documents which is officially used in the Republic. If a treaty is written in the other languages, it is typical to use the already translated document of Russia which entered it earlier. But the example of the 2007 Protocol on the Law Applicable to Maintenance Obligations illustrates that the Republic is not yet ready for independent translation. The article discovers an array of mistakes of the Protocol’s translation and provides some recommendations for their elimination and anticipation in the future.

Keywords: legal translation, Protocol on the law applicable to maintenance obligation, the Hague Conference on private international law, conflict of laws, private international law.

References (transliterated):
3. Конвенция о международном порядке взыскания алиментов на детей и других форм содержания семьи. Перевод К.Д. Шестаковой // Журнал международного частного права. 2008. № 3 (31).

The article focuses on some basic elements of the institute of insolvency in industrially developed countries. First of all, the author makes a review of acts on insolvency in England, the U.S. and in continental Europe, and secondly, of subjects of insolvency (bankruptcy): both physical and legal entities (companies). The article analyses the main systems of regulating insolvency (bankruptcy): pro-creditors and pro-debtors regulation.

Keywords: the institute of insolvency (bankruptcy), legislation on insolvency, acts (statutes), acts of delegated legislation, judicial precedents, subjects of insolvency (bankruptcy), main systems of regulating insolvency (bankruptcy).

1. Legal regulation of bankruptcy proceedings abroad. In countries with developed economies, the market is rather saturated with goods and services, with competition being a driving force of economic development and social progress. Bankruptcy, in its turn, is considered a part (an element) of ordinary operation of the market economy. These countries have developed and successfully applied the general concept of bankruptcy under which entrepreneurial activity is viewed as useful, desirable and socially important. Any entrepreneur, found bankrupt, is entitled to a fair and objective assessment of their efforts and actions. Therefore those entrepreneurs who have acted diligently and in good faith - though in the conditions of fierce competition they have become socially important. Any entrepreneur, found bankrupt, is entitled to a fair and objective assessment of their efforts and actions. The entrepreneur’s social status is not deprived of a bankruptcy. In its turn, is considered a part (an element) of ordinary operation of the market economy. Bankruptcy, in

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its form – a judicial decision – is not formally considered a source of law. So, the French Civil Code (Art.5) prohibits judges adjudicating certain cases to adopt generally worded judgments. Formally speaking, judicial practice is not a source of law in Germany as well as in some other countries. For example, decisions of the Federal Court of Germany are not binding for lower courts. The Federal Court of Germany has the right to refer a case to a lower court in the cassation proceedings. The review of a case by the Federal Court of Germany is reduced to considering a question whether the lower court has rightly applied the law.

Let us briefly analyze major acts related to insolvency (bankruptcy) in England and the U.S. in common-law countries. England regulates matters of insolvency (bankruptcy) of legal entities by statutes, and in particular, by the 1986 Insolvency Act and the 1986 Company Director Disqualification Act. The source of law on insolvency is case law.4

The U.S. has federal legislation on bankruptcy which is mostly statutory. In 1978, the U.S adopted Law No.95-598 (Bankruptcy Reform Act of 1978), which is well-known as the Bankruptcy Code. The new Act (preceded by the Act on Bankruptcy of 1898) came into force on 1 October 1979. The Bankruptcy Code is a complex and fundamental law; however, while analyzing and applying it, special attention is to be paid to Chapters 7 and 11 related to the liquidation of a bankrupt and its reorganization.5 The use of a form of a code is rather conditional. In fact, the federal legislation of the U.S. is stipulated in the Restatement of Laws which includes 50 sections separated by a branch of law or a code is rather conditional. In fact, the federal legislation of the U.S. is stipulated in the Restatement of Laws which includes 50 sections separated by a branch of law or a code.

