SELECTED ASPECTS OF ENTREPRENEUR BANKRUPTCY IN THE ITALIAN AND SLOVAK LEGAL ORDER[1]

VYBRANÉ ASPEKTY KONKURZU PODNIKATEĽOV V TALIANSKOM A SLOVENSKOM PRÁVNOM PORIADKU

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ABSTRACT

Bankruptcy as a part of insolvency law is generally an institution present in the legislation of countries governed by a market economy. The territory of today's Italy is the cradle of the foundations of the current legal systems, and Slovakia is the country where the author lives and works mainly in the field of insolvency law. The legal systems of both countries are undergoing constant and rapid change, and are also being partially harmonised under the influence of EU law. The author's article attempts to present the current Italian insolvency law, to compare it in certain contexts with the Slovak insolvency law and, on the basis of the results obtained, to provide some reflections on how the Slovak insolvency law might develop in the future. The foundations of the current Slovak insolvency law are historically significantly influenced by Austrian and Belgian insolvency law, and currently also by US law. Therefore, the author wonders why some elements of the Slovak legal system could not be inspired by the Italian insolvency law in the future.

ABSTRAKT

Konkurz ako súčasť insolvenčného práva je spravidla inštitútom prítomným v právnych úpravách krajín, ktoré sa riadia trhovou ekonomikou. Územie dnešného Talianska je kolískou základu súčasných právnych systémov a Slovensko krajinou, v ktorej autor žije a pôsobí predovšetkým v oblasti insolvenčného práva. Právne poriadky oboch spomenutých krajín sa priebežne a rýchlo pretvárajú; čiastočne sa vplyvom práva EÚ aj navzájom harmonizujú. Autor sa svojím príspevkom pokúša priblížiť súčasné talianske insolvenčné právo, v istých súvislostiach ho porovnať so slovenským insolvenčným právom a na podklade získaných výsledkov tak priniesť niektoré úvahy o tom, ako by sa slovenské insolvenčné právo mohlo pro futuro ďalej vyvíjať. Základy súčasného slovenského insolvenčného práva sú historicky významným spôsobom ovplyvnené rakúskym a belgickým konkurzným právom, v súčasnosti aj právom USA. Preto sa autor zamýšľa nad tým, prečo by niektoré prvky slovenského právneho poriadku nemohli byť v budúcnosti inšpirované práve aj talianskym insolvenčným právom.

I. INTRODUCTION

The institution of insolvency law in Italy has undergone fundamental changes in the recent past, with the adoption in 2019 of new legislation concerning crisis and insolvency. The Italian Crisis and Insolvency Code of 12 January 2019 (hereinafter "CCII") completely replaced the previous Royal Decree No. 267 of 16 March 1942, which constituted the bankruptcy law (hereinafter also "the Italian Bankruptcy Act"). By contrast, the legal system of the Slovak Republic underwent a significant reform of bankruptcy law with the adoption of Act No. 7/2005

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Coll. on Bankruptcy and Restructuring (hereinafter “ZKR”) as early as 2004. Subsequently, insolvency law in Slovakia underwent further significant reform as a result of the transposition of Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on restructuring and insolvency,[3] through the adoption of a separate Act No. 111/2022 Z. z. on the resolution of imminent insolvency; which continues to co-exist alongside the ZKR.

Our aim in selecting the topic of this paper and in its preparation is to identify the key differences between the legal regimes governing the insolvency of businesses in Italy and Slovakia. Our motivation for choosing a specific foreign legal system stems from a number of differing aspects, such as the size of both countries, their population, the size of both economies, the historical period of market economy development in both countries, the timing of the adoption of new insolvency regulations, and others. The relative availability of specialist Italian legal literature played an important role in the choice of topic. Our specific aim is to ascertain what selected instruments for regulating legal relationships in insolvency proceedings are available under both legal systems, including any preventive and repressive measures. It should be emphasised, however, that this paper does not set out to compare and analyse the entirety of insolvency law in Italy and Slovakia, i.e. crisis and pre-insolvency regimes, as well as any reorganisation regimes or special insolvency regimes, such as small-scale bankruptcy, bankruptcy of financial institutions, debt relief for natural persons, and so on. In this paper, we focus on identifying, defining and comparing the institution of “standard” bankruptcy in both countries; that is, an institution resulting in the “liquidation” of insolvent debtors – business owners. On the basis of the research carried out and in accordance with the sub-objective of this paper, we subsequently set out our reflections on the future development of insolvency law in Slovakia in relation to specific aspects of these institutions.

The following hypotheses assist us in achieving the main objective:

1. Current modern insolvency law in Italy contains legal provisions which serve as a source of inspiration for the future development of insolvency law in Slovakia.
2. Italian insolvency legislation contains legal institutions that are comparable to those in Slovak insolvency legislation.

A content analysis of the legislation of both countries and their selected legal institutions and instruments significantly assists us in achieving the specified sub-objective and main objective of the research. Using this scientific method, we examine in particular the content, meaning, structure and individual relationships between the relevant statutory provisions, so that we may subsequently proceed to compare the legislative texts of both countries with one another. We carry out the comparison using the scientific method of comparison. For the purposes of comparison, we select the legal framework governing the so-called “negative status” of the debtor, as well as the subjective aspect of the selected insolvency proceedings in both countries, as well as institutions typical of insolvency law, such as the effects of the relevant insolvency proceedings in both countries on the debtor’s assets and correspondence, the prohibition on individual enforcement of judgments and the prohibition on the application of protective measures, the satisfaction of secured creditors, and the debtor’s void legal acts. The reason for selecting these specific legal institutions for the purposes of comparison lies in the fact that the definition of the debtor’s so-called “negative status” and the identification of the parties to whom the specific insolvency proceedings are directed form the basis of insolvency law in every legal system. Consequently, the selection of effects that primarily affect assets, correspondence, the prohibition on individual enforcement of judgments, secured creditors and, finally, void legal acts is made in view of the fact that these are typical institutions upon which insolvency proceedings in the legal systems of individual countries are usually

[3] HRABÁNKOVÁ, K. *Verejná preventívna reštrukturalizácia ako sanačný proces podnikateľa v komparácii s českou právnou úpravou*. In: STUDIA IURIDICA Cassoviensia [online]. 2024, vol. 12, č. 2. [cit. 2025-10-14]. Available online: https://sic.pravo.upjs.sk/ecasopis/122024-2/04_Hrabankova.pdf. pp. 52–53.

based. On the basis of the analysis carried out on selected legal institutions, the determining criteria for comparison are the systematic classification of a given legal institution within both legal systems, as well as its teleological and functional aspects. In drafting this paper, we subsequently employ the scientific method of synthesis to summarise and integrate the results of the analysis and comparison into a single coherent section, thereby fulfilling the main objective of the paper. For the purposes of this paper, we also draw upon various methods of legal interpretation, in particular the grammatical, systematic, logical and teleological approaches. In drafting this article, the author has used an artificial intelligence tool, namely DeepL Translator, to assist with the translation from Slovak into English. We would also like to add that the author is not aware of any previous research in this field – that is, the comparative analysis of selected aspects of the institution of business insolvency in Italy and Slovakia – either in Slovakia or abroad.

