

# Crimes of Criminal Insolvency in Macedonian Legislation

**Olga KOSEVALISKA**

e-mail: [olga.gurkova@ugd.edu.mk](mailto:olga.gurkova@ugd.edu.mk)

**Borka TUSEVSKA**

e-mail: [borka.tusevska@ugd.edu.mk](mailto:borka.tusevska@ugd.edu.mk)

## **Abstract**

Over the years, Macedonia has suffered many economic slowdowns as a result of the incompetent legislature prone to economic crime. After many improvements to the relevant legislation, there are still difficulties in detection and proving these crimes. It is unclear whether the state authorities are really willing to prosecute and sanction these crimes or if the legislation was improved with no expectations of these improvements changing the prevailing practice. Why do we have so few convictions, when it is more than clear that criminal insolvency is the cancer of our economy and represents unlawful adoption of property and profits? The purpose of this article is to elaborate the phenomenon of criminal insolvency and to illustrate the real image of the criminal insolvency procedures before the Macedonian courts, in order to find appropriate solutions for more efficient fight against this kind of crime.

**Keywords:** *criminal insolvency, insolvency, crimes, Macedonia, criminal proceedings, economy.*

### **Introduction**

The issues of crimes connected to insolvency and insolvency procedures are evident to the general public, because almost every insolvency procedure is or was connected with criminal reports and sad to say without appropriate end. The main problem, concerning the successful detection and prosecution of these crimes is the complicated legislation in this field. Not only the civil law complicated as it is applied to insolvency, but the relevant law from other areas, including the criminal law, were not coordinated, so that the procedure can be easily manipulated.

For many years there have been laws in several Codes that are relevant to the insolvency procedure, depending of the time when the insolvency procedure was first open. For instance for the insolvency proceedings from 1989 to 1997, the law for forced settlement, insolvency and liquidation was in force.<sup>1</sup> There are 28 proceedings that were started under this law, and some of them have yet to have a final judgment.. Their duration of over 20 years is alarming. These proceedings have lasted an average of more than 13.99 years.<sup>2</sup> From the years 1997 though 2006 the Law for bankruptcy<sup>3</sup> was in force. This law was a welcomed upgrade from preceding law, but in real practice was not sufficient to provide speed, transparent and fairness to the insolvency proceedings. There were 169 insolvency proceedings opened that applied this law. The approximate duration of these proceedings was 5.39 years but since they are not also all finished, this information will be subjected to change.<sup>4</sup> In 2006 another law on insolvency<sup>5</sup> came into force that had new provisions. This Law was

---

<sup>1</sup> Law on compulsory settlement, bankruptcy and liquidation (Official Gazette No.84/89).

<sup>2</sup> Nanev, L. (2009): Осврт на можни правни последици за појава на економскиот криминалитет во стечајните постапки во базата на податоци на Министерството за економија, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1, p.12, hereafter Nanev, L. (2009).

<sup>3</sup> Insolvency Law (Official Gazette No.55/97).

<sup>4</sup> Ibid, p.12.

<sup>5</sup> Insolvency Law, (Official Gazette No 34/2006, 126/2006, 84/2007 и 47/11).

amendment many times in order to make the insolvency proceedings more transparent and timely. The approximate duration of these proceedings is 1.39 years but is tending to decline. The Central Register has currently developed a special online site of insolvency proceedings that can be accessed by the public.<sup>6</sup> In 2014 a law came into force that would require quicker decisions in insolvency proceedings<sup>7</sup>, in order to finish the proceedings that are started under previous legislation but are not yet finished. We still expect to see the final end of these proceedings.

### **1. The essence of insolvency and criminal insolvency**

The insolvency procedure is enacted for the protection and realization of the rights and interest of the creditors as well as the insolvent debtor who is not able to pay his debt on time.<sup>8</sup> This procedure is frequently connected with the so called “rescue culture”<sup>9</sup>, whereby the company’s finances are restructured to save it from failing and to help those concerned with the insolvency, stakeholders, investors, creditors or employees, recovery some of what they are owed.

