INTRODUCTION
Currently, the Russian scholars highlight insolvency (bankruptcy) abuse as an independent form, not mentioned in Article 10 of the Civil Code of the Russian Federation and representing the unfair conduct of a person aimed at satisfying, first of all, personal interests, while the rights and interests of other parties within the framework of these legal relations are neglected. Under the existing procedure, the balance of interests of all parties is essential since abuse is often expressed in violation of this balance, for example, due to manipulation of the right to purchase, an interested party, in violation of debt repayment order, might receive certain property of the debtor.

The analysis of statistical data allows us to conclude that the number of registered crimes under Articles 195-197 of the Criminal Code of the Russian Federation over the past 15 years has grown significantly. According to the statistics of 2016-2020, the peak of prosecution under Articles 195-197 of the Criminal Code of the Russian Federation falls on 2016 (37 people), if compared with the data of 2018 (36 people).

Figure 1. The number of people convicted for crimes in the field of bankruptcy in 2016-2020.

The most common forms of abuse are as follows:

a) The conclusion of various transactions by the parties involved in bankruptcy that violate the balance of interests of creditors due to the commission of actions entailing the dissatisfaction of the declared claims at the expense of the debtor’s property;

b) The implementation of procedures for the withdrawal of the debtor’s assets to exclude them from the bankruptcy estate;

c) The manipulation of the bidding mechanism at the stage of bankruptcy proceedings;

d) The manipulation of the preemptive right to purchase during bidding;

Source: Search data.
e) The repayment of the existing debt to creditors on the principal loan by third parties, which might be a method to enter the bankruptcy procedure for a third party and the basis for exercising control over this procedure.

**METHODS**

The article considers the scientific works of both Russian (pre-revolutionary and Soviet) and foreign authors on this issue. In particular, B.V. Volzhenkin (1997), A.P. Kuznetsov (1999), N.A. Lapashenko (1997), A.A. Mattel (1884), A.N. Trainin (1913, 1938), I.Ya. Foinitsky (1893), G.F. Shershenevich (1890), etc. They claim that it is necessary to distinguish between bankruptcy abuses by the subject of abuse and the stage of the action since abuse can be carried out at any stage of the bankruptcy procedure.

Foreign scholars dwelling on this issue are as follows: G. Ambrasaitė, R. Norkus (2014), L.D. Bayer, S. Elias (2015), etc.

**RESULTS**

It has been concluded that insolvency (bankruptcy) abuse arising at the stage of concluding a settlement agreement is common. However, scholars did not reach a uniform opinion regarding the nature of this abuse: some of them attribute it to a subtype of unfair conduct in the form of a transaction, while the others regard it as a separate form. The latter approach is based on the fact that abuse can be expressed both in the essence of the concluded settlement agreement and can arise at the stage of its conclusion and approval. At the same time, a majority of votes are required to approve the terms of this settlement agreement, which might violate the rights and legitimate interests of creditors and third parties who did not agree with the above-mentioned terms.

It is worth mentioning that bankruptcy abuse is a dynamic and rapidly changing environment due to the constant emergence of new forms of such abuse by the subjects of these legal relations. Therefore, the current legislation is not always able to resolve emerging issues in this area. The position of courts in the disputed legal relationship is of key importance. Initially, bankruptcy abuse was identified with invalid transactions aimed at violating the rights and legitimate interests of creditors, which was reflected in Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of April 30, 2009 No. 32 "On certain issues related to the challenge of transactions on the grounds set by the Federal Law "On Insolvency (Bankruptcy)" (POSTANOVLENIE PLENUMA VAS RF, 2009).

For example, the unfair actions of financial managers that resulted in their dismissal are reflected in Resolution of the First Arbitration Court of Appeal of June 11, 2020 No. 01AP-284/2017 in case No. A79-6522/2016. Thus, company No. 1 applied to the court with a statement on the suspension of the financial manager of the debtor and the recognition of their illegal actions, which consisted in the disposal of funds in the manner not provided for by bankruptcy legislation, inaction on the sale of property, inaction on inclusion in the register of claims of the creditors of company No. 2 for 34,300,000 rubles. By the court's decision, these claims were partially satisfied. Within the framework of the appeal, the court established that the funds constituting the bankruptcy estate were located in the current account of the credit institution and a "cash desk", i.e. a vault. Keeping the funds constituting the bankruptcy estate in the "cash desk", the financial manager created a situation that allowed for the possibility of uncontrolled spending of funds, which contradicts both the provisions of the Bankruptcy Law and its goals, and also violates the rights of creditors to exercise permanent control over the spending of their funds. It was also established that the financial manager did not promote the sale of the property (jet skis and motorboats) within the prescribed period, which led to a delay in the bankruptcy procedure and violated the property rights of creditors.

