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Debt relief of debtors *de lege ferenda* and the protection of the creditor's property rights

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■ **Abstract.** The relevance of the research topic is in the need to develop new ideas on the possible development of insolvency law in the event of an unexpected and unforeseen serious commercial or financial crisis of a structural nature. The purpose of the presented text is to indicate the possible directions of changes in the specific and characteristic insolvency institution of "debt relief". The text was prepared using mainly a formal-dogmatic research method as the study is a general reflection on debt relief of an insolvent debtor (bankrupt), not connected with any particular legal system. It is a well-known and popular institution in many insolvency legal systems worldwide. However, when it comes to the details of the regulation, there may be even serious differences. The problem of debt relief is considered in the context of the protection of property rights of creditors. The creditor's claim is, after all, a component of his property. The study briefly discusses the arguments for the admissibility of debt relief in the context of the creditor's property right. An important part of the study deals with the issue of collective (group) debt relief of many debtors at one time. In the event of structural crises or as a result of special disturbances (e.g. wars, natural disasters), individual debt relief procedures may be too heavy a burden for the judicial system, and thus insolvency courts (other organs), due to extraordinary situation may be ineffective. In the course of the study, attention was paid to some kind of redefinition of the insolvency debt relief structure. The practical value of the study is expressed in the possibility of its application in designing legal norms and establishing state policy in counteracting insolvency

■ **Keywords:** insolvency; bankruptcy; cancellation of liabilities; arrangement repayment plan; restructuring rule; household financial distress

■ Introduction

The significance of this study is already related to the theoretical and practical significance of debt institutions in today's financial system. Thanks to different kinds of commercial loans, one can operate in business. The functioning of many households is founded on a consumer debt. The debt to which the study refers is therefore a common phenomenon. Further, the significance of this study is expressed in a new – more economical and simplified – approach to the restructuring of liabilities. When there is a structural disorder of the financial system, which is not a rare phenomenon, structural insolvency occurs. Standard legal norms provided for in insolvency law are designed for normal, ordinary conditions, and not for pandemics, wars and other similar extraordinary events. They force thinking about the design of more effective forms of debt relief. However, on the other side of the debt relief relationship is the creditor. The legal system should take into account the debtor's reasons and actual interests. Debt relief, in the circumstances of a structural debt, is one of the very important social functions of insolvency law. The

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construction of a debt relief should be designed in such a way that it is properly functional for society. This leads to the search for an effective model of debt relief *de lege ferenda*. The study proposes changes to the fundamental assumptions of the insolvency law.

The problem of the concept of changes to insolvency law in the event of a structural crisis that leads to mass insolvency proceedings of many debtors at the same time has hardly been studied in the scientific literature. This means that the hereby presented idea is fresh. Obviously, the profound academic discussion is needed. In the context of the COVID-19 pandemic, there was a discussion on simplifying and accelerating restructuring procedures; automating the restructuring procedure; applications of artificial intelligence. Nevertheless, these are issues that are just parallel to the problem discussed in this study. As the subject of this study is to present a new legal concept for academic discussion, the formal-dogmatic method is an adequate tool for presenting ideas about the possible shape of future legal norms. Nevertheless, it is worth mentioning a few studies that are relevant to this issue. A. Gurrea-Martínez (2022) generally deals with the COVID-19 crisis which has encouraged many countries to amend their insolvency laws (especially during the hibernation phase of the pandemic), both for a transitional period and on a permanent basis. The author of the article analyses the current trends, reforms and policy discussions, including hybrid procedures, which are expected to reshape the future of insolvency law in a post-pandemic world. S.F. Cherry *et al.* (2021) examine the post-pandemic debt crisis in the United States. The researchers identified social groups that are more likely to receive debt relief, established how debt relief functions in the US private and public sectors, and how debt relief correlated with the level of the pandemic (Volz *et al.,* 2020). R. Greenwood *et al.* (2020) suggest that there are two key issues in extraordinary circumstances: court congestion and excess liquidation and failure of small enterprises. R. Parry *et al.* (2017) review many aspects of various forward-looking solutions in the field of insolvency law.

