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REPAYMENT OF CREDITORS' CLAIMS WITHIN INSOLVENCY PROCEEDINGS IN RUSSIA AND FRANCE: COMPARATIVE LEGAL ANALYSIS

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The relevance of the research topic.

In the process of carrying out the commercial activities of an organization, at one time or another, financial or other difficulties occur, which may lead the company to a complete termination of activity. Despite all the efforts made to restore stability, certain factors (economic, political, legal and other) may render the organization insolvent. In case of impossibility of further continuation of activity, the debtor enters the procedure of insolvency (bankruptcy). In such a situation, the public authorities take control over the future of this organization. It is obvious that in order to avoid abuse of the rights, the legislator should strictly regulate the actions of state bodies and other interested persons within the established procedure. This procedure is the bankruptcy procedure.

Bankruptcy law is often associated with public interference into the activity of the organization that has been rendered insolvent for some reason. Within the bankruptcy procedure, public authorities contribute to the debtor to restore its solvency, that often means a restriction of the legal capacity of the debtor. At the same time, many bankruptcy institutions that seem unfair to one of the parties appear to be effective both for the debtor and for creditors. In addition, the society as a whole benefits from their application in a long term. Such institutions can be introduced by the legislator both for the purpose of mandatory regulation of some important processes, as well as under the influence of requirements and interests of the society. In this case, the society is understood not only as debtors and creditors, but also other members of the society who are not directly involved in the bankruptcy procedure of a particular debtor.

Each stage of bankruptcy pursues certain goals. The tasks may range from assisting the debtor in restoring solvency as the most favourable outcome for the organization, to properly allocating the value of the debtor's property sold in the event of an unsatisfactory outcome of the task at the first stage. There is a growing trend in a growing number of countries to increase the role of rehabilitation in insolvency proceedings.

One of the objectives of the insolvency procedure is to prevent the forced liquidation of the debtor in connection with insolvency and thus to preserve the

organization as an active subject of the economic turnover. This goal is achieved through rehabilitation procedures that allow to restore the solvency of the debtor at the early stages of bankruptcy proceedings. The policy of "conservation of the enterprise", pursued by the French government in conducting activities under the insolvency proceedings, is implemented in the legislation of France and has ensured the availability of institutions that allow to reduce the number of insolvency proceedings ending by liquidation of the debtor.

At the stage of the liquidation, the preservation of the debtor is not the task any more. In case, the debtor cannot pay its debts and restore its solvency, the organization is subject to compulsory liquidation, its assets are sold and the proceeds are transferred to creditors in the repayment of existing debts. The main objectives pursued by the state at the stage of liquidation in the bankruptcy procedure are the sale of the property of the liquidated debtor and the fair distribution of its value between creditors, which determines the need for legislative consolidation of the distribution priorities. In this case, the law protects not only the debtor, but also its creditors. Moreover, the level of development of the legal framework depends on the possibility of economic cooperation between contractors. Considering at the stage of conclusion of a contract the level of risks associated with the insolvency of the debtor, the creditor may vary and choose certain ways to ensure the performance of obligations, as depending on this choice its chances of obtaining debt from a bankrupt may be increased according to the law of a certain jurisdiction.

The choice of comparative analysis of the Russian and French legislation as the subject of the study is due to the fact that, unlike Russia, where at the present stage the first bankruptcy law was adopted a little more than 20 years ago, the history of French insolvency law has already several centuries. However, some researchers argue that despite long history of French civil law, the French civil law and in particular the Civil code "provide much more flexibility than the system of precedents in the common

law"[1]. The positive experience of France in the field of legal regulation of insolvency could serve as one of the sources of improvement of the Russian legislation in the field of insolvency of organizations.

The history of legal regulation of insolvency in Russia begins in Ancient Russia. Some provisions on bankruptcy were contained in the Russian Truth, the Pskov Judicial Charter, the Code of Law of Ivan III[2]. Then, from 1740 to 1917, there comes the stage of codification and intensive development of bankruptcy law. At that time, the legal sources are statutes about bankruptcy of 1740, 1753, 1763, 1768, 1800, the Charter of the trading insolvency of 1832, which was in force until the revolution of 1917. In the Soviet period, rules on bankruptcy were in force until the end of the NEP period[3]. In connection with the establishment of a monopoly of state ownership, the need to regulate the insolvency of enterprises simply disappeared. As a result, the development of bankruptcy law in Russia was suspended for more than 60 years. In the modern Russian legislation, the first law regulating the institution of bankruptcy was adopted in 1992, then the new law was approved in 1998, and finally, at present, the insolvency of organizations is regulated by the Federal law No. 127-FZ "On insolvency (bankruptcy)" of 2002 (hereinafter – the bankruptcy law). In connection with the development and introduction of many amendments to the law, it seems appropriate and relevant to study some insolvency institutions within the framework of a comparative legal approach. This analysis helps to identify the strengths and weaknesses of different ways of regulating relevant institutions and effective methods of resolving problematic issues in this area. Comparative legal analysis allows to explore the positive experience of the legislation of other countries and, if necessary, practical applicability to borrow effective regulatory instruments in this area.

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[1] Guillot, D. Napoleon's code and modern time // Vestnik grajdanskogo prava. – 2015. – No. 1. – T. 15. – P. 156.

[2] Sviridenko, O.M. Russian laws on bankruptcy: history of development. – Irkutsk: Publishing of Irkutsk university, 1929. – P. 3-13.

[3] Kleinman, A.F. On the bankruptcy of private persons according to soviet laws on procedure. – Irkutsk: Publishing of Irkutsk university, 1929. – P. 3-4.

