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LAW «ON RESTORING SOLVENCY AND BANKRUPTCY OF CITIZENS OF THE REPUBLIC OF KAZAKHSTAN»: INITIAL STEPS, PROBLEMS AND SOLUTIONS

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Abstract. *The article discusses the first results of the application of the Law "On the restoration of solvency and bankruptcy of citizens of the Republic of Kazakhstan". The most pressing problems, gaps, and shortcomings of the law faced by applicant citizens, as well as other entities directly involved in the implementation of the law (financial managers, law enforcers, legal consultants, etc.), have been identified. However, a broad and stable legal practice has not yet formed around these issues. Nevertheless, these problems require urgent resolution. Nineteen legislative amendments adopted on July 19, 2024 do not fully address these issues.*

The article proposes some targeted measures for promptly addressing the identified problems. It is argued that restoring solvency is, in the long term, the most promising procedure, as for the citizen and financial organizations and the society as a whole. However, the analysis of practice revealed that this procedure is the least in demand. The article examines some reasons for this situation and proposes measures to enhance the potential of the specified procedure. It is argued that in order to solve the problem of reducing debt burden from the population, more systemic measures of proactive state-legal regulation are necessary. One such measure is seen as the development of contractibility and financial literacy of the population.

Keywords: *bankruptcy of individuals, restoration of solvency of individuals, financial literacy, financial manager, contractibility.*

«ҚАЗАҚСТАН РЕСПУБЛИКАСЫ АЗАМАТТАРЫНЫҢ ТӨЛЕМ ҚАБІЛЕТТІЛІГІН ЖӘНЕ БАНКРОТТЫҒЫН ҚАЛПЫНА КЕЛТІРУ ТУРАЛЫ» ЗАҢЫ: АЛҒАШҚЫ ҚАДАМДАР, МӘСЕЛЕЛЕР ЖӘНЕ ОЛАРДЫ ШЕШУ ЖОЛДАРЫ

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Аннотация. *Мақалада «Қазақстан Республикасы азаматтарының төлем қабілеттілігін және банкроттығын қалпына келтіру туралы» Заңын қолданудың алғашқы нәтижелері талқыланады. Азаматтардың өтініш берушілер, сондай-ақ қызметі заңды жүзеге асырумен тікелей байланысты басқа да субъектілер (қаржы менеджерлері, құқық қорғау органдарының қызметкерлері, заң консультанттары және т.б.) кездесетін өзекті мәселелер, заңнаманың олқылықтары мен кемшіліктері анықталды. Бірақ оларда кең және тұрақты құқықтық тәжірибе әлі қалыптасқан жоқ. Сонымен қатар, бұл проблемаларды мүмкіндігінше тезірек шешу қажет.*

Мақалада анықталған проблемаларды тез арада шешу үшін осы заңға өзгерістер мен толықтырулар енгізу кезінде пайдалы болуы мүмкін кейбір мақсатты шаралар ұсынылған. Төлем қабілеттілігін қалпына келтіру азамат үшін де, қаржы ұйымдары үшін де, жалпы қоғам үшін де ұзақ мерзімді перспективада ең перспективалы рәсім болып табылатыны дәлелденді. Дегенмен, тәжірибені талдау бұл процедураның іс жүзінде ең танымал емес екенін көрсетті. Мақалада бұл жағдайдың себептері қарастырылады, сонымен қатар осы процедураның әлеуетін арттыру шаралары ұсынылады. Халықтың қарыздық шамадан тыс жүктелу мәселелерін шешу үшін белсенді мемлекеттік-құқықтық реттеу шараларын жүйелі түрде жүргізу қажет екені дәлелденді. Соның бірі – халықтың келіссөз жүргізу қабілеті мен қаржылық сауаттылығын дамыту.

Түйінді сөздер: *жеке тұлғалардың банкроттығы, жеке тұлғалардың төлем қабілеттілігін қалпына келтіру, қаржылық сауаттылық, қаржылық менеджер, келіссөздер қабілеттілігі.*

ЗАКОН «О ВОССТАНОВЛЕНИИ ПЛАТЕЖЕСПОСОБНОСТИ И БАНКРОТСТВЕ ГРАЖДАН РЕСПУБЛИКИ КАЗАХСТАН»: ПЕРВЫЕ ШАГИ, ПРОБЛЕМЫ И РЕШЕНИЯ

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Аннотация. *В статье рассмотрены первые результаты реализации Закона «О восстановлении платежеспособности и банкротстве граждан Республики Казахстан». Выявлены наиболее острые проблемы, пробелы и недоработки закона, с которыми столкнулись граждане-заявители, а также иные субъекты, деятельность*

которых непосредственно связана с реализацией закона (финансовые управляющие, правоприменители, юридические консультанты и др.). Но по ним пока еще не сформировалась широкая и устойчивая юридическая практика. Вместе с тем, данные проблемы нуждаются в скорейшем своем разрешении.

