

## Application of “Fresh start“ Doctrine for Individual Debtors in Lithuania: EU and US perspective

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*Bankruptcy<sup>1</sup> of natural persons is not legalized in Lithuania. It means, individuals have to fulfill their obligations to the creditors to the end of their life. During the social welfare crisis period that is present in Lithuania at the moment this issue is especially relevant. In spring of 2009 the project of legal act concerning bankruptcies was registered in Seimas (Parliament) of Republic of Lithuania, but in spite of the opinion existing in academic literature that legalization of bankruptcy of natural persons is absolute necessity, the adoption of the respective legal act in Lithuania was postponed indefinitely. Although professionals criticized some of the clauses of the proposed legal act, the enactment of the act was postponed not because it was imperfect in its form but because at the moment its legalization would be irrational in the face of society's expenditure and benefits.*

*The objective of the article is to generalize and evaluate necessity of the legalization of insolvency of natural persons and to present a conceptual model for legalization of individual insolvency.*

*The first part of the article is devoted to the analysis of arguments of supporters and opponents of the legalization of individual insolvency. The insolvency of an individual and legalization of procedures of bankruptcy are aimed at solving the recovery of the debts from the insolvent individual in a civilized way by balancing all of his creditors' interests. From the analysis of supporters' and opponents' arguments interesting conclusion can be drawn that individual bankruptcy can be ranked as a form of limited liability for individuals. It gives reason for premise that a debtor in some cases will behave opportunistic, but in spite of that fact, the global experience shows that the rule of limited liability is very socially and economically useful. The survey also proves that there are neither legal nor economic arguments for suspension of legalization of bankruptcy of natural persons. The second part of the article is devoted to modeling the conceptual model for legalization of individual insolvency. Suggested model gives the understanding that “Fresh start” doctrine cannot be associated with the straight discharge from the debts. The natural person can be discharged from the debts if only he meets the requirements for an application to court for bankruptcy procedures and if only he fulfilled the payment plan and successfully passed prevention and rehabilitation procedure. The issue of procedures of prevention and integration of the debtor is highly*

*important and complicated. The detailed system of such procedure is the object of another research based on the experience of other countries. This research would develop a longitudinal picture of the debtor after bankruptcy and would reveal whether most debtors really get a fresh start and why some of them fail.*

Keywords: *bankruptcy, insolvency, individual debtors, “fresh start”, debt payment plan*

### Introduction

Although individual bankruptcy is not legalized in Lithuania, currently there are plenty of discussions in academical literature and in the media about the necessity to legalize it<sup>2</sup>, especially due to the fact that Lithuanian macro economic situation of the debtors worsened in the last couple of month. Rising unemployment, multiple company bankruptcies, increasing number of debtors<sup>3</sup> encounter huge difficulties meeting financial requirements and fulfilling commitments to the creditors<sup>4</sup>. At the

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<sup>2</sup> on the problems of the insolvency of natural person and the necessity of legalization of insolvency in Lithuanian scientific literature: (Bernotaite, 2005) analysed the notion of insolvency of natural person and separation of the following notions, namely, insolvency and bankruptcy, (Mikuckiene, 2003), (Visinskis, 2005), (Lauzikas, Visinskis, 2006), where the necessity of legalization of bankruptcy of natural persons was analysed in Lithuania as well as the solution of problems of insolvency, (Urbonas, 1999), where EU Council regulation (EB) dated 29 May, 2000, Nr. 1346/2000 are analysed, application problems, basics of rejection of court decision about bankruptcy. (Butkus, Jazbutis, etc., 2005). Also (Norkus., Visinskis, etc.2008) where collected information concerns natural persons' solution of insolvency in foreign countries.

<sup>3</sup> Scientists indicate more underlying causes of financial insecurity. According to Braucher „They include income disruptions, illness, family break-up, lack of savings, high debt to begin with, and limited private and public insurance programs for unemployment, disability, and health care. Easy credit and structural financial insecurity likely to contribute to cultural and individual acceptance of resort to bankruptcy“ (Braucher, 2003-2004). Easy credit and structural financial insecurity likely to contribute to cultural and individual acceptance of resort to bankruptcy“ (Braucher, 2003-2004).

<sup>4</sup> As the newest survey about financial stability in Lithuania carried out by the bank of Lithuania indicates, the household lending in Lithuania in comparison with other EU countries is relatively low (difference between loans and deposits), and although GDP ratio is getting bigger, it is still the lowest in Europe and lower than in other Baltic states. As May 1, 2009 data indicates, the loans for housing are taken by 11,2 percent of households. The average size for a housing loan is 145 000 Litass in Lithuania. Almost 24 percent of household loans for housing portfolio are insured by Ltd. “Housing loan insurance“. Bad loan share comprised more than 8 percent by the end of the first quarter of 2009. Bad loans are those that were delayed more than 60 days.(Review of Financial Stability, 2009).

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<sup>1</sup> In the scope of this article legal terms “bankruptcy” and “insolvency” are used as synonyms referring to a bankruptcy of a natural person.

moment only legal persons can go bankrupt in Lithuania, individuals have to fulfil their obligations to the creditors to the end of their life.<sup>5</sup> It is interesting to note that although the Seimas of the Republic of Lithuania registered the project of the legal act concerning bankruptcies of natural persons (2009, Nr. XIP-405), it attracted some criticism and was returned for polishing and perfecting. The authors, however, also acknowledge the fact that the legalization of individual bankruptcy is imminent and inevitable<sup>6</sup> and Lithuania is lagging behind in the European context in this matter.<sup>7</sup> There are doubts as to whether it is necessary to legalize the individual bankruptcy act during the economic downturn that is present in Lithuania. Also, although professionals criticized some of the clauses of the proposed legal act, the enactment of the act was postponed not because it was imperfect in its form but because at the moment its legalization would be irrational in the face of society's expenditure and benefits. On the other hand, for example, in three EU countries, namely, France, Germany and Sweden, consumer insolvency laws were enacted as a response to the new levels and types of risks that emerged during the financial and social welfare crisis period<sup>8</sup>. But in spite of the opinion existing in academic literature that individual bankruptcy is absolute necessity, the surveys about the ways of legalization and procedures, the adoption of the legal act is postponed indefinitely.

The object of the article is to generalize and evaluate the legalization of insolvency of natural persons and to present a conceptual model for legalization of individual insolvency.

In Lithuanian science this article is the first attempt to analyze the problem of a natural person bankruptcy using the model methodology and such a wide comparative, systematic analysis. **The novelty of this article** is the analysis of individual bankruptcy using the method of modeling. In Lithuania the problems of a natural person bankruptcy were only fragmentary analyzed by Bernotaite, (2005), Mikuckiene, (2003), Visinskis, (2005), Lauzikas, Visinskis, (2006), Urbonas, (1999) Butkus, Jazbutis, et. al., (2005), Norkus, Visinksis, et. al., (2008).