In France, the main source of law that has governed insolvency proceedings for two centuries is the Commercial code of 1807 (hereinafter referred to as the French Commercial code), which has been amended in accordance with the historical development of the law. Initially, one third of the code was devoted to insolvency. The most significant amendments were made by special laws in 1889, 1967, 1985, 1994. In 2005, the law on the preservation of enterprises No. 2005-845 was adopted, and in 2014, order No. 2014-326 on the reform in the field of prevention of difficulties of enterprises and insolvency procedures was adopted. During this time, the legislator has defined the requirements of the society and the principal objectives of the insolvency procedure, as well as has developed many practices to achieve them. At the same time, not only the legal doctrine influenced the changes in legislation and judicial practice, but also the legislation forced to look at the seemingly well-established theoretical foundations of bankruptcy and business law from a different angle.

According to the statistics of the Supreme Arbitration Court of the Russian Federation, the number of bankruptcy cases considered by arbitration courts (for which the proceedings were completed) was 74 in 1993[4], in 2013[5] the number of completed insolvency proceedings was 23,721, in 2016[6] – 31,788. French courts, in 1993[7],

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[4] Results of work of arbitration courts of the Russian Federation in 1992-2001 // Internet portal "Supreme Arbitration Court of the Russian Federation", 2010 / / [Electronic resource] Access mode: http://www.arbitr.ru/press-centr/news/totals/10anniversary/details.htm (date of access: 02.07.2016).

[5] Information on consideration of insolvency (bankruptcy) cases by arbitration courts of the Russian Federation in 2010-2013 / / Internet portal "Supreme Arbitration Court of the Russian Federation", 2016 // [Electronic resource] Access mode: http://www.arbitr.ru/_upimg/A0397A1AFD76C6B4E3082E213B98BB5D_11.pdf (date of access: 02.07.2016).

[6] Report on the work of arbitration courts of regions of the Russian Federation on consideration of bankruptcy cases in 2016 // Judicial Department of the Supreme court of the Russian Federation, 2017 // [Electronic resource] Access mode: http://www.cdep.ru/userimages/sudebnaya_statistika/2017/AC1a_1-2017.xls (date of access: 07.01.2018).

[7] Saint-Alary-Houin, C. Droit des entreprises en difficulté. – Paris: Montchrestien, 1996. – P. 728.

examined 63 000 applications for insolvency, and in 2015[8] reviewed nearly 80 000 applications for the introduction of insolvency proceedings.

Thus, it is of scientific interest to study the long-term experience of France in the regulation of the treatment of the debtor's property in the insolvency. This substantiates the choice of the main method of research, which is comparative analysis, allowing to compare the regulation of insolvency institutions in the law of Russia and France, to identify similarities and differences in the provisions of the legislation, the current judicial practice and the prevailing doctrine. As a result of comparative legal analysis of the legal systems of Russia and France, the thesis identifies effective legal norms governing the institution in both countries, and the possibility of implementing such legal regulation in order to improve the legislation of a state.

With the enhancement of international relations and economic globalization, trade relations between Russia and France are increasingly strengthening and developing. With Russia's accession to the WTO, it can be argued that Franco-Russian relations will develop confidently. However, differences in legal systems hinder the stability of these relations. Foreign organizations that do not have sufficient knowledge of Russian law, in particular, in the field of bankruptcy law, have reasonable concerns when concluding contracts with Russian contractors, because they do not have full confidence in the preservation of their status and the ability to recover debt in the event of bankruptcy of a counterparty under Russian law, and vice versa. This explains the practical interest of the study, which consists not only in the development of recommendations on improvement of the Russian legislation on bankruptcy taking into account positive foreign experience, but in the justification of the practical utility of selection of a particular model of behavior of actors of economic activities to reduce the risks associated with the liquidation procedures in respect of their counterparty.

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[8] Le Ministère de la Justice, Les chiffres-clés de la Justice, Édition 2015 // [Электронный ресурс] Режим доступа: http://www.justice.gouv.fr/publication/chiffres_cles_20151005.pdf (дата обращения: 02.07.2016).

In this study, it is proposed to analyze the order of repayment of creditors' claims from the value of the sold property of the debtor[9] in the framework of liquidation procedures in accordance with the laws of Russia and France, and related issues, to identify differences in the ways of its regulation, to make proposals on possible ways to improve the existing rules on the basis of effective methods tested in one of the legal systems under consideration.

Russian legislation on bankruptcy is very concise in this area, many issues are subject to resolution on the basis of general rules of civil law. On the contrary, the rules of the French Commercial code on insolvency sufficiently regulate the sequence of repayment of creditors' claims, taking into account various privileges, special status and preferential rights. The provisions of the law on methods of security also apply. At the same time, the French Commercial code may establish some special rules with respect to the legal status of creditors whose claims are secured.

The procedure for repayment of creditors' claims during distribution of the value of the sold property of the debtor requires a full and comprehensive analysis. First of all, such an analysis should be carried out in each bankruptcy case by the liquidator. However, for creditors, an understanding of the rank of their claim is necessary to determine its status and possible risks in the event of bankruptcy of the debtor at the stage of entering into a relationship with the debtor. After all, according to statistics, "the share of repaid claims of creditors to debtors, legal entities and individual entrepreneurs (except debtors of credit institutions) in the total amount of claims for bankruptcy cases completed in 2016 amounted to 3.2% compared to 5% in 2015, that is, it decreased by 1.6 times"[10].

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[9] In this study, the debtor is understood to be only legal entity, without examining issues related to the regulation of bankruptcy of certain categories of legal entities (credit institutions, natural monopolies, etc.).

[10] Creditors in the course of bankruptcy of legal entities in 2016 managed to recover 1.6 times less money than a year earlier / / United Federal register of bankruptcy information, 23.01.2017 // [Electronic resource] Access mode: http://www.arbitr.ru/press-centr/news/totals/10anniversary/details.htm (date of access: 07.01.2018).

The degree of development of the research topic.

