

# The Idea of Mediation in Bribery, According to the Saudi Penal System

Dr. Abdullah Majed Akaileh

*Salman Bin Abdul-Aziz University, Saudi Arabia*

## Abstract

The research tackles with the idea of mediation in bribery, according to the Saudi penal system. This crime is no less dangerous of the crime of bribery itself, and considered a kind of co-ownership. The research shows the legal form either linguistically or systemic, and the differences between it and the crime of mediation in taking interest that provided by law in Article XI, and analyze the legal foundations whether the material element or mental element. And also shows the crime penalties. The individual who organized the crime punish under Article X of the system because of negative effects on the functional administration and society as a whole. The organizer decide to exempt the mediator from the original sentence and dependency in case of he tells seriously and identical to the truth the crime before discovered, and shows the idea of mediation or acceptance. The Saudi penal system in anti-bribery is free from any text refers to criminalization of this idea.

## Introduction

The states have originated and expanded and that led to increasing citizens, which resulted in increasing their desires and needs. So that the states can't care the interests of citizens represented by the ruler himself, that causing to appoint assistants who helped him in provided all the care affairs to achieve their interests. The state has resorted to cede some powers to range of people called public servants, and the relationship between them organized in a way that was consistent with the public interests and ensured justice and equality for all, without exception. And those public servants considered essential parts in state because they were faithful in advancing reform if they done their duties in the best way. At the same time, the corruption of the administration and what followed from negative impacts are their responsibilities in case of negligence and failure in performing their duties.

Public employees have authorities which may be exposed to the temptations of others who seek to achieve their interests by all illegal means, who may promised to take gift or interest opposite to do or not to do a job making government jobs a commodity to achieve what he wants at the expense of public interest. Abuse of power through some employees who exploiting their jobs is not limited to a state but spreads in all states. The employee often resorts to agree with other to achieve other's gains and asks exchange for that, and vice versa the other may resort to the employee directly and asks him in material or moral exchange. Perhaps there is a kind of shyness or lack of desire to know each other at a time both of them seek to achieve the interests of the other in exchange, so the mediator intervene between them in order to facilitate the process between the two parties. Perhaps such actions constitute crimes one of the most serious crimes against career management, even considered as a form of administrative corruption that lead to the obstruction of career system in the state in apparatus since having negative effects and damage that government institutions. This crime is called bribery in addition to other crimes such as the crime of mediation despite the unity of punishment.

The most important things in this field the work of the mediator which are no less dangerous than the acts of the briber or the bribed in the crime of bribery. The mediator may be interested to carry out mediation by the bribed and vice versa. It may be based on an agreement between the briber and the bribed, and the mediator must have science and the will to carry out such acts to apply the punishment. This is why the acts of mediator take multiple forms and images whether by way of agreement or instigation or help in any way. They are all considered forms of co-ownership Lead to a crime that all parties sought to be achieved. The mediator may be a public servant or other one and therefore he is subject to the same punishments as those of the bribed public employee.

The Arab criminal legislation especially the Saudi penal system issuing special laws dealing with the organization and the criminalization of these acts that effect the interests of the state, as well as the interests of individuals. So that the Saudi regulator has created a special system called "Anti- bribery law" issued by Royal Decree No. M / 36 dated 29/12/1412 which created stiff penalties such as imprisonment and fines on every

public official request for himself or other gift or interest and to anyone who participated with him to do any work that would impair the functional duties.

As usual Islamic preceded all laws and legislation in addressing the subject of the mediator in the crime of bribery, although it did not put penalty but created out of criminality embodied in the words of God " "And eat up not one another's property unjustly (in any illegal way, e.g. stealing, robbing, deceiving), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully."<sup>1</sup>. Messenger of Allah- peace be upon him- said: "May Allah curse the briber and the bribed"<sup>2</sup> and "He who assist in a dispute unjustly deserves the anger of Allah, Most High"<sup>3</sup>.

Our concern in the research is the systematic position of the Saudi legal of mediation in bribery crime. It is common knowledge that Saudi Arabia is an Arab Islamic state, subject to the application of its provisions as it stated in Islamic law, thus, the anti-bribery system must be compatible with what came from the provisions of the law.

Since the Saudi regulator has expanded in the criminalization of bribery, and related crimes committed by the briber and the bribed, but he has not ignored the mediator between them, so it has been designated a special punitive text under Article X in the law. Which stipulates that "punishes the briber and the mediator and all those who participated in any of the crimes contained in the system with the penalty provided in Article."

Accordingly, we have found that we are exposed to the subject of the crime of mediation in bribery, and show the legal basis and prescribed punishments and the basis of the criminalization according to the provisions of the Saudi anti-bribery system.

### **Significance of the Study**

The fundamental importance of this topic lies on showing the nature of mediation in the crime of bribery, and showing elements, according to the Saudi system. And showing the role of mediator as a partner for the briber and the bribed. And presenting legal elements and the difference whether in this crime or another. And also the fundamental importance of this topic lies on showing types of participations in crime for partner's work "mediator", whether by the way of incitement or agreement or helping to create the crime of bribery. And show the legal loopholes that seized the Saudi regime about crime mediation offer or acceptance, as it has been devoid of any text or reference criminalize this idea.