The purpose of the insolvency proceeding is to collectively settle with the creditors of the insolvent debtor by cashing in the debtors property and distributing the realized incomes to the creditors or by signing a separate agreement for the settlement of claims that is set forth in the plan for reorganization for the purpose of further maintaining of the debtor’s business enterprise (the company).<sup>10</sup> There is also a provision in the law for

---

<sup>6</sup> Official site of Central Register of Republic of Macedonia, with link to the site of insolvency proceedings <http://e-submit.crm.com.mk/eBankruptcyPublic/> last accessed 23.03.2015.

<sup>7</sup> Law on locking bankruptcy proceedings opened pursuant to the Law for compulsory settlement, bankruptcy and liquidation and Insolvency Law (Official Gazette No.12 22.01.2014).

<sup>8</sup> Максимовски, Р. (2011): Заштита на правата на доверителите во стечајна постапка, Правен Дијалог Број 2, Институт за човекови права.

<sup>9</sup> Cotter, A. (ed.)2003: Insolvency Law, Cavendish Publishing Limited, p.1-13.

<sup>10</sup> Article 3 from the Insolvency Law, (Official Gazette No. 34/2006; 126/2006; 84/2007; 47/2011; 79/2013; 164/2013 и 29/2014). Decisions of the Constitutional Court У. бр. 63/2006 од 19 декември 2007 година, објавена

insolvency, which provides that the reorganization of the company can be performed together with the settlement of claims before the opening of the insolvency procedure. The insolvency is carried out in two situations. One when the company is insolvent for a period of at least 45 days, meaning it is past due 45 days in its payment to its creditors. This takes into account payment from any account with any payment operations, and any debt with valid grounds for payment. The other is real future insolvency, meaning that the debtor is unlikely to be able to pay any of the future financial obligations.

Thus far the legislature has failed to criminalize in the criminal provisions of the law for insolvency or in the Criminal Code, the actions of those persons, who knowing that they are insolvent, failed to claim insolvency before the official authorities step in and force the insolvency claim. There are numerous of cases, which we'll elaborate in this paper, where the official continues to exist, during this additional period he devalues and sells the property at low price.

### **1.1. The legal nature of insolvency and the systematization of crimes involving unlawful insolvency**

The legal nature of insolvency would primarily place it within the legal category of business law and civil procedure, but the criminalization of various acts connected with the insolvency procedure and the public interest in preventing these crimes, makes it an institution with a criminal legal nature as well<sup>11</sup>. Undoubtedly the relationship between various legal areas makes criminal insolvency even more necessary, because of the unmatched provisions of business, civil and criminal law. The Criminal Code also

---

во „Службен весник на Република Македонија“ бр. 3/2008 и У. бр. 11/2009 од 23 септември 2009 година, објавена во „Службен весник на Република Македонија“ бр. 122/2009. Закон за архивски материјал („Службен весник на Република Македонија“ бр. 95/2012.

<sup>11</sup>Kambovski, V. 2009: Економски криминал во стечајот и во стечајната постапка, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1, p.3, hereafter, Kambovski, V. (2009).

provides a systematization of these crimes. Are these crimes against the property or they are crimes against public finances, payment and the economy. Our legislature decided that in our Criminal Code these crimes should be crimes against property because of the prevalence of the interest in the protection of the right to property as a fundamental right<sup>12</sup>. We argue this, as so do others<sup>13</sup>, because the right place of insolvency crimes should be in the chapter 'Crimes against public finances, payment operations and the economy.' The purpose of these laws is not only the protection of property but also the criminalization of certain activities in the economy, which is also crucial. Therefore given that the understanding of the right to property would not be affected and the consistency of the systematization will be preserved. Some may argue that this is not important, because is a theoretical dispute. However, in the official statistical reports, the insolvency crimes are reported as crimes against property, so they are not considered in the crimes against the economy and so the negative effect that they have in economy cannot be seen. There can be an insolvency crime that has caused damage to the economy of many millions of euros and yet in the statistical report of that year shows no significant crime against the economy. A number of crimes, including the purposeful creation of bankruptcy,<sup>14</sup> causing bankruptcy by unscrupulous operation,<sup>15</sup> abuse of bankruptcy procedure,<sup>16</sup> and damage or

---

<sup>12</sup>Ibid, p.6.

