dr. SÁNDOR FÓNAGY

LIABILITY IN PRIVATE LAW FOR INSOLVENCY

THESIS OF THE PhD DISSERTATION

MISKOLC

2011

I. SUMMARY OF THE RESEARCH TASK, DEFINITION OF THE PROBLEM, AIM OF THE RESEARCH

Insolvency is a natural consequence of the market economy; its economic and financial handling is as difficult as to solve the different interest collisions and legal disputes. Emerge of insolvency and its effects depend on the state's economy and intelligence of the economic players. The same bankruptcy act can not be applied in two countries, even if the credit security systems of the countries are similar or the same. Hungary has changed its system to market economy for 20 years, this period of transformation happened suddenly and hiding political and personal liability made possible to allocate assets of having enormously great value, and to place them into private hands. Moreover the legal "small gates" were closed after a considerable delay, at the beginnings more fundamental institutions protecting the creditors' interest were not regulated, they were initiated according to the practical experiences, that is why more statements of facts on liability have not been mature enough.

Since the coming into force of the Bankruptcy Act on 1 January of 1992 (regarding the Hungarian abbreviation of the Bankruptcy Act furthermore referred to as "*Cstv.*") it has been amended about more than 50 times. Prior aim of the amendments of the acts on bankruptcy, business associations and of the Civil Code was creditor protection, security of claims, and improvement of their satisfaction on a larger scale and faster. Introduction of newer statements of facts on stricter legal liability shall be valued as a step forward despite the considerable delay. However, the system does not seem to improve, creditors might do a flick, if their debtors come under liquidation process, they take down their claims at once, they do not believe in compensation and in the reparative function and ability of courts, at least they see them in a sceptic way and of being forceless. Instead of liability of members and executive officers, one can speak about irresponsibility (without any exaggeration). Though *Cstv*. defines economic corporate under its scope widely, without any exception business associations and companies with limited liability come under liquidation process, because in the economic life this is the most frequent corporate form. The business association is an obligation of more persons. The articles of association is established according to the members' will of the same interest, but the members does not provide one another with services, they wish to establish a new legal subject, and in the future it is going to be in connection with third parties. By the establishment of a company a legal relationship with more levels is created. One must distinguish the relationship between the company and

its member, the members themselves, the member and its creditor, from the relationship between the company and third parties (mainly creditors). During the engagement of business operation the company is in relationship with the creditors, towards third parties the company shall bear responsibility with its entire assets without any limits (but really limited to its own assets).

Corporate law and bankruptcy law deal with the protection of creditors, because the independent legal subject, the company makes it possible to hurt the creditors' interest besides relatively law risk. Realisation of creditor protection is a crucial condition to maintain the trust in contacts. Creditor protection is significant in the case of limited-liability companies, because in the case of business association lacking legal capacity the members shall bear unlimited and joint and several and subsidiary liability for the obligations.

The liability in corporate and bankruptcy law shall be distinguished from the liability in civil law, which focuses more on creditor protection; moreover *Cstv.* regulates explicitly the relationship between the debtor and creditor. The provisions of the Business Association Act (regarding the Hungarian abbreviation of the Business Association Act furthermore referred to as "*Gt.*") are going to secure the capital protection; such provisions are like prohibition of reclaiming assets contribution, prohibition of set-off towards providing the assets contribution, apport liability, calling of the general meeting in the case of assets diminution, and obligatory decision on the capital replacement, setting conditions for the share of dividends, restrain the acquisition of shares, liability of the auditor, breakthrough of the member's limited liability. *Gt.* does not focus on the prevention of insolvency; this can not be its aim, because the autonomous independent members decide on the risk of engagement in business operation. *Cstv.* has already tried to increase the liquidation assets for satisfaction of creditors in the course of liquidation process by means of reparative measures, like bankruptcy contest, provisions of liability of executive officer in bankruptcy law, and of the member for carrying out durative unfavourable business policy. Recognising the strong link between the liability in corporate and bankruptcy law is the first step to create an effective and complex creditor protection system.

