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The Principles of the Insolvency Procedure in Romania

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The insolvency law in Romania is one with tradition, its first form being adopted in 1995. At that time, although no principles were expressly stipulated to govern this procedure, they could somehow be deduced from the interpretation of the legal norms. The legal consecration of the principles of the insolvency procedure can only be found in Law No. 85/2014, still in force today. It should be mentioned that Law no. 216/2022 amended the legal rules regarding the principles applicable to insolvency. These principles can be summarised as follows: encouraging negotiations regarding the prevention of insolvency, maximising the debtor's wealth, enabling effective restructuring, efficiency, reasonableness in the procedure, insolvency of the creditor mass, transparency and predictability, pro rata and pari passu rules, credit risk limitation, the superpriority of financing in the procedure, a representative and fairly assumed reorganisation plan, useful and efficient capitalisation, procedural coordination in the matter of the group of companies and legality control.

Keywords: *Insolvency; Principles; Rules.*

Introduction

In the history of Romanian law, after the year 1800, we find empirical regulations regarding insolvency. Under the Calimach Code of 1817, bankruptcy applied to both merchants and non-merchants, being called, in art. 1974, "creditors' course order". The provisions regarding bankruptcy in this normative act ("About lying liars"), quite embryonic, contain definitions of terms such as: the creditor's table or the creditors' committee.

The Caragea Code of 1818 regulated bankruptcy in Part III, Chapter VIII, "For borrowing and debt". According to the bankruptcy provisions of the Caragea Code of 1818, if the court found that the debtor's damages were "established", and they were the result of the circumstances and not his/her act, then the creditors could grant the debtor "mercy", otherwise he/she would be judged for fraudulent bankruptcy.[1]

The "*Condica pentru comerciu*", adopted in 1840, is considered the first complete Romanian bankruptcy law, representing a translation of the bankruptcy provisions from the French Commercial Code, as amended by the Law of May

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[1]About bankruptcy in the old Romanian law, see Atanasiu & Răţoi (2007) at 75-77.

28, 1838. This regulation was applied in Muntenia, and from 1864 also in Moldova.[2]

The Romanian Commercial Code from 1887 regulated the bankruptcy procedure in Book III - About Bankruptcy (art. 695-888) and Book IV, Title I, Chapter III – Special procedural provisions in bankruptcy matters (art. 936-944)

Although in 1938 a new draft commercial code was developed, it was never applied, in fact, the old code continued to function until 1946-1947 when the communist structures replaced it almost entirely with economic legislation appropriate to the economy of a planned state. Although the provisions of the Commercial Code of 1887 were not repealed, they were applied only to foreign trade enterprises by the Bucharest Chamber of Arbitration, and in internal commercial relations, in the relations between mixed companies established in the country and foreign trade enterprises. [3]

After the Revolution of 1989, which reinstated the market economy, the Commercial Code regained its status as common law in relations between traders.

The first modern regulation of commercial insolvency, specific to a market economy, can be found in Law no. 64/1995 regarding the reorganisation and bankruptcy procedure[4].

The unprecedented development of commercial activity in Romania as well as the prospect of joining the European Union[5] led the legislator to reform this institution by adopting Law no. 85/2006 regarding the insolvency procedure[6]. Law no. 85/2014, still applicable today with a series of amendments, was intended to be an Insolvency Code, with the idea of encompassing all the legal provisions on insolvency. This objective, however, was not achieved, as the insolvency of natural persons or the insolvency of territorial administrative units are currently regulated in other documents. It was only in 2015 that the Romanian legislator prioritised the necessity of harmonising the national legislation with the European one and of adopting the Law of Insolvency of Natural Persons No. 151[7].

The principles of the insolvency procedure were also shaped over time, following the legislative evolution in the field of insolvency in Romania.

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[2]Cărpenaru (1996) at 9.

[3]Vonica (1991) at 3.

[4]Law no. 64/1995 was published in the Official Gazette of Romania no. 130 of June 29, 1995, and entered into force on August 28, 1995. This law is currently repealed.

[5]The European Commission's report on the progress made by Romania during 2004 in the process of joining the European Union stated that: 'the Romanian legal system does not provide for effective mechanisms for the exit of economic operators from the market'.

[6]Law no. 85/2006 regarding the insolvency procedure was published in the Official Gazette of Romania, Part. I, no. 359 of Aprile 21, 2006 and entered into force 90 days after the date of publication.

