



'HUMANITARIAN REASONS' IN THE DEBT RELIEF OF NATURAL PERSONS IN CONTEMPORARY POLISH INSOLVENCY LAW IN THE LIGHT OF JUDEO-CHRISTIAN TRADITION AND PHILOSOPHY

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ABSTRACT

The study refers to the competence given to commercial courts in Poland to be guided by "humanitarian reasons" in matters regarding the debt relief for insolvent natural persons. Humanitarian reasons allow the omission of general legal standards. The general clause „humanitarian reasons” can be clarified by referring– inter alia– to the Judeo-Christian traditional concept of debt relief and philosophy. However, Poland is a secular state. In Mosaic law, the debt relief was systemic in nature due to the construction of the sabbath and jubilee years. In Christian ethics, human dignity, forgiveness and mercy have an important place. The influence of Judeo-Christian tradition in Poland on the concept of humanitarianism is a fact. Irrespective of the personal beliefs of the body applying the law and the specific addressee of the court ruling, Judeo-Christian tradition allows for the formulation of directives as to the judicial interpretation of the term „humanitarian” in a secular state.

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Introduction

The research objective of this paper is to consider (1) how the Judeo-Christian tradition and philosophy treated debtors and (2) how presently in Poland the Judeo-Christian tradition (and therefore certain moral canons) still influences the application of the Polish state law on contemporary debt relief in consumer bankruptcy proceedings. It seems that the following qualifications of morality can be distinguished: autonomous morality (ethics of conscience), ethics of religious systems and finally social ethics and universal morality.¹ The ethics of religious systems is therefore one of many possible qualifications of morality. The ethics of religious systems transcend the boundaries of the given social group or nation. Nevertheless, in contemporary Europe, societies are multicultural in terms of worldview *and* pluralistic.

It should be noted that Polish law and Polish judiciary are strictly secular. The legal bases of administrative or judicial decisions cannot be based on the rules of religion. In some special situations the law directly refers to the canons of morality. This morality is shaped, inter alia (not exclusively), by the culture and religious tradition, including the Judeo-Christian philosophy. The preamble of the Polish Constitution contains the following phrase „we, the Polish Nation - all citizens of the Republic of Poland, both believers in God which is the source of truth, justice, good and beauty, as well as not sharing this faith, and these universal values derived from other sources, equal in rights and obligations towards the common good – Poland”. In the present times, the dominant religion in Poland is the Roman Catholic Church. The remaining religious associations are in a significant minority: the Greek Catholic Church, Old Catholicism, Orthodoxy (mainly: the Polish Autocephalous Orthodox Church), Protestantism and non-Christian: Islam² and Judaism. Pursuant to Art. 25 of the Constitution, churches and other religious asso-

1 . Anthony Kość, „Relacja prawa i moralności we współczesnej filozofii prawa (The relationship of law and morality in contemporary philosophy of law)” (2001) vol.11 *Roczniki Nauk Prawnych* 24; Tomasz Przesławski, „Rola Etyki w systemie prawnym (The role of ethics in the legal system)” (2011) *Profilaktya Społeczna i Resocjalizacyjna* 38.

2 . The history of Islam in Poland, which continues to the present day, starts in the fourteenth century, with the beginnings of Muslim settlement in the Grand Duchy of Lithuania, connected with Poland under the royal union. The first Muslims were the Tatars of the Golden Horde. They were prisoners of war, taken prisoner as a result of the wars of the Lithuanian Dukes with the Golden Horde, and voluntary emigrants. The first historically confirmed case of Tatar settlement took place in 1397. Poland was not the initiator of the Crusades in the Middle Ages. Moreover, the Teutonic Order of the Blessed Virgin Mary, brought in 1226 by the district prince Konrad of Mazovia (the Polish state was then experiencing a regional breakdown), became the main



ciations have equal rights. Public authorities in the Republic of Poland shall be impartial in matters of religious, philosophical and philosophical beliefs, ensuring the freedom to express them in public life. Relations between the state and churches and other religious associations are shaped on the basis of respect for their autonomy and mutual independence in their own scope, as well as of cooperation for the good of man and the common good. The relations between the Republic of Poland and the Catholic Church are defined by an international agreement concluded with the Holy See (*Sancta Sedes*) and by statutes. The relations between the Republic of Poland and other churches and religious associations are defined by laws adopted on the basis of contracts concluded by the Council of Ministers with their respective representatives.

In the analyzed case, the legal provision of the Polish law, refers directly to moral canons as premises for the application of specific legal effects which is the debt relief. However, the above observation is a significant simplification. The theory of law has been dealing with the relationship between law and morality for centuries. Many views were expressed on this matter. According to one of them, law and morality are essentially and functionally completely different, and therefore completely separate from each other.¹ According to another concept, law and morality are identical.² Among such extreme views there are compromise concepts: law and morality are neither identical with each other, nor are they entirely separated. They are in relation to each other where there are only some problems in the area of law. They are problems of morality and vice versa. Much of the problem belongs to either the law alone or only morality.³ Nevertheless, purely theoretical considerations are not the subject of this study.

1. Humanitarian Reasons in Polish Insolvency Law

„Consumer bankruptcy” is one of the parts of the Act of February 28, 2003. Bankruptcy law allows for debt relief in bankruptcy proceedings after meeting a number of conditions. Their omission when applying debt relief is possible precisely because of „reasons of equity” or „humanitarian reasons”.⁴ The bankruptcy law does not define the general clause „humanitarian reasons”. In the legal system, reference to humanitarianism takes place primarily when human dignity is

threat to the Polish state over years. Crowned as King of Poland, Władysław Jagiełło, the Lithuanian prince, defeated the troops of the Teutonic Order in the greatest battle of medieval Europe at Grunwald (15 July 1410). After Martin Luther's reformation - when bloody religious wars broke out in Europe - it was a country of religious pluralism and freedom.

1 . Hans Kelsen, *The Pure Theory of Law* (Berkeley: Los Angeles-London 1970) 8; Herbert L.H. Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 *Harvard Law Review* 593, 599-601.

