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IONTSEV MIKHAIL ANATOLYEVICH

RESTORATION OF THE DEBTOR'S WELFARE ON THE BASIS OF RUSSIAN AND FRENCH INSOLVENCY LAWS

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Scientific Supervisor:
Doctor of Law,
Associate Professor, Department of Civil
Kazan Branch of the Federal State Budget
educational institution of higher education
"Russian State University of Justice."
Vitaly Anatolyevich Petrushkin

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Relevance of the research topic. In Russian legal culture, among participants in economic turnover, bankruptcy is surrounded by a set of negative connotations, since the settlement of insolvency is almost always reduced not to restoring the welfare of the debtor, but to its liquidation. Due to the inefficiency of rehabilitation procedures in the Russian legal order, debtors make a lot of efforts not to file claims for opening insolvency settlement procedures, and creditors do not agree to make concessions and do not see the point of providing a "second chance," even if their rehabilitation requirements are satisfied to a greater extent than in bankruptcy proceedings.

The reason for the inefficiency and, as a result, unpopularity of rehabilitation procedures in Russia was the imbalance of protection of interests that persisted for a long time without existing economic prerequisites, either in favor of the debtor or in favor of creditors.

A significant inequality of "power" rights (i.e. the ability to influence the protection of one's interests in a procedure) leads to the formation of uncontrolled processes, which *de facto are* usually managed by one person or a narrow group of persons. This may not have serious consequences if we are talking about a small enterprise, the impact of which on the economy is insignificant, but if we are talking about one of the largest enterprises, it is obvious that ignoring the multiple heterogeneous interests of different sides of the bankruptcy case can lead not only to social, but also to political discontent.

Moreover, the "monopoly of one interest" reduces the stability of the financial market, thereby reducing economic planning horizons that are important for society as a whole. It should be noted that in modern Russia rehabilitation exists, but outside the formal field with a "arbitrator" represented by a judge who could balance the interests of different parties.

Creditors, as a rule, majority, carry out the "rehabilitation" of the debtor without the participation of the court and representatives of justice, by restructuring the debt within the framework of contractual law through either compensation or innovation. However, such "rehabilitation" leads, firstly, to abuse by creditors who strengthen

control over the debtor's business with the help of covenants in case of novation or compensation, secondly, to neglect of the interests of minority creditors who cannot influence the negotiation process of two independent persons, and, thirdly, increases the risks of subsidiary liability for late filing of bankruptcy.

Processes reduced to "black" and "gray" models of insolvency resolution lead to a chaotic redistribution of both insolvency risks and capital between market participants, serve as the basis for the growth of economic crime, contribute to the withdrawal of assets by debtors, the conduct of aggressive contract policies, the growth of distrust and destabilization of relations between the real and financial sectors of the economy.

The economic institution of insolvency settlement in any legal order is forgiveness in whole or a reduction in the debtor's debt, while the debt is not to an individual creditor (as is the case in classical contract law), but to all creditors at the same time. However, the reason for the forgiveness of the debt in whole or in part is the insolvency of the debtor, i.e. some of its economic condition associated with its individual subjective financial circumstances, most often expressed in a stable suspension of all payments. The collective nature of the debt and the special reason for its forgiveness make the institution of insolvency settlement a non-trivial way for civilistics to terminate the obligation.

The evolution of insolvency settlement has gone from the physical liquidation of the debtor to the symbolic (liquidation of a legal entity), and the development of economic theory in the twentieth century made it possible to develop a revolutionary view of insolvency settlement, according to which the focus of insolvency settlement is not liquidation, but restoration of the debtor's welfare, which allows not only more fully, in comparison with liquidation, to satisfy the claims of creditors, but also to preserve the debtor's business.

Today, the settlement of insolvency in various legal systems, including the Russian one, is a wide range of different procedures, not only liquidation, but also preventive and rehabilitation. The latter two are mechanisms for restoring the welfare of the debtor. The differences and peculiarities of these procedures generally

depend on: (a) the type of insolvency (unfortunate, careless or malicious); b) the size of the property mass and its structure; c) the position of the debtor in a competitive market (monopolist, oligopolist, almost perfect competitor).

