Romanian Law no. 151/2015 on the insolvency of physical persons. Participants in insolvency proceedings

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Abstract

On June 26, 2015[2]*, in Official Gazette no. 464, Law no. 151/2015 regarding the insolvency of natural persons, with the deadline for entry into force on 31.12.2015. However, at this time, the law does not have legal effects, its entry into force being repeatedly postponed, the last deadline set for this purpose being 01.01.2018. Unfortunately, the adoption of Government Ordinance no. 30/2017 for amending and completing the Law no. 207/2015 regarding the Fiscal Procedure Code does not refer to the insolvency procedure of individuals, which is an indication that the application of the Law no. 151.2015 will be postponed. The legal approach has as general an analysis of the legal framework and of the arguments underlying the regulation of this legal institution, the presentation of the conditions for initiating the insolvency procedure of the natural person, the entities involved in this procedure, including the insolvency commissions. Also, the paper aims to explain the reasons behind the repeated delays in the application of this normative act, to identify the problems and blurring that make the law inapplicable and to provide solutions to the law.*

Keywords: *insolvency of individuals, insolvency commission, bankruptcy, debtor of good faith, residual debts.*

JEL Classification: K15, K35

1. Introduction

The Personal Bankruptcy Act aims to regulate the insolvency procedure of natural persons with a view to extinguishing their debts by reimbursement under a plan or on the liquidation of assets.

The separate regulation of the insolvency of natural persons, separate from the insolvency procedure regulated by Law no. 85/2014[3], aims to establish a simple and effective procedure for the settlement of the debts of natural persons who do not carry out economic activities.

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[2] Law no. 151/2015 on Insolvency of Individuals, published in the Official Gazette no. 464 of June 26, 2015.

[3] Law no. 85/2014 on the procedure for the prevention of insolvency and insolvency, published in the Official Gazette no. 466/2014.

At the level of the European Union, the issue of insolvency is included in the Area of Freedom, Security and Justice policy area. According to art. 5 of the Treaty of Lisbon on the principle of proportionality, European insolvency law is confined to the provisions governing the power to initiate insolvency proceedings and the award of judgments to undertakings operating in the European Economic Area. By Regulation no. (EC) No 1346/2000[4] on insolvency proceedings, as amended by Council Implementing Regulation (EU) No. Regulation (EC) No 583/2011[5] amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) 1346/2000 on Insolvency and Coding Procedures of Annexes A, B and C to that Regulation, the basic rules in cross-border insolvency proceedings were regulated in order to ensure the organization of the Internal Market in the field of judicial cooperation in civil matters.

While respecting the principle of proportionality, EU Regulation 583/2011 does not impose a common system of rules applicable to the Member States but rules under which insolvency proceedings opened in European Union countries are also recognized directly in the territory of other Member States. Given that most Member States have regulated not only corporate insolvency but also insolvency of private individuals, any consumer residing in a European Union State will be able to declare his state of insolvency irrespective of whether the State of the citizen of which is the consumer, regulates the insolvency procedure of individuals.

At the European Union level, the first country to regulate personal bankruptcy was Denmark in 1984, followed by France, Germany, Austria, Belgium, the United Kingdom, the Netherlands, Italy, Spain, the Czech Republic, Estonia, Latvia and Lithuania.

In the UK[6], bankruptcy, strico sensu, refers only to individuals, companies are subject to other insolvency procedures: liquidation and administration. However, lato sensu, the term bankruptcy is used for all categories of borrowers, individuals or companies. Following the adoption of the 2002 UK Business Act, bankruptcy does not last for more than 12 months or less if the suitably appointed official presents a certificate in court indicating that his investigations are complete. The personal bankruptcy procedure is based on the bona fide of the debtor, all the proceedings, all declarations and actions being carried out on his / her own responsibility. In view of the principle of good faith, the individual debtor has the possibility of assuming an individual voluntary commitment, an official proposal to repay debts to creditors by the syndic judge or the insolvent practitioner when seeking to avoid bankruptcy.