Some problems of distribution of the valeu of sale of the debtor's assets between creditors were reflected in the works of Russian and foreign researchers. Among the Russian scientists it is possible to name such specialists as S.A. Karelina, V.F. Popondopulo, M.V. Teliukina, V.N. Tkachev, etc. Comparative analysis of the regulations on bankruptcy of foreign countries was carried out, in particular, by V.V. Stepanov, E.A., Kalinichenko, by V.V. Valagin, E.A. Kravchenko, O.A. Studentsova. The dissertations on PhD related to the subject of the present study were made by A.O. Potashnik, A.E. Cindyaikin, A V. Himicheva, O.V. Ovchinnikova, E.I. Nazarova, E.N. Matveeva, A.M. Larin, K.B. Koraev, A.V. Valuisky.

Although these works deal with various problems related to the distribution of the debtor's property during the insolvency procedure, a full comparative legal analysis of the Russian and French legislation on the distribution of the debtor's property between creditors has not been carried out. Currently, there are no relevant French sources translated into Russian. Modern works of French scientists are used in Russian studies sparsely. The absence in the domestic legal literature of special monographic literature on the topic confirms the insufficient degree of its development.

Thus, despite the interest of Russian scientists in the legal regulation of various institutions of bankruptcy in the European legal order and the priority of creditors' claims, in particular, the regulatory framework, law enforcement practice and scientific doctrine developed over the long history of the law of enterprises in a difficult situation (hereinafter in this regard for the sake of uniformity and convenience will use the term – bankruptcy law) in France, remain insufficiently investigated by Russian scientists, which determines the relevance of this work.

Among foreign scientists a significant contribution to the development of problems related to the debtor's assets and distribution of value among creditors is made by P.-M. Le Corre, Le Corre-Broly, F. Pérochon, C. Saint-Alary-Houin, Ph. Pasteur, F.-X. Lucas and others.

Due to the fact that the Russian legal science is experiencing some lack of fundamental scientific works and monographs in the field of comparative legal analysis of the legislation of the Russian Federation and France on insolvency and, in particular, on the legal regime of distribution of the debtor's property and repayment of creditors' claims, the researcher conducts a study of the relevant doctrinal and regulatory sources of France. An issue of a particular interest is the legislation of other European countries, which have traditionally adopted and developed many of the concepts introduced by the French Civil code (hereinafter – the French Civil code), for example, Monaco, Luxembourg, as well as us bankruptcy legislation, which is largely borrowed now by the countries of the continental legal system and, in particular, France.

The purpose of the dissertation research is the development and scientific justification of mechanisms and methods to increase the level of repayment of creditors' claims from the value of the sold property of the debtor, while maintaining a balance of interests of creditors and the debtor, and related issues, as well as conceptual proposals for reforming the distribution priorities in Russian law on the basis of the possibility and feasibility of appropriate borrowings from French law. To achieve this goal, the thesis solves the following tasks:

– to analyze the distribution prioroties according to the French and Russian law, to reveal differences and similarities, and also the basic principles of construction;

– to characterize the main sources of French bankruptcy law and their role in the regulation of issues related to the treatment of the debtor's property and the distribution of its value between creditors, to form a theoretical basis for the analysis of the legal regulation of these issues;

– to identify problems arising in connection with the establishment of distribution priorities in Russia and formulate proposals to address these problems;

– to make the distinction between preceding and subsequent claims under French law and to describe the features of the relevant claims, to determine the composition of the subsequent claims and conditions of their preference right;

– to formulate de lege ferenda criteria for distinguishing privileged current and registered creditors' claims in the Russian law, taking into account the influence of these concepts on the practice of repayment of claims;

– to identify signs of attribution of certain categories of claims to the privileged and analyze the grounds for their establishment by the legislator;

– to study the characteristics of the mechanisms aimed at restoring the bankruptcy estate of the debtor in order to fully repay creditors' claims;

– to justify the possibility of borrowing in the Russian law institutions developed and applied in French law to ensure a balance between the interests of the debtor and creditors and proved to be effective in practice;

– to formulate scientific conclusions on the research, theoretical proposals and practical recommendations for the development of legislation in the field of law.

The **object of the thesis** is the social relations arising between the participants of insolvency (bankruptcy) procedures and between these participants and third parties during the events aimed at the distribution of the cost of the debtor's property sold and the establishment of the distribution priorities.

The **subject of the research** is the Russian and French legal acts devoted to the legal regulation of insolvency and, in particular, to the treatment of assets of the debtor and the distribution of their value between creditors, as well as court decisions, decisions of executive authorities and law enforcement agencies in Russia and France, the norms of advisory acts, legal doctrine in this area.

Methodological basis of the thesis. In the preparation, studying and processing of theoretical and practical materials of this thesis, general scientific methods (system analysis, comparison and description, formal logic techniques) and private scientific methods (formal legal, comparative legal, historical and legal, teleological, structural and functional methods) were used. The central place in the work was taken by the comparative legal method, determined by the objectives of the study and allowing to make a comprehensive analysis of the legislation of the two legal systems and to identify their similarities and differences, effective institutions, etc.

Theoretical basis of research was based on the works of Russian scientists-lawyers in the field of civil and business law: V.V. Vitryansky, G.F. Shershenevich, E.A. Sukhanov, A.P. Sergeev, O.N. Sadikov, E.P. Gubin, P.G. Lakhno, I.E.Abowa, A.Y. Kabalkin, I.V. Ershova, G.D. Otnjukova, G.A. Gadzhiyev and other researchers.

In this thesis, the scientific works of K.P. Pobedonostsev, A.F. Fedorov, V.A. Trainin, D.V. Turkevich, T.D. Alenicheva, S.P. Grishaev, V.S. Belykh, A.N. Borisov, A.V. Valuisky, A.H. Holmsten, A.V. Ovchinnikova, E.G. Dorogkhina, N.L. Duvernoi, S.A. Karelina, A.F. Kleinman, E.A. Kalinichenko, S.A. Kuznetsova, A.Y. Kurbatov, G.Pape, S.E. Pirogova, V.F. Popondopulo, R.O. Zaitsev, V.V. Stepanov, M.V. Teliukina, V.N. Tkachev, A.V. Himichev, T.P. Shishmareva and other specialists devoted to the study of individual institutions and problems of legal regulation of insolvency, were used. Selected issues related to the topic of the present work are highlighted in the dissertation research of T.V. Borisenkova, N.U. Kavelina, K.B. Koraev, E. A. Kravchenko, T.K. Martyshkina, A.V. Ovchinnikova, O.A. Potashnik, O.A. Studentsova, A.V. Himichev, G. P. Tsarik, A.E. Cindyaikin, M.E. Erlich, and others.

