THE BANKRUPTCY LAW OF THE REPUBLIC OF SERBIA IN TIMES OF CRISIS[1]

Djuro M. DJURIĆ[2]

Abstract

Bankruptcy proceedings have vital significance for the economy of a country. The number of initiated proceedings and their successful outcome represent a crucial indicator of the health of the economy. The economy in the Republic of Serbia has for a long time been stagnant, lagging behind many countries in Europe. For the last ten years, there have been two reforms performed in this area. The first reform radically changed regulations in order to change to modernize and improve process quality. The aim of the reform in 2009 was to eliminate shortcomings of the first one and to increase the efficiency of the bankruptcy proceeding. The progress was especially made in bankruptcy administrators' training and professionalization. However, all the goals could not have been accomplished due to the conflict of the law regulations with the Constitution. The Law on Bankruptcy of Serbia has in its major part been coordinated with the EU regulations and it is able to respond challenges of economy crisis. However, in order to move economy out of recession it is not enough to have solely modern and efficient bankruptcy law.

Key words: *bankruptcy proceeding, law regulations, the Republic of Serbia, economy crisis.*

INTRODUCTION

The economy of the Republic of Serbia has been in constant decline since 2008[3]. Unfavourable international economic circumstances have led to reduced foreign investments, reduced production volume and the increased amount of business entities in debt. Although significant legislative reforms were made in the past in order to attract foreign investments and to recover domestic economy, as well as national legislation was coordinated with the European Union Law, it all was not enough to mitigate the adverse effects of the economic crisis. Besides, the new regulations had certain shortcomings which emerged in the first year of their application. The Law on Bankruptcy of 2004 was one of the criticized regulations. On the one hand, investors criticized it, as well as practice, business entities and judicial system. Guided by these facts among others, Serbian legislator carried out another bankruptcy regulations reform in 2009. However, this reform only partially met the demands of the time. Entering the fifth year of economic crisis, the question is whether it is necessary a new, more comprehensive reform, which would include a wider range of economic and non-

[1] This paper is a part of research projects No. 47009 (*European integrations and social and economic changes in Serbian economy on the way to the EU*), and No. 179015 (*Challenges and prospects of structural changes in Serbia: Strategic directions for economic development and harmonization with EU requirements*), financed by the Ministry of Science and Technological Development of the Republic of Serbia.

[2] Djuro Djuric, LL.M., Research Associate at the Institute of economic sciences in Belgrade, Serbia, and PhD Candidate at the School of Law and Economy, University of Saarland, Germany, Chair for Civil and Commercial Law, Business Organisation Law, Private International Law and Comparative Law of University of Saarland, Institute for European Law, Saarbruecken Germany. 1 This paper is a part of research projects numbered 47009 *(European integrations and social and economic changes in Serbian economy on the way to the EU)* and 179015 *(Challenges and prospects of structural changes in Serbia: Strategic directions for economic development and harmonization with EU requirements)*, financed by the Ministry of Science and Technological Development of the Republic of Serbia.

[3] World Bank Group – Serbia (2012), *South East Europe Economy Shrinks in 2012, Faces Risks in 2013* (Online) Available from: http://www.worldbank.org/en/news/press-release/2012/12/18/south-east-europe-economy-shrinks-2012-faces-risks-2013 (Accessed: 1st November 2013).

economic subjects. The need for a new reform was imposed by the Constitutional Court of the Republic of Serbia which declared the provisions on the preliminary bankruptcy, very significant for the economy, unconstitutional on 12 July 2012. There is a question for the legislator what to do next? Should we go in a direction of a completely new law or to perform a partial reform following the guidelines of the Constitutional Court in the terms of passing the law in accordance with the Constitution of 2006?

THE LEGAL FRAMEWORK AFTER THE ENACTMENT OF THE LAW ON BANKRUPTCY OF 2009

The aim of the enactment of the new the Law on Bankruptcy[4] in 2009 was to improve key indicators of efficiency of the bankruptcy proceedings[5], through the implementation of several objectives. According to the legislator's intention, the quality of bankruptcy proceeding should have been improved through a higher degree of settlements with creditors, reduction of the cost and duration of the proceeding[6]. In addition, the aim was to encourage participants in bankruptcy proceedings, especially creditors and debtors themselves to timely initiate bankruptcy proceedings in an attempt to overcome financial difficulties and continue their business as solvent business entities[7].The promulgated legislation reflects a new philosophy of bankruptcy, which interrupted non-economic view of the bankruptcy, which was in force until 2004[8]. Bankruptcy has not been seen any longer as a necessary end of the economic entity, but as an opportunity to avoid distress, especially if it is started in a timely manner and for a new "fresh[9]" start.

