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Bankruptcy of an individual in Russia: state and prospects of development

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Abstract

The aim of the study is to identify the areas of improving the bankruptcy institution of individuals in Russia. In this study, methods of observation, generalization, deduction, comparative and system analysis were applied. As a result, the authors consider that the institution of insolvency (bankruptcy) of a debtor in Russia should be improved taking into account the following principles: 1) Bankruptcy proceedings should be applied to the debtor in order to fulfill monetary obligations towards creditors, not for writing off debts; 2) Bankruptcy proceedings for conscientious citizens-debtors should be simplified; 3) Possibilities of abuse in bankruptcy cases should be excluded.

Keywords: insolvency, bankruptcy, citizen, creditor, debtor.

Quiebra de persona en Rusia: estado y perspectivas de desarrollo

Resumen

El objetivo del estudio es identificar las áreas de mejora de la institución de quiebra de personas en Rusia. En este estudio, se aplicaron métodos de observación, generalización, deducción, análisis comparativo y sistema. Como resultado, los autores consideran que la institución de la insolvencia (quiebra) de un deudor en Rusia debería mejorarse teniendo en cuenta los siguientes principios: 1) Los procedimientos de bancarrota deben aplicarse al deudor para cumplir obligaciones monetarias con los acreedores, no para cancelar deudas; 2) Se deberían simplificar los procedimientos de quiebra para ciudadanos concienzudos-deudores; 3) Deben excluirse las posibilidades de abuso en casos de quiebra.

Palabras clave: insolvencia, quiebra, ciudadano, acreedor, deudor.

1. PROBLEM STATEMENT

Both consumer and mortgage lending markets are actively developing in Russia. An increase in lending to individuals is an important factor in the development of a number of economic activities, including housing, automotive, retail and services. The objective consequence of growing consumer and mortgage loans and the current economic situation is an increase in the volume of overdue payments on these loans. These circumstances led to the need for

adequate regulation in the sphere of insolvency (bankruptcy) of citizens.

According to the Bank of Russia, the volume of lending to individuals in Russia during the period from January 2013 to January 2018 significantly increased from 7.7 to 12.1 trillion. RUB (57 %), as well as overdue debts on loans to individuals, grew in 2.7 times.

Overdue debts of individuals on loans need to be sorted out taking into account the rights and legitimate interests of both debtors and creditors. Otherwise, a significant part of citizens will not be able to develop normally, work in the legal zone of the national economy, pay taxes in good faith, form their future pension and will be limited in the legitimate conduct of business.

2. STUDY GOALS AND METHODS

According to North (1997), the institutional system can be a key factor in the long-term development of the society. Technological and institutional changes are the main determinants of social and economic development, besides, in both cases there are features of dependence on the past. Therefore, it is important to investigate economic relations in the field of insolvency (bankruptcy) from the perspective of institutional analysis.

The goal of the study is to identify areas to improve the institution of the individual's bankruptcy in Russia.

To achieve this goal:

- 1) there have been analyzed the current state of the institution of a debtor's bankruptcy, including the data of the Supreme Court of the Russian Federation, The Supreme Arbitration Court of the Russian Federation, the Federal Bailiff Service, the Central Bank of the Russian Federation, the World Bank and other agencies and organizations;
 - 2) there have been studied the materials of judicial practice on cases of citizens' bankruptcy, including application (non-application) of the rules on discharge of obligations, proceedings on individuals' bankruptcy complicated by a foreign element;
 - 3) There have been considered novelties and improvements in the institution of a debtor's bankruptcy during its operation;
 - 4) Institutional shortcomings (traps) of legal relations in the sphere of insolvency (bankruptcy) of citizens have been established;
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5) Proposals to improve the institution of a debtor's bankruptcy have been formulated.

The authors take into account the works of Russian and foreign representatives of scientists and experts Evenko and Soldatenkov (2016), Kuzminov et al. (2005), Biswas (2011), Gissel et al. (2007), Jones et al. (2008), Skeel (2009) and Xi (2011) on insolvency (bankruptcy).

To achieve the goal of the study, methods of observation, generalization, deduction, comparative and system analysis have been used. There have also been applied Douglass North's (1997) methodology for institutional analysis Davis and North (1970), the AGIL concept of Parsons (2002, 1945, 1951, 1996), Robert Merton's methodology of explicit and latent functions and dysfunctions Merton (2006, 1936, 1938), Polterovich's (2014) concept of institutional traps.