### **Methodology of study**

The researcher used descriptive and analytical approach, for how to view the crime of mediation in bribery in the Saudi system, and analyzed the legal elements whether moral or mental elements with the development of applications for this crime as stated in the provisions of the Saudi courts. Illegal acts of mediator in the mediation between the parties in the crime of bribery require analyzing to show their impact on the crime of bribery, where it plays a big role in the crime.

### **The difficulty of the search**

Mediation in bribery considered the worst and the most dangerous types of corruption because it represents invisible crime; it is not easy to be proved by evidences. Mediation also considered a form of administrative corruption, like the crime of bribery. It Forms a kind of exploitation of public jobs and betrayal of trustee jobs which is necessary to be trusted by their owners. It constitutes a violation and flagrant and violation of the right and justice because it kind of the violation of the law and lead to looting of others' rights and violating the public money that everyone must be preserved.

The difficulty of the study is also in the lack of legal writings on this topic, as well as having some legal loopholes related to this crime as "the idea of offering mediation or accepting" The Saudi Penal System is devoid of the presence of any text refers to the idea of criminalization but refers the judicial discretion. Also, the difficulty lies for the first time in a crime did not require in the Saudi systems existence of a causal relationship between the mediator and the result of criminal act because of this crime be realized as soon as the mediator acts mediation.

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<sup>1</sup> sūrat I-baqarah (The Cow)

<sup>2</sup> Narrated by Ahmad attribution correctly, see: Ahmad ibn Hanbal, Musnad, Ahmed Mohamed Shaker investigation, Dar al-Hadith, Cairo, 1995, Hadith number, 6984/433

<sup>3</sup> al-Tabarani, Al-Mu`jam al-Saghir

## THE FIRST TOPIC

Legal essence of the crime of mediation in bribery in the Saudi system

Previously we said that the mediator is a third party in the crime of bribery. It represents the one who assigned the task of mediation, he either can be represented by the briber or can be represented by the briber and in both cases considered a partner in the commission of the crime. Accordingly, we will discuss the concept of mediation in the language and the Saudi penal system and successively.

### *The first requirement*

The concept of mediation crime

First: - the linguistic concept of mediation

Mediation in the language is center, the center is every place where reconciliation "between"<sup>4</sup> the center is evidence of justice and fairness. And the fairest thing is middle and central. Mediator who mediates between two disputing parties among the folk, and mediator is central in everything. Middle central thing between parties.<sup>5</sup> Accordingly, we will discuss the concept of the crime, according to Islamic law in the Saudi penal system as follows: -

Second: - The concept of mediation in bribery according to Saudi system.

Article X from the Saudi anti-bribery system stipulates that "Both briber and mediator punish .... etc." Perhaps the Saudi systematic of this text have been cited in application of all the general rules of criminal contribution. Determining the types of co-ownership as well as the legal requirements to be met by the partner so accountable criminally. The most important of these types is commit crime based on incitement or help or agreement. Causality between the crime that occurred and participation should be available, in addition to the availability of general intent, both science and the will of the partner, the partner in the commission of a crime is punish even if the original actor doesn't. Failure to punish original actor does not have the slightest relationship to punish the accused partner. This application is a legal rule that stipulates that if an actor of the crime is not punished for lack of criminal intent or has to provide the reasons behind the permissibility or for private conditions this does not preclude punish partner.<sup>6</sup>

There is no doubt that the authors of the previous text had found a distinction between the crimes of participation and assistance, and put for the second offense criminal behavior distinct from participation. This behavior came in several images represented in the incitement and assistance to commit a crime. With the knowledge that all partners are subject to the same penalty prescribed them.

Based on the above, we see that the Saudi anti-bribery system puts specifically mediator, by doing a specific and independent actors for the roles of the original actors. And this role is mediating between the parties to the crime, according to these criteria, the mediator in the Saudi system is "The person who assigned one of the two parties (the briber and the bribed or both to do in the face of the other party."

This means that the mediator agrees with the parties to deliver money or benefit for the bribed and briber can get a benefit and pays a bribe as opposed.

As if the mediator is bribed in dealing with briber, and briber in his dealings with the bribed, but he lacks the status of public employee it enables parties to obtain interests without showing whichever is in the face of the other.

### *The second requirement*

The idea of mediation in bribery and the difference in mediation in take interest.