Thus, compared to the previous Law of 2004, the provisions on principles and aim of the bankruptcy proceedings were changed, the existing and new bankruptcy reasons were clarified and introduced, certain proceeding bodies were terminated, the provisions on the status and mode of appointment of bankruptcy administrators were changed, new provisions on the control of the bankruptcy administrators by the Bankruptcy Supervision Agency were introduced, preclusive deadlines for submission of claims of creditors were introduced, the possibility of compensation claims was introduced, the possibility of submitting the pre-arranged reorganization plan was introduced, and the bankruptcy of entrepreneurs and small-value bankruptcy were abolished while the preliminary bankruptcy was introduced.

Bankruptcy or liquidation of an insolvent economic entity through sale of their assets and settlement with the creditors is just one of the possibilities of the outcome of the bankruptcy proceeding. The other, equivalent, possibility is the reorganization, introduced in 2004 under the influence of the U.S. Bankruptcy Code[10], through implementation of the reorganization plan of the insolvent subject with most beneficial collective settlements of the creditors. When there are real economic conditions for that, reorganization enables preservation of the debtor's business.

Besides, the legislator considered necessary to introduce new proceeding principles, with the objective to provide adherence to the principles of lawfulness and legal security, through ruling equal judicial decisions in the same or similar circumstances. The following principles were introduced: principles of protecting the creditors, the principle of equal treatment and equality of the creditors, the principle of cost-effectiveness, the principle of judicial involvement, the principle of imperative prescription and

[4] Law on Bankruptcy ("Official Gazette of the Republic of Serbia", number 104/09).
[5] Ibid.
[6] Ibid.
[7] Law on bankruptcy proceedings ("Official Gazette RS", N°84/04 and 85/05).
[8] Law on companies ("Official Gazette RS", N° 36/11 and 99/11).
[9] Law on Bankruptcy ("Official Gazette of the Republic of Serbia", number 104/09).
[10] Djuric, Dj. (2012) Serbian insolvency law and its relation to EU insolvency standardization and the US bankruptcy code, in: *Substantive harmonization and convergence of laws in Europe*, ed. Rebecca Parry, Nottingham, p. 159-173.

preclusive deadlines, the principle of urgency, the principle of involvement of two instances, and the principle of transparency and access to information.

Among the existing bankruptcy reasons, permanent and threatening insolvency, not adhering to the reorganization plan and a plan obtained in deceiving and illegal manner, there was one new reason – indebtedness of the economic entity. It is seen in the case that the assets of the debtor are lower than the commitments.

Since it appeared that the bankruptcy panel was superfluous and inefficient body, it was omitted in the new law. Its authorities were transferred to a bankruptcy judge, and the Higher Commercial Court is in charge of the appeal to the decision of the judge. Thus, the provision of the small-value bankruptcy from the previous law lost its significance since the bankruptcy judge was in charge of it.

In order to secure lawfulness in naming the bankruptcy administrators, the method of random choice was introduces. Moreover, the control over their work became stricter, they were offered certain protection, but their responsibility increased as well. Serbian legislator continues to argue that lawyers cannot perform the function of a bankruptcy administrator[11]. The new regulation introduced the obligation of compulsory insurance of creditors against professional responsibility for the amount of at least €30,000 expressed in RSD on the day the contract was concluded[12]. The Bankruptcy Supervision Agency had the key role in this commitment. It has the right to impose disciplinary measures and to revoke licenses. In addition, the Agency got the significant role in training bankruptcy administrators in creating and raising awareness of bankruptcy proceedings as well as of an inevitable factor of successful business.

Since the application of the Bankruptcy Law of 2004, it was noted only one case of the bankruptcy of an entrepreneur, therefore the legislator decided to abolish this provision in the new law. Thus, since 2009 Serbian law has recognized exclusively corporate bankruptcy, i.e. bankruptcy of a legal entity. In spite of increasing debts of citizens i.e. individuals, the legislator did not take into account the possibility to introduce civil or individual bankruptcy.