The Hungarian creditor protection can not be regarded effective according to the statistics of satisfying creditors' claim in liquidation processes. The unsatisfied creditors may call for the liability of members and executive officers of the insolvent company, but this social claim often emerges in the course of the general business operation.

With regard to the inner liability for damages of executive officers towards the company there are only a few cases in the practice. Firstly, because of fraudulent transfers the

creditors can not enforce a claim directly towards the executive officer during the operation of the company. The reason for that is the principle of liability's separation of companies with legal capacity, according to which the legal person bears liability for the activities of the member and executive officer, and damages caused to third party, even if that persons act for own interest and own advantages piercing the corporate veil. Even in the case of crime commitment the judicial practice does not separate the executive officer's liability from the legal person's. Secondly, trials for compensation are due after the company had become insolvent and the liquidation process had been filed; at that time there is a need for assets increase, but liquidators hardly decide on filing a case (mainly because of lacking interest). In July 2006 Section 33/A was introduced in *Cstv.* according to the English model, but within the frame of a two-step process, according to which the creditor shall file a case first against the executive officer for the establishment of its liability, and after the termination of the liquidation a separate condemnation process shall be filed. The aim has not been realised, ie. the director acting against the creditors' interest and operating unreasonably and causing assets diminution shall pay into the bankruptcy assets. According to the amendment of Section 33/A on 1 September 2009 the executive officer could have been obliged to give security during the declaration process, but *Cstv.* does not regulate the execution of the security, the amendment did not settle this issue, therefore the executive officer still has a subsidiary liability. It is a step forward that the offence of creditors' interest shall be presumed if the executive officer does not fulfil its obligation to prepare the balance sheet and to hand over the assets and documents. This presumption does not solve the problem entirely as the creditor shall prove the assets diminution, which is hopeless without the documents. This means the burden of proof is laid on the creditor. The provisions do not oblige the executive officer to file petition for liquidation in the case of insolvency, so the company can operate further for any time.

§ 20 (7) of the *Gt.* lays down inner liability of members supporting a resolution clearly contrary to the significant interest of the business association, but this process is very rare, especially in the case of liquidation, because it is very difficult to prove the existence of such resolution and the creditors can not file a case against the members during its general operation and its liquidation. *Gt.* prescribes calling of the general meeting in the case of decrease of the equity under the subscribed capital, but if it does not happen remains without any legal consequences. *Cstv.* does not oblige members to initiate liquidation process. If the separate legal status (limited liability) of the company was misused by the members, § 50 of *Gt.* lays down the personal liability of the members towards the creditors. The breakthrough

of limited liability was introduced by the amendment of *Gt*. in 1997. In the last more than ten years there have not been court decisions regarding liability for obligations not satisfied by members abusing limited liability, it has two reasons. Firstly, creditors may file such case, if the action results in crime commitment, secondly that kind of claims can be brought to the court after the termination of the liquidation process – being linked to the termination without successor – but creditors can not satisfy their claims at that time, limited liability does not serve the security of transfer. In spite of lacking the obvious provisions of *Gt.*, it can be stated that breaking through the liability is statement of facts on liability for damages, and not an objective obligation to fulfil one's commitment for the unsatisfied duties. § 50 of ***Gt.*** would be effective, if filing cases against the liable members were open not only after the termination of the company.

The statement of facts on members operating durative unfavourable business policy linked to the concern law is mostly reasonable, though it will not serve the basis of judicial practice in the Hungarian economic environment based on small and middle enterprises. This kind of business policy is not detailed in the *Gt*. and *Cstv.*, that results in misunderstanding of member's behaviours acting undoubted in bad faith.

Fighting against fraudulent transfers is primary measure of increasing the bankruptcy assets. On 1 May 2004 § 40 of *Cstv*. came into force separating the false, undervalued and free legal actions, and the right for reclaim actions being in favour of creditors was initiated. One shortage of the judicial practice is that undervalue contested upon *Cstv*. is judged according to the principles of the Civil Code (regarding the Hungarian abbreviation of the Civil Code furthermore referred to as *"Ptk."*), and if validation is applied as legal consequence, the correction is not made on the bases of market value, such service is prescribed upon which undervalue can not be stated (based on Nr. 267 PK opinion). It can be also unjustifiable, if false action is declared invalid, and the obligation of the party acting false must be also listed like in the case of creditors acting in good faith. By this false creditor may come before the "good" creditors diminishing the chance for satisfaction. The deadline for contest of one year may seem long, but in the practice it is rather short, if the executive officer does not hand over the documents.