II. INTRODUCTION TO CURRENT ITALIAN INSOLVENCY LAW

At present, the CCII forms the basis of Italian insolvency law, the legislative preparations for which began in 2017 with the aim of achieving a comprehensive reform of the issues surrounding so-called commercial crises and insolvency. In undertaking this work, the Italian legislature envisaged the complete replacement of the Italian Bankruptcy Act of 1942, whilst the drafting of the legislation was also influenced by European Union law, such as Commission Recommendation 2014/135/EU of 12 March 2014 on a new approach to business failure and insolvency, and Regulation (EU) No 2015/848 of the European Parliament and of the Council on insolvency proceedings.[4] Subsequently, following the adoption of the CCII, Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on restructuring and insolvency was also transposed, as a result of which the CCII was amended. Following several postponements, the CCII came into force on 15 July 2022. The reasons for the various postponements of its entry into force included, for example, measures relating to the COVID-19 pandemic and, subsequently, the need to transpose the aforementioned European Directive.[5]

By adopting the new legislation, the Italian legislature has decided to remove the term "bankruptcy" from the legal system entirely and replace it with the term "judicial liquidation". Through an implementing provision – Article 349 of the CCII – the term "bankruptcy" has even been replaced in all applicable legislation; consequently, this change also affected existing proceedings that had commenced under the previous Italian Bankruptcy Code and had not yet been concluded following the adoption of the CCII. The author, Giacomo D'Attorre, states that replacing the term "bankruptcy" with "judicial liquidation" is intended to highlight this procedure as a phase of an entrepreneur's business activity rather than as a procedure of a punitive nature.[6] According to the author Fabio Marelli, this is merely a change in the name of this institution, whilst retaining the characteristics of Italian insolvency proceedings.[7] Furthermore, according to the author Giulia Basile, with the adoption of the CCII, insolvency—renamed judicial liquidation—has lost its central role in resolving an entrepreneur's insolvency.[8]

[4] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. p. 497.
[5] MARELLI, F. *The new Italian Insolvency Code entered into force on 15 July 2022*. In: Advant Nctm [online]. 2022. [cit. 2025-10-14]. Available online: https://www.advant-nctm.com/en/news/il-nuovo-codice-della-crisi-dimpresa-e-dellinsolvenza-in-vigore-dal-15-luglio-2022.
[6] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 18.
[7] MARELLI, F. *The new Italian Insolvency Code entered into force on 15 July 2022*. In: Advant Nctm [online]. 2022. [cit. 2025-10-14]. Available online: https://www.advant-nctm.com/en/news/il-nuovo-codice-della-crisi-dimpresa-e-dellinsolvenza-in-vigore-dal-15-luglio-2022.
[8] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. p. 497.

The fundamental concepts on which the CCII is based are: “crisis” and “insolvency”. With regard to these concepts, the Italian legislature subsequently introduced new institutions, or adopted previously known ones, when drafting the Code, and organised them as follows: i) agreed crisis resolution/agreed settlement; ii) crisis and insolvency management tools, comprising certified restructuring plans, debt restructuring agreements, restructuring plans subject to approval, consumer debt restructuring, small-scale settlements with creditors and agreements with creditors; iii) judicial liquidation; iv) liquidation of over-indebted individuals; and v) compulsory administrative liquidation. This classification thus corresponds to the framework of modern insolvency law in Italy, which is significantly influenced by EU law; primarily in the institutions and processes aimed at overcoming a crisis or insolvency with a view to achieving, for example, business continuity and the protection of employment and employees’ incomes.[9] These are the mechanisms referred to above under (i) and (ii), and they comprise a diverse range of tools that differ from one another in the procedures used to achieve their objectives, and possibly also in the entities for which they are intended; for example, consumers constitute a separate category. Another category comprises the typical mechanism for resolving insolvency, i.e. judicial liquidation, which represents the final stage in resolving the financial difficulties of a debtor who is an entrepreneur, when it is no longer possible to resolve the situation using the mechanisms referred to above under i) or ii). The institution for over-indebted individuals constitutes a special category of bankruptcy proceedings, intended for entities such as so-called “small business owners”, farmers and consumers.[10] Finally, the institution of compulsory administrative liquidation represents another specific category of insolvency proceedings intended for entities subject to supervision by state authorities, such as banks, insurance companies, and so on[11].[12]

In light of the above, it appears that the Italian legislature seeks, through instruments designed to resolve and, where possible, overcome crises and insolvency, to prioritise encouraging debtors and creditors, where possible, to undergo a process of restructuring and “reorganisation” rather than a liquidation process, unless this is unavoidable. From the perspective of , for example, the Slovak legal system, the Bankruptcy Act (ZKR) primarily regulates the institution of bankruptcy, followed by the institution of restructuring; other crisis-related measures are regulated in a separate Act No. 111/2022 Z. z. on the resolution of impending insolvency,[13] which may lead those subject to these legal provisions to believe that if a debtor is, for example, experiencing financial difficulties, the solution is “first and foremost” bankruptcy, and thus any “reorganisation” measures may remain unused in Slovakia without serious justification.

[9] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023, p. 498.

[10] MARELLI, F. *The new Italian Insolvency Code entered into force on 15 July 2022*. In: Advant Nctm [online]. 2022. [cit. 2025-10-14]. Available online: https://www.advant-nctm.com/en/news/il-nuovo-codice-della-crisi-dimpresa-e-dellinsolvenza-in-vigore-dal-15-luglio-2022.

[11] TONUS, F., TRAMBAIOLO, F. *Procedure concorsuali nel Registro delle Imprese: Codice della Crisi e dell'Insolvenza*. In: Camera di commercio di Venezia e Rovigo [online]. 2023. [cit. 2025-10-16]. Available online: https://www.dl.camcom.it/FocusOn/conoscere-il-registro-imprese-rea/procedure-concorsuali-nel-registro-delle-imprese-codice-della-crisi-e-dell-insolvenza.

[12] By way of comparison, under the legal system of the Slovak Republic, the key concepts of insolvency law are “impending insolvency” and “insolvency”, and the legal mechanisms used to address them are bankruptcy, restructuring, small-scale bankruptcy, bankruptcy of financial institutions, debt relief for natural persons through bankruptcy or a repayment schedule, and public and non-public preventive restructuring.

[13] DOLNÝ, J. *Testovanie úpadku a hroziaceho úpadku dlžníka z pohľadu slovenského právneho poriadku*. In: STUDIA IURIDICA Cassoviensia [online]. 2023, vol. 11, č. 2. [cit. 2025-10-16]. Available online: https://sic.pravo.upjs.sk/ecasopis/112023-2/01_dolny.pdf. p. 4.

III. JUDICIAL LIQUIDATION VS. BANKRUPTCY

In view of the topic of this paper, we shall now focus on a comparison of "liquidation" insolvency procedures intended for debtor-entrepreneurs. To clarify, where we use the term "judicial liquidation" in this paper, we are referring to an insolvency procedure under Italian law, set out primarily in Articles 121–267 of the CCII; and where we use the term "bankruptcy", or "standard bankruptcy", this refers to an insolvency institution under Slovak law, set out primarily in Sections 11–105 of the ZKR.

1. Insolvency in Italy and bankruptcy in Slovakia

The institution of judicial liquidation is closely linked to the concept of "insolvency". Article 121 of the CCII specifies that judicial liquidation applies only to entrepreneurs who do not meet the conditions set out in Article 2(1)(d) of the CCII[14] and who are, at the same time, in a state of insolvency.