<sup>13</sup>Velkova, T. 2009: Економскиот, поточно организиранiot Криминалитет во стечајните постапки?!, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1.

<sup>14</sup>Член 254 од, Кривичен законик („Службен весник на Република Македонија“ бр. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 и 199/2014). Одлуки на Уставниот суд на Република Македонија: У. бр. 220/2000 од 30 мај 2001 година, објавена во „Службен весник на Република Македонија“ бр. 48/2001; У. бр. 210/2001 од 6 февруари 2002 година, објавена во „Службен весник на Република Македонија“ бр. 16/2002; У. бр. 206/2003 од 9 јуни 2004 година, објавена во „Службен весник на Република Македонија“ бр. 40/2004 и У. бр. 228/2005 од 5 април 2006 година, објавена во „Службен весник на Република Македонија“ бр. 50/2006.

<sup>15</sup> Article 255 from the Criminal Code.

privilege of the creditors,<sup>17</sup> should be considered as crimes that involve unlawful insolvency. Hence, in some cases crimes that involve the “abuse of official position and authorization,”<sup>18</sup> “reckless operation within the service,”<sup>19</sup> “embezzlement in the service,”<sup>20</sup> “fraud in the service,”<sup>21</sup> “use of resources for personal benefit within the service,”<sup>22</sup> “receipt of a bribe,”<sup>23</sup> “unlawful intermediation,”<sup>24</sup> “unlawful obtaining and covering property,”<sup>25</sup> “falsification of official documents,”<sup>26</sup> “unlawful collection and payment”<sup>27</sup> can be criminal acts that involve unlawful insolvency when these crimes are committed by the official in the legal entity.

## 1.2. The legal genesis of the insolvency crimes

As previously stated, the current legislation directly referred to criminal insolvency as well as a broader interpretation of the criminal act, to include actions where the insolvency proceedings may be used as a tool to allow officials in the course of their position and duties to act in a criminal manner. But instead of applying this law against officials, it appears that in practice the law is in fact rarely applied even to insolvency. We presume that this is because the prosecutors are more certain that they can more easily prove before the court, crimes against the official duty than insolvency crimes. Nevertheless, we will look carefully at insolvency crimes in order to

---

<sup>16</sup> Article 256 from the Criminal Code.

<sup>17</sup> Article 257 from the Criminal Code.

<sup>18</sup> Article 353 from the Criminal Code.

<sup>19</sup> Article 353-B from the Criminal Code.

<sup>20</sup> Article 354 from the Criminal Code.

<sup>21</sup> Article 355 from the Criminal Code.

<sup>22</sup> Article 356 from the Criminal Code.

<sup>23</sup> Article 357 from the Criminal Code.

<sup>24</sup> Article 359 from the Criminal Code.

<sup>25</sup> Article 359-a from the Criminal Code.

<sup>26</sup> Article 361 from the Criminal Code.

<sup>27</sup> Article 362 from the Criminal Code.

see if the law is sufficient to cover them or if the legislature failed to really protect these “vulnerable” relations in cases of bankruptcy.

