PERSONAL INSOLVENCY- AN ENTREPRENEUR'S PERSPECTIVE IN SERBIAN LAW

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Abstract: Personal insolvency, in terms of a possibility of initiating insolvency proceedings against natural persons, represents a new concept in Serbian law, for both the legislation itself and the public. Having in mind official statistical data that report an increasing trend in credit indebtedness not only for businesses but for natural persons as well, followed by an increasing trend in late payments, the Serbian legislation will inevitably have to face the challenge of implementing this concept.

This article outlines the principal characteristics of this concept aiming to introduce to broader professional community advantages of its implementation, not only for business entities by ensuring legal security but for the society as a whole, by applying a social method. Furthermore, using a comparative law method, the authors sought to provide some basic guidelines for future legislative challenges in terms of regulating entrepreneur insolvency, which the Serbian legislators will inevitably face, taking into consideration experiences of the considered reference countries, particularly the respective regulations in countries in the region.

Key words: Personal Insolvency, Bankruptcy, Entrepreneur, Fresh Start Policy, Debt Relief

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INTRODUCTION

Personal insolvency, in terms of a possibility of initiating insolvency proceedings against natural persons, represents a new concept in Serbian law, for both the legislation itself and the public. Having in mind official statistical data that report an increasing trend in credit indebtedness not only for businesses but for natural persons as well, followed by an increasing trend in late payments, the Serbian legislation will inevitably have to face the challenge of implementing this concept.

There is an increasing interest in understanding how entrepreneurship can create value in a society. Much of this interest focuses on the role of risk taking by entrepreneurs and managers in creating economic value and, in particular, how market entry barriers for entrepreneurs can be lowered (Busenitz, Gomez, & Spencer, 2000; Djankov, La Porta, Lopez-De- Silanes, & Shleifer, 2002). However, relatively little work has been done on lowering exit barriers, such as bankruptcy laws.

Corporate bankruptcy is very common. Indeed, hundreds of thousands of firms around the world declare bankruptcy every year.

Despite the rate of corporate bankruptcies, the legal procedures in relation to bankruptcy vary significantly across countries. Some countries define only a few types of bankruptcy and provide limited protection for entrepreneurs and managers of bankrupt firms. Other countries have many more bankruptcy options, which vary in the extent to which they limit personal liability of entrepreneurs and managers of bankrupt firms.

In this paper we define entrepreneurs as individuals who combine resources in new and risky ways and who have the potential to add value to society through these endeavours. Our key question is “Is entrepreneur-friendly bankruptcy law needed in the Serbian law?”

PERSONAL INSOLVENCY

Each business arrangement which includes establishment of a certain creditor-debtor relation carries some realistic risk that the debtor may not be able to fulfil their liability. In order to achieve the fundamental principle of civil and international right *"pacta sunt servanda"* and preserve legal safety at the same time, the law introduced the concept of bankruptcy as a form of settlement with creditors in a situation where debtor becomes insolvent i.e. unable to pay.

When initiating bankruptcy proceeding, it is not relevant whether the debtor is a natural or legal person, because that is a universal procedure which applies to all subjects unable to fulfil undertaken obligations.

The past Law on Bankruptcy Proceedings (Bankruptcy Law, Official Gazette of the Republic of Serbia, No. 84/ 04) stipulated the possibility of initiating

bankruptcy proceedings against entrepreneurs. Thereby the Law opened up the possibility of initiating bankruptcy proceedings against natural persons as well. *Ratio legis* of such solution can be found in the very definition of the private entrepreneur. According to relevant regulations, an entrepreneur conducts activities in order to make profit and achieves either positive or negative results in his/hers business activities. With regard to that, the entrepreneur is either able or unable to fulfil his/her business liabilities, i.e. to reconcile his/her debts with creditors.

Equality before the law requires equal treatment of all parties engaged in commercial relations regardless of them having legal or natural person status.

