

KRISTINA MORKOVSKAYA

Candidate of Legal Science, Senior Lecturer
at the Department of Civil Procedure of the
Saratov State Law Academy

THE PROCEDURAL STATUS OF THE SUBJECTS OF BANKRUPTCY PROCEEDINGS

<https://doi.org/10.31085/2541-8823-2020-5-1-27-39>

Abstract: The scope of procedural rights and obligations depends on the procedural status of a person. The diverse and complex court cases of insolvency (bankruptcy) and numerous disputes arising in these cases prove the correlation of a procedural status and effective protection of violated or disputed rights and legitimate interests. However, the powers of all the subjects should be equal. The doctrine and practice reveal no single understanding of the procedural status of subjects of bankruptcy proceedings. The court acts and procedural documents submitted to the court sometimes fail to convey the procedural position of the arbitration trustee, the former Head of the debtor and the current payment creditor. The difficulties are caused by both, the complex legal status of subjects and the lack of detailed legislative regulation of the status itself. Limited right to study the case files applied to the subjects of bankruptcy proceedings is revealed in court practice. In certain disputes given limitation causes only partial protection of the subjects' rights.

Keywords: Powers, representative, procedural status, bankruptcy, bankruptcy trustee, debtor.

There is a steady increase in the number of cases of insolvency (bankruptcy) every year. Partially, it is due to the fact that a natural person may be recognized as bankrupt since October 2015¹.

¹ There is a steady increase in the number of applications for declaring the debtor bankrupt submitted to court during six months 2018 and six months of 2019. In total there were 41,221 applications –

It takes time to establish and legally register the debtor's insolvency.

G. F. Shershenevich notes 'payments' termination causes no legal changes. Only legal certification of insolvency may affect an individual or an owner.

The bankruptcy affects many parties, including those not directly involved in the court proceedings. Paragraph 4 of Article 20.3 of the Federal Law, dated October 26, 2002 No. 127-FL 'On Insolvency (Bankruptcy)'¹ (hereinafter referred to as the Bankruptcy Law) notes that 'The bankruptcy trustee must act conscientiously and reasonably for the benefit of the debtor, creditors and society when implementing bankruptcy case procedures'.

The Bankruptcy Law (Article, 34) also highlights persons involved in a bankruptcy case, namely, the debtor; bankruptcy trustee; bankruptcy creditors; authorized bodies; federal executive bodies and executive bodies of the constituent entities of the Russian Federation and local governments; person providing security for financial recovery.

Besides, the participants of the bankruptcy arbitration process (Article 35) are also involved. The paper classifies them into two groups:

- *participants* to be elected / elected upon the conditions (as the representatives of employees; debtor is the owner of the property, i. e. unitary enterprise, founders (participants) of the debtor, etc; or if the bankruptcy trustee accesses the state secret when exercising the powers);
- persons *entitled to participate* in the processes related to violation of their rights or an obligation (creditors for current payments in issues related to violation of creditors' rights for current payments; self-regulatory organization of bankruptcy trustees, control (supervision) entities when considering the approval of bankruptcy trustees).

The persons belonging to the second group 'have the right to study the bankruptcy case files, make extracts from them, and copy'². However, in practice, they exercise the right only being involved in disputes.

In such a way, the creditor can request the bankruptcy trustee (without reference to a specific procedure) or study the case file in court in order to track the money the debtor's account, the sum, dates of receipts, and payments. The Article

15,975 against legal entities and 1,717 against individual entrepreneurs and 23,529 cases against natural persons in 2018. The number increased in 2019, i. e. 61,394 total applications are distributed accordingly – 21,292, 2,219 and 37,883.

See: Data from judicial statistics // Official site 'Judicial Department'.

¹ Федеральный закон от 26.10.2002 № 127-ФЗ (ред. от 02.12.2019) «О несостоятельности (банкротстве)» // СЗ РФ. 2002. С. 43. Ст. 4190; Российская газета. 2019. № 275 [Federal Law No. 127-FZ (amended on December 2, 2019) "On Insolvency (Bankruptcy)"].

