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# The Extraordinary Complaint in the Polish Legal System. Selected Remarks on the Admissibility of the Extraordinary Complaint in Bankruptcy Proceedings

**Abstract:** This article analyses the possibility of utilizing the institution of an extraordinary complaint, which constitutes one of the extraordinary means of appeal in the Polish legal system, as a legal tool available to individuals in bankruptcy proceedings. The article also indicates that an extraordinary complaint, when examined from a systemic perspective within the Polish legal order—particularly in light of the judgment of the European Court of Human Rights in Strasbourg in *Wałęsa v. Poland*—is a measure that raises certain legal concerns and prompts some political controversies. However, in the author's opinion, this does not contradict the fact that, regardless of the emerging doubts and controversies (and irrespective of potential future legislative changes regarding this institution), such a measure is extremely important from the perspective of individuals (as subjects of freedoms and rights derived from such conventions as the Constitution of the Republic of Poland and the Convention for the Protection of Human Rights and Fundamental Freedoms, including the right to a fair trial). State authorities should make every possible effort to ensure that this measure is fully effective, efficient, and accessible to individuals at the relevant moment—both in theory and in practice.

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The article aims to determine whether and to what extent an extraordinary complaint may be applied in bankruptcy proceedings, where the primary objective is to satisfy creditors and organize the debtor's obligations. At the same time, considering the postulate of ensuring the full effectiveness and efficiency of this means of appeal available to individuals, the author also seeks to examine whether such a measure can be applied in bankruptcy cases that concern the sale of an enterprise under a pre-pack procedure.

The article highlights that, despite the formal possibility of filing extraordinary complaints in bankruptcy proceedings, in practice, public authorities do not make use of this measure in relation to rulings issued during bankruptcy proceedings. The article emphasizes how the lack of such action contradicts the constitutional principles of a modern democratic state (including the principle of a democratic state governed by the rule of law that implements the principles of social justice, as indicated in Article 2 of the Constitution of the Republic of Poland, as well as the resulting principle of protecting citizens' trust in the state and its legal system). An extraordinary complaint should be a fully effective and efficient remedy, also within bankruptcy proceedings.

The conclusions indicate that an extraordinary complaint in bankruptcy proceedings should also be admissible in situations where the bankrupt's assets are sold (including cases of enterprises sold under the pre-pack procedure), particularly when such actions may lead to violations of the constitutional freedoms and rights of individuals (both creditors and the debtor). In the author's opinion, the possibility of filing such a complaint should be analysed on a case-by-case basis, taking into account the legal consequences of decisions made in the course of the liquidation of bankruptcy assets.

**Keywords:** extraordinary appeal, bankruptcy proceedings, bankruptcy law, protection of civil rights, appeals against judgments

## Extraordinary Complaint in the Polish Legal System: Assumptions and Practice of Applying the Institution of Extraordinary Complaint

The extraordinary complaint is a special means of appeal in the Polish legal system, allowing for the correction of final judgments issued by common and military courts—institutions responsible for administering justice in Poland—that cannot be overturned or modified through other extraordinary means of appeal. This measure can be applied when: (1) the ruling violates the principles or the rights and freedoms of individuals as defined in the Constitution; (2) the ruling grossly violates the law due to its incorrect interpretation or improper application; (3) there is an obvious contradiction between the court's essential findings and the content of the evidence collected in the case.

The institution of extraordinary complaint serves to review and overturn final court rulings. It is a relatively new institution in Polish law, having been introduced by the Act of December 8, 2017 on the Supreme Court.

In the draft of the Act[2] on the Supreme Court of December 8, 2017 (hereinafter: Supreme Court Act), the President of the Republic of Poland—exercising the right of legislative initiative in relation to this Act—indicated that the introduction of this institution was a response to emerging demands for supplementing the existing system of extraordinary means of appeal with a new remedy. This necessity arose from the confrontation with "grossly unjust rulings based on misinterpreted legal provisions, contradictory to the court's essential findings derived from the evidence gathered in the case," leading to the conclusion that "the stability of a ruling cannot be defended at all costs."