2 . Max Scheler, *Der Formalismus in der Ethik und die materiale Wertethik* (Bern 1954); Nicolai Hartman, *Ethik* (München 1962); Lon L. Fuller, 'Positivism and Fidelity to Law-A Reply to Professor Hart' (1958) 71 *Harvard Law Review* 630; Arthur Scheller, 'Law and Morality' (1953) Vol.36 Issue.3 *Marquette Law Review* 319; Jerzy Wróblewski, 'Śluszność w systemie prawa polskiego (Righteousness in the system of Polish law) (1970) No.1 *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 97; Struktura Grzybowski, 'Struktura i treść przepisów prawa cywilnego odsyłających do zasad współżycia społecznego (Structure and content of civil law provisions referring to the principles of social coexistence) (1965) Vol. VI *Studia Cywilistyczne*, Kraków 17, 19, 25, 48.

3 . Anthony Kość, 'Relacja prawa i moralności we współczesnej filozofii prawa (The relationship of law and morality in contemporary philosophy of law)' (2001) vol.11 *Roczniki Nauk Prawnych* 27.

4 This text is based on a scientific paper published in Polish: R. Adamus, '„Judeochrześcijańska koncepcja darowania długów a >względy humanitarne< przy oddłużeniu osób fizycznych”, „The Judeo-Christian concept of forgiveness of debts and >humanitarian considerations <in the discharge of natural persons” [in:] „Człowiek – Państwo – Kościół. Księga Jubileuszowa dedykowana księdzu profesorowi Arturowi Mezglewskiemu”, „Man – State – Church. Jubilee Book dedicated to Father Professor Artur Mezglewski”, P. Sobczyk, P. Steczkowski (editors), Wydawnictwo Academicum, Lublin 2020, p. 13-30.

particularly vulnerable.¹ Therefore, the criminal law² and international public law regulating the principles of conducting armed conflicts refer to the principles of humanitarianism. Civil law protects human personal rights such as his dignity and honor (e.g. Article 23 of the Polish Civil Code).

In the document „Dignity and rights of the human person”, the International Theological Commission, established by John Paul II, an argument was postulated that human dignity is the highest good. Therefore, it should be adequately expressed in all created laws.³ „The fundamental and necessary values certainly include the dignity of every human person and respect for their inalienable rights.” In contemporary ethics, a distinction is made between the personal dignity that is inherent in man due to his humanity and personal (personality) dignity as acquired. In colloquial language, „humanitarianism” is „an attitude characterized by respect for people and concern for their welfare.”⁴ Humanitarianism is a broad concept, encompassing legal, moral, religious and interpersonal elements.⁵

The Judeo-Christian tradition can influence the understanding of the term „humanitarian considerations” as used in the Bankruptcy Law. In my opinion, the problem should be considered on two levels. First, the area of law-making. The Act refers to „humanitarian considerations”. The Constitution of the Republic of Poland, as mentioned before, guarantees the separation of church and state. The legislator must take into account the multiculturalism of society, and thus, both Christian morality and secular ethics. The legislator, however, should not exclude Chris-

1. Mirosław Sadowski, „Godność człowieka – aksjologiczna podstawa państwa i prawa (Human dignity – the axiological basis of the state and law) (2007) Studia Erasmiana Wratislaviensia – Wrocławskie Studia Erazmiańskie, Zeszyt naukowy studentów, doktorantów i pracowników Uniwersytetu Wrocławskiego – Wrocław 14; Junusz F. Mazurek, „Godność osoby ludzkiej jako wartość absolutna (Human dignity as an absolute value) (1993) Roczniki Nauk Prawnych Lublin 266; Junusz F. Mazurek, „Godność osoby ludzkiej jako źródło praw człowieka i obywatela (The dignity of the human person as the source of human and civil rights) (2014) 1 Civitas et Lex 43. Human dignity is a normative concept. In the preamble to the Universal Declaration of Human Rights of December 10, 1948, it was argued that recognition of inherent dignity is the basis of freedom, justice and peace in the world. Similar content was included in the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights, signed on December 19, 1966. Art. 30 of the Constitution of the Republic of Poland. Dariusz Dudek, „Zasada przyrodzonej godności człowieka (Principle of the inherent human dignity) [in:] Dariusz Dudek (editor), Zasady ustroju III Rzeczypospolitej Polskiej (Principles of the political system of the Third Republic of Poland) (Warszawa 2009) 54; Mirosław Granat, „Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawa (Human dignity under Art. 30 of the Polish Constitution as a value and a norm of law) (2014) 6 Państwo i Prawo 32.

2. Alicja Grześkowiak, „Znieść karę śmierci (Abolish the death penalty) (1982) 26 (10) Palestra 59-67; Magdalena Budyn-Kuślik, „Prawa człowieka w kontekście represyjnej funkcji prawa karnego. Przyczynek do rozważań o proporcjonalności w prawie karnym (Human rights in the context of the repressive function of criminal law. A contribution to considerations on proportionality in criminal law) [in:] Zasada proporcjonalności w prawie karnym”, „The principle of proportionality in criminal law, T. Dukiet-Nagórska (editor), (Warszawa 2010) 147; Leszek Bosek, „Prawo podstawowe do godności ludzkiej w Konstytucji RP (Fundamental right to human dignity in the Constitution of the Republic of Poland) [in:] Państwo prawa i prawo karne. Księga Jubileuszowa Profesora Andrzeja Zolla (The rule of law and criminal law, Jubilee Book of Professor Andrzej Zoll) vol. I, P. Kardas, T. Sroka, W. Wróbel (editors), (Warszawa 2012) 96–98; Marek Bielecki, „Ochrona godności osoby skazanej w prawie karnym wykonawczym. Wybrane aspekty (Protection of the dignity of the sentenced person in executive criminal law, Selected aspects) (2018) 60 Zeszyty Naukowe KUL 159.

3. Hubert Izdebski, Godność i prawa człowieka w nauczaniu Jana Pawła II. Wykład inauguracyjny roku akademickiego 2005/2006 na Wydziale Prawa i Administracji UW (Dignity and human rights in the teaching of John Paul II. Inaugural lecture of the 2005/2006 academic year at the Faculty of Law and Administration of the University of Warsaw) (2006) XLV Studia Iuridica 301; Leszek Buller, Godność osoby ludzkiej wymiarem podmiotowości człowieka w gospodarce (The dignity of the human person as a dimension of human subjectivity in the economy) [in:] Annales. Etyka w życiu gospodarczym, (Annales, Ethics in economic life 2012) 49.