The idea of mediation in take interest considered a form of participation of the crime of bribery and is similar to some extent with the offense of mediation. It occurs through the briber or the bribed or both commissioned mediator in taking interest. To do this crime it should available the physical and the mental element, as the physical element represents in accept in the mediator the task of mediation in bribery regardless of that person

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4-.Ayub ibn Musa al-Husseini, a glossary words, the message institution, Beirut, 1992, p. 938 <sup>4</sup>

5-.Intermediate lexicon, the Arabic Language Academy, Al-Shoroq Library, Cairo, 2004, p. 1032 <sup>5</sup>

<sup>6</sup> Dr Fattouh Chadli, crimes discretionary organization in Saudi Arabia, Dar university publications, undated, Alexandria, p. 172.

has been appointed by briber or the bribed as long as he knows that what he is doing is a crime to mediate in bribery.<sup>7</sup>

The crime is for the one who accept to take bribes knowing the reason, it does not need to do this crime to do a crime of bribery itself, the crime of mediation occurs when the mediator to accept doing the task, who accept doing the task knowing the reason either mental element of the crime. This is achieved with the knowledge of the time accept the mediator delivered interest, or to accept to be a mediator in it, with the departure of his will to take or accept, if select the knowledge selecting the crime, if the employee's wife received a sum of money from briber without learning that for the crime of bribery committed by her husband.<sup>8</sup>

We see in this regard that the beneficiary escape from punishment in the text of Article 11 of the order if the employee was not aware of the crime. As considered the beneficiary in that kind accomplice in the crime he is not a partner, and this leads to the existence of two things, the first is that the beneficiary is a foreigner for the crime of bribery, because the beneficiary's punishment depend on the existence and the occurrence of the crime of bribery. Since the employee was not aware of the crime and even not recognize, it means the absence of the occurrence of the crime of bribery and may be in the process of crime of bribe offer if the bases available. Consequently, the mediator in this case is a partner if he do the role of mediator and not just accept or receive interest. The second is that no one participate and not apply on to the beneficiary. It is well known that participation in the crime have two forms, the first is the existence of criminal activity with the activity of the last execution of the crime. The second is to participate directly in the execution of the crime by major act, even if it is not done the crime. The activity for the accomplice in the crime in any case is a secondary activity, because it does not contribute directly to the implementation of the crime but it does not include the implementation, this is the opposite of the activity of partner because it's already linked to criminal closely and acquires criminality.<sup>9</sup>

Consequently, the beneficiary was not responsible, because he mediates between the briber and the bribed so his doing considered legitimate in itself as the result of this act that had accepted the gift from another person. The goal of the criminalization of the behavior of the beneficiary was the result of its association with the behavior of actors, or partners in crime leading to the occurrence of the crime, if the employee was unaware of the crime. And for the extent considered as a partner in the crime of bribery offer, the occurrence of this crime requires that the beneficiary takes the place of the crime of bribery, and therefore he do not have the right in crime mediate in the offering bribery.<sup>10</sup>

The mediating in bribery will be at the behest and the appointment of either the briber or the bribed or both, the punishment for this crime will be when mediator accept mediation and does not require the occurrence of the crime of bribery itself. While the crime of mediation is based on the pursuit of a mediator between the two parties to do the crime of bribery. He seeks to complete the agreement between the briber and the bribed as a partner in the commission of the crime and not, as is the case in the previous crime to mediate, and the occurrence of the crime of bribery clause mediation. And the occurrence of bribery is a condition of the crime of mediation.

## THE SECOND TOPIC

Legal basis of the crime of mediation in bribery

When the criminal legislature intervenes in punishment and criminalization he puts into account all tangible acts that would constitute aggression on the rights and interests under the criminal protection and these material acts are expressed in terms of the physical element of the crime. It is a positive or a negative criminal behavior has a physical and tangible nature requires the availability of any criminal offense, the legislature approved the punitive text. And perhaps mediation in bribery punishable crimes, according to the Saudi penal system and therefore it must be the material element, which consists of three elements criminal behavior and the result and the causal relationship.

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<sup>7</sup> Dr.. Osman Taha and DR. Mohammed Abdul Rahman Mohsen, the private penal system in Saudi Arabia, the first edition, adult library, Riyadh 2014.s 58.57.

<sup>8</sup> Dr.. Osman Taha and Dr. Mohammed Abdul Rahman Mohsen, op .s 58.57.

<sup>9</sup> Dr. Mohammed Zaki Abu Amer, and d. Ali Abdel Gadir qahwaji, the Lebanese Penal Code, General Section, Dar Al-Jamiya, Beirut, 1984, p. 278

<sup>10</sup> Abdel-Hakim Fuda, criminal encyclopedia adequate in the application to the Penal Code, Dar AlFiker and the law for publishing and distribution, Mansoura 0.2011, p. 621

Is not sufficient for doing the crime a criminal behavior by the offender but has the availability of mental element expressing the will, this may be all a deliberate act and it is may be unintentional criminal intent or criminal error.