On behalf of the creditors it is reasonable to call for strengthening the liability of the liquidator, because the liquidator's illegal action is a crucial point in hurting creditors' interest linked to overvalued expenses or selling assets under value, of which consequences are not solved in *Cstv*., the liquidator can not be held responsible within the liquidation process.

Bankruptcy law regulates some legal institutions different to the civil law. Bankruptcy law is a private law branch, regulates the legal relationship of people in an aside position (equal) but sometimes it seems that these two branches of law are two alien dimensions regarding the judicial decision on refusing the security assignment in liquidation process, on ordering cash assets into the bankruptcy asset by mistake after the initiation of the liquidation process, or lacking of provision on validation of right for option serving as security before the initiation of the liquidation process etc. The "relationship" between the two legal fields can be handled from my point of view.

Liability of companies of cohesive capital is separated from the liability of executive officers, ie. the company bears liability toward its creditors even for non contractual damages. This separation is based on the risk of business operation, and it is accepted by the society. The member puts on risk his part of assets, at the time of foundation the risk level is maximised for him and it is prescribed. Though, the creditor gives credit to the company in advance till the satisfaction of his claim taking a considerable risk. From my point of view, risk management became unequal among the economic players, that is why it is reasonable to supervise the liability for insolvency deriving from diminution of assets based on actions of the executive officers and members of the company.

Aim of the research is to examine all the forms of liability of executive officers and members of the company for insolvency and unsatisfied obligations, the methods of reclaiming rescued assets elements, and the liability of liquidators and receivers. After having examined the statements of facts the concrete judicial practice is going to be presented alongside with the contrary and supportive theoretical opinions, formulating critic connected to the statement of facts and final aim is to give *de lege ferenda* recommendations for the legislation.

A new Bankruptcy Act has been aimed by more governments in the last few years but the legislation remained on the level of concepts except the amendment in 2009, which initiated an entirely new form of bankruptcy process, and regarding the liquidation process more provisions were initiated protecting the creditor's interest. The concepts of the new *Ptk.* have already dealt with the liability of executive officers in the bankruptcy law and of the member abusing the separate liability of the legal person.

The dissertation tries to contribute to the legal system's development and examine the effectiveness of measures of creditor protection, moreover focuses on balancing the interests of creditors and insolvent debtors *from the point of view of bankruptcy law*. The task is complex, firstly because understanding the measure- and definition system in insolvency law

presumes the knowledge and appropriate adaptation of civil law, civil process law, and corporate law (and other branches of law like labour law), secondly there can not be found such a process like bankruptcy where so many interests would coincide and wish to gain credit parallel.

II. HYPOTHESIS OF THE DISSERTATION

To solve the above mentioned problem my hypothesis is the following: creditor protection of insolvent companies could be made more effective, the rate of satisfying their claims could be increased by the amendment of provisions and statements of facts regarding liability of members and executive officers held responsible for the insolvency or abusing the separate legal status of the company in corporate, bankruptcy and firm law (regarding the Hungarian abbreviation of Firm Law Act, furthermore referred to as *"Ctv."*); and by the amendment of provisions on bankruptcy contest process and liability of liquidators.

III. THEMATIC AND GEOGRAPHICAL LIMITATIONS

After having defined the legal problem it is reasonable to present the thematic and geographical limitations of the dissertation.

Within legal persons I focus expressly on the business associations.