This is a new legal solution with regard to the previous Law on compulsory settlement, bankruptcy and liquidation. However, bankruptcy of a natural person is not a novelty in our bankruptcy law. Bankruptcy proceeding against natural persons was known concept in the bankruptcy law of the Kingdom of Yugoslavia in 1929. In line with paragraph 67 of that law, bankruptcy shall be initiated over the property of debtor unable to settle payments. Apart from that, paragraph 68 allowed the possibility to initiate bankruptcy proceeding over an over-indebted succession. That way, bankruptcy ability was equalised with legal capacity and the possibility was allowed for bankruptcy proceeding to be commenced against natural persons (Slijepčević, 2006). However, our Law on Bankruptcy Proceedings does not allow entrepreneurs to declare bankruptcy as natural persons, nor in relation to other natural persons. Previous bankruptcy procedure provided for commencement of bankruptcy proceedings only against entrepreneurs as natural persons, and thus the category of bankrupt debtor is needlessly limited as other natural persons were exempted, while business practice speaks in favour of expanding the concept of bankrupt debtor to all natural persons regardless of whether they are entrepreneurs or not. Unfortunately, existing legal solution does not allow initiation of bankruptcy proceedings against individuals, but only against legal persons (Bankruptcy Law, Official Gazette of the Republic of Serbia, No. 104/09).

By introducing the category of individual bankruptcy, non-commercial entities, which enter carefully into business arrangements, would become salient and consequently important actors in economic activities. In addition, the risk of debtor becoming insolvent is in bankruptcy proportionally distributed among all creditors thus preventing that claims of some creditors are entirely satisfied while others do not receive any settlement whatsoever , which is a realistic danger in regular enforcement proceedings. Bankruptcy of natural persons foresees somewhat different procedure than bankruptcy of legal persons, and introduces some new concepts such as: exemption from liability to settle outstanding contractual obligations, right to exemption of certain matters and rights from execution in bankruptcy proceeding, etc.

Also, the expansion of consumer loans implies introduction of this type of bankruptcy, as when consumer loans become more widely available, and so under very favourable conditions, it is logical to have an increased risk of inability to settle due payments, i.e. in this case to repay the loan, which is the most frequent case in this type of bankruptcy precisely in those countries that have extremely developed credit economy, especially in the United States of America.

BASIC PRINCIPLES OF PERSONAL INSOLVENCY

In case of personal bankruptcy it is possible to differentiate two objectives: the first, related to substantive law, concerning only debtor and being precisely *diferntia specifica* with regard to the regular bankruptcy, a fresh start for the debtor and the second one, related to procedural law, concerning only the rights of creditors, i.e. collective, equitable, fair and compulsory satisfaction of unsecured creditors.

In personal bankruptcy, in terms of the rights of creditors and debtors in bankruptcy, a tendency to limit the rights of the creditor for the benefit of the debtor is noted, which is in line with the guiding idea of this procedure, rehabilitation of the debtor, while that is not the case in corporate bankruptcy, where the rights of creditors prevail.

The fresh start principle for bankrupt debtor means a new beginning, and economic re-birth. Considering the nature of this principle it is hard to imagine it being applied in corporate bankruptcy, since it would be quite absurd as the main consequence of legal entity declaring bankruptcy is that it ceases to exist as such and loses capacity of a legal entity.

In corporate restructuring (Slijepčević & Spasić, 2006), as an alternative to bankruptcy, we note certain similarities with this principle, however even though the goal of restructuring is improvement of an insolvent company, through preparation and application of the restructuring plan, that is not an actual bankruptcy because it is used when the restructuring plan fails or creditors achieve quorum and bankruptcy is declared. Economic improvement of a natural person subject to bankruptcy proceeding is precisely the main objective and we may say consequence of personal bankruptcy, and it represents the measure applied due to bankruptcy of natural person.

Achievement of this principle would not be possible without the following most important concepts: debt relief, exemption from execution and limitations of the bankrupt debtor.

