Article 177 of the Russian Criminal Code as a mean of state’s protection of private property interests

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Malicious evasion of credit debts’ repayment

Introduction

In today’s world, the world of materialism and domination of cash assets, money play an indispensable role in dealing with many issues. Good timing of making decisions or investment of money prescribes success or failure of particular investments or even the activity of the whole company.

Undoubtedly, timeliness of investments cannot be reached if contractors do not fulfill their obligations in good faith. As a result, funds of creditors get lost for a particular period of time, depriving them of the ability to use these funds ad lib. Creditors bear not only direct damages, but also lose significant profits that they would have had in case of using property that was returned to them by debtors in time. Thus, it leads to so-called catenary reaction, when the number of creditors and debtors is increasing with a high speed.

In case of inflation, this situation causes serious consequences. Cash assets can be repaid nominally. However, its intrinsic value can be much lower.
Allowedly, non-fulfillment of obligations has to be referred to the sphere of civil law. Nevertheless, debts can be collected with the help of criminal means. The process of executing a sentence on a criminal case means successful collection of debts. Penal means of such collection have many advantages: short terms of consideration of criminal cases, implementation of criminal process is free of charge, possibility of a more effective and larger-scale retrieval of debtor and his property. However, the main advantage is the personal material responsibility of a person, who is in charge of the debtor’s organization and long terms in comparison with civil procedure.

This penal way of collecting debts can be implemented on the basis of Article 177 of the Russian Criminal Code, which provides responsibility for malicious evasion of credit debts’ repayment.

In spite of clarity of disposition which is enshrined in this Article, a more thorough analysis of it may lead to many questions. Questions can be the following: what is the creditor’s debt? What has to be referred as evasion of credit debts’ repayment? Which evasion shall be regarded malicious? What has to be understood under: «after having entered in legal force»?

In order to answer these questions, a thorough and consistent analysis of corpus delicti, prescribed in Article 177, has to be made.

All things considered, it is possible to make the following conclusions about the object, purpose and structure of this research. Thus, the object of this research is Article 177 of the Russian Criminal Code, which prescribes responsibility for malicious evasion of credit debts’ repayment. The purpose of this research is identification of corpus delicti. The structure of the research is stipulated by a classical approach towards definition of corpus delicti. The first chapter is devoted to the object of the crime which is under consideration. The second- to the actus reus, the third- to the subject, whereas the fourth- to the mental element of a crime.
Chapter I

An object of the crime, prescribed in Article 177 of the Russian Civil Code.

Definition of creditor’s debts in criminal law

Traditionally, in criminal law, the object of a crime is something that suffers from the crime. In other words, those goods those are under a real risk of crimes which are prosecuted by criminal law. The author supports a wide-spread position, according to which a structure of a special part of the Code is based on peculiarities of an object. According to this position, names of chapters and sections reflect the nature and content of a particular object.

Thus, a subsumer of this crime is relationships in the sphere of economics whereas a subsume - relations that exist within economic (entrepreneurial) activity.

Nevertheless, much attention has to be paid to the object of the crime, since relations mentioned above are under a real protection of Article 177.

According to the results of the research, these relations can be grouped into two categories: social relations that arise in the sphere of securing collections of all creditor’s debts (the main object) and social relations that exist within an established order of executing procedures (the subsidiary object).
Specific attention has to be paid to defining creditors’ debts as a subject of malicious evasion of credit debts’ repayment. Primarily, a restricted approach prevailed. According to this approach, creditors’ debts are based only on the creditor’s agreement. However, modern scientific society and law adopters agree that creditors’ debts are credits of all types. The sum of such credits has to be not less than 1.5 million. These credits can be based on different types of contracts.

Such wide interpretation of creditors’ debts is followed from Article 308 of the Russian Civil Code, according to which, due to obligations, one party (a debtor) has to accomplish in the interests of another person (a creditor) certain actions whereas a creditor is allowed to demand from the debtor fulfillment of such obligations. According to this definition, creditor’s debts may be based on any type of contracts if a debtor does not carry out his responsibilities duly.

In order to support this position, it is necessary to appeal to the Federal Law № 129 «About accounting», which dates back to 21 November 1996. According to this Federal Law, within the data, which is included in reports on financial results, it is necessary to reflect the existence of creditor’s debts. These debts are debts in relation to suppliers and contractors, subsidiary and subordinate companies as well as debts in relation to the budget and social funds and etc.