The initial research position of the author of the dissertation is his conviction in the need to introduce effective rehabilitation procedures, which is justified by the following arguments:

– **ideological and legal:** rehabilitation embodies the essence of insolvency settlement, expressed by the principle of maintaining a balance of interests between the debtor and creditors, accepted by all continental law and order. This principle is reflected in two aspects: the fullest satisfaction of creditors' claims and the simultaneous preservation of the debtor's business. It should be noted that these manifestations mutually condition each other, since the level of satisfaction of creditors' claims will depend on the success of the **debtor's business;**

– **Political and legal:** rehabilitation is beneficial to all parties to the insolvency settlement, but its effectiveness depends on a number of legal institutions of both civil and bankruptcy law, such as the introduction of the institution of a partnership of procedure, the provision of a mechanism of legal adhesion and the opposability of the decision to approve the rehabilitation plan to all creditors, including those who did not participate in the vote;

– **economic and legal:** rehabilitation procedures perform a number of important economic functions. Thus, it is noted [1]that they are a significant factor, often embedded in the formation of monetary and fiscal policies in developed countries, since from the point of view of the economy they can play the role of subsidies provided to business entities, as well as act as a mechanism for the redistribution of capital between markets with different competitive structure and its individual segments.

[1]Romer G., Romer D. Looting: The Economic Underworld of Bankruptcy For Profit // Brookings Papers on Economic Activity. 1993. No. 2. P. 1–73.

- **social and legal:** one of the key aspects of rehabilitation, and not the liquidation of business - the preservation of employees' jobs. At the same time, rehabilitation can include in the plan the optimization of costs associated with wages, as a result of which a more equitable distribution of the salary fund, which is approved by the judicial authority, is permissible. Thus, rehabilitation preserves jobs, which are the key to the economic stability of workers and their families, but indirectly rehabilitation helps to reduce the burden on state social programs aimed at supporting the unemployed and socially vulnerable categories of citizens[2].

Degree of scientific problem development. In civilistics, the issue of effective rehabilitation of the debtor and overcoming the will of creditors was raised even before the revolution. For example, in 1888 A.H. Holmsten published a monograph[3], which was the first work fully devoted to the review of the development of competition law in Russia (unfortunately, by now it is partially outdated in fact). In this monograph, the issues of rehabilitation of the debtor were raised, since this procedure was actually absent in the law enforcement practice of the courts. The work of A.H. Golmsten was a breakthrough for its time on the topic and selection of material. Unfortunately, in the half century that followed its publication, only five studies on this topic can be distinguished: firstly, three monographs by [4]G.F. Shershenevich on competition law, including a course in trade law [5]and a publication on the system of trade actions[6], and secondly, later works by V.P. Zagorovsky [7]and K.D. Kavelin[8]. However, Shershenevich's work was almost completely focused on the liquidation status of the procedures, they only occasionally noted the existence and need for rehabilitation of the debtor (mainly in the historical and comparative legal context). In the work of V.P. Zagorovsky, the issue of debt forgiveness and

[2]Terentyev A. Basic Principles of Protection of Employees' Rights in Case of Employer's Bankruptcy//Personnel Officer. Labor law for a personnel officer. 2011. N 11. P. 25-29.
[3]Holmsten A.H. Historical essay on Russian competition law. St. Petersburg, 1888.
[4]Shershenevich G.F. Competition law. Kazan: ed. Imp. un-ta, 1898.
[5]Shershenevich G.F. Course of commercial law: in 4 tons. T. 1-4. St. Petersburg: br. Bashmakov, 1908.
[6]Shershenevich G.F. Trading system. Kazan: ed. Imp. un-ta, 1888.
Zagorovsky V.P. Historical sketch of a loan on Russian law until the end of the [7]XIII century. Kiev, 1875.
[8]Kavelin K.D. The main beginnings of the Russian judicial system and civil proceedings, during the period from the Code to the Institution of Provinces. M.: type. A. Semyon, 1844.

debt relief was raised. The scientist came to the conclusion that the legal development of rehabilitation institutions and their implementation in practice is necessary. K.D. Cavelin in his work emphasized the need for procedural regulation of debt write-offs.

In the twentieth century, in the Soviet period, significant enrichment of science with new legal discoveries in the field under consideration did not occur due to the peculiarities of the planned economy. The main interest is the work published at the end of the century, after the formation of the Russian Federation, when since the transition of the USSR to a market economy in the early 1990s. the issue of resolving bankruptcy was especially acute. In the course of work on the development of bankruptcy institutions in the late 1990s and early 2000s. foreign consultants and specialists in the field of law were actively involved, Belgian [9]and French were chosen [10]as the main examples of law and order.

Changes in legislation caused research interest in rehabilitation, which was more or less realized in the works of many domestic jurists, including: A.N. Borisov[11], M.I. Braginsky[12], V.V. Vitryansky[13], A.I. Goncharov[14], S.A. Karelina, [15]M.I. Kulagina[16], V.F. Popondopulo[17], Yu A. Svirina, M.V. [18]Telyukina, V.N. [19]Tkacheva, V.A. [20]Khimicheva[21]

Historically, Belgian institutions for the restoration of well-being were borrowed from the French [9]law and order. См.: Daigre Jean-Jacques. La société unipersonnelle en droit français // Revue internationale de droit comparé. Vol. 42. 1990. No 2. P. 665–676.