When personal bankruptcy specifics are taken into consideration, reflected in enabling economic recovery to insolvent debtor, the question is how to determine who will be able to benefit from this concept in order to avoid significant misuses. At a first look, there are several possibilities to bend the law, so if no clear criteria are established in terms of determining who may apply for personal bankruptcy, individuals will enter into financial arrangements carelessly, with no rational criteria in mind, since they could at any time declare bankruptcy, seek debt relief and thus, after short period of time, re-enter the market and repeat their irrational behaviour which would then reflect to the entire economy of the respective country. That is why the laws of certain countries, where personal bankruptcy is a possibility, introduce terms such as "fair but unfortunate debtor" and similar. In addition, quite liberal personal bankruptcy systems face with uncontrolled credit indebtedness of individuals, and the risk of uncollected debts is borne by the creditors. The consequence is quick return of debtors to the credit market, new indebtedness and a closed circle of irrational spending which would soon result in

crash of national economy. Extreme of this concept may only exist at a theoretical level, that is why solutions are created and, depending to a great extent on the economy of a country, certain limitations are applied such as: determining deadline for repayment of debts. Upon the expiry of the deadline, other debts are forgiven, and by applying the already mentioned category of "fair but unfortunate debtor" the number of individuals who may use this beneficial procedure is narrowed, etc.

However, if this concept is too rigidly applied and many limitations are introduced, it in itself becomes contradictory and is no longer beneficial for the debtor, but approaches corporate bankruptcy, protecting mainly the creditors' interests, which results in negation of the basic principle of personal bankruptcy, as it is absurd to discuss the principle of fresh start for the bankrupt debtor.

By applying this principle both economic and moral goals are achieved.

Economic goals which should be mentioned are:

- stimulating the individual to remain economically productive;
- reduction of the use of social rights;
- efficient monitoring of uncontrolled need of consumers ro take loans offered by creditors;
- maximising the value of bankruptcy estate;
- reduction of credit expenses and increase of availability of loans;
- preserving the integrity of contracts;
- encouraging entrepreneurship (City Bar Justice Centre, 2007)

Different countries shall, depending on who bears the risk, debtor or creditors, apply different systems of relief. Thus, theory experts who opt for the concept according to which the debtor should bear all the risk, believing that debtors have higher control over their financial activities than any creditor, will actually lead to negation of the concept of relief. On the other hand, we often cite the example of the USA, and view which considers creditors as a dominant party in the debtor-creditor relation, and thus the main carriers of the insolvency risk. There are justifications, most of all due to the fact that large creditors are indeed better equipped, before approving the credit lines, to check the potential client's credit ability, and numerous conditions which must be fulfilled prior to approval of the loan. That is precisely why large banks formed Risk departments (RISK) as one of the pillars of their lending activities with the goal to estimate the investment risk. Crisis introduced some new initiatives in the financial market, so now the focus is on establishment of strong legal departments (LEGAL RISK) having as the main goal a detailed risk assessment for biggest investments, from the legal point of view, with a tendency of its subsequent application to all loans. Taking these initiatives into consideration, investments of further funds for the purpose of restructuring, then establishment of units consisting of the best legal experts, who will also earn the most, which additionally stresses the their responsibility level, it does seem that in competition between creditors and debtors, we choose creditors as the dominant risk bearers, without further contemplation.

It should be mentioned, as illustration, that, by passing the Law on Insolvency of Business Organizations, the Republic of Montenegro adopted precisely this type of liberal relief system, whereby creditors bear all the insolvency risks of the debtor. However, as already mentioned, the extremes are only attainable in theory so there is a great number of interim, compromise solutions, which imply distribution of risk between debtors and creditors, and such models are various: obliging debtors to repay their debts to creditors during certain number of years, prescribing requirements for opening bankruptcy proceeding, authorizing courts to grant debt relief to debtors, etc.

Bankruptcy law also has a moral dimension, through its basic principle of the fresh start which makes it clear that there is a tendency for affirmation of Richard Flint's notion that human dignity is bigger and more important category than economic benefits or expenses.