A creditor is considered any individual who on the day of bankruptcy proceeding has an unsecured claim against the debtor. On the date of the filing of the claim, the creditor becomes a party in the proceedings. The creditor is entitled to initiate bankruptcy proceedings in case of permanent insolvency of the debtor or in the case of failure to meet the reorganization plan. The debtor itself can initiate bankruptcy proceeding for any reason provided by law. That was one of the ideas of the reformation of the law; to encourage the debtor itself to file a motion in the court of law for bankruptcy proceeding even before entity becomes permanently insolvent. In addition, the encouragement can be seen in the possibility of filing a pre-arranged reorganization plan. The aim of this provision is to present and to try to solve problems in doing business through arrangements with major creditors, through shorter and thus much cheaper proceeding. Thus, the awareness of the economic entities is growing about the necessity of timely indication of trouble and protection of creditors whose claims are in potential danger.

One of the most significant novelties in the Law on Bankruptcy of 2009 is the provision on preliminary bankruptcy of economic entities which are continuingly insolvent. Besides, the mediation possibility was introduced with limited duration, with the aim to disburden the courts and to decrease the proceeding costs. In these proceedings, the claims of the creditors can be determined and introduced into a table of verified claims.

[11] Law on bankruptcy ("Official Gazette RS", N°104/09).
[12] Ibid.

THE PROVISIONS ON AUTOMATIC BANKRUPTCY AND THE DECISION OF THE CONSTITUTIONAL COURT OF SERBIA

The significant novelty presents introduction of preliminary bankruptcy or special proceeding in case of continuing insolvency. It presents the consequence of the fact that there are a large number of business entities whose bank accounts are blocked, then those which stopped paying in period longer than two years[13]. Therefore, the provision was introduced where the organization carrying out the proceeding of enforced collection has the obligation to provide bank statements monthly in particular on the last day of the month, with the overall status as at that day, to all courts in charge of dealing with the bankruptcy proceeding, to deliver a report on legal entities from their jurisdiction that are continuingly insolvent having ceased all payments in the period of at least two years. In order to introduce creditors with those facts, the announcements are published in one high-circulation daily newspaper and on the internet page of the organization dealing with the enforced collection proceeding. After having received the notification on debtor's continuing insolvency, the bankruptcy judge *ex officio* render the decision to start previous bankruptcy proceeding where it shall be determined whether there is any legal interest of the creditors in conducting the bankruptcy proceeding[14].

The thing that drew the attention is the provision of the Article 154, Paragraph 2, the Law on Bankruptcy, where the property of a debtor continuingly insolvent becomes the property of the Republic of Serbia, which does not interfere with previously acquired rights of security and priority settlement with creditors on the property in question, and according to which the Republic of Serbia is not liable for the obligations of the debtor. Underlying assets are managed and disposed in accordance with the regulations related to the assets owned by the Republic of Serbia[15].

Actually, these provisions, at the request of a number of applicants, became the matter of constitutionality at the Constitutional Court of Serbia[16]. Besides, the Article 13, Paragraph 3 of the same the Law on any funds remaining after the payment of the expenses incurred would be paid in the Budget of the Republic of Serbia was disputed as well. The initiators of the constitutionality evaluation disputed the mentioned provisions of the Law on Bankruptcy in relation to the provisions of the Article 3, Paragraph 1 (inalienability of human rights), Article 18, Paragraphs 1 and 2 (prohibition to influence the basics of human and minority rights guaranteed by the Constitution), Article 32, Paragraph 1 (right to have fair trial within the reasonable time), Article 36, Paragraph 1 (equal protection of rights before courts and other state bodies), Article 51 (right to be informed accurately, fully and timely about issues of public importance), Article 60 (right to work), Article 84 (equal legal status on the market), and Article 86, Paragraph 1 (equal legal protection of private, cooperative and public assets shall be guaranteed) of the Constitution of the Republic of Serbia.

The Constitutional Court determined that with the disputed provision of the Article 13, Paragraph 3, the Law on Bankruptcy, related to the bankruptcy of insufficient value, there was a consequence of confiscation of property of the debtor without reimbursement, and in favour of the state, thus violating the Constitution guaranteeing the right to property stated in Article 58 of the Constitution. According to the estimate of the Court, there are no valid constitutional bases, such as the public interest, settlement of taxes etc. for the confiscation of property of the debtor in favour of the state. Furthermore, disputed provision of the specified Article does not prescribe the expropriation, nationalization or any other form of seizure of property that may possibly relate to the provision of Article 58, Paragraph 2 of the Constitution. Thus, property rights can be seized or restricted in the public interest as determined by the law, for a fee, which cannot be lower than one on the market[17].