Z. Roche (2021) researching the debt reform in Ireland in 2013. An attempt to ease the fate of debtors using the principles of neoliberal governance was made in Ireland in 2013, when the Insolvency Service (ISI) was established. The project provided for the possibility of debt relief for households based on the moral assessment of debtors. However, those who applied to the Service faced fierce opposition from their creditors. M. Kawai *et al.* (2013), discuss how financial crises in six Asian countries worked as catalysts for legal reforms. The authors state that reforms of economic laws alone cannot improve the quality of entire legal and judicial systems of countries and the crucial issue is the enforcement of substantive law by procedural law, the efficiency of the justice system, and other political and social factors.

The purpose of this study is to present a new concept of collective debt relief for many debtors at the same time, while respecting creditor's property rights.

In the implementation of this study, mainly the formal and dogmatic method was used. It is suitable for analysing the existing legal situation, as well as for drawing conclusions as to the need for future legal regulations (proposals *de lege ferenda*). An economic interpretation of the law was used as well. The presented considerations are based on the grounds of the legal culture of the European Union countries. It should be emphasized that European Union law has not completed the process of approximating the laws of individual countries in the field of insolvency law. However, seriously advanced work is currently underway on the so-called Bankruptcy Directive[1,2,3], which will contribute to further harmonization of legislation in this field of insolvency law in the European Union countries.

The right to property and its limitation by coercion of the democratic state of law

The legal system in the democratic state of law should be based on a universal and correctly systematized foundation of values resulting from the achievements of civilization, selected – based on appropriately

[1] Directive EU No. 2019/1023 of the European Parliament and of the Council "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and on Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)".

[2] European Parliament Legislative Resolution No. P8_TA(2019)0321 On the Proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures and Amending Directive 2012/30/EU (COM(2016)0723 — C8-0475/2016 — 2016/0359(COD)) P8_TC1-COD(2016)0359 Position of the European Parliament Adopted at First Reading on 28 March 2019 with a View to the Adoption of Directive (EU) 2019/… of the European Parliament and of the Council on Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and on Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)".

[3] Directive EU 2017/1132 of the European Parliament and of the Council of 14 June 2017 "On Relating to Certain Aspects of Company Law". (2017, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017L1132.

important axiological justification – in the common interest of the addressees of legal norms. Sometimes the values classified as basic in certain areas may be contradictory to each other. The law should therefore establish the boundaries between these values in a balanced way. *Ius est ars boni et aequi*. Sometimes it can be a very difficult task.

In many legal systems, insolvency proceedings provide for the possibility of an individual cancelling unpaid liabilities of a debtor. Liabilities almost of all sorts and of any legal nature. Especially in the case of a debtor who is a natural person. Insolvency is a serious problem not only for entrepreneurs but also for "consumers" (households). With the progress of civilization, the explosion of the culture of mass consumption, as aftermath of financial crisis, wars, natural disaster financial debt has become a kind of social disease of the global common civilization. Presently, consumer bankruptcy is regulated by numerous laws around the world, as it is an important social phenomenon in the credit-based consumption model. At the same time, it is the subject of many theoretical dilemmas as to the premises of debt relief (Adler *et al.,* 2000; Foohey, 2019). The effects of debt relief are also controversial (Niemi-Kiesilainen, 1999; Mann & Porter, 2010).

Debt relief of a debtor (bankrupt) who is a natural person can take place using very different mechanisms. Debt relief of an insolvent debtor may take place by virtue of a final court decision/ruling (other authority) or by virtue of an arrangement concluded between the debtor (bankrupt) and at least a sufficient majority of his creditors, validly approved by the court (other authority). It should be remembered that the meaning of debt relief is usually built on the following assumption: the creditor has previously failed to obtain satisfaction from the debtor's assets, either voluntarily or using legal coercion of the democratic state of law. Debt relief is not a legal invention of modern times. Due to the serious risks of insolvency at that time (famine phenomena in the face of low levels of agriculture, epidemics, natural disasters, wars, etc.), debt relief covered entire social groups, and in some cases its cyclical character was predicted in advance (e.g. the Sabbath year, the jubilee year structurally based on the earlier Babylonian tradition (Hudson, 2018).