### **1.3. Division of insolvency crimes into ‘crimes before the insolvency proceeding’ and ‘crimes after the beginning of the insolvency proceeding’**

Numerous authors<sup>28</sup> divide insolvency crimes into two groups: insolvency crimes committed before the start of insolvency procedure and insolvency crimes committed after the beginning of the insolvency procedure. The first group involves the crimes of “Purposeful creation of bankruptcy” and “Causing bankruptcy by unscrupulous operation”, and in the second group are “Abuse of bankruptcy procedure” and “Damage or privilege of the creditors”<sup>29</sup>. According to Boscov (2013), the insolvency crimes before the opening of the insolvency procedure are usually connected with the unscrupulous operation of the company director and his team. Therefore, the director is usually the one that is prosecuted for this crime. Acts that the director can be prosecuted for include cheating creditors, deliberate devaluation of an enterprise for the purpose of buying it or selling it at a low price, making false contracts, reckless spending or alienation of the movable and immovable property at low costs. While insolvency crimes after the beginning of the insolvency procedure involve criminal behavior in the acts of the authorities that are leading the insolvency procedure. These

---

<sup>28</sup>Бошков, П.(2013): Криминалистички и кривично – правни аспекти на стечајниот криминалитет во Република Македонија, докторска дисертација, Факултетот за безбедност – Скопје, при Универзитетот „Свети Климент Охридски“ Битола; Kambovski, V. (2009), Nanev, L. (2009), Velkova, T. (2009), Kosevaliska, O. Tusevska, B. Nanev, L. Sotiroski, Lj. 2014: Criminal insolvency, Vth International Conference: East – West, International Slavijan University, Conference proceedings; in the text as Koshevaliska, et.al. 2014:329-334); Arnaudovski, Lj. 2009: Стечаите, стечајните постапки, трансформацијата на стопанскиот систем кај нас и економскиот криминалитет, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1.

<sup>29</sup> Kambovski, V. (2011): Komentar na Krivicniot Zakon. Skopje: Akademik, p.904-908.

acts involve unlawful selling of parts of the property of the insolvent firm, avoiding obligations to creditors and the state, personal enrichment of the insolvency trustee and the judge through the purchase of the real estate of the insolvent firm.<sup>30</sup> These acts represent abuse of one's position and duty and are dealt with under the criminal code not the insolvency law.

#### 1.4. Insolvency crimes

The crime "Purposeful creation of bankruptcy" from Article 254 of the Criminal Code, includes actions such as the avoidance of an obligation to pay, causing a bankruptcy by an apparent selling of property or a part of it, by transferring funds to other accounts, by ceding without compensation or selling for a disproportionately low value, by concluding false agreements concerning debt or making untruthful claims, or in any other manner purposefully favoring specific creditors, by covering up, destroying, changing or maintaining business books that make the true state of wealth impossible to determine. The sentence for this crime is imprisonment of one to five years and a financial fine. Also this provision involves criminal responsibility of the legal entity as well. The legal entities were made criminally responsible in the 2004 law, and all the criminal insolvency proceedings were finished by then. Throughout the period of 1991 through the end of 2004 most of the privatization of the biggest enterprises had finished with few criminal charges that did not succeed in court<sup>31</sup>

The second crime, "Causing bankruptcy by unscrupulous operation", is listed in Article 255 of the Criminal Code. According to this provision, a person is criminally responsible if he is aware that he or another as a debtor

---

<sup>30</sup> Kosevaliska, O. et al, (2014): 329-334.

<sup>31</sup> According to this author, the impression for these proceedings is that the state 'silently' justified the process of transformation of the social property into private property, when it was more than obvious that this was pure economic criminal. See, Nanev, L. (2009): Осврт на можни правни последици за појава на економскиот криминалитет во стечајните постапки во базата на податоци на Министерството за економија, Македонска ревија за казнено право и криминологија, Скопје, Vol.1.



is permanently, through violation of duties while managing the property or conducting activities caused bankruptcy by unreasonable spending and alienation of property at a disproportionately low price, by excessive indebtedness, by undertaking disproportional obligations, by conclusion and renewal of agreements with persons incapable of paying, or by failure to realize a claim. The sentence for this crime is from three months to three years.<sup>32</sup> The legal entity can also be fined.

