The Bankruptcy of State Enterprises in Ukraine through the Prism of the practice of the European Court of Human Rights

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Abstract: The market economy, on the principles of which the Ukrainian society develops, assumes that business entities are created, develop and as a result of miscalculations in the management system may cease to exist. On the legal plane, the process of termination of the enterprise occurs by the recognition of insolvency and the passage of the procedure of bankruptcy. State-owned enterprises are not an exception. They can also be an inefficient business entity and require legal registration for the termination of activities.

Taking into account the topicality, the article's aim was defined in accordance with the already considered cases. Namely: the Ukraine's state enterprises bankruptcy through the European Court of Human Rights prism. One took into account all the peculiarities concerned with the topical issue.

In the research the analysis of real cases of declaring bankruptcy of Ukrainian state enterprises was carried out from the plane of human rights protection taking into account the practice of the European Court of Human Rights. The analysis of peculiarities of establishing the procedure for the disposition of property and repayment of obligations of state-owned enterprises in accordance with court decisions was carried out. It is established that since 2019 there is no legislative possibility of recognition of bankruptcy of state enterprise, which on the one hand minimizes misconduct towards state enterprises and deprives the possibility of abuse, and on the other hand - complicates the process of terminating the existence of inefficient state enterprises that cause damage to the state and through the law, unsettlement cannot be eliminated.

The practical significance of the obtained results is the advisability of taking into account the experience of human rights protection in the process of bankruptcy proceedings against state-owned enterprises.

Keywords: Bankruptcy of state enterprises, Bankruptcy case, Human rights, solvency.
JEL Classification: K35, G33.

1. INTRODUCTION

In the current conditions of the country's development, when domestic enterprises are affected by many negative factors of the external environment and operate under the influence of a huge number of risks, the issue of declaring an enterprise bankrupt at the legal and economic level becomes extremely relevant.

To understand the reasons and possible consequences of declaring enterprises bankrupt, researchers should focus on analyzing the experience of those cases of bankruptcy of state enterprises, which have already been considered by the European Court of Human Rights, as the study of this experience will allow developing recommendations for improving domestic legislation and the system of counteraction to

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the emergence. so deep crises in the enterprise, which may lead to the need to declare it bankrupt. It should be understood that most state-owned enterprises today form the basis of the national and economic security of the state Pawełoszek et al. (2022), so the Government and the State authorities must take all possible measures to ensure the maximum possible efficiency of the functioning of state-owned enterprises and their effective development.

1.1. Research Problem

To begin, it should be noted that a properly conducted bankruptcy procedure could allow the owners to make the most efficient use of the resources that remain at the company's disposal for the rational and competent termination of the business.

On the other hand, the institute of bankruptcy is an essential element of the market economy. Its main function is to free the market from inefficient, non-performing businesses, leaving those that can be operating and profitable. However, in Ukraine, during all the years of its independence, the issue of bankruptcy of state enterprises has not been properly regulated at the legislative level and directly contradicts the European Convention on Human Rights, standards of the Council of Europe, as well as the Association Agreement of Ukraine with the European Union in 2014. As noted by the Committee of Ministers of the Council of Europe in 2020, among the root causes of non-enforcement of court decisions are the inability to break and complete the bankruptcy procedure and the existence of a moratorium protecting state-controlled enterprises from liability and enforcement actions in certain sectors of the economy.

According to the author's opinion, the judicial law enforcement practice is the most reliable source to check the quality of regulation of the corresponding sphere of public relations. It is at the level of application of the norms of the law on bankruptcy of state-owned enterprises that appear shortcomings and conflicts of legislation in the relevant sphere (Morska & O. Davydova, 2021).

1.2. Research Focus

At the present stage of legal and economic science development more and more attention of scientists is attracted to the problem of implementation of bankruptcy procedures of enterprises of various forms of ownership, including state enterprises. A separate emphasis should be made on Butyrskyi's work (2019), who considers the problems of legislative regulation of the recognition of an enterprise insolvent. The work of Hrabovan (2019), evaluates the problem the liability of the parties in the process of implementation of bankruptcy proceedings determination, and deserves detailed consideration. Noteworthy is the view of scholars set out in Britchenko & Saienko (2017) formulated a position on the productive use of entrepreneurship as a form of economic relations, which is based on the function of the entrepreneur, with an emphasis on the fact that if these basic functions are not fulfilled it is logical to stop the inefficient enterprise and focus efforts on other business.

