THE OBJECTIVE ASPECT OF THE CRIME OF BRIBERY (PASSIVE BRIBERY)

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This article highlights the fight against bribery. The crime of bribery (passive bribery) has the following methods: directly or indirectly; in person or through the use of an intermediary. As a rule, a bribe is given for the performance of a specific action (inaction) in favor of the person who gave the bribe or the person represented by him.

Keywords: Azerbaijan Republic, right, state, law, crime.

According to Article 14 of the Criminal Code of the Republic of Azerbaijan effective from September 1, 2000, crime shall be admitted as the culpable commission of a socially dangerous act (action or inaction), prohibited by the Criminal Code under ,the threat of punishment [2].

A crime is a socially dangerous, illegal, culpable and punishable, immoral act committed by individuals in public life.

Crime is a socio-legal event.The crime arises from the interaction of the features of the offender's personality and the contradictions of the social environment.Therefore, it has a social nature.At the same time, since such acts are defined in the law, they exist as a legal event.

A crime is a specific, separate event, committed in a specific place, time and by a specific person [7, p.116-117].

According to Article 3 of the Criminal Code of the Republic of Azerbaijan called "Basics of criminal liability" only the commission of an act (action or inaction) creates criminal liability in which all the signs of the criminal composition provided for by the Criminal Code are present.

Criminal composition is one of the important conditions of criminal responsibility. In investigative and judicial practice, in the investigation of criminal cases, the actual four elements of the criminal composition corresponding to the characteristics of the criminal composition are pursued. If it is possible to determine the four sub-system elements, then as a whole the system-crime structure exists and the factual and also the legal grounds for holding the person responsible have been found. Criminal composition acts as the basis of criminal responsibility and directs to define the crime correctly.

The description of the crime is the legal evaluation of the committed crime, which is reflected in the relevant procedural document and causes criminal-legal consequences, by determining the compatibility between the aspects of the specific criminal act committed and the constituent features provided for in the disposition of the criminal-legal norm. The description of the crime has important social and legal significance. Description is an important logical process carried out by officials authorized to apply the criminal law in terms of the fulfillment of the duties defined in the Criminal Code, at the end of which a legal evaluation is given to a specific social event, human behavior, dangerous to society. This requires, first of all, a comprehensive study of the factual circumstances of the case, the selection of the criminal law norm and an explanation of its content [4].

Criminal composition is one of the most important institutions of criminal law. There are

different opinions in the legal literature about the concept of criminal composition.

According to some authors, criminal composition is the key to the Special part of criminal law. It is quite difficult to master the essence of the Special Part of Criminal Law without fully understanding the essence of the criminal composition.

The time and place of the crime, the basis and extent of responsibility for the crime, the description of the crime, justification of the punishment, etc. issues are directly related to the concept of composition. Researching the composition of the crime is also of great importance in terms of strict compliance with the law [1, p. 5].

The signs of criminal composition are formulated in the Special part of the Criminal Code, which defines criminal-legal prohibitions. However, instructions on the characteristics of the criminal composition are also given in the General part, and these include the same characteristics for all the criminal elements and common to many of them [4].

The signs of the criminal composition are the indicators of the elements of the criminal composition, their expression in words. The description of the elements of criminal composition with signs is given in the General and Special parts of the Criminal Code. In the General part of the Criminal Code, such signs of the constituent elements are determined that these signs are the same for all the constituents [7, p. 115].

The science of criminal law divides the elements of crime into the following four groups:

- signs characterizing the object of the crime;
- signs characterizing the objective aspect of the crime;
- signs characterizing the subject of the crime;
- signs characterizing the subjective aspect of the crime.

Let's analyse the objective aspect of the crime. The objective aspect of the crime is characterized by a socially dangerous act (action and inaction), committed in a specific place, at a specific time and under specific conditions, using a certain method, using specific means and (or) tools, and led to the occurrence of socially dangerous consequences that are causally related to the socially dangerous act [1, p.91].

The following are the necessary signs for the objective aspects of all crimes:

- socially dangerous act;
- socially dangerous consequences;
- a causal relationship between a dangerous act and socially dangerous consequences.

Facultative signs include the following signs:

- method of committing the crime;
- the place where the crime was committed;
- when the crime was committed;
- circumstances in which the crime was committed;
- tools and means of committing a crime.

Here, deed means the manifestation of active or passive activity of human behavior in the external world that is culpable, socially dangerous, and damages socially important values, interests, and assets in criminal law [1, p. 87].

The objective aspect of the crime "Acceptance of a bribe (passive bribery)" contained in Article 311 of the Criminal Code of the Republic of Azerbaijan is expressed in the content of that article. The mentioned article states:

311.1. Acceptance of bribes, that is, for any action (inaction) related to the performance of official duties (powers), as well as in exchange for general patronage or indifference, for himself or for third parties, directly or indirectly, personally or using an intermediary asking for or receiving a material or other benefit, privilege or concession, or accepting an offer or promise in this regard - shall be punished by deprivation of liberty for a period of four to eight years, with deprivation of the right to hold a certain position or engage in a certain activity for a period of up to three years.

311.2. Taking a bribe due to illegal actions (inaction) by an official is punishable by deprivation of liberty for a period of five to ten years with deprivation of the right to hold a certain position or engage in a certain activity for a period of up to three years.

311.3. Actions provided by Articles 311.1 or 311.2 of this Code committed:

311.3.1. by a preconceived group of persons or an organized gang;

311.3.2. repeatedly;

311.3.3. in large ammount;

311.3.4. if it is committed by intimidation – shall be punishable by deprivation of liberty for a term of eight to twelve years.