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Among the countries of continental Europe let us consider legal acts on insolvency (bankruptcy) in Austria, Belgium, Germany, France, and Sweden. So, in the Austrian law on insolvency, a leading role belongs to the Bankruptcy Proceedings Act adopted in 1914 with further amendments. Bankruptcy proceedings in Belgium are regulated by

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4English common law is not a source of law for the whole Great Britain; it is applied only in the territory of England and Wales, while Scotland, Northern Ireland, the Isle of Man and islands in the English Channel do not belong to the system of common law. For example, Scotland follows not English but Scottish law which has some distinctive features. See: Romanov A.K. Pravovaia sistema Anglii [The Legal System of England]. M., 2000. P. 79.
6See: URL: http://www.gpoaccess.gov/uscode/browse.html
France has a similar regulation on the subjects of bankruptcy. In accordance with Article L. 631-2 of the FCC, the procedure of recovery is applicable to any vendor, craftsman, farmer, or any other individual involved in independent professional activity, including any freelance work, or to any physical entity of private law. There is also a simplified procedure of bankruptcy for physical and legal entities if their staff includes not more than 50 employees and their turnover does not exceed the established volume (limit).

In England, the 1986 Act on Insolvency covers not only individuals but also companies incorporated following the order established by the 1989 Act on Companies (at present – the 2000 Act on Companies) (excluding insurance companies, banks and other credit organizations the legal status of which is regulated by special statutes). The latter include: Banking Acts of 1979 and 1987, and the 1906 Marine Insurance Act. Subjects of insolvency (bankruptcy) can be non-registered companies acting under the English law. However, in respect of such subjects the procedure of voluntary liquidation shall not be applied under the current insolvency procedures.

After the 1979 reform, the U.S. has considerably expanded the list of subjects of bankruptcy. Not only individuals and traders, but any private persons can be subject to the Code on Bankruptcy. For example, in 1992 there were 900,874 cases of bankruptcy of individuals amounting to 42% of all bankruptcy cases. Such a trend is still obvious. The U.S. legislation differentiates between cases of insolvency of individuals with steady income, banks, insurance companies, brokers of stock and trade exchanges, railways, municipalities, family (farming) business with regular annual income. State formations (like states) cannot be found insolvent.14

Court proceedings in cases of insolvency (bankruptcy) are initiated by the motion of creditors, a debtor, and other persons by the decision of the court or at the request of the prosecutor. In the U.S., only the creditor and the debtor can initiate such proceedings. France and England have an expanded list of subjects who can initiate such proceedings. The law of such states provides for a possibility to initiate proceedings by the court to protect public interests. The French legislation vests such a right with the prosecutor of the Republic.15

The status of courts which adjudicate insolvency (bankruptcy) cases is different. In England and the U.S., cases of bankruptcy are tried by special courts. For example, such courts exist in 90 U.S. judicial circuits, with more than 300 judges administering justice. In France, such cases are tried by commercial courts, while in Germany there are civil courts adjudicating such cases.

3. Main systems of regulating insolvency. Systems of insolvency (bankruptcy) existing in industrially developed countries can formally be divided into pro-debtors and pro-creditors systems. Within the first model, we analyze different types of laws on insolvency, and namely moderate pro-debtors and radical pro-creditors systems.

A similar classification is available with the second (pro-creditors) system of insolvency (bankruptcy): moderate pro-creditors and radical pro-creditors legislation.16 There is the so-called “neutral legislation” which equally takes into account the interests of both the creditor and the debtor. Let us briefly consider these systems.

Radical pro-creditors legislation is effective in Australia, England, Hong Kong, Israel, India, Ireland, Pakistan, etc. It is applied in Europe (except for France). Its main focus is on the protection of creditors’ interests in a way of fully satisfying their claims and under the strict control over the maintenance of the debtor’s assets and its timely liquidation. At the same time, there is no possibility to sue any third parties. The debtor’s status as well as their economic interests are being ignored.

Moderate pro-creditors legislation takes into account the interests of other participants of bankruptcy proceedings (apart from creditors). This type of legal regulation of bankruptcy (insolvency) exists in Germany, Holland, Indonesia, Canada, Norway, Sweden, South Korea, Japan, and in resource-rich African states.