В статье предлагаются некоторые точечные меры для оперативного решения выявленных проблем, которые могли бы быть полезны при внесении изменений и дополнений в указанный закон. Обосновывается, что восстановление платежеспособности является в долгосрочной перспективе наиболее перспективной, как для гражданина, так и для финансовых организаций, и общества в целом процедурой. Однако анализ практики выявил, что данная процедура тем не менее оказалась самой не востребованной. В статье рассматривается причины такой ситуации, а также предложены меры для повышения потенциала указанной процедуры. Обосновывается, что для решения проблем закредитованности населения необходимы более системные меры проактивного государственно-правового регулирования. Одной из таковых видится развитие договороспособности и финансовой грамотности населения.

Ключевые слова: *банкротство физических лиц, восстановление платежеспособности физическихлиц, финансоваяграмотность, финансовыйуправляющий, договороспособность.*

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Introduction

The initial draft of the law, entitled «On the restoration of solvency of citizens of the Republic of Kazakhstan» was presented in February 2014, accompanied by the Concept. On December 30, 2022, the Law «On Restoring Solvency and Bankruptcy of Citizens of the Republic of Kazakhstan»[2] (hereinafter referred to as – «The law on the bankruptcy of individuals») was adopted and came into force on March 3, 2023.

In the relatively short period since the law's implementation, a number of issues have emerged, both new problems related to the adoption of the law and previously existing issues that have become more acute with the law's adoption. These issues have been encountered by debtors, law enforcement officials, and the general public.

On 19 June 2024, the Law of the Republic of Kazakhstan No. 97 – VIII, entitled «On amendments and additions to certain legislative acts of the Republic of Kazakhstan on issues of minimising risks in lending, protecting the rights of borrowers, improving financial market regulation and enforcement proceedings»[3] (hereinafter referred to as – «the Law on amendments»), was adopted. Nevertheless, the enactment of these amendments did not significantly address the existing issues.

The efficacy of any legal act is reflected in the legal practice, which promptly and honestly reflects problematic norms. It is therefore necessary to gain a profound understanding of the practice of implementing the law in order to facilitate further improvements to its norms. Furthermore, the practical issues pertaining to the institution of bankruptcy for individuals have yet to be adequately addressed within the legal literature.

The objective of this work is to examine the process of enacting the proposed law, identify potential challenges in its implementation, and propose strategies for enhancing the efficacy of this legal framework.

Materials and methods

The results of the study were obtained through the formal-dogmatic method, which entailed an examination of the norms of the law and other regulatory legal acts pertaining to the matters of restoring solvency and bankruptcy of individuals.

As previously indicated, the legislation pertaining to the bankruptcy of individuals represents one of the most extensively debated areas of law, with numerous discussions and debates occurring prior to its formal adoption. The debate continues to this day. Accordingly, a substantial corpus of empirical materials was subjected to examination within the context of the research A specific sociological research method was employed to collect, analyse and process the materials pertaining to the practical

[2] *Law of the Republic of Kazakhstan №178 – VII LRK of December 30, 2022 «On Restoring Solvency and Bankruptcy of Citizens of the Republic of Kazakhstan». // URL:https://adilet.zan.kz/eng/docs/Z2200000178. (date of reference: 24.06.2024).*

[3] *The Law of the Republic of Kazakhstan dated June 19, 2024 N 97-VIII. «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Minimizing Risks in Lending, Protecting Borrowers' Rights, Improving Financial Market». // URL: https://adilet.zan.kz/rus/docs/Z2400000097. (date of reference: 26.06.2024).*

application of the law. These included official data, in particular data from the authorised body responsible for state management in the field of restoring solvency and bankruptcy of citizens of the Republic of Kazakhstan (hereinafter referred to as «the authorised body»), materials published on the internet, social networks (e.g. Telegram, Instagram, etc.), as well as unpublished data (appeals from debtor citizens to legal consultants, to population service centres), and other empirical materials.

