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**LEGAL REGULATION OF OVERDUE DEBT COLLECTION ACTIVITY
IN THE REPUBLIC OF TAJIKISTAN AND IN THE RUSSIAN FEDERATION**

Specialty 12.00.03 - Civil law, business law, family law,
international private law

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ANNOTATION

Relevance of the research topic.

With the development of the economy, civil circulation and the financial market, in order to carry out entrepreneurial activities, expand business, improve housing conditions and meet other needs, citizens of Tajikistan have increasingly begun to resort to lending institutions. A significant increase in the number of credit transactions is often accompanied by the emergence of overdue debts among debtors, which leads to a violation of the rights and interests of creditors. Depending on the situation, the collection of such a debt can be carried out both by legal and non-legal means, but the most widespread is the initiation of legal proceedings with the subsequent enforcement of the collection decision. The implementation of the related procedures requires significant efforts from the claimant, monetary costs and often stretches for a long time, during which the creditor cannot dispose of these funds, use them to carry out their activities, to generate income or to settle with their own creditors.

In such circumstances, it is much more convenient to turn to the services of a specialized collection organization that carries out business activities to collect overdue debts, which is distinguished by a higher level of efficiency and efficiency than the independent actions of the creditor. However, at present, the sphere of collection services in the Republic of Tajikistan is clearly insufficiently developed, due to the lack of its legal regulation, as a result of which the rights and interests of the subjects of such relations remain without proper legal protection.

The lack of special legal regulation of collection activity as its kind of collection of overdue debts creates obstacles for the normal implementation and further development of such activities, which are objectively necessary to ensure and protect the rights and interests of collection organizations, creditors and debtors. The importance of these issues has increased even more in connection with the negative socio-economic consequences of the introduction of measures aimed at countering the spread of the new coronavirus infection - Covid-19. Among these consequences are the reduction and termination of the activities of many small and medium-sized businesses, a significant increase in unemployment, a decrease in income citizens, falling purchasing power and solvency in general. These factors have led to a significant increase in the total volume of overdue loans, the bankruptcy of many borrowers, which makes the collection of overdue debts even more problematic.

Currently, in the science of civil law of the Republic of Tajikistan, there are no comprehensive studies of many theoretical and practical issues related to legal regulation and the practical implementation of such activities, which negatively affects both the scope of fulfillment of monetary obligations and judicial practice in cases related to the collection of loans.

The foregoing allows us to conclude that the features of modern legal regulation and the practical implementation of activities to collect overdue debts require a comprehensive study, which determines **the relevance and significance of the chosen topic**.

The goal of the dissertation research is to identify and scientific understanding of theoretical and practical problems related to legal regulation and practical implementation in the Republic of Tajikistan and in the Russian Federation of activities to collect overdue debts, and to formulate recommendations for improving Tajik civil legislation in force in this area.

The object of the dissertation research is a set of social relations arising from the implementation of activities to collect overdue debts.

The subject of the dissertation research is the legal norms governing relations in the sphere of carrying out activities to collect overdue debts in the Republic of Tajikistan and in the Russian Federation, materials of judicial and other law enforcement practice, as well as doctrinal provisions formed on the issues under study by domestic and Russian scientists.

The scientific novelty of the research lies in the fact that for the first time in the legal science of the Republic of Tajikistan, a comprehensive theoretical analysis of modern legal regulation and the practical implementation of activities to collect overdue debts was carried out, on the basis of which ideas were formed about this type of activity, its variety - collection activity, about subjects, signs and its role in modern civil circulation.

Within the framework of the study, definitions of the concept of overdue debt and activities for its collection were developed, the features and characteristics of such activities were disclosed, the subjects participating in it were named; the economic, legal, social and political preconditions were identified, as well as the goals and functions of introducing special legal regulation of activities to collect overdue debts in the Republic of Tajikistan were formulated. In order to promote the development of the financial and credit market and increase the efficiency of collection services, the idea was put forward and substantiated of the feasibility of introducing a new, specific agreement into the Tajik civil circulation - on the collection of overdue debts, combining elements of a service agreement and instructions in the part necessary and not contradicting to carry out this kind of activity. The dissertation defined the rights and obligations of subjects of activity to collect overdue debts, and also established the types and measures of their civil liability. In addition, the category of "collection secrets" was introduced into the modern doctrine, and measures were proposed aimed at legislatively ensuring its safety.