² Article 35 Paragraph 3.

provides the right of acknowledgement, since the creditor seeks receiving funds transferred to the debtor's account. Moreover, the registered creditors face more favorable repayment terms based on the Bankruptcy Law (Article 134).

Upon the request and for a fee, the bankruptcy trustee specifies each credit sum and the expected refund. The trustee is not required to report the track of money on the debtor's account. However, the trustee registers the track, receipt and repayments.

Paragraph 3 of Article 133 of the Bankruptcy Law states that these reports are monthly submitted to the arbitration court and creditors' committee upon request. Article 12 of the Bankruptcy Law states that current payment creditors are not bankruptcy creditors and thus do not participate in creditors' committee and are not allowed to study the materials submitted for the meeting.

Paragraph 3 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated July 23, 2009 No. 60 'On the adoption of Federal Law dated 30.12.2008 No. 296-FL 'On amending the Federal Law 'On Insolvency (Bankruptcy)', states that the Bankruptcy Law gives current payment creditors the right to participate in the bankruptcy proceedings by appealing the actions or omissions of the bankruptcy trustee that violate their rights and legitimate interests (Paragraph 4, Article 5 and Subparagraphs 4 of Paragraph 2 and Paragraph 3, Article 35 of the Bankruptcy Act). However, all the information required to protect the rights of creditors on current payments is not provided.

The bankruptcy trustee determines the status of the creditor for current payments and includes the creditor into the register for current obligations. Thus the creditor only monitors the bankruptcy procedure and the transfer of the information about current creditors to a new trustee. Otherwise, the status of a creditor for current payments would remain ambiguous¹.

The courts dismiss appeals against bankruptcy trustees who fail to review the reports on control and force the trustee to allow the creditor on current payments to study this report².

Moreover, the Courts refuse the appeal of the creditors on current payments to study trustee's report as it is submitted to the court and belongs to the main court case.

E.g., waiting for the repayment, the current payment creditor studies <https://kad.arbitr.ru/> and reveals the completion of the bankruptcy proceedings. The registry debt is repaid partially later than the current debt was formed. He submits

¹ See the 'Decision of the Twelfth Arbitration Court of Appeal', dated June 15, 2018 in case No. A57-1970 / 2014.

² See the 'Decision of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation of January 29, 2016 No. 302-ES15-10995' in the case No. A33-13581 / 2013.

a complaint against the bankruptcy trustee for violation of the repayment order. The current lender, as an involved specialist, failed to reveal the inaccuracy of the remuneration given to an involved specialist, made by the bankruptcy trustee, as he could not track activities of the specialists included in the report of the bankruptcy trustee. The Courts dismissed complaint of trustee's actions¹.

It forces the current creditor to apply to the court claiming bankruptcy trustee to refund (the outstanding debt in the bankruptcy case). Based on the claim 'The Court requests the case files A57-1970 / 2014 for a court review²'. The creditor could not study the case files due to the 'limitations' of the procedural status in the bankruptcy case.

The former head of the debtor, as a legal entity, faces a similar problem as the bankruptcy trustee may initiate processes and claim subsidiary liability, demand documents, contest a transaction, etc.

Being supervised, the Head of the debtor maintains his authority. Therefore, the restrictions provided in Article 64 of the Bankruptcy Law must be followed; namely, transactions should be complied with interim trustee in writing. However, Paragraph 1, Article 69 of the Bankruptcy Law states that the arbitration court suspends the Head of the debtor upon the request of the interim trustee if the Bankruptcy Law requirements are violated. Still, the courts rarely take such measures³ and consider the application until bankruptcy proceedings to legally suspend the Head.

The Head of the debtor is legally suspended as soon as the arbitration court decision declared the debtor bankrupt and bankruptcy proceedings started. The former Head must transfer debtor's accounts, documentation, seals, stamps and other values to the bankruptcy trustee within three days from the date of approval of the bankruptcy trustee (Article 126). The documents are later studied by the bankruptcy trustee, who arranges bankruptcy proceedings (based on the documents or inquiries), analyses the debtor's finances, and analyses possible deliberate bankruptcy.

Thus, the bankruptcy trustee receives and keeps all the documents of the former head. The copies of documents are stored as appendices to reports, financial reports and arbitrary court decisions added to the main case file.