If we consider debtor-creditors relations not only in terms of trust but also in terms of "good faith", their commitment to fulfil their contractual obligations and to pay their debts, the relation of moral obligation or duty is established as well. Bankruptcy must be a relief instrument for those in actual need of assistance and it must not be the means for misuse and frivolous avoidance of moral and contractual obligations. Moral standards are not the only constant, unchangeable category. On the contrary, they are in constant interaction with the society and so they monitor development of the economy on certain territory. Morality, as a fluid category generates different views on personal bankruptcy depending on the historic period, and thus it now represents the basic instrument for protection of human dignity in the bankruptcy proceedings against natural persons, that were once considered disgraceful and morally unacceptable category.

This ethical dimension consists of two related obligations:

- obligation that society has to the consumer and
- obligation that consumer has to the society.

As to the obligation of the society to the consumer, preservation of human dignity is especially emphasized and the role of concept debt relief is precisely achieving that protection. Also, through exemption from execution, debtor is guaranteed existential minimum, and the law prohibits execution which would jeopardize debtor's ability to satisfy their basic human needs and those of their family.

Correlative obligation of consumers to the society has corrective function, since ideal society is a form of utopia, and that there will always be individuals who will try to misuse the law. This obligation is focused on the obligation of consumer to act responsibly towards other members of society, predicting responsibility (sanction) due to breach of some behavioural norm. The aim is to establish and preserve acceptable behavioural standards in economic business activities, such as: principle of conscientiousness and honesty, prohibition of misuse of the law, duty to fulfil obligations, prohibition of causing damage.

In order to discuss introduction of personal bankruptcy system in the first place, certain requirements must be met, from economic as the prevailing ones to social to cultural.

It is equally wrong to leave this matter unregulated, which is precisely what our legislator is doing, or to regulate it in a wrong way not taking into consideration the actual economic, social and time factors in a given society.

Theory has recognised and separated several conditions for successful implementation of personal insolvency, and they are:

- positive attitude towards entrepreneurship;
- increase of consumption in society;
- increase of individualism;
- awareness of the necessity of organising and consumer protection;
- development of legal end entrepreneurial culture, and thus development of socially responsible market;
- deregulation of financial and credit business relations;
- development of social legislation;
- development of theory of personal bankruptcy (Ivanjko, 2008).

Principle of collective, equitable, fair and compulsory satisfaction of unsecured creditors represents the undisputed principle of bankruptcy law and there is no need for it to be applied in the field of bankruptcy over property of natural persons.

When debtor is unable to effect payments of his/her obligations, the creditor may initiate enforcement procedure in order to collect their claims (this applies to entrepreneur in our system). However, considering the maxim in force in enforcement procedure *prior tempore potior iure*, meaning "faster in time, stronger in right", it is possible that the first creditor to apply for settlement of their claims is completely satisfied from the debtor's estate which may result in lack of funds to be distributed to other creditors who filed their application later. If debtor's estate lacks funds for all creditors to be satisfied, the law defined different form of debt collection, the bankruptcy proceeding. In such situations commencement of bankruptcy proceedings is better solution than enforcement procedure since it applies the principal of equality of creditors, which is somewhat relativized by existence of bankruptcy settlement order, but on the other hand, within the same order, equality is guaranteed (In the same bankruptcy settlement order the creditors are payed proportionally). The need for bankruptcy proceeding to be opened so that bankruptcy rules can be applied to all creditors is evident, since conversely those creditors not included in the bankruptcy procedure would, for example, collect all their debts through enforcement procedure and there will be no funds left for satisfaction of other creditors participating in the bankruptcy proceedings against the debtor. Therefore, all principles applied to the personal bankruptcy proceedings are also applied to corporate bankruptcy, such as the principle of collective settlement of unsecured creditors, principle of process economy, principle of universality, etc.

ENTREPRENEUR AS ACTOR IN PERSONAL INSOLVENCY PROCEDURE

Term entrepreneur comes from the French language and it is related to the business activity. The term was first used by the French theorist Kantinijon in 1755 in his discussion of the nature of trade, where lessees of land, merchants, craftsmen, painters, builders, doctors, lawyers, etc. in order to highlight their business risks.

According to our Law an entrepreneur is an individual who is registered to carry out economic activities, and for all liabilities incurred in the course of business fits their assets. Therefore, it is necessary to underline that our legislators do not distinguish between entrepreneur's personal property and property intended for a registered business.