In addition, the debtor owned shares in the authorized capital of organizations, which were not sold within the prescribed period. In relation to some shares, the financial manager applied for the approval of the provision on the implementation of the debtor's share in the authorized capital more than one year after the discovery of the said property, which made it impossible to sell the identified property before the expiration of the term of the bankruptcy procedure. At the same time, no objective evidence of the impossibility of preparing the relevant documents on time was provided. The panel of judges concluded that the financial manager...
delayed measures to sell the debtor's property contradicted the principle of good faith and reasonableness and violated the rights of the creditors.

**DISCUSSION**

The most common form of bankruptcy abuse is a transaction. However, its parties are very diverse: not only the debtor but also other persons can act as a party to the transaction. A.N. Trainin (1913, 1938) claimed that the consequences of an invalid transaction in the framework of the bankruptcy procedure represented a slightly different mechanism than that typical of other invalid transactions, which is expressed in bilateral restitution.

According to A.A. Mattel (1884), if some transaction is declared invalid and the disputed property is returned to the bankruptcy estate, the party does not lose its rights within the framework of bankruptcy procedures. Thus, we can provide the following definition of abuse in the form of an insolvency transaction: a transaction made by a person to their own advantage without taking into account the interests of other persons participating in the bankruptcy procedure, which goes beyond the special rules provided for by the law on insolvency (bankruptcy) and entailing, in connection with a decrease in the bankruptcy estate, violation of the rights and legitimate interests of persons participating in the bankruptcy procedure.

For example, Decision of the judicial panel on economic issues of the Supreme Court of the Russian Federation of February 6, 2020 No. 306-ES19-19734 in case No. A55-505/2016 established as follows: a bankruptcy commissioner applied to the court with a statement to invalidate the transactions on depositing the debtor’s property in the authorized capital of some legal entities and to initiate the consequences of the invalidity of transactions in the form of an obligation to return the disputed property to the bankruptcy estate. Lower-instance courts refused to satisfy this application.

As follows from the essence of the dispute, the debtor’s ownership of some real estate was terminated due to the fact that it was made as a contribution to the authorized capital of legal entity No. 1, which subsequently contributed the disputed property as a share in the authorized capital of companies No. 2 and No. 3, where it was liquidated. By the court decision, the debtor was declared bankrupt and the bankruptcy procedure was opened.

The panel of judges found the decisions of the lower-instance courts incorrect due to the fact that damage to the property interests of creditors might be evidenced by the impossibility of exercising the debtor's control over the property due to the specific corporate structure and management and the presence of debts in the subsidiary company. As a result, the value of the share became lower than the net value of the contributed property, etc. This damage can also manifest itself in a situation where the contribution of property to the authorized capital was an integral part of a chain of sham transactions, which resulted in the alienation of the property contributed to the capital by the subsidiary and the party’s failure to receive an equivalent even at the level of corporate rights (OPREDELENIE SUDEBNOI KOLLEGII, 2020).

An equally common but very complex form of bankruptcy abuse, which often arises from transactions, is the asset withdrawal scheme. The complexity of this form is expressed in the fact that it consists of a whole complex of actions and presupposes the presence of a wide range of persons participating in this process.

When qualifying such a form of abuse as the withdrawal of assets, it is important to analyze the subsequent fate of the disputed property. In this case, we should consider the position of the Supreme Court of the Russian Federation (Decision of the judicial panel on economic issues of the Supreme Court of the Russian Federation of February 6, 2020 No. 306-ES19-19734 in case No. A55-505/2016; Decision of the judicial panel on economic issues of the Supreme Court of the Russian Federation of July 31, 2017 No. 305-ES15-11230 in case No. A40-125977/2013), which is essential for the proper consideration of such disputes.

Thus, a bankruptcy trustee of the bank appealed to the court with a statement to invalidate the transaction on the alienation of the apartment in favor of A.A. Ivanov and A.V. Ivanov covered by a chain of successive purchase and sale transactions. It follows that the bank and company
No. 1 concluded an agreement for the sale and purchase of the apartment costing 79,850,000 rubles under the agreement.