In order to concretize the declared scientific novelty, **the following basic provisions are submitted for defense:**

1. The following definition has been formulated: "Overdue debt in civil law is the amount of payments due to the creditor on the principal debt and / or interest for the use of other people's

funds and (or) penalties for violation that are not repaid by the debtor within the terms established by the civil contract or the law civil obligations arising within the framework of a monetary obligation due to non-performance or improper performance by the debtor of the obligations imposed on him by law or contract."

2. It is proposed to consider the category "overdue debt" as a generalizing generic concept that unites debts that differ from each other according to various criteria, including:

- depending on the nature of the civil obligation, within the framework of which they arose;
- depending on the type of settlement: liabilities expressed in foreign or national currency;
- depending on whether the fulfillment of the monetary obligation was secured by the methods chosen by the parties or not;
- depending on the subject of default - debts of individuals and legal entities.

The debts of married citizens are distinguished into special groups; citizens declared bankrupt, and debts of deceased persons, collection from which has essential specifics. These debts, in turn, are differentiated depending on the basis of occurrence, as well as on whether or not the monetary obligations of such persons were secured by a surety or in other ways.

3. The proposal is substantiated to understand the activity of collecting overdue debts as "a set of actual and legal actions carried out by the debt collector through the use of legal means of influencing the debtor, which are aimed at voluntary repayment by the debtor of unpaid payments due to the creditor on the main debt and / or interest for the use of other people's funds and (or) penalties for violation of civil obligations arising under a monetary obligation due to non-performance or improper performance by the debtor of his obligations, and in case of refusal to repay such payments, to apply court proceedings and compulsory execution of the decision to collect".

4. The specific nature of collection activities is shown, which is a type of activity to collect overdue debt, which is defined as an independent, at their own risk, entrepreneurial activities performed by specialized commercial organizations on behalf of and on behalf of the client or on their own behalf, aimed at systematic profit from collection of overdue debts from debtors, implemented both out of court without the use of enforced collection, and with the use of these procedures. Possessing all the signs of entrepreneurial activity, collection activity differs from it in a special sphere of implementation, professional nature and increased risk, because the achievement of this goal depends not so much on the actions of the claimant, but on the presence or absence of the debtor's funds, income or property, which can be foreclosed.

5. It is proved that increasing the efficiency of ensuring and protecting the rights and interests of creditors, debtors and claimants and establishing an optimal balance between the

private interests of these persons and the public interests, consisting in ensuring the stability and sustainability of financial and monetary relations, can be achieved through the legislative authorization of collection activities, attribution it to licensed types of activities, endowing collection organizations with the appropriate rights and obligations and establishing rules and conditions for carrying out such activities, in connection with which the need to develop and adopt in the Republic of Tajikistan a law "On collecting overdue debts" is substantiated.

6. It was revealed that the claimant, being an intermediary between the creditor and the debtor, bears positive and negative civil liability to these persons. The positive responsibility of the debt collector to the debtor is expressed, firstly, in understanding the situation that caused the overdue debt that the debtor has, and, secondly, in the exclusion of any illegal, aggressive and cruel actions in relation to the debtor. In order to achieve the goal set by the customer, these actions must comply with ethical standards, be fair and conscientious. The positive responsibility of the claimant to the creditor lies in the awareness of his debt to the person who entrusted him with the implementation of this activity, which is transformed into the claimant's desire to best compose an algorithm of his actions aimed at achieving the goal set by the customer, and to perform them as quickly and efficiently as possible.

It was proved that the positive responsibility of the collection organization has another aspect: the claimant must be aware that the public assessment of the activities carried out by him is based on the nature and result of the actions he performs. A negative assessment of the activities of a specific debt collector leads to an increase in public distrust not only to this collection organization, which negatively affects its profits and prospects, but also collection activities in general, which creates obstacles for the further development of collection, banking and finance and credit business.

