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# Economic and legal aspects of personal bankruptcy

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**Abstract:** When a new act on bankruptcy law entered into force on 1 January 2016, it introduced changes in the scope of personal bankruptcy. The article points to the economic aspects of legal solutions provided for in the new regulation for indebted natural persons, significant on a micro and macro scale. At the same time, it points to the problems in the personal bankruptcy procedure, which had existed before the amended Act entered into force, and the problems encountered by debtors and courts in connection with these amendments. The article is based on the author's experience in preparing applications for filing for personal bankruptcy and interviews with the judges employed in the bankruptcy and restructuring section of District Courts. The results of the observations and conducted interviews were compared to practical cases which are the subject of bankruptcy applications studied as part of the research project.

**Keywords:** restructuring, bankruptcy, consumer

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## 1. Introduction

The political, social and economic transformations that took place in Poland after the year 1989 brought about fundamental changes in the economic behaviour of the so-called consumers, i.e. natural persons not conducting a business activity.<sup>1</sup> Before the year 1989, under the conditions of the socialist economy, the concept of personal bankruptcy was non-existent, despite the fact that

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<sup>1</sup> Personal bankruptcy in Poland is mainly regulated by the Act of 28 February 2003 - Bankruptcy Law (consolidated text, Journal of Laws of 2017, item 2144), in particular Article 491<sup>1</sup> - Article 491<sup>23</sup>.

there were insolvent natural persons, i.e. ones incapable of paying their maturing financial obligations. Low availability of material goods, widespread and common employment, very limited possibility of indebtedness by means of loans and credits resulted in insolvency having no significant economic importance in the life of the Polish community.

## **2. Economic and legal aspects of bankruptcy before the year 2016**

After the year 1989, under the conditions of market economy, the citizens of Poland had disproportionately greater possibilities of satisfying their material needs. The volume of these needs changed as well. The aspirations to own apartments and later, houses, to furnish and decorate them, or to purchase cars have increased. Poles began to travel around the world, pursue further education and broaden horizons. They provided stronger financial support to their children. These financial needs could not be satisfied by the gradually and disproportionately rising salaries. Part of this increase was reduced by inflation, especially at the initial stages of the transformation period. The solution came in the form of a credit and loan operation, initially carried out by banks and credit unions, and then also other entities: commercial law companies, natural persons running civil law partnerships or individual business activities. On the other hand, a significant portion of society were not able to cope with the increasing costs of living due to economic reasons (Świecka, 2008; Adamus, 2015, Gębski, 2013; White, 2005). The economic changes led to the emergence of the phenomenon of unemployment (sometimes permanent unemployment). Earning minimum wage<sup>2</sup> for work became the basis for the livelihood of many people. Many retirees and pensioners also suffered from financial deficiencies.<sup>3</sup> For such people, the method of satisfying their basic needs (rather than raising their standard of living) was to take out credits and loans.

After the year 1989, the consequence of these social and economic changes was the emergence of an increasing percentage of consumers who no longer were able to deal with their debts. As a result, they became insolvent. Insolvency is both an economic as well as a legal concept.

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<sup>2</sup> Currently regulated by the Act of 10 October 2002, on Minimum Remuneration for Work, consolidated text, Journal of Laws of 2018, item 2177.

<sup>3</sup> The basic legal act regulating the system of retirement and social pensions in Poland is the Act of 17 December, 1998 on retirement and social pensions from the Social Insurance Fund (consolidated text, Journal of Laws of 2018, item 1270). It should be noted, however, that emoluments of a similar nature are regulated and paid separately to a number of social and professional groups, such as farmers, the so-called uniformed services (including police officers), judges, prosecutors, district attorneys.

Currently defined in Article 11, Sec. 1 of the Act on Bankruptcy Law,<sup>4</sup> according to which “A debtor is insolvent if they have lost the capacity to fulfil their due financial obligations.” The phrasing “lost the capacity” refers to actual payment capacity and, in principle, means that there is no cash available both at the till and in bank accounts in order to settle maturing financial obligations (Zimmerman, 2016).

