LEGAL CRITERIA FOR DETERMINING THE INSOLVENCY OF INDIVIDUALS

Nadirbekova Umida Karamatdin qizi
PhD student, Academy of Justice
https://doi.org/10.5281/zenodo.20483092

Abstract: *This thesis analyzes the criteria for the insolvency (bankruptcy) of individuals within the framework of current legislation. The conditions for determining insolvency, debt restructuring procedures, recognition of bankruptcy, and procedures for the sale of property are examined in detail. In addition, a comparative analysis with foreign legislation is conducted, and the compliance of national legislation with international experience is evaluated.*

Keywords*: insolvency, bankruptcy, individual, insolvency criteria, debt restructuring procedure, bankruptcy recognition and property sale procedure, foreign experience.*

At present, along with the development of economic relations and the expansion of the population's use of credit and financial services, cases in which individuals are unable to fulfill their financial obligations are also increasing. According to statistical data, in the Republic of Uzbekistan, while the volume of consumer loans issued by commercial banks is growing year by year, the increase in non-performing loans is becoming a socio-economic problem. This situation demonstrates the necessity of legally regulating the institution of individual insolvency and, first of all, clearly defining the criteria for determining insolvency.

A number of important approaches regarding the criteria and indicators of individual insolvency have been developed in legal scholarship. V.A. Ovinnikov, analyzing Russian legislation, revealed the distinction between the two main insolvency criteria — "inability to pay" (неоплатность) and "insolvency" (неплатежеспособность) — and emphasized that judicial practice predominantly relies on the latter criterion, which prevents abuse by debtors [8]. I.V. Podlesnaya, relying on the concept proposed by M.V. Belyukina, proved that these two criteria are legally contradictory in nature. Furthermore, based on the analyses of S.A. Karelina and I.V. Frolov, it was established that different criteria apply in cases of mandatory and voluntary filing of applications [9]. O.S. Stepanova and A.A. Mutalieva thoroughly analyzed the criterion of insolvency and described a legal construction consisting of five elements widely used in judicial practice: insolvency (неплатежеспособность), its presumption, the exception rule, inability to pay (неоплатность), and insufficiency of assets. They also noted that the absence of an official legal definition causes practical problems [10].

According to Article 65 of the Constitution of the Republic of Uzbekistan, the economy of Uzbekistan, aimed at improving the welfare of citizens, is based on various forms of ownership. The state creates conditions for the development of market relations and fair competition and guarantees freedom of economic activity, entrepreneurship, and labor, taking into account the priority of consumer rights [1].

The adoption by the President of the Republic of Uzbekistan on April 12, 2022, of the Law of the Republic of Uzbekistan No. ZRU-763 "On Insolvency" systematically regulated the institution of individual bankruptcy for the first time. Prior to the enactment of this Law, there was no separate mechanism governing the insolvency of individuals. The adoption of the Law was aimed at ensuring a balance between protecting the interests of creditors and providing an "honest debtor" with a "second chance" [3].

According to Article 3 of the Law of the Republic of Uzbekistan "On Insolvency" (hereinafter — the Law), insolvency is the inability of a debtor, recognized by a court, to fully satisfy creditors' claims on monetary obligations and (or) fulfill obligations related to taxes and fees in full. This definition is established as a general criterion for both individuals and legal entities.

The Law distinguishes three unlawful acts: fictitious insolvency — when a person declares inability to fulfill obligations despite being capable of doing so; concealment of insolvency — submission of false documents or distortion of reporting; and intentional insolvency — deliberately causing bankruptcy for personal or third-party interests (Article 3).

Chapter 14 of the Law ("Insolvency of an Individual") provides special rules for individuals. According to Article 194 of the Law, the general provisions of Chapters 1, 2, 3, 5, 6, and 7 apply to the insolvency of individuals; however, the indicators of "permanent insolvency" and "temporary insolvency" specified in Article 5 do not apply to individuals, as a special criterion is established for them.

Pursuant to Article 195 of the Law, two conditions must simultaneously exist for recognizing signs of insolvency of an individual:

1. the debtor has failed to fulfill monetary obligations and (or) payment obligations within three months from the date they became due;

2. the claims against the individual amount to at least 200 times the base calculation amount.

After an application for declaring an individual insolvent is filed, the court shall consider the individual insolvent, unless otherwise proven, if at least one of the following circumstances exists: more than 10 percent of the total obligations remain unfulfilled for more than one month from the due date; the amount of the individual's debt exceeds the value of their property; there exists a decision terminating enforcement proceedings due to the absence of property belonging to the individual.