[7] Law no. 151/2015 published in the Official Journal of Romania No. 464 of the 26th of June 2015 and entered into force on the 1st of January 2018.

The Evolution of Legal Regulation

Law no. 64/1995 was, in Romania, the first distinct legal regulation aimed at debtors in financial difficulty, and which proposed two solutions: either judicial reorganisation or bankruptcy. This law did not expressly contain an enumeration of the principles applicable in insolvency. Interestingly, the principles of this procedure were not of interest to doctrinaires for about 5 years. Researching the legal material[8] written in the period 1995-2000 on the matter of insolvency, we find that no attempt was made to draw guidelines in the matter of insolvency.

Only after the year 2000 did the first opinions appear regarding the existence of principles that can be derived from the legal text.

At the level of 2001[9], it is stated that the principles that govern the reorganisation and bankruptcy procedure are: the principle of speed of the procedure, the principle of maximising the value of the debtor's assets, the principle of active participation of creditors, the principle of the pre-eminence of the judicial reorganisation procedure over the bankruptcy procedure, the principle of the privileged treatment granted to the diligent debtor and honest.

Prof. I. Turcu[10] estimated in 2003 that from the analysis of the text of Law no. 64/1995 several fundamental principles can be identified: the principle of priority of the procedure over other debt recovery procedures, the principle of speed, the principle of collectivity, the principle of the primacy of reorganisation and the principle of maximising the recovery of debts. The same author[11], in 2006, added two more to the stated principles: the principle of continuity of the syndic judge and the principle of ordering the rank of claims. These were appreciated by the doctrine as guiding principles in the matter of insolvency.

Regarding the insolvency procedure, Law no. 85/2006, although very modern at its time, did not focus on the unequivocal establishment of principles to guide the judges and insolvency practitioners, maintaining the doctrinal task of identifying such principles.

Thus, legal texts with particular impact and importance in the insolvency proceedings were identified, so that they were considered as principles. In this context, four principles were identified: the principle of priority, the principle of speed, the principle of collectivity and unity, and the principle of maximising the debtor's wealth.

The principle of the priority of the insolvency procedure was expressed by the need to recover creditors' claims and cover the debtor's liabilities. From the date of the opening of the insolvency procedure, all individual prosecutions of the creditors against the debtor ceased. According to art. 36 of Law no. 85/2006 "from the date of the opening of the procedure, all judicial, extrajudicial actions or enforcement measures for the realisation of claims against the debtor or his assets are suspended by law". This provision prevented, from the date of the opening of the insolvency procedure, all creditors, equally, to individually obtain

[8]Pătulea (1995); Turcu (1996); Țăndăreanu (2000); Turcu (2000); Bufan (2001).
[9]Schiau (2001) at 24-33.
[10]Turcu (2003) at 207.
[11]Turcu (2006) at 306.

the satisfaction of their claim through any other method allowed by Romanian law. The suspension took place *ope legis* and determined the termination of any individual prosecution against the debtor in order not to harm the interests of creditors and to eliminate uncertainty about the amount of the passive mass. Observing the rigors of Law no. 85/2006 regarding the registration of creditors in the table of claims, the methods of valorisation of goods, the order of distribution of the amounts obtained, the insolvency procedure was regarded as a special enforcement one. Under these conditions, the principle of the priority of the insolvency procedure over other debt recovery procedures was affirmed. Although this principle is not expressly enshrined in Law no. 85/2006, the legislator to ensure its applicability, by art. 37 provided that the sentence opening the insolvency procedure will be communicated by the syndic judge to all the courts in whose jurisdiction is located the headquarters of the debtor, declared in the trade register.