[10]See Bulletin of the Supreme Arbitration Court of the Russian Federation. 2002. № 3.

[11]Borisov A.N. Commentary to the Federal Law of October 26, 2002 No. 127-FZ "On Insolvency (Bankruptcy)" (article-by-article). M.: Business Yard, 2012. 944 s.

[12]Braginsky M.I. Comment on the Law "On Insolvency (Bankruptcy) "//Law and Economics. 1998. № 4.

[13]Insolvency (bankruptcy): scientific and practical commentary on short stories of legislation and practice of its application/V.V. Vitryansky, V.V. Batsiev, A.V. Egorov [and others]; under ed. V.V. Vitryansky. M.: Statute, 2010. 336 s.

[14]Goncharov A.I., Zinchenko S.A. Prevention of bankruptcy of a commercial organization: methodology and legal mechanisms. M.: Jurisprudence, 2006.

[15]Karelina S.A. Insolvency Legal Mechanism. M.: Volters Kluver, 2008.

[16]Kulagin M.I. Selected works on joint-stock and commercial law [Electronic resource]//Classics of Russian law [Ofitz. site]. 27.06.2016. URL: http://civil.consultant.ru/elib/books/6/page22.html (date of access: 27.06.2021).

[17]Commentary to the Federal Law "On Insolvency (Bankruptcy)": article-by-article/A.Y. Bushev, O.A. Gorodov, N.S. Kovalevskaya [and others]; ed. V.F. Popondopulo. M.: Prospect, 2014.

In the same [18]place.

[19]Svirin Yu.A. Competition law. M.: Bagira-2, 2006.

[20]Telyukina M.V. Basics of competition law. M.: Volters Kluver, 2004.

[21]Khimichev V.A. Exercise and protection of civil rights in insolvency (bankruptcy). M.: Volters Kluver, 2006.

The key contribution to the development of comparative legal and general theoretical aspects of insolvency can be called dissertation studies by V.V. Valyagin[22], P.D. Ivanov[23], V.V. Stepanova[24].

As interest in the problems of eliminating insolvency grows, the question of rehabilitation and its effectiveness becomes more and more relevant in the scientific literature, scientists are moving to an in-depth study of various procedures (for example, the external management procedure is covered in the dissertation studies of I.A. Zabug[25], Yu.B. Yakovenko[26]; settlement agreement – in the studies of O.A. Korobov[27], E.Y. Olevinsky[28]).

The problems of legal regulation of rehabilitation procedures in their relationship with other procedural aspects of bankruptcy, as well as individual rehabilitation measures, were touched upon in the works of S.E. Andreev[29], S.A. Denisov[30], D.V. Egorov[31], E.A. Kravchenko[32], S.I. Fedorov[33].

Issues of the theory of commonality were studied in the Russian legal doctrine mainly in the works of E. Yu. Petrov[34], who, on the example of the institute of inheritance, highlighted both the separation of property masses and their merger, and also considered in sufficient detail various aspects of the theory of commonality: from general interest to control. However, despite a rather capacious description of

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[22]Valyagin V.V. Institute of insolvency (bankruptcy) in the legislation of the Russian Federation and Germany: comparative legal analysis: dis.... Candidate of Legal Sciences. sciences. M., 2007.

Ivanov P.D. Formation and development of [23]the institution of insolvency (bankruptcy) in the countries of Western Europe and Russia (historical and legal aspect): dis.... Candidate of Legal Sciences. sciences. St. Petersburg, 2002.

[24]Stepanov V.V. Legal systems of bankruptcy regulation: dis.... Candidate of Legal Sciences. sciences. M., 1998.

[25]Zabuga I.A. Features of external management in insolvency (bankruptcy) procedures: dis.... Candidate of Legal Sciences. sciences. Krasnodar, 2006.

[26]Yakovenko Yu.B. External management as a restorative bankruptcy procedure: dis.... Candidate of Legal Sciences. sciences. Volgograd, 2006.

[27]Korobov O.A. Settlement agreement in insolvency (bankruptcy) proceedings: dis.... Candidate of Legal Sciences. sciences. Volgograd, 2003.

[28]Olevinsky E.Y. Settlement as a bankruptcy procedure: dis.... Candidate of Legal Sciences. sciences. M., 2002.