The term "insolvency" is defined in Article 2(1)(b) of the CCII as follows: "a state of the debtor characterised by default or other external circumstances demonstrating that the debtor is no longer able to meet its obligations on a regular basis". In accordance with the established case law of the insolvency courts in Italy, the following factors are examined, for example: the length of the period during which the debtor has failed to settle their due obligations; whether ongoing enforcement proceedings against the debtor have proved fruitless; whether the debtor has sufficient liquid assets to settle current liabilities; whether there have been unsuccessful attempts to restructure the debtor's debt; whether there have been delays in meeting tax and social security obligations; whether there is a lack of financial statements; and other factors.[15]

Unlike under Italian law, the Slovak concept of bankruptcy is linked to the term "insolvency". Under Section 3(1), a debtor is in insolvency if they are insolvent or over-indebted. Consequently, the concept of "insolvency" is defined separately in the Slovak legal system for legal persons and for natural persons. As a general rule, a legal person is deemed insolvent if, 90 days after the due date, it is unable to fulfil at least two monetary obligations to more than one creditor, whilst a natural person is deemed insolvent if, 180 days after the due date, they are unable to fulfil at least one monetary obligation. The ZKR also contains a definition of the so-called "presumption" of a legal entity's solvency, which is linked to a reasonable expectation that the management of its assets or the operation of its business will continue, and the determination of the value of the so-called "coverage gap"; this therefore constitutes a negative definition of the concept of "insolvency" in relation to a legal entity. The ZKR subsequently also contains a definition of over-indebtedness. A person is deemed to be over-indebted if they are required to keep accounts in accordance with a specific regulation, have more than one creditor, and the value of their liabilities exceeds the value of their assets; the ZKR also contains a negative definition of the term "liability" for the purposes of determining over-indebtedness, as well as further conditions for determining the value of liabilities and assets.[16] The Slovak legal system further regulates, in an implementing regulation – Decree No. 197/2022 Z. z. – amongst other things, the details of how insolvency is determined and the details of the coverage gap. According to the author Jaroslav Dolný, insolvency, which

[14] article 2(1)(d) of the CCII defines a so-called "small entrepreneur" as an entrepreneur who cumulatively meets three statutory requirements, namely the requirements relating to the specified thresholds for the total value of assets, the value of income and the value of debts.

[15] for further details, see, for example, the Judgment of the District Court of Milan dated 16 July 2026, case no. P.U. n. 321-1/2026 R.G.

[16] for further details, see Section 3(2) and (3) of the Insolvency Act.

the ZKR defines as "over-indebtedness", is generally assessed using the so-called balance sheet test, whilst insolvency is assessed using the so-called liquidity test.[17]

On the basis of the above, we can observe that the definition of a "negative state", which constitutes the so-called objective requirement for judicial liquidation in Italy or bankruptcy in Slovakia, differs significantly. It can be deduced from the above that the Italian court plays a key role in determining insolvency as part of its decision-making process, in which it is not strictly bound by complex statutory definitions and determining criteria, or by exceptions and negative definitions, but the decisive factors for the court's decision are apparently a factual, fair and highly nuanced assessment of the specific case. In contrast, in Slovakia, the assessment of insolvency tends to be characterised by excessive formalism, primarily due to the detailed legislative formulation of the relevant legal concepts; this may, in certain situations, prevent the adjudicating court from assessing this negative state with regard to any specific circumstances, whether in a positive or negative sense. When assessing insolvency, a court in Slovakia tends to focus on strict mathematical calculations using a balance sheet test or a liquidity test,[18] whereas a court in Italy has the option to assess the debtor's state of insolvency freely, broadly and taking into account any variables,[19] so that the purpose and spirit of the insolvency regulations can be fulfilled as fully as possible.

2. The subjective aspect of judicial liquidation and bankruptcy

Under the CCII, the Italian judicial liquidation procedure is designed to resolve the insolvency of entrepreneurs, regardless of whether they are legal or natural persons. However, Article 121 of the CCII excludes the aforementioned "small entrepreneurs" from this procedure. However, the following entities are not included in the positive definition of entrepreneurs under the CCII and other Italian regulations: the State and so-called public bodies,[20] so-called public companies, farmers, consumers, so-called large enterprises and so-called innovative start-ups. Farmers, consumers, large enterprises and innovative start-ups, within the meaning of the CCII or other regulations, are subject to crisis and insolvency resolution mechanisms other than judicial liquidation.[21]

Under the Bankruptcy Act (ZKR), the Slovak bankruptcy regime applies to legal entities (in general) and natural persons – entrepreneurs. From the perspective of the negative definition of entities contained in the ZKR, the state, state budgetary organisations, state-subsidised organisations, state funds, municipalities, higher territorial units and other entities specified in Section 2 of the ZKR are not subject to the institution of bankruptcy.[22] As regards so-called financial institutions, such as banks, insurance companies, reinsurance companies and others, under the ZKR, the bankruptcy of these entities is governed by specific provisions of the ZKR which modify the standard bankruptcy procedure.[23]

In view of the above, it may be concluded that both the legal framework of the CCII and that of the ZKR contain a legislative definition of the so-called "subjective aspect", i.e. the entities for which the institution of judicial liquidation or bankruptcy is intended to resolve their financial difficulties. Both sets of legislation contain both positive and negative definitions of

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[17] for further details on the balance sheet test and the liquidity test, see DOLNÝ, J. *Testovanie úpadku a hroziaceho úpadku dlžníka z pohľadu slovenského právneho poriadku*. In: STUDIA IURIDICA Cassoviensia [online]. 2023, vol. 11, č. 2. [cit. 2025-10-16]. Available online: https://sic.pravo.upjs.sk/ecasopis/112023-2/01_dolny.pdf. ISSN 1339-3995. DOI 10.33542/sic2023-2-01, pp. 5-8.
[18] for further details, see, for example, the resolution of the Košice Municipal Court of 14 November 2023, ref. no. 26K/14/2021.
[19] FORTUNATO, S. *Insolvenza, crisi e continuità aziendale nella riforma delle procedure concorsuali: ovvero la commedia degli equivoci*. In: Il diritto fallimentare e delle società commerciali. Turin : Giappichelli Editore, 2021, No. 1. p. 24.
[20] for further details, see Article 1(1) of the CCII.
[21] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. p. 504.
[22] POSPÍŠIL, B. *Zákon o konkurze a reštrukturalizácii s komentárom*. Žilina : Poradca podnikateľa, 2005. p. 12.
[23] for further details, see Part Six of the ZKR.

such entities; ultimately, it can be stated that judicial liquidation and bankruptcy are intended primarily for "ordinary" entrepreneurs, namely legal and natural persons. However, both sets of legislation contain certain exceptions and restrictions. From the perspective of the ZKR, however, it is irrelevant whether a legal person is an entrepreneur or not;[24] therefore, this category of entities also includes, for example, civic associations, foundations and others. Furthermore, under Slovak law, it is not decisive whether the entity in question carries out agricultural activities; with the exception of debtors farming on agricultural land,[25] to whom the ZKR does not apply during the period from 1 April to 30 September of any given calendar year.[26] For the purposes of the subjective criterion regarding the applicability of standard insolvency proceedings, the Slovak legal system does not distinguish between businesses on the basis of their size. Although the Slovak legal system recognises the definition of a so-called "small" debtor,[27] or a "large" debtor;[28] the aforementioned definitional criteria do not exclude the entities concerned on the debtor's side from the standard insolvency proceedings.

Differences in the approach of various types of entities to the institution of judicial liquidation or bankruptcy on the debtor's side are, however, influenced by the overall concept of insolvency law in both countries, in particular by the existence of other specific institutions designed to address crises and insolvency, as well as the overall view of "liquidation" proceedings; which, in the spirit of Italian legislation, is intended to be the last resort in a state of insolvency, and even then only for selected entities.

3. Certain effects of the commencement of judicial liquidation and the declaration of bankruptcy

The CCII divides the effects of the commencement of judicial liquidation into four categories, namely: (i) effects on the debtor, (ii) effects on creditors, (iii) effects on acts detrimental to creditors, and (iv) effects on existing/uncompleted legal relationships.[29]

The equivalent of the effects of the commencement of judicial liquidation in Italy is, in Slovakia, the legal provisions contained in Title V of Part Two of the Insolvency Act (ZKR), entitled "Effects of the declaration of bankruptcy and voidable legal acts". Although the legislative classification in Slovakia is not organised into individual categories as is the case with the Italian legislation, we can nevertheless identify similar categories based on the content of the relevant Chapter Five of Part Two of the ZKR. In this section of the article, we shall examine certain selected effects of the commencement of judicial liquidation in Italy, analyse them, and subsequently compare them with Slovak insolvency law.