4. Jan Paweł II, Evangelia Vitae (Kraków 1995), 34.

5. Krzysztof Wiak, Godność człowieka jako podstawa aksjologiczna polskiego prawa karnego (Human dignity as the axiological basis of Polish criminal law) [in:] Aksjologiczne podstawy polskiego prawa karnego w perspektywie jego ewolucji (Axiological foundations of Polish criminal law in the perspective of its evolution) A. Grześkowiak, I. Zgoliński (editors), (ydgoszcz 2017) 10 -11; Wiktor Osiatyński, Prawa człowieka i ich granice (Human Rights and Their Limits) (Kraków 2011) 109.



tian values. This has a deep historical and cultural justification.¹ Bankruptcy law is a law that pursues the economic interests of creditors and a debtor. The phrase „humanitarian reasons” is alien to this area of law. It undoubtedly refers to the acquisition of human rights. In the international (global as well as regional) as well as domestic legal order, economic rights are among the human rights. However, the act only uses the general clause: „humanitarian considerations”. Therefore, a second area should be distinguished: law enforcement. How will judges in bankruptcy courts rule on specific bankruptcy cases?

Under Mosaic law, the principle of debt relief was the norm of law. In the New Testament, the moral imperative is the forgiveness of sins. Nevertheless, humanism can also be derived from beyond religious sources of value. These are universal values. They can be important from the point of view of the structure (axiology) of many legal systems as well as from the point of view of the practice of applying the law in different countries.

2. Mosaic Law in the Context of Debt Relief

Debt relief is not an invention of modern times. The institution of debt relief was known in antiquity. The Mosaic law provided for systemic, common debt relief for the entire Hebrew community. Researchers indicate that it referred to an earlier Old Babylonian tradition of cyclical debt relief with royal edicts, dating back to at least the first half of the second millennium BCE. Mosaic law regulated this institution about 1000 years later. Documented practice of cyclical debt relief also took place in the Syrian countries of the Middle Bronze Age.² Famines and wars could impoverish the entire society.

The general liberation of the Hebrews from economic debts took place in a 7 and 50 year cycle (every 7 years and after 7x7 years). The Mosaic law introduced a year of interruption in sowing the land following the six-year cycle, the so-called a sabbath year also referred to as „the solemn sabbath for the Earth”³ or „the year of forgiveness of debts”⁴. At the same time, as

1 . Polish-Lithuanian Commonwealth in the era of religious wars in Europe (16th century) was a country without religious persecution. The area of the multinational Jagiellonian monarchy was inhabited by Catholics, Protestants, Greek Catholics, Orthodox Christians, followers of Judaism and the followers of Islam (Tatar settlement). Henryk Walezy, the elected king, involved in the slaughter of the Huguenots, by assuming the Polish throne, he guaranteed freedom of conscience and religion. The seventeenth century is the age of great wars for the Commonwealth: with Sweden, Turkey, Russia, the uprising of Bohdan Chmielnicki in Ukraine (Cossack wars). They were devastating for the state, and due to the fact that the rivals were largely non-Catholic, the Roman Catholic majority was consolidated. The eighteenth century, along with the Northern War (1700-1721), brought dependence on Moscow. In 1717, the „Mute Sejm” debated. The Parliament - without a word - accepted the laws imposed by Peter I the Great (Tsar of Russia), under the bayonets of Russian soldiers. The first partition of Poland took place in 1772. Three neighboring countries took part in it: Russia, Prussia and Austria. The next two partitions led to the loss of statehood (1793, 1795). The most brutal action of denationalizing Poles and Russification was carried out in the Russian partition. The next great national uprisings were mainly launched against Russia (1794, 1830, 1863). The Catholic Church was a support for over a hundred years of resistance and the preservation of identity. After Poland regained independence in 1918, the young state had to face the Bolshevik onslaught. Catholicism played an important role in the resistance. The Polish-Bolshevik war (culminating in the Battle of Warsaw in 1920, called the „Miracle on the Vistula”) was also an ideological clash between the Catholic state and materialistic nihilism. The Second World War brought a double occupation of Poland: by Nazi Germany and the Stalinist USSR. A resistance movement arose in Poland and the largest underground state in Europe. Again, the Catholic Church was the backbone of the resistance movement. In 1945, Poland, although formally regaining statehood, was a satellite country dependent on the USSR. Resistance against the regime policy of the authorities was organized at the Catholic church. The Church played a political role in the fall of communism in Poland in 1989. Thus, Catholicism played no small part in the survival of the nation. Hence, the great historical and cultural influence of Christian thought on legislation followed.

2 . Gościwit Malinowski, „Geneza Pięcioksięgu Mojżeszowego (Genesis of the Pentateuch)” (2011) 6 *Theologica Wratislaviensis* 67; Edward Lipiński, „Rok szabadowy (Sabbath year)” (2009) 1 *Scripta Biblica et Orientalia* 18.

3 . Liber Leviticus 25, 4,5.

4 . Liber deuteronomii, 31,10.



indicated by prof. Edward Lipiński loans were then granted for short periods of time, for about a year. In addition to the Sabbath year, the Pentateuch referred to the so-called jubilee year. These institutions are treated not only as the nucleus of modern debt relief structures, but also of limitation¹. The sabbatical year referred to its symbolism to the second commandment of the Decalogue (and therefore the foundation of the law) dealing with the sanctity of the seventh day.²

In ancient Rome, the law of the XII tables allowed the body of a debtor to be divided among several creditors (*tertis nundinis partis secanto*).