The examination on creditor protection is narrowed to statements of facts, which make possible the declaration of direct personal liability on assets of persons being responsible for the unsatisfied obligations of the business association or the contest of actions concluded in the insolvent state. These statements of facts are:

- § 50 of *Gt*. on the member's liability abusing the separate liability of the company and of his limited responsibility
- § 54 of *Gt*. and § 63 of *Cstv*. on the member's liability carrying out durative unfavourable business policy
- §§ 33/A and 63 of *Cstv*. on the executive officer's liability for the business operation hurting the creditor's interest after the occurrence of threatening insolvency.
- §63/A of *Cstv*. on the member's liability for transferring his proportion of assets
- § 93 of *Ctv*. on the member's liability for obligations of cancelled firms
- Contest based on § 40 of *Cstv*.

I also deal with statements of facts, which do not sanction the wilful assets rescue of the insolvent company, which statements of facts are not in strong connection with the hurt of creditors' interest, but they establish liability of actionable conduct for the assets diminution of the company, which liability is held towards it and it can be validated by the liquidator in the course of the liquidation process (in the name of the company), ie. they lead indirectly to the increase of rate of satisfying creditor's claims by increasing the assets under liquidation. To this belong (7) § 20 and § 30 of *Gt.* on the liability of the member and the executive officer.

The dissertation does not deal with the liability of the supervisory board and the auditor.

In the last chapter the liability of the liquidator and the receiver is presented, which forms a crucial point of hurting the creditor's interest.

Regulation of other lands has been also examined, such as the English Act on insolvency, because its model has been adopted by several countries. In the United States the liability breakthrough has a broad judicial practice in the past. The Dutch Civil Code make the declaration of the executive officer's liability on a larger scale compared to Hungary, the German methods of the personal responsibility's declaration should be taken also into consideration. Examination of the Russian and Chinese regulation was reasonable because of the same state system before the transformation of regime and of their decisive role in the world economy.

IV. METHOD OF THE RESEARCH

Hungarian publications have been regularly published in the field of insolvency law, but they do not deal in details with the liability forms in bankruptcy – corporate – firm law from comparative and dogmatic point of view and do not focus on the possible application of statements of facts (like liability breakthrough, liability of members and executive officers) in the case of the insolvent company. The handbooks in this field can be regarded as commentary to the Bankruptcy Act describing the regulation in force and the judicial decisions linked to it.

The research was not supported by the foreign literature as it deals mainly with the German and English regulation, comparative examples are presented in these countries,

though, the bankruptcy codification at international level is very broad, in the last decade new insolvency acts have been enacted in more lands. There have been difficulties with the understanding as the papers in English presenting different legal systems use the terminology to the process on termination of the debtor lacking assets (for example liquidation, administration), but these term describe a different kind of insolvency process in other countries.

In order to realise the aim of the research *historical approach* has been applied in the case of the examined legal institutions (if it was possible). The judicial practice of the 20th century has had a great importance; the courts' decisions on the liability forms have been examined including the significant acts determining the development of the commercial law (Bankruptcy Act of 1840 and 1884, Commercial Act of 1875, Act of V of 1930 on the Limited Liability Companies and on the silent companies).

The judicial practice of the last century has a great significance, for example the bankruptcy contest flourished, more bankruptcy principle and definitions were laid down (like equality of creditors, cases of the creditor' s satisfaction not belonging to the general operation). The personal liability of directors should be taken into consideration and as an example by the creation of creditor protection's system in civil – corporate and bankruptcy law. The knowledge of legal history is supported by the fact that the Supreme Court in its PJE decision Nr. 3 of 2008 refers to the Bankruptcy Act of 1881.

Within the frame of *international comparative approach* other countries' regulation has been also examined. There are some regulations, which doe not form a base of reference in the legal literature (England, Germany, United States, Russia, South-Africa, Serbia, China, Spain, Holland, Tanzania, and Bermuda). The common law legal practice could be an example for the shaping judicial practice in the field of liability breakthrough with special regard to the facts and circumstances collected by some legal scholars, which courts can take into consideration.

Desk research has been applied to that extent, which was needed to the understanding and working up of the research task.

In the course of extended presentation of the judicial practice (linked to all examined statements of facts) lack of the regulation has been pointed out and different theoretical legal points of views have been also worked up, after that general consequences have been summarized.