### **The bankruptcy of the individual: pros and cons**

It is obvious that the problem of individual insolvency should be tackled by balancing the duties and rights of

debtors and creditors, also by taking into account the impact of legal regulation for economic relationships. According to the supporters of individual insolvencies<sup>9</sup>, the aim of legitimization of individual insolvencies is to protect an insolvent individual from impoverishment and to restore his/ her solvency or ability to pay debts. What is more, if an individual is allowed to go bankrupt and can hope that after a couple of years his debts will be annulled or written off, such a person is encouraged to work legally and at least partially cover his or her debts.<sup>10</sup> Not least important is to equalize the business conditions for a diversity of businesses. Currently farmers and other individuals whose business is private, also advocates, notaries and auditors cannot and have no tools to overcome financial difficulties following the norms used by legal individuals. That is why individuals who have such businesses find themselves in a much less favorable situation than legal or natural persons who have their business in other European Union states, where natural persons can declare bankruptcy. Thus the problem of individual insolvency acquires international nature. On the other hand, the purpose of the institute of insolvency is not only to protect a debtor but also his/her creditor's interests. As professor of Law at Stanford University Thomas H. Jackson claims „Most of bankruptcy law is concerned not with defining a debtor's right of discharge, but with providing a compulsory and collective system for satisfying the claims of creditors“(Jackson, 1984-1985). Currently in Lithuania the rules how individuals shall recover debts are outlined only in the civil code of Lithuania and the principle of “first come, first served” rules the process<sup>11</sup>. In accordance with the influence of principles of equality and good faith, one of the most important principles of bankruptcy law is *pari passu*, which means that priority rights for creditors as well as privileged creditors should be avoided in the bankruptcy process. Thus the insolvency of an individual and legalization of procedures of bankruptcy are aimed at solving the recovery of the debts from the insolvent individual in a civilized way by balancing all of his creditors' interests.

The opponents of the legalization of individual insolvency emphasize the following negative impact and consequences in Lithuania: 1) the possibility of individual

<sup>9</sup> See reference 1.

<sup>10</sup> It is one of the main arguments for legalization of the insolvency of natural person, mentioned also by other authors. According to Professor of Law of Stanford University Thomas H. Jackson “Discharge also eliminates the incentive structure that causes debtors to become less productive once a large proportion of their wages begin flowing to creditors“(Jackson 1984-1985).

<sup>11</sup> Articles 6.54 and 6.55 of civil code. These articles state the sequence of payments when a person owes to the same creditor not only the debt but also the interest, penalties, recovery costs and other, or if debtor owes several debts for the same creditor, but nor civil code neither civil procedure indicate which debt the debtor should return first when he has several creditors. In this context it is worth mentioning article 6.66 of civil code which stipulates that a creditor has a right to dispute the agreement (actio Pauliana) because if a debtor being insolvent prioritizes another creditor, the creditor has a right to call into question such agreement created by a debtor. Also article 6.67 determines that the agreement which was made due to the debt, the term for which to fulfil did not arrive yet, the unfairness of the parties is presumed (Civil Code, 2000).

<sup>5</sup> The code of civil procedure of the Republic of Lithuania provides 10 year limitation period for the document in execution to be submitted for fulfilment. If a debtor has no assets or income from which the debt could be recovered, the performing document is returned but it can be presented for execution and limitation period counted from the day the performing document was returned to the recoverer. (Code of civil procedure, 2002)

<sup>6</sup> See reference 1.

<sup>7</sup> EU council regulation on insolvency proceedings makes no distinction between natural or legal persons as in the ninth part of it is stated that „this regulation should apply to insolvency proceedings, whether the debtor is a natural person or legal person, a trader or individual (EU Council regulation, 2000).

<sup>8</sup> Main problems – lack of employment security and long term unemployment. In Sweden 1990 marked the beginning of a massive recession and high rates of unemployment, in Germany in 1985-1990, in France -1987-1997; the next reason- consumer market deregulation in 1980-1990 which had led many consumers to take on substantial debts (Kilborn, 2007-2008).

bankruptcy would form improper expectations of individuals. The opponents of the law claim that people knowing the possibility of bankruptcy would be stimulated to adopt risky decisions. 2) the possibility of bankruptcy would raise the price of borrowing and services, also it would reduce the accessibility to the credits because it would encourage the creditors to adopt to new risks, and too risky economical behavior would harm other debtors because they would have to pay bigger price for the same service. As well, banks would be forced to increase the prices for other clients, for example depositors, while wishing to cover the losses. 3) the legalization of bankruptcy would foster abuse of this institute, because people in a difficult financial situation wouldn't be motivated to amend financial situation while trying to conceal the assets or transfer them to other individuals (LLRI examination, 2009).

In our opinion, while analyzing arguments for and contra on the issue of the legalization of insolvency of a natural person, paying attention to the controversy that lingers over this issue, we discern connection with the arguments expressed in literature about limited liability of legal persons. Can the legalization of bankruptcy of a natural person be equaled to the legalization of limited liability? Would the possibility for an individual to go bankrupt mean that an individual will be able to take advantage of the limited liability that is so much used by majority of legal persons? It is worth drawing attention to the fact that in all of the western states the tendency is to direct attention to "the protection of limited responsibility for a bigger number of subjects" (Tikniute, 2006). The primary argument is the promotion of active economic behavior of individuals<sup>12</sup>. Here it is worth mentioning that although proprietorship in Lithuania has unlimited liability, the duties of individual entity after its liquidation stop if its owner who is responsible for the obligations of the enterprise has no means to properly fulfill his/ her obligations. It is also interesting to note that the rule about the expiration of the obligations of the enterprise due to the bankruptcy was developed by the court practice of Lithuanian courts. And although law acts foresee the subsidiary responsibility of the owner of enterprise, if the proprietorship is insolvent at the time of liquidation, the obligations of enterprise do not become personal obligations of the owner. In this case further recovery of the debts of individual entity is not possible (Court decision, 2004). But on the other hand the legal status of the owner of the enterprise is not changing and he has to return his personal debts until the end of his life.

It is obvious that individual's inability to pay debts and such situation's legal indefiniteness influences negatively the decision to take up business. It stops people from using or taking up entrepreneurial initiatives as it increases risk. That is why we believe that if individual could legally go bankrupt the activity of such individual would be revived.

<sup>12</sup> Other authors have the opinion that it is one of the main "fresh start" policy pleas and this approach is founded on a perception of insolvent debtors as potentially valuable contributors to the nation's economic development, whose participation in the economy was impeded by the hopelessness of their financial conditions (Hallinan. 1986-1987).

