



Financial inclusion through a change in the law Case Study Roma Advocacy and Research Center Slovakia 2019

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1. Introduction

Indebtedness of the population is a serious problem in Slovakia. Long-term circling in the debts trap and distraints have an adverse impact on the quality of life of many people.

There are several reasons for falling into the distraintment circle. It can be the result of a loss of employment and hence loss of a stable income. One can fall into the distraintment circle as a guarantor of a liability where the debtor fails to fulfill their obligations. Another reason can be irresponsible behavior of the debtor. Debt and distraintment fundamentally changes the quality of life of people who are trapped in debt without a possibility to change their life situation.

Insolvency occurs when a legal or natural person cannot pay their debts when they fall due. Bankruptcy is a debt solution and a form of insolvency. It's a legal procedure mainly suited to people whose circumstances are unlikely to change and who have little hope of paying off their debts within a reasonable time. A notice of enforcement, known also as a Distraint Order Notice, can be served on the borrower by creditors in order to recover monies owing to them.¹

The Ministry of Justice of the Slovak Republic reacted to the problem and amended Act no. 7/2005 of bankruptcy and restructuring. This amendment of law was a systemic measure that helped thousands of people. Thanks to it, a person who has been struggling with distraint for a long time has the opportunity to start a new life and become employed.

The law, to a large extent, also affected the Roma who were trapped in debt. Several interviewees who have successfully gone through personal bankruptcy talked about “the fall of the stone that dragged them to the bottom”. Therefore, it can be seen as an example of good practice because it is a mainstream legislation that Roma also benefit from. Also, the accompanying document to the Act states that the Act has a significant impact on low-income households, the unemployed, especially the long-

¹ FINCH, B. Insolvency and financial distress. How to avoid it and survive it. Bloomsbury. 2012

term unemployed, marginalized Roma communities and other vulnerable groups such as the homeless.²

One topic especially closely related to treatment of insolvency is the prevention of insolvency. Policy discussions and legal reforms in many current systems have incorporated a desire to attempt to address insolvency by avoiding it altogether through such techniques as more expansive credit reporting and financial literacy training. Financial literacy education in particular might be implemented within a system for treating existing insolvency, though the primary purpose of such education is not to treat existing insolvency, but rather to prevent repeat insolvency.³

In the document “Strategy of the Slovak Republic for the Integration of Roma up to 2020” financial inclusion is mentioned. The limited access of Roma households to financial services and low financial literacy are causing indebtedness of individuals and whole families. One of the objectives of the strategy was to increase the number of marginalized Roma communities who have gone through debt relief. We have to say, however, that this goal is being achieved not only in areas where there are marginalized Roma, but also for all Roma and other Slovaks. This objective is important because many Roma did not consider to get employed after they have fallen into distraintment, because they thought that they will not receive any of their salary because of the distraint. The courts enforce debts by issuing a decision, which then entitles the competent bailiff to confiscate the property or part of the salary. Our respondents also told us that they were afraid to be employed because they did not want to lose their wages.

² See more: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=430313>

³ The World Bank: Insolvency and Creditor/Debtor Regimes Task Force. See more: https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf

2. Methodology

To compile this study, we used qualitative methods. We conducted interviews, supplemented by desk research. We spoke with 23 Romani people; 10 were people who already finished the process of debt relief and 13 were waiting for the conviction of debt relief. Five respondents were from the Western part of Slovakia, 5 respondents were from the Centre of Slovakia and 13 respondents were from the Eastern part of Slovakia. By education, 10 respondents had finished primary education, 10 secondary education and 3 people have an university degree. 10 men and 13 women were interviewed.

We also included the case study of Anna, a Roma woman who went through personal bankruptcy, whose story is at key moments similar to the stories of others who have found themselves in similar situations. All financial amounts were given in EUR, even though this currency was introduced in Slovakia only from January 2009. This is for a better understanding of the financial picture.

3. Bankruptcy and Restructuring Act

It is possible to ask for a loan from non-bank subjects. When non-bank entities came to the financial market, they were very attractive to beneficiaries because they had a much simpler lending process and clients neglected the fact that interest rates were much higher than in bank houses. *“We were happy when a non-bank institution confirmed for us a loan of 3000 EUR, because other banks did not give us money and we were not looking for the level of interest, also because we did not understand what it meant”,* said one Romani man.