The bankruptcy trustee requests the court to prosecute the former Head of the debtor (participant or liquidator) for the following reasons: the inability to refund in

¹ See the 'Decision of the Volga District Arbitration Court', dated August 23, 2018 in case No. A57-1970 / 2014; The determination of the Supreme court of the Russian Federation No. 306-ES17-6414 dated December 17, 2018 in case No. A57-1970 / 2014.

² See the 'Decision of the Arbitration Court of the Saratov Region' dated September 24, 2019 in case No. A57-20133 / 2019.

³ See the 'Decision of the Arbitration Court of the Saratov Region', dated 03.05.2019 in case No. A57-11274 / 2018.

full; absence of submission (or late submission) of the debtor's application; violation of the legislation of the Russian Federation on insolvency (bankruptcy). In these cases, the guilt of the person controlling the debtor is presumed until proved the opposite.

Thus, the former Head of the debtor will have procedural rights of a defendant in a separate dispute applied by the bankruptcy trustee. The rights, however, are exercised only within a separate dispute.

At the same time, such cases are hard to solve and, thus, the status of former Head of the debtor is vulnerable as all the files were transferred and there is no chance to study the case or copy the data.

Obviously, a party may petition the case review in the court and demand a file required to resolve the dispute. Thus, the former Head should study all the case volumes which is time-consuming (as bankruptcy cases comprise many volumes). Even if the papers are readily available it will take time for parties to describe the motivation in writing. The court may not satisfy the request and not provide the case files for review in case the party's motivation is not sufficient. For this reason, the former Head of the debtor has little chance to prove his position.

The former Head cannot copy numerous documents before handing them to the trustee. In case the former Head does not meet the given deadline for the documents transfer, he needs to pay daily penalty¹.

Thus, currently, the procedural rights provided by the legislation are not sufficient to protect the rights of the above-mentioned persons efficiently.

In order to consider the case efficiently and in full and to protect the rights of the subjects of bankruptcy proceedings in the arbitration courts, current payments creditors and debtor monitoring persons need to have the right to study the main case files. They get this right only being the applicants, persons concerned, a third party with independent applications in a separate dispute.

Equal rights of the parties will help to correlate the procedural status of the persons involved.

The bankruptcy trustee is one of the most interesting and controversial figures in the bankruptcy procedure. The legal and procedural statuses of an bankruptcy trustee are disputable.

Paragraph 4 of Article 59 of the Arbitration Procedure Code of the Russian Federation (hereinafter APC RF) notes that in the arbitration court the organizations' cases are dealt by their bodies, who follow federal law, regulatory legal acts or corporate documents of organizations.

A court session validates the creditor(s) requirements and approves the bankruptcy trustee as soon as the debtor was proved insolvent (bankrupt).

¹ See 'the Decision of the Arbitration Court of the Saratov Region', dated 10.09.2019 in case No. A57-11274 / 2018.

The current legislation defines the bankruptcy trustee as a person participating in the bankruptcy case and his powers depend on the bankruptcy procedure. Moreover Article 34 of the Bankruptcy Law highlights a debtor's participation in a bankruptcy case. Undoubtedly, the bankrupt natural person has the right to participate in the court on his own behalf throughout the entire bankruptcy procedure. However, a debtor or legal entity is likely to 'merge' with the bankruptcy trustee throughout the proceedings.

Article 64 of the Bankruptcy Law states that 'the supervision limits but not terminates the powers of the debtor's governing bodies'.

The former bodies of debtor's supervision are retained in the course of financial recovery and restricted by Chapter V of the Bankruptcy Law. Being approved, the bankruptcy trustee performs the supervision.

The power of the Head of the debtor terminates since the introduction of external management that controls the debtor's case (part 1, Paragraph 1, Article 94 of the Bankruptcy Law). The power of the debtor's governing bodies and the owner of the debtor's property, i. e. the unitary enterprise is considered as an exception (the powers are provided in Paragraphs 2 and 3 of Article 94 of the Bankruptcy Law).