About the right of ownership and the legal protection thereof briefly as it is a basic and fundamental civil rule. The creditor is the owner of his claim: he may realize it (including set-off), may remain idle, may dispose of it or encumber it, may – with the debtor's consent – waive it or renew it (novation). Defining the essence of the right to property and its protection is one of the pillars of civil law in the democratic state of law. Ownership, as a rule, is the subject of strong protection:

- of the constitutional law in many countries;
- international law – global and regional (European) Conventions on Human Rights;
- national law. In the case of UE countries, it should be mentioned the strong protection of property in the UE law (Lach, 1999).

However, the ownership (property) protection is not absolute. *Relaxatio legis in casu particulari* is essential. In some situations, the owner's right to property may be limited to the realization of axiologically stronger values than the protection of the individual right to property. This opens up a legal possibility for debt relief for natural persons, in particular in those cases where the debtor's assets cashed in by the trustee in bankruptcy proceedings were not sufficient to fully cover all existing liabilities. In principle, there is a consensus that statutory debt relief (which is a type of state coercion) is sufficiently justified. It appears to be based on the following arguments: at the time of cancellation, the claim against the bankrupt is in principle economically worthless; the debtor fulfils (at least minimally) the criteria of payment morality; the claim has passed through the stage of compulsory recovery, which proved to be ineffective; debt relief "does not fall from the sky" but requires the debtor's involvement in appropriate proceedings, which performs preventive and educational functions as well as debt collection; debt relief is also carried out in the public interest; Insolvency – in the face of the construction of an economic system based on debt – is a common (mass) phenomenon. Finally, the principle of humanity speaks for debt relief. Long-standing dependence on creditors is a kind of modern economic slavery (LeBaron, 2020).

It should be argued that the creditor's right to property is one of the factors against the complete abolition of the census of the debtor's payment morality in order to allow debt relief. In addition, debt relief is usually preceded by the liquidation of the debtor's assets in bankruptcy proceedings and the implementation of a repayment plan (under certain rules, however, debt relief is possible even if there are no assets of the debtor suitable for liquidation and without establishing a repayment plan).

Debt relief *de lege lata*

Modern civilization is based on the economy of debt (Conti-Brown & Ohlrogge, 2022; Grigorian *et al.,* 2023). Societies adhere to the principle of consumerism (Adamus, 2020). Very low economic education does not prepare many people for rational management of their own expenses. Insolvency – which is the root cause of debt relief – has become a common problem in modern society. Insolvency can affect almost anyone in modern free-market states. It is not reserved only for the so-called social margins or people inheriting generational poverty. The

technological revolution associated with artificial intelligence may trigger delabourization, which will probably affect even more office-workers than physical workers. This is due to the essence of this phenomenon: it is to be replaced by human intelligence, not human work. The phenomenon of insolvency, and consequently the cancellation of liabilities of debtors who are natural persons, is a global problem. The problem of debt relief for individuals is currently emerging as a legal phenomenon even in those countries (China) where a very strong cultural code is to pay off one's own (including inherited) liabilities regardless of the circumstances (Yin, 2022).

What is very important in the context of constitutional protection of property rights, debt relief is made not only in the individual interest of the debtor but also in the general interest of society. The social benefits of debt restructuring are evidenced, in particular, by the macroeconomic impact of debt relief in the United States as a result of the Great Recession (Auclert *et al.,* 2019). The legitimacy of debt relief of a particular debtor goes beyond the legal relationship in question. It is therefore not considered only on a microscale. Thanks to debt relief, most often the debtor gets out of the gray zone, usually starts working again, paying taxes, social and health insurance contributions, there is a chance that he will cease to be a social burden for the state. Permanent insolvency usually deactivates the debtor professionally. It is the cause of depression and other mental disorders (Sweet, 2020; Amit *et al.,* 2020). The structural indebtedness of the population is a common, contemporary social phenomenon.

