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Katarzyna Maćkowska
Katolicki Uniwersytet Lubelski

# General remarks on Polish bankruptcy law

**Key words:** bankruptcy law, reorganization law, enterprises, business, liquidation proceeding

## 1. Introduction

After Poland regained its independence in 1918, Polish bankruptcy law was based on provisions enacted by invaders what resulted in four different binding systems in various parts of Poland. A unitary bankruptcy law was introduced in 1934 in a form of presidential executive orders, the first regulating liquidation and the second one governing the procedure of reorganization. Both of these orders were modified in 1990 and 1997 when a term of *merchant* was replaced by term of *entrepreneur*. As it is widely underlined, not only economic and legal aspects caused that a bankruptcy law has been updated. Also a linguistic level required enactment of a modern law[1]. In 2003 a new law was enacted and it is still valid, however it was modified several times, including the last change dated on 31st of December, 2014. This act is entitled The Bankruptcy and Reorganization Law (further: the BRL). It consists of six parts: General rules relating to bankruptcy law and its effects, Cross borders proceedings, Separate bankruptcy proceedings, Reorganization for debtors who are in danger of insolvency, Criminal rules and finally Temporary rules. Generally it should be accentuated that Polish bankruptcy law embraces both the rules of law providing the basic substance of law and the rules of procedure describing how matters are to be handled in the courts, including the Civil Procedure Code. In addition two basic proceedings comprise liquidation and reorganization[2].

As the private sector started up to develop in post Soviet Poland then the necessity for a modern bankruptcy law has appeared. Furthermore, the EU enlargement and the Polish accession determined a shape of new provisions[3]. Presently, the BRL governs rules of debts' execution made by all creditors toward an insolvent debtor being an enterpreneur, rules of debts' execution toward an insolvent debtor being an individual

[1] See: *The Bankruptcy and Reorganization Law*, translated by M. Bińkowska, W. Jacyno, K. Romaniec, Warszawa 2004, Introduction, no pagination.

[2] Detailed description of both of these procedures are clearly presented in: *Modele postępowań upadłościowych w Polsce i wybranych krajach UE*, S. Morawska (ed.), Warszawa 2011, passim.

[3] This problem is deeply analysed by P. Kupis, K. Zaniewska, *Zbliżanie ustawodawstwa – dotychczasowe efekty i wyzwania*, [in:] *Procesy upadłościowe i naprawcze w Polsce na tle doświadczeń Unii Europejskiej*, E. Mączyńska (ed.), Warszawa 2013, p. 181–200.

not conducting a business activity, consequences of bankruptcy declaration, rules of cancelling debts of an individual having a status of a bankrupt as well as rules relating to reorganization of enterpreneurs threatened with insolvency[4].

## 2. Bankruptcy courts, bankruptcy judges and a judge-commissioner

Bankruptcy cases are recognized by bankruptcy courts. They are districts courts and commercial courts[5]. The court officials with decision – making power over bankruptcy cases are bankruptcy judges. The status of bankruptcy judges does not differ from the position of other judges in Poland. They are appointed by the President of Poland and serve for live unless the judge is removed or disquailified.

A jurisdiction of bankruptcy courts is basically subject to rule that a bankruptcy petition is filed with the court where a debtor has its principal business. Adittionaly, if a debtor has its business within the jurisdiction of several courts and it is difficult to determine where the principal business is located, then all these courts have the jurisdiction over such a specific case. Furthermore, a place od debtor's residence or the place of the assets constitute premises enabling to solve a problem of jurisdiction over bankruptcy cases[6].

