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THE PRINCIPLE OF THE EFFECTIVENESS OF INSOLVENCY PROCEEDINGS IN THE EUROPEAN CONTEXT

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Abstract

Law no.85 / 2014 on Insolvency and Insolvency Prevention Procedures, known as the Insolvency Code, has explicitly regulated 13 principles on which its provisions are based. These principles give effect to the World Bank Insolvency Principles, the European Insolvency Principles and the UNCITRAL Legislative Guide on Insolvency. The Concept of Business Insolvency Code focuses on common rules that apply to all pre-insolvency and insolvency procedures in the Member States of the European Union, namely: encouraging insolvency prevention procedures by setting the foundations for a legal and business culture in negotiations; supporting the reorganization process at a reasonable economic and balanced level against a viable and bona fide debtor; in the event of a reorganization failure, the liquidation of assets can also be achieved by business transfer and its duration is reasonable, and asset recovery is effective.

Keywords: *Procedure, insolvency, principles, application, efficiency*

By the notion of principle is meant that fundamental element, that primary cause, that basic idea, which is based on a scientific theory, a legal system, or a norm of conduct.

Law no.85 / 2014 on Insolvency and Insolvency Prevention Procedures[2] is currently known in the usual language of doctrines and practitioners as Insolvency Code[3], given the structure of this normative act but this is not accurate from the point of view of legal technique and scientific reasons.

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[2] Published in the Official Gazette Part I no.466 / 25 06 2014

[3] The use of the name of the Insolvency Code is made for the simplification of the language and for the distinction to be made by the Law No. 85/2006 regarding the insolvency procedure, Law no.85 / 2014 being a more complete and complex law, but not covering all the fields of application , such as the insolvency of the territorial administrative units further regulated by the Government Emergency Ordinance no. 46/2013 on the financial crisis and the insolvency of the territorial administrative units, published in the Official Gazette Part I no.299 / 24 05 2013 and the insolvency of the natural persons, is regulated by the Law no.151 / 2015 on insolvency procedure of individuals, published in the Official Gazette Part I no.464 / 26 06 2015. Also, this law does not refer to the insolvency of the units that provide the public utility services provided by the Constitution Of Romania, such as television and state radio. For details on the name of the Insolvency Code given to the Law no.85 / 2014, see also the Decision of the Constitutional Court no.283 / 21.05 2014, published in the Official Gazette Part I no.454 / 20 06 2014, according to which Law no. 85/2014 "can not be classified as an insolvency code in the light of its scope"

This normative act attempted to build a unitary construction of the existing institutions and concepts, following the way they evolved into the current economic and social reality.

Law no.85/2014 is a comprehensive law, which encompasses legal norms intended to apply to certain legal relationships with a specific regulatory field, namely the applicable rules in the field of insolvency prevention (insolvency) and insolvency. This law attempted to introduce the recommended jurisprudence to the legal standard, which managed to develop equitable solutions.

The Insolvency Code contains special legal rules and consequently derogations from common law[4]. Thus, Article 342 paragraph 1 of the Law no.85/2014 stipulates that "the provisions of this law shall be supplemented, insofar as they do not contravene those of the Civil Procedure Code and the Civil Code".

Article 1, paragraph 1 of the new Civil Code[5] lists the sources of civil law, these being the law, the customs and the general principles of law[6]. Thus we find that for the first time the legislator of the new Civil Code has regulated the principles of law as a source of law, but without enumerating them and encompassing them in a legal regulation[7].

We consider that to the extent that the Insolvency Code complements the provisions of the Civil Code, it constitutes a source of law and for the pre-insolvency proceedings or for the insolvency procedure the general principles of law, in so far as they do not contravene the principles regulated by this special law.

Thus, the 13 principles covered by the Insolvency Code are special principles, which apply as a matter of priority and, in addition to these, constitute a source of law and general principles of law, to the extent of their compatibility, with the subject matter of this law.

The doctrine[8] raised the question of whether the new Civil Code is the common law in all areas of private law or only for matters directly or indirectly regulated by it?