There is no doubt that debt relief of a natural person by a bankruptcy court is not a model way of cancelling the debtor's liability (Adamus, 2019). The main way of extinguishing an obligation is its performance by the debtor. The bankruptcy laws introduce a significant change in relation to the general principles. Pursuant to the decision of the bankruptcy court, the liabilities of the bankrupt natural person are written off, regardless of the source of their creation. Debt relief is *a lex specialis* both in relation to the provisions of civil law and the provisions of the tax law on the manner of performing the obligation.

The root cause of debt relief is the debtor's insolvency, i.e. a state of affairs for which the debtor is responsible himself, or which is the result of objective circumstances. Nevertheless, insolvency is a risk for the debtor. As a rule, the creditor is not responsible for the reason for the bankrupt's debt. However, as already mentioned, behind debt relief is not only the selfish interest of one person (the debtor) but also the wider general interest of society.

Cancellation of liabilities is compulsory, independent of the will or even knowledge of the creditor whose claims are remutant. What is more, debt relief may also take place against the firm will of the creditor. Court debt relief may take place even if all creditors are against it. Creditors' instruments for counteracting debt relief from their debtor are very weak. In principle, if the statutory conditions for debt relief are met, the creditor will not effectively block the cancellation of the bankrupt's liabilities.

On the one hand, debt relief takes place without any formal compensation to the creditor, whose property rights are reduced. This is not a remission for "just" (or even any) compensation. On the other hand, in the event of the debtor's insolvency, an economic analysis of the law shows that it is not possible to use the denomination of the claim, but its market value calculated according to the potential possibility of satisfaction. After the liquidation of the bankrupt's assets and execution of the repayment plan, the market value of such a claim will basically be close to zero. From an economic point of view, the cancellation of claims against the bankrupt cannot be reduced to a common denominator with the case of expropriation of valuable real estate for public purposes.

However, the debtor is liable for his obligations with all his assets: present and future. As for the debtor's future assets, the creditor is not given the opportunity to obtain satisfaction even if after the final debt relief (and especially very shortly after) the financial situation of the former bankrupt improves significantly. The legislator did not introduce, as in the rebus *sic stantibus clause*, a substantive legal principle of the debtor's return to repayment – at least to the extent corresponding to the principles of social coexistence – in the event of an extraordinary and beneficial change in the property relations of the former bankrupt. Legislators usually do not provide for a procedural measure allowing for an extraordinary revocation of the court's decision on the cancellation of liabilities. In fact, in many legal systems, debt relief takes place regardless of the degree to which the creditor obtains satisfaction in the course of bankruptcy proceedings and regardless of the nominal amount of claims to be written off.

Debt relief is decided by the judiciary, regardless of the position of the creditors (in the case of debt relief by composition, the decision is "dispersed": the consent of the relevant majority of creditors and the approval of the arrangement by the court are needed). The creditor, in exchange for the cancellation of his claims by virtue of a decision of the bankruptcy court, does not receive any equivalent from the State Treasury (for example, in the form of a tax credit in income tax spread over years, etc.).

■ Collective debt relief of many debtors *de lege ferenda*

Recently (2020-2023), there have been some kind of cases of collective debt reduction (restructuring),

and at least the effects of these regulations (from the period of the COVID-19 pandemic) have not lost their importance, if only because of the current constitutional doubts as to the solutions adopted at that time. As of 23 July 2021, Article 15 p. 1 of the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them[1], and certain other acts, was in force, which introduced new solutions for tenants of premises in shopping malls. At the same time, as part of the amendment to the above-mentioned Act, Article 15 of the Act was repealed. The new regulation introduces the following solution with respect to lease, or other similar agreements concluded before 14 March 2020, which concern the commissioning of retail space in facilities over 2000 m^2. Well, during the period of the ban on conducting business activity in the above-mentioned facilities, the amount of the benefit for the use of commercial space is reduced to 20% of the amount of the benefit. On the other hand, within three months from the date of lifting the ban, the amount of the benefit for the use of retail space is reduced to 50%. Retail space is defined as any area located in a commercial facility with a sales area of more than 2000 m^2, regardless of the purpose for which the space is put into use, including in particular the sale of goods, provision of services and catering. With the entry into force of Article 15 p. 1, the original solutions introduced for tenants under the "Crisis Shield" have been repealed. Thus, as of 23 July 2021, the solution[2] according to which, during the period of the ban on conducting business in commercial facilities, the mutual obligations of the parties to a lease or other similar agreement expire if, within three months from the date of lifting the ban on conducting business, the tenant made an offer to the landlord to extend the validity of the agreement on the existing terms for the period of the prohibition on conducting business, extended for a further six months.