After the political transformation in Poland began, for an extended period of time of the functioning of market economy, the concept of personal bankruptcy<sup>5</sup> was not introduced, which was quite opposite to the legislation of the European Union member countries, also from before the moment of the accession of the Republic of Poland to the EU. This resulted in an increasing number of insolvent consumers, the economic and social consequences of which were negative. Insolvent people lived in poverty, and the creditors enforced their claims permanently. Since the main creditors' claims increased by high ancillary benefits (especially interest during the periods of high inflation), insolvent consumers were not able to regain financial liquidity on their own. They were often forced to take advantage of state social assistance programs and institutions.

The insolvency of consumers was a factor in the increasing percentage of illegal employment or concealment of wages.<sup>6</sup> As a consequence, social security contributions were not paid on the wages of insolvent workers (or were under-reported), the far-reaching consequences of which were and will still be felt by the society as a whole. This applied equally to deficiencies in the amount of retirement, disability, accident and health insurance contributions. In the future, the insolvent consumers employed in this manner will receive lower pension benefits and their shortage will be compensated by social welfare benefits. The budget of the State Treasury also suffered from these deficiencies in consequence of not receiving due taxes on remunerations.<sup>7</sup>

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<sup>4</sup> Polish legislation bases the understanding of the concept of “insolvency” on the German *Insolvenzordnung* – Stanisław Gurgul in “Komentarz do art. 11 ustawy- Prawo upadłościowe i naprawcze” (trans. “*Commentary on Article 11 of the Act on Bankruptcy and Composition Law*”), Publishers C.H. Beck, 9th edition, Warsaw 2013, pp. 34-35.

<sup>5</sup> Unlike bankruptcy of entrepreneurs, whose bankruptcy was first regulated by the Regulation of the President of the Republic of Poland of 24 October 1934 - Bankruptcy Law (consolidated text, Journal of Laws of 1991, No. 118, item 512, as amended), and then the Act of 28 February 2003 - Bankruptcy and Composition Law (currently from 1 January 2016 - Bankruptcy Law).

<sup>6</sup> The minimum remuneration for work is free from claim enforcement pursuant to article 871 of the Act of 26 June 1974 - Labor Code (consolidated text, Journal of Laws of 2018, item 1629).

<sup>7</sup> Economics and law are inseparably connected and interact with each other. Nowadays, it is more and more often recognized that both legal regulations and the effects of law in practice should be analyzed from an economic perspective, with the inclusion of the profit and loss account. This topic is widely discussed by Robert Cooter and Thomas Ulen in the monograph “Ekonomiczna analiza prawa” (original title: “*Law & Economics*”), Publishers C.H. Beck, Warsaw 2009.

The first attempt to change this unfavourable situation was the introduction of the Act of 5 December 2008, amending the Act on Bankruptcy and Composition Law and the Act on Civil Procedure Costs (Journal of Laws of 2008, No. 234, item 1572) bankruptcy proceedings against natural persons not conducting a business activity.<sup>8</sup> However, this change did not have a positive impact on insolvent consumers due to its legal and economic defectiveness.

The condition for the court to declare the so-called personal bankruptcy was that the insolvency of a natural person not conducting a business activity was caused by exceptional and independent circumstances. Therefore, the minimum degree of guilt of the debtor in insolvency eliminated the possibility for them to obtain the benefit of personal bankruptcy. The second, equally important barrier was of the economic nature. An insolvent consumer, not unlike an insolvent entrepreneur, had to dispose of their assets to cover the costs of bankruptcy proceedings in order to be officially declared bankrupt. These mainly concerned the remuneration of the trustee, expenses on the trustee's activities, correspondence with creditors, press announcements, valuations of the components of the bankruptcy estate, and the costs of its sale. The lack of such assets resulted in the rejection of the application of the insolvent consumer.<sup>9</sup> Such a regulation was unreasonable and incompatible with economic realities. The consumer (i.e. a natural person not conducting a business activity) had usually lost all of their assets (real estate, movable property, receivables) before deciding on the "last resort" – filing for bankruptcy to the court. Most commonly the remuneration for work remained in their property, mostly usually the minimum remuneration. Obviously, these funds were not sufficient enough to cover the costs of personal bankruptcy, especially the remuneration of the trustee (amounting to from at least a few to around a dozen thousand zlotys). In practice, therefore, personal bankruptcy, in the form introduced at the end of 2008, was a marginal concept and did not meet social demand.