The macroeconomic aspects of the insolvency and bankruptcy doctrine and the implementation of bankruptcy proceedings are detailed in . This work is also interesting from the point of view of analyzing the positive impact of termination of inefficient enterprises on the economic situation in the state and reducing the burden on the state budget, in the aspect of the lack of need to maintain the economic activity of an insolvent and long-lasting unprofitable enterprise. And-Bilenko et al. (2019) details the legal aspects of arbitration regulation and management in the process of passing the bankruptcy procedure of Ukrainian enterprises. Also, the legal aspects of recognition of bankruptcy and the rights of bankruptcy trustees are considered in detail in the work of Jarynko (2018).

However, despite the considerable interest of scientists to the problem of bankruptcy of enterprises, the combination of legal, economic, and moral aspects of declaring enterprises bankrupt, especially in the public sphere, which is becoming increasingly relevant in recent years, when there is an objective need for cleaning the public sphere from inefficient enterprises and termination of the state-owned business entities, which have long remained unprofitable and do not benefit the state.

1.3. Research Aim

Given the above arguments, the purpose of the article is to analyze in detail the already considered cases of bankruptcy of state enterprises in Ukraine through the prism of the European Court of Human Rights as well as to analyze not only the legal but also the economic experience for further use by enterprises, which may undergo bankruptcy proceedings in the future.

2. METHODOLOGY

2.1. General Background

The study mainly concerns with a practical nature and is aimed to a detailed analysis of the practice of declaring bankruptcy of state-owned enterprises, taking into account the approaches and cases, which were considered by the European Court of Human Rights.

The analysis of bankruptcy procedures of state enterprises in Ukraine through the prism of the practice of the European Court of Human Rights was carried out with the use of various methods, among which are both general scientific and specific.

Among the general scientific methods, it is necessary to single out the analysis and synthesis, based on the generalization of the experience of court cases on the bankruptcy of state enterprises with the determination of the circumstances taken into account and the peculiarities of the decisions made. The method of analysis was also applied to determine the peculiarities of the procedure of reorganization and liquidation of the enterprise.

The method of scientific generalization was used in order to determine the general trends and basic principles characteristic of bankruptcy cases of state-owned enterprises.

2.2. Instrument and Procedures

The methodology used for the analysis of this research aimed to consider the peculiarities of bankruptcy cases of public

sector enterprises with determining the consequences of each case for the state and each specific enterprise.

Due to the complexity of the conducted scientific research one regrouped it into such stages:

1. The information collecting on bankruptcy cases of state-owned enterprises that have already been adjudicated
2. The processing the legal and economic experience of each of the cases under consideration;
3. The formation of generalized recommendations based on the results of the analysis of completed bankruptcy cases.

3. RESULTS

The quality of legislation is illustrated not by the dynamics of reforms and constant changes by the Verkhovna Rada of Ukraine and the central executive authorities, but by the consistency of regulation and certainty and predictability. Taking into account these peculiarities, the most resonant court cases in the field of bankruptcy of state enterprises after Ukraine signed the Association Agreement with the EU in 2014, as well as the adoption by the Verkhovna Rada of Ukraine of the Code of Bankruptcy Procedures in 2019 are analyzed.

The first precedent is proposed to consider the court case of declaring bankrupt the State Enterprise "Genicheskiy Winery" (Reyestr.court.gov.ua (n. d In case No 923/382/14 the Supreme Court confirmed the conclusion of the courts of the first and second instance that the only possible end of the bankruptcy procedure of such debtor under the law in force at the time the courts of previous instances reached their decisions was the conclusion of a friendly settlement in the bankruptcy case at the disposition of the property. The procedure of disposition of the property of the debtor GP "Genicheskiy Winery" lasted more than 4 years and during this period the creditors' committee and the debtor had not concluded a settlement agreement with its submission for approval to the economic court. In this case, as established by the court of the first instance, the property management body of the debtor - the Ministry of Agrarian Policy and Food of Ukraine did not provide its vision of the prospects of continuing the bankruptcy proceedings, the real ways of any amicable agreement and repayment of accounts payable.

While deciding on the closure of the case the court of the first instance took into account the measures taken by the debtor's property managers in the property disposal procedure, which lasted more than four years, by considering the claims of all creditors, compiled a register of creditors' claims and submitted it to the court for approval, organized a meeting of creditors, formed a creditors' committee of the debtor as a body for collective representation of creditors, organized the conduct of business activities with the achievement of the creditors' interests.