The comparative legal method was also used. The case of Germany provides an illustrative example. The experience of Germany is of particular interest to countries with a continental legal system, which is similar to that of Kazakhstan.

Input from co-authors. Nazarkulova L.T. conducted a comprehensive analysis of both official and unofficial published data on the application of the law, as well as foreign practice with regard to the bankruptcy of individuals. Bayandina M.O. presented a synthesis of the practical challenges encountered in the implementation of the requisite legislation, as experienced by citizens, financial managers, and legal consultants. Seifullina A.B. undertook a study of the legislation, regulations and foreign practice in the field of individual bankruptcy.

Results

In practice, debtors tend to opt for the extrajudicial bankruptcy procedure. This is an understandable phenomenon, as the extrajudicial bankruptcy procedure allows for the swiftest and most cost-effective termination of all creditors' claims against the debtor. It is not uncommon for citizens to view the extrajudicial bankruptcy procedure as a form of «credit amnesty» or «debt write-off/forgiveness», despite the potential consequences of being declared bankrupt.

It seems reasonable to posit that the high level of interest in the extrajudicial bankruptcy procedure may, over time, give rise to the emergence of parasitic attitudes and abuses by debtors.

In light of the name and general meaning of the law and foreign practice, it seems evident that the most viable long-term procedure for citizens, financial organisations, and society as a whole would be the procedure for restoring solvency.

As a consequence of restoring solvency, the citizen in question will undergo a process of financial recovery, thereby retaining their status as a full participant in civil relations and maintaining their creditworthiness.

In light of the aforementioned considerations, it is our conviction that the legal norms pertaining to the aforementioned procedure must be enhanced in order to encourage debtors to utilise it for the restoration of solvency. This would enable citizens «to extricate themselves» from the debt trap and receive a new impetus for their development, primarily in terms of financial and material resources.

As previously stated, the procedure by which solvency is restored is the least demanded among debtor citizens. It is essential to identify the legal norms that impede the broader implementation of this procedure.

Discussions

The Kazakh law on restoring of solvency provides for three main procedures: restoring solvency, judicial and extrajudicial bankruptcy.

The official data from the authorised body indicates that as of 6 June 2024, 78,247 applications for extrajudicial bankruptcy were submitted, of which 62,241 were denied and 8,522 individuals were recognised as bankrupt. In the case of judicial bankruptcy, 2,416 applications were submitted, resulting in 167 individuals being recognised as bankrupt. Additionally, 426 applications were submitted for the restoration of solvency, with 11 applicants being recognised as insolvent[4].

Nevertheless, the number of applicants whose solvency was restored remains unclear. It is regrettable that the authors of the article were unable to locate a corresponding column in the official data provided by the authorised body.

The website of the authorised body contains information as of 29 February 2024 indicating that the solvency restoration procedure was applied to four citizens. It can be concluded that, «despite the absence of adverse consequences, the procedure has not gained significant popularity»[5]. Therefore, the most prevalent method is the non-judicial form of bankruptcy.

In this case, the primary determinant of the applicable procedure is the proportion of debt to the debtor's assets. The extrajudicial bankruptcy procedure is applicable in instances where the

[4] *The service for interaction between participants in procedures for restoring solvency, extrajudicial and judicial bankruptcy can be found at the following link. // URL: https://tazalau.qoldau.kz/ru/statistics/general. (date of reference: 06.06.2024).*

[5] *On Amendments to the Law on bankruptcy of citizens. // URL: https://kgd.gov.kz/ru/news/po-popravkam-v-zakon-o-bankrotstve-grazhdan-1-142568. (date of reference: 24.06.2024).*

amount of debt is no more than 1600 times the monthly calculation indicator and there is no property on the right of ownership. In these circumstances, it is deemed that the objective of the non-judicial procedure is the cessation of the debtor's obligations to a specified number of financial institutions as set forth in the legislation (clause 11 of Article 1).

In the event that the amount of debt exceeds the specified threshold, the judicial bankruptcy procedure is initiated (clause 2 of Article 6). The objective of judicial bankruptcy is to satisfy the claims of creditors through the liquidation of the debtor's assets (clause 10 of Article 1). In the event that the value of the debtor's property exceeds the outstanding debt, the procedure for restoring solvency (clause 1 of Article 6) will be initiated.