The introduction of the extraordinary complaint into the legal system was also intended as a response to the "very low public trust in the judiciary" and aimed to fill a gap in the system of extraordinary means of appeal. These existing instruments were deemed "insufficient to protect constitutional freedoms and citizens' rights in cases where court rulings violated them," due to

2 Draft Act of December 8, 2017, on the Supreme Court, 8th Sejm Term, document no. 2003.

the fact that "final judgments appear in legal circulation that fall far short of expected standards."[3]

It is important to emphasize that in the draft of the act introducing the extraordinary complaint, the legislator highlighted that the stability of final court rulings is undoubtedly a fundamental value rooted in the Constitution of the Republic of Poland.[4] This principle serves as a starting point for determining the position of the extraordinary complaint within the hierarchy of extraordinary means of appeal. In this hierarchy, the extraordinary complaint ranks below both ordinary and extraordinary means of appeal, taking precedence only over the complaint for a declaration of non-compliance of a final judgment with the law. Unlike a cassation appeal or a motion for the reopening of proceedings, the extraordinary complaint does not overturn final judgments.[5]

From a formal perspective, the extraordinary complaint is an extraordinary means of appeal, the resolution of which allows the Supreme Court to modify or annul the contested ruling or limit itself to declaring that the challenged ruling was issued in violation of the law.[6] It is admissible if the party does not have the right to file a cassation appeal or another extraordinary means of appeal, or if such a right existed but the decision issued following its application did not lead to the modification or annulment of the contested ruling in a way that, in the complainant's view, would eliminate its defects.[7]

From the above, it follows that the extraordinary complaint has a relatively subsidiary nature, which, in simple terms, means that it is admissible when, at the time of its submission, there is no possibility of overturning or modifying a final judgment through other extraordinary means of appeal.[8] The relatively

3 Draft Act of December 8, 2017.

4 Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997, no. 78, item 483).

5 Judgment of Supreme Court of December 17, 2019, case no. I NSNc 5/19.

6 Tadeusz Zembrzuski, "Wpływ wprowadzenia skargi nadzwyczajnej na skargę o stwierdzenie niezgodności z prawem prawomocnego orzeczenia," *Przegląd Sądowy*, no. 2(2019): 20–38.

7 Lidia Bagińska, *Skarga kasacyjna i nadzwyczajna w postępowaniu cywilnym* (Wydawnictwo C.H. Beck, 2018), 290.

8 Judgment of Supreme Court of June 3, 2019, case no. I NSNc 7/19.

subsidiary nature of the extraordinary complaint in relation to other extraordinary means of appeal is also evident in the fact that the fundamental premise justifying the initiation of a review of a final judgment through any extraordinary means of appeal is the existence of a defect in the court ruling, with the goal being its elimination from legal circulation.

However, it should be noted that the extraordinary complaint also serves a broader public-law function, which involves ensuring the effective protection of individuals' rights and freedoms as guaranteed by the Constitution in cases where they are violated by court rulings issued in individual cases.[9] It is important to emphasize, however, that this public-law function of the extraordinary complaint does not preclude its realization, even incidentally, through other legal remedies, including a cassation appeal. This is particularly relevant, since the grounds for filing a cassation appeal and an extraordinary complaint partially overlap. According to Article $398^{3}$ of the Act of November 17, 1964—Code of Civil Procedure, a cassation appeal may be based on a violation of substantive law through its incorrect interpretation or improper application, as well as on a violation of procedural provisions if such an irregularity could have had a significant impact on the outcome of the case.

Comparing the grounds for filing a cassation appeal with those for filing an extraordinary complaint, as specified in Article 89 § 1(2) of the Supreme Court Act, which identifies the extraordinary complaint's specific basis as a gross violation of the law, leads to the conclusion that both these extraordinary means of appeal share certain similarities, with their legal grounds partially overlapping.