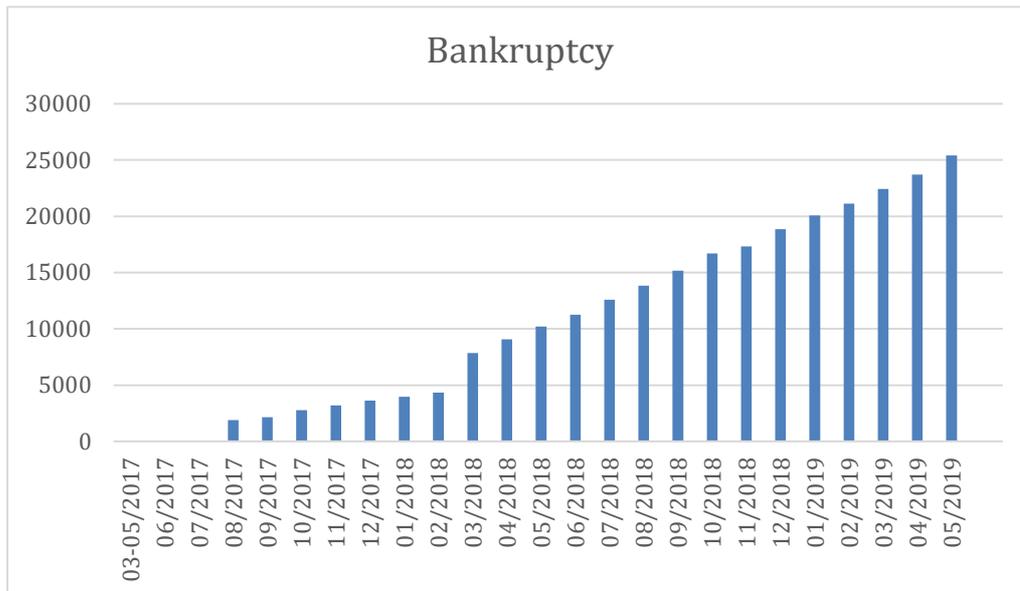
In the event of a breach of contract by default, various hidden charges and penalties came, which increased the amount borrowed by almost 150% and, with the addition of enforcement fees and default interest, the debt became irrecoverable.

In Slovakia with 5 million inhabitants, there were more than three million financial distrains until December 2018. However, this number did not include all

those distraints where a pledge had already been filed; these were about 600,000 as of December 2018.⁴ 'Personal bankruptcy' is a colloquial term used to refer to the lawful process by which a natural person entrepreneur or natural person non-entrepreneur can discharge his debts. The essence is that a natural person is getting rid of debts that they are unable to pay.

The aforementioned amendment to the Bankruptcy and Restructuring Act simplified the process of debt relief. Prior to its adoption, it was necessary to own assets of at least EUR 1659.70. There was three-year probation period, but with amendment of the act it was canceled. The debtor no longer pays 70% of his income to the trustee as it was before. These are the most important changes to the law that became more available for everyone.

It should be noted that since the amendment to the Act interest from people in debt relief has increased significantly. As of June 2019, about 224 121 individuals contacted the Center for Legal Aid. In May 2019, 25 407 people declared personal bankruptcy, compared to May 2018 when 10 199 people declared personal bankruptcies.⁵



Source: Bankruptcy Register, Ministry of Justice, 2019

⁴ See more: <https://www.aktuality.sk/clanok/650368/mapa-exekucii-v-ktorych-okresoch-maju-vymahaci-dlhov-najviac-prace/>

⁵ Information sent from Ministry of Justice based on Infolow, 17.6.2019

Since 2017, after the amendment of the Act, it is evident that the interest in this institute is increasing. This is also facilitated by easier access to service provision from the Center for Legal Aid. The Legal Aid Center is a state budget organization established by Act No. 327/2005 on the provision of legal assistance to persons in material need to improve access to justice for all people who decide to use the bankruptcy process. Since 1 March 2017, the Legal Aid Center has been significantly expanded to include the so-called “Legal Assistance” agenda for personal bankruptcy.⁶ Therefore, if the debtor opts for personal bankruptcy, he must contact the Legal Aid Center and arrange a personal meeting. The Legal Aid Center currently has 15 offices and 29 consultation centers.⁷ Subsequently, at a face-to-face meeting, the staff members of the Center will explain the procedure as well as the necessary documents to deal with the application and set a further date for the visit. *“Social workers told us about this opportunity. We did not believe it at first, but after the first meeting we realized that it is true and it is so easy”*, said a Romani couple.

The delay from the first consultation meeting to the second is one month on average. At the second meeting, the client should already have the necessary documents and the Legal Aid Center will enter into an agreement on repayment of the loan of EUR 500 for juridical costs. Our respondents said that they were very surprised that the process was so simple.

