

Comparative law of bribery library penal liability in Federation of Russian States , Islamic Republic of Iran and Republic of Azerbaijan

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Abstract: In article the comparative analysis of the legislation of the Azernaijani Republic, the Russian Federation and the Islamic Republic Iran, defining responsibility for bribery is carried out. As a result of the carried out research the relevant proposals on improvement of the criminal legislation in these countries are made. According to the author implementation of these offers will promote improvement of the criminal legislation.

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Introduction

Being included in administrative corruption, the bribery does not only happen in countries such as Federation of Russian States, Iran and Republic of Azerbaijan but also has been developed as a worldwide social peril and now, also being committed confidentially in many cases, it has still been specifically placed in offensive crimes tableau and such crimes would bring disorders to the basic elements of the government and state organizations; consequently, it would descend the importance, power and authority of state organizations. Furthermore, bringing disorders to society administrative discipline, it would disturb people's rights and privileges and basic principles of equality and justice. So, some people may solve their problems by convincing civil servants and may assume that it would be possible to solve the problem in this manner.

Since bribery has an important penal effect and causes other crimes such as robbery, money laundering, property illegal seizure to appear so the above mentioned would increase the social peril through the occurrence of bribery crime.

Results and discussion

Cast a look in bribery crime in Federation of Russian States and Republic of Azerbaijan, it has became apparent that in 2001 in Federation Republic of Azerbaijan the offence of receiving the bribe had been documented to be 4797 and giving the bribe to be 3112 cases and totally; both giving and receiving the bribe had been declared to be 7909 cases.

The bribery crimes coefficient had been 5.45, so:

- In 2002 the rate of giving the bribe was 4533 and the rate of receiving the bribe was 2758 and totally for 7291 cases with coefficient of 5.03

- In 2003 the rate of giving the bribe was 4425 and the rate of receiving the bribe was 2921 and totally for 7346 cases with coefficient of 5.07
- In 2004 the rate of giving the bribe was 5273 and the rate of receiving the bribe was 3655 and totally for 8928 cases with coefficient of 6.16
- In 2005 the rate of giving the bribe was 5720 and the rate of receiving the bribe was 4101 and totally for 9821 cases with coefficient of 6.77
- In 2006 the rate of giving the bribe was 6546 and the rate of receiving the bribe was 4517 and totally for 11063 cases with coefficient of 7.63 (5)

So, bribe receiving rate appeared to exceed the rate of giving the bribe. That's because the bribery giver had no penal liability in the governing penal law at the time of committing it. The offence of bribery (giving and receiving the bribe) in Republic of Azerbaijan had been recorded totally as 54 cases and the coefficient of 0.67. While in 2002 the records revealed 9 cases and the coefficient of 0.11. This rate in 2004 had been 5 cases and the coefficient of 0.5 and 12 cases and the coefficient of 0.14 in 2006, 9 cases and the coefficient of 0.10 in 2007, 4 cases and the coefficient of 0.05 in 2008, 7 cases and the coefficient of 0.08 in 2009 and 7 cases and the coefficient of 0.08 in 2010. (4)

Considering the above mentioned records, the bribery rate in 2006 in Federation of Russian States had 40% growth in relation to 2001 and had reached from 7909 to 11063, while the Republic of Azerbaijan had 4.5 decrease in bribery crimes whether receiving the bribe or giving it at the similar time and had descended from 54 to 12. This rate has

been continuously descending in Republic of Azerbaijan. Furthermore, the bribery crimes recorded in Republic of Azerbaijan proved similar committed crimes 50 or even 120 times less than in Federation of Russian States. This could suggest the bribery descending rate, on the other hand suggesting the statistic level diminish due to the confidentially committed crimes. The effective factors in increasing the crime and keep it confident has been the contentment of parties, the penalty, the employees' fray to be dismissed from job and legal authorities inefficiency and neglect of duties.

In legal perspective, receiving the bribe has been discussed under Article No.311 and giving the bribe has been discussed under Article No. 312 of penal code enacted 1999 in Republic of Azerbaijan(3). Federation of Russian States has assigned penal liability for receiving the bribe under Article No.290 and giving the bribe under Article No. 291 enacted by penal code in 1996(2).

According to Article No.311 in penal code of Republic of Azerbaijan, receiving the bribe committed by an employee to accomplish or ignore his duties for a third party against receiving material properties or other privileges offered by the third party in person or others. Article No.312 in Republic of Azerbaijan penal code has been discussing the bribe received by an employee to ignore or perform tasks in which the employee has not been competent against offering properties or privileges personally or by anyone else.

Article No.290 in Federation of Russian States' penal code has explained receiving the bribe but there has not been any definition of the bribe in Article No.291. It seems Article No.291 in Federation of Russian States' penal code has offered a better definition.

Examples of bribery (whether receiving or giving the bribe) has been including governing bodies, civil servants, local organizations and other institutions offering state services.

The subject to above mentioned crimes has been material properties, privileges and ignorance.