Two additional crimes can occur after the beginning of the insolvency proceeding. The provision for the crime “Abuse of bankruptcy procedure” from Article 256 of the Criminal Code provides that every person in a bankruptcy procedure who reports a false claim for the purpose of realizing a right not entrusted to him, shall be fined or sentenced to imprisonment of up to one year. The second paragraph of this article enumerates the specific persons to whom it applies ‘as the creditor, a member of the board of creditors, or a bankruptcy administrator, who for himself or for another accepts a property benefit or a promise for property benefit, in order to pass or not to pass a decision in a certain sense, or in any other manner damages at least one creditor in the bankruptcy procedure. Such a person shall be fined or sentenced to imprisonment of up to three years. A sentence to imprisonment of up to one year is provided also for those that give or promise a property benefit to a creditor, member of the board of creditors, or bankruptcy administrator, for the purpose of committing the crime referred to in paragraph 1 of article 256.’ The criminal responsibility for the legal entity is provided for as well. Our opinion is that this criminalization covers a limited number of activities such as reporting of a false claim or a claim for false payment order, receiving and giving bribes to a creditor, or member of the board of trustees. Offences such as fraud, abuse of office and forging documents are addressed in Civil Code. .

The last crime dealt with in the Criminal Code, Article 257 is “Damage or privilege of the creditors”. This provision criminalizes the act of that person *‘who, knowing that the legal entity has become permanently incapable of payment, by paying out a debt or in some other way intentionally puts a creditor in a more privileged position, herewith damaging the other creditors, shall be fined or sentenced to imprisonment of*

---

<sup>32</sup> Kambovski, V. (2011):906.

*up to three years. A responsible person who, knowing that the legal entity has become permanently incapable of payment, and with the intention of deceiving or damaging the creditors, acknowledges a false claim, puts together a false contract, or by some other deceitful action damages the creditors, shall be sentenced to imprisonment of six months to five years* '. Often the damage from these acts to a large extent,<sup>33</sup> is due to the fact that the legal entity went bankrupt, in which case the offender shall be sentenced to imprisonment of one to ten years. In practice, this crime is most frequent because the prosecutors usually prosecute for this crime or for the crime 'abuse of official duty and authority.'

## **2. Criminal protected by the ones that need to sanction it**

For a long time, one of the ways of getting around the insolvency rules was by changing the definition of the legal entity. This was changed with the provisions for the legal successor or successors by making him/them liable for the decisions made before the opening of the insolvency procedure.<sup>34</sup> The legal entity in insolvency is responsible for the crimes that are committed up to the opening of the insolvency procedure, under the conditions stipulated in the Criminal Code. If the legal entity initiates an acquisition, merger, division or other status change that allows him/her to gain significant financial benefit or causes other persons or entities suffered significant damage, he/she is no longer considered the legal entity for the current insolvency case. The criminal proceeding will continue against the legal successor or successors. With these provisions for liability in cases of insolvency and change of the status of the legal person, the insolvency law is

---

<sup>33</sup> In Article 122, ph.1 t.36 from the Criminal code damage from a large extend is defined as following: A benefit, value or damage of a large scale shall refer to benefit, value or damage that corresponds to the amount of 250 average monthly salaries in the Republic of Macedonia, at the time when the crime was committed.

<sup>34</sup>See Article 28 – a from Кривичен законик на РМ Камбовски, В.,(2011) „Кривичен Законик – Интегрален текст- Предговор, кратки објаснувања и регистар на поими, Скопје, Сл. Весник, hereafter Kambovski, V. (2011)a.

often manipulated, changing the ultimate result of insolvency judgment and bypassing justice.