In summary, the extraordinary complaint should be regarded as a supplementary extraordinary means of appeal that does not replace other extraordinary remedies. It has been rightly emphasized in the jurisprudence of the Supreme Court that the extraordinary complaint serves as a kind of "safety valve," an absolutely exceptional measure that should be filed by an authorized entity only in the situations specified by law—when correcting a final

9 Judgment of Supreme Court of November 25, 2020, case no. I NSNc 48/19.

judgment to ensure its compliance with constitutional principles is no longer possible or was never possible through other extraordinary means of appeal.[10]

Regarding the practical application of the extraordinary complaint in the first years after its introduction, statistical data indicate that between April 2018 and November 2022, a total of 429 extraordinary complaints were lodged. Among them, 58 complaints were submitted by the Ombudsman, which—as noted in the legal doctrine—suggests that the Ombudsman's Office exercised its prerogatives prudently. Meanwhile, the Prosecutor General filed 348 complaints, accounting for 81% of all cases reviewed. The remaining seven authorized bodies submitted a total of 23 complaints.[11] This analysis must also take into account the fact that when examined from a systemic perspective within the Polish legal order—especially in light of the European Court of Human Rights (hereinafter: ECtHR) judgment of November 23, 2023 in the pilot case *Wałęsa v. Poland* (application no. 50849/21), which is discussed in detail later in this article—the extraordinary complaint remains a legally contentious instrument, generating certain political controversies. The institution has increasingly become the subject of public debate in Poland, with ongoing discussions on proposed reforms and potential future legislative changes to its framework.[12]

It is essential to emphasize that despite the rationale behind introducing the extraordinary complaint—justified by the need to supplement the existing system of extraordinary means of appeal—the measure has been relatively

10 Judgment of Supreme Court of June 24, 2020, case no. I NSNc 41/19; Decision of Supreme Court of June 30, 2021, case no. I NSNc 61/20.

11 Marek Antoni Nowicki, "Uchylenie przez Izbę Kontroli Nadzwyczajnej i Spraw Publicznych Sądu Najwyższego (IKNSP) na skutek skargi nadzwyczajnej prokuratora generalnego prawomocnego wyroku w sprawie o zniesławienie wydanego dziesięć lat wcześniej na korzyść skarżącego. Wałęsa przeciwko Polsce [wyrok—23 listopada 2023 r., Izba (Sekcja I), skarga nr 50849/21]," *Palestra*, no. 1(2024): 106, https://doi.org/10.54383/0031–0344.2024.01.8.

12 Joanna Hetnarowicz-Sikora, "Europejski Trybunał Praw Człowieka w Strasburgu wobec kryzysu praworządności w Polsce – cz. 2," *Iustitia*, no. 1–2(2023): 76.

negatively evaluated both within Polish legal doctrine[13] and internationally. Polish legal scholars argue that the broad scope of the extraordinary complaint does not contribute to the stability and predictability of legal transactions. On the international stage, the European Court of Human Rights has explicitly criticized the institution, stating that it functions defectively and that the state must adopt appropriate legislative measures to eliminate the use of the extraordinary complaint as a concealed ordinary appeal and prevent its instrumentalization for political purposes.[14]

Criticism of the extraordinary complaint intensified particularly after the issuance of the aforementioned judgment by the European Court of Human Rights in the case *Wałęsa v. Poland*. This ruling highlighted the systemic issues associated with how the extraordinary complaint functions, emphasizing the threat it poses to the principles of legal certainty and the protection of individual rights. The ECtHR stressed that the extraordinary complaint was designed in a manner that allows public authorities to interfere in judicial proceedings while bypassing the standards of judicial independence and impartiality. A particularly significant concern was the selective use of this institution, which creates the risk of it being instrumentalized for political purposes.

In its judgment, the ECtHR also highlighted how the ability to overturn final court rulings through the extraordinary complaint could lead to a violation of the principle of equality of arms in judicial proceedings. In practice, it is specific public bodies that determine which cases are re-examined, which may result in unequal treatment of citizens and uncertainty regarding the finality of court judgments.

In light of the ECtHR's critical assessments and the positions expressed by representatives of Polish legal doctrine, calls for reforming—or even completely abolishing—the extraordinary complaint are increasingly common. It is

13 Tadeusz Ereciński and Karol Weitz, "Skarga nadzwyczajna w sprawach cywilnych," *Przegląd Sądowy*, no. 2(2019): 7–19.

14 Judgment of European Court of Human Rights (First Section) of November 23, 2023, in the case of *Wałęsa v. Poland*, application no. 50849/21.

argued that its current design is flawed, creates risks of abuse, and thus may undermine the fundamental standards of human rights protection and the rule of law in Poland.