Also enterprising but shy to risk individuals would become more active.<sup>13</sup>

That is why we are deeply convinced that the legalization of individual bankruptcy would be one of the effective means to foster entrepreneurship and a general economic growth of the country.

Evaluating negative consequences of individual insolvency, it is worth noticing that they coincide with the legalization of limited liability in a legal person. According to Tikniute, limited responsibility shifts the paradigm of risk from the legal person to creditors (Tikniute, 2006), correspondingly in the case of legalization of individual bankruptcy the same process of risk shift would occur<sup>14</sup> and creditors would be forced to include the increasing risks into the lending price. Limited liability not only shifts the paradigm of risks, more, it leads to the acceptance of more risk, because in the case of failure the losses would be externalized. This gives rise to the so-called moral abuse of limited responsibility (Glynn, 2004). Respectively in the case of bankruptcy of a natural person this gives rise to the premise that individual hoping to be relieved from financial obligations will behave in an opportunistic way towards his creditors. That is why we would agree with the professor of Law of Stanford University Thomas H. Jackson that "discharge may be viewed as a form of limited liability for individuals - a legal construct that stems from the same desire, and serves the same purposes, as does limited liability for corporations." (Jackson, 1984-1985). Is the externalization of risks fostering to adopt risky decisions a threat and can it be a significant basis to refuse the legalization? The global practice shows that risk shift is not only useful for business, "limited liability rule" is very practicable economically and socially. The threat of the rule's misuse can be neutralized through legal regulation and court practice. The same could be said about this threat of individual bankruptcy.

Thus, honoring obligations (i.e., payments of debts), discharge is a balancing act between the rights of the creditor and forgiving the unfortunate debtor. By doing so one should prevent a dichotomy in society (Apeldoorn, 2008). Thus, the conducted survey shows that individual's cancellation of legalization of bankruptcy due to financial crisis is not sufficiently well grounded neither legally nor economically.

### **Conceptual model of legalization of individual insolvency**

Before legalizing the individual bankruptcy, it is necessary

<sup>13</sup> Especially paying attention to the fact that such individuals could restrain their risks from the point of view of the matrimonial assets, for example, by drafting marital agreements (Civil code, 2000)

<sup>14</sup> According to professor of Law of Stanford University Thomas H. Jackson, "discharge shifts the costs of overextending credit from debtors to creditors, who are in a better position to minimize those costs" (Jackson, 1984-1985).

to analyze experience of other countries.<sup>15</sup> With the help of a modeling method the authors investigated the phenomenon of bankruptcy of an individual and determined the main elements of this phenomenon, also structural-functional, causal and correlative bonds. The comparison of social phenomena is a very complicated process. That is why the chosen method will ensure the possibility to focus on the main information, rejecting the unimportant information. Besides, this method allows investigating advantages and disadvantages of this phenomenon. While preparing for the method of modeling, it is necessary to conduct the systematic analysis of the object, seeking to determine the elements of the phenomenon, whose system links determine the unity of the phenomenon. The phenomenon cannot be examined if we are abstracting ourselves from its interaction with the surroundings.

### Different point of view to bankruptcy in the USA and the EU

From a historic point of view the "fresh start" doctrine started in common law legal system in the UK<sup>16</sup> and the US<sup>17</sup>, explained as "an (almost) automatic right to be discharged from pre-bankruptcy debts in fairly quick and formal bankruptcy proceeding" (Apeldoorn, 2008). Traditionally civil law countries have not been willing to acknowledge the appropriateness of extending bankruptcy relief to consumer debtors upholding the importance of contractual obligation *pacta sunt servanda* (Ziegel, 2006). A discharge from debts in the EU was foreseen as some kind of court's discretionary right in cases when there were exceptional conditions like a favor for the debtor. Starting in 1984, adjustment laws evolved in Europe<sup>18</sup>, the purpose of which is twofold—to discharge the debtor from excessive debts and to use behavior modification in order to avoid becoming insolvent in the future (Report on Legal Solution, 2005). One of the primary purposes of the "fresh start" doctrine is to relieve the honest debtor from the weight of oppressive indebtedness, to create the proper incentives for consumers with large debts, to provide new opportunity in life and the clear field for future effort (Livshits, MacGee, Tertilt, 2007). But on the other hand, fresh start doctrine cannot be associated with the straight discharge from debts, in Europe a payment plan is used and only after a partial payment of debts which on average lasts for five years, a debtor may be discharged from remaining debts, that is why sometimes in a legal and

scientific literature the European insolvency procedure is called "an earned fresh start". Traditional difference between the US and the EU in the bankruptcy policy over time became not so significant, because the EU enacting various forms of debt relief under debt adjustment plan, introduced consumer bankruptcy while the US with adoption of the Bankruptcy and Abuse Prevention and Consumer Protection Act (in 2005) reserved its liberal fresh start tradition (Ziegel, 2006).

### The concept of individual insolvency and conditions for the court case file

In order to provide specific proposals for Lithuanian legislator it is rather important to analyze how the term insolvent (other terms - over-indebtedness, bankrupt) is defined in various countries by various authors and what criteria are applied for a natural person if he wants to use the procedure. There is no general agreement on either definition or measurement for over indebtedness in different member states (EU Statistical study, 2001).

Two basic criteria used in insolvency definitions that may be identified are as follows: 1) difficulties in repaying debts and 2) financial obligations of a debtor exceed his property. At least one or sometimes even two criteria in one or another form are used in the definition of insolvent person of every analyzed country.<sup>19</sup> The first one is used in the UK, the USA (referring to municipality), Canada, Germany, Finland, Ireland, Latvia and France. The second one is used in the USA, Canada, Germany, Ireland and France. On the other hand, these criteria like "repaying debts" or "obligations exceed property" are quite abstract and may be interpreted and understood in a variety of ways.

It is interesting to note that according to German and Latvian insolvency law, one more criterion of indebtedness is singled out. This criterion is directed to person's future inability to pay debts (Butkus, Jazbutis, et. al., 2005). This criterion, in authors' opinion, at least in Lithuanian case, is not applicable because first of all it is difficult to prove without any reasonable doubt such a fact and there is always a possibility that before the time comes, the situation may change. Issuing such a clause in practice may prevent persons from searching other alternatives and make debtors more passive. On the other hand, looking from the creditor interests' point of view, in threatened

<sup>15</sup> Some authors provide a view that Consumer insolvency law is a largely independent response to new problems confronting countries at all points of the spectrum from "neo-liberal" to "social democratic." Consumer insolvency is a virtually preordained problem of the rapid spread of neoliberal economic policy across the globe. Whatever benefits this sort of economic globalization will bring, it will also produce similar problems in countries with and without strong social safety nets (Kilborn, 2007-2008).