By way of example, it can be pointed out that in one of the judicial districts located in south-eastern Poland only one case of personal bankruptcy was successfully declared and carried out in the period during which the above regulations were in force (2009-2015). The taking out of a loan for the purchase of an apartment before the transfer of its ownership was considered to be an

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<sup>8</sup> Social, economic and legal circumstances of the introduction of personal bankruptcy in Poland are discussed by Paweł Kuglarz in a monograph edited by Rafał Adamus and Bartosz Groele "Upadłość konsumencka. Komentarz do nowelizacji prawa upadłościowego i naprawczego" (trans. "*Personal bankruptcy. Commentary on the amendment of the Bankruptcy and Composition Law*"). Publishers C.H. Beck, Warsaw 2015, pp. 24-27.

<sup>9</sup> The normative basis of which was article 13 of the Act of 28 February 2003 on Bankruptcy Law.

exceptional reason for insolvency, which was independent of the debtor. It did not happen due to reasons attributable to the developer, and at the same time there was no material security for the entire loan (mortgage). As a result, the debtor was obliged to repay the loan without having the right to the apartment. At the same time, however, the debtor's assets were high enough to be able to bear the costs of bankruptcy proceedings. The percentage of personal bankruptcies across the country was equally minuscule. According to Paweł Kuglarz:<sup>10</sup> in 2009, 985 applications for declaring personal bankruptcy were submitted to courts, 10 bankruptcies were declared; in 2010 – 510 applications were submitted, 12 bankruptcies were declared; in 2011 – 385 applications were submitted, courts accepted applications of 14 consumers; in 2012 – 286 applications were submitted, 24 personal bankruptcies were declared; in 2013 – 274 applications were submitted, courts accepted 28 of them. Some of the applications were not recognized as substantive due to formal rejection of the applications or discontinuation of bankruptcy proceedings. The official dismissal of applications for personal bankruptcy occurred: in 2009 for 131 applications, in 2010 for 124 applications, in 2011 for 101 applications, in 2012 for 162 applications and in 2013 for 178 applications.

### 3. Economic and legal aspects of bankruptcy since the year 2016

A breakthrough in the functioning of personal bankruptcy in Poland took place on 1 January 2016. It was the day that the amendment<sup>11</sup> to the Act of 28 February 2003 on Bankruptcy and Composition Law entered into force. It has led to a significant liberalization of the rationale for personal bankruptcy, adapting its conditions and course to the realities of economic and social life. First of all, the existing restrictions on the declaration of personal bankruptcy were abolished. It is no longer necessary for a debtor's state of insolvency to be an exceptional circumstance independent of the debtor. On the contrary, it was assumed that in market economy, incurring

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<sup>10</sup> Own elaboration of Paweł Kuglarz in a monograph edited by Rafał Adamus and Bartosz Groele "Upadłość konsumencka. Komentarz do nowelizacji prawa upadłościowego i naprawczego" (trans. "Personal bankruptcy. Commentary on the amendment of the Bankruptcy and Composition Law"). Publishers C.H. Beck, Warsaw 2015, p. 43 prepared on the basis of R. Bieluga's work entitled "Ewidencja spraw upadłościowych w latach 2009-2013", Informator Statystyczny Wymiaru Sprawiedliwości (trans. "Records of bankruptcy cases in the years 2009-2013", *Statistical Guide of the Justice System*), [www.isws.ms.gov.pl/baza-statystyczna/opracowania-wieloletnie/download.2674,54.html](http://www.isws.ms.gov.pl/baza-statystyczna/opracowania-wieloletnie/download.2674,54.html).

<sup>11</sup> The amendment was introduced by the Act of 29 August 2014 amending the Bankruptcy and Composition Law, the Acts on the National Court Register and the Acts on Civil Procedure Costs (Journal of Laws of 2014, item 1306).

liabilities (especially financial liabilities) is quite a natural procedure, which to a certain extent is desirable (e.g. for the impact on the growth in gross domestic product). However, it carries the risk that the state of consumer insolvency may occur. It is therefore desirable for consumers to be able to get out of debt. However, the legislator did not decide to fully liberalize personal bankruptcy. It will continue to be subject to judicial review, which may dismiss the debtor's application if it is established that the debtor's state of insolvency or a significant increase in the degree of insolvency was a result of a wilful act or gross negligence<sup>12</sup> of the consumer. The jurisprudence practice of bankruptcy courts in Poland in this respect is very inconsistent. Depending on the judicial district, a more or less rigorous assessment of the consumer's "gross negligence" in the event of insolvency or a significant increase in the degree of insolvency can be observed. However, the vast majority of personal bankruptcy applications are accepted by the courts. In the jurisprudence practice of one of the courts in south-eastern Poland, consumer applications were finally dismissed due to the premise of gross negligence in the following examples.