A doubt has arisen to what extent the state can interfere in the distribution of economic burdens within private relations, in the form of various legal regulations. The first example is the construction of statutory "credit holidays". The restrictions introduced in connection with the COVID-19 pandemic in conducting business activity and performing paid work have in many cases resulted in a reduction in the income of individual households (IEG, 2021). As a result, the real possibility of settling credit liabilities has decreased, especially for people who have lost their jobs or their source of income. In response to the situation, banks in Poland have introduced to their offer the possibility of suspending the repayment of loan instalments in connection with the COVID-19 pandemic, i.e. the so-called non-statutory credit holidays. On 2 April 2020, the EBA (European Banking Authority, hereinafter: EBA) published the "Guidelines on legislative and non-legislative moratoria on loan repayments applied in the face of the COVID-19 crisis" (EBA, 2020) indicating the criteria to be met by moratoriums that have been or will be granted by banks before 30 June 2020 which may result in long-term problems and, ultimately, insolvency in the long run. The moratoriums granted should also not be classified as *forbearance* or difficult restructuring. The purpose of the so-called non-statutory credit holidays (moratoria) should be to address short-term liquidity difficulties caused by the limited or suspended activities of many companies and individuals due to the COVID-19 epidemic. In a press release of 1 June 2020, the Polish Bank Association announced that work has been completed on the "Position of banks on the unification of the rules for offering assistance tools to banking sector customers" (ZPB, 2020), which is in force for aid instruments granted from 13 March 2020 to 30 September 2020. On 24 June 2020, the Act of 19 June 2020 on subsidies to interest rates on bank loans granted to entrepreneurs affected by COVID-19 and on the simplified procedure for approval of the arrangement in connection with the occurrence of COVID-19[3], the so-called Anti-Crisis Shield 4.0, entered into force., which introduced rules governing the granting of so-called credit holidays for consumers ("statutory credit holidays").

Second example – the regulation regarding the legal situation of tenants of premises, travel agencies. An example is the Act of the Sejm of the Republic of Poland, Dz.U. 2020 poz. 374[4]. Article 12(1) of the Act provides that in the event of withdrawal or termination of a contract for travel services in connection

[1] Act of the Sejm of the Republic of Poland No. Dz.U. 2020 poz. 374 "Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them". (2020, March). Retrieved from https://faolex.fao.org/docs/pdf/pol198652.pdf.

[2] Act of the Sejm of the Republic of Poland No. Dz.U. 2021 poz. 1505 "On the Amending the Power Market Act and Certain other Acts". (2021, July). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001505/T/D20211505L.pdf.

[3] Act of the Sejm of the Republic of Poland No. Dz.U. 2020 poz. 1086 "Act of 19 June 2020 on Subsidies to Interest Rates on Bank Loans Granted to Entrepreneurs Affected by COVID-19 and on the Simplified Procedure for Approval of the Arrangement in Connection with the Occurrence of COVID-19". (2020, June). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200001086/T/D20201086L.pdf.

[4] Act of the Sejm of the Republic of Poland No. Dz.U. 2020 poz. 374 "Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them". (2020, March). Retrieved from https://faolex.fao.org/docs/pdf/pol198652.pdf.

with the SARS-CoV-2 virus epidemic, both by the traveller and by the tour operator, the tourist entrepreneur is entitled to a refund of funds transferred to the Tourist Guarantee Fund. Apart from the case of the COVID-19 pandemic, statutory attempts to settle the debt of borrowers who incurred liabilities in foreign currency should be mentioned (Mišcenic, 2020). Collective debt reduction (restructuring) is already occurring today, but it requires theoretical and legal systematization, a clear ordering of axiological issues. Probably, collective debt relief could be a very useful tool in countries destroyed by wars.