Where the examined statement of facts made possible (especially in the case of liability breakthrough on behalf of the member and executive officer) *comparative analysis* have been applied to present the possibility and conditions of parallel validation of different statements of facts.

While preparing the dissertation personal practical experiences have been also presented as the author acted as liquidator while being a barrister in embryo and now as a practising attorney represents liquidation organs, debtors and creditors on a large scale and knows the neuralgic points of the liquidation process and the interest collisions in it.

V. LOGICAL SYSTEM OF THE DISSERTATION

In the first chapter basic issues of the liability and liability in civil law, corporate-law, and bankruptcy law are presented. Continuously the dissertation approaches the examined issue. The subsidiary liability and the liability breakthrough is detailed and separated from one another, which are needed because of the later examined statements of facts on the member's and executive officer's liability.

In the second chapter insolvency is analysed from legal and economic points of view. The circumstances indicating threatening insolvency are summarized here.

In the third chapter after a broad Hungarian historical presentation first the inner liability of executive officers towards the company and its possibility of validation during the liquidation process are presented. Afterwards foreign and exemplary models are detailed followed by the dogmatic analysis of executive officers' liability in bankruptcy law, and by presenting the extended Hungarian judicial practice, and by the consequences.

In the fourth chapter after having dealt with inner liability of members towards the company, the statement of fact on the member's liability breakthrough is presented followed by the judicial practice linked to it. Within the frame of the *international examination* on the first place the English and American judicial practice are detailed, because liability breakthrough is a common law institution. The member's liability for the durative unfavourable business policy has been also worked up followed by the statements of facts on member's liability transferring his proportion of assets in bad faith and being member of company with an unknown seat.

In the fifth chapter provisions on the liability of members and executive officers are examined in the concepts of the *Ptk.* during its re-codification.

In the sixth chapter statements of facts on bankruptcy contest are viewed closer after a detailed and extended Hungarian historical analysis. The action being in favour of the creditor and the connection – not easy to understand – between the false and to good morals contradicting contracts are also examined. Within the frame of international analysis other countries' regulations are also presented. At the end the difficulties of proof regarding bankruptcy contest processes and breakthrough liability are also pointed out.

In the seventh chapter the liquidator's and receiver's liability is examined, more closely with the liquidator's liability on expenses settled without title and contest of assets transfer under value and on the declaration of personal liability for damages.

In the eighth chapter results of the research are summarized, which means reasonable, normative *de lege ferenda* recommendations including all the statements of facts examined in the dissertation strengthening the creditor protection.

During the entire dissertation the same extension of each chapters have been maintained alongside with own opinions linked to the judicial practice and legal theoretical views regarding the examined statements of facts.

VI. RESULTS' SUMMARY OF THE RESEARCH

1. Recommendations on filing a petition for insolvency

a) As a new reason for insolvency I recommend introducing into the Bankruptcy Act, that insolvency of the debtor is presumed, if in its balance the equity does not amount to a determined proportion of the subscribed capital or he has not handed over the balance to the registry court.

b) It is reasonable to appoint the interim receiver if for example the due date of the claim expires a determined period or the amount of the claim is more than the quota of assets according to the balance or the debtor has not handed over the balance to the registry court or the debtor can not be found on its seat.

c) Recommended amendment: If the debtor does not satisfy its acknowledged debt within 30 days, the court shall file a petition for insolvency without any further examination of the conditions. The order on filing petition for insolvency shall not be appealed.

2. Liability of the company's executive officers

a) First of all I recommend the following amendment of the Bankruptcy Act: "That person is also bound to cooperate with the liquidator (bankruptcy trustee) and to hand over data, who has been executive officer or member of the supervisory board or auditor or bookkeeper within two years before filing request for insolvency. The court could impose fine of 200.000 – 1.000.000 HUF on that person, who did not fulfil its obligation or reported false data. Upon the liquidator's request the court may order personal hearing of the executive officer, member of the supervisory board and the auditor, to whom questions can be proposed by the creditors also."

b) I recommend the following amendment of the Bankruptcy Act: In the course of the liquidation process the creditor or the liquidator – in the debtor's name – may file a case in the court for compensation of that person, who has been executive officer of the debtor within three years before filing request for insolvency and after the threatening insolvency's occurrence has not acted prior in the creditors' interest. Compensation shall be paid by the company.