For example, the Debtor's source of income was a pension of less than PLN 2,000.00 net at the time of filing the application. The Debtor took a dozen or so credits and loans, including the so-called fast microloans (with very high additional costs: commissions, interest). The total amount of instalments that the debtor was supposed to pay monthly on the date of filing the application was approximately PLN 7,000.00, thus exceeding their income more than three-fold. In the next case, the consumer was employed on the basis of an employment contract and earned an income. However, the consumer was a person convicted for an intentional crime and sentenced to

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<sup>12</sup> These concepts are quite vague, they do not refer to precise economic criteria. They depend to a large extent on the court's assessment of the debtor's conduct. As indicated by Piotr Zimmerman in his "Komentarz do art. 491<sup>4</sup> ustawy-Prawo upadłościowe" (trans. "*Commentary on Article 491<sup>4</sup> - Bankruptcy Law - Bankruptcy Law*"), Publishers C.H. Beck, 4th edition, Warsaw 2016, p. 962: "Intentional act within the meaning of Article 491<sup>4</sup> sec. 1 - Bankruptcy Law means the assumption by the debtor of the intention to become insolvent or to aggravate insolvency, and not the mere fact of intentional actions which ultimately led to insolvency." For example, willful assumption of liabilities in a situation where the intention of the debtor was not to lead to insolvency would not imply culpable creation of a state of insolvency. Intentional fault can be attributed to the debtor in a situation when several loans were taken out, despite knowledge of the fact that the debtor will lose their source of income very soon and the funds thus obtained will be transferred to third parties or squandered. Finally, the debtor will submit a debt cancellation application. Gross negligence, also referred to as recklessness in legal language, is a qualified form of the so-called inadvertent guilt, consisting in failure to exercise the due diligence required in given circumstances. Thus, for example, a case of gross negligence will take place when the debtor takes out loans which significantly exceed their earning capacity at the time of granting these loans, in the situation where there is no prospect of an improvement in the current situation. According to a reasonable assessment, the debtor should take into account the fact that in the near future - without additional debt - they will not be able to fulfill the obligations concerning their debt. There is no reason to consider the fact of granting a guarantee on a debt to another party as intentional or grossly negligent if at the time of granting that guarantee, there were indications that the debtor, for whom the consumer had given a guarantee, was in a position to repay.

imprisonment with conditional suspension of the sentence. During the probational period the consumer committed another intentional crime, as a result of which the court ordered the dismissal of the conditional suspension and execution of the prison sentence against the debtor. The consumer, despite being aware that they would have to serve a prison sentence soon (and thus lose their regular job and source of income), took out a loan. The debtor was placed in prison, did not pay off the loan and became insolvent. The court dismissed the application on the ground that the debtor's conduct was grossly negligent. In another case, the consumer was a young person, who after taking up employment, took out a loan in the amount of about PLN 100,000.00 for the purchase of a new car of this value. At the same time, however, the consumer refrained from purchasing a comprehensive cover insurance policy for this vehicle. The car, through the fault of the debtor, was destroyed in a road collision and there were no grounds for obtaining compensation. The consumer soon lost their job, stopped paying the loan instalments and became insolvent. The court dismissed the debtor's application for bankruptcy, stating that the acquisition of such an expensive vehicle by means of a loan and not purchasing comprehensive cover insurance policy for the car was grossly negligent in the process of insolvency.