Within two months after bankruptcy petition filing the bankruptcy court is obliged to issue a bankruptcy decree, i.e. to declare bankruptcy of a debtor or to dismiss the petition[7]. At this stage the case is recognized by three professional judges[8]. Among their detailed duties, the following ones should be noted:

- reviewing both the bankruptcy petiton (as its content must conform to the legal standards) and the supporting documentation, especially when a debtor presents a repayment plan;
- submitting a notice to governmental units if the debtor is a state-owned enterprise or a company wholly owned by the state tresury;
- appointment of probation officer when necessary;
- setting a hearing of a debtor and a creditor who filed the bankruptcy petition when needed (art. 30);
- convening a preliminary meeting of creditors in order to decide an appropriate proceeding and elect creditors' committee unless the costs of such meeting are in excess of 15% of total value of claims (art. 44);
- presiding at the meeting of creditors, however only one judge is responsible for this task (art. 46).

After declaring bankruptcy, the proceeding is conducted by a judge-commissioner, providing that the same bankruptcy court which issued a bankruptcy decree has a jurisdiction over the case and perform other duties expressed in the BRL, i.e.: adjudicating about a conversial of the case from one proceeding to another, adjudicating about the remuneration of trustee and reimbursement of his expenses, confirming the reorganization plan accepted by creditors' and adjudicating about the closing of the case or it discontinuation[9].

According to article 152 of the BRL, the judge-commissioner manages the course of proceeding, monitors a trustee, insolvency supervisor and insolvency administrator, establishes the activities which these officials are allowed to execute only with the judge's permission, pays attention to offences they have committed and recognizes complaints against a bailiff. Furthermore, the judge-commissioner gives a consent to an appointment of trustee, insolvency supervisor or administrator deputies and set a catalogue of their activities[10], reviews trustee's and insolvency supervisor or administrator reports[11] and admonishes them in case of negligency[12]. Finally, the judge commissioner removes a trustee and insolvency supervisor or administrator:

- at their request;
- at the request of creditors' committee or creditors' assembly;
- in case of their death or when there is an obstacle in performing duties;
- for incompetence[13].

It should be added that in Polish bankruptcy proceedings both the bankruptcy judges sitting at bench and the judge-commissioners can decide facts to be

[4] Art. 1 of Ustawa z dnia 28 lutego 2003 r. – Prawo upadłościowe i naprawcze (t.j. Dz. U. z 2015 r. poz. 233) – Bankruptcy and Reorganization Law (further: BRL).

[5] Art. 18 of BRL.

[6] Art. 19 of BRL. See also: K. Flaga-Gieruszyńska, *Prawo upadłościowe i naprawcze*, Warszawa 2012, p. 31–37.

[7] Art. 27 (3) of BRL.

[8] Art. 18 of BRL.

[9] See: A. Hrycaj, *The Bankruptcy Court and the Judge-Commissioner in Poland*, www.insol-europe.org.

[10] Art. 159 of BRL.

[11] Art. 168 of BRL.

[12] Art. 169a of BLR.

[13] Art. 170 of BLR.

proven according to general rules of evidence. Moreover, litigation, if appears, is conducted in the same way that civil cases are handled in the courts.

## 3. Trustee, insolvency supervisor and insolvency administrator

These three entities are appointed after declaring bankruptcy taking a form of proceeding in a bankruptcy case under consideration. If the proceeding encompasses a liquidation the bankruptcy court appoints a trustee. In case the proceeding embraces a repayment plan and a bankrupt remains the debtor in possesion, then an insolvency supervisor is appointed. When the repayment arrangements are allowed but the bankrupt is not permitted to manage his assets, the court appoints an insolvency administrator[14]. It is clearly stated that a conversial of the proceeding requires a modification of that appointment[15]. For instance, if the court changes a bankruptcy decree from liquidation into repayment plan, a trustee must be cancelled and insolvency supervisor or administrator should be appointed instead.

The duties of trustee, insolvency supervisor and insolvency administrator can be performed by individual with trustee license or a company, if partners liable without limitation with their whole property for the partnership's obligations or members of the board representing the partnership or company have an appropriate licence[16].

It should be noted that they disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. The BRL indicates the degree of relationship and circumstances under which the outcome of a proceeding could be affected by interest of the trustee, insolvency supervisor or insolvency administrator[17].