7. It is argued that the negative liability of the claimant to the creditor is based on the general principles of liability for violation of contractual obligations and occurs regardless of the presence or absence of fault in his actions (item 3 of article 401 of the Civil Code of the Russian Federation). However, if the debtor's lack of funds or other property that can be foreclosed was caused by the introduction of restrictive measures aimed at countering the spread of the new Covid-19 coronavirus infection, it can be recognized as the basis for his release from liability for failure to fulfill the obligation, in In this connection, recoverers (collection organizations) should also be exempted from liability for failure to fulfill their obligations. The recoverer's liability to the debtor arises for actions that violate his personal non-property rights or encroach on his intangible benefits, and is expressed in the obligation to compensate the moral damage caused to the debtor - physical or mental suffering that the debtor suffered as a result of the unlawful actions of the recoverer (Article 151 of the Civil Code of the Russian Federation).

Based on the theoretical provisions formulated in the text of the thesis, a number of proposals have been developed aimed at improving the current civil legislation of the Republic of Tajikistan.

1. In order to create optimal conditions for the implementation and development of collection activities, ensuring and protecting the rights and interests of its subjects, it is proposed to consolidate in the Civil Code of the Republic of Tajikistan an agreement on the collection of overdue debts, by virtue of which one party (the claimant) undertakes on the instructions of the other party (the customer) to collect from the person indicated by the customer (his debtor) the amount of money specified in the contract (overdue debt), and the customer undertakes to pay the debt collector remuneration in the amount determined by the agreement of the parties. The content of this agreement, which has a special subject composition, an independent subject and a specific object, is a set of elements of contracts of assignment and paid provision of services, which, being united by a common legal goal, are transformed into a single whole, which is new in comparison with the contracts used in it.

2. In order to simplify and accelerate the collection of overdue debts under a writ of execution issued on the basis of a judicial act that has entered into legal force, it is proposed to enshrine in domestic legislation a provision that provides a debt collector with the opportunity to independently apply to banks and other credit organizations, as well as to organizations or individuals paying the debtor wages, pensions, stipends and other periodic payments, for the implementation by the named subjects of collection of funds not paid by the debtor in a timely manner or for the imposition of seizure on them.

3. For the purpose of the practical implementation of the provision, substantiated in the dissertation, that from the moment the creditor transfers information about the debtor related to his debt to the collection organization, such information should be defined as a "collection secret", the safety of which must be ensured at the legislative level, it is proposed:

- included in the stipulated in Art. 48 of the Law of the Republic of Tajikistan "On Banking Activity", a list of subjects to whom information relating to banking secrecy in the part related to credit history is provided, persons to whom the credit institution has ceded the right of claim;

- to supplement part 7 of this article with the following norm:

"A person to whom a credit institution has ceded the right of claim under agreements containing credit risk is obliged to keep the banking secrets and other secrets protected by law, which have become known to him in connection with the assignment of rights (claims), to ensure the confidentiality and security of the specified data and be responsible for their disclosure. »;

- to supplement Art. 22 of the Law of the Republic of Tajikistan "On Credit histories" with the following norm:

“The person to whom the information provider specified in the first paragraph of the first part of Article 17 has ceded the right to claim under agreements containing credit risks, becomes a supplier of information that, in accordance with this law, is submitted to the credit bureau, and is subsequently obliged to conclude agreements on the provision of information and provide information to one credit bureau”.

4. In order to optimize and intensify the foreclosure procedure on the property pledged by the debtor, it is proposed:

- firstly, to legislate the extrajudicial procedure for foreclosure on the subject of a mortgage, making appropriate amendments to the Law of the Republic of Tajikistan "On Mortgages";

- secondly, to amend Part 1 of Art. 43 of the Law of the Republic of Tajikistan "On the Pledge of Movable Property and Registration of Secured Obligations", stating it as follows:

"The subject of the pledge must be transferred by the pledger to the pledgee out of court on the following grounds:

- under a previously concluded agreement;
- by agreement between the pledger and the pledgee, concluded after non-performance or improper performance by the pledger of the obligation secured by the pledge.

When foreclosure is made on pledged property out of court, the pledgee who carries out foreclosure on the mortgaged property in the manner prescribed by law must send a notice to the pledger of the commencement of foreclosure on the subject of the pledge."