[29]Andreev S.E. Ratio of rehabilitation and liquidation aspects of legal relations in the field of bankruptcy: dis.... Candidate of Legal Sciences. sciences. M., 2004.

[30]Denisov S.A., Egorov A.V., Sarbash S.V. Rehabilitation procedures in bankruptcy case: article-by-article comment to chapters V, VI, VIII of the Federal Law "On Insolvency (Bankruptcy)." M.: Statute, 2003.

[31]Egorov D.V. Legal regulation of the sale of an enterprise in the procedure of external management in the insolvency (bankruptcy) of the debtor: dis.... Candidate of Legal Sciences. sciences. M., 2013.

Kravchenko E.A. Problems [32]of protection and rehabilitation of the debtor in insolvency (bankruptcy) in the UK, Germany, USA, France, Russia (comparative legal analysis): dis.... Candidate of Legal Sciences. sciences. M., 2003.

[33]Fedorov S.I. Some features of consideration by arbitration courts of insolvency (bankruptcy) cases: dis.... Candidate of Legal Sciences. sciences. M., 2001.

[34]Petrov E. Yu. Hereditary law of Russia: the state and prospects of development (comparative legal study). M.: M-Logos, 2017. 152 s.

the theory of commonality at the institute of inheritance, the author did not dwell on either procedural aspects or current problems of restoring well-being. In application to the bankruptcy institute, this theory is considered in the article by A.V. Egorov on the division of debts of spouses in bankruptcy[35].

The problem of incomplete implementation of individual insolvency settlement institutions from the French law and order was partially studied in the works of R.M. Miftakhutdinov. So, in the article devoted to observation, the scientist conducts a deep analysis of the shortcomings of the current legal institution, but does not indicate the genesis of the problem[36]. In the article on the establishment of creditors' claims, he also critically weighs all the shortcomings and merits of the existing order in Russian law, but misses the analysis of the origin of the shortcomings and the possibility of their correction[37].

Despite a large number of scientific works that directly and in detail affect the problems of legal regulation of rehabilitation procedures, the Russian scientific doctrine has not yet focused carefully on the genesis of regulatory material and its connection with the legal institutions of the Romanesque legal order (France and Belgium), moreover, the audit of incomplete borrowings was not carried out, and the mechanism of legal adhesion was not studied, as a result of which an analysis of the possibility of its implementation in the Russian legal order was not carried out.

It should be noted that the closest to legal adhesion is the mechanism of overcoming the will of creditors by a court decision, referred to in section 317.17, paragraph 4, of the Insolvency Act, but it should be indicated this institute applies only to citizens, which is not included in the subject of the study of this work, at the same time, the conditions for the approval of the debt restructuring plan themselves,

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Civil law [35]of the social state: sat. Art., dedicated to the 90th anniversary of the birth of Professor A.L. Makovsky (1930–2020)/A.G. Arkhipov, A.V. Asoskov, V.V. Bezbakh [and others]; holes. ed. V.V. Vitryansky, E.A. Sukhanov. M.: Statute, 2020. 480 s.

[36]Miftakhutdinov R.T. Cancellation of the monitoring procedure as one of the main measures to improve domestic bankruptcy legislation and its consequences de lege ferenda//20 years of the Constitution of the Russian Federation: current problems of legal science and law enforcement in the context of improving Russian legislation: The Fourth Perm International Congress of Legal Scientists (Perm, October 18–19, 2013). Selected Materials/Holes ed. V.G. Golubtsov, O.A. Kuznetsova. M.: Statute, 2014

[37]Miftakhutdinov R.T. Limited relativity of a judicial act in bankruptcy: how to protect bona fide creditors from an unreasonable claim confirmed by a judicial act//Bulletin of Economic Justice of the Russian Federation. 2018. № 4.

specified in this paragraph are so rigid that it is impossible to compare this institution with legal adhesion, the essence of which is to overcome the will of creditors when approving a plan that does not fully repay creditors' claims. According to the research of representatives of the domestic doctrine[38][39][40], it is difficult to talk about the applicability of legal adhesion in the understanding of the French law and order in this case due to the rigidity of the conditions that are presented for its implementation. Thus, claims must be repaid in an amount that significantly exceeds the amount of claims that creditors could receive in liquidation, but not less than 50 percent of the debt.