In a rapidly changing world, it is worth pointing out some trends for the future. There is a very lively discussion in the literature on this matter. The impact of COVID-19 on legislation has been studied by A. Gurrea-Martínez (2022). A significant number of works are devoted to the impact of financial crises on legislation (Black, 2010; Manavald, 2010). The containment of financial crisis as a category of legal and political choices is considered by A. Gelpern (2009). Among more recent studies on this topic, it is worth mentioning the work of E.A. Prosner (2017). The impact of general civilizational progress on legislation also attracts the attention of researchers (Zywicki, 2003; Zywicki, 2015; Gurrea-Martínez, 2020).

It is worth considering the possible directions of development of debt relief. As of 2023, there is – which is an objective observation upon daily economic and political news – a significant accumulation of many factors that point to the possibility of major global financial crises. 1. A huge increase in the debt of states, entrepreneurs, households, accompanied by a serious increase in money printing (Ayhan Kose *et al.,* 2021). 2. Progressive social stratification and massive impoverishment of societies, as a result of which widespread debt may appear (Hoffman *et al.,* 2020; Bringel & Pleyers, 2022). 3. Geopolitical unrest and supply chain disruptions (Qin *et al.,* 2023). 4. The threat of delabouration, the disappearance of some professions due to the use of artificial intelligence (Rozum *et al.,* 2020). 5. Unfavourable demographic structure for the economy (Matysiak *et al.,* 2020). 6. numerous bank failures (Jones & Sims, 2023; European Central Bank, n.d.).

Experience to the present date has shown that during a severe financial crisis, general insolvency assumptions are reassessed and overvalued. (e.g. the obligation to file for bankruptcy is suspended, faster and simpler restructuring procedures are needed, etc.). Due to anticipated, potential cyclical or unforeseen financial (economic) crises, there is a very strong need to prepare legal concepts in advance in order to counteract the effects of such a potential crisis in a systemic and orderly manner. In the event of a structural crisis, the legal and economic situation of many debtors is very similar. In such situations, conducting thousands of individual debt relief proceedings is inefficient, time-consuming, and expensive. Massive debt relief (restructuring) can be crucial for groups of debtors with a similar situation. Collective debt relief (restructuring) will inherently be more effective than conducting many individual proceedings against debtors.

The current model of bankruptcy proceedings is based on a scheme: one debtor and many creditors. In special situations, legislators allow for a model of conduct: one debtor, one creditor (consumer bankruptcy case). The existing solution is very time-consuming and costly for the justice system. The need for the following discharge of debt (restructuring) principle should therefore be considered: "many debtors and one or more creditors at a time". However, the proposal presented here does not intend to replace the fundamental principle of "one debtor – many creditors". The intention is only to supplement it. The axiology of collective (cumulative), and therefore simplified, debt cancellation and restructuring (both in the dimension of general axiology and axiological of detailed solutions) in the context of property rights is of fundamental importance.

The conditions for individual bankruptcy or restructuring require an individualized and in-depth examination of the debtor's financial situation by the court or other authority. However, in the case of proceedings involving several debtors, very objective premises must be introduced. In such collective proceedings, a careful and in-depth examination of the general situation of debtors should be excluded. In individual proceedings concerning a single debtor, this may be "insolvency" and "threat of insolvency". In collective proceedings, this should be "the existence of a specific/specific obligation", "a certain level of income", etc. The rationale for multi-debtor collective procedures should be very easy to use.

Another issue should relate to the clarification of the collective capacity of specific debtors. It would be necessary to describe entities covered by collective debt relief and the method of their identification (e.g. borrowers with some minimum debt, mortgage borrowers, educational borrowers, the unemployed, pensioners, people in a specific age group, people with a specific profile – education, people who lost property as a result of war, natural disasters, war veterans, etc.). The concept of changes should present the legal aspects of the potential scope of claims for debt relief/restructuring (public law, private law claims). It should be clarified which claims should be excluded from debt relief (restructuring). It is possible to cover only one type of debt with a massive debt write-off (restructuring).