[24] POSPÍŠIL, B. *Zákon o konkurze a reštrukturalizácii. Komentár*. Bratislava : Iura Edition, 2012. p. 49.
[25] POSPÍŠIL, B. *Zákon o konkurze a reštrukturalizácii s komentárom*. Žilina : Poradca podnikateľa, 2005. p. 12.
[26] For further details, see Section 205 of the Bankruptcy and Restructuring Act. According to the author Milan Ďurica, this is a restriction whereby, during the specified period of the year, bankruptcy proceedings cannot be commenced against debtors farming agricultural land (ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. p. 1416). However, the provision in question does not prevent bankruptcy proceedings that have already been declared from continuing and being concluded.
[27] For further details, see Section 106c(1)(f) and (g) of the Bankruptcy and Restructuring Act. This concerns debtors in so-called "small-scale bankruptcy", which represents an alternative to standard bankruptcy. According to the author Milan Ďurica, small-scale insolvency is a legal mechanism intended for entities with a lower level of economic activity (ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. p. 838).
[28] For further details, see Section 20a(c)(2) and (3) of Act No. 8/2005 Coll. on Administrators and on Amendments to Certain Acts. These are the defining criteria used to determine the random selection of an administrator, inter alia, in standard insolvency proceedings, specifically from the register of so-called special administrators. The specialist literature refers to these "large" debtors, together with other specific entities, as "special" entities for the purposes of random selection from the section of special administrators (DOLNÝ, J., MACHATOVÁ, L., MALIAR, M. *Zákon o správcoch. Komentár*. 1st ed. Praha : Wolters Kluwer ČR, 2024. p. 69).
[29] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. p. 510.

3.1. The debtor’s assets

The category of effects on the debtor under Italian law primarily includes the definition of the debtor’s assets that form part of judicial liquidation. Article 142 of the CCII stipulates, amongst other things, that upon the commencement of judicial liquidation, the debtor loses the right to administer and dispose of their assets existing at the time of the commencement of judicial liquidation. At the same time, this right passes to the liquidator, who is responsible for the administration and liquidation/realisation of the assets and the subsequent distribution of the proceeds amongst the creditors, in accordance with the principle of *par conditio creditorum;*[30] for which the term *"pari passu* principle" is more commonly used in Slovakia.[31]

The equivalent of Article 142 of the CCII in the Slovak legal system is Section 44(1) of the ZKR, which has the same meaning and effect. The purpose of the provisions in both legal systems is thus to clearly set out the conditions ensuring the proper conduct of proceedings, whilst eliminating any adverse effects that might be caused by the debtor themselves during judicial liquidation or bankruptcy. Under Article 142 of the CCII, assets acquired by the debtor during judicial liquidation are also subject to judicial liquidation; the situation is similar under Slovak law.[32]

Article 146 of the CCII contains a definition of assets that are not included in judicial liquidation; these include, for example, assets and rights of an exclusively personal nature, as well as maintenance payments, wages or pensions, to the extent necessary to ensure the livelihood of the debtor and members of their family, and other items. The aforementioned article further regulates the procedure for determining the maximum amount necessary to ensure the livelihood of the debtor and members of their family, based on a court decision following a hearing of the administrator and the creditors’ committee, and taking into account the personal circumstances of the debtor and members of their family. In view of the wording and content of the aforementioned provision of CCII, it is clear that the negative definition of the debtor’s assets relates primarily to natural persons.

For the purposes of insolvency proceedings in Slovakia, Section 72 contains a definition of assets not subject to insolvency proceedings. This includes, for example, assets that cannot be seized through the enforcement of a court decision or through execution proceedings, a customs security up to the amount of the customs debt, a tax security, and the bankrupt’s income to the extent that it is not subject to the enforcement of a court decision or execution proceedings. As regards assets that cannot be seized for the purposes of bankruptcy proceedings, these will primarily consist of assets owned by natural persons who are entrepreneurs. Typically, this will include assets such as essential household equipment,[33] pets, the debtor’s belongings used for work purposes (up to a limit of €331.94), medical supplies, study materials, and other items. The debtor’s income, to the extent that it is subject to bankruptcy proceedings in Slovakia, is strictly linked to the statutory definition of the scope of deductions from wages and other income, as set out in the Enforcement Code.

On the basis of the above, it can be concluded that the circumstances governing the negative definition of the debtor’s assets are similar in both legal frameworks. Their purpose is to provide a certain degree of protection for important values protected by law, such as the maintenance of the debtor and members of their family, or essential assets relating to public resources, such as customs and tax security deposits in Slovakia. However, the approach taken by the legislators differs, particularly with regard to determining the scope of the income of a debtor who is a natural person – an entrepreneur – not subject to judicial liquidation or

[30] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024, p. 240.

[31] for further details on the *pari passu* principle, see: TÖRÖK, L. *Spriaznené pohľadávky v malom konkurze*. In: SUCHOŽA, J., HUSÁR, J., HUČKOVÁ, R. (eds.): Právo, obchod, ekonomika XII. Košice : Univerzita P. J. Šafárika v Košiciach, 2023. p.356.

[32] for further details, see Section 67(1) of the Insolvency Act.

[33] ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. p. 590.

bankruptcy. Whilst the legislation in Slovakia is linked to a statutory scope applied uniformly in every case concerned,[34] Italian legislation allows the court to assess this scope on a case-by-case basis, taking into account the established facts, as fairly as possible and to the extent necessary, in the interests of both debtors and creditors.

3.2. Correspondence addressed to the debtor

Further effects of the commencement of judicial liquidation include, for example, the service of the debtor's correspondence on the liquidator. Article 148 of the CCII stipulates that where the debtor in judicial liquidation is a natural person, that person is obliged to forward any correspondence, including electronic correspondence, relating to the so-called relationships covered by the judicial liquidation, to the liquidator.[35] In the case of entities other than natural persons, the CCII stipulates that all correspondence addressed to such a debtor must be served directly on the liquidator.[36] With regard to these effects of the commencement of judicial liquidation, the author Giacomo D'Attorre emphasises that these are not provisions of a punitive nature, but rather an effort to remove any obstacles preventing the proceedings from proceeding as smoothly as possible and to prevent the debtor from assuming or retaining roles incompatible with the loss of the power to administer and dispose of their assets.[37] A breach by the debtor of the obligation laid down in Article 148 of the CCII may result in the debtor no longer meeting the conditions for debt relief under Article 280 of the CCII.

As regards the legal framework governing insolvency proceedings in Slovakia, no similar provisions can be found in the section of the Insolvency Act (ZKR) directly entitled "Effects of the declaration of insolvency". However, the ZKR, in Title VI of Part Two, entitled "Asset Identification and Inventory", in Section 2, entitled "Asset Identification", in Section 75, contains a definition of the obligations of third parties to cooperate with the administrator. At this point, it may be concluded that the provisions governing the obligation of individual entities to cooperate with the administrator during bankruptcy proceedings may also be regarded as "effects of the declaration of bankruptcy". Section 75(7) of the Insolvency Act subsequently sets out the obligation of the universal postal service provider to provide the insolvency practitioner, at the latter's request, with the information necessary for the performance of his duties under the Insolvency Act. This includes, for example, notifying the administrator whether the debtor has any post office boxes, the number of items received there and their senders, and the amounts received by the debtor by post.