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[4] For details on the place of the institution of insolvency in Romanian private law, see I. Turcu, M. Stan, A Rebel Private Private Law - Insolvency in Phoenix April - June 2008, pp.17-22

[5] Law No. 287/2009 on the Civil Code published in the Official Gazette Part I no. 511/24 07 2009, republished in the Official Gazette Part I no.505 / 15 07 2011

[6] For details on the general principles of civil law, see I.R. Urs, C. Todica, Civil Law. General Theory, Hamangiu Publishing House, 2015, pp. 28-38

[7] The general principles of law were not a source of civil law under the Civil Code of 1864, for details see C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, Romanian Civil Law Treaty, vol.1, All Publishing House, Bucharest, 1996, pp.10-17

[8] For details see M. Nicolae, The New Civil Code between Common Law and Romanian Private Law, In In Honorem Corneliu Bîrsan, Hamangiu Publishing House, Right Magazine, 2013, pp.29-112. The author proposes by law ferenda reformulation of art.2 of the new Civil Code, which in paragraph 2 should stipulate: "this Code is made up of a set of rules which constitute the common law for all the domains to which the letter, spirit or object refers its provisions. In these areas, this code is the basis of other laws that may themselves add or deviate from the code "

Law no.85/2014 did not expressly stipulate that the principles referred to in Article 4 paragraph 1 constitute a source of law, the legislator stipulating that the provisions of this law are based on these principles. Hence the conclusion that the application of the principles enumerated by the legislator is done for the interpretation of the provisions contained in the Insolvency Code and for their completion, if the law does not distinguish or is unclear.

The need to adopt principles on which to apply the Insolvency Code results from the fact that the legislator can not anticipate all the practical situations that may arise under a certain regulation. Thus, in the literature[9], it was emphasized that "legislators can not know all the possible combinations of circumstances that the future can bring."

The need to regulate the specific principles on which the Insolvency Code is based, in our opinion, derives precisely from the special law character of this normative act, which implies a certain specialization for the bodies that apply these pre-insolvency and insolvency procedures.

The insolvency bodies, namely the court administrator, the liquidator, the syndic judge and the courts, in fulfilling the duties provided by the law, must interpret any provision contained in the Insolvency Code or supplement the lack of provisions when the practical situation justifies it, in the spirit of the defective principles of the law on art.4 of the Law no.85 / 2014.

It can be argued that the principles on which the provisions of this special law are based contribute to the purpose of these procedures, being adopted for the interpetation and unitary application of the provisions of the Insolvency Code[10].

The purpose of pre-insolvency and insolvency proceedings was defined by the legislator in art. 2 of the Law no.85/2014 and consists in "establishing a collective procedure for covering the debtor's liabilities by granting, where possible, the chance of redressing its activity ".

Article 2 of the Insolvency Procedure Law no. 85/2006[11] stipulated that "the purpose of this law is to establish a collective procedure to cover the debtor's liability in insolvency."

Regarding the Law no.85/2006, which was repealed by the Law no.85/2014, it is necessary to specify that it regulated only the insolvency procedure, and by Law no.381/2009 on the introduction of the preventive concordance and the mandate ad-hoc procedures for pre-insolvency were regulated.

Art. 2 of the Law no. 381/2009[12], which was repealed by the Law no.85/2014, stipulated that "the purpose of the present law is to safeguard the undertaking in difficulty in order to continue its activity, to preserve jobs and to covering claims

[9] H.L.A. Hart, The concept of law, 2nd edition, Oxford University Press, New York, 1961, p. 128

[10] For details on the purpose of insolvency proceedings, see C.B. Nasz, Purpose and Object of the Insolvency Procedure in Phoenix October - December 2008, pp. 26-31

[11] Published in the Official Gazette Part I no. 359/21 04 2006

[12] Published in the Official Gazette Part I no.870 / 14 12 2009

against the debtor, amicable procedures for the renegotiation of claims or their conditions, or by the conclusion of a preventive arrangement ".

It thus appears that the legislature Code illustrated the purpose of insolvency procedures to prevent bankruptcy and insolvency to lawmaker Law no.85/2006, adding the possibility of recovery chance debtor's activity and common purpose that both procedures preinsolvență and procedure of insolvency. Thus, the purpose of the law has been redefined, since Law No. 85/2014 also regulated the institution of the ad hoc mandate[13], which is not intended to cover the debtor's liabilities, but to establish an agreement with one or more creditors in in order to overcome the state of financial difficulty, but also the institution of the preventive concordate[14], which aims at the recovery of the debtor's activity.