Directors are liable if they carried out wrongful trading and could have foreseen or should have foreseen with due care and diligence that the economic operator will be incapable to satisfy its debts or diminished the company's assets for their own or other persons' benefit.

Occurrence of the threatening insolvency is that time, from which the directors of the economic operator could foresee or reasonably could have foreseen; that at the time of due date the company will be incapable to pay its debts. This situation shall be presumed, if according to the annual report of the debtor or to its interim balance the equity decreased to half of the subscribed capital.

I recommend amending the definition of the shadow director: "The person acting as shareholder or in other way may be called shadow director, if he influences directly or indirectly the executive officer's decisions, provides him with instructions or participates in the managing of the company and decision making."

c) The creditor's risk may be decreased:

„If the creditor wins the case and the executive officer pays compensation to the debtor, first the creditor's claim for litigation cost declared by the court shall be paid."

d) Regulation of the caution shall be also amended: "the court binds the executive officer to deposit material security on the first hearing. Amount of the material security equals the amount of creditors' claim registered in the liquidation process and being non-secured. If the executive officer does not deposit the material security in time fixed by the court, it orders urgently the assurance of the material security's amount according to the rules of the execution process. If the executive officer appeals, it does not hinder the execution."

e) I recommend the amendment of the Civil Process Act: "The action for compensation filed by the liquidator in the name of the debtor against the executive officers may be filed in the court of the debtor's seat."

f) I recommend obliging the executive officer to file the request for liquidation: "The executive office is obliged to file a request for liquidation urgently, if the company's equity decrease to half of the subscribed capital or became insolvent, or if the assets does not cover the costs. The conditions shall be presumed, if the director in the last two years before the initial date of the liquidation has not handed over the balance to the registry of court. If the executive office shall not file the petition for liquidation, shall be responsible for all debts not paid in the liquidation process,

g) I recommend the amendment of *Gt.*: "The creditor may challenge the resolution of the general meeting in the liquidation court, which resolution confirmed the operation of the executive officer after the threatening insolvency's occurrence.

h) In the case of threatening insolvency the members of the supervisory board and the auditor are bound to warn the executive officer of the file for insolvency's request in written form. If they fail, they are liable wholly, jointly and severally for all debts towards the creditors.

i) It is also reasonable to decrease the number of creditor sections, and to simplify the order of satisfaction.

j) I recommend the enactment of the following reason for disqualification: “The person having concluded fraudulent transfer in the name of the company terminated by liquidation shall not be executive officer for five years.”

k) From my point of view it is inappropriate, if the judicial practice declares the company’s liability for all actions even resulting in crime commitment of the executive officer. In such a case personal liability of the executive officer shall be made possible.

l) Regarding the labour law relation of executive officers I recommend the enactment of the following into the Bankruptcy Act: “The executive officer after filing the liquidation process can be entitled for wage, if the liquidator has been informed of the executive officer’s labour law relationship within 3 days after the file of the liquidation. After the initial date of the liquidation the labour court has competence to decide on the claim for wage.”

3. Liability of the company’s member

a) It should be enacted into the *Ptk*. that the member abusing the separated liability of the legal entity shall be liable jointly with the legal entity and before the termination of the legal entity.

b) I recommend, if a limited liability company or a joint stock company looses its capital in a proportion laid down in the act, the members shall be bound to inform the creditors of that directly or made it public in the official gazette.

c) In connection with the „concern liability” the creditor should be given the possibility, if the registered seat of the dominant shareholder is abroad, then exclusively the creditor should file the petition for damages in the court at the seat of the monitored company.

d) “If the debtor’s debts surpass the 50% of its equity at the time of the initial date of the liquidation, under the petition of the creditor the court binds the member to pay the claim, who sold his shares within two years before the liquidation. The member shall not be

responsible, if he proves, that at the time of sale the company was solvent and lost its assets after that, or the company was insolvent but he acted in good faith."

e) § 93 of *Ctv*. shall be amended, ie. condition of the liability shall be cancelled, that amount of the unpaid debt shall surpass 50% of the equity.