<sup>16</sup> discharge to trade people for the first time was made available in 1705 while for nontraders only in 1861 (Millman, 2008).

<sup>17</sup> US has a formal consumer insolvency regime since 1898 (Dickerson, 2008).

<sup>18</sup> The first was Denmark, in 1989— France, in 1992—Norwegia, in 1993— Finland, in 1994— Sweden, in 1998— Netherlands and Belgium, in 1999 — Germany, in 2000 — Luxemburg, in 2007— Latvia.

<sup>19</sup> UK scholars proposed such a definition *A person is over-indebted if he or she considers that he or she has difficulties in repaying debts, whether consumer debt or a mortgage.* (EU Statistical study, 2001).

Insolvency in US is understood using two criteria- debt's greater than the property (after a fair valuation) and inability to pay debts as they become due in a case of municipality (U.S. Bankruptcy code, 2008). **Canada** Bankruptcy and Insolvency Act resembles US one but establishes a minimum amount of money in order to become insolvent, and in order to prevent unfounded applications introduces a formal requirement of provable claims and defines an insolvent person as a person whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and who is for any reason unable to meet his obligations as they generally become due; who has ceased paying his current obligations in the ordinary course of business as they generally become due, or the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due (Bankruptcy and Insolvency Act, Canada, 1985).

indebtedness cases there are more opportunities to recover debts or at least bigger part of them than in the cases when the person is already insolvent.

Also, under bankruptcy law of Finland one more criteria is mentioned: it is the period during which the individual is not fulfilling his/ her responsibilities, which are well defined and undisputable. If the individual is an entrepreneur this period is just one week, for other individuals – six months (Butkus, Jazbutis, et.al., 2005). In our opinion, the period during which an individual is not performing his/ her financial obligations due to financial difficulties, as a criterion, establishing individual's eligibility to fill for the insolvency proceedings is progressive requirement. It ensures the certainty and concentration of the bankruptcy process as certain individual's difficulties can be temporary. The differentiation periods for business people and other individuals makes sense and is well grounded because determination of insolvency for a businessman should be as operative as possible ensuring that debtor's problems would not deepen and safeguard other participants of economic activity from possible losses.

It is worth paying attention to the fact that in Ireland, Canada and Latvia bankruptcy law provides one more criterion in the definition of insolvency – the debt must be not less than 2000 euros or in case of two or more creditors- the minimum amount is 1500 Euros in Ireland (Butkus, Jazbutis, et. al., 2005) and 1 thousand dollars in Canada, 50 minimal standard of living (MSL)<sup>20</sup> in Latvia (Butkus, Jazbutis, et. al., 2005). The criterion of a minimum amount of debt, in our opinion is also well grounded taking into account the same processes definiteness and economic aims. Minimal determination of 10 000 EUR sum would allow to evade minor, economically ungrounded disputes and abuse of this institute.

It is worth noticing that some countries single out one more reason to file a case about the insolvency of an individual. And these are debtor's possibilities to cover the price of the litigation or part of the debts at least. Although there is a general tendency in European insolvency laws that the costs should not restrict access to discharge and mostly court fees are abolished (example France, Sweden) or very low (Consumer Overindebtedness, 2003), in some analyzed jurisdictions insolvency (bankruptcy of a natural person) is dependent on the possibilities of a debtor to cover the costs of the proceeding (in Latvia and Germany) or to refund at least even small part of debt (Finland), otherwise a debtor cannot benefit from the procedure<sup>21</sup>.

Such a position of a national legislator is rather reasonable because it prevents the society and the state from covering the expenses<sup>22</sup> of a particular person. But it

may be reasonable at least in some cases to give possibility to start procedure even for a fully insolvent natural person. Therefore well founded seems the proposal to use the criteria established in Lithuanian Law on State-Guaranteed Legal Aid and to give an opportunity to apply in such cases when a natural person fulfils the criteria for the legal aid and there is a decision to provide it (Norkus, Visinskis, Driukas, et. al., 2008).

In France insolvency is defined not using any formal criteria as the fact that it is impossible for the debtor to meet current liabilities with the available assets (Bankruptcy- France).

To summarize and generalize comparative analysis of individual's insolvency, we suggest the following conceptual test determining the individual's inability to pay debts. The test also defines insolvent individuals in legal acts: 1) If more than six months for any reason a natural person is unable to meet his financial obligations as they generally become due; 2) and if the sum of natural person's debts is greater than all of such person's, partnership's property, at a fair valuation; 3) and whose liabilities to creditors provable as claims amount to ten thousand euros (34 500 Lt.); **such natural person has a right to apply to court for bankruptcy procedures.**<sup>23</sup>

### **Natural person as the subject of “Fresh start” doctrine: kinds, differences and peculiarities**

#### **Different ways to determine insolvency, procedures for consumers and businessmen**

“Many countries have insolvency laws that seek to distinguish between the simple consumer debtors and those whose liabilities arise from small business” (Consumer Debt Report, 2001). For example, in Belgium (till 1997), and France only the natural person not related to business could be discharged from the debts, while in the Netherlands and Germany both types could be discharged from the debts under insolvency law. There are different procedures for natural persons (consumers) and business

<sup>23</sup> The obligation to cover the costs of pleading and exemption from such costs, its basis and order are already legalized in the code of civil procedure of Lithuania and in corresponding legal acts.

<sup>20</sup> In the beginning of 2008 1 MSL in Latvia was 160 latas, it is about 11 000 EUR

<sup>21</sup> For example, according to UK Insolvency Act a deposit of 335 UK pounds is required to cover administration costs and it has been held that such English law does not infringe the ECHR by unfairly blocking access to the courts (Milman, 2008).

<sup>22</sup> The administrative costs of insolvency procedure generally consist of three types: the court costs, costs for debtor representation and costs for drafting and administration of a payment plan (Consumer Overindebtedness, 2003).

persons in some European countries (Belgium<sup>24</sup>, Finland<sup>25</sup>, France<sup>26</sup>, Germany and Ireland).

Besides, in some jurisdictions differences of legal regulation were noticed, depending on the size of debts of a person going bankrupt and financial situation. It is interesting to note that in spite of the fact that such debt relief schemes were appealed to European Court of Human Rights, the court has ruled that they do not necessarily involve a disproportionate infringement of the property rights of creditors.<sup>27</sup>

In common law countries the procedure used for individuals is called consumer bankruptcy<sup>32</sup> and regulated

<sup>24</sup> In **Belgium** the Belgian Bankruptcy law (in 1997) introduced a “fresh start” doctrine for companies and natural persons acting in a capacity as merchants. But it differs from US one, because the law does not provide clear guidance and Belgian courts have a wide discretion in deciding if a person may be provided such an alternative. Case law shows that “*discharge must be seen as a favour that can be only granted if the bankrupt can prove some circumstances that justifies discharge*”. (example, a person lost a job and tried to start his own business; the death of wife and taking care of children, some illness, a theft and etc.). For natural persons not engaged in business the special procedure called “collective debt settlement procedure” was introduced in Belgium in 1999 (Belgium National Report, 2002).