Although the provision of Section 75(7) of the ZKR relates to correspondence addressed to the debtor, the scope of this provision differs significantly from that under Italian law. Whilst, under Italian law, interference with the confidentiality of correspondence is unavoidable to the extent necessary to achieve the objective of judicial liquidation, Slovak insolvency law does not permit such interference. It is true that, in accordance with Section 75(4) of the Bankruptcy Act, third parties – described, for example, as *"any person in possession of records or documents relating to assets subject to* bankruptcy" – are obliged to cooperate with the administrator; i.e. this category of entities could also include specific entities such as[38] – universal postal service providers; in practice, however, the aforementioned provision of paragraph 4 of the Insolvency Act would be inapplicable, as a postal service provider does not know the contents of a postal item and is not entitled to ascertain them. The only permissible

[34] for further details, see Section 72(2) of the Bankruptcy and Restructuring Act in conjunction with Sections 68–71 of the Enforcement Code.

[35] D'ALONZO, R. *La liquidazione giudiziale vista dal curatore*. In: Il diritto fallimentare e delle società commerciali. Turin : Giappichelli Editore, 2023, No. 6. p. 1106.

[36] BROCARDI.IT. *Spiegazione dell'art. 148 Codice della crisi d'impresa e dell'insolvenza*. [online]. 2024. [cit. 2025-10-17]. Available online: https://www.brocardi.it/codice-crisi-impresa/parte-prima/titolo-v/capo-i/sezione-ii/art148.html.

[37] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024, p. 246.

[38] POSPÍŠIL, B. a kol. *Zákon o konkurze a reštrukturalizácii. Komentár*. 2nd ed. Bratislava : Wolters Kluwer, 2016. p. 429.

way in which the administrator could legally ascertain the contents of postal items is if the debtor discloses to the administrator the information subject to postal secrecy, in accordance with the duty to cooperate with the administrator under Section 74 of the Insolvency Act, specifically insofar as it is relevant to fulfilling the purpose of the insolvency proceedings. Failure to fulfil the obligation, on behalf of the debtor, to cooperate with the administrator could, under Slovak insolvency regulations, be subject to sanctions, for example, the imposition of a fine and a decision on exclusion to the extent provided for in Section 74(5) and (6) of the Insolvency Act.

3.3. Prohibition on individual enforcement of a decision and prohibition on the application of protective measures

The category of effects vis-à-vis creditors under Italian law also includes, for example, a basic definition ensuring the principle *of par conditio creditorum.* This is the legal provision set out in Article 150 of the CCII, the content of which is a general prohibition addressed to the debtor's creditors, who, from the moment judicial liquidation commences, may neither initiate nor continue individual enforcement proceedings, nor initiate or continue proceedings aimed at obtaining a protective measure. This therefore constitutes the effect of the so-called inadmissibility of enforcement and protective measures.[39] The prohibition in question also applies to creditors' claims arising during judicial liquidation. However, the prohibition contained in CCII applies only to the extent of the assets subject to judicial liquidation. Exceptions to the prohibition on the enforcement of a decision or on interim measures may, however, be provided for by law.

In this context, the author Giulia Basile states that the objective pursued by the legislator here is to secure all the debtor's assets concerned so that they can subsequently be distributed equitably; this objective would be irreparably thwarted if each creditor were able to proceed with individual enforcement.[40] According to the author Giacomo D'Attorre, the relevant statutory provision sets out rules for the so-called collective protection of creditors, whereby their individual protection is superseded when they compete for the debtor's assets. Collective protection is ensured by the liquidator, who proceeds to liquidate all of the debtor's assets and distribute the proceeds amongst the creditors. Individual creditors cannot initiate or continue individual proceedings, but may seek to participate in the distribution of the debtor's assets alongside other creditors, in accordance with the principle of *par conditio creditorum.*[41]

As regards insolvency proceedings under Slovak law, a similar legal provision can be found in Section 44(4) of the Insolvency Act (ZKR); however, for the purposes of a comprehensive comparison with Italian law, it must be considered in conjunction with Sections 47 and 48 of the ZKR. Section 44(4) of the ZKR stipulates that, unless the ZKR provides otherwise, a claim lodged in bankruptcy proceedings may not be satisfied during the proceedings from the assets subject to bankruptcy other than through the distribution of the proceeds from the realisation of those assets. In this context, the author Milan Ďurica states that, in principle, individual satisfaction of creditors is precluded during bankruptcy proceedings unless the Bankruptcy Act provides otherwise; typically, for example, in the case of claims against the estate. The Bankruptcy Act addresses the issue of competing creditors on the principle of their proportional satisfaction, namely through the distribution of proceeds.[42] Section 48 of the ZKR subsequently addresses the issue of enforcement of judgments and

[39] BROCARDI.IT. *Spiegazione dell'art. 150 Codice della crisi d'impresa e dell'insolvenza*. [online]. 2024. [cit. 2025-10-17]. Available online: https://www.brocardi.it/codice-crisi-impresa/parte-prima/titolo-v/capo-i/sezione-iii/art150.html?utm_source=internal&utm_medium=link&utm_campaign=articolo&utm_content=nav_art_succ_top.

[40] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. p. 511.

[41] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 247.

[42] ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. p. 434.

execution proceedings, stipulating that no enforcement or execution proceedings may be commenced against assets subject to bankruptcy during the bankruptcy proceedings, whilst any such proceedings already commenced are stayed *ex lege* upon the declaration of bankruptcy. When considering the procedure to be followed by creditors regarding the application of protective measures under Slovak law during bankruptcy proceedings and in relation to assets subject to bankruptcy, the answer can be derived from Section 47 of the Bankruptcy Act, which relates, amongst other things, to court proceedings. Where the enforcement of protective measures relating to assets subject to bankruptcy is concerned, which the creditor in question has individually pursued in court proceedings under the Civil Procedure Code prior to the declaration of bankruptcy, and where, following the declaration of bankruptcy, the relevant court proceedings have not been legally concluded, in such a case, the declaration of bankruptcy will, *by operation of law,* suspend those court proceedings.[43] Should a creditor consider applying a protective measure in relation to assets subject to bankruptcy after the declaration of bankruptcy, pursuant to Section 47(5) of the Bankruptcy Act, they could initiate legal proceedings, but only by filing a claim against the administrator. It follows from the above that the legal provisions governing the effects of the declaration of insolvency do not expressly prohibit a creditor from commencing such proceedings in relation to the assets concerned after the declaration of insolvency; however, having regard to the purpose of the institution of protective measures under the Civil Procedure Code, we consider that a creditor would probably not even be able to demonstrate, in litigation, that the conditions for ordering a protective measure have been met.[44]

When comparing the relevant provisions of the Italian and Slovak legal systems, we can conclude that the effects of the commencement of judicial liquidation and the declaration of bankruptcy are the same in relation to the individual enforcement of creditors' judgments against the assets in question. Both sets of legislation and both legal systems, in respect of the institutions under comparison, are strictly based on the principle *of "par conditio creditorum"*. What is worth noting in this context, however, is the simplicity, brevity and conciseness of the wording of the legal provision enacted by the Italian legislature, as compared with the wording of the legal provision contained in the Slovak insolvency legislation. What is contained in a concise provision in the Italian legislation must, in the Slovak legislation, be interpreted in conjunction with several statutory provisions; thus, under the ZKR, a certain fragmentation of the legal framework can be observed.