Another principle emphasised by the doctrine was that of celerity. This principle can be found in paragraph (2) of art. 5 of Law no. 85/2006 which, referring to the bodies that apply the procedure[12], assigns them the task of carrying out all acts and operations with speed. Even if he/she did not enunciate it as a principle, the legislator was concerned with finding quick solutions for debtors in financial difficulty, constantly intervening in the modification of the legal text. By Law no. 169/2010, many procedural deadlines were reduced: the deadline for submitting claims declarations from 60 to 45 days, the deadline for verifying claims in the simplified procedure from 20 to 15 days, the deadline for verifying claims in the general procedure from 30 to 20 days, the appeal deadline from 10 to 7 days, the deadline for justifying the decisions issued by the syndic judge from 30 to 10 days, the deadline for drawing up the report on the causes and circumstances of the state of insolvency from 60 to 40 of days, etc. Since the commercial life has an alert rhythm, the speed specific to the commercial activity must be also present in the insolvency procedure. Achieving the goal of the insolvency procedure by covering the debtor's liabilities within a reasonable time allows the creditors to continue their activity and also prevents the extension of the state of insolvency to the debtor's partners. On the other hand, remaining in the system for a long period, some debtors in a state of insolvency, without their elimination or reintegration, maintain the blockage of the commercial relations in which they are parties, with the consequence of restricting the freedom of action and the degradation of the conditions of activity and for the other merchants[13].

The principle of collectivity and unity was extracted from the provisions of art. 2 in conjunction with art. 3 point 3 of Law no. 85/2006, according to which the insolvency procedure is a collective one, in which all creditors participate together in the pursuit and recovery of their claims. This principle is related to the nature of the insolvency procedure, which opposes the debtor and the mass of creditors, and provides for a unitary legal regime for each of the latter[14]. The

[12]Art.5 para (1) of Law 85/2006: 'The bodies that apply the procedure are the courts, the syndic judge, the judicial administrator and the liquidator'.
[13]Avram (2008) at 14.
[14]Avram (2008) 15.

effect of imposing this principle is that the insolvency procedure is related to the entire collective of creditors.

The principle of maximising the debtor's wealth results from the provisions of art. 86 paragraph (1) Law no. 85/2006 which provides that "in order to maximise the value of the debtor's assets, the receiver/liquidator may maintain or terminate any contract, unexpired leases or other long-term contracts, as long as these contracts are not fully executed or substantiated by all parties involved". Although this principle is regulated in the content of section IV - "The situation of some legal acts of the debtor", it must be taken into account that it applies both in cases of judicial reorganisation and in cases of bankruptcy, provided either by the general procedure, or the simplified one.

The principle obligates to carry out all the procedural steps related to the increase of the value of the debtor's assets so that, on the path of reorganisation or bankruptcy, the recovery of debts is maximised. The legislator has expressly provided provisions regarding the procedural steps in the application of this principle, such as the return to the active mass of the goods that have fraudulently left the debtor's patrimony, the stopping of losses from the debtor's wealth in the sense of denouncing some contracts, the recovery of the debtor's own claims. Also, an important role in maximising the debtor's wealth is played by the insolvency practitioner who, under the control of the creditors, holds the decisions regarding the management of the procedure.

From the regulation of the Law on insolvency procedure no. 85/2006, two specific rules were deduced, which, although not expressly mentioned by the legislator, are defining for the insolvency procedure: the principle of ordering the rank of claims and the principle of active participation of creditors.

In the specialised literature, we find only two opinions[15] that recognise the order of distribution of the amounts realised in the insolvency procedure as a fundamental principle.

The analysis of art. 121 of Law no. 85/2006 results with the order of payment to creditors differing according to whether or not the capitalised assets were encumbered by mortgages, pledges, or other movable real guarantees or retention rights of any kind[16]. In the conditions in which the creditors have constituted real guarantees on the assets of the debtor's estate, the legislator preserves the principles of common law according to which the creditor holding such a right has the prerogative to be satisfied with priority from the amount obtained as a result of the asset's capitalisation, the claim having rank immediately next to expenses incurred in the common interest of creditors.

Unlike secured claims, unsecured claims have a mandatory distribution order established by the legislator according to their importance from an economic, social, and legal point of view. In the insolvency procedure, the situation may arise that the sums intended to cover the claims are insufficient to satisfy all creditors, in which case the rule of proportionality is enshrined in art. 124 of Law no. 85/2006: "The amounts to be distributed among creditors of the

[15]Turcu (2006) at 302; Nasz (2009) at 125.
[16]For developments see Moțiu (2008) at 12; Bufan & Munteanu (2002) at 10 et seq.

same priority rank will be granted proportionally to the amount allocated for each claim [...]".

Taking these considerations into account, we assessed, at the level of 2013[17], that the manner and order in which creditors see their claims realised is one of the central aspects of the insolvency procedure with principal value.