The mental element is known as the "intent" aware of the elements of the crime as defined in the model law and the will is destined to achieve these elements or accept."<sup>11</sup>

And defined by the French Jaarsma that: "the will of the commission of the crime as defined by law,"<sup>12</sup> and therefore we will discuss these elements in the Saudi penal system and in the following two requirements as follows: -

Material element of the crime of mediation in bribery in the Saudi Penal

***First: - criminal behavior for mediation in bribery.***

The mediator acts in the commission of the crime vary from one image to another, he haven't an independent work, it may be an agent or representative to whome assigned, he is the link between the two parties, and may be represented in common between them in all cases as a partner in the commission of the crime"<sup>13</sup>

It should be noted in this regard that the status of legislation not only to punish the brokerage business, but also punished by or offered to mediate, even if his work was limited to just the offer or acceptance, the legislator has made the criminal acts from this crime a special menu. Accordingly, we will discuss the criminal behavior of the mediator in the two cases as follows: -

The first case: -

The role of mediator as a partner of briber.

Mediator may resort to display works of mediation to the briber in order to facilitate the task of committing the crime between him and the bribed. If the mediator do this task considers a partner in the commission of the crime if the bribed employee accept. In the case of non-acceptance the offer made to him by the broke mediator became the irresponsible for the crime of bribery offer.<sup>14</sup>

Saudi regulator is required to achieve material element of the crime of offering bribe is not accept the employee the offer submitted to him. As the non-acceptance of the offer considered one of the most essential elements. And not accepting may be verbally or in writing or explicit guarantee or be through the signal, suggesting non-acceptance.<sup>15</sup>

In other words, there is no crime of offering bribery if the employee not accept interest that was offered. It's the same lack of accountability and punishment of mediator, so punishment is limited to the mediator of a crime offering bribery<sup>16</sup>.

The crime of offer bribery requires the offer is made by briber toward bribed employee that does not accept any form this offer. This means that the material element of the crime lies in the presentation act includes an act of giving or promise to give. This is the same criminal activity committed by the briber in the crime of bribery that achieved.<sup>17</sup>

Saudi regulator did not specify a particular method of how to accept, it may be through communication directly from the employee or indirectly, as if placed letter of offer in the private employee box or to hand over to his

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<sup>11</sup> Dr . Fattouh Abdullah El-Shazly. Explanation of the Penal Code (General category) .obo Alizm for printing 2010.s 205.

<sup>12</sup> Dr. Mohammed Ahmed al-Mashhadani. Mediator to explain the Penal Code. Warraq Foundation for publication and distribution of Oman. First Edition 2001. p. 123.

A / Naif Ayed Anzi, mediation

<sup>13</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi regime, *ibid.*, P. 21.

<sup>14</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi system, p. 56.

<sup>15</sup> Dr. Fattouh Chadli, explaining the Penal Code, Special Section, Dar Jamyeia for publications, Alexandria 0.2010, p. 138.

<sup>16</sup> Dr. Abdullah bin Abdul Mohsen Al-Tarifi, the crime of bribery in Islamic law and the system of anti-bribery in Saudi Arabia, Reslah institution Beirut, 1982, p. 170.

<sup>17</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi regime, *ibid.* P. 26.

wife. And offer could be an explicit or disguised offer was presenting offer to employees in an envelope inwardly appear to contain documents or papers but in fact contain money.

The second case –

The role of mediator as a partner of bribed.

There is no doubt that the bribe giver considered a partner in the crime of bribery if he realized any of the actions necessary to do this crime, which are give and request and accept. Accordingly, Article X of the anti- bribery in Saudi system stipulates that (punishes briber and mediator and all those who participated in any of the crimes contained in this system in the criminalized penalty provided for in Article, and considered a partner in crime both agreed or incited or helped commit knowingly how long has the crime based on this agreement or incitement or assistance)

This article brought down the curtain on the legal qualification for both the briber and mediator and considered partners to commit bribery and signed by the public employee realized such participation in any means of participation that mentioned earlier in the article represented in incitement and assistance and agreement.<sup>18</sup>

If the bribed assigned mediator to be a messenger to him "the briber" in order to ask him a gift, the gift of a promise to do or not to do. And mediator do this task, It is inevitable to say that the crime of mediation have been made legally as a result of mediator offer a bribe to the briber, both the bribed and the briber perpetrator of the crime of bribery based on these mediation.<sup>19</sup>

The bottom line was that if mediator deputy of the bribed crime of mediation happen, but if he a deputy of the briber the crime not happen, but coincided with offer accepted by the bribed.

Secondly: The result of criminal mediation in bribery

It is well known that there is a significance as result of the crime, one legal and the other material. Legal doctrine<sup>20</sup> divide the result of criminal according to the material significance into two damage crime and other dangerous crimes. The former means those crimes that their results actually affects the interests protected by law and for the second type of crime "danger" result only limited to the threat to the interests protected by the law.

Based on the text of Article X of the Saudi anti-bribery system regulator it did not require a specific result of the crime of bribery. This result did not require the mediation of a crime, it is sufficient for its availability of the material and the mental element, public employee deserves punishment for bribery as soon as he take or accept.

From the foregoing, we conclude that the system was not required to achieve a certain result is not the crime of bribery and not mediation or a mediation offer, take these actions consisting of the offense, and this means that the crime of mediation in bribery is as a crime of bribery danger crimes not damage crimes.