3.4. Satisfaction of secured creditors

Among the further effects of the commencement of judicial liquidation that apply to creditors is the prescribed method of satisfying secured creditors. In accordance with Article 152 of the CCII, a secured creditor is entitled to be satisfied separately from the debtor's assets on which a security interest in their favour is attached; however, a secured creditor may only exercise their right to satisfaction at the stage following the verification of their claim. Under Italian law, both secured and unsecured creditors apply for what is known as "recognition of claims",[45] with their claims being verified by the appointed judge; in the event of disputes, by the insolvency court.[46] Once a secured creditor's claim has been established in judicial liquidation, it may subsequently be satisfied in three alternative ways. In the first instance, this involves the direct sale of the secured assets, carried out by the secured creditor itself. In such a case, the secured creditor must first apply to the appointed judge for authorisation to proceed

[43] MACEK, J. *Konkurz, reštrukturalizácia a oddlženie s poznámkami*. 1st ed. Bratislava : IURIS LIBRI, 2015. p. 194.
[44] for further details, see Section 324 et seq. of the Civil Procedure Code.
[45] under Slovak law, this concerns the filing and verification of claims.
[46] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. pp. 511-512.

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with the sale. Before granting authorisation to the secured creditor, the designated judge shall hear the administrator and the creditors' committee and shall subsequently, by order, set the date of the sale and its terms and conditions. In the course of this procedure, the designated judge may also transfer the assets in question to the secured creditor in return for consideration, provided that the secured creditor has expressed an interest in the assets. If the proceeds from the sale of the assets, after deduction of the costs of realisation, are sufficient to satisfy the secured creditor and any surplus remains, the secured creditor must pay this surplus to the administrator. Should a situation arise in which the secured creditor is not satisfied in full from the proceeds of the sale of the secured assets to the extent of the established secured claim, the secured creditor shall be satisfied in the remaining amount on a pro rata basis with the unsecured creditors. In the second scenario, the secured asset may be repurchased by the administrator;[47] however, in such a case, the consent of the appointed judge is required. The secured creditor will thus be satisfied to the extent of the estimated value of the asset in question. The third method is the sale of the secured assets by the administrator, again subject only to the consent of the appointed judge.[48]

When considering the satisfaction of secured creditors in "standard" insolvency proceedings under the Insolvency Act, Section 50(4) of the Insolvency Act stipulates that a security interest relating to assets subject to insolvency proceedings may not be enforced during those proceedings other than in accordance with the Insolvency Act. A security interest may be enforced during the insolvency proceedings only if the secured creditor duly and timely lodges a claim in the insolvency proceedings and, in doing so, also asserts their security interest; otherwise, their security interest shall not be taken into account during the insolvency proceedings.[49] Following the proper and timely filing of the claim in the insolvency proceedings together with the security interest, the administrator shall subsequently establish a separate, so-called "segregated estate" for the secured creditor concerned.[50] As regards the subsequent realisation of this secured asset, the administrator carries out the realisation in accordance with the procedures laid down in the Insolvency Act (ZKR) and in conjunction with the binding instruction which, in matters concerning the secured asset, the secured creditor in question is, in principle, entitled to issue to the administrator.[51] Following the realisation of the secured assets, the administrator then carries out the so-called distribution of proceeds from the separate estate, through which the secured creditor is paid the proceeds less the so-called claims against the separate estate, i.e. in particular the costs of realising these assets and the administrator's fees. If, after the secured creditor has been satisfied, there is a surplus of proceeds, the administrator will, as a rule, transfer this to the general estate, from which unsecured creditors will subsequently be satisfied. However, if the proceeds from the realisation of the separate estate are insufficient to fully satisfy the secured creditor, the secured creditor will, to the extent that they are not satisfied from the separate estate, subsequently be satisfied together with the other unsecured creditors from the general estate.

Provisions of the Insolvency Act (ZKR) relating to other insolvency proceedings, such as the discharge of natural persons' debts through bankruptcy or small-scale bankruptcy, may constitute an exception to the realisation of secured assets. In other words, the Slovak legal system also recognises the realisation of secured assets "outside bankruptcy",[52] similar to the case of Italian judicial liquidation. We emphasise, however, that this is not a feature of "standard" bankruptcy proceedings. In the discharge of natural persons' debts through

[47] The process of the administrator redeeming secured assets may be important, for example, in order to ensure the continued operation of the business and its subsequent sale.
[48] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 250.
[49] for further details, see Section 28(4) of the Insolvency Act.
[50] ĎURICA, M. *Konkurzné právo na Slovensku a v Európskej únii*. Žilina : Poradca podnikateľa, 2006. p. 270.
[51] ĎURICA, M. *Konkurzné právo na Slovensku a v Európskej únii*. Žilina : Poradca podnikateľa, 2006, p. 303.
[52] DZIMKO, J. *Oddlženie fyzickej osoby*. 1st ed. Bratislava : C. H. Beck, 2024. p. 93.

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bankruptcy or small-scale bankruptcy, the method of realising secured assets is generally left to the discretion of the secured creditor, who decides for themselves whether to enforce their security interest in bankruptcy proceedings or to realise it outside bankruptcy in the manner provided for by the Civil Code and, where applicable, Act No. 527/2002 Coll. on Voluntary Auctions.[53]

In view of the above, it can be concluded that a secured creditor has the right to be satisfied separately from the debtor's secured assets both in the case of judicial liquidation in Italy and in bankruptcy proceedings in Slovakia. However, Italian law provides for several methods by which the proceeds and the satisfaction of the secured creditor may be achieved. The entire procedure is, however, managed in each individual case by the appointed judge, in particular with the participation of the liquidator and the creditors' committee, whilst the judge, based on the specific circumstances of the case in question, has the option to determine which method of realising the secured assets is the most appropriate, or the most effective, the quickest, and so on. By contrast, under Slovak law, secured assets in "standard" insolvency proceedings may only be realised within the proceedings themselves, and by the administrator; however, the secured creditor exercises its rights during the realisation process and issues the necessary binding instructions to the administrator regarding the realisation of the assets in question, such as the choice of method for realising the assets, the rules for realisation, and so on. In the event of inaction on the part of the secured creditor regarding the necessary binding instruction, or if such an instruction were to conflict with the Insolvency Act, the insolvency court shall decide on the binding instruction. In the case of special insolvency procedures under Slovak law,[54] which are more modern than "standard" bankruptcy, the secured creditor has the right to choose; in such cases, however, there is no procedure for the bankruptcy court to guide the process of realising the secured assets in any way. Further discussion is needed on which method of legal regulation is most appropriate for the realisation and satisfaction of a secured creditor, particularly in light of actual practice. The legal framework governing the realisation and satisfaction of secured creditors in judicial liquidation in Italy, as well as in "standard" insolvency proceedings in Slovakia, appears to us to be sufficient in terms of the the ability to exercise the rights of secured creditors and, to the extent necessary, the possibility of judicial regulation.

4. Ineffective legal acts of the debtor

Under Italian law, the category of legal acts prejudicial to creditors comprises "prejudicial" legal acts carried out by the debtor which result in the frustration or hindrance of creditors' satisfaction in judicial liquidation, in particular through the disposal of the debtor's assets. The Italian legislature classifies these prejudicial legal acts into three categories, based on the so-called risk of potential harm to creditors, ranging from the greatest to the least risk; this is then matched by a legal remedy which is either strict or less strict in relation to third parties, and which makes it easier or more difficult for the liquidator to obtain redress.[55]

Those legal acts which pose the greatest risk are rendered ineffective vis-à-vis creditors upon the commencement of judicial liquidation *ex lege*; this group includes, in particular, legal acts performed by the debtor without consideration.[56] Consequently, upon the commencement

[53] For further details, see Section 167k of the Insolvency Act and Section 106h of the Insolvency Act. In this context, the author Jakub Dzimko states, for example: "*Encumbered assets cease to form part of the insolvency estate if any secured creditor, whose claim can reasonably be expected to be satisfied from the encumbered assets, proceeds to enforce their security interest; the secured creditor may proceed to enforce their security interest at any time, up until such time as it is realised by the administrator in the course of the bankruptcy proceedings*" (DZIMKO, J. *Oddlženie fyzickej osoby*. 1st ed. Bratislava : C. H. Beck, 2024. p. 94).

