

CONSEQUENCES OF CHANGES IN CONSUMER BANKRUPTCY REGULATIONS

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Abstract

The purpose of the article/hypothesis: The aim of the article is to review and present changes to the consumer bankruptcy law and the implications of these changes for individual debtors.

Methodology: The study deals with the effects of bankruptcy proceedings against individual debtors who do not conduct business activity (remission of bankrupt's liabilities, or at least partial repayment of creditors by the debtors) together with the analysis of changes in the law. It will be used to verify the hypothesis that the liberalization of regulations has resulted in an increase in the number of consumer bankruptcy petitions filed, as well as open bankruptcy proceedings conducted against individual debtors.

Results of the research: The results of the analysis presented in the paper support the hypothesis that the liberalization of regulations in the area of consumer bankruptcy has resulted in a significant increase in the number of consumer bankruptcy petitions and open bankruptcy proceedings against individual debtors. It seems that as crucial as creating a possibility for the indebted to return to normality in the form of consumer bankruptcy, it is equally important to take care of the sense of equality in this process. It is vital to be aware that consumer debt relief comes at the expense of other market participants – obviously direct creditors but the general public as well.

Keywords: consumer bankruptcy, individual debtor, indebtedness and insolvency of natural person, bankruptcy law, discharge of debts.

JEL Class: K35, G33.

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INTRODUCTION

Many people face financial difficulties in repaying their debts. Sometimes the problem is so serious that they are unable to cope with it on their own. The solution in such a situation may be a consumer bankruptcy. The aim of this article is to review and present changes to the consumer bankruptcy law and the implications of these changes for individual debtors. The study of the effects of bankruptcy proceedings against individual debtors who do not conduct business activity (remission of bankrupt's liabilities or at least partial repayment of creditors by the debtors) together with the analysis of changes in the law will be used to verify the hypothesis that the liberalization of regulations has resulted in an increase in the number of consumer bankruptcy petitions filed, as well as open bankruptcy proceedings conducted against individual debtors.

The article will be divided into five parts. The first part contains review of the literature and legal regulations of consumer bankruptcy in Poland, while the second part focuses on the situation and regulations in this area in European countries and the USA. Then, in the third part the essence of consumer bankruptcy in comparison with the bankruptcy of business entities is briefly characterized. The next part of the article – the fourth one focuses on a description of the process of indebtedness and debt relief of consumers in Poland on the background of changing regulations, indicating the sources, the course and the effects of this issue. For this purpose the analysis of the regulations and data in the area of consumer bankruptcy was made. In the next step – in the fifth part of the article, the sense of social equality in the context of progressive liberalization of consumer bankruptcy laws is discussed. The final part of the article – summary shows conclusions resulting from the study.

1. OVERVIEW OF THE LEGAL REGULATIONS OF CONSUMER INSOLVENCY IN POLAND

The institution of consumer bankruptcy has been implemented in Poland on the occasion of changes in bankruptcy legislation – by the Act of 5 December 2008 amending the Act – Bankruptcy and Reorganisation Law and the Act on court costs in civil cases. The provisions came into force on 31.03.2009. As Michalak (2009) notes in The Commentary to Article 1 of the Act, the act has introduced bankruptcy proceedings against natural persons not conducting business activity, long advocated in the doctrine. Thus, consumer bankruptcy has been regulated as a separate proceeding. In this legal order, prior to the implementation of subsequent changes, bankruptcy for individuals not conducting business activity was declared if the condition was met that their insolvency was caused by exceptional circumstances beyond their control. Additionally, declaring bankruptcy

was not possible if the debtor incurred liabilities while being insolvent, or if the termination of the debtor's employment relationship occurred for reasons attributable to the employee, or with his or her consent. It should be noted that the conditions allowing to declare bankruptcy were so strongly limited that this solution was used very rarely.

Over the last years the regulations have been amended. The problem of regulatory changes has already been discussed by Wiśniewska (2018: 80–109). It is worth tracing the changes in the provisions governing the prerequisites affecting the court's decision to open proceedings in the event that the debtor has committed gross negligence causing an increase in the state of their liabilities. An important change in the regulations occurred on 31.12.2014 (by the Act of 29.08.2014). The prerequisites for opening proceedings were modified – they became significantly more flexible. At the same time, the list of cases in which the court dismissed the bankruptcy petition was expanded. The assessment of the case when a debtor caused his or her insolvency, or substantially increased its amount intentionally or as a result of gross negligence has been mitigated. While these regulations came into force, there has been a noticeable increase in the number of both applications filed and bankruptcies opened.