Later company No. 1, including A.A. Ivanov, and V.V. Petrova concluded a contract of sale and purchase of the disputed property and became co-owners of this apartment (½ share for each). Subsequently, V.V. Petrova sold her share in the said apartment to A.V. Ivanov. The bank was declared bankrupt by a court decision. The financial manager revealed that the disputed property of company No. 1 was financed by the bank and purchased at its expense since company No. 1 did not have the necessary funds to purchase this apartment. Thus, the bank did not receive a counter-provision under the above-mentioned purchase and sale agreement.

At the same time, the bank provided loans to company No. 2 and company No. 3 associated with company No. 1 which did not carry out economic activities and purchased the bank’s promissory notes with these funds. These promissory notes were handed over to Partnership No. 2 and Partnership No. 3 by Company No. 1, which presented them for payment ahead of schedule. The bank transferred the funds under these promissory notes to company No. 1 which made the payment under the disputable agreement. Thus, company No. 1 created an appearance of payment under the agreement and the bank received an illiquid loan.

The courts also concluded that the subsequent resale transactions of the disputed apartment are sham, covering up the alienation of the disputed property of the bank in favor of A.A. Ivanov and A.V. Ivanov, who were relatives of a member of the bank’s governing body.

Courts regard fictitious transactions as void in accordance with Clause 2 of Article 170 of the Civil Code of the Russian Federation. The concealed sale and purchase transaction made by the bank and A.A. Ivanov and A.V. Ivanov was declared invalid as it was committed during the period of suspicion to cause damage to the property interests of the creditors. The panel of judges concluded that a chain of successive sale and purchase transactions with different constituent entities can cover up a transaction aimed at the direct alienation of property by the first seller to the last buyer.

At the same time, the state registration of the transfer of ownership of real estate to intermediate buyers does not prevent the qualification of these transactions as null and void based on Clause 2 of Article 170 of the Civil Code of the Russian Federation. For a sham transaction, the parties prepared documents in such a way that an uninvolved person got the impression that the parties followed the terms of this contract. However, the circumstances related to the transfer of actual control over the property, allegedly transferred under successive sham transactions, were essential for the correct consideration of this dispute (OPREDELENIYE SUDEBNOI KOLLEGII, 2017).

Thus, this form of abuse is a series of actions carried out by a wide range of persons to prioritize the claims of one of the entities within the framework of the bankruptcy procedure, without taking into account the interests of other creditors.

A subtype of abuse of the right to withdraw assets is the conclusion of a compensation agreement and the offset of reciprocal claims. The position of courts regarding the possibility of agreeing on compensation in bankruptcy is based on the explanations provided in the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation of December 29, 2001 No. 65 "Reviewing the practice of resolving the disputes related to the termination of an obligation by a setoff of counterclaims". Thus, the courts of different levels emphasized the inadmissibility of offsetting a homogeneous counterclaim from the date of initiating a bankruptcy case against one of its parties. However, offsetting in enforcement proceedings is possible, provided that there are enforcement proceedings in respect of counterclaims subject to offset (INFORMATSIONNOE PISMO PREZIDIUMA VYSSHEGO ARBITRAZHNOGO SUDA, 2001).

This position was supported by the Supreme Court of the Russian Federation (Resolution of the Supreme Court of the Russian Federation of August 19, 2019 No. 304-ES19-12780 in case No. A03-23842/2018). For instance, Resolution of the First Arbitration Court of Appeal of June 11, 2020 No. 01AP-2294/2020 in case No. A43-47726/2017 and Resolution of the Arbitration Court of the Nizhny Novgorod Region of February 6, 2020 were left unchanged in view of the following. The contractor filed a lawsuit against the general contractor to recover the debt,
indicating that Company No. 1 (customer), Company No. 2 (general contractor) and Company No. 3 (contractor) agreed to the construction of a real estate object on March 1, 2016. From June 30, 2016 to August 31, 2017, the contractor completed and the general contractor accepted work for 298,504,835 rubles and 98 kopecks. In this regard, the customer transferred funds for 149,141,700 rubles to the contractor’s account, later the general contractor transferred funds for 113,000,000 rubles to the contractor’s account.