Pro-debtors legislation is also heterogeneous (both radical and moderate). It is focused on the protection of debtors’ interests who for this or that reason have found themselves in a difficult financial situation. The state tries to create all the necessary conditions for such a subject to escape a critical situation, including a possibility to get rid of their debts and get a chance of a fresh start. The pure pro-debtors (radical) system of bankruptcy is known to exist in the U.S., taking into account the following facts: a) the debtor has acted within effective legislation and justice; b) entrepreneurial activity (business) is a risky activity; c) entering into the contract with the bankrupt-debtor, the creditor has the discretion to choose a partner and, therefore, the creditor bears all the risks of such a decision.

For the recent years, bankruptcy proceedings in France have acquired a “pro-debtors” bias, i.e. their purpose is to protect the interests of an insolvent debtor to the maximum extent (including the sole trader). The European Commission has recently stated that bankruptcy legislation of France tends to use the procedure of bankruptcy as a means of protecting the debtor from their creditors and render assistance in reorganization to financially recover the enterprise.17

Moderate pro-debtors legislation on insolvency makes a preference primarily towards the debtor’s protection. But a series of legislative acts connected with the interests of the creditor and balancing this model of regulation make a sort of priority to a creditor as well. Such legislation is effective in Belgium, Greece, Spain, Portugal, Thailand as well as northern-western African countries. As stated above, there is “neutral legislation” which harmoniously combines the interests of the creditor and the debtor. The states which “preach the principle of neutrality” in the...
legal regulation of insolvency (bankruptcy) include: Denmark, Italy, Slovakia, and the Czech Republic. Some commentators argue that the U.S. can also be considered as a state with neutral legislation on insolvency. If under such a social and economic situation, preference is given to the protection of the interests of creditors, very soon we can see a major default with many enterprises in debt ceasing to exist as a result of mass bankruptcies.

Consequently, priority trends in the development of legislation on insolvency include: a) modernization of rules on criteria, features and elements of bankruptcy; b) review of provisions determining the status of the bankruptcy manager; c) elimination of a certain imbalance of interests of different subjects (creditors, the debtor, the owner, etc.) in regulating some stages of bankruptcy proceedings. But it is a subject for further independent research.

В.С. Белых: кейібір Еуропа елдерінде және Америка Құрама Штаттарында дәрмешісіздікті (банкrottқықтық) құқықтық реттеу.

Макарада индустриалды елдерде дәрмешісіздік институтының негізгі элементтері карастьрылады. Бірніңден, Англия, Америка Құрама Штаттарында және жоғары кезіндегі Еуропадағы дәрмешісіздік туралы қоңір реттейтін штаб жасалады. Солдан кейін дәрмешісіздік субъектерін (б ankrottқықтық) субъектері карастьрылады: қоңір қауіпсіздік субъекттері (б ankrottқықтық) реттеудің негізгі жүйелері өзгертіліп тастанады. Б ол. 

Тірек сөздер: дәрмешісіздік (б ankrottқықтық) институті, дәрмешісіздік туралы әтініш адамдар (налдаттаттар), бәрілген әтініш адамдар (әтініш акшери), басты қатардың актірелдігі (сом пре́дпреде́нт), дәрмешісіздік (б ankrottқықтық) сүйкіштерін, дәрмешісіздік (б ankrottқықтық) реттеу 

В.С. Белых: Правовое регулирование несостоятельности (банкротства) в некоторых европейских странах и в США.

В статье рассматриваются основные элементы института несостоятельности в промышленно развитых странах. Во-первых, дан обзор законодательства о несостоятельности в Англии, США, странах континентальной Европы. Далее, рассмотрены субъекты несостоятельности (банкротства): физические и юридические лица (компании). В статье проанализированы основные системы регулирования несостоятельности (банкротства): прокредиторская и продолжниковская.

Ключевые слова: институт несостоятельности (банкротства), законодательства о несостоятельности, законы (статутты), акты делегированного законодательства, судебные прецеденты, субъекты несостоятельности (банкротства), основные системы регулирования несостоятельности (банкротства).

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