The detailed tasks of trustee[18] are governed by the Division II Chapter 2 of the BRL which involves:

- management of property of the estate, its protection from destroying, deterioration or seizure by third parties and liquidation of debtor's assets;
- taking actions in order to reveal the bankruptcy decree in all register in which the debtor's assets were recorded;
- informing creditors, a bailiff, banks and other institutions about declaring bankruptcy;
- recovering items of a property of the estate.

The trustee is responsible for executing laws protecting employees in case of employer's insolvency. He also has a right to demand needed information from governmental units. In addition, bankruptcy law formulates a general rule binding the trustee, namely to take action with due diligence and in a manner that enables the best use of a property of the estate in order to satisfy creditors, including a reduction of proceeding expenses[19].

Articles 180 and 181 of the presented act regulates a position of the insolvency supervisor. As aforementioned he acts only when the court declares a bankruptcy involving the arrangement plan and the debtor has a status of a debtor in possesion. The insolvency supervisor monitors the debtor's activities and his enterprise at any moment. Furthermore, he is allowed to inspect the debtor's asset being not a part of the enterprise and determines whether it is properly protected from destroyment. Generally the insolvency supervisor performs his duties until a repayment plan is accepted unless the court decides otherwise.

The tasks of an insolvency administrator in turn resemble those of a trustee. Accordingly he manages a property of the estate, including current operations of the business, protect it from a destroyment or taking away by third party. He also submits schedules and financial reports as for the time before declaring bankruptcy if these documents have not been presented. He is obliged not to worsen a property of the estate and to observe the rules of good management[20].

## 4. The debtor/bankrupt and a property of the estate

First of all the act regulating bankruptcy in Poland requires a debtor to be an enterpreneur. Nevertheless Polish law includes many definitions of this meaning and the BRL refers to one presented in the Civil Code. A bankruptcy case can be commenced against an enterpreneur within a year after he stopped to continue a business activity and against a debtor who conducted

[14] Art. 156 of BRL.

[15] Art. 158 of BRL.

[16] Art. 157 of BRL.

[17] Art. 157a of BRL.

[18] The legal status of trustee in specific proceedings is analysed in: P. Feliga, *Stanowisko prawne syndyka w procesie dotyczącym masy upadłości,* Warszawa 2013, passim. K. Flaga-Gieruszyńska, op. cit., p. 38–52.

[19] Art. 179 of BRL.

[20] Art. 182–184 of BRL.

a business but has never registered it. Furthermore, individuals who are not enterpreneurs may also be subject to the presented act but only when their insolvency is implied by extraordinary circumstances and beyond their control. Additionaly, article 5 of the BRL indicates other entites who may declare bankruptcy.

A bankruptcy of individuals who do not conduct a self-business activity is regulated as a separate proceeding (Title V) and is commonly known as a consumer bankruptcy. This procedure was deeply modified in December, 2014. Accordingly it helps individual overburdened with debts to solve financial problems at the bankruptcy courtroom. This case may be commenced even though there is only one creditor at the picture. The court will dismiss a motion when:

- an insolvency of a debtor is not implied by extraordinary causes being out of his control; bankruptcy law regulates such examplatory grounds as an entering an obligations at the time of insolvency or when the debtors has agreed or caused termination of an employment contract;
- the debtor has caused or increased his insolvency purposely or owing to his serious negligence;
- within 10 years before bankruptcy petition, another bankruptcy proceeding (including situations when creditors had not been satisfied or a proceeding had been discontinued but not at a motion of creditors) or procedure (during which all or part of debts had been cancelled or arrangement provisis had been entered) have been conducted or when a debtor's action has finally been recognized as made at the expense of creditors;
- data included in bankruptcy motion are false or not complete, unless it does not affect a proceeding seriously or there are other equity and humanitarian grounds for conducting the bankruptcy procedure[21].