Another significant change occurred under the Act of 30.08.2019 amending the provisions of the Bankruptcy Law, effective from 24.03.2020. The existing need for the court to examine whether the debtor intentionally contributed to the state of his or her indebtedness was withdrawn. At the same time, a provision indicating the possibility for the court to refuse to approve a plan for repayment of creditors or to cancel the bankrupt's liabilities unless, as indicated in Article 491^{14a}, it is "*justified by considerations of equity or humanitarian reasons*" has been introduced into the legislation.

2. CONSUMER BANKRUPTCY – OVERVIEW OF SOLUTIONS USED WORLDWIDE

The institution of consumer bankruptcy is also used around the world. The development of legislative systems for consumer bankruptcy in the EU was presented by Walter and Krenchel (2021). The authors looked into comparing regulations in EU countries and measuring their leniency. Regulatory developments in U.S. law were described by Albanesi and Nosal (2018). They described the impact of the reform in US laws on bankruptcy and insolvency and the resulting consequences for households. Li and White (2019), on the other hand, focused on studying the impact of the change in the US regulations on the increase in financial difficulties of the elderly.

It is worth to look at the experience of other countries in this area. Cukiernik and Teluk (2007) point to the example of the United States, where the model of

open and easy debt relief has worked for a long time. Consumer bankruptcy has become an increasingly popular solution in the U.S. and the increase in its popularity has not been accompanied by a decrease in macroeconomic indicators; on the contrary, the number of consumer bankruptcies has grown along with economic growth. The authors explain this by the fact that consumers began to treat bankruptcy "*as an instrument to optimally allocate risk in the consumer credit market*". This even made it necessary to tighten the rules in 2005, so that this solution would not be abused by people who wanted to go bankrupt in a relatively easy way without suffering onerous consequences.

In Europe, as Szymańska (2013: 54–67) points out, EU countries started to introduce consumer bankruptcy legislation in the 1980s and 1990s. Most Central and Eastern European countries decided to implement relevant regulations in this area at the end of the first decade of the 21st century.

Data on the solutions applied in Europe is provided by the project of the Law on Amendments to the Law – Bankruptcy Law and Certain Other Laws from May 2019. The regulations in force in the Czech Republic since 2008, were amended in 2017 in order to counter unfair practices when it comes to declaring bankruptcy. The Lithuanian regulations largely focus on the cause of the consumer's insolvency. A debtor cannot benefit from a consumer bankruptcy solution if his or her insolvency is due to illegal behaviours, fraud and unfair conduct. Similarly, in France, the assessment must be made as to whether the debtor created the insolvency without malicious intent and whether, in good faith, he or she became insolvent. French law also requires that a number of material and formal legal prerequisites must be met in order to benefit from the debt relief. Not all categories of individuals can take benefit from such solutions.

Some countries decide to facilitate the use of the institution of consumer bankruptcy. The legislation in Slovakia introduced in 2005 was amended in 2017 so as to broaden the circle of entities that could be affected by the procedures contained in the regulations.

In turn, the British legislation does not provide for an automatic repayment plan for creditors. The repayment is made only if the debtor earns enough to cover his or her living expenses and those of his or her closest family and has a financial surplus after paying them. However, British solutions assume a period of one-year restrictions. During this time, the debtor cannot perform certain professions, cannot sit on the board of directors of a limited liability company or hold certain government positions. In addition, during this period, the debtor is not authorized to incur new financial obligations without the trustee's approval, his or her income is controlled, and he or she is required to report any additional income beyond the level of resources needed for a normal, dignified life. The solution assuming that the discharge of the consumer's debts occurs automatically, 12 months after the

initiation of the bankruptcy procedure, as indicated by Hrycaj and Michalska (2018: 7–37), is practiced in England, Wales, Scotland and Northern Ireland.

As, in turn, creators of portal spiralazadluzenia.pl (www5), who specialize in tracking consumer bankruptcy solutions, state that in Germany regulations are much more restrictive in this aspect. The debtor remains under the supervision of the trustee for six years. During that time, the debtor is obliged to take up a job even below his or her qualifications and to hand over to the trustee any amount of surplus money above the seizure-free amount. Debt relief is not granted until after this six-year period, unless there are grounds to refuse relief for remaining debts.

In Norway, restrictive regulations are in place to ensure that the debtor faces long term consequences related to the debt settlement process. Great importance is attached to the enforcement of claims at the stage of first calls for payment. Failure to do so may result in being entered in the register of debtors, which in turn will result in e.g. inability to obtain credit or limited access to post-paid services, such as telephone, television or Internet. In turn, Dutch regulations focus on supporting the debtor's self-reliance in getting out of debt. This is done by giving consumers support in dealing with formal matters, such as reading and interpreting payment notices, helping them find a job, and even giving the debtor a consolidation loan from the municipal bank to help them get out of debt.