According to Article 200 of the Law, upon consideration of the case, the court adopts one of the following judicial acts: (a) introduction of a debt restructuring procedure; (b) declaration of the individual bankrupt and commencement of property sale procedures; (c) rejection of the application.

Debt Restructuring Procedure: After recognizing the application as justified, the court initially provides the debtor with an opportunity to repay debts according to a restructuring plan. For this purpose, on the date the plan is submitted, the individual must have a permanent source of income; no property sale procedure must have been applied to them within the previous five years; and no restructuring plan must have been approved within the previous eight years. The implementation period of the plan may not exceed three years and is supervised by a financial manager. If the plan is fully implemented, the individual is released from debt obligations; otherwise, the court initiates the property sale procedure.

Recognition of Bankruptcy and Property Sale Procedure: The court declares the individual bankrupt and initiates the property sale procedure on three grounds: failure without valid reason to comply with court-imposed obligations, failure to submit a debt restructuring plan within the prescribed period, or refusal to approve the plan. The procedure is introduced for a maximum period of six months and may be extended for an additional three months if necessary. A financial manager is appointed, and credit institutions are obliged to provide the financial manager with information regarding all deposits, accounts, and property of the debtor.

Furthermore, until the completion of the procedure, the court may temporarily restrict the individual's right to leave the country [3].

Foreign countries apply different approaches in regulating the insolvency of individuals. In the Russian Federation, according to Federal Law No. 127-FZ, an individual may be declared bankrupt if the minimum debt amounts to 500,000 rubles and at least three months have elapsed. In legal doctrine, the criteria of inability to pay (неоплатность) and insolvency (неплатежеспособность) are differentiated, while courts mainly rely on the latter. The criterion in Uzbek legislation stating that "the debt exceeds the value of property" is substantively similar to the Russian criterion inability to pay [8]. Under the United States Bankruptcy Code (11 U.S.C.), Chapter 7 (liquidation) and Chapter 13 (restructuring) procedures are provided for individuals. Insolvency is determined through the "means test," and the "automatic stay" mechanism immediately protects debtors from creditors' claims, which is functionally similar to the moratorium provisions of national legislation [7]. German insolvency legislation, namely the Insolvenzordnung (InsO, 1994), establishes the criteria of insolvency (inability to pay debts as they become due) and over-indebtedness (where liabilities exceed assets). The debt relief mechanism allows an honest debtor to be fully discharged from remaining obligations after a three-year probationary period [6]. Directive (EU) 2019/1023 establishes the principle of a "second chance" as a common standard, obliging member states to introduce mechanisms enabling honest debtors to obtain full discharge of debts within three years. This principle is regarded as a legal guarantee of social rehabilitation and is substantively consistent with the "second chance" approach embodied in Uzbek legislation [5].

In general, improving legislation, developing judicial practice, and enhancing legal culture regarding the legal criteria for determining the insolvency of individuals remain urgent tasks in this field. This research is intended to contribute to addressing these issues.

Adabiyotlar, References, Литературы:

1. Constitution of the Republic of Uzbekistan. – Tashkent: Uzbekistan, 2023. – 78 p.
2. Civil Code of the Republic of Uzbekistan. – Tashkent: "Yuridik adabiyotlar publish", 2024. – 616 p.
3. Law of the Republic of Uzbekistan "On Insolvency", No. ORQ-763, dated April 12, 2022. https://lex.uz/docs/5957612#5957946
4. Federal Law of the Russian Federation dated October 26, 2002 No. 127-FL "On Insolvency (Bankruptcy)" // Collection of Legislation of the Russian Federation, October 28, 2002, No. 43, Art. 4190.
5. Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016. https://eur-lex.europa.eu/eli/dir/2016/943/oj/eng
6. Insolvenzordnung (InsO) of October 5, 1994. https://www.gesetze-im-internet.de/englisch_inso/englisch_inso.html
7. United States Bankruptcy Code, 11 U.S.C. (1978, as amended). https://www.law.cornell.edu/uscode/text/11
8. Ovinnikov V.A. Criteria and Signs of Bankruptcy (Insolvency) of Individuals // Vestnik Magistratury. — 2018. — No. 12-1(87). — pp. 131–135.
9. Podlesnaya I.V. Criteria of Bankruptcy and Insolvency of Individuals // Supplement to the "Bulletin of the MIIT Law Institute". — 2020. — No. 3(31). — pp. 137–142.

10. Stepanova O.S., Mutalieva A.A. Criteria and Signs of Insolvency (Bankruptcy) of Individuals. — M.K. Ammosov North-Eastern Federal University, 2019.