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] IUz-850/2010, "Official Gazette of the Republic of Serbia", N°71/2012.
[17] Constitution of the Republic of Serbia ("Official Gazette RS", N°98/2006).

Besides, Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that the term "public interest" has extensively been interpreted in the sense that it is logical that the national legislator has at its disposal a broader freedom of this concept as an expression of certain economic and social policy that state runs[18]. The state, however, cannot promulgate laws on its own discretion that comprises of so called arbitrary confiscation or nationalization of property without any reimbursement to an owner. Therefore, in cases of turning the property of the debtor into the state property there must be fulfilled the element of the existence of a fair balance and proportionality between the demands of the general interests of the state and the element of the protection of fundamental rights of individuals. In order to meet the requirements of proportionality of certain measures taken by the state it is obligatory that such measures are necessary so that for a fulfilment of a goal there is no other alternative or more favourable ways[19].

Besides, the Constitutional Court estimated that the disputed Article 13, paragraph 3, the Law on Bankruptcy puts the state into favourable position in relation to other participants on the market, due to the state confiscation of the surplus assets of the debtor insolvency makes the state in favourable position in relation to other forms of property recognized by the Constitution (for example, private, cooperative) and thus violates the constitutional principles of equality of status of all market participants and the equality of all forms of property referred to in Article 84 Paragraph 1 and Article 86 Paragraph 1 of the Constitution[20]. Furthermore, the disputed statutory provision violates the principle of unity of the legal order under Article 4 Paragraph 1 of the Constitution, since the provision of Article 243 of the Law on Company stipulates that a joint stock company is liable for its obligations by its whole property[21].

When it comes to preliminary bankruptcy, the Constitutional Court estimated that the provision in Article 150, Paragraph 1 affirms the right to fair trial and right to equal legal protection and legal means (Article 32, Paragraph 36 of the Constitution). Namely, the provision anticipates announcement of legal entities that stopped all payments continuously for at least two years by the organization that leads the proceeding of enforced collection delivers to the courts in charge of the bankruptcy proceeding and that is only published in high-circulation daily newspaper and on the internet website, although the announcements are not delivered to creditors of the bankruptcy subject. The consequence of this is that the bankruptcy judge upon receiving the announcement due to his duties renders a decision on initiating the preliminary proceeding where it is to be determined whether or not there are legal interests of creditors in conducting the bankruptcy proceeding. The Constitutional Court is against the standards referred to in Article 153 Paragraph 1 of this law where the decision should be published on the notice board of the court, actually that the document is not to be personally served to a party within which its rights, obligations or interest determined by law are decided, because the party is not able to objectively get acquainted with the content of this document, thus the right to a fair trial is in question as well as the right to equal legal protection and remedy guaranteed by the provisions of Article 32 Paragraph 1 and Article 36 of the Constitution. When it comes to bankruptcy proceeding, this constitutional guarantee means that it has to be ensured that an independent and impartial tribunal established by law in a fair and open debate discusses on the rights and obligations of the debtor that are the subject of the proceeding as well as to discuss on the merits of a doubt that was the reason for the initiation of the bankruptcy proceeding, and that the entire court proceedings are conducted in accordance with the provisions of applicable procedural and substantive regulations[22].

---

[18] European Charter on Human Rights and Fundamental Freedoms, Protocol 1 (Online) Available from *conventions.coe.int/Treaty/en/Treaties/Html/005.htm* (Accessed: 1st of November 2013).

[19] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012. Law on basic property relations "Official Gazette of the SFRY" N°6/80.

[20] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012 and the Constitution of the Republic of Serbia "Official Gazette RS", N°98/2006.

[21] The Law on Companies "Official Gazette of the Republic of Serbia", No 36/11 and 99/11.

[22] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012.