In the framework of the present study the author analyzed scientific works of foreign scientists (experts on problems of insolvency in France), such as: J. Bonnard, R. Bonhomme, J. P. Branlard, J. Vallansan, D. Vidal, D. Voinot, A. Jacquemont, P. Le Cannu, P.-M. Le Corre, E. Le Corre-Broly, F.-X. Lucas, A. Lienhard, F. Pérochon, Ph. Pasteur, F. Reille, Ph. Roussel Galle, C. Saint-Alary-Houin and other researchers.

Legal and regulatory framework of the study. The study is based on Russian and French legal acts on the distribution priorities. The fundamental normative acts include the French Civil code, the French Commercial code, the law of 2005 on the preservation of enterprises, the Civil code of the Russian Federation, the Russian law on bankruptcy, etc.

The empirical basis of the study. The study used the decisions of the executive authorities of the Russian Federation and France, adopted in pursuance of legal acts regulating the distribution of the value of the sale of property between the creditors of

the debtor. In addition, judicial acts of Russian and French courts were analyzed. The author also uses materials from the media, Russian and French competent authorities and various organizations, in particular, the All-Russian Union of insurers and the Association for the management of the regime to ensure the claims of employees. Statistical and reference materials of arbitration courts of the Russian Federation and the Ministry of justice of France are analyzed as well.

The scientific novelty of the study is that it presents conceptual proposals for the development of institutions to the repayment of creditors' claims, which have been tested in France and have shown their effectiveness and feasibility. The thesis proposes a criterion for limiting the concept of current payments and ways of its practical implementation. In addition, the study identifies ways to prioritize the repayment of creditors' claims, mechanisms for establishing privileges for individual creditors, and suggests effective ways to use privileges to achieve the objectives of a particular insolvency procedure.

The proposed changes allow to solve a number of problems of the Russian bankruptcy law, which are currently faced by the legislator. The thesis presents an analysis of the possibility and practical applicability of some institutions developed and applied in French law, with a view to possible use in the reform of Russian law.

Provisions to be defended. The conducted dissertation research allowed to formulate the following main provisions, which are submitted for defense:

1. For the purpose of limiting the concept of current payments in the bankruptcy law, it is proposed to use in addition to the temporary criterion also the target criterion, the analogue of which has been applied since 2006 in France. Claims arising after the date of acceptance of the application for recognition of the debtor as bankrupt, satisfying at the same time the target criterion, namely the claims arising for the needs of the insolvency procedure, and the claims necessary for the needs of the ordinary course of business of the debtor, which it continues to conduct during the insolvency proceedings, should have an advantage in the bankruptcy procedure.

2. The legal status of claims that do not meet the target criterion for any reason is proposed to be equated with the legal status of registered claims, as tested in France. It is sufficient to reduce the priority of such current claims to satisfaction within the framework of repayment of claims that arose before the introduction of bankruptcy prcedure, in accordance with the rules of distribution of the value of the debtor's property legally established for them.

3. It is advisable to set a time limit for notifying the arbitration manager and the debtor of the creditor's claims for current payments within three months from the date of occurrence of such a claim, which will ensure the completeness and accuracy of determining the amount of the debtor's debt in order to prevent violations of the distribution priorities order, establishment of the real degree of the possibility of restoring the debtor's solvency and accounting of the current debt to include it in the sale price of the debtor's enterprise.

The consequence of failure to notify within the specified period will be the repayment of such a claim after the completion of settlements with creditors of the corresponding rank of claims for current payments and before the claims of creditors of subsequent ranks.

4. On the basis of the analysis of the French legislation in the field of social insurance, it is established that the protection of employees' rights can be ensured by a special mechanism for obtaining the employee's earnings in the shortest possible time, namely the social insurance system in case of loss of wages due to the insolvency (bankruptcy) of the employer.

The system of insurance with the description of the main elements is proposed by the author: the mechanism of insurance, volume of insurance coverage, terms of payment, the role of the insurer, the order of transition of claims to the insurer for the amount of payment, priority of their repayment.

5. Subject to the creation of the proposed social insurance system, the claims for payment of severance payments and (or) remuneration of persons working or having worked under an employment contract shall be excluded from the list of claims

receiving partial satisfaction from the value of the collateral in accordance with article 138 of the bankruptcy law.

6. The author proves the expediency, economic validity and practical applicability of the implementation in Russia of the rules on special privilege of the claims of creditors who actively participated in the restoration of the financial position of the debtor in the period immediately preceding the introduction of insolvency proceedings against the debtor, in accordance with the court-approved agreement between the debtor and its creditors and (or) third parties in the framework of preventing measures. Such claims shall be satisfied until the third-priority creditors' claims are satisfied.

7. For the purpose of scientific systematization and classification of various types of claims, the author substantiates the need to allocate to a separate category (as it is implemented in the French doctrine) the claims of creditors secured by means of a title security, on the basis of the characteristic features that determine their fundamental differences from the rest of the claims. The peculiarity is that despite the similarity of the legal nature (secured claims), such creditor, unlike the others, does not participate in the distribution of the debtor's assets according to the established order, and the surplus (the amount of excess of the value of the collateral over the amount of the secured claim) is not subject to return to the debtor or other creditors[11].