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[4] Regulation no. 1346/2000 of the Uruguay Union on insolvency proceedings, published in the Official Journal of the European Union no. L160 of 30.06.2000.

[5] Implementing Regulation (EU) No 583/2011 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) 1346/2000 on insolvency proceedings and codification of Annexes A, B and C to that Regulation, published in the Official Journal of the European Union no. L160 / 52 of 18.06.2011.

[6] „Regulations on Insolvency of Individuals in Member States of the European Union", http://www.cdep.ro/infoparl/dip.studiu? par1=2010&par2=11404 (last consulted on 5.11.2017).

In Belgium, the bankruptcy procedure is governed by a 1997 law, in the sense of a simple liquidation mechanism, with three stages, namely judicial administration, bankruptcy and the arrangement with the creditors, in the first stage the debtor enjoying legal protection against creditors, no person requires the debtor's entry into bankruptcy.

In Spain, insolvency is governed by Law no. 22/2003 which provides for a single procedure for both natural persons and traders. The single procedure is called the Creditors Council and applies to both civil and commercial debtors, regardless of whether they are natural or legal persons, the purpose of which is to satisfy creditors' claims.

In Germany, Insolvenzverordnung, insolvency proceedings concern both the patrimony of natural persons, regardless of whether they carry out a commercial activity or not, as well as the patrimony of legal persons. Insolvency of the individual is also governed by the general law, Insolvezverordnung, but also by the special law, consumer insolvency, Verbraucherinsolvenz, a procedure applicable to all natural persons who do not engage in any commercial activity, or individuals who exercise sporadically commercial activities.

2. Legal framework

In Romania, at this moment, insolvency is regulated by different normative acts, depending both on subjects of law subject to insolvency proceedings (natural or legal persons) and on the nature of debits that trigger the opening of proceedings (civil activities or exploitation of the enterprise in to conduct an economic activity). As a result, by Law no. 85/2014, the insolvency procedure of the professionals was regulated, and by Law no. 151/2015, the insolvency procedure of natural persons was regulated. By Government Decision no. 419/2017[7], the methodological norms for the implementation of Law no. 151/2015, the lack of which was, officially, the reason for postponing the entry into force of the insolvency law (personal bankruptcy).

Content. The legislator specified in art. 1 the purpose of regulating the insolvency of natural persons, namely the recovery of the financial situation of the borrower in economic difficulty by establishing a collective procedure involving all the debtor's creditors, in order to achieve three objectives: to restore the financial situation of the debtor; covering its liabilities; the release of the remaining debts after the procedure.

Theoretically, the purpose of the law is to protect creditors in the sense of covering the debtor's liabilities as much as possible through insolvency proceedings. Individual forced execution[8], in addition to the fact that it could lead

[7] Government Decision no. 419/2017 for the approval of the Methodological Norms for the application of Law no. 151/2015 on insolvency procedure of natural persons, published in the Official Gazette no. 436 of 13.06.2017.

[8] Comşa Marcela, *Legea privind insolvenţa persoanelor fizice nr. 151/2015*, Universul Juridic, Bucharest, 2015.

to the deprivation of the individual, simply private, of certain assets necessary for a decent living with adverse consequences for himself and his family would favor the initiating lender to the detriment of other creditors in the same legal situation. Also, capitalizing on assets in an organized setting increases the chances of getting a better price. In the collective insolvency procedure of a natural person, it is mainly the payment of debts from the income obtained by the debtor through the performance of a paid activity and the proper management of the amounts collected from salaries, pensions, etc. It is worth mentioning that, according to the provisions of art. 2 of the Law no. 85/2014 on insolvency and insolvency prevention procedures, in insolvency proceedings of legal and physical persons, professionals within the meaning of art. 3 C. Civ., This is the main purpose of covering the debtor's liability by maximizing its wealth, and, in the alternative, is given to the debtor "where possible" the chance of redressing the activity.