Therefore, a legislator, a permanent arbitrator of theory, made a decision in favor of a wide interpretation of creditor’s debts, according to which creditor’s debts may be based on any contracts.

Apart from creditor’s debts, a subject, upon which this crime is encroached, includes securities. Nevertheless, it is necessary to mention that if we take into account provisions of Article 142 of the Russian Civil Code, according to which a security certifies promissory and other rights of its holder in relation to the party who published this document, we may make a conclusion that non-fulfillment of obligations on the basis of this security leads to creditor’s debts as well.

It is thought that such mentioning of securities has a signaling function. A legislator pays special attention to the fact that malicious evasion of credit debts’ repayment is a criminal offence.
The size of creditor’s debts, as well as those which appeared on the basis of securities, is established by the decision of the civil court, which has come in force.

Thus, according to disposition of Article 177, in order to acknowledge the existence of debts, a court decision has to come in force. A debtor, who is aware of such decision, doesn’t repay this debt intentionally. It also leads to non-fulfillment of this judicial act.

To sum up, malicious evasion of credit debts’ repayment partly encroaches upon relations that exist in the sphere of judicial administration. It corresponds with the third approach towards definition of an object. Nevertheless, Article 177 is primarily directed at protecting rights of creditors, since the nature of corpus delicti stipulates encroachment upon rights of creditors so that they could get their demands satisfied.

Chapter II
Actus reus of malicious evasion of credit debts’ repayment
Any crime is expressed in the real world thorough its external side. Actus reus, external expression of a crime, prescribed in Article 177 of the Russian Civil Code, is the malicious evasion of credit debts’ repayment.

According to methodical recommendations on identifying and investigating crimes, prescribed in Article 177 (malicious evasion of credit debts’ repayment), malicious evasion of credit debts’ repayment are activities or inactivities which entail non-fulfillment of obligations, arising from contracts, to cover creditor’s debts.

Such evasion can be referred to complicated inactivity as well. For instance, activity can take the form of active inhibition of executory procedure, aimed at collecting creditor’s debts. Inactivity may take the form of not exactly full inactivity. Here we have to refer a concrete position towards fulfillment of obligations, which takes the form of active abstention from obligatory actions.

According to Article 177, evasion takes place only after a judicial decision has come in force. However, such stipulation is not that successful. Undoubtedly, a judicial act means incontestability of debts. However, this approach can be interpreted in two ways: either as an obligatory condition of responsibility or as a starting point of counting terms of such evasion. In science the second point of view prevails.

A way of invasion doesn’t affect qualification. The key factor is the fact that a debtor doesn’t fulfill his obligations without any grounds. In methodological recommendations, that were mentioned above, there is an unlimited number of means that allow to evade repayment of debts. Generally speaking, these means can be grouped into two categories of actions: transfer of property to third parties or transmission of not authentic data.

According to Article 177, in order to hold a person responsible, it is necessary to identify a malicious motive in his actions. However, this terms is rather subjective and evaluative. A malicious motive can be expressed in different ways. As a result, there are no clear criteria which could help to identify such
intention. In any way, many subjective and objective conditions, which result from committing such a crime, would give a signal in relation to this malicious motive. A court establishes it in every single case

However, a malicious motive has several idiosyncratic features.

Firstly, non-repayment of debts, if such opportunities existed, shall be treated as the main feature of malignance. Such opportunities can be proved by accomplishing deals on the disposal of property.

Secondly, a constant non-submission of demands also has to take place. A debtor, having enough means to cover debts, in spite of constant notifications, given by an executor, doesn’t follow them. Non-fulfillment of obligation would also be taken into account.

Many economic examinations also help to prove a malicious motive. It can be done by receiving full and objective information concerning economic activity of a debtor during a period of non-repayment.

Nevertheless, as judicial practice shows, a fact, which is on the one hand may seems malicious, on the other hand is not a malicious one, since there was a significant reason that could explain it.

Lastly, this crime lasts from the moment of malicious evasion till a marshal refusal from its evasion or till a prosecution of such activity by law-enforcement bodies. A moment of invasion starts from expiration of terms, that were provided by an executory officer to implement the decision voluntarily.
Chapter III
A subject of malicious evasion of credit debts’ repayment

An essential element of every corpus delicti is the subject of a crime. In science many questions arise in this sphere.

In Article 177 of the Russian Criminal Code’s subject of this crime can be a manager of both commercial or non-commercial organization of any forms of property, which is obliged to cover debts or pay for securities.