However, in the author's view, this does not contradict the fact that, regardless of the concerns and controversies surrounding the extraordinary complaint (and irrespective of potential future legislative changes), this type of legal remedy remains crucial from the perspective of individuals' rights and freedoms under the Polish Constitution and the European Convention on Human Rights (hereinafter: ECHR), for example, including the right to a fair trial.[15] In this context, following European Court of Human Rights case law, public authorities should make every possible effort to guarantee that this remedy is fully effective, efficient, and accessible to individuals in particular judicial proceedings concerning their rights and freedoms. This must be ensured both in theory and in practice at the relevant time.

In this context, given the doubts and controversies surrounding the institution of the extraordinary complaint, situations in which public authorities arbitrarily deprive individuals of access to such complaints (without a clear legal basis in statutory provisions) should be regarded as particularly undesirable. In this regard, it is worth citing the following judgment of the European Court of Human Rights, issued in the context of the principle of exhaustion of domestic remedies, as referred to in Article 35 § of the ECHR, which demonstrates the necessity of ensuring that the extraordinary complaint is (both in theory and in practice) an effective remedy available to individuals at the relevant time:

> The Court wishes to recall that the principle of exhaustion of domestic remedies, as indicated in Article 35 § 1 of the Convention, is based on the assumption that an effective remedy appropriate to the alleged violation exists within the domestic legal system. It is the Government, assert-

15 This right is enshrined in Article 45(1) of the Constitution of the Republic of Poland and Article 6(1) of the ECHR.

> ing that remedies have not been exhausted, that must convince the Court that the remedy in question was effective and available in both theory and practice at the relevant time, meaning that it was accessible, capable of providing redress in relation to the applicant's claims, and offering a realistic prospect of success (see Akdivar and Others v. the United Kingdom [Grand Chamber], application no. 24888/94, § 57, ECHR 1999-IX).
> (…) The Court must realistically take into account not only the existence of formal remedies in the legal system of the Contracting State concerned but also the general context in which those remedies operate, as well as the personal situation of the applicant (see *İlhan* v. Turkey [Grand Chamber], application no. 22277/93, § 59, ECHR 2000-VII).[16]

## Scope of Application of the Extraordinary Complaint in the Polish Legal System

Article 89 § 1 of the Supreme Court Act explicitly states that only rulings that conclude proceedings are subject to extraordinary complaints, unequivocally demonstrating that an extraordinary complaint is available "against a final ruling of a common court or a military court that concludes proceedings in a case." This issue is also addressed in legal doctrine and the jurisprudence of the Supreme Court.[17]

In the jurisprudence of the Supreme Court, it is emphasized in this context that adopting a different stance would mean that in any situation where the deadline for filing an extraordinary complaint has expired, it would be sufficient to obtain any ruling (even one dismissing a complaint or motion) in any incidental matter related to the main case for the deadlines for filing an extraordinary complaint to start running anew.

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16 Judgment of the Grand Chamber of the European Court of Human Rights in the case of *D.H. and Others v. the Czech Republic*.

17 Decision of Supreme Court of May 27, 2021, case no. I NSNk 11/20.

At the same time, it should be noted that the institution of the extraordinary complaint includes certain restrictions regarding its admissibility. In terms of subject-matter jurisdiction, the group of entities entitled to use this exceptional legal instrument has been narrowed by introducing an exhaustive list in Article 89 § 2 of the Supreme Court Act of public authorities authorized to file an extraordinary complaint. These include the Prosecutor General, the Commissioner for Human Rights, and, within their respective competences, the President of the General Counsel to the Republic of Poland, the Commissioner for Children's Rights, the Commissioner for Patients' Rights, the Chairperson of the Financial Supervision Authority, the Financial Ombudsman, the Commissioner for Small and Medium Enterprises, and the President of the Office of Competition and Consumer Protection.

Regarding its substantive scope, Articles 90 § 3 and 4 of the Supreme Court Act exclude the use of extraordinary complaints against judgments declaring the non-existence of marriage, annulling a marriage, or granting a divorce if at least one of the parties has entered into another marriage after the ruling became final, as well as against decisions on adoption and in cases concerning misdemeanours and fiscal offences. In terms of time limitations, Article 89 § 3 of the Supreme Court Act generally limits the deadline for filing an extraordinary complaint to five years from the date the challenged ruling became final and to one year from the date of the decision on a cassation appeal or cassation complaint. It is also inadmissible to consider an extraordinary complaint to the detriment of the accused if it was filed more than one year after the ruling became final or more than six months after the cassation appeal or cassation complaint was decided. Additionally, pursuant to Article 90 § 1 of the Supreme Court Act, an extraordinary complaint may be filed against the same ruling in the interest of the same party only once.