Material aspects of bribery have been discussed in paragraph No.1, Article No.311 of Republic of Azerbaijan penal code and in paragraph No.1, Article No.290 of Federation of Russian States' penal code.

Receiving and giving the bribe has been a formal compound crime. The bribery crime could be accomplished by giving and receiving the bribe even a part of it. In objective and immaterial aspect receiving and giving the bribe would be the basis of the bribery since the bribe receiver has been potentially aware of it and has willingly received it, on the other hand the bribe giver would be also guilty he has been aware of his action.

It is to be mentioned that competent persons (employees), being above 18 years old, would have penal liability. Reaching 16 years old, anyone would be legally liable(8).

By virtue of Article No.312 of Azerbaijan penal code and Article No.291 of Federation of Russian States' penal code; if the bribe giver had been forced by those who have a legal competence, he might be freed of guilt only by reporting the case to state organizations voluntarily.

Also, by virtue of the paragraph No.2 Article No.311 of Azerbaijan penal code and paragraph No.2 Article No.290 in Federation of Russian States' penal code; one of descriptive indicators for the competent employee to receive the bribe has been suggested as committing illegal action (duty ignorance).

Paragraph 1 and 2 of Article No.311 in Azerbaijan penal code and paragraph 1 and 2 of Article No.290 in Federation of Russian States' penal code have been defining a severe penalty for the aforesaid crimes committed by a competent person or organizational groups and repeatedly committed crime in general or committed by force. It should be mentioned that description of receiving the bribe repeatedly has been excluded from Federation of Russian States' penal code in Dec.8, 2003.

As far as I'm concerned it would be better to describe the bribery and middleman, a definite and divided penal liability in penal legislation of Federation of Russian States and Republic of Azerbaijan. So, it would be necessary to mention the case in paragraph No.1 Article No.312 penal code of Azerbaijan and also in the recently enacted paragraph No.1 Article No.292.

"Anyone helping bribery whether the giver or receiver in giving or receiving the bribe

In addition, it would be necessary to mention the following case in the recently enacted Article No.312 (paragraph No.1) in Azerbaijan penal code and also in the recently enacted paragraph No.1 Article No.292 of Federation of Russian States' penal code.

"Committing the bribery crime whether being a middleman, receiving or giving the bribe, guilty would be exempted from punishment by the court in case of reporting the offence committed by state organizations voluntarily."

Article No.118 enacted 2003 in penal code in armed forces of Islamic Republic of Iran describing the offence committed by armed forces. Islamic penal code in Iran has discussed receiving the bribe under Articles No.588, 589 and 590, giving the bribe under Article No.592, giving and receiving the bribe and also being as a middleman under Article No.594, attempts to receive the bribe under Article No.594 and the physicians receiving the bribe under Article No.539(1).

In order to intensify the bribery penalty the defalcation, swindle and bribery penal intensification code had been approved Dec.6, 1988 allocating the case under Articles No.3 and 4(6).

Different codes have been approved in Iran discussing the bribery offence. The legislative ought to unify the codes just as penal codes in Federation of Russian States and Republic of Azerbaijan; so that, the penal legislative system could be integrated and on the other hand the approved codes could be brought into action more easily.

So, there has been a similarity in legal cases of bribery in Russia, Azerbaijan and Iran. E.g. in Article No.591 of penal code in Islamic Republic of Iran it has been assigned that “approving that the bribery committed had been obliged to offer a property or payment in order to preserve the due rights, the guilty would not be subjected to penal pursuance. The offered payment would be also returned. Furthermore, it has been approved under Note in Article No.592 that “if the bribe giver has been forced to it, he could be exempted from the imprisonment as penalty by reporting or complaining the case so that the property would be returned(7).

Article No.312 in Azerbaijan penal code and also the Note to Article No.291 in Federation of Russia penal code have exempted the bribe giver from penal liability provided by realizing the above conditions; however, nothing has been mentioned about the paid money or property. While, the paid money or property have been thoroughly discussed in Iran penal code.

Since, it seems necessary to define the situation under the mentioned conditions in Article No.312 of Republic of Azerbaijan penal code and the Note to Article No.291 in Federation of Russia penal code in order to return the paid money or the property. As follows:

“if the bribery committed, being threatened, had given the bribe to the civil servant and inform the related state organization, he would be freed of penal liability and the offered property could be returned”

One of the interesting cases in pecuniary penalty in bribery Articles in the penal code of Islamic Republic of Iran has been the amount of the received bribe, imprisonment penalty and permanent or temporal deposition or being fired of military services.

It would be better to apply this in Republic of Azerbaijan and Federation of Russia Estates legislation.

Summary

The present paper has analyzed and compared the bribery in Iran, Russia and Azerbaijan penal codes. Pointing to the differences and similarities in the norms, some reformations and supplements have been suggested. Applying the suggested reformations in the mentioned codes, the recent penal codes at the aforesaid countries could be improved.

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