The court of the first instance also took into consideration the fact that the debtor's creditors' committee and the debtor's management body had not, during the lengthy procedure of disposing of the debtor's property, shown any ability to reach a compromise and express their will to conclude a settlement agreement at the stage of disposing of the property.

On reviewing this case law, it can be argued that Article 6, paragraph 1 of the European Commission of Human Rights (ECHR) imposes an obligation on the State to organize its judicial systems in such a way that its courts can meet the requirements of this provision. This provision confirms the importance of administering justice without delay, which could jeopardize its effectiveness and reliability. In addition, excessive delay in the administration of justice poses an important risk, particularly to respect for the rule of law.

It is incumbent upon the State to ensure that final judgments rendered against its organs, institutions, or enterprises that are publicly owned or controlled by the State are carried out in accordance with the requirements of international law. The State cannot justify the failure to execute judicial decisions rendered against it or against State-owned or State-controlled institutions or enterprises by lack of funds, which was the very rule considered in the case of Ivanov v. Ukraine (Zakon.rada.gov.ua (n. d.)).

At the same time, in the case of Burmich and Others v. Ukraine (Zakon.rada.go,v.ua (n. d.)) the European Court of Human Rights (ECtHR) notes that the situation in Ivanov-type cases, where measures of a general nature were not taken within a reasonable time in the State poses a serious threat to the Convention system. In that case, the respondent State's failure to comply with the pilot judgment over many years led to a steady and growing stream of applications, with the ECHR's role being solely to repeatedly reiterate its finding of a violation of the ECHR in the Ivanov case and to award just satisfaction or to take into account the Government's admission. violation and its obligation to pay monetary compensation. This repetitive decision-making, however, has not been helpful and has not resulted in any satisfactory change in the implementation process. The implementation process, which has been stimulated by a number of ECtHR decisions, remains ineffective, despite the CoECoE's oversight under the enhanced procedure, an instrument designed to address the most serious and systemic violations of the ECHR.

In general, the effectiveness of the regulatory procedures implementation set out in Article 13 of the ECHR does not depend on the certainty favorable to the applicant. Moreover, even if an individual remedy alone does not fully meet the requirements of Article 13 of the ECHR, a combination of remedies under domestic law may do so. It must therefore be determined on a case-by-case basis whether the remedies available for litigation in domestic law are "effective" in the sense of either preventing the violation prolonging it or providing adequate compensation for any violation that has already taken place (Hudoc.echr.coe.int (2022) (Surmeli v. Germany). After analyzing the said conclusion of the Supreme Court in this case, it can be stated that the main idea is that when bankruptcy proceedings are long due to the impossibility of completing them using special rules of bankruptcy law, the court is entitled to apply general procedural rules in order to ensure the right of fair trial in understanding the timing of the proceedings and ensuring a balance between the interests of creditors and the debtor during the court proceedings. Bankruptcy proceedings must be closed if the law prohibits the court from proceeding to judicial rehabilitation

or liquidation. This legal position is quite fair, since it presupposes a balance of interests of the debtor and creditors (both bankruptcy and current), the absence of effective consequences of the creditors and the bankruptcy trustee during the long continuation of the bankruptcy case at the property disposal stage (over four years), the absence of consequences on the conclusion of a settlement between creditors and the debtor and takes into account the objectives of economic proceedings regarding a fair, impartial and timely resolution.

As the following example, it is appropriate to consider the Court case on the bankruptcy of the State Enterprise "Chervonensky plant foodstuffs" (Reyestr.court.gov.ua (n. d.)). .2019 in case No. 906/1290/15). In Case No. 906/1290/15, the Chamber for bankruptcy cases of the Economic Court of Cassation within the Supreme Court clarified that the "absence of the subject matter of the dispute" in the meaning of paragraph 2 of Part one of Article 231 of the Code of Civil Procedure of Ukraine means the termination of the existence of disputed legal relations due to certain circumstances (payment of debt, destruction of the object of dispute, cancellation of the contested act). In making the decision the Supreme Court took into account that the proceeding on the case ¹ 90the 6/1290/15 on the bankruptcy of State Enterprise "Chervonensky plant of foodstuffs" lasted more than three years at the stage of disposition of property. During that period the debtor was not excluded from the list of state property not subject to privatization. Making it impossible to apply the procedures of rehabilitation or liquidation, the creditors' committee and the debtor did not conclude an amicable agreement in the property disposal proceedings in this case. The moratorium in force in the bankruptcy case for a long time prohibited the satisfaction of the claims of the debtor's bankruptcy creditors, in order to ensure the principles of examination of the case within a reasonable time by an independent and impartial court and to ensure legal certainty for creditors whose claims are recognized by the court, included in the register under the ruling of the previous bankruptcy case and cannot be satisfied for over three years because of the bankruptcy case moratorium, to ensure principles of review. Therefore, the Supreme Court held that the court of the first instance had correctly concluded that the bankruptcy proceedings against the State Enterprise Chervonensky Factory of Grocery Products had been terminated in accordance with the general rules of procedure (Article 231 § 1 (2) of the CCP of Ukraine) and Article 6 of the ECHR.