4. Bankruptcy contest actions

a) Regarding the legal consequences of bankruptcy contest the following amendments are recommended:

„Legal consequence of a successful contest is invalidity. In the case of § 40 (1) point a. of *Cstv. in integrum restitutio* shall be ordered, set-off is not permitted in the course of service reimbursement. In the case of § 40 (1) point b. of *Cstv*. upon request of the plaintiff the court shall validate the contract concluded with obvious undervalue and obliges the party acting in bad faith to pay back the service provided at market value. In the case of free contract *in integrum restitutio* shall be ordered, the respondent can choose the reimbursement of the service's market value, of which burden of proof is put on him. In the case of § 40 (1) point c. of *Cstv. in integrum restitutio* shall be ordered including that if during the process interim balance is going to be handed over, the creditor concerned shall reserve in its section of satisfaction.

According to the provisions of *Ptk*. and *Cstv.* in the case of invalidated contracts set-off of services in favour of other party and of claims on behalf of other party by other legal title and of creditor's claims shall not be applied towards the services refunded to the debtor within the frame of *in integrum restitutio*.

b) I recommend further that in the case of invalidity of contracts aiming evasion of creditors the claim of fraudulent person acquiring right shall be registered under § 57 (1) point h. among the sub-ordered bankruptcy claims."

c) It is reasonable to make possible, if a person acts in good faith (for example the free acquirer), his claims regarding *in integrum restitutio* shall be validated as liquidation cost.

d) “In the case of successful claim enforcement the other party may enforce its claim in the liquidation process within 40 day from the binding date of the court decision.”

e) Introduction of bankruptcy contest objection: “towards a claim declared in liquidation process, of which legal title can be contested according to § 40 of *Cstv*. as an action or legal declaration, the liquidator may apply contest objection and its registration can be refused. Upon the creditor’s request filed within 15 days the claim will be decided by the liquidation court, as contested creditor’s claim and decide on the validity of the action being basis for the action. The court’s decision is regarded as final decision.”

f) The deadline for contest shall be increased from 18 months to 1 year.

g) The provisions pertaining to the abeyance and interruption of limitation shall be duly applied to the deadline.

h) I recommend securing duty record for the creditor in the case of bankruptcy contest process, even if he files a compound petition in the court, because he refers to other invalidity legal title too.

i) I recommend to declare duty record for the creditor against the debtor’s executive officers and proprietors in process filed according to §§ 33/A, 63, 63/A of *Cstv*. and §§ 50, 54, 284 (5) of *Gt*. and § 93 of *Ctv*.

j) I recommend to enact as separate statement of facts among the statements of facts of bankruptcy contest the following: legal actions regarding member’s loan instead of capital contribution, and legal actions concluded before (or afterwards) filing the petition for liquidation including the reimbursement of member’s loan, its satisfaction in other way (for example set-off) and its assurance. In that statement of facts it is reasonable to increase the deadline of 60 days before filing the petition for liquidation to 6 months.

k) The possibility and legal consequences of enforcement against other persons acquiring rights shall be regulated depending on whether the right is acquired in bad, good faith or for consideration.

In the case of impossible filing against further persons acquiring rights, and with the debtor contracting party (for example a party interlocking with the debtor) sold the object, and the new proprietor can not be contested, it is reasonable, the court shall declare the contract valid and bind the buyer to supplement the real estate's price to the market value.

l) Though it is not a question of bankruptcy contest, I recommend the enactment of the following provision into the *Cstv.*: "If the debtor and contracting party laid down arbitration in their agreement concluded before filing the petition for liquidation for the enforcement of claims, the debtor is entitled to file a case in the court being competent according to the Civil Process Act."