The Constitutional Court finds that the bankruptcy proceeding before the Court, according to the general rules of the bankruptcy proceedings, is initiated by submitting a single proposal which contains legally relevant data, not ex officio of a bankruptcy judge upon receiving the notice from the organization that conducts enforced collection, as stipulated in the disputed provisions of the Article 150 of the Law on Bankruptcy. Therefore, in order to have any dispute before the court publicly discussed, the constitutional requirement, within the Article 32 Paragraph 1 of the Constitution, is for the court to ensure the presence and the possibility of active participation of the debtor about whose rights and obligations of the proceedings before the court is discussed in terms of taking appropriate actions in the court procedure. Therefore, the Constitution rules out the possibility that the bankruptcy judge could render a decision which initiates or concludes the proceeding upon the debtor, without the presence or involvement of the parties whose rights and obligations are being discussed and decided by this decision[23]. The purpose of the Constitutional guarantees from the Article 36, Paragraph 2 of the Constitution is to provide guarantees to any person to whom it applies a decision about their rights, commitments or lawful interests in order to objectively have possibilities to use against such a decision required, effective legal remedy[24]. This option can only exist if the decision is in the prescribed manner, in writing, personally delivered to the debtor in the proceedings, so the debtor could within the stipulated period from the date of receipt of the decision be able to get acquainted with the contents of this document, and if it wants to render a prescribed legal remedy against such an act.

Moreover, the legislator has violated the provisions of Article 32, Paragraph 1 of the Constitution, which guarantees the right to a fair trial by having conditioned the payment of a sum of money in the form of an advance and prescribed that, if not paid within a period referred to in Article 151 paragraph 1 of the Law on Bankruptcy, and without summoning the debtor and its creditors and without enabling their presence and participation in the discussion in the court proceedings, it can be considered that there is no legal interest of creditors and the debtor for the implementation of bankruptcy proceeding[25]. Namely, neither the debtor nor the creditors are not in any legally relevant way made aware of initiation of any kind of bankruptcy activity so that they could participate in the proceeding and register their claims. In this way, it means that the constitutional requirement is not fulfilled that refers to Article 32, Paragraph 1 of the Constitution that the court in this discussion provides the presence and participation of the parties whose rights and obligations are discussed in a trial before court. Therefore, the Constitutional Court ruled that the right to appeal against the decision referred to in Article 153, Paragraph 1 of the Law on Bankruptcy is necessary to bind to the date of delivery to the party in person and not to the date of publication on the court notice board, in order to enable the realization of the constitutional guarantee under Article 36, Paragraph 2 of the Constitution.

The Constitutional Court has also estimated that the principles referred to in Article 32 Paragraph 1 and Article 36 of the Constitution are violated, as well as the basic constitutional principles on the direct application of human and minority rights and freedoms referred to in Article 18 Paragraph 2 of the Constitution which provides that the law may prescribe the manner of exercising the rights guaranteed by the Constitution, whereby the law in any case should not affect the substance of the guaranteed rights. Specifically, the Law on Bankruptcy prescribed that the decision which concludes the bankruptcy proceedings is published on the court notice board and is delivered to the companies register, and without previous delivery to the party in person, as well as determining that the debtor and creditors may appeal to the decision within 30 days from the date of publication of the decision on the court notice board[26]. The legal possibility and deadline to use the prescribed legal remedy depends upon the circumstances whether and when the party is going to be served the document. At the same time, these entities are in underprivileged position in relation to other bankruptcy debtors, given that

[23] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012.
[24] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012.
[25] Article152 Paragraph 3, Law on bankruptcy "Official Gazette RS", N°104/09.
[26] Article153 and 154 of the Law on bankruptcy "Official Gazette RS", N°104/09.

Article 71 of the Law on Bankruptcy provides that the decision on initiating the bankruptcy proceeding in the general bankruptcy proceeding is delivered to the debtor, thus violating the principle of Article 21 Paragraph 1 of the Constitution which guarantees equality before the law and the Constitution[27].

The disputed provisions of Article 154 of the Law on Bankruptcy, according to the Constitutional Court limit the property right of debtors and their creditors guaranteed by Article 58 of the Constitution. It creates an actual impossibility of realization of claims, including those that are based on the valid court decisions, since the disputed provisions of Paragraphs 2 and 3 of this article to "transfer" property of the debtor into property of the state, and under the law. In addition, the state does not take over the obligations of the debtor, but it can take the place of the debtor in litigation carried out under debtor's lawsuit for the collection of debt or things (bankruptcy due to long-term insolvency or insolvency of the debtor as a special type of bankruptcy). Thus, not a single constitutional requirement was fulfilled for confiscating property according to the provisions of Article 58 of the Constitution. The consequence is that the initiation and conclusion of bankruptcy of the so-called inactive entities ceases their legal status by being deleted from the public register, and the Republic of Serbia, under the law, becomes the owner of the property i.e. the assets of the debtor, since the state is not liable for the obligations of the debtor[28].