However, it should be emphasized that this does not exclude the possibility of terminating the subject matter of the dispute based on a legislative prescription. In this case, such legislative prescription were the requirements of Part Four of Article 96 of the Bankruptcy Law (in force at the time of the decisions of the courts of previous instances), limiting the possibility of bankruptcy proceedings of an enterprise not subject to privatization, on the transition to the procedures of sanitation and liquidation. The procedure for the disposition of property may end with the conclusion of an amicable agreement in bankruptcy proceedings or closing of the bankruptcy proceedings with the application of paragraph 2 of Part one of Article 231 of the Civil Procedural Code of Ukraine.

In the context of this case, it should be mentioned that in its practice the ECtHR has consistently pointed out that Article 13 of the ECHR guarantees at the national level efficient legal remedies to exercise one's rights and freedoms regardless of how they are expressed in the legal system of this or that country. The essence of this article is thus reduced to the requirement to provide an individual with such domestic measures as would enable the competent state authority to examine the merits of complaints about violations of ECHR provisions and to grant appropriate judicial protection, although ECHR member states have some discretion as to how they enforce their obligations in doing so (Hudoc.echr.coe.int (2022) Vilvarajah and others v. the United Kingdom).

As a result of that case, it can be argued that the State must organize its legal systems in such a way that their courts can guarantee everyone the right to a final judgment within a reasonable time in determining their civil rights and obligations. In Hudoc.echr.coe.int (2022) Surmeli v. Germany, the ECtHR noted that remedies that have a judicial process at the domestic level to complain about the length of proceedings are "effective" within the meaning of Article 13 ECHR if they prevent an alleged human rights violation. Thus, a remedy is effective if it can be used either to expedite the decision of the courts hearing the case or to provide adequate substantive redress for the delay in the execution of judgments.

If the judicial system is deficient in the reasonable time requirements of Article 6 § 1 of the ECHR, the most effective solution is an issue designed to expedite proceedings in order to prevent them from lasting too long. Such a measure offers an undeniable advantage over a that one that provides only compensation, since it also prevents the discovery of successive violations in respect of the same process of proceedings and does not merely remedy the violations but forms the preconditions for compensation for the damage caused. The failure of state authorities to provide the applicant with the property awarded to him or her pursuant to a final court decision usually constitutes an interference incompatible with the guarantees enshrined in Article 1(1) of the First Protocol of the ECHR.

The key conclusion of the Supreme Court of Human Rights in defense of the rights and freedoms of citizens involved in bankruptcy cases is that when bankruptcy proceedings are long due to the impossibility of completing them using special rules of bankruptcy law, the court is entitled to apply general procedural rules to ensure the right to a fair trial in understanding the timing of the case and ensuring the balance of interests of creditors and the debtor during court proceedings. If due to direct legislative prohibitions it is impossible to apply a judicial procedure of rehabilitation or liquidation to a state-owned enterprise, it is considered that in such a case there is no subject matter of a dispute, which has as a consequence the closure of the case.

It should be taken into account that judicial rehabilitation and liquidation procedures in respect of a debtor included in the list of objects of state property rights not subject to privatization, in accordance with the Law of Ukraine "On the list of objects of state property rights not subject to privatiza-

tion" may be implemented only after the debtor is excluded from the list.

Under Ukrainian law, the only possible completion of bankruptcy proceedings is an amicable agreement on the bankruptcy case at the property disposal stage. The presence of statutory restrictions on the application of rehabilitation or liquidation procedures to the debtor, failure to conclude a settlement agreement in the property disposal procedure in this case for a long time, and absence of successful completion of the debtor's bankruptcy proceedings deprive the debtor of the possibility to achieve the legitimate goal of the law on bankruptcy.