In essence, the concept of Insolvency Code in the field of business restructuring focuses on the following rules that apply to all insolvency and insolvency proceedings in the Member States of the European Union, namely: encouraging insolvency prevention procedures by setting up a legal and business culture in negotiations; supporting the reorganization process at a reasonable economic and balanced level against a viable and bona fide debtor; in the event of a reorganization failure, the liquidation of assets can also be achieved by business transfer and its duration is reasonable, and asset recovery is effective[15].

Law No. 85/2014 established for the first time specific principles in light of which the provisions of this law should apply in its area of regulation. These principles must be respected by the bodies that apply both insolvency prevention procedures and insolvency procedures[16]. Also, all participants in these procedures, such as the debtor, the debtor's creditors, the special administrator, etc., must fulfill all the acts and operations specific to these procedures in the spirit of these principles.

Regarding the function that the principles laid down in the Insolvency Code have to ensure, it is stated that this is an integrative function, and the necessity of

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[13] According to art. 5, paragraph 1, item 36 of the Law no.85 / 2014, the ad hoc mandate is a confidential procedure initiated at the request of the debtor in financial difficulty whereby an ad hoc mandate, appointed by the court, negotiates with the creditors in the purpose of achieving an understanding between one or more of them and the debtor in order to overcome the state of difficulty in the

[14] According to art. 5, paragraph 1, item 17 of the Law no.85 / 2014, the preventive concordat is a contract between the borrower in financial difficulty and the creditors holding at least 75% of the value of the accepted and uncontested claims, on the other hand, approved by the syndic judge, a contract whereby the debtor proposes a plan for the recovery and realization of the claims of these creditors, and the creditors agree to support the debtor's efforts to overcome the difficulty they are in

[15] For details, see S.M. Milos, A. Deli-Diaconescu, the New Law on Insolvency and previous regulations. Comparative presentation with the analysis of the main novelties brought by the Law no.85 / 2014, Hamangiu Publishing House, Bucharest, 2014

[16] N. Țăndăreanu, The Insolvency Code Annotated. News, comparative examination and explanatory notes, Universul Juridic Publishing House, Bucharest, 2014, p.19

editing these principles derives from the "logical unity of the rule of law, insolvency not being an exception in this matter"[17].

The previous laws regulating this area, namely bankruptcy (Commercial Code)[18] judicial reorganization and bankruptcy (Law no.64/1995 on the procedure of judicial reorganization and bankruptcy)[19] and insolvency (Law no.85 2006) did not contain provisions which sets out the principles governing these procedures.

In the literature[20] prior to the adoption of the Law no.85/2014, some principles governing these special procedures were mentioned, on the basis of an overview of the provisions contained in the previous normative acts adopted in this field, among which: the principle of celerity, the principle of reorganization, the principle of maximizing the debtor's wealth, the principle of continuity of the syndic judge[21], the principle of ordering the rank of receivables, the principle of active participation of creditors in the procedure.

The principles established by Law no.85/2014 were based on the World Bank Principles, the European Insolvency Principles and the UNCITRAL Legislative Guide on Insolvency.

The notion of effective procedure was introduced for the first time in the internal insolvency law when the principle laid down in Article 4, paragraph 1, paragraph 3 of Law no. It has been established that one of the principles on which the application of the legal provisions on insolvency should be based is also to ensure an efficient procedure, including through appropriate mechanisms for communication and proceeding in a timely and reasonable manner, in an objective and impartial manner, with a minimum of costs.