According to art. 4, the insolvency law of natural persons shall apply to the debtor, a natural person whose obligations do not result from the exploitation of an undertaking within the meaning of Art. 3 Civil Code, which fulfills cumulatively the following conditions:

a) has his or her habitual residence, habitual residence or habitual residence for at least 6 months prior to the filing of the application in Romania;

b) is insolvent and there is no reasonable expectation that, within 12 months or more, he will be able to re-execute his obligations as contracted, maintaining a reasonable standard of living for himself and for the persons he / has maintenance. Reasonable likelihood shall be assessed by considering the total amount of the obligations in relation to the actual or possible incomes achieved with respect to the level of professional training and expertise of the debtor as well as to the identifiable assets owned by the debtor.

c) the total amount of its due liabilities is at least equal to the threshold value, this being stamped by art. of the law as the equivalent of 100 minimum wages for the economy.

According to art. 3 paragraph 1 point 11 of the law, insolvency is the state of the debtor's patrimony characterized by insufficient funds available for payment of debts, as they become due. The insolvency of the debtor is presumed when, after a period of 90 days from the due date, he has not paid his debt to one or more creditors.

The legislator introduces by art. 3 (3) of the Act, the words "reasonable livelihood" as a reasonable standard of living for the debtor and for the persons to whom he is currently serviced, so as to ensure respect for fundamental rights and freedoms and human dignity. Criteria for determining the reasonable standard of living will be determined annually by the central insolvency commission, taking into account the following benchmarks provided by art. 2 par. 2 of the Methodological Norms:

- the value of the minimum monthly consumer basket established on the basis of information received from the competent bodies (National Institute of Statistics and / or Institute for Quality of Life);

- financial features, structure of the labor market;
- the minimum amount of professional and / or tuition fees;
- the price of utilities, food and commodities;
- the composition and structure of the debtor's family by including the dependents of the debtor, the persons to whom the debtor provides maintenance and the persons living with the debtor or contributing to the maintenance;
- the existence of special situations of health, physical integrity, disability, in the case of the debtor or the persons to whom he or she maintains or in the case of the person with whom he or she lives;
- the minimum costs related to the operation and maintenance of an indispensable vehicle, by reference to the criteria set out in Art. 3 pt. c) of the Act, but also the availability and cost of using the public transport system or alternative means of transport and the associated costs;
- the minimum expenses caused by raising, caring for and educating the child in the care of the debtor or in respect of which the debtor provides maintenance, by reference to its various stages of development;
- minimal requirements of a suitable dwelling, including those provided by the Housing Law no. 114/1996, republished, as subsequently amended and supplemented.

Insolvency procedure. The law regulates three forms of insolvency proceedings for individual consumers. It is the borrower who, by analyzing the financial situation, may opt to request the opening of one of these types of proceedings. The first two forms are addressed to all debtors who meet the requirements of the law, and the third is a form of social protection for a small group of borrowers[9]. Thus, according to art. 5 of the Law no. 151/2015, insolvency proceedings are:

a) the insolvency procedure on the basis of a debt repayment plan;

b) insolvency proceedings by liquidation of assets;

c) simplified insolvency procedure.

The only one who may request the opening of insolvency proceedings is the debtor, having the following possibilities:

- may file an application to the insolvency panel for the opening of insolvency proceedings on the basis of a debt repayment plan. This procedure is a legal opportunity for the bona fide borrower to restore his financial situation through a debt repayment plan that lasts for a period of 5 years with the possibility of a 1 year extension with the creditors' and the debtor. The procedure is under the control of the Insolvency Commission. The procedural documents of the insolvency panel may be appealed to the court with jurisdiction by the interested parties.

[9] Comşa Marcela, *Legea privind insolvenţa persoanelor fizice nr. 151/2015*, Universul Juridic, Bucharest, 2015.

- may apply directly to the competent court to open the insolvency proceeding by liquidation of assets if its financial situation is irreparably compromised and a debt repayment plan can not be drawn up and enforced. It is a procedure for collectively capitalizing on the debtor's assets and / or incomes. This procedure is a matter for the court. After the closure of the liquidation procedure, debtors enter the post-liquidation procedure under the supervision of the liquidator under the control of the insolvency commission for a period that may vary between 1 and 5 years depending on the degree of recovery of claims under the law. During the period of oversight, the debtor will continue to make payments to creditors in proportion to the receivable earnings established by the court or by the insolvency board. The post-liquidation procedure is followed by the release of residual debts under the conditions of the law[10].