It can be noted that the problem of indebtedness of individuals, resulting in the introduction of the institution of consumer bankruptcy into the legal systems, as well as the abuse of this method for solving problems with consumers excessive debt is also present in other countries. The law is being amended and attempts are being made to eliminate the abuse. Preventive methods are used in the form of strict regulations that are supposed to discourage people from getting into debt. On the other hand, solutions such as providing consumers with official assistance are used, so that the debtor, if possible, first tries to deal with financial problems on his or her own.

3. CONSUMER BANKRUPTCY VS. BUSINESS BANKRUPTCY

The description in this section of the article refers to Poland. The state obligation to help people who, for various reasons in life, in an unfaulted manner, have found themselves in a difficult material situation, i.e. making it impossible to repay their debts, may seem obvious. What is needed is a solution that allows such people to safely get out of debt and rebuild a normal life. However, a question arises as to how to implement such support in an effective way and to the right group of people. As pointed out by the President of the Office of Competition and Consumer Protection (www3), *"It would not be good if we allowed bankruptcy*

also for those who intentionally, through their own fault, fell into debt loops with no guarantee that they will incur liabilities in a responsible manner in the future."

Bankruptcy proceedings were regulated by the act dated 28 February 2003. Bankruptcy proceedings¹ – conducted against a private person not running business activity as well as against a business entity – seem to be largely similar. The bankrupt (an entrepreneur as well as a consumer) is obliged to indicate and hand over to the trustee all of their assets as well as documentation regarding these assets and debts. Subsequently, after the identification of the bankruptcy estate and the list of receivables, the bankruptcy estate is liquidated and the funds obtained are distributed among the creditors participating in the proceedings.

However, there are fundamental differences between the two types of proceedings. In case of an entrepreneur, the bankruptcy petition may be filed by the debtor or any of its personal creditors. In case of a natural person who does not conduct business activity, such a request may be filed only by the debtor². A significant difference is also expressed in the purpose of conducting proceedings and the possibilities of their realization in both cases.

In case of the proceedings conducted in respect of business entities, the court shall dismiss the application for bankruptcy if the assets of the insolvent debtor are not sufficient to cover the costs of the proceedings or are only sufficient to cover these costs. This means that the proceedings shall not be conducted if the assets gathered in the bankruptcy estate are not sufficient to partially satisfy the creditors. The situation of individuals is approached differently. According to the law, the court may conclude the bankruptcy proceedings also in the absence of the bankruptcy estate or when, after the bankruptcy estate has been completely liquidated, no final distribution plan has been drawn up due to the absence of the bankruptcy estate funds that could be subject to distribution.

It is also worth noting that the main aim of the proceedings conducted against a company is to try to satisfy the creditors' claims as much as possible. It is different in the case of individuals not running business activity. With regard to this group of debtors, proceedings should be conducted in such a way as to enable satisfying the creditors' claims and to remit the debtor's liabilities not fulfilled in bankruptcy proceedings as well.

A comparison of the provisions of the Bankruptcy Law for individuals and business entities shows a significant preference for the first group. As Adamus (2015: 33–37) points out, in the case of consumer bankruptcy, *"the priority is therefore the debt relief of the bankrupt"*.

¹ Previously – Bankruptcy and Reorganization Law.

² With certain exceptions – a creditor may file a bankruptcy petition against an individual who has carried on business if less than one year has elapsed since the date the individual was removed from the relevant register or ceased to carry on business.

4. DEBT AND DEBT RELIEF PROCESS

4.1. Causes of indebtedness

Successive amendments of Polish bankruptcy laws concerning individuals are aimed at improving the rules where they appear to be imperfect. Commentators on the subject, however, point to the source of the debt problem among consumers.

As Gurgul and Podczaszy (2019: 9–16) note, the August 2019 amendment project to the law lacked an examination of the socio-economic conditions that induce consumers to behave in certain ways, as well as an analysis of the reasons for their insolvency and the extent of debt problems both nationally and globally. The authors predict further relaxation of the rules and point out that *"there is a steady process of social familiarization with the total economic default of a single individual"* and that *"it could be stated that any intermediate proposals for change are only temporary solutions on the way to final solutions, where anyone who finds that the burden of debt prevents them from freely pursuing their goals will be able to obtain legal debt relief upon application."* Podczaszy (2017: 61–67) further emphasizes that *"The totalization and infantilization of the society by consumption has already gone so far that perhaps soon no legal instruments will help anymore."* As Dąbrowska and Janoś-Kresło (2020: 37–55) add, *"the purchase of goods and services and their consumption has ceased to be dependent on the purpose it serves, becoming an end in itself."*

Also, Swoboda (2014: 241–255) states that *"the sudden technological development, IT and social transformations have caused the development of indebtedness beyond the measure of average citizens and falling into a debt spiral"*. Similarly, Żurawski (2017: 372–386) points to the ease of access to credit and loans, which is associated with the growing indebtedness of society. Chybiński (2021: 6–12) notes that regulations may not sufficiently counteract abuses by people overusing the services of financial institutions. The author also draws attention to the role of mechanisms conducive to indebtedness, such as imperfect creditworthiness testing procedures or conditions for using the services of shadow banking system, indicating that financial institutions are focused on generating profits without paying attention to the future material situation of their customers.