Despite the numerous reforms of the Criminal code,<sup>35</sup> we fail to see any positive outcomes in practice. This indicates that these types of crimes are “protected by the institutions that are responsible for the detecting, prosecution or sanctions of the defendants.”<sup>36</sup> Some even says that criminal insolvency is “criminal protected by the court.” This is the general opinion of many theoreticians. For instance Velkova<sup>37</sup> says “insolvency proceedings were conducted under the umbrellas of the institutions of the law, the courts, when in fact the courts played the role of witness of such crimes that represented theft of social property”. Sad to say this is not far from the truth. Some judges that had decades of experience in these proceedings even stated that they failed to see any criminal behavior in the long running insolvency proceedings. We can conclude that the tolerant attitude towards insolvency in practice is illogical, given that the purpose of the legislature was broad criminalization of acts that exist, in order to have the legal basis for punishment, or maybe it is the other way around. The broad definition of criminal act in the legislation leaves room for the ones that apply the law to “play the law”.

These crimes almost always involve an organized group of offenders that makes the crimes even more difficult to detect. Also insolvency crime represents “white collar crime”<sup>38</sup> that means these criminals are powerful

---

<sup>35</sup> Macedonian Criminal Code.

<sup>36</sup> Kambovski, V. (2009) p. 4.

<sup>37</sup> Velkova, T. (2009): p.1.

<sup>38</sup> The phrase "white-collar crime" was coined in 1939 during a speech given by Edwin Sutherland to the American Sociological Society. Sutherland defined the term as "crime committed by a person of respectability and high social status in the course of his occupation." Although there has been some debate as to what qualifies as a white-collar crime, the term today generally encompasses a variety of nonviolent crimes usually committed in commercial situations for financial gain. Many white-collar crimes are especially difficult to prosecute because the perpetrators use sophisticated means to conceal their activities through a series of complex transactions. See [http://www.law.cornell.edu/wex/white-collar\\_crime](http://www.law.cornell.edu/wex/white-collar_crime) , last accessed on 20.03.2015.

people that use their power and influence in society to avoid prosecution. Such was the case in Serbia in 2006 in the arrest of the “insolvency mob” when very powerful people were arrested,<sup>39</sup> ultimately showing how the system should work. Cases like this exist in our legal system as well, though few of them end with convictions; in some the prosecutions are withdrawn or, in some, the criminal charges are rejected.

In the cases of the insolvency procedure for one of the biggest enterprises in Macedonia, the Macedonian courts reached the verdict of guilty and sentenced notorious insolvency trustee Voislav Tamburkovski to prison. He has multiple convictions for insolvency crimes (generally the convictions are for abuse of official position and authorization) in “Topilnica” Veles, “Zletovo”, “Eksport-import banka” “Gazela” and “FAS 11 Oktomvri.” Sad to say he is “on the run” so the criminal sanctions cannot be applied. Tamburkovski holds dual citizenship in Bulgaria and Macedonia, so he has the freedom to perform business in Bulgaria, and so is out of reach of the Macedonian authorities. Also there have been other trials where officials, notaries, insolvent trustees and even, judges of the court were arrested, prosecuted and sentenced, for instance in the case of the “Sandanski” insolvency procedure where these people performed criminal acts during the insolvency procedure and caused damage to the state in the sum of nearly 400,00,000 denars. And yet the qualification for these crimes was “abuse of official position and authorization”.

Judicial officials sentenced in the big “Dust Affair” included directors, managers, officers, trustees, one judge. A state advisor even approved the illegal way of assigning the property of the firms “Zito Mel” “Iskra

---

<sup>39</sup> In 2006 the action for arresting the “bankruptcy mob” was undertaken and many important officials were arrested and prosecuted. So was the president of the commercial court in Belgrade, the owner of „Eko produkta 2000“, the directors, judges, etc. (approximately 35 people). The damage cause in several insolvency proceedings was estimated around 50 million of euros. Stanojević, P., Hamidović, D. (2010): Krivična dela prouzrokovanje Stečaja i prouzrokovanje lažnog stečaja – kao aktuelna krivična dela potiv privrede u postkriznom periodu, Annals of International Conference of Young Leaders (Anali međunarodne konferencije mladih lidera), issue: 1 / 2010, ctp: 676 – 684.