Throughout the course of the procedure, debtors have a number of obligations, such as making payments to creditors, compiling quarterly reports, conducting revenue-generating activities, or looking for a more remunerated job, according to their skills and training, attending financial education courses, etc.

Debtors will only be able to pay for a reasonable level of living under the supervision of the administrator of the procedure / liquidator. The legislator regulated by the methodological norms of application, the criteria for establishing the debtor's reasonable standard of living. During the course of the procedure, the debtor can not borrow new loans, except with the consent of the Insolvency / Court Commission and only to resolve serious and urgent situations of danger to his / her life or health or dependents. At the same time, the law governs the possibility for creditors, under certain conditions, to request the court to annul some fraudulent acts or operations of the debtor for the return of transferred assets or the value of other services executed.

- may file an application to the insolvency panel for the application of the simplified insolvency procedure, according to Article 66, if it fulfills the conditions of art. 65 of the law. This simplified insolvency procedure is applicable to debtors with a total amount of outstanding debts of no more than 10 minimum wage economies that do not have traceable goods or income and who have a standard retirement age or who have lost total or at least half of their ability for work. Similarly, and under this procedure, the debtor may obtain the release of residual debts under the law. Control of the procedure is carried out by the Insolvency Commission, with the judicial control of the court, at the request of either party.

The participants in the insolvency proceedings are the debtor and, according to art. 7 par. 1 of the Law no. 151/2015, the insolvency bodies: the insolvency commission (administrative body at territorial level) and the administrator of the procedure, the courts and the liquidator, whose aim is to perform acts and operations in a speedy manner and to carry out, under the law, the

[10] The personal insolvency procedure at the beginning of the road! Monica Zamfir and Luminita Malanciuc analyze the advantages and disadvantages of personal bankruptcy, http://www.bankingnews.ro/insolventa-personala-falimentul-personal.html (last consulted on 5.11.2017).

rights and obligations of the debtor and the creditors. The Insolvency Commission and the courts have jurisdiction in all forms of proceedings. The administrator of the procedure administers the insolvency procedure on the basis of a debt repayment plan, and the liquidator has powers only in the context of the insolvency proceedings through asset liquidation.

The debtor is the individual consumer whose debts are not the result of an economic activity, ie does not fall under the provisions of Art. 3 Civil Code in the sense of a professional who exploits an undertaking by systematically pursuing an activity consisting in the production, management or disposal of goods or the provision of services, whether or not the activity is lucrative.

Article 4 of the Law also establishes the situations in which a consumer, a natural person, having debts not resulting from the operation of an enterprise, according to art. 3 of the Civil Code, will not be able to benefit from the provisions of Law no. 151/2015, namely:

- in which, for reasons attributable to it, an insolvency based on a debt repayment plan, an insolvency proceeding through asset winding up or a simplified insolvency procedure with less than 5 years ago formulating a new request to open insolvency proceedings;
- who has been finally convicted of committing an offense of tax evasion, a crime of forgery or an intentional offense against patrimony by failing to trust;
- who was dismissed for the last two years for reasons attributable to him;
- who, although able to work and without a job or other sources of income, has not taken the necessary diligence to find a job or who has unduly refused a proposed job or job other income-generating activity;
- who has accumulated new debts by voluptuous expenses while knowing or ought to have known that he is in a state of insolvency;
- which has caused or facilitated entry into insolvency, intentional or gross negligence.