It would be beneficial to consider the experience of foreign countries in this regard. In Germany, the legal framework governing personal bankruptcy is set forth in the Insolvency Code (Insolvenzordnung – InsO), which was adopted on October 5, 1994 (BGBl. I S. 2866), and entered into force on October 19, 1994, with subsequent amendments taking effect on January 1, 1999.

This legislative framework governs both consumer and entrepreneurial bankruptcy, encompassing both individual and corporate cases. Nevertheless, more streamlined conditions are afforded to those pursuing consumer bankruptcy (Verbraucherinsolvenzve rfahren). Concurrently, the principal objective of consumer bankruptcy in Germany is to facilitate the debtor's recovery.

The provisions pertaining to consumer bankruptcy are applicable to individuals who have not been engaged in entrepreneurial activity but whose financial circumstances are manageable (at the time of filing the bankruptcy petition, the debtor must have fewer than 20 creditors) and who have no claims against them arising from employment relationships (Section 304(1)).

Prior to the commencement of the judicial procedure for consumer bankruptcy, the matter must be settled through an out-of-court process. The objective of this process is to facilitate an agreement between the debtor and creditors regarding the settlement of the debt.

The out-of-court settlement is conducted on the basis of a debt settlement plan, which is submitted by the debtor at the time of filing the bankruptcy petition (Section 305, Section 1, Subsection 3). During the aforementioned out-of-court settlement period, the judicial proceedings are suspended. Nevertheless, the period in question must not exceed three months (Section 306, Section 1).

A settlement plan may encompass any arrangements for a lawful settlement of the debt, with due consideration of the interests of the creditors and the debtor's wealth, income, and family circumstances. The plan may include, for example, the granting of a deferment, the establishment of payment guidelines, or the forgiveness of the remaining debt. To illustrate, the plan may stipulate that the debtor is permitted to retain ownership of their vehicle, should this be necessary for the pursuit of gainful employment or a professional activity. An additional option is to permit the debtor to retain their principal residence, etc.

Should the creditor commence collection proceedings subsequent to the commencement of out-of-court settlement negotiations, the attempt to achieve an out-of-court settlement with the creditors is deemed to have failed in accordance with §305a. Moreover, should objections be raised against the debt settlement plan that are not rendered moot by the court's approval, the proceedings shall be reopened ex officio in accordance with Section 311.

In cases where residual debts remain following the implementation of a debt settlement plan that relies on the debtor's assets, there may be grounds to pursue the release of those debts. In order to achieve this, the debtor is required to submit an application for the release of residual debt at the time of filing for bankruptcy, as outlined in Section 305, Paragraph 1, Subparagraph 2. The discharge of debts is contingent upon the fulfilment of specified criteria.

The primary condition is the debtor's demonstration of «good faith behavior», which entails their engagement in remunerative activity and the repayment of debts to creditors over an extended period. It can thus be seen that there is a disparity between the procedures set out in German legislation and those laid down in the relevant Kazakh legislation with regard to the question of consumer bankruptcy. It should be noted that German law does not provide for an extra-judicial bankruptcy procedure. Nevertheless, it does provide for an extra-judicial settlement procedure, whereby the court offers its assistance in resolving the dispute. Furthermore, the extra-judicial settlement process may be conducted with the involvement of legal professionals, consulting centres, and other interested parties. Furthermore, it is important to highlight that debtors are entitled

to free consulting assistance from the state. For example, the Berlin Senate Department for Integration, Labour and Social Affairs has established a national network comprising state-approved debtors' organisations and bankruptcy advisory centres.

Let us consider some of the problems of implementing the rules governing extrajudicial bankruptcy procedures in Kazakhstan. Despite the apparent appeal of the extrajudicial bankruptcy procedure, there are a number of less apparent obstacles to its implementation. First and foremost, the specific grounds for recognising a debtor as bankrupt in an extrajudicial procedure give rise to questions of a legal nature.

Article 5 of the law sets out the grounds on which an individual may invoke this procedure. One such ground was the failure to make repayments for a period of twelve consecutive months from the date of filing an application for obligations to creditors as indicated in the aforementioned application (subparagraph 2, paragraph 1 of Article 5).

This stipulation presented a potential vulnerability for debtors with income, who might attempt to evade deductions from their official earnings by concealing them, thereby «entering the shadow economy».

Additionally, this stipulation introduced the potential for creditors to exploit the absence of specified repayment periods as a means of disrupting the established legal framework (paragraphs). In practice, it is not uncommon to hear complaints from debtors who allege that creditors are attempting to obtain at least some payments in order to interrupt the period of non-repayment.

