

Doctoral dissertation abstract

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LEGAL STATUS OF THE CREDITOR IN CONSUMER BANKRUPTCY

The dissertation focuses on analyzing creditor's rights and obligations in the course of bankruptcy proceedings against an individual not conducting business activity (the so-called consumer bankruptcy). Relations occurring on the following three levels were analyzed: (1) between creditors and debtor, (2) between creditors and the authorities, and (3) between particular creditors. The work provides a holistic view on all stages of the proceedings, beginning from its initiation, through the establishment of list of claims, liquidation of the bankruptcy estate and distribution of funds between creditors, and drawing up of creditors' repayment plan and clearing of liability for the debt (discharge). Such structure of the work enables to present the situation of the creditor in different variants in the course of the proceedings. Thereby, it allows to show overall efforts of the creditor to satisfy the claim.

Special emphasis was put on the decision-making process in situations requiring the creditor to take or omit particular procedural steps. A thorough analysis was made i.a. in relation to the functions and objectives of the consumer bankruptcy proceedings as well as their conformity to the socio-economic policies of the state. Further liberalization of the grounds for clearing of liability for the debt as well as the use of general clauses, especially in the context of questionable payment intentions of debtors, have been assessed negatively. Causes of consumer insolvency were also taken into consideration, often indicating the co-responsibility of the creditors for the debtor's financial problems. The focus was on the court case possibilities of the creditors in terms of prevention of debtor's release from obligation. Doubts as to the compatibility of the institution of debt relief with the fundamental principles of civil and constitutional law intended to protect the creditor's economic rights were also indicated. A critical evaluation was made with regards to the creditor's inability to participate in the first phase of the proceedings as well as the limitation on the right to use certain judicial remedies. Much attention was devoted to the preparation and implementation of the creditors' repayment plan. The author also examined the possibility of harmonizing the conflicting interests of creditors and the debtor by means of applying composition agreement.

A detailed interpretation of the law, made from the perspective of the creditor, has indicated few benefits and highlighted numerous risks of declaring consumer bankruptcy, including an insufficiently extensive catalog of opportunities to defend the creditor's economic interest. The discussion on the respective topics was not limited only to the *de lege lata* (as the law is) remarks but also presented were *de lege ferenda* (the law as it should be) postulates, implementation of which could improve the legal and economic position of the creditor, without unduly distorting the debtor's privileges, justified by the need for certain consumer protection mechanisms as for the weaker subject of trade relations.

The dissertation is an interdisciplinary approach to the issues of the procedural civil law, economics, contract law and broadly understood commercial law.

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