Thus, the amount owed by the general contractor to the contractor was 36,363,135 rubles and 98 kopecks. Later an agreement was concluded between the customer and the contractor for the assignment of the right of claim for obligations for 14,420,022 rubles and 11 kopecks arising from the above-mentioned construction contract. In this connection, the customer sent the corresponding claim to the general contractor with the requirement to pay off the debt and the resulting penalty but it was left unsatisfied. The court rejected the general contractor’s application for offsetting counterclaims since a bankruptcy case was initiated against the contractor. Starting from the date of initiating the bankruptcy case, creditors are not entitled to receive any amounts from the contractor without observing the procedure for satisfying claims within the framework of bankruptcy otherwise it would be an abuse of the right. Thus, a statement on the offset of similar counterclaims is not a basis for the termination of monetary obligations (POSTANOVLENIE PERVOGO ARBITRAZHNOGO APELLYATSIONNOGO SUDA, 2020).

The next form of abuse in bankruptcy proceedings is abuse associated with illegal actions of persons when concluding and approving a settlement agreement. It is worth mentioning that the settlement agreement within the framework of the bankruptcy procedure has certain specifics, i.e. creditors with the intention to at least partially satisfy their claims are ready to refuse part of the requirements.

The Resolution of the Constitutional Court of the Russian Federation formed a position, according to which courts should establish the purpose of concluding a settlement agreement, i.e. to ensure the benefits of a certain group of creditors or to restore the debtor’s solvency. Thus, it is possible to establish a mechanism of unfair conduct in concluding a settlement agreement, which is expressed in ensuring the preferential satisfaction of the interests of a certain group of creditors. Several scholars believe that courts should not approve settlement agreements that encourage the primary satisfaction of the requirements of a certain group in the bankruptcy process.

One should pay attention to the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation of December 20, 2005 No. 97 “Reviewing the consideration of disputes related to the conclusion, approval and termination of settlement agreements in insolvency (bankruptcy) cases by arbitration courts”. According to these provisions, the consent of each creditor is not required if a settlement agreement establishes a debt reduction for all the creditors entering into a settlement agreement.

In our opinion, this position is controversial since the interests of bona fide creditors might be violated. Thus, Resolution of the Third Arbitration Court of Appeal of March 29, 2019 in case No. A33-17846/2010 reflects the following situation: a bankruptcy commissioner applied to the court with an application for the approval of the settlement agreement but the court refused to approve it. As follows from the essence of the dispute, creditors held a meeting and decided to conclude a settlement agreement and approve it in the prescribed manner.

After analyzing the terms of this settlement agreement, the court of the first instance established that the actual result of the agreement proposed for approval would be the release of the debtor from the fulfillment of all the obligations to creditors by waiving 98.5% of the debt and paying the remaining amount to a person affiliated to the debtor. Most of the bankruptcy creditors who voted for the approval of the proposed version of the settlement agreement pursued their own interest in concluding this contract, i.e. they are interested parties in relation to the debtor.

In addition, the decision to approve the settlement agreement at the general meeting of creditors was made by a majority of votes of the interested creditors, while this decision was
also made in relation to the property rights of independent creditors, including A.A. Ivanov, who stated that the real purpose of concluding this agreement was to release the debtor from any obligations to him. The court also established that a person who, in accordance with the terms of the settlement agreement, shall pay the debt remaining after the debt release, was the mother of the debtor and a member of creditor’s companies with shares of 100% and 50%; the debtor himself was the director of several creditor’s companies.

The court concluded that all the legal entities that were bankruptcy creditors of the debtor had an affiliate relationship with the debtor, which indicates the legal interest of these creditors. The actual interest of the bankruptcy creditor, the entrepreneur V.V. Petrov and other creditors (legal entities) is seen as a result of the analysis of their actions expressed in voting for the version of the settlement agreement that was economically less profitable for them. During the meeting of creditors, two versions of settlement agreements were presented. The draft agreement as amended by the creditor A.A. Ivanov provided for the receipt by other creditors of monetary funds in a larger amount and in a shorter time than those provided for by the draft of the contested settlement agreement. Under A.A. Ivanov’s settlement agreement, monetary funds would have been paid to other creditors independently by the debtor based on the assignment of rights of claim.

CONCLUSION
If a court approves the controversial edition of a settlement agreement, there is an artificial compulsion to waive A.A. Ivanov’s debt due to concerted deliberate actions of the creditors interested in waiving the total (not just partial) amount of the debt. The application of the debt relief should be regarded as reasonable in the interests of the creditor and the debtor. The appellate court did not find any legal grounds for canceling the contested court decision but emphasized that the establishment of an unreasonable discount on debt to bankruptcy creditors who did not agree to waive the debt cannot be considered an adequate settlement with creditors and contradicts the meaning and goal of a settlement agreement as bankruptcy procedures.