In this context, it is logical to continue analyzing the experience of bankruptcy cases within the case of declaring bankrupt the State Enterprise "NAEK "Energoatom". This company applied to the court of the first instance with a request to initiate bankruptcy proceedings (Case No. 910/16246/18). However, the court of the first instance, when opening the bankruptcy proceedings in breach of the requirements of the Economic Procedural Code of Ukraine with the reference to the provisions of the legislation in force, did not properly clarify the legal status of the enterprise, did not provide in the determination of the legal assessment of the debtor's documents of title, in particular the statute of the enterprise, etc. Analyzing the motivation of the court decisions in the light of Article 6 of the Convention and the said practice of the ECtHR, the Supreme Court noticed improper performance of the local and appellate jurisdiction over the enterprise. The Court also noted that, according to the ECtHR, the requirement of compliance with the relevant provisions of national law and the rule of law is a fundamental principle of the rule of law (Hudoc.echr.coe.int (2022) Hentrich v. France).

While it is primarily up to the national authorities, in particular the courts, to address the problem of interpretation of national law, the task of the ECtHR is to ascertain whether the result of such interpretation is contrary to the ECHR (Hudoc.echr.coe.int (2022) Kushoglu v. Bulgaria). Although the ECtHR has only limited competence to review compliance with national law, it can formulate relevant findings under the ECHR if it finds that, in applying the law in a case, the national courts made a clear error or applied it in a way that resulted in an illegal decision (Hudoc.echr.coe.int (2022) Bottazzi v. Italy, Hudoc.echr.coe.int (2022) Kushogluv.

The key conclusion of the Court, in this case, is that Article 96 of the Bankruptcy Law, which is entitled "Peculiarities of bankruptcy of state enterprises and enterprises in the authorized capital of which state ownership exceeds 50 percent", provides special rules that have priority over the general rules of the Law, the bankruptcy proceedings of such enterprises are conducted under a special procedure. Given that the rules on the bankruptcy of state-owned enterprises are of a special nature in the context of general provisions on bankruptcy, the court at the stage of initiation of bankruptcy proceedings must establish the form of ownership and features of the legal status of the debtor.

The court case on bankruptcy of the State Enterprise "Dneprovskiy Electric Locomotive Plant" where the panel of judges of the Commercial Court of Cassation did not agree with the validity of the conclusions of the appellate court concerning the local court ruling on the commencement of bankruptcy proceedings is illustrative. The Supreme Court of Ukraine drew attention to the fact that at the time of the appellate review of case #910/3406/18 on the day of cancellation of the order of the FGIU #776 dated 08.06.2018 was a new act of the FGIU on the privatization of the debtor - order #4 dated 03.01.2019, which was the court in deciding whether to continue the bankruptcy case at the stage of reviewing the court ruling on the opening of proceedings. Order ¹ 4 dated 03.01.2019 of FGIU on the debtor excluded the possibility of bankruptcy proceedings under paragraph 4-3 of the Final and transitional provisions of the Law on Bankruptcy and paragraph 5 of Article 12 of the Law of Ukraine "On privatization of state and municipal property", and these legal provisions defined the obligation of the court of appeal to close the bankruptcy proceedings, taking its own decision on the result of the repeal of unfounded local court decision on the opening of bankruptcy proceedings.

Considering the above mentioned, the Supreme Court of Ukraine ruled that the appellate court had reached an erroneous conclusion both on the possibility of upholding the local court ruling on the opening of bankruptcy proceedings and on the further conduct of bankruptcy proceedings at the property disposal stage, and the rules of law referred to in this paragraph had been incorrectly applied. In its ruling the Supreme Court noted, that the conclusions of the court of appeal instance on the legality of the opening of bankruptcy proceedings against the State Enterprise Dneprovsky Electric Locomotive Plant (USREOU code 32495626) in the presence of an unexamined application for the closing of the bankruptcy case ¹ 910/3406/18, according to paragraph 7 of Article 16 of the Bankruptcy Law and paragraph 4-2 of the Final and transitional provisions of the Bankruptcy Law were premature. The applicant's failure to enforce the judgment in his favor constitutes an interference with the right to peaceful possession of property as guaranteed by the first sentence of Article 1(1) of Protocol No. 1 (Hudoc.echr.coe.int (2022) Jasiuniene v. Lithuania and Hudoc.echr.coe.int (2022) Shlepkin v. Russia).