Mediator task lies in the convergence of views between the two parties and considered an ambassador between them. The essence of mediation is to convey the desire of one to other party and what he wants for fear of adjustment or to ward off hardship.

Third: - the causal relationship in the crime of mediation in bribery.

Previously we mentioned that the crime of mediation in bribery is one of the serious crimes that did not require the Saudi regulator punishment to achieve a certain result. This means that the regulator is punishable by without requiring the presence of a causal relationship between criminal behavior and criminal outcome, saying only as mediator behavior contrary to the legal base of penal. Regulator requires to do the crime of mediation behave the mediator actions constitute the mediation in one of the crimes stipulated in the system, including the crime of bribery and related offenses.

The second requirement

Moral basis of mediation in bribery in the Saudi regime

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<sup>18</sup> Dr. Abdullah bin Abdul Mohsen Al-Tarifi, the crime of bribery in Islamic law, op. Cit., P. 171.

<sup>19</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi system, op. Cit., P. 28.

<sup>20</sup> Dr. Abdel Fattah Bayoumi Hijazi, the fight against Internet and computer crimes in the Model Arab Law, Dar legal books, Alexandria 0.2010, p. 178.



Saudi Regulator requires mediation in the crime of bribery to have a mental element, which in turn is divided into two parts science and will. The concept of science is surrounding offender in all criminal elements and their constituent elements. The will considered as a substance upon which the criminal intent which is about psychological activity committed by the offender by his own choice wishing for the achievement of criminal behavior and the result of criminal together. There is no doubt that science precedes will and availability together a so-called criminal intent, which means the departure of the will of the offender to achieve criminal behavior with surround all the constituent elements of the crime.<sup>21</sup> Accordingly, we address in detail the concept of science and the will of the crime of mediation in bribery and successively.

First: - Science in the crime of mediation in bribery

Regulator in Saudi Arabia requires in the crime of mediation in bribery the knowledge in mediator. This means that he knows the employee and what he will take "interest" in opposite to do or not to do something.<sup>22</sup> For example, if the mediator think the interest taken on behalf of his client gift, the responsibility to participate in the crime cannot be achieved legally. There is no requirement that the intermediary's intention is to provide benefit to the bribed, meaning that if the mediator intent to intervene in mediation, to grab bribery for himself, it did not solve it without criminally accountable as a partner in bribery.

And that, considering that bribery had been as soon as he accepted, or taken on behalf of the bribed, the situation seems to be different if the offender claimed that he is a mediator for bribed and received a bribe intent for himself. Here, the mediator is not subject to the provisions of bribery for not legally occurrence but is subject to the rule of fraud crime if the bases are available) and the foregoing, the science component of criminal intent requires the following:<sup>23</sup>

1. Knowing the crime: Meaning the offender must know the whereabouts of the victim which provides him the protection of the law considered the inflicting punishment on anyone who attacks him in the crime of mediation in bribery the right public office.

2. Knowing to do or not do the act and its seriousness:

Criminal act is one of the most important elements of the material element of the crime which are two forms, the first represents affirmative action and the second represents the passive action. It is also important that the offender knows the probability of the implications of criminal doing and also knows that the criminal activity represents a danger to the victim, if he denied knowledge of this means that he hasn't criminal intent.<sup>24</sup>

With regard to the crime of mediation must be available the mediator's knowing that he infringe on the civil service, as this action could be makes it easier to commit the crime of bribery.

3. Predict the criminal outcomes

Saudi regulator did not take the crime of mediation in bribery even the crime of bribery itself achieve a certain result, considering that such offenses and related are dangerous crimes, not damage crime. Mediation in bribery lies at predicted probability of the perpetrator, "the mediator" to accept bribes from the other party, but if the mediator is unsure to accept the bribery from other party, so he is subject to punishment but not on the crime of mediation.

4. Predict causal relationship:

This means that the offender imagines that his criminal behavior positive or negative, is the reason that led to the achieve result. Applying the research topic, the median expectation is assumed. As the quest including his brokerage business to achieve the result of criminal conduct associate with the criminal result.

Secondly - the will of the crime of mediation in the Saudi system.

The criminal intent in the crime of mediation (the holding of the intention of offer or accept mediation in bribery to act as a mediator in the bribery. If it is proven that the intention of the defendant while offering or accepting mediation to do any role between the parties but only he alleged bribery, he hasn't criminal intent.<sup>25</sup>

There is a legal opinion believes that the criminal intent at the briber is available, even if the purpose of bribery ward off the suffering of an unjust act. (If the briber knows that the employee allegedly competence when making the tender, the motivation is to get rid of the employee. His method to satisfy this motivation is to achieve the purpose of the employee in the exploitation of his job and pay for breach of the employee's job duties, briber intent here is to get rid of unfair work. He refrains from buying an unlawful work to satisfy this

<sup>21</sup> Awad bin Abdullah Al-Anzi, the crime of bribery in the wisdom of the Saudi regime, applied study, Master Thesis, School of Criminal Justice, Naif Arab University for Security Sciences, 2014, p. 23.