One should not forget that the law modified in 2014 includes a new version of article 2 in which the aim of commencing bankruptcy procedure toward an individual who does not conduct a business activity is to enable his debts not satisfied at the conlusion of a case to become discontinued and secondly – if aboved is possible – to satisfy the creditors to a highest degree[22].

When considering an individual bankruptcy it must be underline that the new law of 2014 partially solves a problem of 'no – asset cases' of individuals who are not entrepreneurs by allowing to conduct a bankruptcy procedure in such events and mandating the state to cover its costs.

The following categories of debtors are totally excluded from bankruptcy act: the State Treasury, local government units, public health care centre, college and universities, individual who is a family farmer and other institutions and legal persons created by an act or created to perform duties imposed by acts[23].

A debtor is declared the bankrupt if he becomes insolvent. According to article 11 of the BRL the insolvency means that a debtor is not current on his financial obligations. Another premise is constituted by situation in which a debtor is a legal person and satisfies its creditors' claims but a total sum of its obligations does not exceed a value of the property. It should be hereby mentioned that the BRL defines that the debtor becomes a bankrupt after bankruptcy declaration[24]. Therefore Polish terminology precisely uses both terms a debtor and a bankrupt while for instance in the U.S. only the term debtor appears in the Bankruptcy Code.

There are two basic grounds for dismissing a bankruptcy petition. The first one appears when a delay on repaying creditors is no longer than three months and a sum of claims is not in excess of 10 % of the balance sale value of the debtor's enterprise[25].

The second condition for a dismissal of petition relates to no – asset cases (with exceptions aforesaid). The case will not be commenced it the debtor's property is not sufficient to cover costs of proceeding[26].

When the bankruptcy petition is voluntary one, a debtor is required to indictate a type of proceeding he recognizes as appropriate and to attach schedules as well as further documentation presenting his financial affaires.

If a debtor requests for a bankruptcy including the arrangements possibility, he is obliged to submit a repayment plan and cash flow statements for previous 12 months[27].

The bankrupty petition itself should among others include:

- debtor's name and surname, firm, place of residence or place of business, his councel and per-

[21] Art. 491[3] of BRL.

[22] See art. 2 of BRL, Dz.U. z 2014 r. poz. 1306 (J.L. of 2014, item 1306).

[23] Art. 5 and 6 of BRL.

[24] Art. 185 of BRL.

[25] Art. 11 section 2 of BRL.

[26] Art. 13 of BRL.

[27] Art. 23 of BRL.

sonal data of partners with unlimited liability for the obligations of the partnership;
- a location of enterpreneur and additional asset of a debtor if any;
- grounds for petition presented and that they are probable[28].

Regarding a bankruptcy petition it must be marked that a presentation of motion which does not conform to formal requirements results in a dismissal without obliging the bankruptcy court to call a party submitting the petition to fulfill lacking information. Commencing a bankruptcy case requires the payment of a filing fee. As of April, 2015, the filing fees are 1 000 zł (circa 250 euro) in case of entrepreneur and 200 zł (circa 50 euro) in case of individuals who do not conduct a business activity.

If a debtor files the bankruptcy petition the bankruptcy court *ex officio* secures his asset. When the bankruptcy petition is accepted, the court declares a bankruptcy of o debtor. This decision includes debtor's data and whether he remains debtor in possession, a form of proceeding, information when and where proof of claims should be submitted, calls for other parties to reveal their rights on debtor's real property, appointment of a judge-commissionaire, a trustee, an insolvency supervisor or administrator. The date of issuing of such a decision is recognized as a date of bankruptcy. The court order must be publicly announced[29].

Only the bankrupt is permitted to appeal against the court's decree declaring the bankruptcy. When the court dismisses a petition a right to appeal is granted solely to the party presenting this motion[30].