Cecchetti et al. (2011) point out *"Debt is a two-edged sword. Used wisely and in moderation, it clearly improves welfare. But, when it is used imprudently and in excess, the result can be disaster. For individual households and firms, overborrowing leads to bankruptcy and financial ruin"*.

Lewicka-Strzałecka (2019), on the other hand, underlines that *"generally speaking, the extent of social consent to consumer fraud in the area of finance is*

large and shows a growing trend". It turns out that consumers are willing to justify the behaviour of others, such as: taking out a loan without carefully studying the terms of its repayment, frequent changes of bank accounts to avoid seizure by a bailiff, transferring assets to the family to escape from a creditor, or working illegally to avoid collecting debts from their wages.

Liberalization of bankruptcy laws may foster the danger described by Cukiernik and Teluk (2007) of encouraging overconsumption instead of prudent spending planning and timely payment of liabilities.

In conclusion, the authors dealing with the subject, referring to the issue of increasing indebtedness among consumers, point to the ease of access to credit and loans, the progressive tendency to increase consumption in society, a certain social acceptance of consumer abuse in the financial area, as well as the liberalization of regulations in this field.

4.2. (De)motivating activities related to indebtedness

The liberalization of the regulations is consistent with the message sent to debtors by the Ministry of Justice in its documents: Consumer Bankruptcy, a guide issued in 2015 and Consumer bankruptcy and consumer arrangement, a practical debtor's guide published in 2021. These are booklets prepared for debtors, from which they can obtain basic information on the conditions and the course of bankruptcy proceedings. It is worth noting the style of writing used in these documents and its subsequent changes.

While the former study points to the importance of *"the legal and property consequences associated with this proceeding"* the message from the 2021 Guide is much softer in tone. It provides tips for those considering taking advantage of debt relief through consumer bankruptcy. There are phrases such as: *"Consumer bankruptcy should be a quick, simple and transparent process leading to your debt relief"* as well as: *"Can a creditor apply for my bankruptcy? NO. It is your privilege."* and further on *"The ability to discharge your debts in consumer bankruptcy is your right and privilege"*. So one may get the impression that consumer bankruptcy is an uncomplicated and easy procedure. Only a consumer seeking bankruptcy is entitled to initiate bankruptcy proceedings and the creditors have, in principle, no voting rights in this process

The Guide further states that: *"Conscious or grossly negligent increasing your state of insolvency e.g. by incurring effectively unmanageable debts will result in an extension of your plan to repay your creditors"*. Thus, from reading this excerpt one may conclude that evident, intentional increasing of the debt status is not unethical or improper, but may only lead to prolongation of the creditors' repayment plan. As the regulations indicate, this period may not exceed 7 years

maximum. The attention should also be focused on the article 370d paragraph 2 of the Bankruptcy Law, which states that in case of significant improvement of material conditions of the bankrupt during the period of execution of the plan of repayment of creditors, the creditor and the bankrupt may apply for a change in the plan of repayment of creditors. However, the improvement of the material conditions of the bankrupt must result from reasons other than the increase of remuneration for work or income obtained from personally performed gainful activity of the bankrupt. This means that if the debtor e.g. improves his or her qualifications and, as a result, finds a noticeably better remunerated job, it will not affect the possibility of his or her creditors to recover their claims. It should be emphasized that if the liabilities were enforced by way of enforcement proceedings, the deduction would be subject to the share in the debtor's remuneration set forth by law, i.e. with the increase of the debtor's income, the amount going to the creditor would increase.

During bankruptcy proceedings, the debtor's salary is subject to deduction. Half of the salary is protected, however, it cannot be less than the amount corresponding to the minimum wage. It seems fair and obvious to leave a part of the salary with the debtor, thanks to which he or she will be able to cover the costs of ongoing maintenance, just as it is indisputable to collect a part of the debtor salary to cover the costs of bankruptcy proceedings and repay creditors. However, for those who earn less than twice the minimum wage, there is no motivation to increase the level of their earnings, as the whole amount earned will go to the bankruptcy estate anyway. It is only when the level of earnings exceeds twice the minimum wage that the amount actually received by the bankrupt will increase. It is conceivable that in case of some people this may lead to seeking solutions to get around the law and find employment in the grey area. Since their salary is to be subject to seizure, it may be more advantageous for them to work in an officially undeclared way (although in this situation the debtor is deprived of the obvious rights and protection resulting from legal employment) and to use all the money they earn. Another type of the attempt to get around the regulations could be the debtor's agreement with the employer to work for a non-deductible minimum wage rate and to arrange for payment of the remaining salary in an "informal" way. However, such solutions will certainly not be possible for all jobs, moreover, changes in the regulations (such as in tax and labour law) are aimed at eliminating such situations.