While the Mosaic law permitted the debt bondage of the Hebrews, it did require the humane treatment of such persons.³ In the seventh year of captivity, however, the commandment was to grant the Hebrews personal freedom. This law, according to the content of the Exodus, was given to a community that had recently itself been in collective bondage to Egypt („I am the Lord your God, who brought you out of the land of Egypt, out of the house of bondage”⁴). It becomes especially important on the eve of the next great tragedy of the Hebrew community. The book of Jeremiah mentions the following event: “The word that the Lord addressed to Jeremiah after King Zedekiah had made an agreement with all the people of Jerusalem to proclaim universal freedom. Each one was to grant freedom to his Hebrew slave and his Hebrew slave. (...) Having given their consent, they released them. But then they changed their minds and brought slaves and slaves whom they had granted freedom, forcing them to become slaves and slaves again.”⁵ The book of Jeremiah, in this violation of the law, explained the Babylonian captivity of all the Hebrews following the conquest of Jerusalem by the Babylonian king Nebuchadnezzar and the destruction of the first temple.⁶ „Thus says the Lord: You did not obey me to proclaim freedom to each one his brother and fellow man; here I am setting you free - against the sword, pestilence and famine. Moreover, I will make of you an object of terror to all the kingdoms of the Earth.”⁷ For comparison: it was only in 326 B.C.E. Lex Poetelia improved the status of an insolvent debtor in Rome. The debtor remained dependent on the creditor until the debt was paid off or forgiven.⁸

The Old Testament treated paying its own debts as a virtue.⁹ At the same time, the Mosaic law introduced a universal (for members of the community), obligatory, cyclical legal mechanism of debt relief for the entire society, independent of the scale (individual and global) or the causes of indebtedness. It should be emphasized that it was not an *ad hoc* institution introduced

1 . S. Grzybek, „Rok jubileuszowy w Piśmie Świętym”, „Jubilee year in the Holy Scriptures”, *Ruch Biblijny i Liturgiczny*, 1974/3, XXVII, p. 109.

2 . Liber Exodus 20, 8-11, Liber deuteronomii 5, 12-15.

3 . Liber Leviticus, 25, 39-43. There was a legal dualism in dealing with non-Hebrews : Liber Leviticus 25, 44 -46.

4 . Liber Exodus 20,2.

5 . Prophetia Ieremiae 34, 8-11.

6 . Prophetia Ieremiae 34, 2.

7 . Prophetia Ieremiae 34, 17.

8 . Jozef Rosenberg, *Geneza i rozwój postępowania upadłościowego w prawie rzymskim* (The genesis and development of bankruptcy proceedings in Roman law) (Warszawa 1935), Jozef Rosenberg, „Postępowanie upadłościowe w prawie rzymskim (Bankruptcy Proceedings in Roman Law)” (1996) 2 *Gazeta Sądowa* 8; Kazi

mierz Kolańczyk, *Prawo rzymskie* (Roman law) (Warszawa 1976) 158; Marek Kuryłowicz, Adam Wiliński, *Prawo rzymskie prywatne* (Roman Private Law) (Kraków 2000) 79; Witold Wołodkiewicz, Maria Zabłocka, *Prawo rzymskie* (Roman law) (Warszawa 1935) 309.

9 . Prophetia Ezechielis 18,16. It is worth mentioning that the Mosaic law in relation to members of the community assumed the repayment of debts in face value: „You shall not charge interest or usury on him” Liber Leviticus 25, 36.



to relieve the negative social effects of some sudden emergency, but, in its assumption, it was to function systematically and continuously, even in times of economic prosperity. Undoubtedly, debt relief allowed the Hebrews to avoid debt bondage. First, the following legal injunction should be cited: „At the end of the seventh year, you shall perform debt forgiveness” for the sabbatical year¹. Second, „You will celebrate the fiftieth year, declare deliverance in the land for all its inhabitants,” referring to the jubilee year.²

At the same time, the Deuteronomium contained an important hint regarding the mechanism of the institution of debt relief: „This will be the forgiveness of debts: every creditor will forgive a loan made to his neighbor, he will not demand repayment from his neighbor or his brother, because the donation in honor of the Lord is announced.” Nevertheless, debt relief was limited to the Hebrews: „From a stranger you can ask for return, but what is owed to you from a brother is given by your hand”³ (Roman law also had double standards for citizens and non-citizens: *ius civile* and *ius gentium*; Athenian democracy was only for citizens). Debt relief was known in ancient civilization. Seisachteja or „shaking off burdens” was a collective one-off debt settlement carried out in 594 BCE. by Solon in ancient Athens.⁴

The Mosaic Law explained the purpose of the regulation as follows, „But yours should not be poor.”⁵ Nevertheless, this was, of course, an idealistic assumption. Describing the people who gathered around David fleeing from Saul, the Old Testament mentions, *inter alia*, those who were „pursued by creditors.”⁶ Debt would then have to be a noticeable social problem. With time, the rules of debt relief had to be abandoned because in the Book of Nehemiah, on the occasion of the so-called to renew the covenant, the following obligation is mentioned among the written obligations: „Also in the sabbath year we will waive the benefits and demand repayment from any debtor.”⁷

It can be argued that in the social dimension, debt forgiveness was aimed at protecting human (Hebrew) dignity.⁸ Some passages from the Old Testament draw attention to this. Let's start with the Book of Proverbs: „The rich direct the poor, the debtor is the servant of the creditor.”⁹ In the Book of Wisdom of Sirach, one can find the sentence: „The insults of a creditor are heavy for a wise man.”¹⁰

The Mosaic law tried to prevent a situation in which debt relief would result in the failure to grant loans. „Take care that the wicked thought does not arise in your heart:” This is the seventh

1 . Liber deuteronomii 15,1.

2 . Liber Leviticus 25,1.

3 . Liber deuteronomii 15,2.

4 . Leon Dattner, Seisachteja (oddłużenie) w świetle prawa własności (Seisachteja (debt relief) in the light of the ownership right) (Kraków 1934) 3; Joseph G. Milne, 'The Economic Policy of Solon' (1945) Vol. 14 No. 3 Hesperia: The Journal of the American School of Classical Studies at Athens 230–245.

5 . Liber deuteronomii 15,3.

6 . Liber Primus Samuelis 22,2

7 . Liber Nehemiae 10,32

8 . Georg Bulik, „Bliskość Boga i sprawiedliwość społeczna. Rozumienie deuteronomicznego prawa w okresie niewoli (Closeness to God and social justice. Understanding deuteronomic law in captivity) (1980) Vol. XXXIII Ruch Biblijny i Liturgiczny 301.

9 . Liber proverbiorum 22,7.

