

Consumer bankruptcy as a legal and economic instrument for mitigating financial exclusion of households in Poland

1. Genesis and justification for the choice of dissertation

In the literature related to the trend of institutional economics (e.g. by J. Stiglitz, A. Sen, H. De Soto), it is indicated that sustainable economic development facilitates overcoming social inequalities and reducing exclusion from social and economic life and poverty, to name just a few. Hence, constant socio-economic development improves the standard of living of households, which can fulfil their needs, and reduces their insolvency. At this point, it should be noted that sustainable economic development is among fundamental principles of the legal order and constitutes the pillar of socio-economic policy in Poland.

Due to the policy aimed at building the economic system based on the concept of sustainable development, the reduction of many negative social and economic phenomena can be currently observed. However, new problems arise today, and such issues as the excessive indebtedness and the failure in retaining the financial liquidity of households deserve special attention. According to the domestic economic information bureaus (e.g. "Info-Monitor S.A."), excessive consumer indebtedness has both grown and slowed down over the period of good economic prosperity. Due to sustainable economic development, the scale of poverty has been declining for long now (according to Statistics Poland the poverty rate has been falling since 2002), but the number of insolvent households has been constantly increasing. The instruments used are not able to scale this problem down, which may ultimately cause the exclusion of such households from the area of financial services.

The exclusion of a household from various areas of socio-economic activity is attributable to modern economies. On the one hand, it is the opportunity for entrepreneurs looking for market niches at the highly competitive market. On the other hand, it causes many negative consequences, driving pauperization, and consequently, poverty of the excluded households. This phenomenon constitutes also the major

challenge for public institutions, whose activities focus on the poverty reduction and the management of households' exclusions.

One of the reasons of the financial exclusion of consumers is their excessive indebtedness, usually causing insolvency and contributing to numerous difficulties in various spheres of the domestic economy, such as access to financial services and their utilization. Due to the significant and constantly growing number of indebted consumers, it is necessary to analyse these phenomena thoroughly and comprehensively, examining their various aspects – including all the legal and economic instruments which are to support households in overcoming their excessive debts on their own.

Because of the complexity of the studied phenomena, the research spectrum, analysing financial exclusion as a phenomenon associated with excessive indebtedness and social exclusion, was adopted in the theoretical and empirical research theses. In addition, the considerations were also extended to countries representing different types of economies and different models of bankruptcy policies. The author states that this approach has facilitated the extensive exploration of the field with the valuable experiences of other countries, considering their specificity as well as legal and economic differences between them and Poland.

The institution of consumer bankruptcy was introduced into the Polish legal order by the Act of 31 March 2009 amending the Bankruptcy and Reorganization Law of 5 December 2008 (Journal of Laws No. 234, item 157, as amended). The first legal provisions were subject to the comprehensive amendment by the Act of 29 August 2014 amending the Bankruptcy and Reorganization Law, the Act on the National Court Register and the Act on Court Costs in Civil Matters (Journal of Laws, item 1306 of 2014). The amended version of the Act came into force as of 31 December 2014 and the provisions amended made the bankruptcy procedure available for insolvent individuals. Even though the consumer bankruptcy law has been in force in the national legal order for almost ten years now, further legislative proceedings are underway to improve the current legal solutions, as still, relatively few citizens declare bankruptcy as compared to the number of overly indebted consumers.

In Poland, i.e. post-socialist economy, many households tend to raise their standards of living too quickly, because they want to live like the citizens of wealthier countries. These consumers pay for their high standards of living with money from various types of loans and credits, and consequently - they lose their financial liquidity

to pay instalments, which may lead to excessive debt, insolvency and even financial exclusion.

2. The purpose of the dissertation and research hypotheses

The aim of this paper is to analyse the complicated problem of the consumer bankruptcy procedure as the instrument of reducing financial exclusion and to answer the following questions: *whether and to what extent do current legal solutions support process of financial inclusion of excessively indebted households?*

Due to the adopted objective of this doctoral dissertation and the reason for analysing the subject, the complementary research hypotheses are presented along the main hypothesis. The main hypothesis states that, *„domestic legal solutions in the field of consumer bankruptcy are not the effective tools for limiting financial exclusion in Poland.”*

The verification of the main hypothesis was supplemented by the assessment of accuracy of the detailed hypotheses:

- *The number of insolvent households in Poland has been increasing, regardless of the macroeconomic situation.*
- *Excessive consumption applies to every type of household, including poor households, socially and financially excluded.*
- *The model of the inclusive financial system and its tools, including consumer bankruptcy, serve as a function for legal and economic conditions applicable to the specific circumstances.*

3. Time and scope of conducted research

The content of the dissertation was based on own research, i.e. case studies, statistical data analyzes and the analysis of scientific literature.