The powers of the Head of the debtor, other governing bodies of the debtor and the owner of the property of the debtor – a unitary enterprise are terminated as a consequence of the bankruptcy proceedings. Subparagraph 2 of Article 126 of the Bankruptcy Law highlights the exceptions of agreements on refunding by a third party or parties on behalf of the debtor, i. e. unitary enterprise (the powers of the general meeting of participants of the debtor, owner of the debtor's property).

The explanations given in Paragraph 42 of the Decision of the Plenum of the Supreme Arbitration Court of the Russian Federation dated June 22, 2012 No. 35 'On some procedural issues related to the consideration of bankruptcy cases'¹ states that the introduction or termination of the bankruptcy trustee's powers is an operative part. It is relevant if only the operative part on the approval of the bankruptcy trustee or the suspension of the bankruptcy trustee was announced (the court resolution may be appealed as soon as it is complete).

The remuneration of the bankruptcy trustee also depends on the operative part of the approval or suspension of the trustee².

¹ Постановление Пленума ВАС РФ от 22.06.2012 № 35 (ред. от 21.12.2017) «О некоторых процессуальных вопросах, связанных с рассмотрением дел о банкротстве» // Вестник ВАС РФ. № 8, август, 2012; Российская газета. 2017. № 297. [The Decision of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 22.06.2012 No. 35 'On some procedural issues related to the consideration of bankruptcy cases'].

² См.: абзац 2 пункта 2 Постановления Пленума ВАС РФ от 25.12.2013 № 97 «О некоторых вопросах, связанных с вознаграждением арбитражного управляющего при банкротстве» // Вестник ВАС РФ. № 3, март. 2014. [Subparagraph 2, Paragraph 2 of the Decision of the Plenum of the

Evidently, the powers of the bankruptcy trustee start as soon as the resolution part (full text) of the judicial act on the approval of the trustee is announced.

The remuneration of the bankruptcy trustee does not consider the period between the application submission by the bankruptcy trustee for bankruptcy proceeding and the entry in the Unified State Register of Legal Entities on the debtor's liquidation. However, the trustee still has certain powers during this period¹. Exercising the powers (namely, court participation in appealing bankruptcy proceedings), the trustee can apply to the court for a remuneration due to the amount and complexity of the work performed during this period. Articles 110–112 of the APC RF state that the remuneration may be granted to the bankruptcy trustee by persons who lost the relevant litigation.

The powers of the trustee are established and confirmed by court. In fact, the powers are prescribed either by the Arbitration Court independently², or by declaring the debtor bankrupt³ and a decision on the financial recovery⁴, monitoring⁵, but not a separate court act.

The appointed trustee starts to work even before his approval as he needs to express his consent. The written consent is submitted to the main (bankruptcy) case and is a prerequisite for approval of the trustee.

The bankruptcy trustee has procedural and extra-procedural powers. The former involve all possible court activities of the bankruptcy trustee: applications to appeal the debtor's transactions; feedback on the creditors' applications on inclusion into the Register of debtor creditors' claims (hereinafter – RCC); statement on subsidiary liability for persons controlling the debtor, etc.

The procedural powers originate from the Bankruptcy Law, namely, to hold a creditors' meeting (however, the submission of the results of the creditors'

Supreme Arbitration Court of the Russian Federation dated 25.12.2013 No. 97 'On some issues of the remuneration of the arbitrary trustee of the bankruptcy').

¹ See Paragraph 2 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 25, 2013 No. 97 'On Certain Issues Related to the Remuneration of an Arbitration Trustee in Bankruptcy'.

² See, 'the Decision of the Arbitration Court of the Saratov Region' dated April 11, 2019 in case No. A57-11274 / 2018.

³ See, 'the Decision of the Arbitration Court of the Saratov Region' dated September 6, 2018 in case No. A57-10510 / 2018; The decision of the Arbitration Court of the Penza Region dated 05/12/2014 in case No. A49-9747 / 2013.

⁴ See, 'the Decision of the Arbitration Court of the Samara Region' dated 03.10.2015 in case No. A55-12436 / 2014.

⁵ See, 'the Decision of the Arbitration Court of the Saratov Region' of 02.10.2018 in case No. A57-11274 / 2018.

meeting with a petition to attach them to the bankruptcy case files is a procedural authority); to upload information into the Unified Federal Register of Bankruptcy Information, to send information to the 'Kommersant' newspaper and local media; to send inquiries in order to form the bankruptcy estate of the debtor; to assess property and its auction sale, etc.