<sup>25</sup> In **Finland** the procedure is called “adjustment of the debts of a private individual” and only natural persons can apply (also can adjust debts linked to business which has ceased trading) where of relevance are the reasons for insolvency (including illness, unemployment), the total amount owed and the debtor’s ability to pay. The aim of procedure – to restore financial soundness and allow debtors to overcome their financial difficulties (Bankruptcy- Finland).

<sup>26</sup> In **France** there is either some possibility to discharge the natural person from remaining debts and the procedure is called “personal recovery proceedings” but the procedure is even more exceptional than in Belgium. First of all an amicable settlement is required and if it is not reached under the debtor requirement there may be suspension of debt payments for a maximum period of 5 years, except for fiscal, semi- fiscal and social security claims. Only under special circumstances and after sale of the matrimonial home it is a possibility to discharge form remaining debts (Apeldoorn, 2008).

<sup>27</sup> for example, under 2007 Act in England simplified procedure is established for debtors who have small debts (less than 15,000 pounds), little income (surplus income less than 50 pounds per month) and almost no assets (worth less than 300 pounds) (Millman, 2008).

<sup>32</sup> According to **US** Bankruptcy code the person (both natural and juridical) may become insolvent using two procedures, one in accordance with chapter 7- also known as a straight bankruptcy (liquidation) and reorganization bankruptcy according to chapter 13. Their main difference that in first case a trustee sells debtor’s property and pays creditors while in the second case an instalment payment plan is prepared and the debtor from 3 to 5 years is paying his debts. In both cases if the debtor is honest and did his best at the end he is discharged from the rest debts (with some exceptions). The second procedure depends on the debts owned- secured debts cannot be more than 1,010,650 USD and unsecured debts not more than 336,900 USD and of course on the debtors’ payment abilities. The advantage of the second procedure – that a person may save some property, example, mortgage house, while the aim of the first is to sell everything and to pay creditors as much as possible The law foresees a moratorium (some period of time for an amicable settlement) and in case it is not reached a judicial settlement is made. In ideal case the court orders liquidation of the debtor’s assets and requires compliance with a debt relief plan for a period of 3 to 5 years (Bankruptcy and Debt Center, 2009).

by bankruptcy laws while in Europe the terms of consumer debt adjustment or debt rescheduling are used and regulated by debt adjustment laws (Report on Legal Solution, 2005).

In our opinion the determination of different procedures for businessmen and consumers is advanced and well grounded. It has already been mentioned that the bankruptcy of legal persons is a habitual process and performs a very important role in the environment of every business. That is why the discrimination of the individual businessman (for example, farmer, advocate, auditor and similar) is totally unacceptable, worsening the situation of individual businessmen and their rivalry positions from the point of view of legal entities and individuals acting in other countries. On the other hand, the viewpoint to individual person’s bankruptcy should be different: it shall be applied only in exceptional cases, after all possibilities of amicable settlement are used, after sale of the matrimonial home and payment plan of debts was duly performed.

### The requirement of persons’ good faith test

Access to consumer insolvency procedure and discharge is the subject to the discretion of the court in all EU Member States and one of the requirements for the procedure to be successful is- good faith of the debtor which in various countries is understood a bit differently (Consumer Overindebtedness, 2003). First of all, the person shall cooperate with creditors and institutions, disclose all information needed before and during insolvency procedures, prove that there are no intentional bad acts, a debtor was not dishonest, not tried to cheat creditors, to conceal property and was not lying about his income, property, debts and etc.<sup>33</sup> It is interesting to note, that for example, in the Netherlands the good faith test is ensured by provision of a “good faith certificate”<sup>34</sup> which a debtor needs to provide applying to a court for an insolvency procedure (Consumer Overindebtedness, 2003).

Generalizing the comparative analysis which characterizes an insolvent natural person, the conceptual

<sup>33</sup> In **Finland**, a debtor cannot use insolvency procedure in cases when he acted against the interests of creditors (including criminal activity), for non- disclosure or false information in an insolvency procedure, a false statement to obtain a credit. The most important obstacle is identification of the reasonable grounds to believe that a debtor because of irresponsibility has run into debt (Consumer Overindebtedness, 2003).

According to **Latvian** insolvency law a debtor is not discharged from the remaining debts if he provided incorrect data to a court or administrator or does not fulfil his obligations (Norkus, Višinskis, Driukas, etc., 2008).

In **Germany** conditions are numerated in article 290 (if debtor intentionally or because of gross negligence violated cooperation and information provision obligations instituted in Insolvency law; if a debtor intentionally or because of gross negligence provided incorrect or incomprehensive required data; if a debtor in three years period till the application for bankruptcy intentionally or in gross negligence provided incorrect data about his economic state in order to get credit, some money from state, or in order to avoid some payments to state budget; if a debtor in one year till the application for insolvency intentionally or in gross negligence aggravated satisfaction of creditors’ interests while accepting inadequate obligations, wasting property or without having any reason to expect better economic situation, behind time applied for insolvency (Norkus, Višinskis, etc., 2008)

<sup>34</sup> Certificate is issued by the debt mediators or by the municipality and the information concerning the specific situation is indicated.

model of a physical subject should be supplemented by some conditions: 1) different conditions and procedures should be applied for an individual – businessman or consumer; 2) if he meets the requirements of good faith test.<sup>35</sup>

### **Other parameters of insolvency for an individual:**

#### **Debt repayment plan and payment terms**

Actually, fresh start doctrine does not mean the straight discharge from debts, as a rule the payment plan is an essential prerequisite of this institution and only after a partial payment of debts which usually in average lasts for five years a debtor may be discharged from remaining debts, if the debtor asks. Various countries provide different time terms and conditions for a discharge from remaining debts. The longest time in order to be discharged is in Ireland– the bankruptcy procedure may be finished only after 12 years, while in Latvia– 7 years, Germany– 6 years, in France and Finland– 5 years, in Belgium– a period of 3 to 5 years and in Netherlands– 3 years. In the authors' opinion the optimal time period for discharge from debts in Lithuania would be 5 years in order for the debtor to feel some negative consequences and restraints but, on the other hand, to have a real opportunity to have an earned fresh start.

So, a discharge from remaining debts is conditional and depends from the fulfillment of a payment plan (Consumer Overindebtedness, 2003), but in practice it is much more complicated and depends on specific jurisdiction, court discretion and other conditions. But generally the plan can be annulled only in very serious cases of non- fulfillment (Consumer Overindebtedness, 2003).