The BRL distinguishes the following consequences of declaring a bankruptcy[31]. The first group[32] embraces such effects in relation to a bankrupt himself. When the liquidation proceeding is implemented, the debtor is obliged to indicate and pass his entire asset, documents pertaining to business activity, property and financial statements. Performing this duty must be confirmed in a written form and submitted to a judge-commissioner. Furthermore, the bankrupt is required to give information requested by a judge-commissioner and a trustee. Similarly, this second duty is imposed on a debtor, when the bankruptcy involves a repayment plan. Obviously the trustee is replaced by an insolvency supervisor.

The second group relates to the effects of declaring bankruptcy on bankrupt's assets. In this context the presented act distinguishes among property of the estate, debts of the bankrupt, inheritances received by the bankrupt and the assets of bankrupt and his spouse[33].

In the aspect of property of the estate (articles 61–82) one should accentuate a legal definition of this term. Accordingly after a declaration of bankruptcy an asset of the bankrupt becomes the property of the estate avaiable to satisfy creditors. What is important this asset consists of property both obtained by the bankrupt at the day of bankruptcy declaration and received during bankruptcy proceeding. Therefore the property of the estate is a fundamental concept, since it determines what assets are avaiable to pay creditors. Article 63 regulates what assets are excluded from the property of the estate. Firstly, it refers to the Civil Procedure Code. This act expressly states that following items are exempt:
- household goods, bedclothes, clothing necessary for debtor and the members of his family and clothing used for the professional activity;
- food supply and fuel necessary for debtor and members of his family for one month;
- one cow or two goats or three sheep necessary for feeding of debtor and members of his family including groats supply and litter till the nearest harvest;
- implements and tools necessary for debtor's labour and components necessary for his production for the time period of one week, without the motor vehicles;
- a limited payment under employment or if the debtor is not employed money necessary for him and members of his family for two weeks;
- items necessary for education, personal papers, rewards, items necessary for religious practices and other items daily used which sale profit is less than their value, if they have high value in use for the debtor[34].

The Civil Procedure Code regulates further exemption. Additional exclusions are governed by the BRL itself. For instance these are a part of bankrupt's salary

[28] Art. 22 of BRL.

[29] Art. 51–54 of BRL.

[30] Art. 54 of BRL.

[31] See also: A. Ptak-Chmielewska, *Statystyka procesów upadłościowych naprawczych przedsiębiorstw w Polsce na tle krajów europejskich,* [in:] *Procesy upadłościowe…*, p. 319–331.

[32] Presented in Title III, Division I of BRL.

[33] Presented in Title III, Division II of BRL.

[34] Article 829 of the Civil Procedure Code (Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego, t.j. Dz.U. z 2014 r. poz. 101 as amended).

that may not be taken and asset used for the employers and their families social assistance. It must be also stated that all parties in interest are entitled to submit a motion in order to exclude an asset from the property of the estate. The motion must include all claims and supporting proof. The judge-commissionaire recognizes the motion within one month after hearing the trustee, the insolvency supervisor or the insolvency administrator. If the motion is dismissed, then a claimant has a right to file a lawsuit with the bankruptcy court[35].

Usually in bankruptcy proceedings the property of the estate is protected from its dissipating by the automatic stay. Accordingly creditors may not take any collective actions against debtor[36]. The BRL constitutes an exception as the declaration of bankruptcy with reorganization arrangements does not prohibit creditors from commencing judicial and administrative proceedings against a bankrupt[37]. In case when the liquidation is involved, both judicial and administrative proceedings regarding the property of the estate may only be filed and conducted only by the trustee and against him[38].

## 5. Creditors and their rights

According to article 189 of the BRL the creditor is who is entitled to being repayed from the property of the estate, even though a proof of claim does not have to be necessarily filed. The general rule governing a problem of proof of claim states that creditor is obliged to present his claim to a judge-commissionaire within the time indicated in a bankruptcy declaration in order to participate in bankruptcy proceeding and when it is necessary to decide a value of the claim[39].