[54] debt relief for natural persons through bankruptcy and small-scale bankruptcy.

[55] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. pp. 259-260.

[56] COSTA, C. *Le principali novità in materia di revocatoria fallimentare nel Codice della Crisi e dell'Insolvenza*. In: Il diritto fallimentare e delle società commerciali. Turin : Giappichelli Editore, 2021, No. 6. p. 1273.

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of judicial liquidation, the assets of third parties in question will be subject to judicial liquidation. However, the third parties concerned have a legal remedy through which they may seek judicial review to determine whether the administrator's conduct in securing the third party's assets in question for judicial liquidation is or is not in accordance with the CCII.[57] An exception to gratuitous legal acts under Article 163(1) of the CCII is, for example, property donated by a debtor to a third party, provided that the value of the gift is proportionate to the donor's assets. The specialist literature cites as an example the donation of jewellery of negligible value by a debtor to a child, in which case the legal act would not be void *ex lege*. However, if that child were to be gifted a substantial part of the debtor's assets, the legal act would then be void *ex lege*.[58] For the aforementioned group of legal acts, the decisive factor is the time of their performance by the debtor, namely during the period from the filing of the petition for judicial liquidation until the commencement of judicial liquidation, and the two-year period prior to the filing of that petition for judicial liquidation.[59]

The second group, the so-called "lower-risk" group, comprises unusual legal acts, provided that these were carried out whilst the debtor was insolvent. The CCII classifies as unusual legal acts, for example, legal acts without adequate consideration, the creation of a charge after the debtor's obligation arose, and others.[60] The invalidity of legal acts in this second group can only be determined by a court decision. Court proceedings are initiated exclusively at the administrator's request; the competent court is the insolvency court; and the burden of proof regarding knowledge of the debtor's state of insolvency at the time the legal act was performed rests with the person who entered into the unusual legal act with the debtor. As a court decision is required to declare unusual legal acts void, this legal mechanism is less stringent than in the case of gratuitous legal acts, where invalidity arises *ex lege*. For this group of legal acts, the decisive factor is the time of their performance by the debtor, namely during the period from the filing of the petition for judicial liquidation until the commencement of judicial liquidation, and the period of, as a rule, one year prior to the filing of this petition for judicial liquidation.[61]

The third group, classified as the so-called "lowest-risk" group, comprises ordinary/routine legal acts carried out by the debtor with a third party during the specified period when the debtor was insolvent. This group includes, for example, legal acts by which payments of due liabilities were made, comprising both voluntary payments and payments obtained by the creditor through enforcement proceedings at the time of the debtor's insolvency.[62] The invalidity of legal acts in this third group may also be declared only by a court decision. Court proceedings are again initiated exclusively at the administrator's request; the competent court is the insolvency court; however, the burden of proof regarding knowledge of the debtor's state of insolvency at the time the legal act was performed rests with the administrator. Since the burden of proof regarding knowledge of the debtor's state of insolvency at the time the legal act was performed rests with the administrator, not the third party, this provision is the least onerous for the third party. The invalidity may relate only to those ordinary legal acts performed by the debtor during the period from the filing of the application for judicial liquidation until its commencement, and those performed during the period of up to six months prior to the filing of that application.[63]

[57] for further details, see Article 133 and Article 163(2) of the CCII.
[58] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 261.
[59] BATTILORO, V., BASILE, G. *Compendio di Diritto Commerciale e della Crisi di Impresa*. 1st ed. Molfetta : Neldiritto Editore, 2023. p. 513.
[60] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 263.
[61] for further details, see Article 166(1) of the CCII.
[62] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 264.
[63] for further details, see Article 166(2) of the CCII.

However, the Italian legal system also provides for a definition of legal acts performed by the debtor during their insolvency which cannot be declared ineffective by a court decision. According to the author Giacomo D'Attorre, this definition applies only to legal acts that are unusual and ordinary, not to those performed gratuitously.[64] These are legal acts defined in Article 166(3) of the CCII and other specific regulations; they include, for example, the following legal acts of the debtor: payments for goods and services made in the ordinary course of business under customary terms; routine transfers to a bank account which do not result, for example, in a significant reduction in the bank's claim at the time of insolvency, such as by settling an overdraft; legal acts carried out by the debtor on the basis of a restructuring plan; payments intended to facilitate access to crisis and insolvency resolution tools, such as payments to lawyers, accountants, financial advisers, etc.[65] The purpose of these exceptions is to ensure, to the extent necessary, that even during insolvency it is possible to maintain the business's operations, preserve employment, and gain access to other crisis and insolvency management tools, etc.

Alongside the concept of the ineffectiveness of legal acts in the Italian legal system in the context of judicial liquidation, a similar institution can also be identified in the Slovak legal system, including in "standard" bankruptcy proceedings. This concerns the so-called legal framework for voidable legal acts, which is set out in Section 2 of Chapter 5 of Part II of the Bankruptcy Act.

Legal acts which, under the Insolvency Act (ZKR), may be challenged in "standard" insolvency proceedings are linked to the commencement of the insolvency proceedings,[66] rather than to the declaration of insolvency. However, under the ZKR, once bankruptcy proceedings have commenced, the debtor is only authorised to carry out routine legal acts; any breach of this obligation may result in a legal act other than a routine one, carried out after the commencement of bankruptcy proceedings, being challenged.[67] Section 10 of the ZKR contains a positive definition of routine legal acts performed by entrepreneurs, persons carrying out activities other than business, and natural persons; as well as a negative, exhaustive definition of routine legal acts. According to the author Jaroslav Dolný, with regard to Section 14(5)(a) of the ZKR, the following applies: *"A challenge must be brought in the manner prescribed by law in accordance with the rules of Section 57 of the KR et seq*.";[68] thus, even in the period following the commencement of insolvency proceedings up to the declaration of insolvency, where the debtor's affected (non-routine) legal acts are invalid, the procedure will be the same as for affected legal acts carried out prior to the commencement of insolvency proceedings.

Slovak bankruptcy law does not recognise the invalidity of a legal act performed by the debtor prior to the commencement of bankruptcy proceedings, or prior to the declaration of bankruptcy, which would be invalid *ex lege*. Invalidity *ex lege* is governed solely by Section 44(2) of the Bankruptcy Act (ZKR) and concerns legal acts performed by the debtor only after the declaration of bankruptcy. In this context, these are legal acts that diminish the assets subject to bankruptcy.

Under the Slovak legal system governing insolvency, the invalidity of a legal act does not affect its validity; such invalidity applies only in relation to the debtor's creditors, specifically for the purposes of the insolvency proceedings.

In "standard" bankruptcy proceedings, the ineffectiveness of a legal act performed by the debtor prior to the commencement of bankruptcy proceedings, or prior to the declaration of bankruptcy, can only be achieved if the administrator or a creditor with a registered claim

[64] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024. p. 266.
[65] D'ATTORRE, G. *Manuale di diritto della crisi e dell'insolvenza*. 3rd ed. Turin : Giappichelli Editore, 2024, pp. 267–268.
[66] for further details, see, for example, Section 58(3) of the ZKR, Section 59(4) of the ZKR.
[67] for further details, see Section 14(5)(a) of the ZKR.
[68] DOLNÝ, J. *Odporovateľnosť právnych úkonov v konkurznom práve*. Bratislava : C. H. Beck, 2021. p. 49.

objects to the legal act in question in good time. The right to challenge a legal act is exercised either by notifying the obligated party or by bringing an action before the competent court. The invalidity of a legal act for the purposes of insolvency proceedings may thus be achieved in Slovakia not only on the basis of a court decision, but alternatively also by written acknowledgement of the right[69] to challenge a specific legal act by the so-called obligated party. However, in the situations provided for by law, the right to challenge a legal act may also be exercised, to the extent necessary, by the administrator or a creditor of a filed claim disputing another creditor's filed claim or a security interest filed by that creditor and acquired on the basis of a challengeable legal act.[70]

In "standard" insolvency proceedings, a legal act of the debtor may only be challenged if it impairs the satisfaction of a claim filed by one of the creditors.