10 . Ecclesiasticus Iesu filii Sirach 29,28.



year, the year of donation „, lest you look at your poor brother with an evil eye without helping him. He will call upon the Lord against you, and you will be guilty of sin.”¹

The debt forgiveness of the Hebrews had, in addition to its positive social effects, also a deep religious meaning. Genesis indicates that man was created in the image and likeness of God.² Meanwhile, as the Book of Isaiah expresses it, God gives man much more than the creditor of debtors: „Even if your sins were like scarlet, they will whiten like snow; even red as purple, they will become like wool.”³ In turn, the book of Micah indicates that „He will have mercy on us again, wipe away our iniquities, and throw all our sins into the depths of the sea.”⁴

The later rabbinical interpretation changed with time the original meaning of the debt forgiveness institution. In the 1st century BC Hillel⁵ formulated the principle of the so-called „prosbol”, whereby in the sabbatical year debts could not be canceled and the creditor could still recover his debt. For this purpose, the creditor deposited the script with the court, which - according to this interpretation - made the debt excluded from the operation of the debt relief institution.⁶

3. Christian Tradition in the Context of Debt Relief

While the Mosaic law was in its assumption a constructional state law organizing the theocratic state (in vertical relations) and social life in this state (in horizontal relations), with other standards for Hebrews and non-Hebrews, the New Testament is a set of moral norms in universal and spiritual dimension. Christian philosophy does not focus on temporality (and in this sphere economic debt should be located), but on spiritual values. The focus is on forgiveness of sins.⁷ „And forgive us our trespasses as we forgive those who trespass against us.”⁸

The New Testament did not introduce an *expressis verbis* command such as the Christian's obligation to liberate a slave. Paul of Tarsus wrote: “Everyone, therefore, should remain in the condition in which he was called. Were you called as a slave? Do not worry! Yes, even if you can become free, rather take advantage of [your slavery]! For whoever is called in the Lord as a slave is the Lord's liberator. Likewise, the one who is called free becomes Christ's slave.”⁹ It did not mean, however, praising the slave state but it was rather paying attention to a different level of value than the temporal. Like the words „If you want to be perfect, go, sell what you have and give it to the poor, and you will have treasure in Heaven. Then come and follow me!”¹⁰

1 . Liber deuteronomii 15,9.

2 . Liber Genesis 1,27.

3 . Prophetia Isaiae 1,18.

4 . Prophetia Micheae 7,19.

5 . Jewish sage, foremost master of biblical commentary and interpreter of Jewish tradition in his time. He was the revered head of the school known by his name, the House of Hillel, and his carefully applied exegetical discipline came to be called the Seven Rules of Hillel”. <https://www.britannica.com/biography/Hillel>

6 . Solomon Zeitlin, „Prosbol. A Study in Tannaitic Jurisprudence” (1947) Vol. 37 No. 4 The Jewish Quarterly Review 342.

7 . Evangelium secundum Matthaeum, 18, 21. Zob. np. Janusz Lekan, „Przebaczenie w optyce miłosierdzia (Forgiveness in the view of mercy) (2016) Vol.10 Issue 2 Teologia w Polsce 59-77; Piotr Mazurkiewicz, „Przebaczenie czy miłosierdzie. Wokół pojednania w polityce (Forgiveness or mercy. Around reconciliation in politics) (2016) XXIX/3 Warszawskie Studia Teologiczne 116 -129; Jacek Sowiński, „Komu trzeba wybaczyć? Aspekty psychologiczne przebaczenia i pojednania” (2018) 28 Studia Franciszkańskie 115-138.

8 . Evangelium secundum Matthaeum, 6,12.

9 . Epistola beati Pauli apostoli ad Corinthios prima, 7, 20-22.

10 . Evangelium secundum Matthaeum 19, 21.



Nevertheless, forgiveness of material debts is a frequent opportunity to explain these most essential values for Christianity. The Evangelist Luke describes the following dialogue: “«A certain creditor had two debtors. One owed five hundred denarii, and the other fifty. When they had nothing to pay, he forgave both of them. So which of them will love him more?» Simon replied, „I think the one to whom he forgave more.” He said to him, „You have judged right.”¹ The forgiveness of economic debt appears here as the equivalent of forgiveness of sin. The parable of the dishonest steward is also known: „So he called each of his master’s debtors to him, and asked the first, „How much do you owe my master? „ He replied, „One hundred barrels of oil.” He said to him, „Take your pledge, sit down quickly and write fifty.” Then he asked the other, „How much do you owe?” The man said, „A hundred bushels of wheat.” She tells him, „Take your pledge and write eighty.”² Also in this case, economic debts are only a prop in the rhetorical figure. In the Gospel of Matthew there is the following passage „Then his master called him before him and said to him: „Wicked servant! I forgave you all this debt because you asked me. Should you not have had mercy on your fellow servant, as I had mercy? Above you?” And his master was angry and delivered him over to the tormentors, until he should pay back all the debt to him. My heavenly Father will do the same to you, if each one of you does not forgive his brother from the heart”.³ The use of such frequent examples of debt forgiveness is at least indicative of a certain cultural standard being in place.

However, the most famous example of the parable about restoring the dignity of a man who lost his property is the literary beautiful parable of the prodigal son. “A certain man had two sons. The younger of them said to his father, ‘Father, give me my share of the estate.’ So he divided the property between them. Soon after, the younger son, having taken everything, went to distant places and there he squandered his fortune, living wastefully”. Does such a person have no right to dignity? „Quickly bring the best robe and put it on; give him a ring on his hand and sandals on his feet! Bring the fattened calf and kill it: we will feast and play because this son of mine was dead and is alive again; he disappeared and he was found.”⁴ Nevertheless, it is a parable, not a presentation of socio-economic rules.

John Paul II in „*Dives in misericordia*” wrote: „The world from which we will eliminate forgiveness can only be a world of cold, ruthless justice, in the name of which each one will claim his rights against the other, and life and coexistence of people in the system of oppression of the weaker by the stronger, or in the arena of constant struggle against one another.”⁵

However, it would be wrong to assume that, in Christian doctrine, economic empathy did not matter. Paul of Tarsus, stigmatizing various moral dysfunctions of the members of the Corinthian church, points out that, inter alia, „Greedy” and „extortioners” will not inherit God’s kingdom.⁶

Moreover, early Christian morality did not assume selectivity. In the Sermon on the Mount,

1 . Evangelium secundum Lucam 7, 41-43.