As a rule, individual debt relief (restructuring) is complex because it takes into account the individualized situation of the individual debtor. It would be

different in the case of mass debt write-off (restructuring). The concept of changes should clarify the issue of total or only partial discharge of debts (restructuring) of many debtors. Sometimes it would be justified to omit an examination of the individual situation of debtors. It is possible to cancel all delayed unpaid property taxes for victims of floods, earthquakes, regardless of their personal financial situation. It is possible to set income limits for debt relief, etc.

The procedure for mass discharge of debts of many debtors (debt restructuring) is a key issue. It should be clarified how to conduct a massive discharge of debt (restructuring) procedure. Indicate how to confirm the results of the bail-in. There are many theoretical possibilities. The analysis of collective discharge proceedings/restructuring could include: (a) debt relief (restructuring) acting automatically by operation of law, (2) discharge of debt (restructuring) through collective judicial proceedings, (3) collective administrative proceedings, (4) a "mixed" manner. It should be remembered that the party to court and administrative proceedings should always be individually identified. Dealing with multiple participants is more prone to protracted procedures. However, the solution to this dilemma does not have to be complicated. The assumption of massive debt reduction (restructuring) should be formulated very generally. A special law should specify the conditions for mass debt write-off, the procedure, and the consequences. In administrative or judicial proceedings, the authority powers may be limited to confirming that the person concerned is subject to the regulation in question. Proceedings may be collective in nature involving multiple debtors and, once an objection has been lodged in a timely manner by a specific creditor or creditors (representing a certain amount of claim), may develop into individual debtor proceedings.

The concept of changes should take into account, in particular, respect for creditor's property rights (erroneous regulation may bring the risk of compensation for creditors from the State Treasury). Many post-covid cases have shown very serious constitutional doubts about the arbitrary influence of the legislator on private relations (this applies to the previously given example of shopping malls and rent). The concept of change should offer a clear solution in this regard. Deprivation of the creditor's rights should be duly justified.

The impact of insolvency prediction (including through artificial intelligence) on the use of collective restructuring and debt reduction solutions should be taken into account. The concept of changes should present possible general solutions *de lege ferenda* in the case of: a state of natural disaster, pandemic, state of emergency, war (so-called emergency situations). Several possible "alternative" methods should also be considered: shortening limitation periods, limiting the time spent on enforcement proceedings, massive use of artificial intelligence in cases of individual debtors, etc. An alternative method is to prepare a quick procedure in simple cases. Sometimes the debtor has no assets. It is possible to prepare a standard list of questions for the debtor regarding the causes of insolvency. Based on the data provided (earnings, liabilities), thanks to the use of artificial intelligence, it would be possible to automatically generate an individual repayment and debt relief plan. In the absence of opposition from the debtor or creditors, a debt repayment and discharge plan could enter into force. The design of the changes should clearly define the relationship between "collective" and "individual" debt relief/restructuring. It would be possible (a) to conduct multiple "collective discharge procedures" against the same debtor, and b) to conduct a single "collective discharge of debt" procedure against the same debtor. The concept of changes should take into account the issue of the seasonality of legal regulations for debt relief (restructuring) of many debtors. The concept of changes should answer whether the debt relief mechanism (restructuring) of many debtors should be mandatory (automatic) or voluntary.

The institution of mass debt relief (restructuring) of many debtors may supplement the possibilities resulting from individual "individual" procedures. In crisis situations (structural or concerning only selected groups of debtors), speed of action is important. The proposed proposal is innovative and requires discussion. Nevertheless, the civil procedure, which is insolvency proceedings before the court, is quite flexible. In the event of such a specific social need – in particular, if debt relief could not be carried out by way of direct statutory regulation – the presented concept could possibly be implemented. the advantage of debt relief through court proceedings, even involving many debtors, is a better guarantee of protection of the creditor's property right. In such a case, the court examines whether the debt relief is justified. the creditor may use the means of appeal, he may use in principle audiatur et altera pars.