8. Taking into account the presence in the Russian legislation of the norms allowing to use the legal mechanisms mediating title security, it is reasonable both from the social and economic, and from the legal perspective to introduce a general rule according to which in case of excess of the actual cost of the subject of title security over the size of the secured claim such surplus is subject to transfer by the creditor to bankruptcy estate of the debtor.

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[11] In turn, collateral claims are not included in this category, since their legal regime is regulated by the bankruptcy law, and creditors are subject to the rules and requirements of the introduced insolvency procedure.

The determination of the real value of the collateral is achieved either by sale at auction or by independent evaluation (in case of leaving of the collateral to the creditor-owner).

9. The rights granted to the secured creditor through the transfer of ownership of the security should be limited by extending to it the legal regime of collateral claims in the debtor's bankruptcy procedure, which will restore the balance of interests of the parties to the legal relations established by the bankruptcy law. All creditors' claims, including claims secured by transfer of title, will be subject to the provisions of the bankruptcy law.

The theoretical significance. Analysis of the legal norms on the procedure of repayment of creditors' claims with the use of comparative legal method is of high interest because it allows to choose the optimal approach for determining the scope of claims for priority repayment and the appropriate legal regime ensuring the balance of interests of different groups of individuals experiencing the consequences of insolvency proceedings against the debtor. As a result of the research carried out by the author, the conclusions concerning the main features of the legal regime of creditors' claims under the legislation of Russia and France, privileges, as well as ways of extraordinary repayment of claims, are made.

Practical significance of the work and testing of the results of the dissertation research. Based on the findings of the dissertation research, the author formulated proposals for amendments and additions to the Russian insolvency law, which determine the practical significance of the work.

In particular, the author proposed to amend the legal definition of current payments contained in article 5 of the bankruptcy law (see § 1.2 of Chapter 1 of the thesis), to create a system of compulsory social insurance in case of loss of earnings due to insolvency (bankruptcy) of the employer (see § 2.1 of Chapter 2 of the thesis), to fix in the bankruptcy law the privilege for claims of creditors who participated in the restoration of the financial position of the debtor at the pre-bankruptcy stages (see § 2.2 of Chapter 2 of the thesis), as well as to make changes

regarding the order of distribution of the value of the pledged property (see § 2.3 of Chapter 2 of the thesis).

Proposals for the reform of legislation and other conclusions and results of the dissertation research can be used both by practicing lawyers and in the scientific field: the results can be taken into account by the relevant committees and groups involved in the development of reforms and changes in the bankruptcy legislation, recommendations for the application of certain provisions of regulations, law enforcement and judicial bodies, arbitration managers and lawyers representing the interests of both debtors and creditors. In addition, the findings and comparative analysis can be used for further research on this topic and related issues, since the information contained in the study on bankruptcy law in France characterizes the current state of the legal framework of French bankruptcy law.

In addition, the main provisions and conclusions of the study can be used in teaching of a number of disciplines – "Civil law", "Business law", "Bankruptcy law", "Labor law". The reliability of the study is confirmed by the use of scientific methods accepted and widely known in the field of jurisprudence. The results of the research were discussed and reported by the author at scientific conferences.

The structure and volume of work are determined by the purpose and methodology of the study. The thesis consists of introduction, two chapters, consisting of six paragraphs, conclusions and a list of references.

The main content of the work:

The introduction substantiates the relevance of the research topic, determines the degree of development of the topic, identifies the goals, objectives, as well as the object, subject and methods of research, describes the theoretical, legal and empirical base of the research, characterizes the scientific novelty of the work. The provisions submitted for protection are formulated, the theoretical and practical significance is revealed, the data on approbation of research results are given.

The first chapter "Order of repayment of the current (subsequent) claims" consists of two paragraphs and reveals the legal regime of repayment of the current

(subsequent) claims, their concept and distinctive features in accordance with the legislation of Russia and France. In the first chapter, the author also indicates the place and importance of liquidation procedures in insolvency (bankruptcy) in the system of forced debt collection, the reasons for the allocation of creditors among other persons involved in the bankruptcy case, identifies the types of claims and the criteria for their classification, determines the content of the institute of repayment of creditors' claims in insolvency in the author's concept and describes the prerequisites for the allocation of certain types of claims for their consideration in the text of the thesis.

In **the first paragraph of the first chapter "Distinctive features of the current claims (in Russia) and subsequent claims (in France)"** the author analyzes the nature and scope of this category of claims on the basis of existing regulations and judicial practice. The author reveals the homogeneity of the current claims under Russian law and the so-called subsequent claims under French law, which makes it possible to conduct a comparative legal analysis. The primary criterion for assigning claims to this category is the time criterion, namely the date of occurrence of the claim.

Further, the author presents the internal and external order of repayment of the current (subsequent) claims and reveals the position of such creditors in the distribution of the value of the debtor's assets in relation to other creditors and to each other.

The second paragraph of the first chapter "Conditions for the recognition of the current (subsequent) claims as privileged" is devoted to the detailed analysis of criteria (conditions) of the assignment of claims to the privileged rank. The thesis examines the conditions provided by the French legislation for granting priority to subsequent claims (legality of occurrence, time interval of occurrence and special purpose), as well as the grounds and reasons for their establishment.

It is revealed that the concept of current payments established by the Russian bankruptcy law is limited to the temporary criterion, which is a prerequisite for problems associated with the implementation of unreasonable costs in the bankruptcy case.

The author concludes that it is reasonable to limit the concept of current payments in Russian law, since at the moment the existing mechanisms to overcome the negative consequences in connection with the implementation of current payments that do not meet the objectives of the insolvency procedure are not enough to restore the rights and protect the interests of the debtor, creditors and other persons.

The author makes a conclusion about the appropriateness of limiting the concept of current payments in the Russian law, as currently existing mechanisms to overcome the negative effects in connection with the current payments that are not consistent with the objectives of the insolvency proceedings are insufficient to restore the rights and protection of interests of debtor, creditors and other entities. Moreover, these mechanisms seem relatively complex to implement. The author reveals difficulties in contestation of the transactions made by the debtor on the grounds provided for in chapter III[1] of the bankruptcy law (for example, as a transaction with preference, suspicious transaction), as well as in bringing the arbitration manager to responsibility. In addition to the problems encountered in the practical implementation of these methods, these mechanisms involve a long period of implementation, which is not effective for either interested creditors or the debtor.