In Hudoc.echr.coe.int (2022) Burmych et al. v. Ukraine, the ECtHR noted clearly and consistently that the right to a trial would be illusory if the domestic legal system of a State allowed a final, binding judgment to remain unimplemented to the detriment of either party. In the same context, petitioner's failure to enforce a judgment entered in his favor constitutes an interference with the right to peaceful possession of property as set forth in the first sentence of the first paragraph of Article 1 of the First Protocol. In civil cases, enforcement proceedings are the second step in the proceedings since the right asserted is not actually exercised before execution. Any interference by an authority with a protected right will not be contrary to the general rule set out in the first sentence of Part One of Article 1 of Protocol No. 1 to the ECHR only if there is a fair balance between the general interest of society and the requirements of protecting the fundamental rights of the individual. The question of whether such a fair balance has been struck becomes relevant only after it has been established that the interference in question satisfied the requirement of legality and was not arbitrary (Hudoc.echr.coe.int (2022) Beyler v. Italy).

The key conclusion in this court case is that if the State Property Fund of Ukraine has decided to privatize a state enterprise, the court has no right to disturb the bankruptcy proceedings of such state enterprise, and if bankruptcy proceedings had already been initiated before such decision was made - the court is obliged to close the proceedings.

Based on the analysis of paragraph 5 of Article 12 of the Law of Ukraine "On the privatization of state and municipal property" and paragraph 4-3 of Section X of the Final and transitional provisions of the Bankruptcy Law, the requirement of termination (closure) of bankruptcy proceedings on the debtors, which are state-owned enterprises and / or business entities, more than 50% of the shares (stakes) which directly or indirectly belong to the state. In its respect the decision on privatization, except those liquidated by the owner is a mandatory.

Consequently, business courts conducting bankruptcy proceedings on cases of state-owned enterprises should take into account the legislator's mandatory requirement to close proceedings on such cases in the case when the competent authority issued a decision on the privatization of the state enterprise-the debtor-and apply the mandatory requirements of paragraph 4.3 of Section X of the Final and transitional provisions of the Bankruptcy Law on termination (closure) of bankruptcy proceedings against such enterprises at any stage of the proceedings (disposition of property).

Consequently, the analysis of cases of bankruptcy of state enterprises indicates that, according to the Ukrainian legislation, there is a significant specificity in the implementation of bankruptcy proceedings, which should take into account not only the experience of national legislation, but also international experience.

Of course, the European Court of Human Rights is the highest legal body that protects human rights, and its decisions are binding on the Government. Since 2019 in Ukraine, according to the introduction of amendments to the legislation, only the judicial procedure of disposal of the debtor's property without any restrictions is applicable to state-owned enterprises. In addition, it should be emphasized that only to certain state-owned enterprises and only under certain conditions the judicial procedure of rehabilitation or liquidation may be applied. On this subject, the legislation of Ukraine contains a number of restrictions on the rehabilitation or liquidation of state-owned enterprises. In each case, an analysis of a particular state-owned enterprise should be carried out to determine whether it is possible to apply the judicial procedure of rehabilitation or liquidation. For the vast majority of state-owned enterprises as of today it is impossible to apply a judicial procedure of rehabilitation or liquidation.

In general, the main task of the state in the aspect of regulation of bankruptcy processes of state-owned enterprises is the formation of bankruptcy prevention policy.

Consequently, today a considerable attention of the Ukrainian government is paid to the issues of bankruptcy of state-owned enterprises. It concerns not only the new issues on bankruptcy, but also the implementation of decisions of the European Court of Justice, which were made earlier. Not all judgments of the European Court have been executed in full, partially it is hindered by martial law and territories of Ukraine, but obligations on execution of court decisions to the Government of Ukraine still exist.

4. DISCUSSION

The conducted detailed analysis of proceedings on recognition of bankruptcy of state enterprises in Ukraine led to the fact that a legal collision was revealed. Accordingly, it is impossible to recognize a state enterprise in Ukraine bankrupt by law. In this context, one should also refer to the work of Hrabovan (2019), where the analysis of the provisions of part 1 of article 6 of the Code of Ukraine on bankruptcy procedures leads to the conclusion that, as a general rule, one of the following court bankruptcy procedures may be applied to a debtor economic entity of any form of ownership, regarding which bankruptcy proceedings are conducted:

- disposal of the debtor's property;
- rehabilitation of the debtor;
- bankruptcy liquidation.