Importantly, the principle of active participation of creditors was generated by the increase in the role of the assembly of creditors in the supervision of the activities carried out by the insolvency practitioner and the transfer of economic aspects to the competence of the creditors' committee.

The meeting of creditors approves the bankruptcy proposal made by the judicial administrator in the report on the causes and circumstances that led to the emergence of the state of insolvency[18], approves the valuation and method of selling the debtor's assets[19], analyses the final report drawn up by the insolvency practitioner[20], etc. Among the attributions of the creditors' committee we find: analysing the debtor's situation and making recommendations, negotiating with the insolvency practitioner who wants to be assigned to the case, learning about the reports of the judicial administrator or the liquidator, and challenging them if necessary, proposing taking reasonable measures, requesting the lifting of the debtor's right of administration, formulating actions for the cancellation of transfers of a patrimonial nature made to the detriment of creditors[21], etc.

The entirety of the creditors' attributions leads to establishing the defining role they have in determining all important decisions in the insolvency procedure. Although the legislator gives the possibility to the creditors to take managerial decisions under the aspect of opportunity regarding the debtor, they are free to choose an active or passive attitude in the insolvency procedure. Although creditors should show a special interest in the debtor's insolvency procedure, the jurisprudence at the level of 2010[22] revealed their passivity most of the time. The non-involvement of creditors in the insolvency procedure is not only quantified in the lack of information about their debtor but also leads to the prevention of the exercise of duties by the judicial administrator/liquidator and to the procrastination of the insolvency procedure.

Although the involvement of creditors is welcome in the insolvency procedure, its practical inapplicability and their possibility to stay passive without any legal sanction, led to the conclusion that the "active participation of creditors" cannot be raised to the rank of principle.

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[17]Iancu (2013) at 19.

[18]Art. 59 par.(4) și art. 60 of Law no.85/2006 regarding insolvency procedure.

[19]Art. 116 par. (2) și 117 of Law no.85/2006 regarding insolvency procedure.

[20]Art. 129 of Law no.85/2006 regarding insolvency procedure.

[21]Art. 17 par. (1) lett. a-f) of Law no.85/2006 regarding insolvency procedure.

[22]În file no. 937/30/2009 of Timiș Court, the liquidator convened the meeting of creditors three times to approve the capitalisation strategy of the debtors' assets; in file 1322/30/2009 of the Timiș Court, 11 months were needed for the communication of a point of view of the secured creditor on the reduction of the auction price of the asset affected by the guarantee; in file no.609/115/2009 of Caraș Severin Court, numerous addresses were sent to the majority creditor to participate or to communicate a written point of view regarding the agenda of creditors meeting, since in his absence the assembly was nonstatutory.

Thus, until 2015, the rules stated above, extracted by doctrine from the legal text and called principles, guided the insolvency procedures in Romania.

Principles Applicable in the Insolvency of the Professionals

Law 85/2015, still applicable today, on insolvency prevention and insolvency procedures expressly contains 14 principles listed in art.4. Thus, with the entry into force of this law, the principles were clearly expressed by the legislator, they no longer had to be extracted by doctrinaires from the legal text.

Maximising the degree of capitalisation of assets and recovery of debts (art. 4 point 1). This principle has been taken into account in the insolvency procedure since its first form in 1995. Although the law puts a lot of emphasis on the reorganisation procedure, the goal of the law "covering the debtor's liabilities" must not be forgotten, in a context in which the maximisation of the debtor's wealth must be pursued with the aim of satisfying the creditors, either by capitalising on the highest possible price, or by recovering the debtor's claims. In order to comply with this principle, all measures must be taken to prevent the premature and harmful dismemberment of the debtor's patrimony.

Giving debtors a chance for efficient business recovery, by maintaining economic activity and protecting jobs, by the debtor's effective access to early warning means, by means of insolvency prevention procedures or by judicial reorganisation proceedings, without prejudice to other recovery solutions (art. 4 pt. 2). The means of warning times are procedures recently introduced in Romanian legislation (2022) and involve alerting of the existence of circumstances that could give rise to the state of difficulty or insolvency of the debtor. In practice, access to all forms of informal recovery of the debtor is prioritised with the direct aim of maintaining jobs but also the debtor's activity in general.

