

UDC 345

CRIMINAL LIABILITY FOR EVASION FROM REPAYMENT OF ACCOUNTS PAYABLE

УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА УКЛОНЕНИЕ ОТ ПОГАШЕНИЯ КРЕДИТОРСКОЙ ЗАДОЛЖЕННОСТИ

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ABSTRACT

CRIMINAL LIABILITY, ADMINISTRATIVE LIABILITY, EVASION FROM REPAYMENT OF ACCOUNTS PAYABLE

Today difficult conditions of implementation of business activity were reflected also in settlement legal relations of subjects of managing. Situations related to late payment or debt forcing business leaders to apply to the Economic court in order to recover from contractors debt forcibly. At the same time, despite the issuance by the Economic court of judicial decisions on debt collection, the debtor does not always fulfill the obligations stipulated in the contract, and often deliberately, being able to fulfill them, evades the repayment of accounts payable, which entails a violation of the legislation of the Republic of Belarus. This article deals with the following: criminal liability for evasion of accounts payable; administrative liability for offenses in the economic sphere.

АННОТАЦИЯ

УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ, АДМИНИСТРАТИВНАЯ ОТВЕТСТВЕННОСТЬ, УКЛОНЕНИЕ ОТ ПОГАШЕНИЯ КРЕДИТОРСКОЙ ЗАДОЛЖЕННОСТИ

Сегодня сложные условия осуществления предпринимательской деятельности отразились и на урегулировании правоотношений субъектов хозяйствования. Ситуации, связанные с несвоевременной оплатой или задолженностью, вынуждают руководителей предприятий обращаться в Экономический суд для принудительного взыскания задолженности с контрагентов. В то же время, несмотря на вынесение Экономическим судом судебных решений о взыскании задолженности, должник не всегда выполняет обязательства, предусмотренные в договоре, и зачастую намеренно, будучи в состоянии их выполнить, уклоняется от погашения кредиторской задолженности, что влечет за собой нарушение законодательства Республики Беларусь. В данной статье рассматриваются следующие

вопросы: уголовная ответственность за уклонение от кредиторской задолженности; административная ответственность за правонарушения в сфере экономики.

Currently, there is a practice of default by the debtor of its obligations to comply with the terms of contracts. The fact is that the predominant form of evasion of a person from fulfilling the terms of the contract was the introduction of the creditor to mislead about the actual capabilities of the obligated person to repay the debt in the amounts and terms stipulated by the contract. According to the Civil Code of the Republic of Belarus (hereinafter – the civil code), article 295 provides for the terms of performance of obligations [3].

Article 242 of the Criminal code of the Republic of Belarus (hereinafter – the criminal code) provides for liability for failure of an individual entrepreneur or an official of a legal entity to repay large amounts of accounts payable under a court order that has entered into legal force, if it is possible to fulfil the obligation. Therefore, for Commission of this crime sanctions in the form of a penalty, or deprivation of the right to hold certain positions or to be engaged in certain activity, or restriction of freedom for a period of up to two years, or imprisonment for the same term will be applied [1].

The essence of evasion from repayment of accounts payable on a large scale is manifested in the active inhibition of enforcement proceedings aimed at collecting accounts payable. The crime is committed by omission, but such omission consists in the active abstention of the debtor from binding his actions, taking an unconstructive position in relation to the fulfillment of his obligations. In this case, the debtor imitates his difficult financial situation, does not act to fulfill the obligations imposed on him by the court decision that entered into force. The debtor deliberately does not comply with the court decision on repayment of accounts payable and can actually prevent the occurrence of criminal consequences [5].

In order to bring a person to criminal liability under article 242 of the criminal code, the following conditions must be met simultaneously:

1. The presence of accounts payable. As a rule, the debt is formed in case of non-payment of the delivered goods, rendered services in time specified in the contract. However, there may also be a transfer of funds to the account of the performance of obligations in the future and which has not been performed within the period specified in the contract.

2. Large amount of debt. A large debt is considered to be 250 or more times the amount of the basic amount on the day of the Commission of the crime.

3. The presence of an effective court order. It can be a decision, a ruling on a court order, which are subject to execution.

4. The availability of opportunities fulfill judicial the resolution. This condition is determined

by the availability of funds that are or were in the accounts of the enterprise at the time of the crime.

5. Intentional action of an official. An official (Director, Manager, acting Director, etc.) or an individual entrepreneur must be aware that his enterprise has a debt (that is, these persons knew about the presence of a court order), there is an objective opportunity to repay it and he does not want to do this.

6. The period elapsed from the date of default. Since this act belongs to the category of crimes that do not pose a great public danger, from the date of Commission of the crime and before the entry into force of the sentence should take no more than two years [4].

However, if the actions of the individual entrepreneur or official person of the legal person provides for evasion of payment on an enforceable court order accounts payable subject to availability to fulfil the obligation is subject to administrative liability under article 11.18 of the code of administrative offences (Hereinafter Cao) of the Republic of Belarus, which entails a warning or imposition of a fine from six to twenty basic units, or administrative arrest [2].

However, the dispositions of article 11.18 of the administrative Code and 242 of the criminal code differ only in the size of outstanding accounts payable, so article 242 of the criminal code has a greater public danger than the corresponding administrative offense.

Thus, increasing the effectiveness of criminal and legal measures to combat economic crimes today is the Central task of criminal policy in the face of extremely unfavorable changes in quantitative and qualitative indicators of crime [5]. It is these prerequisites suggest the need for a scientifically sound understanding of the mechanism of this struggle. The problem of creating an effective mechanism to ensure the implementation of the law in modern conditions is of great importance. However, the achievement of this goal requires to intensify the implementation of the system of measures of criminal and legal impact on economic crime.

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