In light of these considerations, doubts may arise as to whether and to what extent an extraordinary complaint can be applied in bankruptcy proceedings. The next part of the article will be devoted to addressing this issue.

## Extraordinary Complaint in the Context of Bankruptcy Proceedings

Bankruptcy proceedings are a distinct type of judicial proceedings aimed at satisfying the creditors of an insolvent debtor and organizing their obligations. The regulations concerning this matter are comprehensively outlined in Poland's current legal framework in the Act of February 28, 2003—the Bankruptcy Law. It should be noted that a characteristic feature of bankruptcy proceedings is the fact that, as a rule, the separate stages of the proceedings conclude with the issuance of a ruling.

This represents a significant difference from the model case of civil proceedings, which typically conclude with a judgment (and only marginally with a ruling, e.g., in cases concerning the discontinuation of proceedings). Rulings in bankruptcy proceedings may pertain to such matters as the appointment of a trustee or the approval of a debt repayment plan.

What is particularly important in bankruptcy proceedings is the ruling on the declaration of bankruptcy, which, in fact, initiates the proper bankruptcy proceedings under Article 51(1) of the Bankruptcy Law, as well as the ruling on the sale of an enterprise under the pre-pack procedure. Such proceedings can generate irreversible legal effects and have a significant impact on the freedoms and rights of individuals affected by the bankruptcy proceedings, particularly on the property rights of the debtor's creditors, which are guaranteed under Article 64(1) of the Constitution of the Republic of Poland and Article 1 of the Additional Protocol to the ECHR.

It should be noted that the type of ruling issued and the stage at which it is made during the bankruptcy proceedings have considerable practical significance regarding the possibility of challenging such rulings using the appeal mechanisms available in the Polish legal system. A particularly important issue in the practical application of law is whether rulings issued in bankruptcy law cases can be challenged through extraordinary remedies, including extraordinary complaints.

Although the legislator has not excluded the possibility of challenging rulings issued in the course of bankruptcy proceedings through an extraordinary complaint, in practice, public authorities seem to exercise considerable caution and reluctance in using this extraordinary remedy in relation to rulings issued in bankruptcy proceedings.

This practice of public authorities—who have the exclusive right to file an extraordinary complaint—somewhat contradicts the constitutional principles of a modern democratic state, including the principle of a democratic state governed by the rule of law, as expressed in Article 2 of the Constitution of the Republic of Poland, and the derived principle of protecting citizens' trust in the state and the laws it enacts (Vertrauenschutz).

At the same time, considering the necessity of ensuring the full effectiveness and efficiency of such a remedy available to individuals, as in the case of the extraordinary complaint, the author wishes to examine whether such a measure could be applied in bankruptcy cases concerning, for instance, the sale of an enterprise—particularly when such actions could lead to violations of the constitutional freedoms and rights of individuals (both creditors and the debtor). In the author's opinion, the possibility of filing an extraordinary complaint should always be analysed with regard to the legal consequences resulting from decisions made when liquidating the bankrupt's assets.

Exceptions to the applicability of the extraordinary complaint—arising from the Supreme Court Act—should not be interpreted broadly, especially if they define the scope of restrictions on individual freedoms and rights (including the property rights of the bankrupt's creditors in bankruptcy proceedings). It can be argued that public authorities, when considering the need to ensure an adequate standard of legal protection for individuals and guided by the aforementioned principle of protecting trust in the state, should, in principle, refrain from adopting interpretations that would significantly hinder the application of generally binding legal provisions in cases concerning individuals, or even nullify procedural institutions such as the extraordinary complaint in bank-

ruptcy cases (and should, in fact, avoid such practices in applying the law). In legal doctrine, the prevailing view remains that the proper interpretation of legal provisions aims to ensure the coherence of statutory solutions, and the entity interpreting them should resolve any contradictions that may arise, while avoiding objectively irrational conclusions and findings.