In accordance with the Law on amendments, the subparagraph 2) of paragraph 1 of Article 5 was augmented with the following stipulations: «Repayment is defined as a payment exceeding the single monthly calculation index established by the law on the republican budget and valid on the date of payment»[6].

It is not yet clear what impact the introduction of this norm will have. However, in consideration of the circumstances observed in practice, it is our opinion that the indicated payment amount should be increased.

In such cases, the sum payable may be specified as a percentage of the outstanding debt. This condition also prevents certain categories of citizens from using the extrajudicial bankruptcy procedure, in particular, pensioners. On 27 May 2024, a petition was submitted to the Ministry of Finance of the Republic of Kazakhstan on the epetition.kz website (applicant Rasul U.) entitled «The Law on Bankruptcy of Citizens for Pensioners».

The petition highlighted the difficulties faced by retired debtors, including the following: «The filing for bankruptcy process requires a period of 12 months of non-payment. However, upon receipt of a permanent pension, retired persons are withheld 50 percent of the amount for the remainder of their lives. This prevents them from being able to live a comfortable life in old age»[7].

This practice effectively precludes pensioners from utilising the extra-judicial bankruptcy procedure. This problem is particularly relevant for pensioners receiving a minimum pension. In this regard, we propose to supplement paragraph 2 of Article 5 after the words «targeted social assistance» with a comma and the words: «a pensioner receiving a minimum pension and/or over the age of 75».

The legal issues pertaining to the restoration of solvency among citizens. According to the norms of Kazakhstani law, the grounds for filing a claim with the court to apply for the procedure for restoring the solvency of the debtor are the fact that the value of the debtor's assets exceeds the total amount of his liabilities.

The question arises: what does «the fact» mean in the context of this provision? How and by whom should this fact be established?

We agree with the opinion of Zaitsev O.R., expressed in relation to a similar provision in one of the previous draft laws, which is still relevant today. According to him: «The criterion under discussion is one of the most complex, as it is often quite difficult to accurately assess the value of assets at the stage of initiating bankruptcy proceedings» [1]. Moreover, we believe that this provision contributes to the growth of the shadow economy.

Often, debtor citizens have income (as self-employed or employed workers), but they do not wish to apply for the procedure of restoring solvency because, in the eyes of debtors, this

[6] *The Law of the Republic of Kazakhstan dated June 19, 2024 No. 97 – VIII. «On introducing amendments and additions to some legislative acts of the Republic of Kazakhstan on minimizing risks in lending, protecting the rights of borrowers, improving regulation of the financial market and enforcement proceedings». // URL: https://online.zakon .kz/Document/?doc_id=33913864&pos=1216;-20#pos=1216;-20. (date of reference: 05.07.2024)*

[7] *Petition site. // URL: https://epetition.kz/petition/b5d9f931-d028-4a97-8276-9a816e002c05?commentPage=0. (date of reference: 05.07.2024)*

procedure is seen only as a possibility for minor changes in debt payment (deferrals, minor write-offs, debt forgiveness, etc.) without the prospect of significantly relief their debt. This is why they are trying to hide their income.

In view of the current economic reality, where daily expenses and the size of the consumer basket are increasing, it is necessary to reconsider the guarantees for the preservation of the debtor's salary and/or other income during the procedure for restoring solvency.

This is necessary to bring debtors out of the shadow economy so that they are not forced to hide their income in order to avoid deductions by creditors.

According to subparagraph 4 of paragraph 2 of article 29 of the Law, one of the tools for restoring solvency is to «reduce the amount of periodic payments while increasing the total duration of the credit agreement».

In order to render the process of restoring solvency more appealing to the general public and encourage their transition out of the «shadow economy», it is recommended that a new sentence be added to subparagraph 4 of paragraph 2 of article 29 of the Law on restoring solvency as a guarantee of the debtor's rights, namely: «The amount of regular current payments may not exceed 20 per cent of the salary and/or other income (in accordance with the provisions set forth in paragraph 1 of Article 95 of the Law on Enforcement Proceedings)».

In order to make the mechanism for restoring solvency more flexible, it would also seem possible to consider the possibility of classifying debtors into categories for which different conditions for financial recovery would apply. For this purpose, it is also important to improve the mechanisms of rehabilitation procedures.