At the same time, it should be noted that today the legislation of Ukraine is structured in such a way that only a judicial procedure of disposition of the debtor's property without any restrictions may be applied to state-owned enterprises. By the entry into force of the Code of Ukraine on bankruptcy procedures on October 21, 2019 to state-owned enterprises could also be applied judicial bankruptcy procedure, which was called a settlement agreement. However, now this norm is no longer valid and the procedure of declaring a state enterprise bankrupt has been terminated. After Ukraine's bankruptcy law was reformed and the mentioned Code was adopted, the legislator excluded amicable settlement from the list of possible court procedures, and today it may be regarded only as part of the rehabilitation procedure. Such changes were made due to the possibility of abuse on the part of governmental structures in the aspect of the possibility of declaring a state enterprise bankrupt under amicable agreement. It is advisable to pay attention to the fact that only to certain state-owned enterprises and only under certain conditions the judicial procedure of rehabilitation or liquidation could be applied. Therefore, the legislation of Ukraine contains a number of restrictions on the rehabilitation or liquidation of state-owned enterprises. In each case, an analysis of the particular state-owned enterprise should be made as to whether a judicial procedure of rehabilitation or liquidation can be applied to it. As of today, it is impossible to apply a judicial procedure of rehabilitation or liquidation to the vast majority of state-owned enterprises.

Also noteworthy is a generalization made by researcher Levshyna (2020), who summarized the peculiarities of bankruptcy proceedings of state-owned enterprises:

- the debtor must provide the economic court with evidence confirming that the debtor belongs to state-owned enterprises or enterprises in the authorized capital where the state owns more than 50%;
- the opening of bankruptcy proceedings at the request of the debtor does not constitute grounds for terminating the powers of the body authorized to manage the debtor's property to manage the relevant object of state property;

- if the debtor is a state-owned enterprise or an enterprise with more than 50% state ownership in the authorized capital, the economic court shall invite representatives of the body authorized to manage state property to participate in the bankruptcy case, with notice of the opening of bankruptcy proceedings against such enterprise;
- state enterprises and enterprises in the authorized capital where the state owns more than 50%, submit a plan of rehabilitation, agreed with the body (entity) authorized to manage state property, for consideration of creditors.

In conclusion, it should be noted that the lack of direct possibility of bankruptcy of state-owned enterprise on the one hand allows to protect such enterprises from unlawful abuses and to create difficulties in the formation of a legal framework for the logical termination of the enterprise, which is insolvent and does not bring the state benefits.

5. CONCLUSION

The analysis of the current Supreme Court jurisprudencepracticeon bankruptcy cases of state-owned enterprises affirmatively emphasizes that the bankruptcy legislation of Ukraine is constructed in such a way that liquidation or rehabilitation of state-owned enterprises is legally impossible. However, such a legislative collision leads to the fact that the state is forced to maintain and continue the existence of enterprises that are insolvent, and the restoration of their effective functioning and ability to perform their functions as a business entity is almost impossible. This leads to the need of finding a way out of the situation by privatizing inefficient state enterprises in order to further declare them bankrupt. However, such boundaries, wherestate-owned enterprises are placed, create additional corruption and abuse of power on the ground.

In the current environment, bankruptcy proceedings against state-owned enterprises “stop” at the judicial procedure of disposing of property which, contrary to existing Ukrainian legislation, drags on for years and the legitimate purpose for which the bankruptcy legislation of Ukraine is aimed is not achieved. The “Moratorium” on bankruptcy of state enterprises only worsens their situation, because the company actually “freezes” in a state of insolvency, it is impossible to apply an effective procedure of rehabilitation, the state does not implement its proper financial support. In fact, the “moratorium on bankruptcy” gives them an opportunity to use the moratorium only as an excuse not to fulfill their monetary obligations to creditors, because creditors cannot violate the bankruptcy procedure because of the moratorium. This not only diminishes the trust in cooperation with state-owned enterprises, but also reduces the investment attractiveness of the Ukrainian economy. As a result, as of today in Ukraine there is no mechanism of compulsory execution of decisions of national courts, in which state enterprises are debtors, directly contradicting the Convention for the Protection of Human Rights and Fundamental Freedoms, standards of the Council of Europe and the Association Agreement with the EU.

CONFLICT OF INTEREST STATEMENT

The authors declare that they have no conflict of interest

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