Quantitative research includes statistical data about financial exclusion of consumers, their excessive indebtedness and the bankruptcy proceedings, including the number of bankruptcies declared by consumers, with particular reference to data concerning Poland.

Statistical data was derived from international institutions (including the World Bank) and from national institutions, including The National Bank of Poland, the Polish Financial Supervision Authority, the Central Statistical Office, economic information

offices (BIG) and data of the Ministry of Justice on of bankruptcy proceedings, including the number of declared bankruptcies.

Statistical analyzes cover the years 2009-2017 - the period from the introduction to the national legal order of the consumer bankruptcy to the date of completion of the own survey (carried out in 2015-2017).

3. Characteristics of parts of the dissertation

The doctoral dissertation consists of five chapters, and its structure has been subordinated to achieving the objectives and verifying the research hypotheses. The first four chapters contain mainly theoretical considerations, supplemented with the analysis of statistical data, while the last, most important chapter includes the also results of primary research, ie case studies.

The first chapter "*The household as an economic entity*", included comprehensive and critical analysis a household, using a variety of theories present in the scientific literature, taking into account contemporary socio-economic changes. The object of his considerations is his functioning on the market: labor, consumer goods and financial services.

Second chapter "*Financial exclusion: a theoretical-statistical view*", contains considerations about the forming of financial exclusion, depending on its social, economic, geographical or cultural conditions. In this chapter, there are described definitions and classifications of financial exclusion and their the relationship between financial and social exclusion. The theoretical concept of financial exclusion is supported by statistical analysis about the forming of this phenomenon on a global and a national scale.

The third chapter "*The inclusive financial system*" analyzes the concept of building a financial system, based on the idea of sustainable economic development and responsible finances, the purpose of which is, among others, reduction of poverty as well as reduction of exclusions from various spheres of socio-economic life. This chapter also presents instruments for mitigating financial exclusion in Poland and other countries with different types of economies.

The fourth chapter "*The consumer bankruptcy - theoretical issues*" describes various legal regulations of consumer bankruptcy in various countries, including two of its most important models, i.e. based on common law and continental model.

Considerations on legal solutions applicable in the analyzed countries studied are complemented by an analysis of the relationship between consumer bankruptcy and excessive indebtedness and financial exclusion.

The fifth chapter of the "*Polish model of consumer bankruptcy and its conditions*" is devoted to the analysis of the functioning of consumer bankruptcy in Poland. After presenting its legal and procedural aspects, the chapter contains the considerations about effectiveness in limiting the phenomenon of financial exclusion and over-indebtedness of households. The final part of chapter describes propositions of changes in the field of consumer bankruptcy, which would increase effectiveness of bankruptcy procedure in the mitigation against financial exclusion of households.

4. Research methods and their characteristics

This work includes secondary studies based on published statistical data, and primary research, which were based on direct questionnaires.

Moreover, epistemological investigations were also carried out, based on national and English scientific literature.

Considering the fact that the core of the work is a legal institution (consumer bankruptcy), the analysis also included legal acts regulating the matter related to financial exclusion and over-indebtedness of households.

The first chapter uses a method of analysis and criticism of the literature, a method of data analysis and method of critical interpretation of the law.

In the second to fifth chapters, the method of statistical data analysis was also used. In addition, the content of the last chapter also includes the results of own research (case studies).

The method of analysis and criticism of the literature was used mainly for epistemological and systematic researches.

The following texts were used to prepare the dissertation:

- monographs;
- scientific articles;
- reports of international organizations (eg the World Bank) and governmental and non-governmental institutions;

- press releases;
- conference reports;
- results and analysis of statistical data.

The method of analysis and critical interpretation of legal provisions includes domestic and foreign legal acts, with particular emphasis on national laws. The analyzed legal acts are mainly related to the introduction into the legal order in Poland of a consumer bankruptcy procedure and its later amendments, i.e.:

- The Act of 28 February 2003 Bankruptcy Law (Journal of Laws of 2003 No. 60 item 53, as amended)
- The Act of March 31, 2009 amending the Bankruptcy and Reorganization Law of December 5, 2008 (Journal of Laws No. 234, item 157, as amended)
- The Act of 29 August 2014 amending the Act - Bankruptcy and Reorganization Law, the Act on the National Court Register and the Act on court costs in civil matters (Journal of Laws item 1306 of 2014).