When it comes to the creditor who commenced a lawsuit against the debtor before the bankruptcy, it has no right to continue it after the deletion of the debtor in the process against the state, because the state is not the legal successor of its debts or claims of its creditors. Therefore, the Constitutional Court found a violation of the constitutional principle of equality of all forms of property under Article 86 Paragraph 1 of the Constitution because it favours state ownership. According to the provisions of the Law on Bankruptcy, debtor's assets by operation of the law transfer into state assets without any charge[29]. Furthermore, the guaranteed right to equal protection of rights and the right to legal remedy have been violated according to Article 36, Paragraph 1of the Constitution, then judicial protection of individual rights that everyone is guaranteed by the Constitution is denied, due to the fact that the confiscation of the property in favour of the state is justified by the legal ignorance of the creditors of the bankruptcy of continuing insolvent debtors, and legal protection of their property rights resulting from the claims of creditors is not provided.

INVESTORS RECOMMENDATIONS

Bankruptcy regulations are of the vital interest for both domestic and foreign investors. The reform of bankruptcy legislation of 2009 achieved progress, since the top critics of the practice were acknowledged, which were related to a number of key issues. Thus, the introduction of provisions on pre-arranged plan of reorganization allows the debtor to initiate insolvency proceedings together with filing of the reorganization plan. This gives the opportunity to a greater number of insolvent companies to "survive"[30] before the irreparable loss of the ability to pay and not be closed down forever. In addition, new provisions are intended to encourage creditors to take a more active role in the conduct of bankruptcy proceedings, through filing the petition for initiating bankruptcy proceedings, as well as through participation in the creditor institutions[31].

Through position strengthening of the Bankruptcy Supervision Agency, it is possible to increase the professionalism of the bankruptcy administrators to the highest level, but also to revoke the license for those who cannot contribute to the development of practice in bankruptcy, either due to the lack of

[27] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012.
[28] IUz-850/2010, "Official Gazette of the Republic of Serbia", No 71/2012.
[29] Article 154 of the Law on bankruptcy "Official Gazette RS", N°104/09.
[30] Foreign Investors Council (2012), *White Book* , Proposals for the improvement of the business environment in Serbia, ed. Mihailo Crnobrnja, Beograd, p. 54-57.
[31] Ibid.

knowledge or ethics violations, and, in the worst case, abuse[32] of power and committing various criminal offenses.

Finally, introducing mediation provision, it is enabled to decrease the cost of bankruptcy proceedings (which are always high), whereby the principle of effectiveness and efficiency of the bankruptcy proceedings is applied. Since the provision on preliminary bankruptcy estimated from the investors' point of view as a significant progress in reformation process, but the matter of the disputable right to dispose of the assets of the debtor, the Decision of the Constitutional Court of Serbia revoked the provision. However, one should not forget that the closure of companies that are indebted for a long period of time and their ultimate removal from the Serbian legal system, using the mechanism of *ex officio* bankruptcy, shows the true picture of the liquid and stable companies that actually operate in the Serbian market[33].
From the perspective of investors, the bankruptcy proceedings in the Republic of Serbia remain only denied to lawyers to be active bankruptcy administrators. It is however a result of implementing other regulations, or the Legal Profession Act adopted in May, 2011. Attorney register regulations do not allow lawyers to be registered as entrepreneurs. According to investors[34], bankruptcy has become less cost-effective and less efficient, contrary to the principles which should be based on.

Moreover, although the aim is to randomly select their bankruptcy administrator as transparent, impartial and equitable[35] as possible, in practice it was detected resistance to the implementation of this model. Contrary to the practice of the developed world and modern bankruptcy, the appointment of the same administrators continued by the same judges, while a significant number of active licensed bankruptcy administrators did not get a chance to be entrusted with leading at least one of the bankruptcy proceedings[36].

Unlike the previous Law on bankruptcy proceedings dating 2004, the process of the new Law on Bankruptcy has been greatly accelerated. Implementation and continuous education of highly qualified bankruptcy judges and administrators proved to be of particular importance, as well as the definition and higher accountability of the administrators. However, the new law did not mandate the responsibility of the bankruptcy judge[37].