In addition, in order to proactively prevent bankruptcy and expand the possibilities for restoring solvency, it would be worth considering the proposal to separate the pre-trial financial rehabilitation of the debtor-citizen as an independent legal institution.

A number of questions remain unanswered with regard to the role of the financial manager and the nature of their activities. In accordance with Article 24 of the aforementioned Law, the financial manager is tasked with preparing a report on the debtor's financial situation, based on the findings of the information collection process. This report must be presented in the prescribed format and must indicate whether there are grounds for applying the appropriate procedure or not.

Concurrently, the decision to implement the procedure for restoring the debtor's solvency is made by the court, with consideration given to the financial manager's conclusion (Article 28(1) of the Law).

It is therefore evident that the financial manager's conclusion regarding the debtor's financial situation is of crucial significance in determining the debtor's subsequent legal (and not merely) outcome. In light of the crucial role of the financial manager in solvency restoration procedures and judicial bankruptcy, it is essential to regulate its legal status, undertake a detailed review of the requirements and measures for candidates for this position, and provide opportunities and obligations for the training of financial managers, as well as measures of their responsibility.

At this time, a number of aspects pertaining to the work of financial managers remain unclear. As a result, financial managers are frequently compelled to address these challenges independently, particularly through the exchange of information within a privately-accessible telegram group. The most critical issues concerning the activities of financial managers can be summarised as follows.

In essence, the primary objective is to establish the legal framework governing the content and presentation of the financial manager's report. While the legislature has established the requisite format for the report, it has yet to define the legislative requirements for its content. The precise list of actions and procedures that financial managers are required to perform has yet to be determined. Currently, financial managers are operating in accordance with a list of procedures initially compiled by one of them and subsequently disseminated to the wider group via a closed telegram group.

In addition to the aforementioned measures that render the process of restoring solvency for debtor citizens more complex, there are also provisions that impose expenses on the debtor within the solvency restoration procedure. In essence, these are costs associated with the services of the financial manager, appraiser, and other relevant professionals. According to the Law, the debtor is obliged to remunerate the financial manager on a monthly basis from their own resources (paragraph 3 of Article 23 of the Law). The monthly remuneration is set at the level of one minimum wage, as defined by the law on the republican budget for the relevant financial year. For an individual facing financial challenges, this can become a significant burden, potentially leading to the inaccessibility of the solvency restoration procedure and even

the loss of its intended purpose, which is to alleviate the financial burden on the citizen, not the contrary.

It is possible that this may result in the potential for abuse by financial managers, who may artificially prolong the procedure in order to receive remuneration for longer periods of time.

Furthermore, additional measures exist that render the process of restoring solvency for debtor citizens more complex. In addition, provisions exist that impose expenses on the debtor within the solvency restoration procedure. In essence, these are costs associated with the services of the financial manager, appraiser, and other relevant professionals. In accordance with the stipulations of the legislation, the debtor is obliged to remunerate the financial manager on a monthly basis from their own resources (paragraph 3 of Article 23 of the Law). The monthly remuneration is set at the minimum wage level, as defined by the law on the republican budget for the relevant financial year. For an individual facing financial difficulties, this can prove onerous, potentially leading to the inaccessibility of the solvency restoration procedure and even the undermining of its purpose, which is to alleviate the financial burden on the citizen, not exacerbate it.

It is possible that this may result in the potential for abuse by financial managers, who may artificially prolong the procedure in order to receive remuneration for longer periods of the procedure.

Indeed, it is not uncommon for the services of financial managers not to be remunerated.

In accordance with paragraph 2 of Article 44, the remuneration of the financial manager is to be paid from budgetary funds: «If the following circumstances are cumulatively established during the judicial bankruptcy procedure: 1) the debtor belongs to the category of socially vulnerable segments of the population in accordance with the housing legislation of the Republic of Kazakhstan; 2) there is no property that can be seized in accordance with the legislation of the Republic of Kazakhstan on enforcement proceedings and the status of bailiffs».

In accordance with the Law on amendments, article 46 was amended to include a new obligation for the bankrupt, which is not subject to termination after the completion of the procedures for restoring solvency and judicial bankruptcy.

This new obligation is set out in paragraph 5 and concerns the remuneration of the financial manager who conducted the procedure for restoring solvency and (or) judicial bankruptcy, in the event of non-payment in full or in part. This norm has slightly improved the situation, albeit to a limited extent. Nevertheless, we contend that this norm has not demonstrably diminished the issue of alleviating debt burdens on citizens or reducing social discord within society.