<sup>22</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi regime, *ibid*, P. 32.

<sup>23</sup> Dr. Majali Nidal, explaining the Penal Code, General Section, *op. Cit.*, P. 331

<sup>24</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi regime, *ibid*, P. 39

<sup>25</sup> Dr. Ibrahim Hamed Tantawi, molesters on the job and public money, *ibid*. P. 178.

motivation. Others say that the briber realized responsibility according to this hypothesis as long as he was not subjected to any compulsion. In addition to the lack of a state of necessity, one of the main terms of the availability of the inability of briber in resorting to public authorities in order to prove the innocence of his conduct of the existence of suspicion of the crime).<sup>26</sup>

Saudi regulator is not required in the mediators' intention to make interest for bribed, some believe that the mediator is a partner in the commission of the crime of bribery if he intent to grab the interest for himself. Because bribery occurs as soon as the acceptance or taking on behalf of the bribed. While the mediator responsibility lies on the crime of fraud if falsely claimed that he is mediator for the bribed.<sup>27</sup>

According to Article 11 of the Saudi anti-bribery system, the punishment which requires a person to accept the necessity of taking a bribe, nor can such acceptance be achieved only if it arises from the conscious and free will.

### **THE THIRD TOPIC**

#### **Criminalize mediation in bribery and prescribed penalties**

There is no doubt that the Holy Quran and Sunnah of the most important sources of Islamic law as well as the case of the Kingdom of Saudi Arabia, also this state relies on legislation and rulings on what is stated in the book of Allah and the Sunnah of His Messenger, and therefore, any legal base in the application of its provisions are subject to these sources, and therefore we will arrange a study of criminalize mediation in bribery and prescribed penalties according to the Saudi penal system and in the following two requirements.

#### ***The first requirement***

Criminalize mediation in bribery in the Saudi system

First: - the basis of the criminalization of mediation in bribery

Saudi regulator considered the mediation in bribery form of original contribution to crime, the basis of criminalized in accordance with Article X of the fight against the crime of bribery system issued by Royal Decree No. (M / 36) dated 29/12/1412. As this article stipulates (briber and mediator punishes and all those who participated in any of the crimes contained in this system of punishment stipulated in criminalized Article and considered a partner in crime and all of agreed or incited or helped to commit knowingly the crime based on this agreement or incitement or assistance).<sup>28</sup>

Second: - The cause of the criminalization of mediation.

Penal legislation, including Saudi legislation punish acts of mediation in bribery because of the consequent damage and considered as a form of administrative corruption and the consequent of workflow public service.

The organizer reasons to criminalize mediation lies on the consequences of the recent showing bad damage as a result of the commission of "bribery" crime

Kinds of damage as follow:<sup>29</sup>

#### **1. Bad income distribution, and damage economic services**

Mediation in bribery and crimes of bribery as a whole worse consequent in the distribution of income, so that it shows through inequality and the emergence of the gaps between the members of the community, because some groups in society get material illicit gains more than others, and over time show an increase disparities between classes. Also it constitutes the crime of bribery and even mediation and related crimes damaging the services provided to members of the community. For example, if bribery entered in construction or food, medicine and business. The goal of the briber is to import cheaper and pittance materials and so that he could sell them in high prices to citizen to achieve considerable material gains at the expense of the citizen.

#### **2. Disable the business and block the implementation of development projects and plans in the country.**

Bribed maybe deliberately resort in order to obtain a bribe to disable the business and therefore accumulation and lack of completion, which consequent recession of work and lack of production. Also, mediation in bribery and ill effects lead to change the basis on which to conclude contracts, cost will, quality, delivery time and the other is considered one of the basic components for the legitimate conclusion of contracts, and perhaps diminish the significance of these ingredients would lead to the selection of contractors and suppliers with less efficiency and buying goods with less quality.

3. The emergence of monopoly, monopoly arises as a result of practices and acts of unfair competition based on bribery and gradual manner consequent bankruptcy of a lot of competitors, especially small investors, and keep them away from the epicenter of the trade conflict, and this in turn leads to the existence of some sort of

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<sup>26</sup> Dr. Abboud Sarraj, the Penal Code, General Section, Damascus University publication, tenth edition, 2001/2002, p. 215.

<sup>27</sup> Ibrahim Hamed Tantawi, op. Cit., P. 178.

<sup>28</sup> See Article 10 of combating the crime of bribery of Saudi Arabia system in 1412 AH.

<sup>29</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi system, op. Cit., P. 150.



monopolies that dominate the market and control the laws of supply and demand, thus forcing prices, which in the interests of monopolists.

4. Low production capacity. And refrain businessmen and their reluctance to invest.

### ***The second requirement***

The punishment of mediation in bribery, according to the Saudi system.