The author notes that for the purpose of protecting the interests of creditors and limiting the scope of subsequent claims, the French legislator introduced a special criterion according to which privileged claims include only those claims that arose for the needs of the procedure, or for the needs of the temporary continuation of the debtor's activities permitted in accordance with article L. 641-10 of the French Commercial code, either in exchange for a counter-provision to the debtor made during such temporary continuation of the debtor's activities (claims arising in connection with the execution of current or newly concluded contracts) or in pursuance of the current contract determined by the liquidator.

The current wording of the definition of current payments in the Russian bankruptcy law seems to be too broad, allowing the debtor to spend money in bankruptcy proceedings to the detriment of creditors whose claims are included in the

register of claims. The methods of preventing the negative consequences of current payments that do not meet the objectives of the bankruptcy procedure, namely the recognition of transactions invalid on general or special grounds, the involvement of the arbitration manager to responsibility, provided by the legislation, are not sufficiently effective.

In order to solve this problem, the author considers it appropriate to limit the concept of current payments in the Russian bankruptcy law. The author proposes to consider as an additional criterion the need of such claims for the purposes of insolvency proceedings and the continuation of the enterprise. Based on the analysis of previously existing Russian legislation on bankruptcy, the draft of the current law on bankruptcy, the various projects on amendments to the law on bankruptcy, the French experience, Russian experience in law enforcement and legal doctrine, the author makes a conclusion on the practical applicability of such constraints and represents the wording of the necessary amendments to article 5 of the bankruptcy law. Accordingly, the current claims are proposed to include claims that, first, arose for the purposes of insolvency proceedings, and second, are necessary for the ordinary course of business of the debtor, which it continues during insolvency proceedings.

Thus, it is proposed to define the current claims in two stages. In the first phase, a time criterion is used to distinguish claims on the basis of time of occurrence. According to the current legislation and under this criterion, liabilities and obligatory payments arising after the date of acceptance of the application for recognition of the debtor as bankrupt are considered current.

Invalidation of transactions involving expenses of the second group could be an obstacle to interaction with the debtor of other creditors after the introduction of bankruptcy proceedings because taking into account the possibility of applying of such a measure to them, the number of persons willing to work with the bankrupt, would be reduced significantly. The issue would be further exacerbated if the law established general rules and the specific features of improper payments were to be determined by the courts in the context of specific factual circumstances. In connection with this, it is

supposed to consider the deprivation of the privilege provided for the current claims in the bankruptcy case and the application to them of the regime provided for the registered claims as a consequence of non-compliance with the target criterion.

Further, the author justifies the need for accurate determination of the number and amount of the following (current) claims for the purposes of the bankruptcy proceedings, including for purposes of determining the financial condition of the debtor and the possibility of recovery and appropriate allocation of the value of the property, which proves the feasibility of the statutory period to notify the arbitration manager and the debtor on the claims for current payments. Claims that have not been submitted within the specified period shall be satisfied after the completion of settlements with creditors of the corresponding rank of claims for current payments until the repayment of claims of creditors of subsequent ranks. The relevant proposals to change the law on bankruptcy are formulated.

The legislation of both countries provides for the period of application of registered (previous) claims, but the Russian law provides for a softer consequence of its omission, while under French law the creditor is considered to have lost the right to claim under the insolvency procedure and does not participate in the distribution of the value of the debtor's assets, which seems unjustified in comparison with the creditor's omission.

Chapter two "Order of repayment of registered (previous) claims" reveals a legal regime to address registered (previous) creditors and peculiarities inherent to the different categories of claims.

At the beginning of **the first paragraph of the second chapter "Guarantee of remuneration of employees in case of insolvency of the employer: French experience and Russian initiatives"** the author presents an overview of the main characteristics of the legal regime for repayment of employees' claims under French law, defines the doctrinal concept of super-privileges of employees, and describes the legal system of guaranteeing payments to employees and the mechanism for its implementation.

Then the author characterizes the main ways to ensure the interests of employees in accordance with Russian law. Identifying a certain insufficiency of protection of employees' rights, the author concludes that it is possible to introduce in Russia a system of social insurance in case of loss of wages due to the insolvency (bankruptcy) of the employer.

It is proposed to establish the term of the insurance payment not later than one month from the date of the insured event. To achieve this goal, the insured event must be understood as the existence of the debt to the insured person on wages as of the date of adoption by the court of one of the following judicial acts in the bankruptcy case of the debtor: on the introduction of supervision, on the recognition of bankruptcy, if in accordance with the legislation supervision procedure was not applied, on the termination of bankruptcy proceedings due to the lack of funds sufficient to reimburse court costs (if the procedure applied in the bankruptcy case against the debtor was not introduced).

It is reasonable to establish the volume of insurance coverage in the amount due by the debtor before the insured person for the last three calendar months preceding the date of initiation of proceedings on the bankruptcy of the debtor, in the amount of not more than thirty thousand rubles for each month for each person.

It is proposed to establish a rule on the transition in the order of subrogation of the employee's claim to the Social Insurance Fund of the Russian Federation (hereinafter referred to as the Fund, FSS) within the amount paid to the employee with preservation of the distribution priorities for claims of employees that will promote the solution of three main tasks: return of the amounts paid by the third party (insurer), that is financing of the insurance system, assignment of responsibility to the person responsible for emergence of insolvency, and also restraint of the insurer, that is prevention of its unreasonable enrichment at the expense of Fund.

The author substantiates necessity and efficiency of its introduction on the basis of the French and international law and practical possibility of creation of the similar

mechanism in Russia taking into account the existing similar institutions, in particular in the sphere of insurance of bank deposits of physical persons.