Also, the introduction of preliminary bankruptcy proved to be necessary legislative measure in the troubled economy as it is in the Republic of Serbia. However, the legislator introduced other objectives into provisions of the new law introduced, that due to non-compliance with the provisions of the Constitution of the Republic of Serbia[38] led to the termination of these provisions. As a result of the Decision of the Constitutional Court of the Republic of Serbia, the provisions of Article 150-154 of the Law on Bankruptcy determining a special procedure in the event of prolonged inability to pay ceased to apply. Therefore, the automatic opening of bankruptcy proceedings against companies which have long been unable to pay is no longer possible in the Serbian legal system. Also realizing the

[32] Ibid.
[33] Ibid; Constitutional Court of Serbia, IUz-850/2010, ("Official Gazette RS", N°71/2012).
[34] Foreign Investors Council (2012), *White Book* , Proposals for the improvement of the business environment in Serbia, ed. Mihailo Crnobrnja, Beograd, p. 54-57.
[35] The Book of Regulations on Conditions and Mode of Selection of Bankruptcy Administrators by the Method of Random Selection ("Official Gazette of the Republic of Serbia", No 3/2010).
[36] Djuric, Dj. (2012) Serbian insolvency law and its relation to EU insolvency standardization and the US bankruptcy code, in: *Substantive harmonization and convergence of laws in Europe*, ed. Rebecca Parry, Nottingham, p. 159-173.
[37] For example, exceeding the legal limits that applied during the previous Law on Bankruptcy appeared as a regular practice, or entrusting the performance of certain duties which by law belong to the jurisdiction of the court, the bankruptcy administrators, with reimbursement by the formal verification of the court, were included into cases of drafting court decisions
[38] Constitutional Court of Serbia, IUz-850/2010, ("Official Gazette RS", N°71/2012).

provisions on ex officio bankruptcy are unconstitutional raises many questions about the completed procedures and processes that are ongoing[39].

The relatively young branch of bankruptcy law in the Republic of Serbia is reorganization. It has not proved too successful, although there were several attempts with big companies. One of the major contradictions of the bankruptcy proceeding appeared to be different court treatment when the reorganization plan was not met[40]. This is especially true in cases where the reorganization plan was implemented for some time and in which certain restructuring measures were implemented. In this regard, in a situation where failure to comply with the approved plan of reorganization leads to the occurrence of the bankruptcy, the initiation of the bankruptcy proceedings and the determination that the bankruptcy proceeding is finalized in liquidation, the creditors are damaged in this case, while being the minority when voting on the reorganization plan. To make the things even worse, in the past the courts rendered different decisions. A number of courts argued that in such situations restitution must be made whereby the creditors whose claims were settled during the reorganization process were lead to a situation to return the money back they received to the bankruptcy estate which in the case of a payment made to individuals or employees and former employees can be nearly impossible to carry out[41]. Others have argued that a return to previous situation should not be made, but the bankruptcy proceeding should continue as it was. Thereby, the creditors who voted for the reorganization plan were damaged as they converted their claims awaiting the successful outcome of the reorganization. Thus, the principle of equal treatment of creditors in bankruptcy proceedings is threatened to collapse, as well as the rights guaranteed by the Constitution[42].

CONCLUSION

Serbian bankruptcy legislation has achieved significant progress for the last ten years. Thanks to the comprehensive reform in 2004, an end to the inefficient system was made, the process based on protection principles of creditors as well as leading an efficient process, new and modern bodies were introduced and prerequisites were made for successful regulations application in practice. Five years after the application of the Law, there was a new reform with the objective to improve previous and develop proceeding quality. However, having desired higher efficiency, and to protect state interests, the legislator committed certain errors, which resulted in abolishment of certain regulations, because of the Decision of the Constitutional Court on non-compliance with the Constitution. It is not clear whether behind the state's disposal of the debtor's property there was the hidden intent to confiscate the property or to just place it under control and protect it. In any case, Serbian legal system remains deprived of a body of preliminary bankruptcy in case of long term insolvency.