Ensuring effective insolvency and insolvency prevention procedures, including through appropriate communication mechanisms and proceeding in a timely and reasonable manner, in an objective and impartial manner, a minimum of costs, likely to lead to the discharge of obligations (art.4 pt. 3). To achieve the purpose of the law, insolvency prevention, and insolvency procedures must be carried out with maximum efficiency, in a satisfactory period for both the debtor and the creditors, and with the lowest possible costs. This principle also emphasises the distinct nature of prevention procedures compared to insolvency procedures, the purpose of the first being the discharge of the debtor's obligations.

Ensuring equal treatment of creditors of the same rank (art. 4 point 4) Creditors of the same rank or of the same category will be treated without differentiation. In other words, creditors in the same category will benefit from equal and uniform treatment. It is valuable that this principle refers to the rights of the creditors in the procedure (the right to vote or the right to information) and less to the rules for the distribution of the collected sums that follow the rank of the creditors. In the category of secured claims, preference clauses must be observed, and within the same rank creditors will receive amounts proportional to the claim they hold in that category. So in these situations, the equal treatment of creditors is thwarted.

Ensuring a high degree of transparency and predictability in the procedures provided for by law (art. 4 point 5) The transparency of the ongoing procedures must accompany all participants in the insolvency procedure for clear and correct information on the debtor's situation. Carrying out the procedures in a transparent manner, respecting the legal deadlines, respecting the rights of the debtor as well as the creditors, and mentioning all the necessary and relevant information for all involved parties ensures predictability.

Protecting information of a competitive nature regarding the debtor's business, without hindering creditors' access to the necessary and relevant information that would allow them to adopt a decision in insolvency prevention and judicial reorganisation procedures (art. 4 pt.5^1) Newly introduced in insolvency law, this principle aims at the protection of competitive information related to the debtor's business. The debtor's creditors must have relevant information to make the right decisions regarding the debtor's situation, and his possibility to continue his business, but the protection of information of a competitive nature comes to protect the normal course of business of a debtor who has not reached bankrupt and intends to continue the business.

Recognition of existing rights of creditors and compliance with the order of priority of claims, based on a set of clearly determined and uniformly applicable rules (art. 4 pt 6) Since by the effect of the law, creditors are forbidden to recover their claims individually from the debtor, it is natural to respect the rights of creditors acquired before the opening of the insolvency procedure and to distribute the sums of money obtained during the insolvency procedure according to rigorous and uniform rules established by law for all creditors. The principle enunciated by art. 4 pt. 4 - ensuring the equal treatment of creditors of the same rank could be included within this principle since compliance with the order of priority of claims based on a set of clearly determined rules also implies the classification of creditors according to the rank of the claim and the application of uniform provisions in within each rank of creditors.

Limiting the credit risk and the systemic risk associated with transactions with financial instruments by recognising compensation immediately due in the event of the insolvency or insolvency prevention procedure of a co-contractor, having the effect of reducing the credit risk to a net amount due between the parties or even to zero when to cover the net exposure, financial guarantees have been transferred (art. 4 pt. 7) This principle is enshrined in art. 89 of the law and ensures the validity of operations carried out based on a qualified financial contract or of bilateral compensations with an insolvent co-contractor or insolvent guarantor of the co-contractor, being recognised as receivables in insolvency proceedings. The insolvency law also establishes other exceptions for qualified financial contracts, such as the impossibility of denouncing them, or the impossibility of declaring anticipated liability in case of bankruptcy.

Ensuring access to funding sources in insolvency prevention procedures, during the observation and reorganisation period, with the granting of an appropriate treatment, priority to payment, to protect these claims (art. 4 pt. 8) The stated principle unequivocally devotes priority to payment of the creditors who provide the financing of the debtor, the legislator indicating again the fact

that he prioritises the formal or informal reorganisation of the debtor over the bankruptcy procedure. Most of the time, reorganisations are doomed to failure due to the lack of external financial support that is extremely necessary during the negotiations or the preparation of the plan. In practice, these financings are difficult to obtain because, although the law seems to ensure a super-priority for the payment of these creditors, in reality, they cannot satisfy the claims of secured creditors, who will be paid in case of bankruptcy after the expenses of the procedure from the capitalisation of unsecured assets.