In addition, legal acts related to the issue of excessive indebtedness and financial exclusion of households were analyzed. The analysis included, among others:

- Act on supervision of the financial market of July 21, 2006 (Journal of Laws No. 157 item 1119 with later amendments).
- The Act on the sharing of economic data and the exchange of economic information of 9 April 2010 (Journal of Laws No. 81, item 530 of 2010, as amended).
- The Act on consumer credit of May 12, 2011 (Journal of Laws No. 126, item 7, as amended).
- The Act on Payment Services of 19 August 2011 (Journal of Laws 2011, No. 199, item 1175, as amended).

The method of analyzing statistical data focuses mainly on data illustrating the phenomenon of excessive indebtedness, financial exclusion and the course of bankruptcy proceedings. The dissertation used, among others, statistic data:

- World Bank showing the phenomenon of financial exclusion;
- national economic information offices (BIG) showing the number of overly indebted consumers;

- National Bank of Poland showing the financial inclusion of Poles (eg number of bank accounts per one person) and development of infrastructure serving the provision of financial services (eg number of ATMs, number of accounts).
- The Polish Financial Supervision Authority showing the liquidity of repayment of loan installments;
- The Central Statistical Office in Poland concerning, among others, income and expenditure of Poles and their financial obligations.

The most important methods are case studies, involving thirty insolvent debtors and their households. Those are citizens who permanently lost their financial liquidity. For the research needs they are divided into three groups:

- over-indebted people, who declared bankruptcy (group A);
- over-indebted people who were not interested in declaring their bankruptcy (group B);
- over-indebted people, whose bankruptcy applications were rejected (group C).

The research was carried out in the form of a direct interview. In its content appeared questions related to their various spheres of socio-economic life, with particular emphasis on their financial management.

Case studies was aimed to search and show some anomalies in the management process, and even extreme or even pathological behaviors. Insolvency and over-indebtedness of households are so atypical and complex phenomena that they need using of special, precise research tools, analyzing in detail the financial behavior of consumers and their various socio-economic determinants. Although the selected research group (30 people) is not representative for all debtors in Poland, but it shows various aberrations, which are not revealed from the level of quantitative data. It should also be added that this type of research is innovative, because so far mainly were conducted quantitative research on financial exclusion phenomena or over-indebtedness problem.

Due to the lack of many detailed quantitative studies illustrating the phenomenon of financial exclusion of over-indebted and bankrupt consumers, case studies were crucial in assessing the validity of the main hypothesis.

6. The most important results - conclusions

The most important conclusions from the dissertation can be presented in following statements:

- The number of consumer bankruptcies is too small to significantly reduce the number of individuals financially excluded from transaction services. The raise in the number of bank account holders should be associated primarily with the development of the financial services market and infrastructure as well as with the growing incomes of Poles, who use transaction services more often.
- The increasing number of bankruptcies may change the policy of credit institutions and reduce access to loans for the bankrupts. Restrictions on the access to credits for citizens who have been previously over-indebted may be the form of responsible consumer protection. However, it should also be stressed that such restrictions may also arbitrarily exclude consumers who, after losing and liquidating valuable assets, would like to take a loan and improve their economic conditions. Their loss of financial liquidity may have been caused by external factors and may not have been the result of their erroneous economic decisions. Credit institutions has not prepared duly profiled services, e.g. micro-credits services. On the one hand, such services would protect the bankrupt citizens against the risk of consecutive loss of financial liquidity; on the other hand, they would allow them to responsibly and rationally improve their standards of living after they have declared their bankruptcy.
- Consumer bankruptcy tools cannot effectively reduce the financial exclusion, because of the low level of economic awareness of indebted individuals and their inability to manage personal finances. The current procedure contains too few re-educational elements to improve the skills of over-indebted individuals in order to use such elements in a responsible manner (e.g. regulations connected with negotiations with creditors in order to reach an agreement).
- The "grey area" is the sector of informal economy in which insolvent households can protect themselves, earn income and collect property assets, which are not subject to execution. Some respondents developed a specific strategy for personal management in conditions of permanent insolvency and

eliminated to minimum the difficulties resulting from ongoing enforcement activities; therefore, such individuals are not interested in bankruptcy procedure. Unfortunately, in the long run, staying in the "grey area" will cause number of difficulties in various aspects of the domestic economy and increase risk of even greater financial and social exclusion.

- In recent years, the number of over-indebted people in Poland has been growing over the period of better and worse economic conditions. Apparently, the higher the income of a household, the higher the number of over-indebted consumers.
- The bankruptcy procedure may have elements of financial inclusion, even in the countries with more restrictive models of the bankruptcy procedures (e.g. France). Consumer bankruptcy policy is one of many instruments to reduce over-indebtedness and financial exclusion. Financial inclusion of excessively indebted consumers also requires the use of other instruments to limit their financial exclusion (e.g. education).