#### **Undischarged debts**

In general event in the cases when the actual discharge is applied for the rest of the debts, not all debts are discharged. Where in Europe discharge should include as many debts as possible, giving the debtor a real fresh start, US exclude a considerable number of debts.<sup>36</sup>

Most countries exclude fines and monetary liabilities for criminal or other damages (Belgium, France, Germany, UK, Latvia) and maintenance debts (Belgium, France, Luxemburg) (Apeldoorn, 2008). In some others– Finland and Norway it is some kind of privilege, granted or not by

the court. Study loans are not discharged only in Netherlands and UK (Report on Legal Solution, 2005).

A position of a legislator not to discharge from every debt especially from those where crimes are involved or the burden to pay would be provided to other members of society and the state itself is reasonable. But “the barriers to obtain a discharge should on the one hand not be so high that the debtor is discouraged from using the procedure. On the other hand, sufficient recognition of the system should be created so that society is willing to forgive and permit a fresh start.” (Consumer Debt Report, 2001).

#### **Prevention and re-integration of the debtor**

European Ministers of Justice in the Resolution *On Seeking Legal Solutions to Debt Problems in a Credit Society* emphasized the importance of proper prevention of debt problems (Resolution No.1, 2005). On the other hand, “the findings reveal that, contrary to popular belief, the fresh start may be more myth than magic bullet. Instead of being a panacea for consumer financial distress, bankruptcy relief is insufficient to ensure lasting financial well-being for one in three households.” (Portert, Thornett, 2006-2007).

The importance of the help to the debtor in order to avoid repeated debts problems in future is stressed also by INSOL<sup>37</sup>, noting that help should also be directed at both finding a solution for the adverse financial situation and, as far as possible, preventing the debtor from getting into a debt again (Consumer Debt Report, 2001). In literature such measures are suggested: debt advice, a supervised rehabilitation period, financial education, social help to find sources of income and to manage household expenditures (Brauchner, 2003; Consumer Overindebtedness, 2003).

Traditionally debt counseling<sup>38</sup> focused on the household budget and on the negotiations on payment of debts with individual creditors, but with enacting of adjustment laws the counseling procedure changed into advice and help with the filing for the debt adjustment procedure and has additional tasks such as, mobilization of social security, supervision of repayment to creditors and financial literacy (Report on Legal Solution, 2005).

Of course the procedures of prevention of the debtor also may be criticized because not all problems could be addressed, for example, a person loses a job or he gets ill with some unexpected illness – problems of such kind could not be solved by debt counseling. Another critical issue mentioned in a scientific literature is that procedure is not costless and therefore reduce access for some debtors because of the impossibility to pay for it (Braucher, 2003). Debt counseling is enacted in all of the analyzed countries but the forms and institutions involved are different. For example, in Finland municipalities are responsible for debt counseling, in France there is a mixture– consumer organizations, non– profit organizations and social workers, in Germany– local authorities, Caritas, Red Cross, Workers' welfare and consumer organizations. In

<sup>35</sup> Due to a shortage of space we will not discuss these different conditions and procedures but it was already mentioned that natural person consumer should be exempt from the debts only in exceptional cases when it is obvious that there are no objective ways to return the debts.

<sup>36</sup> In US a natural person is not discharged from the following debts: debts or creditors not listed on the schedules filed at the outset of the case; Most student loans, unless repayment would cause the debtor and his or her dependents undue hardship (more on student loans below); Recent federal, state, and local taxes.; Child support and spousal maintenance (alimony); Government-imposed restitution, fines, and penalties; Court fees; Debts resulting from driving while intoxicated; Debts not dischargeable in a previous bankruptcy because of the debtor's fraud (U.S. Bankruptcy code, 2008).

<sup>37</sup> International Association of Restructuring, Insolvency & Bankruptcy Professionals

<sup>38</sup> The best variant to make such kind of consultation using interactive group work which is rather widely used in Canada and US (Karen, 2003).

Netherlands even municipal credit banks are involved together with social services, private organizations and attorneys. In Belgium – non profit organizations, advocates and notaries. In the USA and Canada financial education in consumer bankruptcy is used for groups (Karen, 2003).

Conclusion could be drawn that Lithuania shall as well use the procedures of prevention and integration of the debtor. On the other hand this question is highly important and complicated<sup>39</sup>, so the detailed system of such procedure is the object of another research based on the experience of other countries. This research would develop a longitudinal picture of the debtor after bankruptcy and would reveal whether most debtors really get a fresh start and why some of them fail.

### **Institutions involved in insolvency procedures (Court, administrator, trustee)**

Institutions that are in charge of insolvency proceedings vary, but judges and/or courts are always part of the procedure, exercising varying degrees of control on how the procedures take place, appointing administrators, trustees, executors, receivers or liquidators, and controlling their work in most cases.

In most countries, such as Israel, Iceland, Slovenia, Sweden, Finland, Malta and Norway, ordinary courts are in charge of insolvency proceedings. In others, specialized Commercial Judges or Courts are in charge of them, as in France, Italy, Venezuela, United Kingdom and Spain (Insolvency Procedures, 2005). While in Europe there is a payment plan as such confirmed by the court, usually some third person (a trustee, an administrator, and a receiver) is appointed by the court that is responsible for administration and control or even for the direct distribution of money among creditors. In some jurisdictions (for example, Germany, Netherlands and Finland) a debtor is directly responsible for the distribution of money, while in others (for example, Latvia) the third person makes financial operations.

In order to generalize the results of a comparative analysis of a conceptual model of the recognition of a natural person being bankrupt, these conditions shall be added: **The natural person can be discharged:** 1) if the debtor fulfilled his payment plan; 2) and successfully undergone the prevention and rehabilitation procedure; **except** discharge for the intentional criminal or administrative acts and alimony.

### **Conclusions**

1. In spite of the fact that in academic literature there is a strong opinion favoring the legalization of individual bankruptcy, the adoption of such law is postponed for an indeterminate period in Lithuania. The survey proves that the suspension of the legalization of individual bankruptcy

due to economic downturn is not sufficiently well grounded neither by legal nor economic arguments.

2. The individual bankruptcy can be ranked as a form of limited liability for individuals. In the case of legalization of individual bankruptcy, the process of risk shift for creditors would be transferred, which gives reason to believe that a debtor will be freed from financial responsibility in the case of bankruptcy and will behave in an opportunistic way towards creditors, because in the face of loss the loss will be externalized.

3. Global experience shows that in spite of the fact that for most individuals the aim to transfer the risks is one of the main motives to continue business, the rule of limited responsibility is very socially and economically useful, and the threat of abuse can be neutralized through legal regulation and practice of law. That is why it is possible to think that if the right of a person to go bankrupt would be legalized, not only the activity of individuals in debt would become much stronger economically but also people who avoid taking risks and entrepreneurial but currently unemployed people would be more active. The legalization of natural person's bankruptcy would be one of the quite effective means to foster individual entrepreneurship and economic growth of the state.