In this context, it is also worth noting a view which, while formally related to the institution of a complaint for a declaration of unlawfulness of a final ruling, can also be applied to the extraordinary complaint. This view demonstrates that existing legal provisions should, as far as possible, be interpreted in a manner that allows for the effective filing of a complaint, ensuring that affected individuals have a real instrument necessary to seek compensation for unlawful actions by state authorities.[18]

This view leads to the conclusion that entities authorized to file an extraordinary complaint are entitled to do so in situations where the admissibility of such a complaint has not been excluded under Article 90 § 3 and 4 of the Supreme Court Act. They should not interpret the law in a way that expands the list of cases in which filing an extraordinary complaint is inadmissible. Therefore, final rulings that conclude proceedings and are not explicitly excluded under the Act of December 8, 2017 on the Supreme Court—including certain bankruptcy proceedings—should be subject to challenge through an extraordinary complaint. In this regard, particular attention should be given to the concept of a ruling that concludes proceedings. While the admissibility of challenging a final judgment through an extraordinary complaint is undisputed, the admissibility of challenging final decisions that conclude proceedings requires a particular analysis.

In civil proceedings, the concept of a decision that concludes proceedings is understood as a decision that "closes the path to issuing a ruling by the court of a given instance that resolves the substance of the case in a trial (by

18 Zembrzuski, "Wpływ wprowadzenia skargi nadzwyczajnej na skargę o stwierdzenie niezgodności z prawem prawomocnego orzeczenia," 20–38.

judgment) or in non-litigious proceedings (by decision), as well as decisions that conclude the case as a whole, meaning they pertain to the entirety of the case and constitute the final rulings issued in the proceedings."[19] Simply put, decisions that conclude proceedings are those whose finalization permanently closes the path to resolving the case on its merits by the court of the given instance.[20]

Regarding the interpretation of the concept of a ruling that concludes proceedings—specifically in the context of bankruptcy law—legal doctrine emphasizes the distinction between the termination and completion of bankruptcy proceedings. Bankruptcy law provides for three ways to complete bankruptcy proceedings: by discontinuance, conclusion, or annulment. The reasons leading to each of these methods of completion differ, yet their effects are essentially identical. In all cases, the completion of bankruptcy proceedings results in an official announcement (Article 362 of the Bankruptcy Law), the deletion of bankruptcy-related entries in land and mortgage registers and other registries (Article 363 of the Bankruptcy Law), the restoration of the debtor's right to manage and dispose of their assets, and the return of the debtor's property, books, correspondence, and documents (Article 364 of the Bankruptcy Law).[21]

From the above, it follows that rulings that conclude bankruptcy proceedings should be subject to challenge through an extraordinary complaint. However, identifying a precise list of rulings issued after the declaration of bankruptcy but before the completion of bankruptcy proceedings proves problematic.

At this juncture, it should be noted that the primary objective of bankruptcy proceedings is to satisfy creditors and, if possible, to allow the debtor's business to continue operating. Therefore, an analysis of the admissibility of filing an extraordinary complaint should focus on rulings issued during bank-

19 Resolution of a panel of seven judges of the Supreme Court of October 6, 2000, case no. III CZP 31/00.

20 Decision of Supreme Court of October 12, 2007, case no. I CNP 56/07.

21 Resolution of the Supreme Court of January 27, 2006, case no. III CZP 126/05.

ruptcy proceedings that directly impact the financial situation of individuals involved in the proceedings, including the bankrupt's creditors. These financial interests are protected by broad guarantees of property rights and other proprietary rights (Article 64(1) of the Constitution of the Republic of Poland and Article 1(1) of the Additional Protocol to the ECHR).

In this regard, particular attention should be given to rulings concerning the sale of assets in bankruptcy proceedings, including the sale of movable property, real estate, or an entire enterprise. According to Article 306 of the Bankruptcy Law, after bankruptcy is declared, the trustee immediately proceeds with the inventory and valuation of the bankruptcy estate and preparing a liquidation plan. The trustee submits the inventory list along with the liquidation plan to the supervising judge, specifying the methods proposed for selling the bankrupt's assets. As a result of this process, the trustee sells individual components of the bankruptcy estate with the effect of an execution sale (Article 313 of the Bankruptcy Law).