Therefore, if the client of the Legal Aid Center fulfills all conditions, the center will issue a decision to provide legal assistance. The main condition is to have a minimum of one debt enforced by the bailiff. Then it is important to contact the Legal Aid Center and arrange a meeting. At a personal meeting the client receives a request for personal bankruptcy. The application must be accompanied by a curriculum vitae, the course of employment and basic information on the life situation. For the next meeting, the applicant will bring all the necessary documents and receive a legal aid contract. The applicant must pay a legal aid fee of EUR 500 after the approval of

⁶ Source: <http://www.centrumpravnejpomoci.sk/o-nas>

⁷ To date: 27.6.2019

personal bankruptcy. Our respondents said that it was relatively easy to attend these two meetings and bring all necessary documents for the application. The Center filed for bankruptcy on behalf of the debtor, which in most cases takes an estimated 3 months, as the capacity of the Center is limited. The court will decide within 15 days to delay the debt. After this decision the debtor has no longer any debts. It is still necessary to send a request to the competent courts to stop the enforcement proceedings and, if the client is employed, a copy of the court's debt relief decision must be taken to the employer to stop distraining from the salary. During the following period, the client is obliged to repay the fee of EUR 500, mostly in installments of 14 EUR per month. *"It is much easier to pay 14 EUR montly, because I know that lenders will not penalize my salary,"* said another Romani woman.

The law also defined a case where the debtor owns the property in which they reside and decide to be declared bankrupt. The administrator may only monetize the debtor's dwellings by auctioning with appropriate use of a special regulation. The debtor's dwelling cannot be monetized if the proceeds after deducting the immovable value of the dwelling / i.e. : 10,000 EUR / could not satisfy the costs of monetization and at least part of the claims of registered creditors. The value of the debtor's dwelling shall be estimated by the trustee. There is however a complication, as for example an average two-bedroom apartment is worth more than EUR 10 000 (or for spouses more than EUR 20 000), so it often happens that owners of more valuable real estate prefer to remain in debt because they are not willing to sell their home. This is important because many Roma live in villages where they own houses and the land the houses are built on. *"My aunt wanted to ask for bunkruptcy, but when she found out that her house could be sold as a consequence she decided not to ask for bunkruptcy,"* said one respondent.

The entire bankruptcy process ends after five years. The five-year period is a protection period during which a dormant client is not allowed to apply for a loan and must not acquire asset higher then 20 000 EUR. In the event of any funding (by winning

or inheritance), the debtor it must pass 50% of the amount to the receiver in order to satisfy the creditors.

4. Anna's story

Anna's story will give us a closer look at how one finds oneself in a debt trap and what personal bankruptcy meant for this client.

Anna is a middle-aged Roma woman, 43 years old, living in western Slovakia in a small town in the Trnava Region. She is married and has two children with her husband Jan. They have been living in a rented apartment since 2018. Anna has been employed for a long time and her husband is a seasonal worker. Her daughter goes to elementary school and her son is already grown up and working. Anna has three siblings, has completed high school education and has been working since she was 20 years old. Anna married in 2000, when her son was 2 years old. Her daughter was born 10 years later.

First loan

After her first maternity leave, she started working full-time and, having been employed for more than a year, decided to take a loan with her husband for new equipment. Her monthly income was EUR 300 and her husband's EUR 550. That was in 2004, and since at that time her husband was also working full-time, the creditor gave them a loan of EUR 3,000 with a monthly payment of EUR 70 and a repayment period of 5 years. At that time the couple and their son lived with Anna's parents in a large four-room apartment. They contributed EUR 100 for housing and EUR 100 for meals. This left them with around EUR 580. They did not have any savings, most of the monthly paycheck was spent on things such as clothing, cosmetics and the like. The fact that the husband was addicted to slot machines played a big role in their relationship and impacted their financial situation.

Second loan

After about a year, the couple wanted to buy a car. Therefore, they applied for an additional loan of EUR 5,000. They bought a used vehicle and spent the rest of the money on other different things. The loan repayment amounted to EUR 50 monthly. This meant that they had monthly total loan payments of EUR 120. However, they still made no savings for "worse times". In the framework of Act no. 483/2001 about banks⁸, at the end of 2004, banks established a Common Banking Information Register for the purpose of concluding and executing transactions with clients and for checking the creditworthiness, credibility and payment discipline of their clients. At this point, obtaining loans from banks became more complicated as banks exchanged information on clients and their financial possibilities. However, non-bank entities were not part of this common register and so people started to use non-bank services more frequently.