3. IMPORTANCE OF THE INSTITUTION OF INSOLVENCY (BANKRUPTCY) TO THE STATE AND ECONOMY

The institution of insolvency (bankruptcy) is one of the most complex institutions of a market (mixed) economy because it combines the components of economic efficiency and social orientation. The institution of bankruptcy is, first of all, of economic and social content, and the distinctive feature of its form is a high degree of its legal regulation. Modern economic realities and international experience

indicate that the main functions of bankruptcy include, among others (Evenko, 2016):

1. Creating conditions for maintaining a viable competitive enterprise (business) experiencing temporary financial difficulties;
2. Maintaining the balance of interests between a debtor, creditors, and other parties involved in bankruptcy proceedings;
3. Financial rehabilitation and socialization of a conscientious citizen who is insolvent.

4. FORMATION AND DEVELOPMENT OF THE INSTITUTION OF A DEBTOR'S BANKRUPTCY

The need to develop the institution of an individual's (debtor's) bankruptcy in Russia has been discussed for quite a long time among experts as well as in published articles (Soldatenkov, 2012).

Federal law of June 29, 2015 No. 154-FZ amended Federal law of 26 October, 2002 No. 127-FZ "On insolvency (bankruptcy)" (further – Bankruptcy Law). These amendments concern implementation of the bankruptcy procedure against the debtor.

Table 1 shows the statistical data on the number of applications received by arbitration courts for recognition of debtors as bankrupts, in comparison with the number of abating suits of bankruptcy because of debt repayment in the procedures of financial recovery and external management in the period from 2011 to 2017.

Table 1 - Data on the number of applications received by arbitration courts for recognition of debtors as bankrupts, in comparison with the number of abating suits of bankruptcy because of debt repayment in the procedures of financial recovery and external management in the period from 2011 to 2017 (according to the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation).

Year	Number of applications received by arbitration courts for recognition of debtors insolvent (bankrupts)	Number of bankruptcy cases which were accomplished with financial recovery procedures		Number of bankruptcy cases which were accomplished with external management procedures	
		Total	Abated because of debt repayment	Total	Abated because of solvency restoration (as a result of meeting creditor's requirements)
2011	33 385	94	7	986	13
2012	40 864	92	3	922	25
2013	31 921	67	4	803	15
2014	41 996	22	4	381	18
2015	50 779	36	0	413	14
2016	67 744	41	1	365	12
2017	79 358	29	3	334	13

The given data show that the effectiveness of rehabilitation procedures in bankruptcy cases is insufficient and it is expedient to

expand the use of tools by which the debtor – legal entity will be able to prevent the loss of its solvency and financial stability.

That is why the institution of an individual's bankruptcy has not copied the model of bankruptcy of legal entities.

Comparable conclusions about the insufficient effectiveness of a rehabilitation component of function of the institution insolvency (bankruptcy) in Russia are made from the data of the World Bank rating "Favorable business conditions" (Table 2).

Table 2 – Rating results "Favorable business conditions" regarding the Russian Federation (according to the World Bank)

Index	Rating Doing Business 2017	Rating Doing Business 2016
Global rating	40 (- 4)	36
Index «Insolvency settlement»	51 (- 2)	49
Procedure final result (0 point – if asserts of an enterprise are sold in parts, 1 point – if an enterprise continues to operate)	0	0

The following procedures are applied when considering the case of a citizen's bankruptcy:

- * Restructuring a citizen's debts (rehabilitation procedure applied in the case of a citizen's bankruptcy in order to restore his solvency and repay his debts to creditors in accordance with the debt restructuring plan);

* Sale of a citizen's property (rehabilitation procedure applied in the bankruptcy case to a citizen declared a bankrupt in order to satisfy creditors' claims adequately);

* Settlement agreement (the procedure applied in the bankruptcy case at any stage of its consideration in order to terminate the bankruptcy proceedings by reaching an agreement between the debtor and creditors).

Thus, the law on bankruptcy treats both restructuring of a citizen's debts and sale of a citizen's property as rehabilitation procedures.