The answer to the question of whether an extraordinary complaint can be filed against rulings issued during bankruptcy proceedings, particularly regarding the sale of assets from the bankruptcy estate, should be provided by the Supreme Court ruling of February 16, 2022 (case no. I NSNc 601/21).[22] This ruling was issued in a case concerning an extraordinary complaint filed by the Prosecutor General regarding the disposal of real estate in bankruptcy proceedings.

Although the subject of the complaint was not strictly the real estate sale itself, but rather the legal consequences of the sale—specifically, the transformation of cooperative ownership rights to a separate ownership title and the permissibility of transferring liability for a mortgage encumbering the cooperative's real estate—this matter was inextricably linked to bankruptcy proceedings.

An analysis of the aforementioned ruling leads to the conclusion that any sale conducted during bankruptcy proceedings should be subject to challenge

22 Decision of Supreme Court of February 16, 2022, case no. I NSNc 601/21.

through an extraordinary complaint if it results in a violation of fundamental principles, freedoms, or human and civil rights as defined in the Constitution of the Republic of Poland. This is particularly relevant when the sale leads to a gross infringement of the freedoms and rights of a creditor or the bankrupt party—especially their property rights.

In this context, a highly questionable issue observed at times in legal practice is the arbitrary exclusion by public authorities of the possibility of filing extraordinary complaints in various types of bankruptcy proceedings. This includes cases concerning the sale of an enterprise during bankruptcy proceedings through the pre-pack procedure. In the author's view, this is a striking example of a situation in which such a ruling should be considered a decision concluding the proceedings, particularly given that it may produce irreversible legal effects (such as the sale of the bankrupt's enterprise) and definitively determine the property rights of the bankrupt's creditors. This is especially significant in cases where there are serious legal doubts regarding procedural irregularities during the proceedings or when the approved sale conditions do not result in the most advantageous offer being selected, namely, the one that maximally satisfies the claims of the bankrupt's creditors.

In this regard, a highly questionable issue—and one that lacks a clear basis in statutory provisions—would be the assertion that such rulings issued during bankruptcy proceedings are merely incidental and therefore cannot be considered rulings concluding proceedings within the meaning of Article 89 § 1 of the Supreme Court Act. However, such an interpretation finds no explicit support in the provisions of the Supreme Court Act. Consequently, restrictions on individual freedoms and rights in this regard fail to meet the requirement of sufficient legal precision, as emphasized by the Constitutional Tribunal. This raises concerns in terms of the principle of legal certainty, which is one of the fundamental principles of proper legislation derived from Article 2 of the Constitution of the Republic of Poland.

## Conclusion

In conclusion, despite the minimal activity of public authorities in filing extraordinary complaints against rulings issued in bankruptcy proceedings, it would be unwarranted to assert that the possibility of filing such a complaint is excluded in bankruptcy proceedings. While it remains a fact that the mere sale of assets by the trustee does not conclude the proceedings, thereby excluding the filing of an extraordinary complaint, such sales, particularly of real estate, often lead to the initiation of subsequent proceedings, including land and mortgage register proceedings, and trigger further factual events that may have irreversible effects on the legal status of the property (such as property division or the demolition of buildings), resulting in irreversible legal consequences. It should also be emphasized that in bankruptcy proceedings, the trustee is obliged to undertake actions enabling the completion of liquidation within six months from the date of the bankruptcy declaration. This relatively short period may contribute to overly hasty decisions regarding asset disposal, which may, in turn, lead to violations of constitutionally protected rights and freedoms (including the property rights of the bankrupt's creditors within bankruptcy proceedings).

Thus, the admissibility of filing an extraordinary complaint in the context of selling a bankruptcy estate should always be analysed in light of the consequences of such a sale, including the proceedings initiated as a result of the sale, their outcomes, and the legal effects produced by the transaction. There is a strong argument in favour of allowing extraordinary complaints against rulings related to the sale of the bankruptcy estate, particularly in cases where the sale was conducted with gross violations of the law, and the consequences of the sale constitute an infringement of the property rights of individuals in bankruptcy proceedings, including those of the bankrupt's creditors.

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