Basing the vote to approve the restructuring or reorganisation agreement/plan on clear criteria, ensuring equal treatment between creditors of the same rank, recognition of comparative priorities and acceptance of a majority decision, with equal or higher payments to be offered to other creditors than he/she would receive in the case of the next optimal alternative or in bankruptcy, as the case may be (art.4 point 9). This principle clearly establishes the elements according to which the creditors will decide the fate of the debtor, i.e. if he is to be allowed a restructuring of business or if initiating bankruptcy is necessary. In practice, scenarios will be set up about the number of claims that will be collected by creditors at certain predetermined time intervals, with the continuation of the debtor's activity versus the sums of money that will be collected by creditors in a theoretically shorter time but by selling the goods in the procedure bankruptcy with the cessation of the debtor's activity.

Favouring in insolvency prevention procedures, the negotiation of the amicable renegotiation of debts and the conclusion of a restructuring agreement or, as the case may be, preventive arrangement, ensuring the continuity of the enterprise (art. 4 pt.10) We are in the presence of a new principle that reaffirms the legislator's intention to prioritise business restructuring over business recovery. The purpose of supporting the negotiation and renegotiation of receivables is clearly expressed, "continuity of the enterprise." The budget creditor is allowed to vote within an agreement to reduce his receivables provided that the private creditor test is performed.

Valorisation in a timely manner and in the most efficient manner possible (art. 4 point 11). Depending on each case, the method of timely capitalisation of the assets will have to be identified. Obviously, for perishable goods, the capitalisation will be urgent, some non-essential assets of the reorganisation can be capitalised to ensure the costs of the procedure, also in the reorganisation, the debtor's assets can be sold. The most efficient method of capitalisation will also be analysed by the creditors, respectively auction or direct negotiation. This principle can also be found in art. 4 point 1 - maximising the degree of capitalisation of assets, because an effective capitalisation also implies obtaining the best possible price to satisfy the creditors.

In the case of the group of companies, the coordination of the insolvency prevention and insolvency procedures, for the purpose of their integrated approach (art.4 pt. 12) The coordination of the insolvency prevention and insolvency procedures in the case of several companies that form a group involves cooperation appointed insolvency practitioners, the existence of a co-ordinating practitioner, interconnected reorganisation plans, all of which are intended to give business restructuring a chance.

The administration of insolvency prevention and insolvency procedures by insolvency practitioners and their conduct are under the control of the court, within the limits provided by this law (art. 4 pt. 13) This principle confirms the fact that the restructuring practitioner (notion introduced by adopting debtor's restructuring procedure) is the insolvency practitioner - a familiar notion in insolvency law and that the syndic judge is the one who will have the control of the legality of the operations carried out, even if in the matter of insolvency prevention procedures the judge's intervention is rather reduced and punctual in certain moments expressly established by law.

The Principles Applicable in the Insolvency of the Natural Persons

Law no. 151/2015 expressly sets out eight guidelines that must govern any insolvency proceedings where the debtor is a natural person. These rules create the pillars on which this normative act was built, some of them taken from the principles of the insolvency procedure of professionals, others specific only to the insolvency procedure of natural persons.

The principle of recovery of the debtor in good faith. Art. 2 paragraph 1 of Law no. 151/2015 - granting bona fide debtors a chance to recover their financial situation, through a debt repayment plan - raises to the level of principle the granting of a chance to bona fide debtors to recover their financial situation, through a plan debt repayment. The idea of financial rehabilitation of the debtor governs the entire insolvency procedure, an aspect clearly stated by the legislator both in the definition of the purpose of the procedure (art. 1) and in the first principle. The possibility of staggered debts through the repayment plan with the perspective of erasing a portion of the debt have the role of supporting the natural person during the period of financial difficulty with the perspective of returning to the financial normality.

The principle of debt negotiation. The principle stated in art. 2 paragraph 2 – facilitating the amicable negotiation/renegotiation of claims and the conclusion of an agreement between creditors and the debtor on the debt repayment plan aims to find a balance between the interests of the debtor and the interests of the creditors, the latter being called to the negotiations table. The legislator does not limit him/herself to enumerating this principle, but also outlines the minimal framework in which this negotiation will take place. Thus, the negotiation period is 60 days, with the possibility of extending it by another 30 days if there are solid indications that an agreement will be reached. Also in support of the debtor, it is established that this conciliation procedure can also be carried out electronically, the legislator realising the difficulty of the personal participation of many creditors but also the fact that many times the decision-makers in the creditors' structure are not found at the local level. Conciliation meetings are not limited in number, but must take place within the period established by art. 27 of Law 151/2015. The finality of these negotiations will be recorded by the administrator of the procedure in a minute.