Applying the institution of a debtor's bankruptcy is expanding, as evidenced by statistics.

According to the information system "Electronic justice" from 1st October, 2015 till 17th February, 2018 arbitration courts received more than 85 thousand applications of citizen's bankruptcy. Arbitration courts are now considering bankruptcy cases of a number of well-known persons: large entrepreneurs and public figures (for example, cases A56-71378/2015, A41-94274/2015, A05-1077/2017).

During the period of its operating, the institution of a debtor's bankruptcy has been developing consistently, and the practice of its application has expanded.

❖ The Plenum of the Supreme Court of the Russian Federation on October 13, 2015 adopted a resolution No.45 "Some issues related to the introduction of procedures applied in cases of insolvency (bankruptcy) of citizens". This act of the Supreme Court regulated a number of issues related to ensuring the bankruptcy procedure of a debtor.

❖ The institution of individuals' bankruptcy in Russia has begun to be applied to foreign citizens.

Bankruptcy Law does not contain indications that for legislation purposes the debtor, including individual entrepreneurs, is understood only as a person who is the citizen of the Russian Federation.

The relevant position is contained in the resolution of the Arbitration Court for the Moscow Circuit of July 8, 2016 in case No. A40-186978/2015, according to which Bankruptcy Law does not connect the definition of a debtor with his status of the citizen of the Russian Federation. At the same time, the conclusion of the courts that Bankruptcy Law provisions do not provide application of its regulations to persons who do not have citizenship of the Russian Federation is not based on the regulations of the substantive law.

The Moscow Arbitration Court under the decision of October 10, 2016 case № A40-186978/15-44-335Б upheld the application of the bankruptcy creditor to declare a German citizen bankrupt and brought distress sale to that debtor.

❖ There are cases of jurisdictional competition in regulating insolvency relations. For example, according to the materials of bankruptcy case № A56-71378/2015 it follows that the debtor, having previously been declared bankrupt in the UK, tried to legalize the results of this procedure in the form of discharge (debt relief) in the Russian Federation. At the same time, the bankruptcy procedure of the debtor was instituted in Russia (2015) much later than in the UK (2012).

According to Bankruptcy Law point 6 of article 1 court decisions of foreign states on insolvency (bankruptcy) are recognized in the Russian Federation jurisdiction according to the international agreements of the Russian Federation. In the absence of international treaties of the Russian Federation, decisions of foreign courts on insolvency (bankruptcy) are recognized in the Russian Federation on the basis of reciprocity, except as otherwise provided by the Federal law.

According to the decision of the Arbitration Court of St. Petersburg and Leningrad region in December 23, 2015 case № A56-71378/2015 creditor's application for declaring the debtor bankrupt,

who has previously been declared bankrupt in the UK (the decision of the High Court of Justice of England in October 5th, 2012 case № 4893-2012), was upheld and the debtor was brought to debt restructuring.

The court of the first instance noted that the Russian Federation was not a party of international insolvency treaties. The solutions of foreign courts are recognized and enforced in the Russian Federation, including on the basis of reciprocity, according to articles 241-246 of APC, articles 409-417 of Civil Procedural Code of the Russian Federation. The judicial act of the *High Court of Justice* in the UK on October 5th, 2012 case No. 4893-2012 on recognition and enforcement in the Russian Federation was not accepted by the Arbitration Court or the Court of General Jurisdiction, and the debtor did not address with this statement. According to point 1 of article 1186 (further – Civil Code of RF) the right, which is subject to application to the civil legal relations with the participation of foreign citizens or foreign legal entities or the civil legal relations complicated by other foreign elements, including the cases when the subject of civil rights is abroad, is defined on the basis of international agreements of the Russian Federation, the Civil Code of the Russian Federation and other laws (point 2 of article 3 of the Civil Code of the Russian Federation) and the customs recognized in the Russian Federation. The resolution of the Thirteenth Arbitration Appeal Court in March 28th, 2016, case № A56-71378/2015, records that the Russian Federation is not the party of international treaties on insolvency of individuals or legal entities;

insolvency complicated by a foreign element. Neither the statements of the Civil Code nor the rules of international agreements with the participation of the Russian Federation provide for the application of foreign law to legal matters related to the bankruptcy of citizens, including procedural legislation governing the recognition of persons insolvent in other countries.