Another aspect to mention is the fact that the protection applies to all the financial means received by the debtor, such as social benefits, alimony, family and parental benefits (including 500+); family, nursing and childbirth allowances;

one-off childbirth benefit³. For some people who could potentially find employment, taking a job could turn out to be an unfavourable solution because it would result in losing (at least some of) the social support benefits. Financial support should certainly be targeted at those who need it, but the key is how the funds are distributed so that they go where they are actually needed. In some cases, poorly targeted support may cause counterproductive effects, such as lack of motivation to seek employment and permanent use of government support as requiring less commitment. As Adamus points out (2019: 9–15), excessive consumer protection may contribute to the phenomenon of so-called moral hazard, expressed in the consumer's claims attitude and lack of responsibility for his or her decisions, which may ultimately work against them.

4.3. Causes of indebtedness

In order to illustrate the impact of changes in regulations, it is worthwhile to track the data on the effects of their introduction, concerning both the number of applications filed and proceedings initiated. As indicated in the explanatory memorandum to the draft of changes in regulations, in the period from the entry into force of the changes in regulations (31.03.2009) until the end of 2012, 2 161 applications for bankruptcy were filed and only 60 decisions to open proceedings were made. Therefore, only about 3% of requests resulted in opening bankruptcy proceedings by the court. As can be seen from the subsequent explanatory memorandum to the draft amendments to the regulations (2014), in 2014 there were 300 applications and 32 open proceedings, which gives 11% share of cases of opening proceedings in relation to the applications. To sum up, in the period 03.2009–12.2014 the institution of consumer bankruptcy was not very popular and in addition the fraction of the announced proceedings to applications filled was low.

The data for the next period obtained from the Statistical Directory of Justice Department are different. The significant increase in the number of filed applications from 5,616 to 15,458, as well as in the number of open proceedings from 2,153 to 7,781 in 2015, 2019 is recorded. The ratio of cases opened to applications for the described period was nearly 50%.

However, the originator of the recently introduced changes (in force from 24.03.2020) as well as the legislator considered these results still insufficient and, as mentioned, the requirement for the judge to examine the consumer's negligence in causing his/her insolvency was eliminated. Nowadays, bankruptcy proceedings

³ *Consumer bankruptcy and consumer arrangement, a practical debtor's guide.*

are declared for all applications filed⁴ and, according to data published by the Statistical Directory of Justice Department, 17,532 bankruptcies were declared in 2021, and 22,035 applications for bankruptcy were filed in the same time. These changes are illustrated on the Chart 1. Thus, one can see a jump in both areas discussed – the number of bankruptcy applications filed and the share of cases opening proceedings in relation to filings. The ratio of cases opened to applications in 2021 was nearly 80%. The increase in the number of proceedings opened in relation to consumer bankruptcy applications filed is shown in Chart 2.

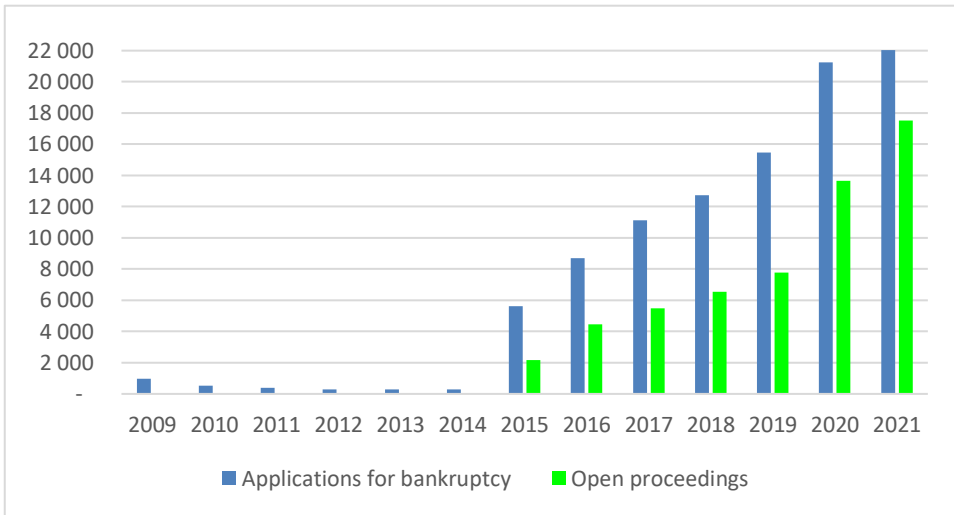


Chart 1. Bankruptcy filings vs. open proceedings

Source: own analysis based on data from www4 (Bankruptcy, reorganization, restructuring proceedings in 2005–2021)

⁴ However, applications that do not meet formal requirements may be rejected.