The discussion on the presented content can be divided into several stages. The first stage should answer whether it is possible, and if so, what is the sense of implementing the recommended idea. A balance of benefits should be drawn up. In the second stage, it would be necessary to consider where the boundary should be drawn between the principle of legal automaticity and the action of the competent authority. The subject of discussion should be the formulation of the conditions for debt relief. The issue of subjective and objective limitations of debt relief needs to be considered. The discussion should also concern the legal nature of the regulation: whether

it should be *ex ante* regulation or *ex post* regulation. Another important issue for discussion should be whether this should be a separate proceeding from mainstream debt relief.

■ Conclusions

Every legal system is constructed for the "normal", "typical", "common" use of its institutions. However, in a situation where a procedure and the operation of an institution are necessary for the implementation of certain legal norms, a serious crisis situation may paralyse the justice system. Meanwhile, in the event of a cross-border situation, a very efficient operation of the justice system is needed. The correlate of the forced discharge of the obligation in favour of the debtor is the loss of title by the creditor. The deactivation of a significant proportion of citizens due to their insolvency is a real burden on society. Therefore, it is necessary to arrange in an appropriate order the relations between: the interest of the bankrupt, the interest of the creditor involved, the interest of the bankrupt, the interest of other creditors, the interest of society.

On the one hand, it would be difficult to overestimate the importance of the constitutional right to obtain – in justified (and exceptional) circumstances – a discharge of debts (restructuring) for balancing the constitutional principle of protection of creditor's property rights. However, sustainable collective debt relief (like individual debt relief) might be introduced regardless of any constitutional rights designed for debtors. On the other hand, the first big problem is with the legal justification of the existence of such a constitutional right. The second big problem is with the proper definition of debtor's constitutional rights. Besides, if collective debt relief is just an exception to the general rule of property protection, it should always be limited to strongly justified situations.

This study introduced a new idea of the universal nature of. It therefore requires factual and profound criticism. It should not be forgotten that there are alternatives to it: by simplifying the system as much as possible, e.g. by entrusting certain competences to artificial intelligence. The possibility of applying technological innovations to solve the problem raised in this study requires further research.

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■ Conflict of Interest

None.

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Списання боргів боржників *de lege ferenda* і захист майнових прав кредиторів

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▪ **Анотація.** Актуальність теми дослідження полягає в необхідності окреслення напрямів можливого розвитку законодавства про неплатоспроможність у разі несподіваної та непередбачуваної серйозної комерційної або фінансової кризи структурного характеру. Метою публікації є визначення шляхів удосконалення такого специфічного інституту неплатоспроможності, як списання боргів. Для цього використано формально-догматичний метод дослідження, оскільки публікація є загальним роздумом про списання боргів неплатоспроможного боржника (банкрута) без зв'язку з конкретною правовою системою. Це доволі поширений інститут з питань неплатоспроможності в різних правових системах, однак аспекти безпосереднього регулювання можуть істотно різнитися. Проблему списання боргів розглянуто в контексті захисту майнових прав кредиторів, оскільки вимога кредитора є складовою його майна. У дослідженні наведено аргументи на користь допустимості списання заборгованості в контексті права власності кредитора. Також проаналізовано питання колективного (групового) списання боргів значної кількості боржників одночасно. У випадку структурних криз або внаслідок особливих потрясінь (війни, стихійних лих) індивідуальні процедури звільнення від боргів можуть бути занадто важким тягарем для судової системи, а отже, суди (та інші органи) у справах про неплатоспроможність у зв'язку з екстраординарністю ситуації будуть неефективними. Загалом у межах статті переосмислено структуру списання боргів у справах про неплатоспроможність. Практична цінність дослідження полягає в можливості його застосування під час розроблення правових норм і формування державної політики у сфері протидії неплатоспроможності

■ **Ключові слова:** неплатоспроможність; банкрутство; анулювання зобов'язань; план погашення; правило реструктуризації; фінансові складнощі домогосподарств