In the legal literature[22] preceding the Insolvency Code reference was made to the principle of the procedure, which was not expressly regulated by Law

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[17] .M. Milos, A.Deli, Elements of novelty in insolvency law - from principles to their implementation - in Phoenix July - September 2014, p.5; Collective Authors with Scientific Coordinator R.Bufan and Editors Coordinators A.Deli-Diaconescu, F. Moțiu, Practical Insolvency Treaty, Hamangiu Publishing House, Bucharest, 2014, p.61

[18] Codes of Commerce of the Kingdom of Romania in 1887 with the amendments introduced by the Law of 20 June 1895 and the Regulation of 7 September 1887 and that of 20 June 1895, published in the Official Gazette of 20.6.1895

[19] Republished in the Official Gazette Part I no. 608 / 13.12.1999

[20] I. Turcu, Bankruptcy. Current procedure. The Treaties, the 5th Edition, Lumina Lex Publishing House, Bucharest, 2005, pp. 253 257, I. Schiau, The Legal Regime of Commercial Insolvency, Publishing All Beck, Bucharest, 2001, pp. judicial reorganization and bankruptcy, in the Commercial Law Review Magazine no. 3/2001, pp. 118-126, A. Avram, Insolvency Procedure, General Part, Hamangiu Publishing House, Bucharest, 2008, pp.13-18, CB Nasz, Opening of Insolvency Procedure, C.H. Beck, Bucharest, 2009, pp. 94-134, C.B. Nasz, Principles of insolvency proceedings, in the Commercial Law Magazine no.10 / 2008, pp.53-84

[21] Regarding the principle of continuity of the syndic judge as an accessory component of the principle of continuity specific to the Romanian civil process, see V.M. Ciobanu, Theoretical and Practical Treaty of Civil Procedure. General Theory, vol. I, National Publishing House, Bucharest, 1996, pp.309-310

[22] . Adam, C.N. Savu, Insolvency Procedure Law, Insolvency Procedure Law. Comments and explanations, C.H.Beck Publishing House, Bucharest, 2006, p.6

no.85/2006 and was not considered as a component of the principle of ensuring the efficiency of the procedure.

The principle of timeliness of the insolvency procedure was raised as a result of the obligation for insolvency bodies to carry out their duties with speed.

The principle of the timeliness of the insolvency proceedings has also been practicable, so it has been ruled by jurisprudence[23] that during the insolvency proceedings, the syndic judge will not be able to order the suspension of the trial on the basis of the legal grounds contained in the Civil Procedure Code. In this respect[24], it was noted that even in the case of invoking an exception of unconstitutionality, the insolvency proceedings will not be suspended.

As far as we are concerned, we consider that, pending the opening of the insolvency proceedings, the suspension of the court is possible, namely in the cases concerning the creditor's request for the opening of the ordinary insolvency procedure, for the grounds of suspension of the trial provided by the Code of Civil Procedure. Under such circumstances, the question arises as to whether, in the event that the creditor fails to comply with the claim, the syndic judge will order the suspension of the judgment under Article 242 of the Code of Civil Procedure[25] or reject the creditor's claim as unproven, the provisions regarding the regularization of the applications for legal action are not applicable, respectively the sanction of cancellation of the creditor's request can not be applied, according to art. 200 of the Civil Procedure Code. Even if the suspension of the judgment constitutes a sanction[26] applicable to the plaintiff for non-fulfillment of the obligations imposed by the court, we consider that the syndic judge in such situations will reject the creditor's request and will not order the suspension of the court, since the provisions of art.70 par. 1 and 2 of the Law no.85/2014 stipulate that the request for opening the insolvency procedure should have a certain content, and it must be accompanied by the supporting documents. Regarding the remedies against judgments given by the syndic judge in judicial practice it is found that the judicial control courts have considered that the provisions of the Code of Civil Procedure concerning the suspension of the court are applicable given the enforceability of the judgments of the syndic judge and the cases extremely limited when it is possible to suspend their execution by the judicial control court.

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[23] Civil Decision no. 1994/2004 pronounced by the Court of Appeal Cluj, Commercial Section, published in I. Turcu, Bankruptcy. The present procedure, Treatise, 5th Edition, op.cit., p.255

[24] Civil Decision no.3456 / 02 11 2007 issued by the High Court of Cassation and Justice, Commercial Section, published in Romanian Journal of Law No.1 / 2009, pp.148-150

[25] According to Article 242 of the new Code of Civil Procedure, when it finds that the normal conduct of the proceedings is hindered by the applicant's fault, by failing to fulfill the obligations established in the course of the trial, the judge can suspend the trial

[26] I. Les, Code of Civil Procedure. Comment on Articles, Issue 3, C.H. Beck, Bucharest, 2007, p. 458

Thus, according to Article 43 paragraph 5 of the Law no.85/2014, the following judgments of the syndic judge may be suspended by the court of appeal: a) the opening sentence of the insolvency procedure; b) the sentence whereby the debtor's entry into simplified procedure is decided; c) the sentence by which the debtor's bankruptcy is decided; d) the decision to settle the appeal to the plan for distribution of the funds obtained from liquidation; e) the decision to settle the appeals against the measures of the judicial administrator / liquidator; f) the conclusion by which the reorganization plan was confirmed; g) the termination of the replacement of the practitioner in insolvency; h) the sentence by which the actions for annulment of the fraudulent acts of the debtor, concluded before the opening of insolvency proceedings, have been settled.