The principle of debt relief. Art. 2 paragraph 3 establishes, at the level of principle, the support of the debtor's exit from insolvency, including through the discharge of debts, under the law, systematically and rationally, so that the debtor is motivated to make efforts to carry out income-generating activities, to facilitate his/her reinsertion into the social environment and his/her contribution to the economic life of the community, according to the level of professional training and accumulated experience. Through this principle, the legislator reiterates the good faith that must characterise the debtor throughout the insolvency procedure, who must generate income, according to his/her professional training, for the payment of creditors, the context in which the discharge of debts will also operate. The work carried out without the prospect of actually benefiting from the fruits of the work - the income being intended to pay creditors - does not represent a stimulating framework for the debtor. However, the prospect of debt relief if the debtor has covered certain shares of the total value of the claims within certain terms, should motivate generating income at an accelerated pace. In other words, the law protects the honest debtor who makes efforts to quickly cover the debts to the creditors.

The principle of maximising the debtor's wealth. In art. 2 paragraph 4 the legislator establishes as a benchmark the maximisation, through a collective procedure, of the degree of recovery of claims and the degree of capitalisation of assets, when appropriate. This principle has general application in insolvency proceedings, there being the direct interest of both the debtor and the creditors in collecting an asset as substantial as possible in order to cover the liability. The collective nature of the procedure, which reveals a rigorous and coordinated collection by the administrator of the procedure/liquidator and a fair distribution of the sums of money obtained, is insisted upon. The maximisation of the debtor's wealth is achieved by suspending individual foreclosures. Any enforced execution generates expenses for both the debtor and the creditor, or in the insolvency procedure where all the assets that can be used are identified by the debtor and a single assessment of the assets is made, the administrative expenses will be much lower. Simple coordinated action on all of the debtor's assets will maximise the debtor's wealth.

The principle of fair treatment of creditors. Ensuring, within the collective procedure, a fair treatment of creditors and an equal treatment for creditors of the same rank, is the principle enunciated in art. 2 paragraph 5 of Law no. 151/2015. The effective implementation of this principle is ensured by legal texts that do not support interpretation. Art. 62 paragraph 4 establishes the order in which creditors will satisfy their claims, with special mentions in the case of secured creditors - art. 62 paragraph 1. Between creditors of the same rank, the distribution is done pro rata, that is, proportional to the percentage of the claim held in relation to the claims of the same rank. Ensuring the fair treatment of creditors is done by the administrator of the procedure.

The principle of recognition of creditors' rights. The principle of recognising the existing rights of creditors and respecting the order of priority of claims, based on a set of clearly determined and uniformly applicable rules, can be found in art. 2 para. 6 of the law. In our opinion, this principle could be included in the previously stated principle - the principle of fair treatment of creditors. The order

of priority of the claims referred to and whose compliance requirement is raised at the level of principle can be found in the claim table drawn up by the administrator/liquidator of the procedure. Both the debtor and any creditor have the right to contest the entries entered in the preliminary table of claims, with the consequence of the control of legality by the court. The method of distributing sums of money to creditors is established by clear legal rules and an erroneous interpretation of the provisions of art. 62 will be able to be corrected by the court regardless of whether the mentions regarding the distribution carried out will be contained in the quarterly report (art. 61) or the final report (art. 63).

The principle of speed of procedure. The legal consecration of this principle can be found in art. 2 para. 7 which ensures an efficient insolvency procedure, including through appropriate mechanisms for communicating and conducting the procedure within a reasonable time, objectively and impartially, with minimum costs for creditors, debtors, institutions, and public authorities, as well as for any other entities involved. Ensuring a reasonable term in which an insolvency procedure must be carried out efficiently is ensured by the legislator both by establishing shorter procedural terms than in common law, but also by the possibility of the creditor taking over an asset on account of the claim if time for two years it was not possible to capitalise it. [23]. We believe that attributes such as objectivity and impartiality should characterise the activity of the administrator or the liquidator of the procedure, an activity that can be subject to the control of the courts. The expenses of the insolvency procedure represent a particularly important aspect in the context of analysing the efficiency of the insolvency procedure as they will be borne by the debtor already in a situation of financial difficulty, aspects established by art. 62 paragraph (1) and paragraph (4) point 1 of the law.