Furthermore, there is a lack of clarity surrounding the question of whether the financial manager's services are to be paid for in the event that the debtor chooses to withdraw their application. In practice, debtors typically decline to remunerate the financial manager for their services.

It is therefore proposed that the norms regarding remuneration for the financial manager’s services be reviewed.

One potential solution to this issue is the implementation of a system whereby the remuneration is paid based on the completion of the work as a whole, rather than on a monthly basis. Furthermore, subparagraph 1 of paragraph 2 of Article 44 of the Law could be amended after the words «Republic of Kazakhstan» to include the following additional categories of individuals: «a pensioner receiving the minimum pension, and/or a pensioner over 75 years old».

In practice, the specifics of storing the debtor's property present certain difficulties during the procedure. These difficulties may arise in relation to livestock, vehicles and other assets.

The enactment of the aforementioned Law has resulted in an exacerbation of the issue of malpractice by collection agencies.

This issue has been the subject of debate for some considerable time, even before the legislation was enacted. The enactment of the legislation has prompted financial institutions to pursue the sale of problematic loans to collection agencies with greater enthusiasm. Simultaneously, collection organisations are pursuing the recovery of problematic debts without restructuring the problematic loans, thereby denying borrowers access to the debt restructuring mechanism. The inflexibility of collectors, who demand either «the full repayment of the debt or nothing at all», has also prompted many debtors to turn to the «shadow economy».

In light of the aforementioned considerations, we express our support for the measures set forth in the Law on amendments.

Until 1 May 2026, banks and microfinance

organisations are prohibited from transferring the debts of individuals to collectors. As of 1 May 2026, the transfer of citizens' debt rights to collectors has been subject to more rigorous regulation.

Concurrently, it is deemed essential to supplement the aforementioned measures with additional provisions aimed at more effectively safeguarding the rights of citizens-debtors. In particular, collectors could be required to agree to and accept a repayment schedule from the debtor based on their assessment of the debtor's financial capabilities.

It would be useful to consider the experience of foreign countries. In Germany, consumer bankruptcy is closely related to the protection of the rights of consumers of financial services. German experts have identified a significant problem in the form of a high level of household debt. One of the reasons for this phenomenon is the growth of unplanned purchases made via the Internet, where consumers can buy any product with one click of the mouse. The high level of household debt has led to the need to develop bankruptcy legislation. It is noteworthy that in Germany, as in other European countries, much attention is paid to the protection of consumer rights in the field of financial services. The development of legislation in this area is influenced by the law of the European Union. In Germany, the following mechanisms are used to protect the rights of consumers of financial services: development of standard terms of credit agreements jointly with the Association of Consumers of Financial Services; prohibition of usury; establishment of requirements for pre-contractual information in order to ensure transparency of contract terms.

The institution of consumer bankruptcy can be considered as an effective tool for protecting property rights and ensuring the economic security of participants in financial and economic relations [2, p. 2305].

Over time, this institution has become a means of ensuring an optimal balance of interests between the private and public sectors, debtors and creditors, as well as facilitating the financial recovery of debtor citizens [3, p. 32].

In this regard, the primary objectives of U.S. bankruptcy legislation pursue a dual purpose: firstly – to provide an individual with new opportunities to have “a new beginning” and secondly – to ensure that creditors are paid in a fair and orderly manner.

In general, in foreign countries, consumer bankruptcy can be considered as part of a system of measures aimed at protecting the rights of consumers of financial services. The primary distinction between consumer and entrepreneurial bankruptcy lies in their respective objectives. Whereas the objective of an entrepreneurial bankruptcy is to satisfy the claims of creditors, the objective of consumer bankruptcy is to facilitate the debtor's reintegration into society.

In light of foreign experience, the Republic of Kazakhstan should consider developing the institution of consumer bankruptcy as a measure that allows financially responsible citizens who have fallen into debt to regain their position in the social order.

The aforementioned practice evinces that ADR develops in the face of considerable challenges, not only in Kazakhstan but also on a global scale (4, c. 180). Conversely, there are indisputable advantages to be gained from the resolution of disputes prior to the commencement of legal proceedings [5, c. 128].

It is therefore important to provide for other institutions of mediation and advisory assistance to debtors, including those provided by civil society institutions. It would be beneficial to expand the possibilities of pre-trial settlement of the debtor’s debt.