Punishment knowing as a form of criminal sanction, who signed on behalf of the community pursuant to a judicial ruling on those found responsible for the committed crime.<sup>30</sup>

Saudi regulator has been punished for the crime of mediation in bribery as same bribed punishments. Apart from the type of contribution that practiced by the mediator in the crime, whether this contribution inciting agreement or assist<sup>31</sup>

And by reference to the text of Article (10) of the Saudi system to fight the crime of bribery, we find that mentioned article has approved three types of penalties (original and dependency, and supplementary).

First: - the original penalties:

The original sentence knowing as a basic penalty for the crime, which the judge has to be provided by explicitly indicating in its kind and amount, and may be sentenced individually without implement on other punishment.

The original sentence to mediate in the crime of bribery imprisonment for a term not exceeding ten years and a fine not exceeding one million riyals, or one of these penalties. The prison is "robbed" personal freedom for a certain period of time and implemented in special locations intended for this purpose, who was sentenced either life sentence or a temporary that performs business established in the punitive establishments. Considering that the work has become at the present time a means of reform not torture and not a manifestation of cruelty. "

As for the fine: "financial penalty imposed on the convicted person is required under which payment of a sum of money estimated by the judge in the ruling to the state treasury."<sup>32</sup>

Second: - the dependency punishment.

Known as "that follow the original sentence on its own as stipulated in the law as a reward punishment of the crime without the need to be prescribed by the judge. It's no cause convict the force of law just because the original sentence sentencing produces its effect, or implemented by the implementation authority. Dependency punishment issued individually, dependency of sanctions stipulated in the Penal Code. . Deprivation of certain rights and benefits.<sup>33</sup>

According to Article 13 of the anti-bribery system, the dependency punishment is dismissal from office, "deprivation of the same function and prescribed salary." Isolation is also known as a deprivation of acceptance of any government service, meaning that a person loses public office, including the moral and material advantages associated with them.<sup>34</sup>

Third: - supplementary punishment.

It is known as "the punishment inflicted on the offender as a result of being sentenced to original condition that the judge stated in his ruling on requiring that an offender."<sup>35</sup>

Article 15 came from the system to provide punishment, saying "that governs in all cases, the sources of money or feature or topic of interest crime when it is possible", It is clear from this article that the Saudi regulator show supplementary penalty of in-kind resources that were subject of the crime exists.

The confiscation is considered one of the additional financial sanctions by authorizing the state expropriation of public money without charge.<sup>36</sup> In this sense, confiscation is different from the fine, it is considered as the

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<sup>30</sup> Dr.Abboud Sarraj, the Penal Code, General Section, Damascus University publication, tenth edition, 2001/2002, p. 385

<sup>31</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi system, op. Cit., P. 165.

<sup>32</sup> Dr. Dr. Ali Hussein Khalef. Sultan Abdelkader Chaoui, the general principles of the Penal Code, legal library, Baghdad, 1982, p. 424.

<sup>33</sup> Dr.Abdullah bin Abdulaziz Al-Yousef, the experiences of other countries to alternatives to prison sentences, research presented to the National Assembly for Human Rights, the first edition, Riyadh, 2007, p. 125. See also: d. Ahmed Fathi Bahnasy, punishment in Islamic jurisprudence, Dar Al Shorouk, Cairo, p. 215.

<sup>34</sup> See: Study the available alternatives to imprisonment in Saudi Arabia, a research center of the fight against crime, 1423, 2011, p. 456.

<sup>35</sup> D, Mohamed Sobhi Najm, the assets of criminology and punishment, op. Ibid. P. 126. Dr. Mansour Mohamed Mansour, uncertainties and their impact on the criminal penalties in Islamic jurisprudence comparative positive law, press secretaries, Cairo, 1986, p. 142

<sup>36</sup> Dr.. Mahmoud Taha Jalal, the assets of criminalization and punishment in contemporary criminal policy, a study in the use of criminal sanction and rooting the phenomena of strategies to reduce criminality and punishment, Dar Arab Renaissance for Publishing, Cairo, 2005, p. 151

original penalty unlike confiscation are considered supplementary penalty. Also, the fine arrangement really the state before the convict, compelled to pay a certain amount depending on what is contained in the referee's decision.

Consequently, it is not the right of the briber in the crime of bribery nor of the right mediator in the crime of mediation by demanding bribe in known civil ways compensated for the damage to his right as a result of the crime of bribery. Since it is the legally non-eligibility of a person to seek compensation for a crime he had been involved in the commission whether they committed in a way of inciting agreement or assistance as stated in Article deficit "10" from the system.<sup>37</sup>

The case of mediator exemption from punishment

Saudi regulator gave the reward of the mediator in the case of reporting the crime before discovered representing by the exemption of the original sentence and dependence provided for by law. This text explicitly in Article XVI of the system as it stipulates that "the briber and mediator exempted of the original sentence and dependency if he told authorities before discovered the crime." Whether the mediator appointed by the briber or the bribed he exempts. Exemption is a right for mediator from the moment of his telling about the crime and the duty of the judge is pronouncing the judgment if conditions achieved.