The Insolvency Code did not expressly regulate, among the principles on which this law is based, the principle of the speed of insolvency proceedings, so that we can see that the notion of procedural speediness is included in the notion of procedural efficiency.

Thus, we find that the lawmaker of the Insolvency Code comprised in principle the assurance of an efficient procedure and the principle of the speed of insolvency proceedings.

Art. 40 para. 2 of the Law no.85/2014 stipulates that bodies applying the insolvency procedure must ensure that the acts and operations stipulated by law are carried out as a matter of urgency and that they must also ensure the rights and obligations of the other participants in these acts and operations .

We consider that the notion of effective procedure implies the achievement of its purpose, namely the establishment of a collective procedure to cover the debtor's liabilities, with the possibility of re-establishing the activity of the debtor when possible. Thus, the legislator refers to the notion of timely and reasonable time for insolvency proceedings. Hence, it is concluded that the notion of celerity must be understood in relation to the specificity of each insolvency proceeding, in relation to the size and importance of the debtor, in relation to its economic and social position, the number of creditors of the debtor, the economic and financial situation at national level, or in a determined geographic or commercial space, over a certain period of time, etc. In other words, the rapid deployment of insolvency proceedings must be useful but also reasonable.

A component of this principle is also the obligation for the insolvency bodies, namely the judicial administrator, the liquidator, the syndic judge and the courts, to assure the rights and obligations of the participants in the acts and operations specific to the insolvency procedure.

Regarding the appropriate means of communication, the legislator has determined, in principle, that notifications and communications, in insolvency proceedings, must be carried out by means and rapid methods, which ensure that the right to information for the parties to the proceedings, the important acts and operations performed by insolvency bodies.

Thus, the parties' summons, notification, as well as the communication of any procedural documents after its opening are made through the Insolvency Procedures Bulletin[27]. By way of exception to this rule, the provisions of the Code of Civil Procedure in conjunction with the provisions of EU Regulation 2015/848 of 20 May 2015 of the European Parliament and of the Council on Insolvency Proceedings, which apply to insolvency proceedings, shall apply to participants in proceedings residing or domiciled abroad repealed Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as subsequently amended and supplemented and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on notifications in the Member States judicial and extrajudicial documents in civil or commercial matters and repealing Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, as the case may be.

EU Regulation 848/2015 regulates the legal recognition in the territory of all Member States of any decision to initiate insolvency proceedings by a court of a competent Member State from the time it takes effect in the State of opening.

Several Member States of the European Union have adopted the Insolvency Procedures Bulletin system for insuring quoting, communicating and notifying specific insolvency proceedings. The system adopted by our country and managed by the National Trade Register Office was considered to be efficient and effective at the level of the European Union. Among the proposals to amend EC Regulation 1346/2000, the obligation to advertise insolvency proceedings in an electronic register accessible to the public and the interconnection of national insolvency registers was found. By the legislative resolution of 5 February 2014, the European Parliament amended the European Commission's proposal COM (2012) 744 amending EC Regulation No.1346 / 2000, but it maintained the proposal to interconnect the Insolvency Procedures Bulletins of the Member States of the European Union.

At present, Article 25 of the EU Regulation No.848/2015, which will enter into force on June 26, 2019, established a decentralized system for the interconnection of insolvency registers by the European Commission. from the Member States' insolvency registers, which is carried out through the e-Justice portal, which serves as a central point of electronic access to information in the system.