When an entrepreneur becomes insolvent, he/she may be subject to enforcement proceedings but not bankruptcy. Bankruptcy procedure is reserved only for legal entities. When registering his/her business, the entrepreneur is not required to pay the initial capital, or even to provide confirmation that he/she owns any property. This is essential for understanding the main problem that arises when entrepreneur becomes insolvent. So, on one hand the legislator defined that entrepreneur is liable with all his/her assets in case of insolvency, and on the other hand, he/she is not bound to actually possess any asset when registering his/her business. This is the reason why it typically occurs that when enterpreneur becomes insolvent, there are no assets from which his/her creditors may collect claims.

When it is impossible to settle with creditors due to lack of assets, it seems that business entities cautiously enter into business and financial arrangements with entrepreneurs.

This further complicates the position of enterpreneurs as more and more credits and loans become unreachable. Because of the increased risk of failure to repay the loan, banks and other financial institutions approve fewer loans to this category of business entities. The risk that even a partial payment of creditors will be impossible creates the overall legal uncertainty that has an effect on the economy in general. All this goes in favor of implementing personal insolvency procedure (entrepreneur) which would improve legal safety and provide even partial satisfaction of creditors.

A personal bankruptcy law that allows “fresh start” after bankruptcy has reduced the individual risk involved in entrepreneurial activity. On the other hand, as risk shifts to creditors who recover less of their loan after debtor has declared bankruptcy, lenders may charge higher interest rates or ration credit supply, which can hamper entrepreneurship. Both aspects of a more forgiving personal bankruptcy law are less relevant for wealthy entrepreneurs who still risk losing their wealth, but tend not to face higher interest rates because they provide collateral security. As income from entrepreneurial activity is considerably more unpredictable than income from wage employment, entrepreneurship implies a

greater risk of bankruptcy. For entrepreneurs owning unincorporated businesses, business debts are personal liabilities as we have previously said. Personal bankruptcy law can, therefore, be expected to play an important role in the decisions of an individual to become and to remain an entrepreneur. Stimulating entrepreneurship is now a major policy objective in many countries with the intent to promote innovation, competitiveness, and job creation. How may one expect to stimulate entrepreneurship when there is no legislative regulating personal bankruptcy? From an economic perspective, the main policy leeway in personal bankruptcy law is between more creditor-friendly and more debtor-friendly procedures. The former ensures that creditors recover as much of the funds extended as possible in case of a debtor's bankruptcy ("absolute priority rule" of creditors over equity holders); while the latter provides discharge of debt when certain requirements are fulfilled, thus giving the bankrupt the chance for a fresh start. Such "fresh start" policies are widely considered to promote small business entrepreneurship, because relief from debt burden allows entrepreneurs to start new business after experiencing failure. This is the main argument laid out by Germany's Merkel led government, which intends to shorten the time period after which debt relief may be granted, after filing for personal bankruptcy, from six down to three years.

More liberal bankruptcy law could generate two opposing effects on entrepreneurial activity. On one hand, it may make entrepreneurship more attractive, as entrepreneurs do not risk losing as much wealth and future income in case of bankruptcy. On the other hand, however, risk is shifted to lenders, who recover less in case of debtor declaring bankruptcy, and they may react by charging higher interest rates or rationing credit supply. This may hamper entrepreneurship, which depends on capital (Fossen, 2011).

Historically, entrepreneur-friendliness and bankruptcy laws are like an "oxymoron," because bankruptcy laws are usually harsh and even cruel. The very term "bankruptcy" is derived from a harsh practice: In medieval Italy, if bankrupt entrepreneurs failed to pay their debts, creditors would destroy their trading benches.The Italian word for broken bench, "banca rotta," has evolved to become the English word "bankruptcy." The pound of flesh demanded by the creditor in Shakespeare's The Merchant of Venice is only a slight exaggeration. The world's first bankruptcy law, passed in England in 1542, considered a bankrupt individual a criminal and punishments ranged from incarceration to death sentence (bankruptcydata.com, 2008).