However, the Appeal Court states that the purpose of insolvency is fair settling with creditors and not discharging debtor's obligations. The resolution of the Thirteenth Arbitration Appeal Court in March 28th, 2016, the ruling of the Arbitration Court of St. Petersburg and Leningrad region in December 23rd, 2015 case No. A56-71378/2015 were upheld by the ruling of the Arbitration Court of the Northwest district of 06 July, 2016. The Supreme Court of the Russian Federation in October 10th, 2016 No. 307-ES16-12310 refused the debtor to transfer his appeal against the acts of the courts of the first, appellate and cassation instances specified above for consideration by the Chamber for Commercial Disputes of the Supreme Court of the Russian Federation. In this case the Supreme Court of the Russian Federation stated that the judicial act of a foreign court being available on recognition of the citizen of the Russian Federation a bankrupt, taking into account the circumstances of the bankruptcy case № A56-71378/2015 does not prevent the implementation of a bankruptcy procedure to this individual in accordance with Russian laws. Taking into account the data stated above, recognition in the Russian Federation of the Russian citizen's (debtor's) bankruptcy who has

passed bankruptcy procedure in a foreign jurisdiction, and also legal consequences of passing this procedure are possible according to the following conditions:

- 1) The Russian Federation and foreign jurisdiction practice the principle of reciprocity of recognition of judicial acts;
- 2) There is a formal procedure for recognizing an act of a foreign court in the Russian Federation;
- 3) Bankruptcy procedure in the foreign jurisdiction of the debtor has not violated the rights and legitimate interests of his creditors and other persons.

5. INADMISSIBILITY OF USING BANKRUPTCY BY UNSCRUPULOUS ECONOMIC AGENTS FOR EVASION TO FULFILL THEIR OBLIGATIONS

It is unacceptable that the institution of bankruptcy should be used by debtors, including individuals, to maliciously evade their obligations to creditors. In case of malfeasance by the citizen being bankrupt it is not allowed to discharge this debtor from obligations. The conditions under which a citizen is not allowed to be discharged from obligations are established by paragraphs 4-6 of article 213.28 of

Bankruptcy Law. These standards of law provide that an individual upon completion of the procedure of his property sale may not be released from the performance of all obligations or the citizen is not released from the performance of individual obligations arising in connection with unfair (illegal) behavior of the individual. The judicial practice of non-using the rules on discharge of obligations to unscrupulous debtors is being established.

Let us consider the following examples of judicial practice.

❖ In the framework of case No. A45-24580/2015 the Arbitration Court of Novosibirsk region, March 24th, 2016 made the resolution of non-using the rule on the discharge of obligations to the debtor in connection with the debtor's unfair conduct while obtaining loans. Besides, in the case under consideration, the debtor's household indebtedness and the ownership of the apartment (i.e. the citizen has not fulfilled his obligations under the loan agreements, but has executed its obligations for the payment of utility bills) in conjunction with other circumstances of the bankruptcy case became the basis for non-using by the Arbitration Court the rule on the discharge of obligations to the debtor. The resolutions of the Seventh Arbitration Appeal Court dated May 26th, 2016, of the Arbitration Court of West Siberian district dated October 13th, 2016 stated that the judicial act on appeal was upheld. The Supreme Court of the Russian Federation of February 2nd, 2017

No. 304-ES16-19557 refused to transfer the debtor's appeal for consideration by the Chamber for Commercial Disputes of the Supreme Court of the Russian Federation. Application of bankruptcy procedures by unscrupulous economic agents in order to evade their obligations eliminates the value of this institution for the national economy, so it is important to minimize the opportunities for abuse in the field of bankruptcy within the framework of this institution.