[27] The Insolvency Proceedings Bulletin functions within the National Trade Register Office and is a publication made electronically and can be used for a fee. This was implemented by the Government Decision no. 460/2005 on the content, stages, conditions for financing, publication and distribution of the Bulletin of judicial reorganization and bankruptcy proceedings, published in the Official Gazette Part I no.474 / 03 06 2005 and by the Decision Government Decision no.1881 / 2006 amending Government Decision no.460 / 2005, published in the Official Gazette Part I no.17 / 10 01 2007

The provisions of art.7 of the Law no.85/2006, which regulated the way of quoting, notification and communication of procedural documents specific to insolvency, similar to the provisions of art.40 of Law no.85/2014, were declared unconstitutional in part[28], in which they refer to natural persons or to natural or legal persons residing or having their registered office abroad.

Regarding the notification of insolvency in judicial practice[29], it was noted that these should be cited according to the provisions of the Code of Civil Procedure, since the Bulletin of Insolvency Proceedings is a publication that is not free, or access to justice must be free, according to Article 21 paragraph 1 of the Romanian Constitution. One of the principles of organization of justice is that of justice, and the parties to the proceedings can not be required to pay the cost of summons and procedural documents performed ex officio. This principle is intended to establish the preventive role of justice, in the sense that the act of justice uses everyone.

It is noted that Law no.85/2014 does not contain provisions regarding the quoting, notification and communication of procedural documents specific to the insolvency procedure to natural persons participating in insolvency proceedings.

We appreciate that even under the Insolvency Code, even if the law does not expressly provide, natural persons participating in the insolvency procedure must be quoted or notified to the proceedings also according to the provisions of the Code of Civil Procedure. Such a solution contributes to putting into practice the principle that insolvency proceedings must be effective, including through appropriate mechanisms for communication and implementation. Also, the bodies implementing the procedure must ensure that the rights of the participants to this procedure are respected. Moreover, the legislator had the obligation and under the law of the Law no.85 / 2006 to amend the provisions of art. 7, within 45 days, according to the ones established by the Constitutional Court by the decision of unconstitutionality [30]of this legal provision.

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[28] Decision of the Constitutional Court no.1137 / 2007 published in the Official Gazette Part I no.31 / 15 01 2008

[29] Civil decision no.60 / 17 01 2011 pronounced by Bucharest Court of Appeal, Commercial Section IV, irrevocable

[30] In this respect, Article 147 (1) of the Constitution of Romania establishes, with respect to the laws and ordinances in force, found to be unconstitutional, that they "cease their legal effects 45 days after the publication of the Constitutional Court's decision if, The Parliament or the Government, as the case may be, disagree with the unconstitutional provisions with the provisions of the Constitution. During this period, the provisions found to be unconstitutional are legally suspended "; This constitutional provision is resumed at the legal level by art. 31 paragraph 3 of the Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished in the Official Gazette Part I no. 807/03 February 2010, For details see SM Costinescu, K. Benke, The Effects of Constitutional Court Decisions on the Dynamics of Their Application, published on http://www.ccr.ro/uploads/ RelatiiExterne/2012/CB.pdf

By way of exception to the rule of quoting, notification or notification of acts specific to insolvency proceedings, the Insolvency Proceedings Bulletin shall notify the procedural documents prior to the initiation of the procedure and the notification of the opening of proceedings in accordance with the provisions of the Civil Procedure Code. Also, the first citation and communication of procedural documents to persons against whom an action is brought under the provisions of the Insolvency Code following the opening of proceedings will be carried out in accordance with the Code of Civil Procedure and the Insolvency Proceedings Bulletin.

In disputes that have been promoted under the common law, after opening the insolvency proceedings, the summons of the debtor will be made at its headquarters and at the head of the judicial administrator / liquidator.

The courts have the obligation to send ex officio the documents specific to the insolvency procedure for their publication in the Insolvency Proceedings Bulletin. If the debtor is a company traded on a regulated market, the syndic judge shall communicate to the Financial Supervisory Authority the decision to open the proceedings.

The notifications, unless the task of the notification belongs to other bodies that apply the procedure, and the convictions provided by the Insolvency Code fall under the responsibility of the judicial administrator or the liquidator, as the case may be.

The publication of procedural documents, or, as the case may be, of court rulings in the Insolvency Proceedings Bulletin replaces, from the date of their publication, the summoning, summoning and notification of procedural documents made individually to the participants in the trial, which are presumed to be fulfilled at the time of publication .