It is indisputable, however, that the conducted reforms and completion of the provision on reorganization enable debtors to smoother initiation of the bankruptcy proceeding with simultaneous filing of the reorganization plan. In this respect, debtors should be encouraged in this direction. In addition, it is necessary to encourage creditors to take more active role in managing bankruptcy proceeding, through filing motions for initiation of bankruptcy proceedings and through participation in creditor institutes.Introduction of institute of bankruptcy of physical entities is of great significance, as well as special procedure of preliminary bankruptcy reorganization, in order to prevent the commencement of incapacitating conditions for payment.However, for successful outcome of the economy in crisis, it is not only enough to have good and modern bankruptcy regulations, nor even their successful application. Since the bankruptcy is the part of legal-economic system of the country, it is necessary to act jointly in all key aspects of the economy. Regulations on bankruptcy in Serbia,

[39] Foreign Investors Council (2012), *White Book* , Proposals for the improvement of the business environment in Serbia, ed. Mihailo Crnobrnja, Beograd, p. 54-57.
[40] Ibid.
[41] Ibid.
[42] Ibid.

with the exception of the preliminary bankruptcy, are on a satisfactory quality level, it is only left to be successfully applied in practice.

LITERATURE

1) Bankruptcy Supervision Agency (2013) *Report on active bankruptcy proceedings in 2013*, Official web page of the Bankruptcy Supervision Agency, (Online) Available from http://www.alsu.gov.rs (Accessed: 1st of November 2013).
2) Colovic, V. (2013) *Nacela stecaja i stecajnog postupka : potreba za njihovim definisanjem u stecajnom zakonodavstvu*, in: Aktuelna pitanja savremenog zakonodavstva, Beograd.
3) Colovic, V. (2010) *Stecajno pravo*, Panevropski univerzitet Apeiron, Art print, Banja Luka.
4) Constitution of the Republic of Serbia ("Official Gazette RS", N°98/2006).
5) Constitutional Court of Serbia, IUz-850/2010, ("Official Gazette RS", N°71/2012).
6) Djuric, Dj. (2012) Serbian insolvency law and its relation to EU insolvency standardization and the US bankruptcy code, in: *Substantive harmonization and convergence of laws in Europe*, ed. Rebecca Parry, Nottingham, p. 159-173.
7) European Charter on Human Rights and Fundamental Freedoms, Protocol 1 (Online) Available from *conventions.coe.int/Treaty/en/Treaties/Html/005.htm* (Accessed: 1st of November 2013).
8) Foreign Investors Council (2012), *White Book* , Proposals for the improvement of the business environment in Serbia, ed. Mihailo Crnobrnja, Beograd.
9) Kozar, V. (2011) *Komentar Zakona o sporazumnom finansijskom restrukturiranju privrednih drustava*, Beograd.
10) Law on bankruptcy ("Official Gazette RS", N°104/09).
11) Law on bankruptcy proceedings ("Official Gazette RS", N°84/04 and 85/05).
12) Law on basic property relations "Official Gazette of the SFRY" N°6/80.
13) Law on companies ("Official Gazette RS", N° 36/11 and 99/11).
14) Malbasic, V. (2005) *Reorganizacija kao mera za sprecavanje stecaja*, SEF, Beograd.
15) Pocuca, M., Kozar, V., Stankovic, I. (2013) *Komentar Zakona o stecaju sa sudskom praksom i podzakonskim aktima*, Beograd.
16) Ilic-Popov, G., Jovanovic, N., Jovanovic, J. (2006) *Prirucnik za stecajne upravnike*, Intermex, Beograd.
17) Radovic V. (2009) *Licna uprava stecanog duznika de lege ferenda*, Savremene tendencije u medjunarodnom stecajnom pravu, p. 244-257.
18) Regulation on conditions and bankruptcy administrator election method by random sample ("Official Gazette RS", N° 3/2010).
19) Regulation on performing reorganization according to the "pre-packed" plan and its content, ("Official Gazette RS", N°37/2010).
20) Serbian Broadcoasting Corporation (2012), *U Srbiji najveći privredni pad u region* (Online) Available from: http://www.rts.rs/page/stories/sr/story/13/Ekonomija/1231700/U+Srbiji
a. +najve%C4%87i+privredni+pad+u+regionu.html (Accessed: 19th December 2012).
21) Slijepcevic, D., Spasic S. (2006) *Komentar Zakon o stecajnom postupku*, Ces. Mecon, Beograd.
22) Slijepcevic, D. (2009) *Pravni aspekti reorganizacije stecajnog duznika*, Beograd.
23) Supreme Court of Serbia (2012), Bulletin of the Supreme Court of Serbia, N°3, Beograd.
24) World Bank Group – Serbia (2012), *South East Europe Economy Shrinks in 2012, Faces Risks in 2013* (Online) Available from: http://www.worldbank.org/en/news/press-release/2012/12/18/south-east-europe-economy-shrinks-2012-faces-risks-2013 (Accessed: 1st November 2013).