It must be noted that claims arising from employment title are put on a list of claims *ex officio*. Furthermore, secured claims must be enlisted although a creditor himself has not filed a proof of claim.

The proof of claim is a written statement supported by documents confirming the claim. Generally it includes datas of creditor (names, firms and addresses), value and category of claim, proves, liens and information whether another proceeding in relation to the claim are conducted[40].

A copy of the proof of claim and supporting documentation must be attached to.

Firstly, the proof of claim is formally evaluated by the judge-commissioner. If a creditor is an enterpreneur or is represented by professional proxy and a proof of claim does not conform to the BRL requirements, then it is returned. In other cases a judge-commissioner sends for a completion. When the proof of claim is formally correct, a judge-commissioner forwards the proof of claim to a trustee, an insolvency supervisor or an insolvency administrator who checks if it is confirmed in financial documentation of a bankrupt or other register and subsequently summons the bankrupt for a declaration whether he accepts the claim[41]. He also writes out a list of claims when a deadline for presenting claims expires. This list is modified thereafter when such a need appears. Article 245 of the BRL regulates the obligatory contend of a list of claims. It embraces: a value of claim acknowledged, category of claim, whether a claim is secured, whether a creditor has a right to compensation, information about other judicial and administrative proceedings regarding the claim. The list is transfered to a judge-commissioner who disseminates that it was drawn up. Creditors, bankrupt and other parties in interest are entitled to object. Objections are recognized by the judge-commissioner at a trial. After such disputes are solved or when there are no objections, the judge-commissioner confirms a list of claims[42].

In Polish bankruptcy law there are two forms representing creditors. The first one is the meeting of creditors. It is convined by the judge-commissioner:

- when the law requires creditors' resolution;
- on the motion of minimum two third of creditors representing minimum one third of undisputed claims;
- when the judge-commissioner deem it necessary[43].

The judge-commissioner announces about a date and place of such a meeting. It is important to mention that he also presides at it but has no vote. Creditors with join claims vote by a proxy. A resolution is passed by

[35] Art. 73 and 74 of BRL.

[36] It must be remembered that submitting of bankruptcy petition may be used as an instrument of taking a control over a company. To see a case study, note: A. Adamska, *Złożenie wniosku o ogłoszenie upadłości jako narzędzie w walce o kontolę nad spółką publiczną*, [in:] *Upadłości, bankructwa i naprawa przedsiębiorstw. Wybrane zagadnienia*, A. Adamska, E. Mączyńska (eds.), Warszawa 2012, p. 401–415.

[37] Art. 137[1] of BRL.

[38] Art. 144 of BRL.

[39] Art. 236 of BRL.

[40] Art. 240 of BRL.

[41] Art. 241–243 of BRL.

[42] Art. 255–260 of BRL.

[43] Art. 191 of BRL.

a majority of attending creditors who represent at least one fifth of claims belonging to creditors with a right to participate in the meeting[44].

The judge-commissionaire is entitled to abrogate creditors' resolution when it:

- is inconsistent with law;
- is contrary to good practices;
- harshly violates an interest of creditor who voted against a resolution[45].

At the first meeting creditors have a right to establish their council, i.e. a second form of creditors' activity. In addition the creditors council may be constituted by the judge-commissioner when he recognizes it as needed. It consists of 3 to 5 members and 1 or 2 deputies appointed by the judge-commissioner among creditors whose claims are undisputed or *prima facie* evidences.

In general, the first meeting of creditors is convened by the court in order to take a resolution relating to a form of proceeding, election of creditors' council and to enter into agreement with a debtor. However it is not convened when the costs of its convening will be excessive or when disputed claims exceed 15 % of all claims[46].

Creditors at any time may demand the judge to establish the council and to modify its composition. In the second case if the judge does not accept a motion, creditors at a meeting are entitled to modify a composition of the council by voting[47].