Due to the fact that one of the main methods used in the writing of this work was comparative legal, the author refers to the analysis of the French legal literature devoted to the restoration of the welfare of the debtor, in particular, legal adhesion, namely the works of M-L. Bélaval, A. Bernard, E. Le Corre-Broly, G. Endréo, D. Gibirila, P. Hoonakker, Ch. Lebel, A. Lienhard, J.-F. Martin, A. Martin-Serf, A. Perdriau, R. Perrot, J-P. Rémery, G. Ripert; R. Roblot, B. Rolland, S. Scholastique, G. Teboul, J. Vallansan и J-Cl. Viandier, which consistently examines the very procedure for the development of the institution of legal adhesion, as well as defines the conditions for its responsible borrowing and implementation in practice.

The purpose of this work is **to** define the fundamental conditions and requirements for the application of legal adhesion under French insolvency law.

The objectives of the study are:

– identification of the basic principles and preconditions for the restoration of the debtor's well-being under French law;

– classification of measures to protect the interests of persons on the side of the debtor and creditors in rehabilitation procedures and identification of their types;

[38]Amaltynov A.R., Boyarsky D.A. Local restructuring plan in the bankruptcy procedure of an individual//Arbitration and civil proceedings. 2023. № 12. S. 37-41.
[39]N.Y. Kogdenko on the consequences of the debt restructuring procedure and on the release of a citizen from obligations/N.Y. Kogdenko//Economic justice in the Ural district. 2018. № 2. S. 53-59.
[40]Tsokur E.F., Rudenko A.S. Main problems of debt restructuring in the bankruptcy of individuals in Russia//Lawyer. 2022. № 5. S. 54-58.

– the establishment of preliminary procedural conditions for the application of the institution of legal adhesion;

– Identification of conditions and requirements for the application of legal adhesion in preservation and rehabilitation procedures in the French legal order;

– identification of incorrect borrowings from the French legal order to the Russian law in the process of formation of insolvency legislation, which impede the effectiveness of existing rehabilitation procedures in Russia.

The subject of the study is social relations related to overcoming the will of creditors in order to restore the welfare of the debtor and the most complete satisfaction of creditors' claims, i.e. legal relations in bankruptcy related to legal adhesion[41].

The object of the study consists both of the norms of French legislation on the approval of a rehabilitation plan and legal adhesion, and of the norms of Russian insolvency law in terms of the opening of rehabilitation procedures, including the judicial practice of their application.

The choice of the French legal order as the object of comparative legal analysis, and legal adhesion as the subject is due to the following reasons:

firstly, during the insolvency settlement reform in 1998, a Russian legislator introduced a number of changes borrowed from the then similar French and Belgian Commercial Codes. In view of this nature of the reception, Russian insolvency law belongs to the continental (Romanesque) legal system, the development and improvement of which is advisable to be carried out using comparative analysis of institutions, in particular French law. The reception of legal adhesion is connected

[41]In the scientific literature, the English-language legal term – the so-called *cram down*, i.e. overcoming the will of creditors, or (literally) "squeezing, pushing" is often used to describe this phenomenon. The author of the scientific work suggests using the Latin term, which is adopted in a number of Romanesque law and order with the French bankruptcy tradition (Belgium, Italy, Spain). Adhesion in physics helps to describe the ability of bodies to hold together, touching their surfaces, only due to the strength of each of the individual molecules. The term chosen by the author also reflects the process of restoring the welfare of the debtor: two different bodies (groups of interests of the debtor and creditors), having found a common point, can stick together. Both in physical adhesion, the forces of individual molecules are too small and weak for the bodies to hold together, and in the legal efforts of individual creditors or members of the prodebitor coalition are sometimes lacking to maintain the required unity. If it is necessary to connect two parts of a broken cup, in ordinary life we not only make them together, but also use glue, in jurisprudence such a binding means is the judiciary, which gives strength to the desire, albeit not of the majority of creditors, but of their constructive part, and members of the prodebitor coalition to restore the welfare of the debtor.

with the rebuttal of presumptions, therefore, it is necessary to resort to institutions of procedural and evidentiary law, which are also useful to compare in comparative analysis with similar institutions of continental law and order. Due to the principle of comparativeness, according to which comparable institutions can be compared, the author of this work believes that the analysis of the institute cram down, developed and existing within the framework of the Anglo-Saxon legal system, is methodologically impractical due to the significant difference in the foundations of the regulation of civil law relations, as well as the significant specifics of evidentiary law[42][43];

secondly, the experience of functioning of sufficiently effective restrained-producer methods of insolvency settlement in France can be useful to the Russian legislator in carrying out reform[44]. The choice of the restrained-prodebitor nature of rehabilitation procedures is justified by the fact that France, like Russia, had experience in using radical-prodebitor mechanisms in the insolvency settlement process, which ultimately led to the opposite effect - the unwillingness of creditors to participate in the procedure;

thirdly, the French legal order, according to rating agencies, was able to develop effective ways of resolving insolvency[45].