The principle of transparency and predictability of the procedure. The legislator ensures a high degree of transparency and predictability in the procedure, respecting fundamental human rights and protecting personal data through the principle enunciated in art. 2 paragraph 8 of Law no. 151/2015.

To achieve the purpose of the insolvency procedure, a fundamental condition is that all parties involved provide correct information, be informed in turn, collaborate, and cooperate. Even if, to ensure information, the law establishes that the documents of the procedure will be published in the Bulletin of Insolvency Procedures, we appreciate that the human factor has a decisive role.

Analysis of the Principles of the Insolvency Procedure from a Jurisprudential Perspective

If until 2014 some clear, fundamental principles were outlined in the insolvency matter, although they were not expressly mentioned in the law, ten years later we find that in the insolvency matter we have 22 principles expressly

[23]art. 59 of Law no.151/2015 regulates special payment;

mentioned, 14 in the insolvency of professionals and 8 in the matter insolvency of natural persons.

Regarding the insolvency of professionals, in practice there is predominant use of a few particular principles, while the rest have an extremely limited area or are even non-existent in jurisprudence, found to be unmentioned in court decisions. Situations are extremely rare in which the need to disclose information of a competitive nature intervenes, to operate with qualified financial contracts, to have an external financier appear in the insolvency procedure, to open the insolvency of a group of companies. Also, the incidence of restructuring or concordat procedures is extremely low.

Some principles are reflected almost identically in the legal text. Thus art.4 pt 13 Law 85/2014 – The principle of administration of insolvency prevention and insolvency procedures by insolvency practitioners and their conduct are under the control of the court, within the limits provided by this law, unequivocally summarised in art.7 and art.57 from law no. 85/2014. Article 7 stipulates that the bodies that apply insolvency prevention procedures are the courts through the judicial judge, the restructuring administrator and the bankruptcy administrator. Thesis 2 of art. 7 indicates that "the restructuring administrator and the concordat administrator must have the capacity of an insolvency practitioner". Art 57 shows that "interested insolvency practitioners will submit to the file an offer to take over the position of judicial administrator, to which they will attach proof of the quality of insolvency practitioner..." In this context, the reaffirmation at the level of principle that only insolvency practitioners can administer insolvency prevention procedures but also insolvency procedures seem unnecessary.

Other principles seem to aim at the same point. Thus, art. 4 point 1 enshrines the principle of maximising the degree of capitalisation of the asset and art. 4 pt. 11 enshrines the principle of timely and efficient capitalisation of assets. In our opinion, the maximisation of the asset's valorisation fence even requires an efficient and timely valorisation of the assets, not being necessary to consecrate two distinct principles.

Thus, from the perspective of their applicability, we give maximum interest to the principle of maximising the degree of capitalisation of the asset, the principle of granting the chance of financial recovery of the debt, the principle of speed, the principle of transparency and predictability of the procedure, the principle of recognising the existing rights of creditors and respecting the order of priority of claims, having as a basis a set of clearly determined and uniformly applicable rules which should be supplemented with the principle of ensuring equal treatment of creditors of the same rank.

If the principles enunciated in the matter of insolvency of professionals support a discussion from a jurisprudential perspective, in the matter of insolvency of natural persons it is of no interest. Insolvency of natural persons, despite the multiple benefits established for over-indebted citizens, is not a procedure accessed in Romania. In the paper presented at the 2021 ATINER Conference, we presented the minimal number of accesses to the procedure, although the law entered into force in 2018, and currently the situation has not changed. The extremely small number of people who have benefited from the natural person's

insolvency procedure makes it impossible to analyse the jurisprudential application of the principles expressly stated in the law.

Conclusions

The Romanian legislator, in consecrating the principles applicable in insolvency, had as a source of inspiration the principles of the World Bank, the European principles of insolvency as well as the UNCITRAL Guide in matters of insolvency but also the EU Directive 2019/1023 on preventive restructuring frameworks transposed into national legislation by Law no. 216/2022 which amended and supplemented law no. 85/2014.

However, the principles must remain fundamental prescriptions that channel the creation of law as well as its application. They draw guidelines, exercise constructive action, and must guide the activity of the judge and also of the insolvency practitioner. They must provide support when the legal situation is unclear or the law is silent, the principles having the role of supporting judicial reasoning in resolving the legal issue.

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