Third loan

In 2006, the bank offered to Anne another loan, with the possibility of repaying the remaining amount of the first loan, so they continued to pay two installments (two loans). The loan amounted to 7,000 euros and the maturity was 10 years. After deducting the residual amount of the first loan, they had approximately EUR 4,000 and the installment was approximately EUR 80. So their loan repayments were increased by 10 Euros. During this period, they began to have relationship problems and Anna's husband started to gamble more often. Anna's parents refused to bear such behavior, as they all lived under one roof and asked them to solve their problems. Anna looked for different ways to raise funds to replace the amounts her husband lost through gambling and started to take out loans from non-bank entities. As mentioned above, non-bank entities had easier conditions for obtaining a loan, where both spouses did not have to be applicants, or it was not necessary to prove the income of all members of the household. In order to obtain the loan it was necessary to complete an application form and submit a confirmation of the amount of netto income. In this

⁸ "Bank Act"

way, Anna borrowed further loans of EUR 6,000 over a period of several months, but did not tell her husband of this fact and, in fact, repaid one loan with another. For some time, the situation in the family calmed down. This situation lasted for about 2 years, with Anna and her husband having a steady income and thus paying all loan repayments on a regular basis without delay.

During this period, a non-bank client information register was established, which gathers information about clients, their creditworthiness and credit burden.

Breakpoint

In 2008 the economic crisis broke out, which resulted in a downturn of economic activities and thus increased unemployment. This crisis also affected Slovak households and hence Anna and Jan's family. Jan lost his job and was unemployed for over six months. Their unemployment benefits covered their basic needs, i.e. the purchase of food, payment of housing and electricity cost. Suddenly they were faced with the decision to give their last resources for at least one loan installment or not to repay any loan. Their son was 10 years and their daughter 3 months old. Their income dropped to EUR 400. Food and consumer goods became more expensive, also due to Slovakia's entry into the Euro zone on 1 January 2009. The family began to sell all their valuables, including the car. They also asked the bank to suspend their credit and postpone the installments, but the bank disagreed. Non-bank entities also rejected requests for suspension of installments. *"My husband Jan was looking for a sudden crash job to make some extra money, but there were very few possibilities"*, Anna said. In 2010, Jan started a construction business and looked for orders, while Anna was still on maternity leave with her daughter. Therefore, they only repaid part of the loan installments. In 2012, Anna opened a small grocery store with state support for start-up physical entrepreneurs. Loans were still only partially paid, because they thought they would at least delay the distraint procedure. At the end of 2015, Anna had to close the store because new supermarkets were opened in town, which reduced her client basis. From 2017 until the end of 2018 Anna was unemployed. As she said: *"You know, I was thinking, that if I will start to work, they will take all my salary because of*

distrain, and for which reason I had to work?" So she registered at the unemployment office and received around EUR 250 monthly.

Finally, in 2019 Anna started to work in a shop, where she earned a monthly salary of EUR 110 netto on a part-time contract. Many employers give only part-time contracts, as they then do not have to pay holiday charges. This possibility is aligned with the Act nr. 417/2013 of material need, where it is allowed to work a few hours inside Slovakia and still be registered as unemployed.⁹ This meant that Anna still received unemployment benefits. Jan earned approximately EUR 600 a month. The problem, however, was that John's income was not stable, in some months he only earned EUR 300. During this period they moved out from Anna's parents into a rental apartment assigned by the city. The rent and electricity amounted to EUR 300. *"When they gave us a distrain on the debts that we paid back at least in part, we thought it was useless to send partial payments, but they would still give us the distrain, so we stopped paying it altogether,"* Anna said.

In June 2019 Anna and her husband applied for personal bankruptcy. In three months they were approved for bankruptcy and all their debts were erased. Anna says, *"It is a great relief, because I can now start to work with the regular working contract and can keep my salary and we will live much better, we are starting a new life without debts."* Anna also said that financial literacy education should be taught in primary schools, because children should learn about financial issues from early childhood on.

6. Conclusion

What is interesting about this measure is that the amendment to the law has helped all residents without distinction of ethnicity. It focused on an issue that does not only affect Roma, but also majority society. This explicit but not exclusive approach will also work for other policies. If policies try to associate specifics of an ethnic group (eg. racism, discrimination) with life situations that are very similar or

⁹ Act about material need



identical to the majority, this can cause tensions. An example is the self-construction of houses, which is organized exclusively in Roma communities, while some non-Roma families are in the same position. As a result, if such public policy is publicized, it creates negative emotions because the majority population feels excluded from something that they could have also benefitted from. It is undisputed that the institute of personal bankruptcy had a very positive impact on the life of the Roma, even if it was not specifically aimed at them. In addition, it has not triggered antigypsyist reactions, as is the case with other measures that are directly aimed at improving the situation of excluded Roma. Increased interest in debt relief only shows how effective this tool is in practice. The next step should now be to increase chances for creating job possibilities and to make also the job market more inclusive.