Around the world, being entrepreneur-friendly is a relatively new concept in bankruptcy lawmaking, which is in radical contrast with traditional bankruptcy laws and practices that generally favored the creditor and were harsh toward the bankrupt (Halliday & Carruthers, 2007). Recently, many governments around the world have increasingly realized that entrepreneur-friendly bankruptcy laws cannot only lower exit barriers, but also lower entry barriers for entrepreneurs.

We can distinguish six dimensions of entrepreneur-friendliness:

1. the availability of a restructuring bankruptcy option,
2. the time spent on bankruptcy procedures,
3. the cost of bankruptcy procedures,
4. the opportunity to have fresh start in liquidation bankruptcy,
5. the opportunity to have automatic stay of assets during restructuring bankruptcy, and
6. the opportunity for entrepreneurs and managers to remain on the job after filing for bankruptcy (Peng, Yamakawa & Lee, 2009).

PERSONAL INSOLVENCY IN SERBIAN LAW

The current Law on Bankruptcy of the Republic of Serbia (Law on Bankruptcy, Official Gazette of the Republic of Serbia, No. 104/09) defines that bankruptcy proceedings may be initiated only against legal entities ("This law governs the manner and conditions of initiating and governing bankruptcy proceedings against legal entities.", Law on Bankruptcy, Official Gazette of the Republic of Serbia, No. 104/09). Hence, our legislator, with 2009 bankruptcy law reform, erases entrepreneur as a potential actor in bankruptcy proceedings. The possibility of opening bankruptcy procedure against entrepreneurs was introduced in the Serbian law by the Law on Bankruptcy Procedure (Law on Bankruptcy Procedure, Official Gazette of the Republic of Serbia, No. 84/ 04) adopted in 2004 (1861 Law on Bankruptcy Procedure and 1930 Law on Bankruptcy regulate consumer bankruptcy. From 1953, when Decree on Cessation of Business and Activities was passed until today our legal system does not regulate bankruptcy of a natural person not conducting business activities). That Law also introduced the possibility of singular management of the entrepreneur in bankruptcy. This solution was at that moment interpreted by the law theory that advocates the implementation of the personal bankruptcy system as small but valuable step toward contemporary bankruptcy laws. The fact that natural persons eligible for bankruptcy procedure are only entrepreneurs and the lack of the concept of debt relief were criticized, and the need for future reform of singular management of the entrepreneur was stressed. The 2009 reform has not continued to further implement and improve the mentioned concepts but, on the contrary, the possibility of opening bankruptcy against natural persons was erased from the Serbian bankruptcy law.

On the other hand, academic community shows increasing interest in the possibility of opening bankruptcy procedures against natural persons. The data collected by the Credit Bureau of the Association of Serbian Banks (UBS, 2012) show an increasing trend in consumer debts, which is a consequence of many individuals taking bank loans in order to be able to meet their basic needs. Consumer credit indebtedness increased in July of last year (2012) by 1.3 percent in relation to the previous month, amounting to the debt total of 609,84 billions of dinars. Credit indebtedness of entrepreneurs increased in July by 7.7 percent which resulted in the total debt of 98,57 billions of dinars. If we compare the data of the Credit Bureau of the Association of Serbian Banks from July

2011 with July 2012 data we will note that credit indebtedness of both economy and citizens significantly increased, as well as increase in late payments (In July of 2012, late payments were registered at 4.3 percent of citizens.).