RECOMMENDATIONS
Firstly, the most common forms of abuse are as follows:

a) The conclusion of various transactions by the parties involved in bankruptcy that violate the balance of interests of creditors due to the commission of actions entailing the dissatisfaction of the declared claims at the expense of the debtor’s property;

b) The implementation of procedures for the withdrawal of the debtor’s assets to exclude them from the bankruptcy estate;

c) The manipulation of the bidding mechanism at the stage of bankruptcy proceedings;

d) The manipulation of the preemptive right to purchase during bidding;

e) The repayment of the existing debt to creditors on the principal loan by third parties, which might be a method to enter the bankruptcy procedure for a third party and the basis for exercising control over this procedure.

Secondly, it is necessary to distinguish between bankruptcy abuses by the subject of abuse and the stage of the action since abuse can be carried out at any stage of the bankruptcy procedure.

Thirdly, a settlement agreement within the framework of bankruptcy is an opportunity to complete the legal proceedings by means of concession between the creditor and the debtor. According to the definition of the Constitutional Court of the Russian Federation, courts shall pursue the purpose of concluding a settlement agreement, i.e. to ensure the benefits of a certain group of creditors or to restore the debtor’s solvency. Thus, it is possible to establish a mechanism of unfair conduct with due regard to the conclusion of a settlement agreement, which is expressed in ensuring the preferential satisfaction of the interests of a certain group of creditors.
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Public danger of bankruptcy offenses in modern Russia

Perigo público de crimes de falência na Rússia moderna

Pelagro público de delitos de bancarrota en la Rusia moderna

Resumo
O artigo tem como objetivo estudar a legislação penal russa sobre o processo de insolvência (falência) nos últimos 15 anos. Um indicador importante da deterioração dos casos de falência é a prática judicial discutida no artigo. O principal método para estudar a questão foi o método estatístico que permite considerar alguns casos judiciais indicativos para a Rússia e tirar certas conclusões sobre as perspectivas para o desenvolvimento da legislação russa sobre a responsabilidade penal por crimes de falência (insolvência) na Rússia moderna. Este artigo científico também utiliza o método de análise do sistema, o método histórico, dedução, indução, etc. O artigo conclui que o abuso de falências é um ambiente dinâmico e em rápida mudança devido ao constante surgimento de novas formas de abuso por parte dos sujeitos dessas relações jurídicas. Portanto, nem sempre a legislação vigente é capaz de resolver questões emergentes nessa área.

Keywords: Creditor. Debtor. Insolvency. Unfair conduct. Crime.

Abstract
The article aims at studying the Russian criminal legislation on the insolvency (bankruptcy) procedure over the past 15 years. An important indicator of the deterioration of bankruptcy cases is the judicial practice discussed in the article. The main method for studying the issue in question was the statistical method which allows to consider some court cases indicative for Russia and draw certain conclusions about prospects for the development of the Russian legislation on criminal liability for bankruptcy (insolvency) offenses in modern Russia. This scientific article also uses the method of system analysis, the historical method, deduction, induction, etc. The article concludes that bankruptcy abuse is a dynamic and rapidly changing environment due to the constant emergence of new forms of such abuse by the subjects of these legal relations. Therefore, the current legislation is not always able to resolve emerging issues in this area.

Keywords: Creditor. Debtor. Insolvency. Unfair conduct. Crime.

Resumen
El artículo tiene como objetivo estudiar la legislación penal rusa sobre el procedimiento de insolvencia (quiebra) en los últimos 15 años. Un indicador importante del deterioro de los casos de quiebra es la práctica judicial discutida en el artículo. El método principal para estudiar la cuestión fue el método estadístico que permite considerar algunos casos judiciales indicativos para Rusia y sacar ciertas conclusiones sobre las perspectivas de desarrollo de la legislación rusa sobre responsabilidad penal por delitos de quiebra (insolvencia) en la Rusia moderna. Este artículo científico también utiliza el método de análisis de sistemas, el método histórico, la deducción, la inducción, etc. El artículo concluye que el abuso de bancarrota es un entorno dinámico y rápidamente cambiante debido a la aparición constante de nuevas formas de dicho abuso por parte de los sujetos de estas relaciones legales. Por lo tanto, la legislación actual no siempre es capaz de resolver los problemas emergentes en esta área.

Palabras-clave: acreedor. Deudor. Insolvencia. Conducta injusta. Crimen.