5. Liability of the liquidator

a) It is needed to assure the right for introspection on behalf of the creditors before and under the liquidation process.

b) Establishment of the select committee shall be made obligatory above a fixed set of debts and creditor's number.

c) Legal authorization shall be assured in the Bankruptcy Act for the court so that it could oblige the liquidator for the payment of unlawfully paid liquidation cots (without legal title or being overvalued) alongside with the provision that he shall be released after the resolution becoming binding, if he does not fulfil its obligation the debtor shall gain right for execution regarding the amount laid down in the resolution. This claim shall be enforced by the newly appointed liquidator.

d) Bankruptcy Act shall regulate in details the process of assets sale with special regard to the determination of its time factor and value

e) The subjective deadline for filing an object against the liquidator should be increased to 15 days.

Catalogue of the publications in connection with the matter of the thesis

The liquidated company's right to bring an action *(Advocat – a B-A-Z Megyei Ügyvédi Kamara lapja, 2001, 8-14)*

Anomalies in the Hungarian insolvency law *(Doktoranduszok Fóruma, Miskolci Egyetem, 2000, szerkesztette: Lehoczky László, 36-42)*

The reform of the Hungarian insolvency law *(Doktoranduszok Fóruma, Miskolci Egyetem, 2001, szerkesztette: Lehoczky László, 66-73)*

International insolvency law *(Miskolci Doktoranduszok Jogtudományi Tanulmányai, Miskolc, 2002, Bíbor kiadó, 243-261)*

Retention of title in insolvency processes *(Doktoranduszok Fóruma, 2002, 83-89)*

Anti-constitutional depriving liquidators of their fees *(Gazdaság és Jog, 2003/6., 11-18.)*

Formázott: Felsorolás és számozás

Proposals to the creating of the new Bankruptcy Act – set off *(Miskolci Doktoranduszok Jogtudományi Tanulmányai, Miskolc, 2004, Bíbor kiadó, 185-204)*

Summing-up the contract concluded without right to represent *(Gazdaság és Jog, 2006/4., 9-15.)*

Formázott: Felsorolás és számozás

Summing-ug statements done after the initial date of the liquidation *(Ügyvédek Lapja, 2006/5)*

Reform of bankruptcy law all over the world *(Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, 2006. 24. évf. 367-385.)*

Formázott: Felsorolás és számozás

The liquidator's liability *(Gazdaság és Jog, 2007/9., 14-19.)*

Professional fees of Lawyers in the liquidation process *(Ügyvédek lapja, 2007/9)*

Voidableness of an agreement created as a result of exercising an option in the liquidation process *(Gazdaság és Jog, 2008/3., 3-9, Tanulmányok a fiduciárius biztosítékok köréből, HVG ORAC Kft, Budapest, 2010., 434-446.)*

Proposals to create the new Bankruptcy Act – Avoiding contracts

Shareholders' loan in liquidation process *(Gazdaság és Jog, 2008/9., 7-12.)*

Proposals to create the new Bankruptcy Act – Challenging the fraudulent transfers *(Magyar jog, 2008/7., 477-488.)*

Proposals to create the new Bankruptcy Act – Liability for insolvency of the managing directors and shadow directors *(Magyar jog, 2009/6., 332-347.)*

Preferential transactions *(Gazdaság és Jog, 2009/12., 3-10.)*

Performing contracts under liquidation process *(Gazdaság és Jog, 2010/4., 15-18.)*

The shareholders' liability for insolvency *(Magyar jog, 2010/5, 287-299)*

The liability of the shareholder and the director abusing the company's separated legal personality *(Gazdaság és Jog, 2010/9-10., 9-16.)*

Immoral contracts vs. Fraudulent transfers *(Gazdaság és Jog, 2011/6., 9-13.)*

Catalogue of court decisions

A selection from the decisions of Supreme Court in connection with liquidation process and voluntary dissolution *(www.foe.hu)*

Publications written in English

Reform of Hungarian insolvency law *(Microcad 2003, International Scientific Conference)*

Amendments of Hungarian Bankruptcy Act *(Insol International electronic newspaper, May, 2006)*

Hungary – Advice on how creditors may be more satisfied *(Eurofenix, Autumn 2007)*

Challenging fraudulent transfers in Hungary *(Eurofenix, Spring 2008)*

Employment in liquidation process *(Eurofenix, Autumn 2008)*

Formázott: Felsorolás és számozás