Theoretical and methodological basis of the study. Firstly, when writing a dissertation, the author used a comparative legal method, through which the subject and object of the study were determined, as well as the admissibility of using comparative studies to achieve the goals and tasks.

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[42]Reshetnikova I.V. Evidentiary law of England and the United States. Yekaterinburg, 1997; Puchinsky V.K. English civil process: basic concepts, principles and institutions. M., 1974; He's. U.S. Civil Procedure.

[43]Puchinsky V.K. English civil process: basic concepts, principles and institutions. M., 1974; He's. U.S. Civil Procedure.

[44]Since the methods of insolvency settlement set up a fragile balance between the interests of the debtor and creditors and therefore could not be neutral with respect to one of these parties. The totality of economic, social and political circumstances always develops in such a way that the balance of protection of interests is somewhat shifted either to a pro-creditor or to a producer position.

[45]URL: http://www.doingbusiness.org/data/exploreeconomies/france (date of access: 01.08.2023); Desiree I. Menjivar, David W. Gillmor. Jurisdiction Ranking Assessments Of National Insolvency Regimes Update: November 2017. S&P Ranking, 2017. P. 3.

Secondly, in order to clarify the essence of regulatory regulation and the compliance of law enforcement practice with the objectives of legislative regulation, the study respected the principles of hermeneutics.

Thirdly, in the process of conducting the study, sociological techniques for studying legal phenomena were used, in particular, statistical data on the opening of rehabilitation procedures, as well as data on the number of tort claims filed to protect the interests of members of procedural partnerships in different procedures were studied.

Fourthly, the methodology of the study was based on the formal-logical and system-analytical approaches traditionally related to the methodological apparatus of jurisprudence, which made it possible to consistently and consistently come to the theses put forward for defense.

Fifthly, the present work does not apply the method of economic analysis, due to the lack of currently accurate and complete data, since: (a) data on the financial condition of enterprises, especially those in crisis, may be incomplete or unreliable, which makes the conclusions of economic analysis unreliable; b) currently the methodology of economic analysis is not formed and does not take into account unique legal nuances and changes in the legislation or practice of its application. c) the legislative provisions of France and Russia on bankruptcy and their enforcement differ significantly in these states, which makes the development of universal economic models and their applicability so difficult that they deserve independent research as part of a separate work.

In the domestic doctrine, very strong arguments are made regarding the method of economic analysis of law, which consider the use of this method premature and inappropriate at the present stage of the formation and development of this method in the system of legal methodology of domestic civilistics[46][47][48].

[46]Kurbatov A.Ya. Protection of rights and legitimate interests in the conditions of "modernization" of the legal system of Russia. M.: Justicinform, 2013. 172 s.

[47]Sinitsyn S.A. Economic analysis of law and its place in the civilistic methodology//Law. Journal of the Higher School of Economics. 2017. N 2. P. 4 - 17

[48]Momotov V.V. Economic analysis of law in the system of legal methodology: concept, essence, criticism//Bulletin of Moscow University. Ser. 11 "Law." 2017. N 5.

Thus, despite the importance and relevance of economic and legal studies, and their possible contribution to the significance of legal studies of insolvency settlement, the use of economic analysis as a method in conducting this study is considered premature and therefore inappropriate, since its methodology causes reasonable skepticism in the field of insolvency settlement and the absence of a proven special methodology in this area of law. The establishment of such a methodology and its development seem to be the subject of separate scientific research.

The information base of the study includes the following systems: a) Russian: reference and legal systems Consultant + and Pomegranate, information and search system "Law," the official website of the State Duma of the Federal Assembly of the Russian Federation (duma.gov.ru), information and library system of the Russian State Library (rsl.ru), b) French: reference and legal system Dalloz, information and search system Legifrance, reference and library system L'ADIJ.

The validity and reliability of the results of the study is based on the application of methods of scientific knowledge corresponding to the dissertation work, and confirmed by the widespread use as a theoretical and methodological base of the results of scientific research of domestic and foreign authors, including publications in recent periodicals, as well as the analysis and generalization of a significant amount of law enforcement practice materials, primarily judicial, throughout the sector of issues of the topic under study.

Provisions for protection. In this dissertation work, the following theses are put forward for defense.