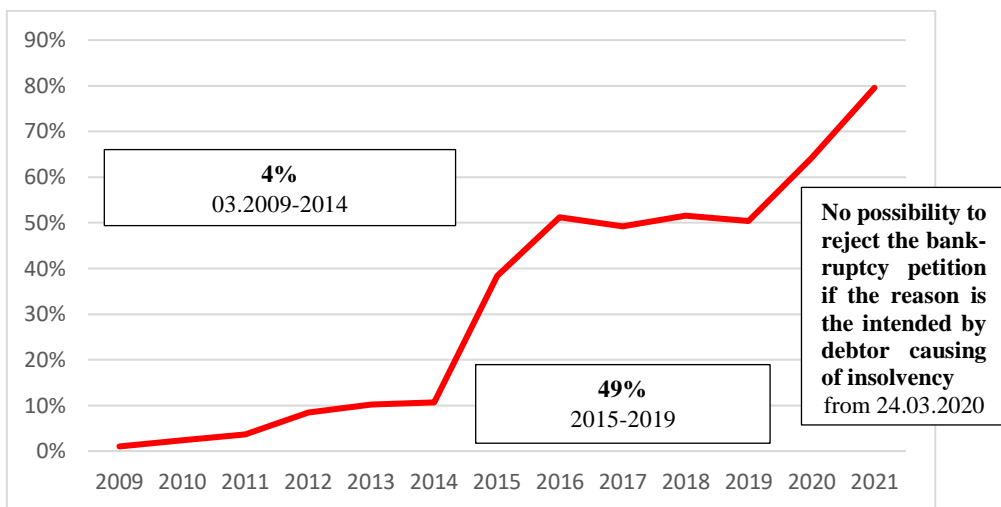


Chart 2. Relation of open proceedings to number of applications filed

Source: own analysis based on data from ww4 (Bankruptcy, reorganization, restructuring proceedings in 2005–2021)

Table 1. Age structure of debtors against whom bankruptcy proceedings were opened in 2015–2021

The age of the debtors (in years)	2015	2016	2017	2018	2019	2020	2021
<20	0,05%	0,11%	0,16%	0,14%	5,76%	6,38%	7,02%
20–29	5,16%	5,05%	5,68%	5,04%			
30–39	25,15%	23,18%	23,67%	20,74%	20,41%	22,03%	22,58%
40–49	24,90%	25,54%	24,39%	23,09%	23,18%	23,86%	26,17%
50–59	20,68%	21,01%	19,35%	19,38%	17,67%	18,31%	17,61%
60–69	18,30%	18,09%	18,60%	21,32%	20,88%	19,08%	17,48%
70–79	5,21%	6,07%	7,04%	8,83%	10,22%	9,17%	8,14%
80–93	0,55%	0,95%	1,11%	1,46%	1,88%	1,17%	1,00%
< 60	75,94%	74,89%	73,25%	68,39%	67,01%	70,58%	73,39%

Source: own analysis based on data from ww1 (Consumer Bankruptcy Reports for 2015–2021)

The brief analysis of the data published by the Central Economic Information Centre regarding the age structure of debtors shows (Table 1) that in the years 2015–2021 from 67% to 76% of debtors in relation to whom consumer bankruptcy was declared are persons under 60 years of age, so (except the special cases) persons able to work or persons (also underage or studying) able to take up work in the future⁵.

4.4. Effects of conducted proceedings – cancellation of liabilities without setting a repayment plan

The law⁶ allows the debtor to be relieved of the payment of debts, but only in an exceptional situation. It is briefly described in the Guide of the Ministry of Justice: "*Debt relief without establishing a plan for repayment of creditors is completely exceptional. It may take place only if your personal situation clearly indicates that you are permanently incapable of making any repayments under a plan to repay your creditors*". The Guide goes on to point out that this situation applies mostly to single-person pensioner households.

It is necessary to take a closer look at what is meant by this specific circumstance of cancelling the bankrupt's debts without establishing a repayment plan. Some clues may be found in statistics concerning the effects of conclusion of conducted proceedings. Unfortunately they are not publicly available (perhaps they are not registered at all) and in order to demonstrate the data presented below, it was necessary to review daily editions of Court and Economic Monitor (www2) for the year 2021. In this way, summary information on all court decision requiring such disclosure according to the provisions and concerning the termination of bankruptcy proceedings against individuals not conducting business activity was collected.

