the PK ATC for NEAD GU MVD of Russia for Moscow, acting intentionally and realizing socially dangerous nature of his actions, got available when it cash in the amount of 6 000 rubles, then, realizing their criminal intent, aimed at bribery to the official for committing obviously illegal actions listed above, put them on the Desk located in the duty, but the chief duty of the categorically refused to receive a bribe in the form of money in a specified amount, and Khakimov sh. he was detained by law enforcement officers with the subject of a bribe at the scene (Verdict of the magistrate of the court district No. 330 Babushkinsky district of Moscow from 08.06.2017).

Analyzing this situation it should be noted that in accordance with the provisions of article 8 of the Federal Law "On operative-search activities" operational experiment allowed only for the purpose of detection, prevention, suppression and disclosure of crimes of medium gravity, grave or particularly grave crimes, as well as to identify and establish the persons who are preparing, committing or have committed. The sanction of part 1 of article 291.2 of the criminal code of the Russian Federation provides for punishment in the form of imprisonment up to one year, which refers the considered composition to the category of crimes of small gravity. Consequently, the initiation of a criminal case against a citizen Khakimov sh. occurred with violations of Federal law.

However, despite this decision of the court Khakimov Sh. found guilty of committing a crime under part 1 of article 291.2 of the criminal code, and he was sentenced to a fine of 20,000 (twenty thousand) rubles. This case is quite rare, but clearly demonstrates the imperfection of the current legislation to identify the crimes in question. Studying other examples from practice, the following patterns were identified. Cases of small-scale bribery were detected in conjunction with more serious crimes, which allowed the said operational search activity. Most often identified actions for giving a bribe in the amount not exceeding 10,000 rubles. In cases of criminal liability for receiving a small bribe or mediation in small-scale bribery, electronic transfers took place, which allowed to additionally fix the amount and the fact of moving the object of the crime.

Thus, the current legislation has significantly limited the possibility of detecting the fact of receiving small bribes. This problem can be solved in the following ways. Change the sanction of article 291.1 to 4 years of imprisonment, which will lead to a change in the category of crime. However, such changes will lead to the fact that the punishment for petty bribery will be more severe than for a bribe, and therefore, will lead to the need to review all sanctions related to the considered negative phenomenon.

Second, it is possible to amend the article 8 of the Federal Law "About operatively-search activity", allowing operational experiment for the cases of small gravity, however, before these changes, you need to understand the logic of the legislator who initially provided such restriction. Third, you can use the

recommendations of experts to document the cases under consideration without using an operational experiment (Derevyanko & Yelisov, 2019).

There is also a problem related to the subject of the bribe. In particular, the legislator describing the size (amount) of the bribe uses the following construction. In part 1 of article 291.2 of the criminal code "in an amount not exceeding 10 000 rubles," the note to article 290 of the criminal code of "considerable size of a bribe ... recognized the amount of money more than twenty-five thousand roubles, large size of a bribe - exceeding one hundred and fifty thousand roubles, especially large size of a bribe - exceeding one million roubles" (Federal Law "About operatively-search activity", part 1, article 291.2). These interpretations effectively differentiate the quantitative characteristics of the subject of the considered crimes within the system. For example, the amount of a bribe under part 1 of article 209 of the criminal code can not be less than 10 000 rubles and more than 25 000 rubles. However, the maximum and minimum value of this feature is absent in the law.

This leads to the need to address the question of the fairness of the punishment. For example, according to the publication "Forbes", the largest bribes that appeared in criminal cases over the past 19 years in Russia were characterized by amounts from 750 000 US dollars (46 500 000 rubles) to 5 600 000 US dollars (347 200 000 rubles) (The First Anti-Corruption Media, 2019). thus, the excess of the minimum amount of the bribe provided by CH. 6 article. 290 of the criminal code in these cases comes to 347 times. The question arises what punishment should be borne by the defendant accused for receiving a bribe in the amount of 1 000 000, and a 347 in the amount of 200 000 rubles, if the sanction of article of the criminal code provides for punishment of imprisonment for a term of 8 to 15 years? Let's assume that in the first case the punishment will be 8 years, therefore, conditionally 1 year of imprisonment the person serves for 125 000 rubles. In the second case, this amount is equal to approximately 9 810 000 rubles. The difference is about 78 times. Where is the justice?

The solution to this question is seen in the revision of the system of extreme values of the subject of the crimes in question. There is the problem of determining the minimum size of the bribes, in particular the question, at what amount can apply the provisions of part 2 of article 14 of the criminal code of insignificance act? The minimum amount of a bribe should not and cannot be legally defined. Such decisions will lead to the legalization of this negative phenomenon.

4. Purpose of the Study

Drawing attention to the problem of fighting corruption in Russia. Formulation of recommendations for changing the criminal code of the Russian Federation. Formulation of recommendations to change the Federal law "on ORD". Formulation of organizational proposals aimed at improving the effectiveness of the fight against bribery.

5. Research Methods

On the basis of the dialectical approach as a General scientific method of knowledge, General and particular research methods were used. In particular, the statistical method of research was used to justify the existence of the problem. A number of legal problems were identified by applying the comparative legal

method. Recommendations were formulated using logical methods (analysis, synthesis, induction, deduction).

6. Findings

The number of corruption crimes committed in our country remains quite high, with an average of 27,541 cases per year. The amount of bribes reaches the amount of 347 times higher than the minimum size of the considered crimes on a large scale. Some changes in legislation have led to a reduction in the ways of detecting the crimes in question, which may negatively affect the fight against the negative phenomena in question.

7. Conclusion

The identified problems in the work can be solved in the following ways. Changing the category of article 291.1 of the criminal code. Make changes to article 8 of the Federal Law "On operational search activity" dated 12.08.1995 N144-FZ, allowing the conduct of an operational experiment in cases of minor gravity. It is necessary to review the system of extreme values of the subject of crimes under articles 290-291. 2 of the criminal code. The minimum amount of a bribe should not and cannot be legally defined. Such decisions will lead to the legalization of this negative phenomenon.

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