1. *The key principles of preservation and rehabilitation through legal adhesion* are:

a) the principle of competitiveness embodied in the institution of procedural partnerships;

b) the principle of good faith, manifested in the need to refute the presumption of the unfortunate nature of insolvency

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

2. As part of the study, it was revealed that the condition for the rehabilitation of the debtor in France is the formation of *procedural partnerships*, that is, groups of persons united either by pro-creditor or producer interests. Each group can form either a will partnership, when the relationship between the persons in the group is governed by a contract, or accidental, when their relationship is determined only by mandatory norms of the law. A group united by a pro-creditor interest is a random (procedural) partnership, the powers of the head of which are determined by law. A group united by a producer's interest is a "will" partnership, the powers of the head of which are determined by the contract of comrades.

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

3. The study found that, for the purposes of general insolvency settlement, the debtor was considered to be in good faith, that is, the cause of the insolvency was a force majeure event or a circumstance in which the debtor, acting with the necessary reasonableness and diligence, was unable to prevent the suspension of payments. Thus, in the French legal order there is a rebuttable presumption of the need to restore the welfare of the debtor in the form of preservation or rehabilitation.

(corresponds to paragraph 32 of the passport of the scientific specialty 5.1.3).

4. According to the results of the study, it was found that the purpose of *opening a rehabilitation procedure* is to agree on a rehabilitation plan by procedural partnerships and approve it by the court. At the same time, the plan approval can take place through legal adhesion. *Legal adhesion* – a new term for Russian legal discourse. This is the binding force of a court decision, which is made contrary to the statements of creditors about the need to liquidate the debtor due to the fact that the satisfaction of creditors' claims in the rehabilitation procedure will result in better (compared to liquidation) conditions for creditors. Legal adhesion is an institution of continental (Romanesque) law, in contrast to the institution of cram down, which belongs to the Anglo-Saxon legal system, built on principles that differ significantly

from the principles of continental law in terms of evidentiary law and the peculiarities of regulating private law relations.

This decision applies to all creditors, including those who did not vote or did not participate in the vote on the approval of the rehabilitation plan, it also cannot be challenged by creditors on the basis that they voted against the rehabilitation plan or did not vote at all.

Adhesion by the court is possible only with simultaneous consideration of the following two criteria:

a) the percentage of repayment of creditors' debts during rehabilitation should be greater than or equal to the percentage of payment during liquidation;

b) no recurrence of insolvency within one business cycle.

At the same time, the restoration of solvency is the result of the proper execution of the rehabilitation plan, and legal adhesion is the effect of a court decision that makes this plan mandatory for all third parties.

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

5. As part of the study, it was revealed that *the type of restoration of well-being is the preservation procedure*, i.e. the procedure that opens before the insolvency, but if there are long-term reasons for it. At the opening of the preservation, the debtor (only he is authorized to file an application for the opening of the procedure) must prove the need for the procedure, i.e. refute the presumption that the preservation is not necessary. Preservation cannot be opened if the insolvency of the debtor is malicious.

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

6. Within the framework of the study, it was revealed that *the type of restoration of well-being is a rehabilitation procedure*, i.e. a type of procedure aimed at restoring the well-being of a debtor who is declared insolvent. Insolvency is a civil state established by a court decision, the necessary (but not sufficient) feature of which is a long suspension of payments under ongoing contracts. If the court approves the

existence of insolvency by a court decision, the need to open a rehabilitation procedure is presumed. This presumption can be refuted by the participants in the case on the restoration of the welfare of the debtor. However, rehabilitation cannot be opened if the debtor is a representative of a market with monopolistic competition.

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

7. According to the results of the study, it was found that *the mandatory conditions for refuting the presumption of the need for rehabilitation* are the establishment in court that, firstly, there was a suspension of payments for most obligations; secondly, the market structure of the debtor does not involve extracting excess profits for the effective implementation of the rehabilitation plan. At the discretion of the court, one or two additional conditions may be added to refute the presumption: proving that, firstly, large investments disproportionate to the debtor's business are necessary for rehabilitation; secondly, the debtor's balance sheet and a number of insolvency indicators show that the performance of activities cannot generate the necessary income and the recurrence of insolvency is inevitable.

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

8. The study found that *the institutionalization of preventive procedures* had led to the rejection of formal requirements for the initiation of proceedings in French law, simplified the process of preparing reports and plans for rehabilitation or preservation, as *de iure* had replaced the collection of evidence to qualify the nature of the procedure, i.e. as a prerequisite for effective insolvency resolution.

(corresponds to paragraphs 6 and 32 of the passport of scientific specialty 5.1.3).

The scientific novelty of the study is to determine the mechanism of legal adhesion, the order and conditions of its action. In the course of the study, new patterns and trends in the development of regulation of insolvency settlement and restoration of the debtor's well-being were identified, gaps in the legislative

regulation of the restoration of the debtor's well-being were identified, incorrect borrowings from French legislation were discovered, ways and ways were proposed to fill these gaps and incorrect borrowings.