2 . Evangelium secundum Lucam 16, 5-7.

3 . Evangelium secundum Matthaeum 18, 32 – 35.

4 . Evangelium secundum Lucam 15, 22-24.

5 . Jan Paweł II, Encyklika o Bożym Miłosierdziu, *Dives in misericordia* (Encyclical on Divine Mercy, *Dives in misericordia*) (Kraków 2010) 14.

6 . Epistola beati Pauli apostoli ad Corinthios prima

there is the following moral imperative: „To him who wants to make law with you and take your robe, give up your cloak!.”¹ The Gospel guides towards the value of spiritual goods by depreciating the value of material goods. If so, then the obligation to forgive debts selectively for the Hebrew community should also apply to Christians on a universal basis.

Christian philosophy is based on non-selective forgiveness. The universalism of this concept indicates that it cannot be directly applied in modern judicial decisions, which should balance the economic interests of creditors and the dignity of the debtor.

4. Contemporary Insolvency Legislation Relating to the Debt Relief of Natural Persons

The concept of debt relief is strongly present in the Judeo-Christian tradition. Contemporary bankruptcy legislation in Europe does not therefore grow out of a legal vacuum. However, contemporary legislation in Western countries arises from completely different calculations than the legal norms organizing the functioning of the theocratic state or moral norms constructing a universal world of Christian values. The contemporary Western culture of consumerism and living on credit gives rise to a negative social phenomenon in the form of mass indebtedness of the population.² Moreover, an obvious problem is the poverty of the middle class in the 21st century. The SARS-CoV-2 pandemic was an excruciating ordeal in terms of insolvency.³

Debt relief of natural persons is currently regulated by a large number of laws in the world. The approach of modern legislation to debt relief is varied.⁴ The differences in the regulation of this institution are very often profitable culturally. At the same time, it is a field for many theoretical dilemmas as to the premises of debt relief, effects of debt relief, recidivism of insolvency, etc.⁵ The concepts related to debt relief are essentially evolving towards the liberalization of

1 . Evangelium secundum Matthaeum 5, 40

2 . Marek Jaślikowski, „Podstawy ogłoszenia upadłości konsumenckiej w praktyce sądów powszechnych (Grounds for declaring consumer bankruptcy in the practice of common courts)” (2011) 10 (10) Prawo w Działaniu 44.

3 . Rafał Adamus, Oddłużenie w upadłości konsumenckiej i układzie konsumenckim (Debt relief in consumer bankruptcy and consumer arrangement) (Warszawa 2020) 25; Rafał Adamus, „Wybrane zagadnienia dotyczące nowelizacji przepisów o upadłości konsumenckiej (Selected issues regarding the amendment to the provisions on consumer bankruptcy)” (2020) Monitor Prawa Bankowego; Joanna Podczaszy, „Quo vadis homo debitor – rozważania na temat prawnego uregulowania upadłości konsumenckiej (Quo vadis homo debitor - considerations on the legal regulation of consumer bankruptcy)” (2011) Edukacja Prawnicza; Joanna Podczaszy, „Instytucja upadłości konsumenckiej jako warunek utrzymania systemu społeczno – gospodarczego opartego na długu (The institution of consumer bankruptcy as a condition for maintaining a socio-economic system based on debt)” (2017) No. 9 Przegląd Prawa Publicznego 61; Joanna Podczaszy, „Współczesny homo consumens jako homo debitor – instytucja upadłości konsumenckiej w dobie kryzysu finansowego gospodarstw domowych (Contemporary homo consumens as a homo debitor - consumer bankruptcy institute in the times of financial crisis of households)” (2015) Vol. XVI Issue. 8 Przedsiębiorczość i Zarządzanie Łódź–Warszawa 261; Ewa Całus, „Upadłość konsumencka – doświadczenia i perspektywy (Consumer bankruptcy - experiences and prospects)” (2015) No. 3644 Przegląd Prawa i Administracji Wrocław 11; Włodzimierz Szpringer, Upadłość konsumencka. Inspiracje z rozwiązań światowych oraz rekomendacje dla Polski (Consumer bankruptcy. Inspirations from global solutions and recommendations for Poland) (Warszawa 2006) 11; Włodzimierz Szpringer, Społeczna odpowiedzialność banków. Między ochroną konsumenta a osłoną socjalną (Social responsibility of banks. Between consumer protection and social protection) (Warszawa 2009) 11.

4 . Robert Anderson, Hans Dubois, Anne Koark, Gotze Lechner, Iain Ramsay, Thomas Roethe, Hans W. Micklitz, „Consumer Bankruptcy in Europe, Different Paths for Debtors and Creditors” (2009) 11 European University Institute Working Paper LAW; Robert W. Kalfas, „Upadłość osoby fizycznej nieprowadzącej działalności gospodarczej oraz prowadzącej działalność gospodarczą w ujęciu komparatystycznym (Bankruptcy of a natural person not conducting business activity and running a business in a comparative approach)” (2018) 3 Radca Prawny Zeszyty Naukowe.

5 . Philip Schuchmann, „An attempt at a philosophy of bankruptcy” (1982) 21 University of California, Los Angeles Law Review 403–476; Barry Adler, Ben Polak, Alan Schwartz, „Regulating Consumer Bankruptcy: a theoretical inquiry” (2000) Vol. XXIX Journal of Legal Studies, The University of Chicago 595; Johanna Niemi-Kiesi-



this institution.¹ At the same time, too liberal concepts of debt relief may facilitate the attitudes of the so-called moral hazard. Hence, there are voices to tighten the provisions on debt relief.²

Contemporary legal culture aims to protect human dignity. Protocol No. 4 (enforced on May 2, 1968) to the European Convention on Human Rights, done in Rome on November 4, 1950 (enforced on September 8, 1953) prohibits imprisonment for debts.