It is assumed to have had this effect:

1. contracting in the last 6 months prior to the opening of the insolvency proceedings of debts representing at least 25% of the total amount of the liabilities, excluding the excluded obligations;

2. the assumption in the last 3 years prior to the filing of the application of excessive obligations in relation to its patrimonial status, to the advantages it derives from the contract or to all the circumstances that have contributed significantly to the debtor's inability to pay his debts, then those due by him / her to the persons he / she contracted with;

3. making, over the last 3 years prior to the application, preferential payments, which have significantly contributed to reducing the amount available for the payment of other debts;

4. transferring, during the last 3 years prior to the filing of the application, goods or property in its patrimony to another natural or legal person while knowing or ought to have known that through such transfers it will become insolvent;

5. the termination of an employment contract by agreement of the parties or by resignation in the last 6 months preceding the opening of the request for opening of the procedure;

The Insolvency Commission is the administrative body at territorial level which has attributions in all three procedures that this law regulates. In the insolvency procedure based on a reimbursement plan, he / she has decision-making, supervisory and supervisory responsibilities, together with the administrator of the procedure. In the insolvency proceedings by asset liquidation, it has the powers of guidance, control and supervision together with the liquidator. In the simplified insolvency procedure, it has supervisory powers.

The debtor will address the insolvency insolvency proceedings in the territorial jurisdiction of which he has his domicile, habitual residence or habitual residence for at least six months before filing the application for insolvency proceedings. This insolvency commission will be territorially competent to carry out the procedure regardless of subsequent changes of the debtor's domicile, habitual residence or domicile.

Although the legislator refers to the text of Law no. 151/2015 both to the Central Insolvency Commission and to the territorial insolvency commission, only the latter has specific powers in the procedure, being expressly stated by art. 8 of the Law on the law enforcement bodies. The Central Insolvency Commission coordinates and monitors the work of these territorial committees, has a regulatory role (methodological norms, guidelines, sets the necessary law enforcement criteria), organizes training activities, etc.

Consequently, as a body applying the procedure, the law indicates the insolvency commission, meaning only the insolvency commission organized in each county, as an administrative body at the territorial level[11].

The administrator of the procedure is a body with exclusive powers in the insolvency procedure based on a debt repayment plan, regulated by art. 5 lit. to the law. It collaborates with the debtor to develop the plan and then monitors the achievement of the plan. Supervises the debtor during the course of the plan and informs the insolvency board and the creditors how to proceed with the biannual reports or when it considers that the good goes. His activity is under the control of the insolvency commission, but indirectly also of the creditors. The powers of the administrator are stipulated distinctly in art. 39.

The administrator of the proceeding is appointed randomly by the insolvency board by a decision to admit in principle the insolvency procedure on the basis of a debt repayment plan. The appointment is made from the List of

[11] Comșa Marcela, *Legea privind insolvența persoanelor fizice nr. 151/2015*, Universul Juridic, Bucharest, 2015.

administrators and liquidators for the insolvency procedure of natural persons in the county in which the domicile or residence, the habitual residence of the individual debtor in insolvency. The administrator of the proceedings may be an insolvency practitioner, a bailiff, a notary public or a lawyer, provided he is enrolled on this list.

Courts. According to art. 10 paragraph 1 of the Law no. 151/2015, the claims and actions of the insolvency proceeding through the liquidation of assets, the appeals against decisions of the insolvency commission and the applications for debt relief are within the jurisdiction of the court in whose jurisdiction the domicile, habitual residence or habitual residence of the debtor 6 months before the date of the referral to the court. This court will remain territorially competent to deal with claims in insolvency proceedings, regardless of subsequent changes of domicile of the debtor.

Regarding material competence, art. 10 par. 1, sentence 2 of Law no. 151/2015 designates the court as the competent court and the court as the appeal court. Although there may be cases when the value-assessable claims filed in insolvency proceedings exceed 200,000 lei, by way of derogation from the provisions of Art. 94 lit. h C. Proc. Civ., The material competence to resolve these disputes belongs to the court, the same court having jurisdiction also in the case of enforced execution of the debtor consumer.

According to art. 90 of Law no. 151/2015, the application for the opening of insolvency proceedings is exempt from the payment of stamp duty. Likewise, all claims made by the insolvency board, the administrator of the procedure and the liquidator are exempt from the stamp duty. Any other action, a request made by the parties, with the exception of paragraph (2), shall be charged with the stamp duty amounting to 100 lei, and the call with half of the fee due to the fund.