In order to proactively prevent consumer bankruptcy, it is essential to enhance the negotiability of individuals engaged in credit relations and to foster financial literacy among the general population.

A clear indication of this is the insufficient understanding by the population of their rights, obligations, and opportunities provided by the law. Notwithstanding the efforts of the authorised body to provide explanatory work to the population prior to and following the adoption of the law, misunderstandings about certain provisions of the law continue to prevail among the population and even among specialists. Consequently, a considerable number of debtors seek the assistance of paid services for the out-of-court bankruptcy procedure, which results in further deterioration of their financial circumstances, despite the fact that this procedure is free of charge. Furthermore, this results in the exploitation of individuals by various intermediaries who offer their services for a fee. Often, this involves the misleading of citizens, the misinterpretation of the conditions for applying certain procedures, and the possible consequences and risks. Furthermore, a lack of clear and comprehensive information is evident even among officials of the authorised body, who respond to citizens’ queries via the number «1414». For instance,

with regard to the application of paragraph 3 of Article 5, there is still a misinterpretation of the Law among both citizens and specialists. When interpreting the grounds for out-of-court bankruptcy, many do not take this paragraph into account, even when there are grounds for applying this article.

In 2020, the Concept for Improving Financial Literacy for the Period 2020-2024 was formally adopted[8]. It is regrettable that in Kazakhstan, the primary entity responsible for enhancing financial literacy is the authorised body[9], with financial organisations continuing to demonstrate a lack of sufficient attention to this issue, although there are a few exceptions. It is imperative to devise strategies that will foster greater interest among financial institutions in promoting financial literacy among the general public. It would be beneficial for financial organisations to adopt a more considered approach to borrowing.

To provide an example, in other countries there is a practice whereby if it is subsequently proven that a loan was issued to a borrower without consideration of their expertise or their clear understanding of all the terms and risks of the agreement, as well as the consequences in case of indebtedness, it will result in adverse outcomes for the credit organisation, up to and including the inability to collect the debt from such a borrower. In this scenario, financial institutions will be motivated to enhance the financial literacy of the general public and to encourage a prudent approach to loan acquisition.

It is similarly crucial to enhance the legal framework surrounding loan agreements, ensuring that the terms are explicit and transparent, including a detailed breakdown of all interest rates, the amount of bank fees, and the total overpayment. Furthermore, it is imperative to reinforce the accountability of financial institutions for contravening these regulations.

Conclusion

In conclusion, it can be stated that the legal institution of bankruptcy and restoration of solvency is a necessity in the current socio-economic climate.

Nevertheless, an examination of the manner in which the legislation is implemented has uncovered a number of issues, both of an organisational and a legal nature.

In order to address the issues identified in the legal practice of restoring solvency and bankruptcy for individuals, a series of proposed measures are presented in the following areas.

It is this author's recommendation that the legal provisions which govern the grounds for applying the aforementioned procedures for restoring solvency and extrajudicial bankruptcy be improved. It is of the utmost importance to develop effective mechanisms for rehabilitation procedures. It is imperative to evaluate the legal standing of the financial manager.

Furthermore, it is crucial to devote attention to the matter of pre-trial debt settlement, utilising a vast network of intermediaries and consultants.

In order to prevent over-indebtedness and personal bankruptcy at the systemic level, it would be beneficial to develop the ability to negotiate in society and to improve the financial literacy of the population. The comprehensive approach to the legal regulation of personal lending proposed in the article may serve as the foundation for the early prevention of personal bankruptcy and the effective implementation of the potential of the law on the restoration of citizens' solvency.

Authors' contributions

Nazarkulova L.T. conducted a comprehensive analysis of both official and unofficial published data on the application of the law, as well as foreign practice with regard to the bankruptcy of individuals. She also determined the methodology of the stud, wrote the introduction and conclusion, summarized the results and discussion.

Bayandina M.O. presented a synthesis of the practical challenges encountered in the implementation of the requisite legislation, as experienced by citizens, financial managers, and legal consultants. She also designed the literature.

Seifullina A.B. undertook a study of the legislation, regulations and foreign practice in the field of individual bankruptcy, prepared bibliographic sources and designed the transliteration.

[8] *Resolution of the Government of the Republic of Kazakhstan dated May 30, 2020 "On approval of the Concept for improving financial literacy for 2020-2024". // URL: https://adilet.zan.kz/rus/docs/P2000000338. (date of reference: 01.07.2024)*

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