5. Humanitarian Considerations in Judicial Practice in Poland

In judicial decisions in Poland, humanitarian considerations are treated as universal moral norms. Due to the separation of church and state, the courts do not refer directly to the Judeo-Christian tradition. According to the concept proposed in the jurisprudence, the recourse to humanitarian considerations in bankruptcy proceedings should concern: (1) Objective circumstances, and therefore beyond the control of the debtor, (2) Exceptional (above-average) circumstances, which means that the typical nuisance associated with being a debtor is irrelevant. Consequently, these are not circumstances that apply to everyone and in every case. So, there is no place here for the concept of „unconditional forgiveness.” The circumstances should be so important as to outweigh the economic interests of creditors. (3) Circumstances may relate to the debtor and his relatives.

In one of the rulings, the court explained that “the concept of (...) humanitarian considerations has not been defined in the act. These are the so-called general clauses, evaluative concepts that give the court some decision-making freedom and refer to extra-legal values. Due to their unclear meaning, they pose some interpretation problems, (...) humanitarian considerations concern the circumstances of the debtor. The court takes into account the assessment of the effects of a possible failure to conduct bankruptcy proceedings in a given case, assesses the degree of their severity, taking into account the personal conditions of the debtor (...) the above regulation allows the debtor to benefit from debt relief in situations where the insolvency was the result of objective circumstances (e.g. disability, illness, loss of income without fault and objective inability to return to the previous state), as well as when there are strong arguments of a social, just or humanitarian nature- resulting primarily from the consumer’s current situation (illness, old age, high level of poverty)”.³

In another ruling, the court explained that „humanitarian considerations (...) must be read as respecting human dignity. Humanitarian considerations should be interpreted in the context of the grossly poor financial situation (high level of poverty) and life (serious illness) of the

lainen, 'Consumer Bankruptcy in Comparison: Do We Cure a Market Failure or a Social Problem' (1999) Vol. 37 Issue Osgoode Hall Law Journal 474; Roland J. Mann, Kathrine Porter, 'Saving Up for Bankruptcy' (2010) vol. 98 The Georgetown Law Journal 98; Rafal Adamus, 'Importance of payment morality in the Polish bankruptcy law' (2019) Vol.7 No. 1&2 Journal of Business Law and Ethics New York 9-15; Rafal Adamus, 'Modes of debt relief for consumers in Poland' (2019) 6 Economic problems and legal practice 137–142; Rafal Adamus, 'Consumer arrangement under Bankruptcy Law Act in Poland' (2019) 6 Sociopolitical Sciences 76–81; Rafal Adamus, 'Debt relief thorough creditors, repayment plan in Poland' (2019) 6 Economic problems and legal practice 130–136.

1 . Pamela Foohey, 'A New Deal for Debtors: Providing Procedural Justice in Consumer Bankruptcy' (2019) vol.60 Issue 8 Boston College Review 2298; Charles G. Hallinan, 'The >Fresh Start< Policy in Consumer Bankruptcy: A Historical Inventory and an Interpretive Theory' (1986) Vol.21 Issue 1 University of Richmond Law Review 96; Loren G. Renner, 'Debt Settlement: New Illinois Law Provides Significant Consumer Relief' (2011) Vol.23 Issue 3 Loyola Consumer Law Review 440.

2 . Er Mevliyar, 'The German consumer bankruptcy law and moral hazard – the case of indebted immigrants' (2019) VI Journal of Financial Regulation and Compliance 19.

3 . Resolution District Court in Częstochowa - 5th Commercial Division of 15 July 2016 V Gz 123/16.

debtor. Humanitarian considerations will be circumstances in which failure to complete the debt relief procedure will expose the debtor to a level of suffering which is contrary to the sense of morality. In such a case, the possibility of satisfying the creditors is practically non-existent now and in the future, and thus even objectively unjustified (in the context of negative premises) debt relief does not infringe the economic interests of the creditors. Humanitarian considerations must focus not only on the person of the debtor, but also on the impact of debt relief or its absence on the situation of the persons closest to the debtor (especially those who are dependent on him).¹

In another case, the court stated that „‘humanitarian considerations’ is a human attitude aimed at respect for other people, characterized by concern for his good, forbearance, kindness, or generally aimed at not violating human dignity or aimed at restoring this dignity.” Nevertheless, the court stated at the same time that “the amount of retirement benefits free from deductions [enforcement] is not contrary to humanitarian considerations. It does not follow from the above-mentioned circumstances that the debtor was in an extremely difficult life situation, e.g. in a serious illness or disability. The debtor’s retirement age and the lack of prospects for repayment of the debt do not justify the existence of humanitarian reasons”.²

The following rationale for the court’s ruling is interesting: “When considering whether the conduct of bankruptcy proceedings is justified on humanitarian grounds, it was therefore necessary to take into account the debtor’s family, property and health situation at the time of the ruling, as well as future prospects. When examining whether the conduct of bankruptcy proceedings is justified on humanitarian grounds, the Court took into account that the debtor is a young person, and has all basic living needs financed by his parents (even renting a flat, where he travels to school). The debtor is therefore not a person on the verge of poverty, since he can count on such a significant help. The Court is very surprised by the fact that the debtor does not take up any paid work and shows no willingness to undertake it. According to the certificate from the post-secondary school, education takes place on a weekend basis there. It should also be emphasized that the participant is a person who has many years of professional activity ahead of him. It is therefore not unrealistic to expect that thanks to income from gainful employment, he can satisfy his faith in the years to come cut even in part. On the other hand, the prospect of enforcement against the debtor (in the case of obtaining income subject to enforcement), as well as an increase in debt by interest and costs of proceedings, are typical consequences of the debtor’s insolvency and do not make his situation worse than that of other debtors. To sum up, the family and life situation, health condition and age of the applicant do not allow us to assume that he is in an extremely difficult situation compared to the situation of many other insolvent debtors, among whom there are many people struggling with various types of health or family problems.”.³ Thus, when applying „humanitarian reasons”, the court should be very critical of the debtor.

Not every disease justifies humanitarian reasons. According to the court, „there are no

1 . Resolution District Court in Toruń of 9 August 2017 VI Gz 154/17.

2 . Resolution District Court in Szczecin - VIII Commercial Division of 17 October 2018 VIII Gz 314/18.