The property inventory and dismissal of employees are ordinary powers of the Head of the organization. However, the bankruptcy trustee performs the same powers according to the terms stipulated by the Bankruptcy Law. E.g., Subparagraph 1, Paragraph 1 of Article 129 states "...the property inventory needs to be performed no later than three months since the introduction of the bankruptcy proceedings...". Therefore, these powers are regarded as procedural ones for the bankruptcy trustee.

Interestingly, approval and exercising of both types of powers by the bankruptcy trustee is directly related to the judicial act itself. As it approves and extends the powers of the trustee / trustee and the duration of the proceedings within the corresponding procedure.

The retaining of the powers of a bankruptcy trustee is questioned in case the court specified the procedure's duration and set the date of the proceedings to review the results. The bankruptcy trustee seeks a 5-days break of the proceedings to consider the results. The court grants the application extending for no longer than the term of the introduced procedure, and therefore the duration of the bankruptcy trustee powers. Moreover, the proceedings to review the results may be postponed for a month and the decision on the proceedings' adjournment does not focus on powers of the bankruptcy trustee for this time.

Consequently, the powers of a bankruptcy trustee terminate within the indicated periods that have gone beyond the term of an open bankruptcy procedure. Thus, he cannot control the debtor's account and open an bank account for tendering, due to a number of requirements set to confirm the powers of the trustee in the Bank, namely, a court act is required to approve the trustee in the bankruptcy procedure, a court introduces (opens) the bankruptcy procedure and, a court extends the procedure in case it expired.

The legislation does not specify this issue. As it seems, the judge needs to both declare a break and extend the powers of the bankruptcy trustee.

The substantive status of the bankruptcy trustee is also considered alongside his approval and suspension¹. The focus should be made on the legal aspect of the subject in question.

¹ *Popondopulo V.F.* The legal status of the arbitration trustee in the insolvency (bankruptcy) case // Leningrad Journal of Law. 2006. No. 2.

Firstly, the Civil Cassation Department of the Governing Senate¹ and Ya M. Hesse consider the jury trustee (trustee) a representative of the debtor. Secondly, the jury trustee acts “on behalf of the creditors”². Thirdly, S. I. Halperin suggested that the jury trustee (trustee) does not protect the property interests of either the debtor or the creditors, but represents the state and public interest. He is empowered by the court and, primarily, considers the bankruptcy process socially and meets the interests of all parties involved³.

Paragraph 2 of Article 24.5 of the Code of Administrative Offenses, dated December 30, 2001 No. 195-FL defines the legal representatives of a legal entity as the Head or another person determined by the law or constituent documents of a legal entity⁴. The position is confirmed officially.

Tax legislation defines the legal representative of an organization as a person legally authorized to represent the organization⁵.

E.g., the bankruptcy trustee submits an application form No.R14001 approved by the Federal Tax Service of Russia Order dated 25.01.2012 No. MMV-7-6 / 25 @⁶ to the tax authority. Thus, the trustee specified as ‘bankruptcy trustee’, is added into the section ‘information about the person acting on behalf of the legal entity without an attorney’

Article 182 of the Civil Code of the Russian Federation⁷ states that ‘the civil legal representation aims at creating, amending and terminating civil rights and obligations for the person in question’.

The representation in the civil process aims at protecting the interests of the person represented in court, helping to exercise procedural rights and duties.

¹ See The Civil Cassation Department of the Senate of the government’s decision of 1884.

² See *Bardzky A.* About the limits of power of a district court when appointing jury trustees for insolvent debtors // *Journal of Civil and Criminal Law.* 1886. 10.

³ See *Halperin S. I.* Rights and obligations of a jury trustee in a case of commercial insolvency // *Journal of the Law Society: December.* At the Imperial St. Petersburg University. S.-Pb.: Type. Governing Senate, 1898, Prince 10. P. 13–14.