Note: In Article 311.3.3 of this Code, the term "in large ammount" means the amount exceeding five thousand manats**.**

For the correct description of the crime of bribery (passive bribery), it is important to determine the objective aspect of this crime. Because the determination of the objective aspect, its framework and limits is necessary for the solution of the moment of initiation and completion of the crime of bribery (passive bribery), as well as the issue of complicity in this crime. The crime in question is objectively characterized by the commission of the following acts:

1) for any action (inaction) related to the performance of official duties (powers) of an official, as well as asking for material and other favors, privileges or concessions for himself or third parties in exchange for general patronage or indifference to the service;

2) for any action (inaction) related to the performance of official duties (powers) of an official, as well as receiving material and other favors, privileges or concessions for himself or third parties in exchange for general patronage or indifference to the service;

3) acceptance of an offer or promise of material and other favors, privileges or concessions for himself or third parties in exchange for general patronage or indifference to the official for any action (inaction) related to the performance of his official duties (authorities).

Accepting a bribe as an act included in the objective aspect of the crime of bribery (passive bribery) means acts consisting of accepting an offer or promise of material and other favors, receiving money, securities, property, or property benefits

given to him in exchange for "service" rendered for the benefit of the person who gave the bribe or the person he represents.

Bribery is given due to general patronage or indifference in the official's duties or service.

As a rule, a bribe is given for the performance of a specific action (inaction) in favor of the person who gave the bribe or the person represented by him. However, in the analyzed article, giving money, securities due to the general patronage or neglect of the service is considered bribery. This type of bribery is more often found among persons in subordinate relationships (for example, a subordinate gives money to his boss from time to time), in the activities of various control bodies (for example, paying a bribe to a tax inspector) [3, p. 984-985].

Let's analyse the experience of the courts and law enforcement agencies regarding the crime of accepting bribes (passive bribery). An official T. who works as the head of the actual military service recruitment department of the State Service for Mobilization and Conscription of the Republic of Azerbaijan, Baku City S. District Office, in connection with the performance of official duties (authorities) as an official, repeatedly received a large amount of material wealth as a bribe for himself in a direct way in person and through the use of an intermediary, intentionally using his service powers contrary to the interests of the service in order to obtain an illegal advantage for himself in connection with the performance of his official duties as an official, repeatedly abused his powers by causing significant damage to the interests of the state protected by law, which caused serious consequences.

Thus, he willingly took 10,000 (ten thousand) manats from R.'s mother as a bribe, for considering R. unfit for military service in peacetime and partially fit in wartime and with those actions, as an official, he discredited the State Service for Mobilization and Conscription among the population, and abused his powers by causing significant damage to the legally protected interests of that Service, expressed in the violation of the normal operation of the Service in terms of its lack of trust and the transparency of the procedures of conscription.

In addition, while working in that position, T. repeatedly used his service powers against the interests of the service in order to obtain an illegal advantage for himself, i.e. profit, in connection with the performance of his official duties as an official performing organizational-discipline and administrative-economic functions, due to a knowing illegal act in connection with the performance of official duties (authorities), i.e. due to non-recruitment to actual military service, he received 12,000 (twelve thousand) manat money as a bribe from citizen O's father

through K., who worked as a secret clerk in that Department (using an intermediary) in February 2023, for considering citizen O. unfit for military service in peacetime and partially fit in wartime.

By the judgment of the Baku Military Court dated January 19, 2024, T., who worked as the head of the conscription department of the Baku City S. District Office of the State Service for Mobilization and Conscription of the Republic of Azerbaijan was found guilty of committing the criminal acts provided for by Articles 311.3.2, 311.3.3 and 341.2.3 of the Criminal Code of the Republic of Azerbaijan (when abuse of official powers or exceeding official powers leads to serious consequences) and imprisonment for 8 (eight) years and 6 (six) months was imposed [5].

Another example. The chairman of the S. district military-medical commission, the deputy chief doctor of the Central Hospital of that district M. was caught in flagrant delict in the service room, when bribed 200 manats of the 500 manats he demanded for himself in exchange for the arrangement of the relevant medical documents in the performance of his duties that the son of a resident of the district was considered unfit for military service. Regarding the fact, a criminal case was initiated under Article 311.1 of the Criminal Code of the Republic of Azerbaijan, and by the court's decision M. was arrested [8].

Another example. The General Prosecutor of the Republic of Azerbaijan, as a result of operational measures carried out based on the received information that military serviceman H., who works as the chief officer of the Recruitment Department of the State Service for Mobilization and Conscription of the Baku city N. district, demanded and received a bribe from a citizen during the performance of his official duties and a criminal case has been initiated in the General Directorate of Anti-Corruption.

With the conducted operational-investigative measures, while working in the mentioned position, H. first received a certain amount of money as a bribe in exchange for giving the citizen the right to a temporary reprieve, and then reasonable suspicions have been established that he demanded a large amount of bribe to present that person with a military ticket stating that he was unfit for actual military service in peacetime and limited in wartime. Based on the preliminary evidence collected in the case, H. was arrested as a suspect and charged with Article 311.3.3 of the Criminal Code (accepting a large amount of bribes), according to the court's decision based on the request of the investigative body and the presentation of the prosecutor who conducted the procedural management of the preliminary investigation [6].

It is evident that, there is a serious fight against bribery in the Republic of Azerbaijan.

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