All applications, appeals, actions based on the provisions of the present law shall be judged in accordance with the provisions of the Code of Civil Procedure on the Court of First Instance. In the case of these applications, the provisions of Art. 200 of the Code of Civil Procedure for the regularization of the application. The deadline for submitting a complaint is not more than 15 days after the communication, the response to the request is not obligatory, and the judge fixes, by resolution, within maximum 5 days from the date of the filing of the testimony, the first term of the judgment. Judgments delivered by the judges are subject to the appeal to the tribunal and the tribunal's decisions are final.

According to art. 10 par. 8 of the Law no. 151/2015, the appeals are judged by specialized panels from the specialized courts or the special insolvency section of the court, if it was created either by the civil section that solves the insolvency cases provided by the Law no. 85/2014 on insolvency and insolvency prevention procedures.

The liquidator is the body involved in administering the insolvency proceeding by liquidation of assets under the control of the court. For the post-trial period of insolvency by liquidation of assets, the liquidator has supervisory powers, under the control of the insolvency commission.

The liquidator is appointed by the court between the insolvency practitioners, the bailiffs, the lawyers and the public notaries registered in the List of the administrators of the procedure and the liquidators for the insolvency procedure of the individuals. He is required to inform the court of any change in his statute that has an effect on his status as liquidator for insolvency proceedings with a view to his replacement.

Each professional body shall submit to the insolvency panel at central level, within no more than 30 days, any change in the status of insolvency practitioners, bailiffs, lawyers or notaries, as the case may be, which has an impact on the activity carried out by to them as liquidators.

For the performed activity, the liquidator is entitled to a fee established by the court and will consist of a fixed amount in the amount between 100 lei and 500 lei, VAT included, which will be paid monthly. The monthly fee is determined by the complexity of the debtor's financial situation, the structure of the debtor's assets and the work to be carried out by the liquidator.

In case of replacement of the administrator of the procedure or, as the case may be, of the liquidator for the insolvency procedure of natural persons, the fee established initially can be maintained or modified taking into account the complexity of the procedural steps that have yet to be completed.

The administrators of the procedure or, as the case may be, the liquidators for the insolvency procedure of natural persons who for reasons attributable to them have been replaced during the proceedings for damages caused to the debtor or creditors by failing or failing to perform their duties may be sanctioned by professional bodies of its own rules.

The costs related to the administrators and liquidators' fees for the insolvency procedure are borne from the state budget, from the budget of the National Authority for Consumers Protection, through the budget of the Ministry of Economy.

Article 12 of the Law no. 151/2015 provides for the conditions for acquiring the status of administrator of the procedure or the liquidator. Thus, the administrator or the liquidator may be the person who:

a) has acquired and is in the exercise, under the law, of one of the following professions: insolvency practitioner, bailiff, lawyer, notary;

b) is at least 3 years old in the profession of insolvency practitioner or bailiff, or cumulated in these professions and is finalized in at least one of them;

c) is at least 5 years old in the profession of lawyer or notary or cumulated in these professions or in the ones referred to in b) and is finalized in at least one of them;

d) has completed professional training courses in the field of personal insolvency proceedings and in other areas relevant to the administration of insolvency proceedings;

e) was admitted to the examination for inclusion in the List of administrators of procedure and liquidators for insolvency procedure of natural persons;

f) enjoys a good reputation, determined according to the status of the profession to which he belongs;

g) has not been sanctioned for committing a disciplinary misconduct in the year preceding the filing of the application for inclusion in the List of the administrators of proceedings and the liquidators for the insolvency procedure of individuals;

h) provides evidence that he / she has a professional placement appropriate to this activity.

The capacity of insolvency practitioner, bailiff, lawyer, notary is compatible with the exercise of the capacity of administrator of the procedure or liquidator for the insolvency procedure of natural persons.

Each professional body organizes training courses in the field of personal insolvency proceedings and in other areas relevant to the administration of insolvency proceedings. Also, each professional body organizes the examination for inclusion in the List of administrators of procedure and liquidators for insolvency procedure of individuals. The leadership of the four professional bodies adopts a common curriculum and a unitary methodology for conducting courses and examinations, with the advice of the central insolvency board.