But the regulator did not specify who is charged with receiving the news, and this means that it may be the administrative authority or reasoning power or the investigation, and that the regulator required to have serious news in conformity with the reality that includes all the information that he knows them the beneficiary of the crime, if the news is contrary to the fact that there is a serious mediator benefit from the exemption.

## **FINDINGS AND RECOMMENDATIONS**

### **Results:**

First: - Saudi regime does not care about the aim of the mediator of bribery depends only on the fact that the mediator acts of mediation between the briber and the bribed, while we find that the Islamic Sharia is interested in providing objective mediator bribery if he has personal interest.

Second: - a crime of mediation in bribery considered dangerous crimes and therefore it does not require the achievement of certain result of a crime. This means there is a causal association, but achieved by the mediator in criminal behavior of this crime.

Third: - the importance of the mental elements of the crime of mediation represented in science and the will he must know of criminal behavior and that he has available the intent to do so.

Fourthly: Saudi regulator stipulated in the Anti-Bribery System availability of knowledge so that the mediator will facilitate the task of the commission of the crime of bribery between the briber and the bribed, and also require the availability of the will.

Fifth: - Saudi Arabia's anti-bribery system has been devoid of the existence of any definition of mediation in the crime of bribery, which made us put a definition as stated in the legal explanations and jurisprudence.

Sixth: - According to the Saudi regime, the mediator is not punished for introducing mediation on the person or as soon as accepted if he do not complete the crime.

### **Recommendations**

First: - There must be private concepts of the offense of bribery in the mediation legally.

Second: - to reduce the routine procedures that employees argue to get bribery must develop in a new strategy and a flexible mechanism to deal with complaints of citizens, in turn leads to a lot of reluctance of received the brokerage business so that prevent them from doing any role in the completion of the crime.

Third: - emphasis on sanctions is indispensable, especially in crimes of bribery to include workers in the public interest, whether they are employees or workers, in particular, who repeated their brokerage business in the crime of bribery.

Fourth: - We hope that the Saudi regulator need to fill the legislative vacuum to criminalize the idea of offering or accepting mediation in bribery, to reduce at least the mediation of brokers in this crime. The system has been devoid of any text mention punishment for this crime.

Fifth: - I believe that the Saudi regulator punishes mediation in bribery, even if there was no approval from the bribed and not restricted to the approval of the recent with the offer made to him by the briber through the mediator.

Sixth: - colleagues urge to address the subject of mediation in the crime of bribery to be treated in a comprehensive legal, social and legal aspects.

### **References**

Abboud, S. (2002) the Penal Code, General Section, Damascus University publication, tenth edition

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<sup>37</sup> A / Naif Ayed Anzi, mediation in bribery in the Saudi system, op. Cit., P. 170.

- Abdel-Hakim, F. (2011) criminal encyclopedia adequate in the application to the Penal Code, Dar Fiker and the law for publishing and distribution, Mansoura
- Abdullah, A. (1982) the crime of bribery in Islamic law and the system of anti-bribery in Saudi Arabia, Risala institution, Beirut
- Abdul Mohsen, H. (2005) Offering bribery in Saudi regime, Master Thesis, School of Criminal Justice, Naif Arab University for Security Sciences, Riyadh
- Ali, M. (2003) the perpetrators of the crime of bribery properties, Master Thesis, School of Criminal Justice, Naif Arab University for Security Sciences, Riyadh
- Awad, A. (2014) the crime of bribery in the wisdom of the Saudi regime, a study Toeselah applied, Master Thesis, School of Criminal Justice, Naif Arab University for Security Sciences
- Bayoumi, A. (2010) the fight against Internet and computer crimes in the Model Arab Law, House legal books, Alexandria.
- Chalabi, S. (2010) controls the practice of public employee rights and political freedoms, a comparative study between the systems status and Islamic law, the first edition, legal books Dar, Cairo
- Fattouh, Ch. (2010) explaining the Penal Code, Special Section, Dar university publications, Alexandria
- Ibrahim, H. (2000) molesters on the job and public money "bribery, profit," Legal Library, Cairo
- Majali, N. (2010) explaining the Penal Code, General Section, the Dar Al thaqafa for Publishing and Distribution, Amman.
- Mohammed, Gh. (2013) explain the Penal Code, Special Section, Arab Renaissance Publishing House, Cairo
- Mohamed, S. (2013) the assets of criminology and punishment, analytical study, the third edition, the House of Culture for Publishing and Distribution, Amman
- Naif, A. (2014) mediation in bribery in the Saudi system, applied study, Master Thesis, School of Criminal Justice, Naif Arab University for Security Sciences, Riyadh.
- Osman, T. & AL-Maghrbi, M. (2014) the private penal system in Saudi Arabia, the first edition, adult library, Riyadh
- Nawaf, F. (2003) the insulation of the general function of criminal punishment and its applications in Saudi Arabia, Master Thesis, unpublished, Graduate School, Naif Arab University for Security Sciences, Riyadh