6. WAYS TO IMPROVE THE INSTITUTION OF DEBTOR'S BANKRUPTCY

It is extremely important to provide an efficient application of the institution of debtor's bankruptcy in Russia. As an example of ineffective application of the institution of bankruptcy, it seems reasonable to consider the enforcement of the Federal law of January 8th, 1998 № 6-FZ "Insolvency (bankruptcy)" operated from 1998 to 2002, which was based on the principle of the enterprise insolvency on current transactions, and which significantly reduced obstacles to bankruptcy proceedings. As a result, by January 1st, 1998 there were about 4 thousand bankruptcy cases in the proceedings, and by January 1st, 2002 – more than 50 thousand bankruptcy cases. About 80% were bankruptcy cases of missing or liquidated debtors initiated mainly by tax authorities in order to comply with the formal procedure of

liquidating legal entities without the real possibility of debt collection to the budget (Kuzminov et al., 2005). Despite the fact that since October 1st, 2015 time the institution of a debtor's bankruptcy has affected tens of thousands of citizens, there are a number of institutional barriers hindering the most effective application of the institution of bankruptcy for debtors and creditors: The high cost of bankruptcy proceedings for the debtor, insufficient application of rehabilitation procedures and abuse in bankruptcy cases, attempts to use bankruptcy proceedings by unscrupulous debtors in order to evade their obligations, the institutional complexity of legal relations in the field of bankruptcy. Taking into account mentioned above, the following proposals are formulated to improve the institution of the debtor's insolvency (bankruptcy):

- 1) Simplification of bankruptcy proceedings for conscientious debtors by minimizing their costs.

At present the relevance of the issues under consideration is high. The number of execution proceedings for debt collection from individuals over 500 thousand rubles by the end of February 2015 (before the entry into force of the amendments to Bankruptcy Law related to the insolvency of the individual debtor) was 418.2 thousand with the total amount of debt on them exceeding 2 trillion rubles. A significant part of these individuals potentially meets the criteria of insolvency (bankruptcy). And a great number of these debtors, who are

already actually insolvent, simply do not have funds to cover the costs of the bankruptcy proceedings.

The cost of debtor's bankruptcy proceedings remains high enough:

Fixed fee of a financial manager is 25 000 rubles, and interests on the fee of the financial manager;

State duty is 300 rubles;

Mandatory postal and organizational expenses are not less than 10 000 rubles, and other expenses for bankruptcy proceedings.

Thus, minimum costs of debtor's bankruptcy proceedings are about 35,300 rubles. At the same time, according to some experts, the costs of debtor's bankruptcy proceedings actually are at least 45-50 thousand rubles. In this regard, it is advisable to publish information on the case of a debtor's bankruptcy only in an electronic form (by placing information in the Unified Federal Register of Bankruptcy Information) without duplicating in the official print publication.

2) Inadmissibility of using bankruptcy proceedings by unscrupulous debtors to evade fulfillment of obligations to creditors. Besides, the Russian Federation should maintain the possibility to review the judicial act on discharging the debtor

from fulfillment of obligations to creditors in case of revealing illegal actions committed by the debtor before and (or) during bankruptcy proceedings after completing the procedure of the realization of the citizen's property.

7. CONCLUSION

The institution of a debtor's bankruptcy in Russia needs constant improvement taking into account the rights and legitimate interests of the debtor and creditors, as well as maintaining a balance of interests between these persons. Otherwise, the Russian institution of bankruptcy will not be able to compete with the institutions of bankruptcy of the most developed communities.

The state and quality of the function of the institution insolvency (bankruptcy) are an important indicator ("mirror") of the effectiveness of managing the national economy, including its public and private sectors. Rehabilitation orientation of relations in the field of insolvency (bankruptcy) indicates the desire and ability of economic entities to fulfill their financial obligations. On the contrary, liquidation orientation of bankruptcy legal relations is a sign of debtors' tendency to deviant (unfair) economic behavior, expressed in evasion from the fulfillment of their obligations and desire to write off their debts. There are rare cases when citizens of the Russian Federation, for various

reasons, choose foreign jurisdictions for bankruptcy proceedings. This fact indicates that the conceptual basis of the institution of insolvency (bankruptcy) in Russia should be balanced and sustainable over time. Besides, the legal form, which expresses the essence of economic relations in the field of insolvency (bankruptcy), should be constantly improved to meet the most effective goals of applying the institution of insolvency (bankruptcy) at a particular historical stage of Russia's development.

Thus, the institution of the debtor's insolvency (bankruptcy) in Russia should be reformed taking into account the following principles:

- 1) Bankruptcy proceedings should be applied to the debtor for fulfilling monetary obligations to creditors, but not for writing off debts;
 - 2) Bankruptcy proceedings for conscientious debtors should be simplified;
 - 3) Possibilities of abuse in bankruptcy cases should be excluded.
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