An analysis of court decisions shows that termination of bankruptcy proceedings without setting a repayment plan, however, is not as rare as the regulations would indicate. A study conducted for 2021 shows that courts issued decisions to close bankruptcy proceedings⁷ without setting a repayment plan⁸ (or conditional

⁵ Data on the number of debtors in 2019–2021 are given cumulatively for persons under 30 years of age. In the years 2015–2018 the category of persons under 20 years of age was also included, the percentage of the youngest persons in the group of debtors was marginal at 0.05%–0.16%, therefore, it can be assumed that the reported data refers to working age persons.

⁶ Article 491¹⁶ of the Bankruptcy Law.

⁷ Article 491¹⁴ paragraph 8 of the Bankruptcy Law provides that the issuance of a decision on establishing a plan for repayment of creditors, or discontinuance of the bankrupt's obligations without establishing a plan for repayment of creditors, or conditional discontinuance of the bankrupt's obligations without establishing a plan for repayment of creditors shall mean the closing of the proceedings.

⁸ According to article 491²¹, these are not subject to redemption: obligations of alimony nature, obligations resulting from pensions for compensation due to illness, incapacity to work, disability or death, obligations to pay fines adjudged by the court, as well as to fulfil the obligation to repair damage and compensate for harm

non-repayment) in as much as 32% of all cases. In 56% of cases, the court established a repayment plan or an agreement with creditors was reached, meaning that the debtor was obliged to make repayments to creditors. In the remaining 12% cases it was not clear from the decision whether a repayment plan was set in the proceedings or whether all the bankrupt's liabilities were written off without setting a repayment plan. It is worth noting that after eliminating the last group of cases with unclear conclusion the percentage of proceedings ending with cancellation of all of the bankrupt's liabilities without a repayment plan amounts to 36% of all cases.

In the situation when bankrupts at the working age (or able to work in the future) represent in recent years even 3/4 of the group of bankrupts (those under 60 years of age, indicated in Table 1), attention is drawn by the high percentage of cases, constituting 1/3 of all completed proceedings, in which debtors are deemed permanently incapable of making any repayments⁹.

The article raises important ethical issues, which are difficult to regulate by law, but referring to the hypothesis presented in the introduction, it should be pointed out that in Polish legislation it is possible to notice a leniency of the rules on the possibility of bankruptcy for individuals, and consequently an increase in the number of consumer bankruptcy petitions filed, as well as open bankruptcy proceedings conducted against individuals who do not conduct any business activity.

5. BANKRUPTCY RULES AND THE SENSE OF EQUALITY

In the light of the above considerations and the data presented, a question arises about the consequences of consumer bankruptcy for the directly concerned creditors, financial market participants and, finally, for the society as a whole. Does the realization of protection goals for the debtor-consumer not violate the rights of other market participants?

Debt relief for people who, for reasons beyond their control, find themselves in a difficult financial situation seems to be a solution that does not raise many doubts. But should the same treatment be offered to people who clearly contributed to their own insolvency? Such a solution means that obligations of some consumers are written off, while others have to pay their debts. This may result in

suffered, obligations to pay restitution or pecuniary performances ordered by the court as a punishment or a measure connected with placing the offender on probation, as well as obligations to redress damage resulting from a crime or misdemeanour established by a final judgment, and obligations that the bankrupt intentionally failed to disclose, if the creditor did not participate in the proceedings.

⁹ The age structure of bankrupts between 2015 and 2021 was used for comparison. In the analysed period it is rather constant, which made it possible to relate this data to the results of bankruptcy proceedings completed in 2021. Bankruptcy proceedings are usually completed after a period of not less than one year from the date of opening the proceedings.

more people opting for a consumer bankruptcy solution, as it is easier and requires less effort on the part of the debtor, instead of trying to repay creditors (if it is actually possible).

It also seems that not enough attention is given to creditors in the situation of debt relief for a non-business individual. These creditors may include banks, financial institutions, other economic entities, but also other individuals. Cancellation of the bankrupt's liabilities in the process of bankruptcy proceedings or setting the repayment plan at a level that satisfies only a small part of the claims may lead to deterioration or even loss of liquidity by creditors. Langer (2020: 207–218) recognizes this issue, wondering "*whether opening the access of wider range of debtors to legal resources enabling their debt relief does not excessively violate the constitutional rights of creditors. As an analogy, one can mention the numerous jurisprudence of the Constitutional Court on the imbalance in the landlord-tenant relationship, in which the Court declared unconstitutional legal regulations that interfere too much with the rights of landlords, providing protection for tenants that is disproportionate to the goal*"¹⁰.