3 . Resolution District Court in Bydgoszcz - VIII Commercial Division of 5 July 2019 VIII Gz 95/19.



humanitarian reasons which constitute a negative premise for the possibility of discontinuing bankruptcy proceedings (...)” in the following situation. „When analyzing (...) the debtor’s health condition, it should be noted that he has submitted medical documentation which shows that he has received psychiatric treatment and is taking antidepressants. At the same time, however, the debtor submitted a certificate (...) in which it was stated that he had suffered a depressive syndrome, he is currently in a balanced mental state and there are no psychiatric contraindications to return to his current position. Therefore, it is difficult to conclude that the health of a debtor who is able to work, is not elderly, does not suffer from any serious diseases and does not have a pronounced degree of disability, supports the continuation of bankruptcy proceedings”.¹ In another ruling, the court accepted that „caring for two children, a sick husband and the inability to find employment for a long time do not support humanitarian reasons”.² Another judicature referred to serious but temporary health problems „The bankrupts are currently in a difficult position due to the very serious illness of the bankrupt, where he is unable even to move, and is struggling with a strong inflammation. However, it cannot be unequivocally determined that the inability of the bankrupt to implement the repayment plan will remain permanently and this state will not change”.³ Similarly in another judicature, the court ruled that there were no fairness or humanitarian considerations, „The bankrupt is not a helpless person, and she does not suffer from an incurable disease”.⁴

Humanitarian considerations were applied to the following facts: “the personal situation of the bankrupt indicates that she is incapable of making any repayments under the repayment plan. The situation of the bankrupt and her child is extremely difficult, [the bankrupt] is chronically ill [suffers from kidney disease in the course of their polycystic degeneration, arterial hypertension, ventricular arrhythmia. Her daughter suffers from polycystic kidney disease, which affects, inter alia, the pathological increase in the volume of the left kidney], while the possible definition of a repayment schedule would give priority to the financial interest of creditors over humanitarian considerations. (...) debtor (...) used all available earning opportunities; she even took up additional employment. In the course of the proceedings, she duly performed her duties - she provided the trustee with information and documents regarding her assets and liabilities, which clearly proves her reliability”.⁵

Conclusion

It is possible to formulate the following final conclusions, underpinned by the analysis of the Judeo-Christian concept presented, as to the „humanitarian considerations” of the commercial courts in Poland in the context of debt relief for natural persons.

First of all, it is necessary to refer to „merciness” one of the central concepts of Christian doctrine. The ability to show mercy does not depend on one’s worldview⁶. Commercial courts

1 . Resolution District Court in Bydgoszcz - VIII Commercial Division of 11 March 2022 VIII Gz 14/22

2 . Resolution District Court in Toruń - VI Commercial Division of 14 June 2017 VI Gz 127/17

3 . Resolution District Court in Bydgoszcz - VIII Commercial Division of 18 March 2022 VI Gz 59/22

4 . Resolution District Court in Szczecin - VIII Commercial Division of 9 January 2019 VIII Gz 215/18

5 . Resolution Supreme Court - Civil Chamber of 25 May 2021 I CSKP 100/21

6 . In the parable of the Good Samaritan (Evangelium secundum Lucam 10, 30-37), neither the priest nor the Levite showed



with statutory powers to be guided by humanitarian considerations when reducing debt to natural persons should therefore apply the paradigm of the conduct of a merciful person. Nevertheless, the possibility of the court to use mercy in order to achieve certain legal consequences does not apply to every debtor. It only applies to a situation that is serious and unique. Next, the dignity of a person who is unable to pay his obligations is of a higher value than the economic interest of the unfulfilled creditors. The creditors' interest is not absolute. The debt relief instrument is only competitive with the legal effects of the statute of limitations and tight deadlines. If the debtor is a legal person, it may be removed from the register and thus lose his legal existence without paying his obligations before they expire. In the latter case, the creditor will also not be satisfied. The peculiar situation of economic „bondage” of the debtor should not be indefinite. If the debtor is unable to pay the liabilities, and despite the fact that the reason for incurring them deserves condemnation, the debtor should also be financially recovered. This study draws on the Christian concept of forgiving even those who are subject to negative moral evaluation. Finally, indebtedness should not deprive the debtor of the possibility of a decent existence. Everyone has the inalienable right to dignity. In the case of irresolvable factual doubts, it should be adjudicated in favor of the debtor (in dubio pro humanitate). This study is underpinned by the Christian concept of mercy.

In relation to the assumed research goals, I point out that (1) the institution of debt relief was well known in the Judeo-Christian tradition. It is not without significance that it did not contain an absolute order to pay off liabilities regardless of the circumstances. The cancellation of liabilities is therefore acceptable in this cultural circle. (2) The Judeo-Christian tradition has had a strong influence on the modern universal concept of morality. Therefore, if state law (such as Polish bankruptcy law) refers to „humanitarian considerations” in the aspect of debt relief, then the content of these „humanitarian considerations” can be constructed with reference to the Judeo-Christian tradition. However, it is not the exclusive source of understanding of the mentioned phrase and with regard to the separation of church and state in Poland - the jurisprudence cannot refer directly to the principles of religion.

mercy, but the Samaritan. In the cultural context of the time, the Samaritan was a person outside the community of the Hebrews. As the Gospel of John explains during the conversation between Jesus and the Samaritan woman, „the Jews avoid one another with the Samaritans” (Evangelium secundum Ioannem 4, 9). Due to the submission of this paper for publication in the journal published in Iran, I would like to include a short digression on mercy in the modern world. It is about the enormous support that Polish refugees have experienced from the Iranians. On September 1, 1939, Poland was invaded by Nazi Germany and on September 17, 1939 by the USSR. Both occupation states pursued a brutal policy towards Polish citizens. Hundreds of thousands of Poles were deported into Asia by the USSR. The situation changed when, on June 22, 1941, Germany invaded the USSR. The Polish government in London signed an agreement with the USSR to create a Polish army from exiles. In the face of mounting tensions, General Władysław Andres led the Polish army out of the USSR. The army was accompanied by civilians. Along with the Anders Army, 120,000 refugees reached Iran, including as many as 40,000 women and children. Wanderers were welcomed, among others, by Meszched, Qazvin, Isfahan, Ahwaz, Tehran. Most Poles found a roof over their heads in Isfahan, known as the „city of Polish children”.



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