Consumer loans enable immediate consumption of goods and services that will be paid for by future income. As long as income is constant and sufficient, there are no problems. The question is how to solve numerous problems of insolvent citizens who are no longer able to repay their debts due to job loss or illness. In case of mortgage loans, the loan is secured by real property through the use of mortgage note, so the bank is protected and may settle the debt by selling the property. However, the situation on the housing market forces commercial banks not to sell the property (low selling rates, low market value) but to seek alternative methods such as various consumer debt restructuring plans. In case of cash and consumer credits such collaterals do not exist and in case of debtor's inability to continue to repay their debts, both banks as creditors and debtors are facing big problems. The way out may temporarily be found through various forms of credit restructuring which actually in a very perfidious way drags debtors into a vicious circle of perpetual indebtedness. Insolvency most commonly occurs as a result of irresponsible and reckless behaviour of individuals, to an extent due to lack of understanding of how credit economy works, but insolvency may also occur as a result of sudden job loss, illness or illness of one's next of kin, natural disasters that destroy one's property, etc. It is necessary to find solution for those individuals who are not objectively guilty for being in such position, which would in such extraordinary cases help preserve their dignity and prevent their social stigmatization. It is in the interest of legal security to provide for a proceeding in which the creditors would collect at least part of their claims, in cases in which enforcement procedures prove inefficient. In case of enforced collection of claims, all parties lose: creditors lose because they most commonly cannot entirely collect their claims, debtor loses because in such situation it is quite clear that he/she will hardly get back on his/her feet, and state loses by gaining one more user of the social assistance system. Consumer insolvency may actually have far-reaching consequences. A person who is not able to meet his/her financial obligations will be under great stress most of the time, which may cause physical illness and psychological disorders and it is quite evident that persons in such position may opt for illegal ways of solving their problems (criminal activities). Insolvency reflects quite seriously on the state's entire economy since such individuals will burden it with their need for social assistance and, on the other hand, will no longer be subject to taxation, thus having double impact on the state's budget (Garašić, 2011).

Economic reality warns us that the time has come for the state to start behaving responsibly, since it is obliged by the Constitution to guarantee dignity of every individual citizen (Article 19 of the Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No.83/06). It is necessary to start financial literacy action, gather unions' representatives, consumer associations and representatives of the competent ministry in order to find an adequate model of the fresh start concept implementation. Taking into consideration that other countries in the region regulated this matter to a lesser or greater extent, it is recommendable to consider their experience and difficulties they face in implementation phase and accordingly draft a model that corresponds to our specific economic and social circumstances.

CONCLUSION

From the age of imposing entrepreneur-hostile bankruptcy laws, countries and governments around the world have come a long way to reform their bankruptcy laws to make them more entrepreneur-friendly. Strengthening market-supporting institutions to stimulate more entrepreneurship development is at the heart of the institution-based view of entrepreneurship.

Our Insolvency Law does not recognize entrepreneurs as potential parties to this procedure, as it is defined that actors in insolvency procedure can only be legal entities. There are two possible solutions to change the norm in order to extend the base of potential actors, as it was the case with Insolvency Law in force from 2004 to2009, under which it was possible to start insolvency procedure against entrepreneur or to adopt a special law considering personal insolvency matter, that would regulate entrepreneurs bankruptcy as well as bankruptcy of any other natural person.

In region, the situation is completely different. Montenegro, Slovenia, Croatia and FYROM have implemented provisions on personal insolvency, some only for entrepreneurs as natural persons (Montenegro, Croatia, FYROM) and others like Slovenia, being the most modern legislative model, recognizes all natural persons as potential actors in this privileged procedure.

Economic trends on the global market, recession, disruptions of the credit sector due to over-indebtedness of entities and their inability to repay their loans, all imply changes in determining users of the procedure making its expansion to all natural persons necessary. Europe offers great number of models , it is only necessary to make a collage from all the offered solutions which would in itself contain all the good sides of some of them and be in accordance with the economic, social and political circumstances of our country, since that is the only way their full implementation may be ensured.

Human dignity, in our eternally unhappy and turbulent economic surroundings, has become an endangered category that must be affirmed and protected through individual bankruptcy system.

Instruments providing second chance to individuals who, due to difficult existential circumstances and fight for survival,-reached for too many loans that overburdened them and led them to a brink of disaster, must be ensured.

It is up to the legislator to establish a new system which shall function for the benefit of the society as a whole, but legal theory is responsible for understanding this matter well, both in its own country and in the comparative law as well, and for criticising the legislator in order for the best solution possible to be developed. There is not enough time for passing provisional laws, in line with the expiry date principle "from one Government session to another", but it is necessary to address this issue seriously and involve the most prominent experts in the field of bankruptcy law and diligently work on preparation of a draft of the new bankruptcy law.

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