⁴ See: Code of the Russian Federation on Administrative Offenses of December 30, 2001, 195-FZ (amended on December 2, 2019) // *SZ RF.* 2002. No. 1 (part 1). Art. 1.

⁵ Clause 1 of Article 27 of the Tax Code. See: Tax Code of the Russian Federation (Part One) dated July 31, 1998 No. 146-FZ.

⁶ See: Federal Tax Service of Russia dated January 25, 2012 No. MMV-7-6 / 25 @ (amended on May 25, 2016) ‘On the approval of forms and requirements for the execution of documents submitted to the registration authority during state registration of legal entities, individual entrepreneurs and farmer households’.

⁷ See: Civil Code of the Russian Federation (Part One) dated November 30, 1994 No. 51-FZ (amended on July 18, 2019) // No. 32. Art. 3301; Art. 3844.

Paragraph 4 of Article 20.3 of the Bankruptcy Law states that the bankruptcy trustee 'acts conscientiously and reasonably for the benefit of the debtor, creditors and society'. His interests extend the debtor whom he represents.

Some scientists argue that the arbitration trustee has a special legal status¹.

Up to January 1, 2011² legal scientists claimed that being defined as an individual entrepreneur, the bankruptcy trustee does not meet the requirements of the Bankruptcy Law. The bankruptcy trustee was even claimed to be considered as one of the 'privileged' professions, such as notaries, lawyers, auditors, doctors, as they perform socially significant functions for and thus, refuse the profit³.

V.F. Popondopulo believes that "the bankruptcy trustee should not be viewed as a representative of any of the participants in the bankruptcy case, being the case participant himself ..."⁴.

Many norms of the Bankruptcy Law regulate the procedural position of the bankruptcy trustee, his rights and obligations in the bankruptcy case. Moreover, Article 40 of the Arbitration Procedure Code of the Russian Federation determines that in cases of insolvency (bankruptcy), the case participants are applicants and interested parties.

The specificity of the procedural status of the bankruptcy trustee is manifested in his case interest, since he is not directly involved in the property conflict caused by the insolvency of the debtor. The trustee has no direct interest to property or other results of the trial. The interest of the bankruptcy trustee may only be related to the return of the property to the bankruptcy estate. The property must be sold and the register refunded by debtor. Subparagraph 13 of Article 20.6 of the Bankruptcy Law states that 'the remuneration of the bankruptcy trustee is determined by the satisfied appeals of creditors included in the register of creditors' appeals'. It 'motivates' the trustee and indirectly makes him seek positive financial outcome of the processes.

Acting independently, the bankruptcy trustee follows various managing techniques within the bankruptcy proceedings, limited by the Bankruptcy Law requirements. The trustee reports his actions to all creditors and submits supporting materials to the court.

¹ See *Kalinina E. V.* The legal status of the arbitration trustee (Volgograd, 2005).

² Subparagraph 9 of Article 4 of the Federal Law of December 30, 2008 No. 296-FZ 'On Amendments to the Federal Law 'On Insolvency (Bankruptcy)'.

³ See *Dorokhina E. G.* Problems of entrepreneurial activity of the arbitration trustee (St. Petersburg, 2004).

⁴ See: *Popondopulo V. F.* The legal status of the arbitration trustee in the insolvency (bankruptcy) case // (St. Petersburg, 2006).

The bankruptcy trustee makes the procedural decisions fairly and independently and has procedural rights equal to creditors and the debtor¹.

Thus, the bankruptcy trustee has applicant's rights in the main case since his approval. Firstly, these are case volumes, including a statement declaring the debtor bankrupt. Next, files of the creditors' meetings registering the procedure and the trustee's petition to extend the procedure, move to the next procedure (e. g., bankruptcy proceedings after observation), and a petition to complete the procedure are attached to the main case.

Thus, the bankruptcy trustee has the procedural rights of the applicant in the cases considered above.

The bankruptcy trustee has all the rights possible for the separate disputes in the bankruptcy case, regardless of his position;

- application for the invalidity of the transaction (applicant);
- approval of the Regulation on the procedure, terms and conditions for the sale of debtor's property (applicant);
- a complaint about the actions (inaction) of the bankruptcy trustee (interested party), etc.