In a broader perspective, the effects of the progressive liberalization of consumer bankruptcy laws on the society as a whole cannot be ignored either. Financial institutions, which will not be able to enforce their claims against debtors declared bankrupt, will try to seek compensation for their losses. This, in turn, may result in higher costs of credits and loans or stricter thresholds for creditworthiness examination. Consequently, this will limit access to the aforementioned services or increase their costs for the remaining financial market participants. As a result, access to credit and loans may become more difficult for the poorest individuals and paradoxically lead to an increase in consumer bankruptcy due to the increased debt servicing costs resulting, for example, from seeking financing from the nonbank financial companies. Current regulations are more and more attractive for people considering taking advantage of the institution of consumer bankruptcy. What is important, the liberalization of regulations has made the access to this solution easier for people who have intentionally increased their level of indebtedness. The number of proceedings terminating bankrupt's debts without setting a repayment plan is not marginal, as it should be expected from the regulations, but it occurs in about 1/3 of cases. In this situation, excessive consumption and the resulting indebtedness of the society may lead to the violation of the principle of social equality.

¹⁰ At this point, one may wonder whether any constitutional rights may be considered to be more or less violated, whether it is possible to graduate the violation of the constitutional rights.

CONCLUSIONS

The paper presented the institution of consumer bankruptcy and the review of its legal regulations applied in Poland and some other countries. The process of consumer indebtedness and debt relief was described. The causes of insolvency of individuals and important aspects of the debt relief process were discussed. The results of the data analysis show that the number of bankruptcy applications and proceedings have definitely increased in recent years. As the study of changes in consumer bankruptcy laws shows, this growing trend is correlated with the progressive liberalization of these laws. In addition, about 1/3 of consumer bankruptcy proceedings completed in 2021 were concluded with the cancellation of the bankrupt's liabilities without establishing a repayment plan. This is a very high fraction considering that this way of closing bankruptcy proceedings is indicated in the regulations as to be used in exceptional situations.

The results of the analysis, and conclusions of the observations support the hypothesis put forward at the beginning that the liberalization of regulations in the area of consumer bankruptcy has resulted in a significant increase in the number of consumer bankruptcy petitions and open bankruptcy proceedings against individual debtors. A total of 2,161 bankruptcy petitions were filed in the first less than four years after the changes to the laws allowing consumer bankruptcy came into force (by the end of 2012). In 2021 only, there were already 22,035 such applications. In the first six years after the implementation of the regulations allowing the announcement of consumer bankruptcy (2009–2014), a total of 120 decisions to open bankruptcy proceedings were issued, in 2019 there were already 7,781, and two years later – 17,532 cases. Thus, one can see a clear jump in the number of cases in both areas analyzed.

It seems that as important as creating the possibility for the indebted to return to normality in the form of consumer bankruptcy, it is equally important to take care of the sense of equality in this process. It is vital to be aware that consumer debt relief comes at the expense of other market participants – obviously direct creditors but also the general public. Therefore, the subject of the next research in this area could be the verification whether such a direction of changes in the consumer bankruptcy institution in Poland is really in line with the social norms accepted in the Polish society.

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KONSEKWENCJE ZMIAN PRZEPISÓW O UPADŁOŚCI KONSUMENCKIEJ

Streszczenie

Cel artykułu/hipoteza: Celem artykułu jest dokonanie przeglądu i przedstawienie zmian przepisów dotyczących upadłości konsumenckiej oraz konsekwencji, które wynikają z tych zmian dla osób fizycznych nieprowadzących działalności gospodarczej.

Metodyka: Przeprowadzone badanie efektów postępowań upadłościowych prowadzonych wobec osób fizycznych nieprowadzących działalności gospodarczej wraz z dokonaną analizą zmian przepisów posłużą do zweryfikowania hipotezy, że liberalizacja przepisów spowodowała wzrost liczby złożonych wniosków o ogłoszenie upadłości konsumenckiej, jak i otwartych postępowań upadłościowych prowadzonych wobec osób fizycznych nieprowadzących działalności gospodarczej.

Wyniki/Rezultaty badania: Wyniki przeprowadzonej w artykule analizy pozwalają stwierdzić, że hipoteza została potwierdzona, ponieważ liberalizacja przepisów w obszarze upadłości konsumenckiej spowodowała istotny wzrost liczby wniosków o ogłoszenie upadłości konsumenckiej oraz otwartych postępowań upadłościowych prowadzonych wobec osób fizycznych nieprowadzących działalności gospodarczej. Wydaje się, że równie ważne, jak stwarzanie możliwości do powrotu do normalności dla osób zadłużonych w postaci rozwiązania jakim jest upadłość konsumencka, jest zadbanie o wiążące się z tym zagadnienie poczucia równości. Trzeba mieć świadomość, że oddłużenie konsumenta odbywa się kosztem innych uczestników rynku – bezpośrednich wierzycieli oraz ogółu społeczeństwa.

Słowa kluczowe: upadłość konsumencka, dłużnik indywidualny, zadłużenie i niewypłacalność osoby fizycznej nieprowadzącej działalności gospodarczej, prawo upadłościowe, zwolnienie z długu.

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