If a person carries out his responsibilities nominally, another person, who is really in charge, will be held responsible for this crime.

In this case, a debt of an organization will be transformed into a debt of a manager. A manager of an organization cannot carry responsibilities for the activity of the company from the civil-law point of view. However, he may be criminally liable for damages, caused by this offence. Courts, treating debtor as an offender, usually satisfy his claims in relation to the civil lawsuit. Thus, it is conceivable to speak about transmission of civil responsibility to the manager.

However, it is necessary to remember that an organization can also be held civilly liable for damages, caused by an offence.
Apart from a manager, if a citizen, who is already 16, is a debtor as well, he can also be held responsible despite the fact that he is not involved in an entrepreneurial activity. Nevertheless, taking into account specific feature of this crime, it is doubtful that a teenager may commit this crime. Firstly, Article 177 of the Russian Criminal Code is aimed at protecting only lawful creditor’s debts. Firstly, one of the main criterion, in order to regard a bargain as valid, is a subjective structure of a crime. Articles 26,28,30 of the Russian Civil Code impose restrictions upon bargains, whose parties who have partly or fully restricted capability. Secondly, minors, in order to get a credit, are obliged to receive a written agreement of their parents or other legal representatives. Is shall be also regarded as an obstacle while committing this crime. Thirdly, creditors evaluate possible risks when they lend money. Therefore, it seems impossible, taking into account a sum of money, that they would like to enter into relations with minors who do not have any working experience, reputation and etc.

However, it is not reasonable enough to exclude a possibility of committing this crime by minors at all. Such cases can sometimes take place.
Chapter IV

Mental element of malicious evasion of credit debts’ repayment

Mental element of a crime is a psychological activity of a person, which is directly related to commitment of a crime. Malicious evasion of credit debts’ repayment can be committed only intentionally. In addition, commitment of this crime is possible only with the form of such guilt as direct intention. Thus, a person has to recognize the malicious motive of such evasion. Neither motive not purpose really affects qualification of this crime.

Due to specific actions, which lead to malicious evasion of credit debts’ repayment, questions, concerning imputation, do not arise at all.

As a rule, an irresponsible person is not able to accomplish several complicated actions, which are united by one aim. Moreover, commitment of this crime needs complicated schemes and, as a result, outstanding mental abilities. Generally speaking, such characteristic is applicable to any “white-collar” crime.

One of the main problems, which refers to the mental element of this crime is the identification of the moment when such malicious moment is born. A person may start to evade from before a judicial act comes in force. It means that such guilt has to be proven not only after, but also before this judicial act.
For example, a debtor may use not authentic documents. These actions can be a signal of intention to evade of credit debts’ repayment in a malicious manner despite the fact that a judicial decision has not taken place yet.

However, during investigation of this crime, many lawyers usually point at the fact that any proves that were received before a judicial decision are not valid at all.

This position is proven by the following. If a party received somebody else’s property without any intention to fulfill obligations, such intention appeared before a person received this property or before a right to such property was transferred to him. Therefore, such action has to be treated as fraud.

In this case, a moment of receiving money or getting a right to acquire somebody else’s property has a distinctive role. If, on the stage of concluding a contract, a person didn’t intend to fulfill his obligations, this action is a fraud. On the other hand, if a contract is concluded, property transferred and only after this a malicious motive appeared, such action has to be qualified as a crime, enshrined in Article 177 of the Russian Criminal Code.
Conclusion

This paper is devoted to the analysis of elements of crime, prescribed in Article 177 of the Russian Criminal Code. After having completed an analysis, it can be presumed that this legal rule has to be an effective measure in protecting property interests.

Undoubtedly, this norm has much potential and significance. However, due to several circumstances, its application faces real difficulties. Mainly, it can be the result of those gaps, which were made by legislators. Having placed an evaluative notion “malicious evasion” without defining it or its features, a legislator hampered its application in practice.

What is more, it is still not clear enough what does the phrase “after a judicial comes in force” actually means. Despite the fact that in science this issue has already been tackled, law-enforcement bodies have not given any interpretations yet.

Another problem is the fact that very often this crime is treated as a fraud. Law-enforcement bodies find this crime exotic and in many cases they just declare that a committed offence refers to the sphere of civil law and there is no corpus delicti of this crime at all.

All stipulations, mentioned above, can be proven by the fact that the number of conviction is very low- about 13 crimes per year.
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