Inzinerering”, “Ken” and the working unit in “Poljodelstvo” in “Stocarstvo I prerabotka.” The estimated unlawful gain was approximately 6 million euros.<sup>40</sup>

Other insolvency case that involved imprisonment of court officials and other officials was for the company “Gemiks” of Skopje, where an insolvency trustee and a judge from the Court in Gostivar were prosecuted for insolvency crime for the sum of 5 million euros during the insolvency procedure for “Silika.”<sup>41</sup> These are not isolated cases, only the most recent ones.

### 3. Critical points of the legislation and final remarks

The simple analysis of the law concerning bankruptcy reveals many critical points that leave room for criminal activities by the participants in these proceedings. For instance, as we previously stated the insolvency crime from article 256 Abuse of bankruptcy procedure, covers only some activities such reporting of a false claim or a claim for false payment order, receiving and giving bribes to a creditor, member of the board of trustees, while neglecting to mention other crimes such as fraud, or abuse of office, or forging documents.

Our final remarks are that despite the existing Criminal Code, other actions must be considered criminal. We believe that, by expanding the actions that are considered criminal in the insolvency proceedings, the prosecutors would be able to prove these crimes more easily and successfully. First the following must be held criminally responsible for their actions.

---

<sup>40</sup> Kosevaliska, et al. (2014) 329-334, and for more see the official site of the daily newspaper “Vecer” available at <http://www.vecer.com.mk/defaultmk.asp?ItemID=1C4DEEE35F99F74B8C7140719F8D45D2> , last access on 30.03.2015.

<sup>41</sup>For more see the daily newspaper “Vecer” <http://www.vecer.com.mk/default.asp?ItemID=41432D1E61284B4D930BE411E52AA9C2> , last access on 30.03.2015.

- Debtors / or ones that fail to initiate opening of insolvency procedure even though they know that they cannot pay their obligations or even change the address of the company in order to avoid the receiving of official letters and documents concerning their debts.
- Debtors that performs commercial activities under a new name or set up a new company, even though they know that they are insolvent.
- Debtors that perform commercial activities using the accounts of another legal entity by cessions (civil institute), with the purpose of avoiding opening an insolvency procedure.
- Others who help the debtor to conceal parts of the property that should enter in the insolvency estate.
- All those that report unlawful claims in the insolvency procedure, including insolvency trustee, creditors, debtors.

We ask the question why it took so long for the legislature to make provisions concerning the legal and criminal responsibility of legal entities, the confiscation of property gained through criminal activities, and other special types of insolvency crimes. And why do the prosecutors always bring a case of abuse of official power and authority rather than take advantage of other crimes stated in the law? That is why in our opinion that previously a criminal went free because the authorities were blind to the crimes that were obvious. We need new provisions in the insolvency law because the foreign investors need to know that criminal activities will be prosecuted. In that way the investors will have some legal security in this area. That is why we welcome all those new bodies that are competent for monitoring the insolvency procedure, for conducting public registers for insolvency, for tax debtors etc. and finally for enabling the public to have a look at the insolvency.