The author proposes a justification for excluding of the claims for payment of severance pay and (or) remuneration of persons working or having worked under an employment contract from the list of claims receiving partial repayment from the cost of the collateral in accordance with article 138 of the bankruptcy law, subject to the creation of the proposed social insurance system. The purpose of these changes is to provide enhanced protection to secured creditors, which is a prerequisite for reducing the cost of commercial credit and, accordingly, the economic growth of a particular enterprise and the economy as a whole. The need for priority protection of social categories of creditors, which is often opposed to the need to support the market, in this case is ensured by the introduction of an additional guarantee of repayment of employees' claims, thereby allowing the implementation of a compromise solution in prioritizing secured claims.

The second paragraph of the second chapter "Privilege of creditors participating in the conciliation procedure: possibility of adoption into the Russian law" is devoted to the analysis of the institution of French law, providing a preference to creditors who assisted in restoring the financial position of the debtor at the pre-bankruptcy stages, and the possibility of its borrowing in Russian law. The author analyzes the socio-economic reasons justifying the need to stimulate the interaction of creditors with the debtor at the pre-bankruptcy stages. The procedures used in the bankruptcy case, including rehabilitation procedures, as well as measures to prevent bankruptcy have a common goal – the maximum repayment of creditors' claims. Restoration of the financial condition of the debtor ensures the implementation of this goal to the greatest extent, as it implies the possibility of full repayment of creditors' claims. The greatest success of the debtor's recovery is achieved when it is applied at the earliest stages of difficulties, including when the insolvency procedure has not yet been introduced against the debtor.

In this regard, it is proposed to create a mechanism of legal regulation, which consists in granting priority to creditors in the distribution of the value of the sold property of the debtor, who at the pre-bankruptcy stage actively participated in restoring the financial position of the debtor (provided additional financing, supplied goods (works, services), etc.). Such preferential position of creditors shall consist in establishment of a separate rank for repayment of these claims which in the conditions of the Russian practice can be established between the second and third rank of creditors.

The introduction of such a mechanism implies a detailed elaboration and reform of existing preventive mechanisms, including the need for approval by the court of the agreement concluded between the debtor and its creditors and(or) third parties in the framework of preventive measures, since such an agreement would mean a change in the order of repayment of claims. At the same time, mandatory restrictions should be introduced related to the suppression of unfair behavior of counterparties, in particular, the prohibition of excessive subsidizing of the debtor in a situation where the creditor (especially professional credit institutions) becomes apparently aware of the inability of the debtor to restore the solvency.

In the third paragraph of the second chapter "Repayment of other registered (previous) claims in Russia and in France" the author gives the analysis of distribution priorities of registered (previous) creditors and pays attention to the legal regime of collateral creditors, offering a brief overview of various types of regulation of claims secured by pledge in foreign legal systems, as well as a review of theoretical views of Russian scientists on the situation of collateral creditors. The legal nature of collateral relations is studied, the problem of credit security is identified, justifications from the point of view of economic goals and aspects of social justice are given, allowing to draw a conclusion about the possibility and expediency of changing the provisions of the Russian bankruptcy law on the distribution priorities of secured claims.

Taking into account the creation of the social insurance system described in the first paragraph of the second chapter, the author proposes to amend article 138 of the bankruptcy law and to exclude the claims for payment of severance pay and (or) remuneration of persons working or having worked under an employment contract from the list of claims receiving partial repayment from the cost of the collateral.

In addition, in order of full repayment of creditors' claims, the legislation of both countries provides not only the possibility of repayment at the expense of the value of the debtor's assets, but also with the help of special mechanisms that allow foreclosure on the property of third parties. The author analyzes the institutions of bringing to secondary liability of persones controlling the debtor and the extension of the procedure to third parties, examines the conditions of their application. When implementing these mechanisms, the balance of interests of various parties to the legal relationship must be observed, since the doctrine of removing the corporate veil, the instrument of which is the listed mechanisms, may conflict with the fundamental principles of corporate law, which allows to separate the property of a legal entity from the property of its founders, and therefore should be used in exceptional cases in order to avoid a negative impact on the stability of economic turnover.

Paragraph 4 of the second chapter "Differences in the legal regime of other creditors' claims" reveals the issues of repayment of creditors' claims, which for one reason or another are not included in any of the ranks established by the bankruptcy legislation. Some civil law instruments allow a creditor to obtain repayment of its claim without participating in the insolvency proceedings, in particular with regard to the means of withdrawing certain property from the debtor's insolvency estate. For practical purposes, the author conducts a comparative analysis of the terminology used by the French and Russian legislator in relation to the definition of the debtor's property, and then gives a description of the main tools that allow to repay the claims in a preferential manner.

When the title security is used, the debtor transfers ownership of the asset to the creditor as security for the performance of its obligation under the principal obligation,

thus the asset is removed from the debtor's property. In case of proper performance by the debtor of its obligations, the creditor undertakes to return to the debtor the ownership of the previously transferred asset. In case of violation by the debtor of its obligations, the creditor remains the owner and can satisfy its claim against the debtor by retaining the asset or other disposal, including the sale to a third party, since such asset is already part of the creditor's property, not to be included in the bankruptcy estate of the debtor.

Thus, creditors whose claims are secured through the transfer of title are now granted out of turn, primarily before any other creditors. However, such creditors may receive even more than the amount of the secured claim. At the same time, the essence of this tool is to provide the principal obligation. A natural question arises as to why, in bankruptcy proceedings, such creditors are satisfied, first, primarily before other creditors, and secondly, in the amount which is even more than a secured claim.

In connection with the peculiarities of the legal regime of creditors' claims secured by transfer of title and the need for their theoretical study in connection with the rules of bankruptcy law, it is proposed to allocate them in a separate category in order to study their legal nature and consequences in the insolvency proceedings. Currently, the legal regime of such claims is not studied in the framework of the study of the legal regime of the creditor's claims in bankruptcy, moreover, the bankruptcy legislation does not provide for special provisions governing the fate of such claims.