As regards the notification of the debtor's creditors by the judicial administrator / liquidator, immediately after the opening of insolvency proceedings, for the purpose of formulating possible claims, this will also be done according to the provisions of the Code of Civil Procedure. The insolvency code expressly provided for in Article 42, paragraph 3, second sentence, that creditors who have not been so notified are deemed to have been repudiated within the time limit for the filing of the claims, but they will take over the procedure at the stage when it is.

The legislator expressly imposed the obligation of objectivity and impartiality for the bodies applying the insolvency procedure, such as the judicial administrator / liquidator, the syndic judge and the courts.

For the syndic judge, who works within the court or the specialized court, and the judges who compose the appeals at the level of the judicial control court, respectively the court of appeal, the regulation of the obligation of impartiality and

objectivity may be considered an excess of regulation , as this obligation was previously regulated for any magistrate[31].

As far as the insolvency practitioner is concerned, we consider that the lawmaker of the Insolvency Code also imposed on him an obligation of impartiality and objectivity similar to that of the magistrate when he exercises the public office of a judicial administrator, namely a liquidator, appointed in an insolvency case[32]. The profession of insolvency practitioner is a liberal profession in view of its legal regulation, but when it is exercised as a result of appointment in an insolvency case as a judicial administrator or liquidator, the insolvent practitioner becomes a body applying the procedure insolvency, together with the magistrate judge / magistrates, having the attributions expressly stipulated by the law, which are accomplished by taking measures imposed by the law.

The legislator provided for a minimum cost to be part of the principle of the effectiveness of insolvency proceedings. This requirement must be considered by the court administrator / liquidator in terms of the costs of the proceedings and by the syndic judge / court in terms of censuring procedural expenses.

According to art. 39, par. 1 and 4 of the Law no.85/2014, all expenses incurred by the judicial administrator / liquidator shall be borne by the debtor's assets and, in the absence of available funds, the liquidation fund shall be used[33].

According to art.159 paragraph 1 and art.161 paragraph 1 of the Law no.85/2014 on the distribution of the funds obtained from the sale of goods and rights from the debtor's property, the expenses of the procedure shall be paid as a priority, these being composed of taxes, stamps and any other expenses related to the sale, including the expenses necessary for the preservation and management of these goods, the expenses incurred by the creditor in the forced execution procedure, the debts of the utility providers born after the opening of the procedure, the remuneration of the judicial administrator / liquidator, the remuneration of the specialists employed during the 2% of the sums recovered in insolvency proceedings due to the National Union of Insolvency Practitioners,

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[31] Art. 73 and 75 of the Law no.303 / 2004 on the status of judges and prosecutors, published in the Official Gazette Part I no.576 / 29 06 2004, contained in Title III "Rights and duties of judges and prosecutors" regulates the judge's obligation to impartiality, in the conduct of the trial

[32] Government Emergency Ordinance no.86 / 2006 on the organization of the activity of insolvency practitioners, published in the Official Gazette, Part I no.944 / 22.11.2006, Statute regarding the organization and the practice of the insolvency practitioner profession, republished in the Official Gazette Part I no. 678/06 10 2010, Code of Conduct on Professional Ethics and Discipline, republished in the Official Gazette Part I no.678 / 06 10 2010

[33] The liquidation fund is a fund constituted by the application of 50% of the fees to be paid to the trade registry for the authorization of the constitution of persons subject to registration, modification of their acts, facts and claims and the making of all records in the trade register, authorization, operation and release specific documents, verification and / or reservation, transmission / receipt / issuance of documents and / or information provided by law, and 2% of sums recovered in insolvency proceedings, including funds obtained from the sale of property from the debtor's property

including the funds obtained from the sale of the assets from the debtor's assets, which constitute the liquidation fund, etc.

Analyzing these legal provisions it is found that the unfolding of the insolvency procedure with minimal costs leads to a more satisfactory achievement of the purpose of the procedure, namely the highest coverage of the debtor's liabilities. The lower the procedural expenses, the more funds will be distributed to the creditors.

The importance of conducting the insolvency procedure at low costs also subsists when there are no assets in the debtor's assets, because in this case the procedural expenses are borne by the liquidation fund, which is made up of public funds.