The BRL stresses that the council of creditors acts in charge of creditors and helps a trustee, an insolvency supervisor or administrator, oversees if they carry out their duties properly, monitors a financial state of the property of estate, issues opinions when required. The council itself and its members individually may present to the juge-commissioner their remarks on trustee's, supervisor or administrator activity. Furthermore they have a right to ask the judge for revoking these officials. The council may also demand them to make an explanation and review documents relating to a particular proceeding[48].

What is important, the council's consent in liquidation proceeding is obligatory required to:

- continuation of business by a trustee if it is to last longer than 3 months after bankruptcy declaration;
- departure from sale of a firm as a whole;
- sale of rights and claims;
- taking loans and credit and encumbering the bankrupt's asset with limited rights *in rem*;
- execution of reciprocal contract entered into by the bankrupt, rescission such an agreement;
- the acknowledgement, waiver and conclusion of a settlement, concerning challenged claims, as well as submitting a dispute to a court of arbitration for settlement[49];

In case where a reorganization is considered, the council consents to liabilities entered by the bankrupt or insolvency administrator, such liens and other rights as well as taking by insolvency administrator credits and loans[50].

The creditors' council takes decisions in form of resolution by majority votes. When the council monitors a trustee, insolvency administrator or supervisor and oversees a condition of the property of the estate, it may act through individual members who are authorized to do so[51].

According to art. 208 of BRL the council's meeting is invoked by a trustee (or insolvency administrator or supervisor) by mail who also presides at it without right to vote. When the meeting is convened to monitor a trustee, then the oldest member acts as a president unless the council decides otherwise. Furthermore, the council's meeting may be convened by the judge-commissionaire. He is entitled to waive a resolution which is inconsistent with law or good practices. The decision of judge-commissioner is revokeable[52].

It must be added that a judge-commissioner performs duties reserved for the council if it is not constituted and acts instead of such an entity when the council is in delay[53].

At the first meeting of creditors the arrangement agreement may be entered when at least a half of creditors having ¾ of all claims being confirmed by enforcement titles or undisputed or provable takes part in ballot[54].

The aforesaid meeting is presided over by a judge being a member of a court deciding about the particular bankruptcy. It embraces a debtor, interim insolvency supervisor or examiner and creditors whose claims are con-

[44] Art. 199 of BRL.
[45] Art. 200 of BRL.
[46] Art. 44 of BRL.
[47] Art. 201–203 of BRL.
[48] Art. 205 of BRL.
[49] See *The Bankruptcy*…, p. 121. Art. 206 of BRL.
[50] Art. 206 of BRL.
[51] Art. 207 of BRL.
[52] Art. 210 of BRL.
[53] Art. 213 of BRL.
[54] Art. 45 of BRL.

firmed in enforcement titles. Additionally, a bankruptcy court or a judge-referee may enable other creditors to participate if their claims are undisputed or provable[55].

## 6. Priorities

The meaning of priorities is strictly connected to a term of the funds of property of the estate. It is defined in article 335 of BRL generally as sums derived from liquidation of the property of the estate and revenue arising from continuation or lease of the bankrupt's business. Foreasmuch as liens survive bankruptcy proceeding, so only money remaining after a sale of collateral and repaying a secured creditor (according to a rule 'first in time, first in rights') constitute the funds of property of the estate[56].

Polish bankruptcy law regulates 5 categories of priorities[57]. The first one pertains to costs of proceeding, for the time after declaring bankruptcy alimony obligations, pension, amounts resulting from unjust enrichment of the bankruptcy estate, amounts from contracts entered by the bankrupt before declaring bankruptcy, which were executed due to trustee's order, amounts resulting from trustee's, insolvency administrator acts, amounts concluded by the bankrupt and made after declaring bankruptcy which had not reguired an insolvency administrator's consent or which had been made with such a consent.

The second category includes the following: for the time before declaring bankruptcy amounts from employment, amounts of farmers from delivery of their products, alimony obligations, pension and social security contributions for last two years before bankruptcy declaration including interests and costs of execution.