The theoretical and practical significance of the study lies in the possibility of using the results of the study in the study of the law of insolvency settlement by students and graduate students, the reform of legislation on the settlement of insolvency and the interpretation of the rules of law. Within the framework of the study, a system of principles for applying legal adhesion was formed. First, the application of the said institution requires clarification of the concept of good faith of the debtor for the purposes of insolvency settlement. Secondly, it is necessary to establish a rebuttable presumption of the need to restore the welfare of a bona fide debtor. Thirdly, the restoration of the welfare of the debtor (if the presumption has not been refuted) with the need entails rehabilitation procedures. Fourthly, the rehabilitation procedure lasts for a period called surveillance, after which a rehabilitation plan is developed. Fifthly, if the rehabilitation plan meets the necessary and sufficient conditions of legal adhesion, the court approves it. At the same time, the rebuttal and proof of procedural presumptions and the drawing up of the plan are carried out by procedural partnerships, which allows consolidating the positions of creditors and participants on the side of the debtor.

When developing draft proposals for reforming Russian insolvency law, France's experience in restoring the welfare of debtors may be taken into account. First, improving the mechanism of interaction of persons in a bankruptcy case by adapting the institution of procedural partnerships (for example, developing the institution of group claims, claims on corporate disputes). Secondly, the Russian legal order belongs to the continental legal system, and the insolvency law refers to the Romanesque legal tradition, due to its indirect reception from France, therefore, it is more preferable to accept legal adhesion as an institution of continental (Romanesque) law, rather than cram down, which refers to the Anglo-Saxon legal system. Thirdly, domestic legislation contains three types of rehabilitation procedures (external monitoring, financial recovery, settlement agreement), the

conduct of which, if there is an institution of legal adhesion, will ensure a high level of diversification of effective regulatory instruments for the restoration of well-being.

When creating Russian insolvency legislation, such institutions of bankruptcy law as observation, rules on formal criteria for opening a procedure, and regulation of closing the register of creditors' claims were incorrectly adopted. First, under French law, observation is the time interval between recognizing the debtor's insolvency and approving the rehabilitation plan, rather than a separate procedure. Secondly, in accordance with the French Commercial Code, a bankruptcy case is opened only when establishing the insolvency of the debtor, in connection with which the judge analyzes the economic condition of the debtor and establishes the fact of suspension of payments. Thirdly, the closure of the register of claims of creditors in France is functional and not absolute, i.e. it can always restore the claims of creditors in the appropriate queue and rank, if they have legal grounds for this or the omission occurred for a good reason.

Testing of the results of the study was carried out, firstly, during lectures to students of the S.S. Alekseev Research Center for Private Law under the President of the Russian Federation, lectures and seminars on advanced training among employees of the legal department and services for working with problem debts of Gazprombank JSC, recording a course of lectures for *LF Academy* on the main theses set out in this dissertation.

Secondly, the theoretical results obtained have already been used in the discussion in the process of developing draft laws on the development of bankruptcy institutions in Russia.

Thirdly, the results of the work were discussed at thematic scientific conferences, symposia, which were held at the Moscow State Law University named after O.E. Kutafin, the Institute of Legislation and Comparative Law under the Government of the Russian Federation, the Financial University under the Government of the Russian Federation.

List of publications of the author.

1. *Iontsev, M.A.* Key conditions for the balance of interests of the debtor and creditors in the settlement of insolvency in the procedures of prevention, preservation and rehabilitation: experience of Russia and France/M.A. Iontsev//Law and power. – 2021. – No. 1.

2. *Iontsev, M.A.* General principles of insolvency settlement in modern legislation and the theory of community/M.A. Iontsev//Modern science: problems of theory and practice. – Series "Economics and law." – 2021. – No. 5. – Part 2.

3. *Iontsev, M.A.* General Principles of Insolvency Settlement/M.A. Iontsev//Legal Sciences. – 2021. – No. 5.

4. *Iontsev, M.A.* Presumptions when opening rehabilitation procedures in the law and order of the French Republic/M.A. Iontsev//Public service. – 2023. – No. 2 (142).

5. *Iontsev, M.A.* Legal adhesion, or Rehabilitation in French: on the importance of compromise in insolvency settlement: [monograph]/M.A. Iontsev. – M.: Statute, 2023. – 208 p.

6. *Iontsev, M.A.* Legal adhesion in restoring the welfare of the debtor. Experience of France/M.A. Iontsev//Corporate lawyer. Bankruptcy Lawyer Workshop. - 2023. – 101 p.