Nevertheless, such claims should be considered in substance, as well as other claims of the debtor's creditors, within the framework of a special legal regime provided for by the bankruptcy law. Allocation of scientific category is due to the presence of distinctive characteristics of such claims. Like other secured claims, the category in question relates to secured claims. It is assumed that, if the principal obligation is properly performed, the asset of the security (title) will be returned to the debtor. Otherwise, the creditor may retain the asset. The peculiarity of this procedure lies in the fact that in order to settle the claim is not required to participate in the distribution of the bankruptcy estate of the debtor and to expect the payment of cash in its rank. In

addition, the surplus (the amount of excess of the value of the asset of the security over the amount of the secured claim) is not refundable to the debtor or its other creditors.

The result of allocating such a category is classification, systematization of such claims, study of their legal nature, treatment under the insolvency proceedings, and the possibility of applying to them of the rules peculiar to insolvency, which in turn will allow to provide an adequate (fair and economically reasonable) legal regime of ensuring the balance of interests of creditors and the debtor. Currently, the study of treatment of security of ownership is carried out in the framework of the specific researches, although the main purpose of the use of the security methods is repayments of claims in those cases where the debtor does not have sufficient funds to repay the debt, i.e. if there are signs of insolvency.

Based on the analysis of the legal nature of the title security, the purposes of its use by the parties, as well as the purposes of the insolvency procedure, the balance of interests of the participants in the bankruptcy procedure, the author makes a conclusion about the need to establish a general rule, according to which in case of excess of the actual value of the asset of title security over the size of the secured claim, such surplus is subject to transfer by the creditor to the bankruptcy estate of the debtor. Such a surplus is not a security of the creditor's claim, and is used as one of the ways of withdrawal of assets from the bankruptcy estate of the debtor to the detriment of the other creditors. The return of the surplus to the bankruptcy estate of the debtor will allow, to the minimum extent, insurance of the interests of the remaining creditors of the debtor, who would be deprived of the opportunity to recover the asset of the security.

In conclusion, the author presents the summary and conclusions on the results of the study, indicates the prospects for further development of the studied issues.

The main provisions of the thesis are reflected in the following publications of the author with a total volume of 7.7 printed sheets (p.s.):

1. Bychkova K.M. Insurance in case of loss of earnings due to insolvency (bankruptcy) of the employer // Russian law journal. – 2018. – No. 3 (120). – P. 144-156. – 1,1 p.s.

2. Bychkova K.M. Invalidity of acts committed during the period of "suspicion" under the laws of France // Russian law journal. – 2016. – No. 4 (109). – P. 58-63. – 0,5 p.s.

3. Bychkova K.M. Priority of repayment of claims of "previous" creditors within the procedure of judicial liquidation in France // Law. Journal of Higher School of Economics. – 2015. – No. 3. – P. 145-156. – 1 p.s.

Other publications:

4. Bychkova K. Le classement des créanciers en droit russe de l'insolvabilité [Priority of repayment of creditors' claims in the bankruptcy law of Russia] // Gazette du Palais, Ed. spécialisée Droit des entreprises en difficulté. – 2014. – No. 278-280. – P. 17-22. – 0,7 p.s.

5. Bychkova K.M. On the limitation of the concept of current payments in bankruptcy / / Law and life. – 2017. – No. 1. – P. 33-43. – 0,5 p.s.

6. Bychkova K.M. Priority of repayment of creditors' claims on current payments in Russia and subsequent claims in France in the framework of liquidation procedures in bankruptcy // Law and business. Appendix to the journal "Business law". – 2016. – No. 4. – P. 39-43. – 0,5 p.s.

7. Bychkova K.M. Legal status of the arbitration manager in insolvency proceedings under the legislation of Russia // Legal regulation of insolvency in Russia and France: collection of articles / group of authors of HSE and the University of Nice – Sofia Antipolis. – M.: Yustitsinform, 2016. – P. 125-139. – 0.6 p.s.

8. Bychkova K.M. Features of observance and protection of labor rights of workers in case of bankruptcy of the employer in France // Comparative labor law. – 2014. – No. 12. – P. 14-25. – 0.3 p.s.

9. Bychkova K.M. Concept of "PATRIMOINE" in proprietary law of France // Jurislinguistic. – 2013. – No. 2 (13). – P. 11-16. – 0.4 p.s.

Printed abstracts:

10. Bychkova K.M. The influence of public order on the formation of bankuptcy law on the example of French legislation // Problems of formation of new Russian law and new Russian statehood: on the way to the "pure gold of law": collection of articles of the first All-Russian scientific conference. For the anniversary of Professor N. Ah. Pridvorov. February 5, 2015 – Tambov: Publishing house TSU named after G. R. Derzhavin, 2015. – p. 261-270. – 0.6 p.s.

11. Bychkova K.M. Self-regulating organizations of arbitration managers as an institution of civil society / / Problems of formation of civil society: collection of articles of the III International scientific student conference. Part III. – Irkutsk law Institute (branch) of the Academy of the Prosecutor General of the Russian Federation, 2015. – P. 42-46. – 0.3 p.s.

12. Bychkova K.M. Participation of the mediator in the conciliation procedure in the bankruptcy law of France // Mediation: theory, practice, development prospects. Collection of articles of the First All-Russian scientific-practical conference (23-24 April 2015, Moscow). – FSBI "FIM", 2015. – P. 77-82. – 0.3 p.s.

13. Bychkova K.M. Consequences of missing the deadline set for the application of creditors' claims in bankruptcy proceedings under the laws of Russia and France // Socio-economic and legal problems of the development of modern Russian society [Text]: Collection of articles of the international student scientific-practical conference on April 22, 2015. – Kursk Institute of cooperation (branch) BUKEP, 2015. – P. 42-45. – 0.2 p.s.