In practice, a significant proportion of the dismissed applications come from consumers who had previously been self-employed, had become insolvent during the course of their business and did not file for bankruptcy as entrepreneurs with the court in due time. As a rule, such applications are subject to dismissal (the legal basis for such a practice being Article 4914 sec. 2 point 3 of the Act on Bankruptcy Law subject to expiry of the interdict after the ten-year period referred to in this provision), unless the conduct of bankruptcy proceedings against a former entrepreneur (or a representative of the entrepreneur, e.g. a member of the management board of a limited liability company) is justified on grounds of equity or for humanitarian reasons. In practice, the vast majority of such applications refer to such grounds. These include the difficult financial situation of the debtor and their family, the need for medical treatment, expenses connected with children's education, the desire to return to society, the restoration of a sense of dignity and honour, the low legal and economic awareness of the insolvent consumer (Cooter, Ulen, 2009).<sup>13</sup>

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<sup>13</sup> The issue of equity and humanitarian reasons as grounds for declaring personal bankruptcy is discussed by, i.a., Aleksander Witosz in "System Prawa Handlowego" (trans. "Trade Law System") edited by Prof. Stanisław Włodyka and Prof. Andrzej Szumański, volume 6: Restructuring and bankruptcy law, Publishers C.H. Beck, Warsaw 2016, pp. 1284-1285; Piotr Zimmerman in "Komentarz do art. 491<sup>4</sup> ustawy- Prawo upadłościowe" (trans. "Commentary on article 491<sup>4</sup> - Bankruptcy Law"), Publishers C.H. Beck, 4th edition, Warsaw 2016, p. 965; Stanisław Gurgul in "Komentarz do art. 491<sup>4</sup> Prawa upadłościowego" (trans. "Commentary on Article 491<sup>4</sup> of Bankruptcy Law"),



Another fundamental change with regard to the possibility of declaring personal bankruptcy was that of 1 January 2016. It was no longer mandatory for the debtor to provide sufficient assets to cover the costs of bankruptcy proceedings. If the debtor does not have such assets at their disposal, or if the assets in question are insufficient to cover these costs, they shall be temporarily financed from State Treasury funds. In practice, the majority of bankruptcy proceedings of natural persons not conducting business activity are credited by the State Treasury. The costs of such proceedings may range from a few to even tens of thousands of zlotys. Usually, the largest expense is the trustee's remuneration, generally ranging from a quarter of the average monthly remuneration in the enterprise sector without payment of rewards from profit in the fourth quarter of the previous year, as announced by the President of the Central Statistical Office (GUS), up to double the amount of that remuneration (and in particular justified cases up to four times the remuneration). The other most frequent expenses include the remuneration of experts who prepare valuations of the debtor's assets (movables, receivables – the cost of several hundred zlotys, real estate – several thousand zlotys in a single proceeding), the trustee's expenses of running an office (a lump sum of several dozen zlotys per month), costs of correspondence, business trips of the trustee (calculated according to a kilometre rate as for employees using private vehicles for business purposes).

In 2018, the courts determined the remuneration of trustees assuming the base amount at PLN 4,739.51.<sup>14</sup> Thus, the trustee's remuneration should, as a rule, be in the range from PLN 1,184.87 (one fourth) to PLN 9,479.02 (double the amount). If the trustee is obliged to pay value added tax, this tax is added to their remuneration. Courts, when determining the trustee's remuneration, are obliged to be guided by the monetary value of bankruptcy estate funds (i.e. amounts obtained from the sale of the debtor's assets), the degree of satisfaction of creditors, the workload of the trustee, the scope of activities undertaken by the trustee in the proceedings, the degree of their difficulty and the duration of the proceedings. In the jurisprudence practice of one of the courts in south-eastern Poland, a principle was developed that in the case of an uncomplicated bankruptcy, i.e. when the debtor had no assets or the assets were small and quickly disposable (e.g.

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Publishers C.H. Beck, 10th edition, Warsaw 2016, p. 940; Rafał Adamus in a monograph edited by Rafał Adamus and Bartosz Groele entitled "Upadłość konsumencka. Komentarz do nowelizacji prawa upadłościowego i naprawczego" (trans. "*Personal bankruptcy. Commentary to the amendment of the Bankruptcy and Composition Law*"), Publishers C.H. Beck, Warsaw 2015, pp. 180-181;

<sup>14</sup> Announcement of the President of the Central Statistical Office of 17 January 2018 on the average monthly remuneration in the enterprise sector without payments of profit rewards in the fourth quarter of 2017, published in CSO Official Journals of 2018, item 2.

a car), the number of creditors participating in the proceedings ranges from several to several dozen, the proceedings lasted until a year from the declaration of bankruptcy to the determination of the plan for repayment of creditors/cancellation of liabilities without establishing the plan for repayment of creditors – the remuneration of the trustee is set at an amount similar to the average salary referred to above, i.e. PLN 4,739.51.

