

Dissertation advisor: Prof. Ph.D. Adam Sulikowski

Dissertation co-advisor: Ph.D. Piotr Marcin Wiórek, LL.M.

ABSTRACT OF DOCTORAL DISSERTATION

“CONSUMER BANKRUPTCY – CRITICAL ANALYSIS OF THE INSTITUTION”

WRITTEN BY JOANNA PODCZASZY

It is unquestionable that law is an expression of values thus bankruptcy laws should incorporate social and moral values in order to find the proper balance between the interest of the creditors (*all debts should be repaid, pacta sunt servanda*) and the interests of the debtors who have miscalculated risks and suffered from unfortunate change of circumstances (*social solidarity*). Creating the law by valuing interests requires compromises of all parties, often in the name of higher economic and social intentions. Maintaining the balance between the conflicting interests of individuals is not an easy task and any solution is usually more or less prejudicial to one party. Moreover, the excessive privilege of one party will always violate the natural balance by causing abnormal and improper behaviour. The over-indebtedness is a serious social and economic problem which has to be legally regulated by law, however the institution of consumer bankruptcy should be a remedy, especially dedicated to those, who passively led to its excessive debt.

The subject of this dissertation is the critical analysis of consumer bankruptcy regulations. The evolution of consumer insolvency provisions, the illustrated scale of debt in modern society and the analysis of the effects of the problem of over-indebtedness verify the hypothesis that a consumer bankruptcy institution is an absolute condition for maintaining a socio-economic system based on debt. Furthermore, it has been proven that debt of modern society and the subsequent socio-economic dangers justify the need for legal regulations of consumer bankruptcy.

Nowadays, the modern enlightenment maxim of *cogito ergo sum* takes the form of *consumo ergo sum*. Consumer society is the society enslaved by debt. For this reason, the consumer insolvency legislation is necessary for the maintenance of social homeostasis. The law on consumer bankruptcy is thus a reflection of the values recognized in society and the response to current social problems (*“Law is the mirror of society”*)¹. In the era of households

¹ I. Ramsay, *Comparative Consumer Bankruptcy*, „University of Illinois Law Review, Vol. 12/15, 2006, s. 266.

financial crisis and growing indebtedness of consumers, the bankruptcy of an natural person who does not conduct business activity has become a necessity, however the legal bankruptcy systems should minimize the risk of moral hazard and influence the future behaviour of the debtor. The process of introducing the institution of consumer bankruptcy in Poland presented in this dissertation reinforces the hypothesis that the regulations still does not fulfill its functions, mainly due to the privileged position of the financial institutions.

The institution of consumer bankruptcy is a recognition of certain axiological values that justify the legislator's interference in the civil relationship. Consumer bankruptcy is therefore the legislator's response to the phenomenon taking place in the modern world based on a free market economy.

A handwritten signature in blue ink, reading "Joanna Paleczny", is written over a horizontal line.

Wroclaw

11th of April, 2017