The main provisions of the dissertation were presented by the author at 10 scientific and scientific-practical conferences, including:

- International scientific-practical conference "Legal systems of the Republic of Tajikistan and the CIS countries: state and problems", dedicated to the scientific activities of Honored Lawyer, Doctor of Law, Professor Sh. Mengliev (Dushanbe, October 23, 2015);

- XV International Koniv readings "Prosecutor's Office of Russia: yesterday, today, tomorrow" (Vladivostok, March 2, 2016);

- International student scientific and practical conference "Actual problems of private law", in the framework of the annual Basin readings (Almaty, Caspian University, April 23, 2019).

The main theoretical conclusions of the dissertation research, proposals and recommendations are set out by the author in 13 publications, including:

Articles published in journals peer-reviewed in the Higher Attestation Commission of the Russian Federation:

1. Vohidov A.I. Legal regulation of the transition of banking secrecy to collection organizations // Bulletin of the Tajik State University of Law, Business and Politics. - 2015. - No. 4 (65). - P. 120-126.

2. Vohidov A.I. Preconditions for the formation of collection activities in the Republic of Tajikistan // Bulletin of the Pedagogical university. - 2015. - No. 5-1 (66). - P. 327-332.

3. Vohidov A.I. Alternative methods of collecting overdue debts under civil law // Legal life. - 2020. - No. 3. - P. 170-181.

An article published in a journal peer-reviewed in the Web of science, as well as included in the list of publications approved by the Academic Council of the Academy

4. Vohidov A.I. On the subject of collection activity in the Republic of Tajikistan // Bulletin of the Perm University. - 2016. - Issue. 1 (31). – P. 41-48.

Articles published in other journals and collections of scientific conferences:

5. Vohidov A.I. Agreement as the basis for the emergence of collection activities // Legal systems of the Republic of Tajikistan and the CIS countries: state and problems: materials of the International scientific and practical conference dedicated to the Honored Lawyer of the Republic of Tajikistan, an outstanding scientist, Doctor of Law, Professor Sh. Mengliev (Dushanbe, October 23, 2015). - Dushanbe: RTSU, 2015. - P. 28-33.

6. Vohidov A.I. Objective necessity of the market for collection services in Tajikistan // Actual problems of legal sciences: theory and practice: materials of the International scientific-practical conference dedicated to the 25th anniversary of Independence of the Republic of Tajikistan and the 20th anniversary of the RTSU (Dushanbe, October 27-28, 2016). - Dushanbe: RTSU, 2016. - P. 172-178.

7. Vohidov A.I. The legal nature and signs of collection activity // Prosecutor's Office of Russia: yesterday, today, tomorrow: materials of the XV International Koniv readings (Vladivostok, March 2, 2016). - Vladivostok: Publishing house of VSUES, 2016. - P. 234-238.

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9. Vohidov A.I. On the issue of civil liability of entities involved in the collection of overdue debts // Development of legal science in modern conditions: theory and practice: materials of the VI international scientific and practical conference (Dushanbe, October 31, 2018). - Dushanbe: RTSU, 2018. - P. 29-34.

10. Vohidov A.I. Object necessity of legal regulation of activities to collect overdue debts in the Republic of Tajikistan // Scientific works "Adilet". - 2018. - No. 1. Part II. - P. 66-75.

11. Vohidov A.I. The essence of overdue debt in civil law and the grounds for its collection // Scientific works "Adilet". - 2019. - No. 2. - P. 83-87.

12. Vohidov A.I. Contracts for the provision of services and instructions as the basis for the emergence of activities to collect overdue debt // National legal system of the Republic of Tajikistan and the CIS countries: analysis of trends and development prospects: materials of the VII international scientific and practical conference dedicated to the 25th anniversary of the Constitution of the Republic of Tajikistan (Dushanbe, 31 October 2019). - Dushanbe: RTSU, 2019. - P. 245-249.

13. Vohidov A.I. Problems of foreclosure on mortgaged property in the Republic of Tajikistan // Actual problems of legal science. IX International scientific and practical conference of students, undergraduates and postgraduates (Kirov, April 26-27, 2019): collection of scientific reports / Volgo-Vyatka Institute (branch) of Moscow State Law Academy. - Kirov: Avers, 2019. - P. 183-188.

The structure of the thesis is defined by the logic of achieving the objectives and consists of an introduction, three chapters, which include 8 paragraphs, a conclusion and a list of references.