Higher amounts, ranging from one and a half times or double the amount of the above-mentioned remuneration are granted in more labour-intensive and complicated proceedings, e.g. when the bankruptcy estate includes real estate encumbered in kind (mortgage), which needs to be sold or when the bankrupt consumer has numerous (at least 20-30) creditors.

It should be noted that from year to year, from 2016 onwards, the number of declared personal bankruptcies in Poland has been increasing exponentially. As a rule, they are pre-financed by the State Treasury (due to the poverty of the bankruptcy estate), and these expenses reach several million zlotys every year in the country. The State Treasury recovers these amounts only partially, i.e. in the event of sale of the debtor's assets (e.g. the ownership right to the apartment) and in the event of the establishment and implementation of the creditors' repayment plan. In the latter case, in practice, the courts divide the amounts due to the State Treasury into interest-free instalments of up to 36 months for the bankrupt consumer. Whereas, in proceedings concluded with the cancellation of defaulted obligations of a bankrupt consumer without the execution of a repayment plan, the consumer is also not obliged to reimburse the State Treasury for the costs incurred in the proceedings.

The economic aspect of insolvency proceedings for consumers is also expressed in their duration. If the bankruptcy estate does not include any assets (which is most often the case), such proceedings should end within 6 months from the declaration of bankruptcy with a decision issued by the court on the establishment of creditors' repayment plan, or on the cancellation of defaulted obligations without the establishment of creditors' repayment plan. However, since 1 January 2016, in practice, bankruptcy courts have been declaring an increasing number of personal bankruptcies. They have already reached the level of several thousand proceedings every year in the whole country. This significantly prolongs the duration of these proceedings and, at the same time, the creditors' waiting period for the payment of their receivables and the time the debtor needs to wait to get out of debt.

In the course of bankruptcy proceedings, the trustee establishes a list (called the list of claims) of creditors entitled to satisfy their claims and their amounts. Then, on the basis of this document (approved by the judge-commissioner), the bankruptcy court, as a rule, establishes a plan for the repayment of creditors. The repayment plan may not cover a period longer than 36 months. In practice, the vast majority of repayment plans are set for such a period.

Personal bankruptcy proceedings, unlike bankruptcy of entrepreneurs, are primarily aimed at getting the consumer out of debt, and at satisfaction of creditors' claims to the highest degree possible (Article 2 sec. 2 of the Act on Bankruptcy Law in the form in force since 1 January 2016). In practice, therefore, in the vast majority of cases to get the insolvent consumer out of debt a part or all of the outstanding financial claims of the creditors are reduced (cancelled). This means that the creditors recover only a negligible part of their receivables, be it as a result of the sale of the debtor's assets or after the execution of a repayment plan. In the best-case scenario, the creditors are secured in kind (e.g. with a mortgage, pledge, transfer of ownership as collateral), as the satisfaction of their claims, with the exclusion of unprivileged creditor, is prioritized and it is done through the sale of objects on which the collateral has been established (e.g. with a mortgage on ownership right or perpetual usufruct, registered pledge on a motor vehicle). Interest, including interest arising after the declaration of bankruptcy, is also subject to enforcement of collateral. On average, other creditors receive several percent of their receivables, rarely more than 20-30 percent. When determining the repayment plan, the creditor takes into account the above-mentioned directive on the priority of debt repayment and the provisions found in Article 49115 sec. 4 of the Act on Bankruptcy Law.<sup>15</sup> It should be remembered, however, that the court, when establishing a repayment plan, must obligatorily charge the bankrupt consumer with the costs of the proceedings temporarily covered by the State Treasury.<sup>16</sup> In practice, before establishing a repayment plan, the court will hear (usually in writing or orally at a hearing) the bankrupt, the trustee and the creditors included in the approved list of debts. Most often, the bankrupt claim that they are unable to carry out any repayment plan due to their low income in relation to the cost of living, poor health, medical

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<sup>15</sup> "In determining the plan for repayment of creditors, the court shall take into account the earning capacity of the bankrupt consumer, the living needs of the bankrupt and their dependents, including their housing needs, the number of unsatisfied claims and the probability of their satisfaction in the future" - Article 491<sup>15</sup> sec. 4 of the Act on Bankruptcy Law;