The third category relates to taxes and other public obligations, as well as remaining social security contributions, including interests and costs of execution.

The fourth category embraces remaining claims which do not belong to fifth category with interests for the last year before bankruptcy declaration. Finally, the fifth category is constituted by the interests other than those included in higher categories repayed due to an order of capital's repayment, administrative or judicial fines and amounts resulting from donations and legacies.

Considering an order of repayment it must be marked that a trustee satisfies the creditors of first category gradually when money are paid into the property of the estate. Similarly, alimony obligations are payed when due but entitled persons shall be satisfied up to the amount of minimum remuneration for work. If it is not possible creditors mentioned above are repayed by way of distribution of the bankruptcy estate funds[58].

The trustee prepares a plan of distribution of funds of the property of the estate and submit it to the judge-commissioner. This plan includes the sum which is distributed among creditors, claims and rights of persons participating in a division, a sum which will be paid to particular participants, an indication what is paid and what is left on judicial deposit. What is more, a trustee decides whether the plan is final or partial. The judge is entitled to modify the plan himself or to instruct a trustee to do so[59]. Obviously objections to such a project may be presented and if they are submitted, a bankruptcy court issues an order in this matter. If there are no objections, the judge-commissioner confirms the plan[60].

When funds of the property of the estate are not sufficient to repay all claims, the claims of lower category are satisfied after claims of a higher category are repaid in full. The claims of the same category share *pro rate* when they may not be totally satisfied[61].

## Conclusions

To sum up, it must be clearly accentuate that Polish bankruptcy law constitutes a branch requiring a complicated process of adaptation in post-Soviet Poland. Modifications of law relating to self-bussiness activity and economic changes have influenced rules on insolvency. For a long time bankruptcy proceedings have not been aviable to individuals. When a proper regulation was enacted it still has not met expectations of individuals who in effect of vicissititude of life could not solve financial problems. Liberalization of premises made in 2014 should improve this situation. Nonetheless vesting the bankrupt in instruments similar to American *fresh start* somewhat substitutes a remedium general that could be used in fighting against an economic cri-

[55] Art. 49 and 50 of BRL.
[56] Art. 336 of BRL.
[57] Art. 342 of BRL.
[58] Art. 343 of BRL.
[59] Art. 347 of BRL.
[60] Art. 351 of BRL.
[61] Art. 344 of BRL.

sis. Therefore we should have in our minds the direction of changes in American bankruptcy law, since they clearly show that less restrictions on part of the debtor lead to often misuses in bankruptcies. In this context it is difficult to find a moderate solution.

Polish bankruptcy law traditionally recognizes secured debts as obligations repaid from collateral according to general rule *first in time, first in rights*. It also gives the priority to claims which require additional protection because of their specific nature, for instance an alimony.

In consideration of the bankruptcy courts their equal status to other courts in Polish legal system should be noted. This feature also characterizes bankruptcy judges. Their role in bankruptcy proceeding is not restricted to supervision of trustee and other officials.

Regarding the status of trustee there are no doubts that this organ has an attribute of a representative for the creditors as a body and play a role of a disbursing agent for payment made by the debtor. Nonetheless, a trustee is entitled to bring actions against creditors to recover property of the bankruptcy estate. An insolvency administrator and an insolvency supervisor play a similar role depending on the type of procedure basing a particular case.

The creditors are entitled to meaningful participation in proceeding what seems to be balanced by instruments protecting the bankrupts.

In relation to types of bankruptcy procedures the most common one is the liquidation embracing an orderly, court-supervised actions of a trustee and resulting in a sale of bankrupt's property. Reorganization (rehabilitation) provisions are also available but in practice used less often than the liquidation.

Finally it is now observed that new provisions introduced in December 2014 result in more bankruptcy cases commenced by individuals who do not conduct a business activity. Number of these cases relates to debtors repaying their CHF credits.

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