The procedural status of the bankruptcy trustee in a particular separate dispute in one bankruptcy case predetermines his rights and obligations at all stages (procedures) of bankruptcy. It is due to different legal regimes of bankruptcy². In Russia the bankruptcy trustee has the special legal status since he always represents himself, but acts in the interests of others³.

However, the bankruptcy trustee may also face procedural difficulties in case, a complaint of the bankruptcy case or an application for refunding is submitted against the bankruptcy trustee after he has been discharged or suspended. In a given procedure the trustee has ceased his powers, but he is responsible for his actions (inaction) in the case. In the initiated separate dispute, the bankruptcy trustee is granted a full range of rights specific to the person concerned. But, at the same time, he faces the above-mentioned problem, i. e. the former leader of the debtor and the chance to study the materials of the main case. So the bankruptcy trustee is forced to petition the demand for the case files to protect his rights and obtain the information required⁴.

¹ See Arbitration process (ed. By V.V. Yarkov). 'Statute', 2017.

² See *Dorokhina E.G.* The legal status of an external trustee in conducting external management // Judicial Arbitration Practice of the Moscow Region. Enforcement issues. 2004. No. 3.

³ See *Tokar E.Ya.* Issues of the application of the design of the representative office by business companies: monograph. M.: Justicinform, 2018.

⁴ See 'Decision of the Arbitration Court of the Udmurt Republic', dated 01.27.2020' in the case No. A71-8536 / 2014.

Certain participants of the bankruptcy proceedings should have the right to study the main case files under certain conditions (a certain procedural status in a separate dispute).

The cases considered above reveal legislative gaps and inaccuracies in the regulation of the procedural status of certain participants of the bankruptcy proceedings due to insufficient doctrinal development of their legal status.

By indicating 'bankruptcy trustee' (external trustee, etc.) instead of the procedural provision (whether it is the applicant, interested person, etc.) in the court submissions the participants confirm difficulty in determining in principle the procedural status of such a person but not their legal illiteracy.

The procedural rights and obligations correlate with the procedural status of a person. The complexity of the insolvency (bankruptcy) cases and many separate disputes arising in a bankruptcy case prove that the possibility to implement the process goal, i.e. to protect violated or disputed rights and legitimate interests, depends on the correct determination of the procedural status of a person. At the same time, the artificial expansion of the powers of some entities over others is unacceptable. However, the powers of all the subjects should be equal.

References

Arbitration process: *Textbook (7th edition, revised and supplemented)* (ed. By V. V. Yarkov). 'Statute', 2017.

Bardzky A. *About the limits of power of a district court when appointing jury trustees for insolvent debtors* // Journal of Civil and Criminal Law. 1886. 10.

Dorokhina E. G. *Problems of entrepreneurial activity of the arbitration trustee* // Jurisprudence. St. Petersburg: Publishing House St. Petersburg. University, 2004. No. 1.

Dorokhina E. G. *The legal status of an external trustee in conducting external management* // Judicial Arbitration Practice of the Moscow Region. Enforcement issues. 2004. No. 3.

Halperin S. I. *Rights and obligations of a jury trustee in a case of commercial insolvency* (St. Petersburg, 1998).

Kalinina E. V. *The legal status of the arbitration trustee*. (Volgograd, 2005).

Popondopulo V. F. *The legal status of the arbitration trustee in the insolvency (bankruptcy) case* // Leningrad Journal of Law. 2006. No. 2.

The Civil Cassation Department of the Senate of the government's decision of 1884. Yekaterinoslav: Type. Book Publishing L. M. Rotenberg, 1905.

Tokar E. Ya. *Issues of the application of the design of the representative office by business companies* (Moscow, 2018).

Information about the author

Kristina Morkovskaya (Saratov, Russia) – Candidate of Legal Science, Senior Lecturer at the Department of Civil Procedure of the Saratov State Law Academy (1, Volskaya St., 410056, Saratov; e-mail: kristink-m@yandex.ru).

Recommended citation

Morkovskaya K.S. The procedural status of the subjects of bankruptcy proceedings. *Kazan University Law Review*. 2020; 1 (5): 27–39. <https://doi.org/10.31085/2541-8823-2020-5-1-27-39>.