<sup>16</sup> "The costs of the proceedings, temporarily covered by the State Treasury, shall be borne by the bankrupt as ordered by the court. These costs shall be included in the creditors' claims repayment plan in full, and their repayment may be spread over a period not longer than that provided for the implementation of the creditors' repayment plan" - article 491<sup>15</sup> sec. 3 of the Act on Bankruptcy Law;

expenses, etc. Consequently, they request the cancellation of their defaulted obligations without the establishment of a plan to repay the creditors.<sup>17</sup> However, such a request is not binding on the court. On the other hand, creditors usually demand satisfaction of all or part of their outstanding claims, without reference to the actual financial capabilities of the bankrupt consumer. The most reliable source of information (especially as far as economic aspects are concerned) is the bankruptcy trustee's knowledge about the bankrupt consumer, their living situation and the earning capacity. In practice, it is the trustee who, at the bankruptcy court's request, prepares the accounting assumptions of the future repayment plan, including: data of individual creditors included in the approved list of debts, the amount of their unsatisfied claims, the amount of the outstanding costs of bankruptcy proceedings covered by the State Treasury (if there were any), the duration of the repayment plan period, monthly, total encumbrance of the bankrupt with the repayment, as well as instalments for individual creditors.

Bankruptcy proceedings are universal in the sense that they concern claims of all creditors (with certain exceptions: alimony obligations, fines for criminal offenses, amounts due for the recovery of damages are not remitted). The repayment plan therefore decides on public law receivables (taxes, social security contributions, obligations to repay subsidies), as well as private liabilities of various sources (most often credits and loans). At the same time, as in the case of the division of the bankruptcy estate of entrepreneurs, there is no obligation to categorise the payment of receivables into more and less privileged ones. This means that a tax receivable due to the State Treasury may (but does not have to) be treated on the same level as the so-called fast microloans. Referring to the example, it can be pointed out that a bankrupt consumer working on the basis of an employment contract, earning an income of 2,500.00 PLN net monthly, married (whose wife also works) with two dependent children (one of whom receives a 500+ benefit) may count on setting the repayment plan at approximately PLN 500-700 per month for a period of 36 months. If the list of approved receivables includes 5 creditors with outstanding receivables: creditor "A" - PLN 100,000.00, creditor "B" - PLN 50,000.00, creditors "C" and "D" - PLN 10,000.00 and creditor "E" - PLN 1,000.00, the repayment plan (assuming proportional satisfaction of creditors) may be as follows: monthly, the total amount that the debtor will be obliged to pay to creditors -

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<sup>17</sup> "The court shall waive the liabilities of the bankrupt without establishing a plan for repayment of creditors if the personal situation of the bankrupt clearly indicates that they would not be able to make any repayment to creditors" - Article 491<sup>16</sup> sec. 1 of the Act on Bankruptcy Law.

PLN 500. Instalments for the benefit of individual entitled persons: creditor “A” - PLN 292.40; creditor “B” - PLN 146.20; creditors “C” and “D” for PLN 29.25; creditor “E” - PLN 2.90.

## 5. Final thoughts

Undoubtedly, the regulations introduced into the Polish legal system and being in force since 2016 are an important element of social and economic life, and from the consumers' perspective, are a way to start a new “life”. As a result of the amendment to the bankruptcy law, the number of declared bankruptcies of natural persons has increased, which is confirmed by the data of the Central Economic Information Centre. The number of announced consumer bankruptcies in subsequent quarters from 2015 is presented in the table below:

Quarters	Number of bankruptcies
02.2015	514
03.2015	660
04.2015	852
01.2016	834
02.2016	1156
03.2016	1090
04.2016	1354
01.2017	1311
02.2017	1470
03.2017	1172
04.2017	1582
01.2018	1574
02.2018	1071

Source: Number of declared consumer bankruptcies in subsequent quarters from 2015 (\* - first two months of the quarter) (Central Economic Information Centre)