4. Fresh start doctrine cannot be associated with the straight discharge from debts. In a legal and scientific literature the European insolvency procedure is called "an earned fresh start" and even the US recently reserved its liberal fresh start tradition.

5. After summarizing comparative analysis we suggest such conceptual model of legalization bankruptcy for individuals:

1) If more than six months for any reason a natural person is unable to meet his financial obligations as they generally become due; 2) and if the sum of natural person's debts is greater than all of such person's/partnership's property, at a fair valuation; 3) and whose liabilities to creditors are provable as claims amount to ten thousand euros (34 500 Lt.); **such natural person has a right to apply to court for bankruptcy procedures;** 4) and if only he meets the requirements of good faith test, 5) fulfilled the payment plan; 7) and successfully undergone the prevention and rehabilitation procedure; such a **natural person can be discharged except** discharge for the intentional criminal or administrative acts and alimony. Different conditions and procedures should be applied for an individual – a businessman or consumer.

6. The Issue of the procedures of prevention and integration of the debtor is highly important and complicated, so the detailed system of such procedure is the object of other research based on experience of other countries. It would develop a longitudinal picture of the debtor after bankruptcy and would reveal whether most debtors really get a fresh start and why some of them fail.

<sup>39</sup> Some authors provide a view that the rising consumer bankruptcy filing rate over the past several years is not the result of increasing economic distress, but, rather, from the result of an increasing *propensity* for American households to file bankruptcy in response to economic problems. The underlying problems are not therefore what is novel. Rather, it is the increasing willingness of individuals to use bankruptcy as a *response* to those underlying problems (Zywicki, 2004-2005).



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#### „Naujos pradžios“ doktrinos taikymas fizinių asmenų bankrotui Lietuvoje: iš ES ir JAV perspektyvų

Santrauka

Fizinio asmens bankrotas Lietuvoje nėra reglamentuotas. Tai reiškia, jog fiziniai asmenys savo įsipareigojimus kreditoriams privalo vykdyti iki gyvenimo pabaigos. Ekonominio sunkmečio sąlygomis fizinio asmens bankroto įteisinimo klausimas tapo itin aktualus. 2009 metų pavasarį Lietuvos Respublikos Seime buvo užregistruotas fizinių asmenų bankroto įstatymo projektas, tačiau nepaisant akademinėje literatūroje vyrujančios nuomonės, jog fizinio asmens bankroto įteisinimas yra būtinas, minėto įstatymo priėmimas buvo atidėtas neribotam laikui ir regis ne dėl jo netobulumo, o dėl to, kad „šiuo metu įstatymo priėmimas nebūtų racionalus visuomenės išlaidų ir naudos santykio požiūriu“.

Tyrimo tikslas yra apibendrinti ir įvertinti fizinio asmens bankroto įteisinimo Lietuvoje poreikį, prielaidas, galimas neigiamas ir teigiamas įteisinimo pasekmes ir pateikti konceptualų fizinio asmens nemokumo (bankroto) įteisinimo modelį. Tai yra pirmas tyrimas apie fizinio asmens nemokumo (bankroto) įteisinimo problematiką Lietuvoje užsienio kalba, siekiant su minėta problematika supažindinti pasaulio mokslinę bendruomenę. Tyrimo metu buvo kompleksiskai taikomi įvairūs metodai. Taikant deskriptyvinį, analizės, lyginamąjį, istorinį bei apibendrinimo metodus, buvo aptartas fizinio

asmens bankroto įteisinimo poreikis, pasekmės ir pagrindimas. Taikydamos apibendrinimo, teleologinio, sisteminės analizės, lyginamojo ir modeliavimo metodus autorės pasiūlė konceptualų fizinio asmens pripažinimo bankrutavusių įteisinimo modelį.

Pirmojoje straipsnio dalyje analizuojami fizinio asmens bankroto įteisinimo šalininkų ir priešininkų argumentai. Akivaizdu, jog fizinio asmens nemokumo teisinis neapibrėžtumas neigiamai veikia fizinį asmenų apsisprendimą užsiimti verslu, vartoti ar imtis antrepreneriškų iniciatyvų, nes didina jo riziką. Todėl prognozuotina, jog, įteisinus galimybę fiziniam asmeniui bankrutuoti, suaktyvėtų ne tik šiuo metu negalinti ir neturinti vilčių artimiausiu metu skolų grąžinti fizinį asmenų ekonominė veikla, bet ir rizikuoti vengiančių, bet potencialiai verslių asmenų, kurie šiuo metu galbūt yra praradę darbą, aktyvumą. Anot fizinio asmens bankroto instituto įteisinimo Lietuvoje šalininkų, fizinio asmens bankroto įteisinimu yra siekiama apsaugoti nemokų fizinį asmenį nuo nuskurdimo ir atkurti jo mokumą. Be to, fiziniam asmeniui leidus bankrutuoti ir suteikus viltį, kad po kelerių metų skolos bus nurašytos, toks asmuo būtų skatinamas dirbti legaliai ir grąžinti bent dalį skolų. Ne mažiau svarbus argumentas yra verslo sąlygų suvienodinimas skirtingomis verslo formomis veiklą vykdančiams asmenims. Šiuo metu ūkininkai ir kiti individualia veikla užsiimančios asmenys, pvz., advokatai, notarai, auditoriai, neturi galimybės įveikti finansinių sunkumų, remdamiesi analogiškais normomis, kokiomis naudojasi juridiniai asmenys. Taigi, šių verslo užsiimančių asmenų konkurencijos požiūriu padėtis yra blogesnė nei juridinių asmenų ar fizinį asmenų, užsiimančių verslu kitose Europos Sąjungos valstybėse, kuriose ir fiziniam asmeniui gali būti taikomas bankrotas. Kita vertus, bankroto instituto paskirtis apsaugoti ne tik skolininko, bet ir jo kreditorių interesus. Šiuo metu Lietuvoje fizinio asmens skolų grąžinimo principai yra reglamentuoti tik Lietuvos Respublikos civiliniame kodekse, o išieškant skolas neretai veikia „kas pirmesnis, tas greitesnis“ principas. Taigi įteisinant fizinio asmens nemokumo ir bankroto procedūras siekiama civilizuotai spręsti išieškojimo iš nemokaus asmens turto problemas subalansuojant visų jo kreditorių interesus.