### BIBLIOGRAPHY

- Arnaudovski, Lj. 2009: Стечаите, стечајните постапки, трансформацијата на стопанскиот систем кај нас и економскиот криминалитет, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1;
- Cotter, A. (ed.)2003: Insolvency Law, Cavendish Publishing Limited, стр.1-13;
- Criminal Code (CONSOLIDATED TEXT, “Official Gazette of the Republic of Macedonia” nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 and 199/2014). Decisions of the Constitutional Court of the Republic of Macedonia: U. no. 220/2000 dated 30 May 2001, published in the “Official Gazette of the Republic of Macedonia” no. 48/2001; U. no. 210/2001 dated 06 February 2002, published in the “Official Gazette of the Republic of Macedonia” no. 16/2002; U. no. 206/2003 dated 09 June 2004, published in the “Official Gazette of the Republic of Macedonia” no. 40/2004; U. no. 228/2005 dated 05 April 2004, published in the “Official Gazette of the Republic of Macedonia” no. 50/2006.
- Daily newspaper “Vecer”  
<http://www.vecer.com.mk/default.asp?ItemID=41432D1E61284B4D930BE411E52AA9C2> , last access on 30.03.2015;
- Daily newspaper “Vecer” available at  
<http://www.vecer.com.mk/defaultmk.asp?ItemID=1C4DEEE35F99F74B8C7140719F8D45D2> , last access on 30.03.2015;
- Kambovski, V. (2011): Komentar na Krivicniot Zakon. Skopje: Akademik;
- Kambovski, V. 2009: Економски криминал во стечајот и во стечајната постапка, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1;
- Kosevaliska, O. Tusevska, B. Nanev, L. Sotiroski, Lj. 2014: Criminal insolvency, Vth International Conference: East – West, International

Slavijan University, Conference proceedings; in the text as Koshevaliska, et.al. 2014:329-334);

Nanev, L. (2009): Осврт на можни правни последици за појава на економскиот криминалитет во стечајните постапки во базата на податоци на Министерството за економија, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1;

Official cite of Central Register of Republic of Macedonia, with link to the book of insolvency proceedings <http://e-submit.crm.com.mk/eBankruptcyPublic/> last access 23.03.2015;

Official site of the Cornell University, See [http://www.law.cornell.edu/wex/white-collar\\_crime](http://www.law.cornell.edu/wex/white-collar_crime) , last accessed on 20.03.2015;

Stanojević, P., Hamidović, D. (2010): Krivična dela prouzrokovanje Stečaja i prouzrokovanje lažnog stečaja – kao aktuelna krivična dela potiv privrede u postkriznom periodu, Annals of International Conference of Young Leaders (Anali međunarodne konferencije mladih lidera), issue: 1 / 2010, стр: 676 – 684;

Velkova, T. 2009: Економскиот, поточно организираниот Криминалитет во стечајните постапки?!, Македонска ревија за казнено право и криминологија, Скопје, Здружение за казнено право и криминологија, Vol.1;

Бошков, П.:(2013): Криминалистички и кривично – правни аспекти на стечајниот криминалитет во Република Македонија, докторска дисертација, Факултетот за безбедност – Скопје, при Универзитетот „Свети Климент Охридски“ Битола;

Закон за заклучување на стечајните постапки отворени согласно со Законот за присилно порамнување стечај и ликвидација и Законот за стечај (Службен весник на РМ, бр. 12 од 22.01.2014 година);

Закон за стечај („Службен весник на Република Македонија“ бр. 34/2006; 126/2006; 84/2007; 47/2011; 79/2013; 164/2013 и 29/2014). Одлуки на Уставниот суд на Република Македонија У.



бр. 63/2006 од 19 декември 2007 година, објавена во „Службен весник на Република Македонија“ бр. 3/2008 и У. бр. 11/2009 од 23 септември 2009 година, објавена во „Службен весник на Република Македонија“ бр. 122/2009. Закон за архивски материјал („Службен весник на Република Македонија“ бр. 95/2012

Законот за стечај („Службен весник на Република Македонија” број 34/2006, 126/2006, 84/2007 и 47/11);

Законот за присилно порамнување, стечај и ликвидација (Сл. Весник на РМ, бр.84/89);

Законот за стечај (Сл. весник на РМ, бр.55/97);

Камбовски, В. (2011): „Кривичен Законик – Интегрален текст-Предговор, кратки објаснувања и регистар на поими, Скопје, Сл. Весник;

Максимовски, Р. (2011): Заштита на правата на доверителите во стечајна постапка, Правен Дијалог Број 2, Институт за човекови права;

Нанев, Л. (2006): Криминолошки аспекти на стопанскиот криминалитет, Кавадарци, СППМД;