They are included in the List of the administrators of procedure and liquidators for the insolvency procedure of the individuals, without supporting the examination stipulated in paragraph (1) lit. e) and par. (3), insolvency practitioners and bailiffs older than 5 years.

Verification of the fulfillment of the conditions stipulated in paragraph (6) shall be carried out by the control bodies of the profession to which the administrator of the procedure / liquidator belongs. The professional control of the administrator of the procedure / liquidator is exercised under the special law of the profession, as well as by the Ministry of Justice through the specialized general inspectors.

Any person enrolled in the List may at any time request the withdrawal from the List or may request his suspension for a specified period by a request made to the professional body of which the person is a member. Upon acceptance of the request, the professional body informs the central insolvency panel to make a statement about the suspension or, where appropriate, the deletion from the List. Upon acceptance of the application, the person listed in the List informs the insolvency commission at the territorial level.

Each professional body shall submit to the insolvency panel at central level, within maximum 30 days, any change in the status of insolvency practitioners, bailiffs, lawyers or notaries, as the case may be, which has an effect on their quality as administrator's procedure.

3. Conclusions

The adoption of the insolvency law of individuals in the urgency procedure, without having been thoroughly analyzed and corrected in the legislative procedure, has been a great error. In addition to some grammatical errors, the text of the law contains a number of non-logical provisions, as well as in

the legislative procedure, by the Legislative Council, through its opinion[12] and by the Government[13].

Also, the purpose of the law, as stated in Art. 1 of the Law is to establish a collective procedure for the recovery of the financial situation of the debtor, in good faith, to cover as much as possible its liabilities and the discharge of debts. The reasons why a natural person debtor would be under the protection of the insolvency law are the suspension of forced execution and the freezing of the value of the receivables. However, the law does not make any reference to this unless, in principle, the debt rescheduling application is admissible, in which case an interim injunction is made. But, in this case, the insolvency commission will also indicate to the court whether such a suspension is justified.

Moreover, we consider that the insolvency law of individuals does not offer too many possibilities to creditors, first, because only the debtor has the right to request the opening of proceedings, and creditors have no right to do so. It is true that the law refers to the debtor of good faith. This does not exclude the possibility that a debtor of bad faith may abuse his position to the detriment of creditors of good faith who can only wait for the debtor to request the opening of the procedure.

We consider that the text of the law is discriminatory in the sense that it is forbidden to have access to this procedure to persons who fall under the provisions of Art. 5 of the law, being able to work but not having a job or other source of income who did not take reasonable care to find a job or unjustifiably refused a job. Even if the intention of the legislator is correct, trying to exempt them from the insolvency of natural persons to those of bad faith, we consider, however, that there are many cases of natural persons in good faith who fall within the provisions of art. 5 of the Law no. 151/2015. We believe that the text of the law should be amended accordingly.

From a technical point of view, Law no. 151/2015 regulates the Central Insolvency Commission and the territorial insolvency commission, which implies the allocation of resources for the establishment of these entities. Also, in order to resolve the actions and requests provided by this law by the courts, specialized sections must be set up. This is one of the reasons why the implementation of the law has been repeatedly postponed.

It was only in June 2017 that the Government approved a normative act on the reorganization of the National Authority for Consumer Protection in order to create 320 new posts needed to carry out its additional tasks regarding credit agreements for consumers for real estate, credit for consumers, insolvency procedures for individuals and alternative dispute resolution between consumers and traders. It is also planned to set up within the ANPC a Directorate for Insolvency of Individuals.[14]

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[12] PL-x nr. 579/2014, Draft Law on Insolvency of Individuals, Opinion of the Legislative Council, http://www.cdep.ro/proiecte/2014 /500/70/9/cl823.pdf (last consulted on 5.11.2017).

[13] PL-x nr. 579/2014, Draft Law on Insolvency of Individuals, Government Point of View, http:// www.cdep.ro/proiecte/2014 /500/70/9/pvg823.pdf (last consulted on 5.11.2017).

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