Due to the variety of economic phenomena and events that consumers may participate in, it is necessary to constantly amend the bankruptcy law in this respect. There are new proposals for changes so that personal bankruptcy is regulated by a separate act and its procedure is simplified. Such perspectives were pointed out during a seminar on this subject matter organized in the Polish Ombudsman's Office. On 14 June 2018 the Ombudsman organized a meeting of experts – theoreticians and practitioners – dealing with the issues of bankruptcy law. The participants of the

meeting reacted positively to the extension of the catalogue of possibilities to conduct bankruptcy proceedings concerning consumers. In addition to liquidation bankruptcy, the introduction of restructuring bankruptcy seems to be particularly justified. It was deemed appropriate to consider whether the restructuring should not consist in cancelling a certain portion of the housing loan taken out (e.g. 20%). The remaining part would be repaid by the debtor over the next several dozen years, as would have been the case under the original agreement. In the current form of personal bankruptcy, such a solution seems impossible to apply. Bearing in mind the experience of business restructuring, this perspective is particularly interesting and attractive, especially from the point of view of the financial impact on the economy as a whole, since, as it has been pointed out above, personal bankruptcy has consequences for the debtor, but also for creditors and the State Treasury.

## Literature

- Adamus R. (2015). *Socio-economic aspects justifying the need to create a personal bankruptcy system in Poland*. In a monograph edited by R. Adamus and B. Groele “*Upadłość konsumencka. Komentarz do nowelizacji prawa upadłościowego i naprawczego*”. Publishers C.H. Beck, Warsaw 2015.
- Świecka B. (2008). *Bankructwa gospodarstw domowych. Perspektywa ekonomiczna i społeczna*, Warsaw 2008.
- Gębski Ł. (2013). *Nadmierne zadłużenie gospodarstw domowych*. *Gospodarka Narodowa* 2013, issue no. 4.
- White M.J. (2005). *Economic Analysis of Corporate and Personal Bankruptcy Law*, NBER Working Paper Series 2005, no. 11536.
- Gurgul S. (2016). *Prawo upadłościowe. Prawo restrukturyzacyjne. Komentarz*. Publishers C.H. Beck: Warsaw.
- Hołda A. (2015). *Wartość godziwa według MSSF oraz ustawy o rachunkowości*. KiBR: Warsaw.
- Zimmerman P. (2016). *Prawo upadłościowe. Prawo restrukturyzacyjne. Komentarz*. Publishers C.H. Beck: Warsaw.
- Witosz A. (2016). *Prawo restrukturyzacyjne i upadłościowe*. (in) *System Prawa Handlowego* edited by S. Włodyka and A. Szumański, volume 6:, Publishers C.H. Beck, Warsaw 2016.
- Restructuring law (2016). *Journal of Laws of 2016*, item 1574, of 23 August 2016 - consolidated text.
- Bankruptcy law (2016). *Journal of Laws of 2016*, item 2171 of 7 December 2016. - consolidated text.
- Informator Statystyczny Wymiaru Sprawiedliwości (trans. *Statistical Guide of the Justice System*), [www.isws.ms.gov.pl/baza-statystyczna/opracowania-wieloletnie/download.2674,54.html](http://www.isws.ms.gov.pl/baza-statystyczna/opracowania-wieloletnie/download.2674,54.html)
- Cooter R. Ulen T. (2009). *Ekonomiczna analiza prawa*, Publishers C.H. Beck, Warsaw 2009.

*Ekonomiczno-prawne aspekty upadłości konsumenckiej*

*Streszczenie*

Przemiany polityczne, społeczne i gospodarcze, jakie nastąpiły w Polsce po 1989 r. przyniosły za sobą zasadnicze zmiany w zachowaniach ekonomicznych tzw. konsumentów, czyli osób fizycznych nieprowadzących działalności gospodarczej. Przed 1989 r. w warunkach gospodarki socjalistycznej nie funkcjonowała instytucja upadłości konsumenckiej, mimo że występowały niewypłacalne osoby fizyczne tj. niezdolne do regulowania swoich wymagalnych zobowiązań pieniężnych. Niewielka dostępność dóbr materialnych, powszechność zatrudnienia, bardzo ograniczona możliwość zadłużania się w drodze pożyczek i kredytów powodowały, że niewypłacalność nie miała istotnego znaczenia ekonomicznego w życiu polskiego społeczeństwa.

**Słowa kluczowe:** restrukturyzacja, bankructwo , upadłość konsumencka.