Fizinio asmens bankroto instituto įteisinimo Lietuvoje priešininkai akcentuoja šias neigiamas pasekmes: 1) bankroto galimybė prisidėtų prie netinkamų žmonių lūkesčių formavimo. Anot šios pozicijos šalininkų, žmonės, žinodami apie bankroto galimybę, būtų netiesiogiai skatinami priimti rizikingesnius sprendimus; 2) bankroto galimybė didintų skolinimosi ir paslaugų kainą, mažintų kreditų prieinamumą, nes skatintų kreditorius prisitaikyti prie naujos rizikos, o kai kurių asmenų pernelyg rizikingas ekonominis elgesys darytų žalą visiems kitiems skolininkams, nes jiems tektų mokėti didesnę tos pačios paslaugos kainą (netgi kitiems kredito įstaigų klientams), pvz., indėlininkams, nes siekiant padengti nuostolius, tektų didinti kitų paslaugų kainas; 3) bankroto įteisinimas skatintų piktnaudžiavimą šiuo institutu, nes fiziniam asmeniui, kurių sudėtinga finansinė padėtis, mažintų paskatas gerinti finansinę situaciją, o įgytą turtą perleisti kitiems asmenims ar kitaip nuslėpti. Vertinant fizinio asmens bankroto įteisinimo poreikį, galima išvengti tam tikras išsakytų argumentų „už“ ir „prieš“ sąsajas su literatūroje išsakytais argumentais dėl ribotos juridinio asmens atsakomybės, nes, vertinant neigiamas fizinio asmens nemokumo (bankroto) įteisinimo pasekmes, pastebėtina, kad jos sutampa su ribotos juridinio asmens atsakomybės įteisinimo pasekmėmis. Ribota atsakomybė perkelia rizikos paradigmą iš juridinio asmens dalyvių kreditoriams, atitinkamai fizinio asmens bankroto įteisinimo atveju įvyktų tas pats rizikos perkėlimo kreditoriams procesas ir kreditoriai būtų priversti savo didėjančią riziką neutralizuoti įskaičiuodami ją į skolinimo kainą. Remiantis analize, daroma išvada, jog fizinio asmens bankroto įteisinimas gali būti vertinamas kaip ribotos fizinio asmens atsakomybės nustatymas. Atitinkamai tai sudaro prielaidas manyti, jog fizinis asmuo, tikėdamasis būsiąs atleistas nuo finansinių įsipareigojimų ištikus nesėkmei, gali elgtis oportunistiškai kreditorių atžvilgiu. Nepaisant to, jog būtent siekis perkelti riziką yra vienas pagrindinių verslo vykdymo formos pasirinkimo motyvų, pasaulinė praktika rodo, kad „ribotos atsakomybės taisyklė“ yra itin ekonomiškai ir socialiai naudinga. Atliktas tyrimas taip pat įrodo, kad fizinio asmens bankroto įteisinimo atidėjimas dėl finansinės krizės nėra pakankamai pagrįstas nei teisiniais, nei ekonominiais argumentais.

Antroji straipsnio dalis yra skirta konceptualaus fizinio asmens nemokumo įteisinimo modelio parametrų modeliavimui, atsižvelgiant į JAV, Kanados ir atskirų ES valstybių patirtį šiuo klausimu. Taikant modeliavimo metodą, buvo siekiama iširti fizinio asmens bankroto reiškinį, nustatyti šio reiškinio esminius elementus, struktūrinius–funkcinius, priežastinius bei koreliacinius jų ryšius. Socialinių reiškinų lyginimas yra itin sudėtingas procesas, todėl pasirinktas modeliavimo metodas sudarė galimybę užtikrinti esminės informacijos sukoncentravimą atmetant neesminę informaciją. Be to, šis metodas leido paprasčiau tirti reiškinio pranašumus ir trūkumus. Pasirengiant modeliavimo modeliui, buvo atlikta sisteminė objekto analizė, siekiant nustatyti reiškinio elementus, kurių sisteminiai ryšiai lemia reiškinio vientisumą. Atliekant tyrimą, buvo modeliuojami šie konceptualaus fizinio asmens nemokumo įteisinimo modelio parametrai: fizinio asmens nemokumo samprata ir bylos iškėlimo sąlygos, „Fresh start“ subjektų ypatybės, rūšys ir skirtybės, išskiriant skirtingas nemokumo nustatymo sąlygas ir procedūras vartotojams ir verslininkams bei sąžiningumo testo reikalavimą. Toliau modeliuojami ir kiti fizinio asmens pripažinimo bankrutavusių įteisinimo modelio parametrai: skolų grąžinimo planas ir grąžinimo terminai, skolos, nuo kurių fizinis asmuo negali būti atleidžiamas, skolininko prevencijos ir reabilitacijos procedūros, institucijos, kurios atlieka fizinio asmens bankroto procedūras. Straipsnio autorės formuluoja šias fizinio asmens bankroto koncepcijos modelio esmines sąlygas: kai asmens negali įvykdyti finansinių įsipareigojimų ilgiau nei 6 mėnesius, įsiskolinimų suma didesnė nei turimas asmens turtas bei pradelsta įsipareigojimų kreditoriams suma siekia 10 000 eurų, fizinis asmuo įgyja teisę kreiptis į teismą dėl fizinio asmens bankroto procedūros pradėjimo. Tik tuomet, jeigu asmuo atitinka „sąžiningo asmens“ nustatytus kriterijus, tinkamai vykdė mokėjimų planą, sėkmingai atliko reabilitacijos ir prevencijos procedūras, jis gali būti atleistas nuo likusių skolų, išskyrus finansinius įsipareigojimus už tyčinius nusikaltimus ar administracinius pažeidimus ir alimentų mokėjimą. Verslininkams ir vartotojams, atsižvelgiant į jų skirtingą vaidmenį visuomenėje, turėtų būti taikomos skirtingos sąlygos ir procedūros.

Pasiūlytas modelis pagrindžia, jog „naujos pradžios“ doktrina nereiškia automatinio fizinio asmens atleidimo nuo skolų. Asmuo gali būti atleistas nuo skolų, tik jei yra sąlygos iškelti bankroto bylą teisme, be to jis įvykdė skolų mokėjimo planą ir yra atlikęs reabilitacijos bei bankroto prevencijos procedūrą.

Itin reikšminga, bet kartu ir sudėtinga yra reabilitacijos bei bankroto prevencijos procedūrų problema, todėl detali šių procedūrų sisteminė analizė yra tolesnio tyrimo objektas. Šio tyrimo tikslas – remiantis kitų šalių patirtimi atskleisti, ar iš tiesų bankroto procedūrą atlikęs fizinis asmuo turi galimybę pradėti viską iš pradžių, kodėl ne visada ši procedūra pasiteisina.

*Raktažodžiai:* bankrotas, nemokumas, skolininkas, „fresh start“ doktrina, skolų mokėjimo planas.

The article has been reviewed.

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