Slovak insolvency law generally recognises the following categories of legal acts which may be challenged in insolvency proceedings with a view to having them declared void: (i) legal acts without adequate consideration, (ii) preferential legal acts, (iii) legal acts that deprive creditors of their rights.

The ZKR classifies within the first category a gratuitous legal act by the debtor and a legal act by the debtor for consideration, on the basis of which the debtor has provided or undertaken to provide performance whose usual price is substantially higher than the usual price of the performance which the debtor has received or is to receive in return.[71] Such legal acts may be challenged if they caused the debtor's insolvency or were carried out during the debtor's insolvency. In the case of a legal act carried out with a related party, a presumption of insolvency applies unless the contrary is proven; depending on the nature of the legal provision, the burden of proof lies with the party subject to the obligation, i.e. the defendant. This category concerns legal acts carried out no more than one year, and in the case of acts carried out with a related party, no more than three years prior to the commencement of insolvency proceedings.

The second category under the Bankruptcy Act (ZKR) includes, for example, a legal act by which the debtor has settled, in whole or in part, a monetary claim that would otherwise have been due only upon the declaration of bankruptcy; secured their obligation at a later date than when the obligation arose; waived their right, in whole or in part; or waived their debtor's debt, in whole or in part, and so on.[72] Such legal acts may also be challenged if they caused the debtor's insolvency or were carried out during the debtor's insolvency. As regards a legal act carried out with an affiliated person, the presumption of insolvency also applies here, unless the contrary is proven. This category concerns legal acts carried out no more than one year, and in the case of acts carried out with an affiliated person, no more than three years prior to the commencement of bankruptcy proceedings.

The third category under the Bankruptcy Act (ZKR) covers a legal transaction by which the debtor has defrauded his creditors, provided that it was carried out with the debtor's intention to defraud his creditors and that this intention was, or ought to have been, known to the other party.[73] In the case of a legal act carried out with an affiliated person or so-called "squandering of assets", there is a presumption that the debtor's intention to defraud their creditors, as well as the other party's knowledge of this intention, is presumed unless the contrary is proven. In such cases, legal acts carried out within a period of up to five years prior to the commencement of bankruptcy proceedings may be challenged. According to the author Jaroslav Dolný, in the case of contestable legal acts constituting "deprivation of creditors", an entitled person may contest such acts regardless of whether the debtor was insolvent at the time

[69] ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. pp. 514–515.
[70] for further details, see Section 62(6) of the Insolvency Act.
[71] ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. p. 528.
[72] DOLNÝ, J. *Odporovateľnosť právnych úkonov v konkurznom práve*. Bratislava : C. H. Beck, 2021. p. 17.
[73] ĎURICA, M. *Zákon o konkurze a reštrukturalizácii. Komentár*. 4th ed. Praha : C. H. Beck, 2021. p. 539.

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the transaction took place (or became insolvent as a result of the transaction). The purpose of this type of voidability is to protect creditors from any acts by the debtor that objectively "deprive" his creditors, even in situations where the debtor is not in insolvency.[74]

In light of the above, it can be concluded that the legal systems in both Slovakia and Italy recognise the principle that legal acts performed by a debtor are ineffective vis-à-vis creditors in judicial liquidation or bankruptcy proceedings. Both principles quite clearly pursue the same objective, namely to regulate, as a preventive measure, legal relationships that may lead to insolvency, or bankruptcy, or legal relationships that might be entered into during such a period, thereby potentially hindering or preventing at least the proportional satisfaction of creditors in judicial liquidation or bankruptcy proceedings. Both legal systems also address any subsequent procedures should such legal acts by the debtor occur, typically through separate court proceedings. However, a number of exceptions or differences can be found in both legal systems. From the perspective of the speed and efficiency of judicial liquidation, it is worth noting the legal acts that are void *ex lege* under Italian law, where a state of insolvency need not even be present; but, with regard to the period under consideration, the law creates a kind of fiction of insolvency arising as a consequence of the transfer, without consideration, of a substantial part of the debtor's assets. On the other hand, the Italian legal system addresses the issue of determining the invalidity of legal acts, other than those made without consideration, exclusively through court proceedings and only upon application by the liquidator. This indicates that higher demands are placed on the liquidator in Italy, and this is apparently reflected in their liability, particularly when compared to the administrator in Slovakia, where, for example, if the administrator fails to exercise the right to challenge legal acts, any creditor who has lodged a claim may reverse this adverse outcome in favour of the other creditors. The categorisation of individual legal acts appears to us to be clearer in the Italian legal system, where the period under scrutiny is shorter than in Slovakia, which implies a higher degree of legal certainty for third parties; furthermore, it may be inferred from this that the judicial system in Italy is more flexible and/or that the regulation of legal relationships in Slovakia is overly strict. A reversal of the burden of proof can be identified in both legal systems; however, in Italy it is linked to the knowledge of any third party who has entered into an unusual legal transaction with the debtor, that the debtor is insolvent, whereas in Slovakia such a burden of proof applies, in principle, to related parties with regard to knowledge of the debtor's insolvency or knowledge of the debtor's intention to defraud their creditors.

IV. CONCLUSION

In this paper, we have succeeded in identifying the equivalent of "standard" bankruptcy proceedings in Slovakia, namely judicial liquidation in Italy. Through a subsequent examination of selected provisions of the relevant legislation in both countries, we were able to compare them and draw the partial conclusions set out in the individual chapters. Summarising these partial conclusions, we can state the following findings:

The basic definitions of the terms expressing the "negative state" which constitutes the so-called objective requirement for judicial liquidation in Italy and bankruptcy in Slovakia differ in both countries. We consider that the definitions in question are unnecessarily complicated and verbose in the legal system of the Slovak Republic; this may, in practice, cause problems of application and a state of legal uncertainty. By contrast, the simple and concise definition contained in the Italian legal system gives the law enforcement authorities greater scope to assess the adverse financial situation of a particular entity on a case-by-case basis.

From the perspective of the entities subject to liquidation proceedings, we believe that Slovak legislation could, in future, reflect a classification more similar to that in Italy. We take

[74] DOLNÝ, J. *Odporovateľnosť právnych úkonov v konkurznom práve*. Bratislava : C. H. Beck, 2021. p. 42.

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the view that the choice between alternative "winding-up" procedures[75] - in Slovakia, given their fundamentally different content and impact on creditors' rights, is not an ideal solution; and therefore a more appropriate approach would be legal regulation allowing specific entities, in the event of a "negative situation", to utilise only one liquidation mechanism, in order to guarantee equal rights for specific categories of debtors and their creditors.

The categorisation of the effects of the commencement of judicial liquidation in Italy is defined clearly and transparently in law, whereas the effects of a declaration of bankruptcy in Slovakia are not even explicitly categorised. From the perspective of the addressee of the legal norm, the legal framework in Slovakia may therefore appear unclear or even confusing, which in turn may have a negative impact on legal certainty and on the fulfilment of the purpose and spirit of the law. We take the view that a categorisation of the effects of the commencement of judicial liquidation similar to that in Italy could eliminate the negative aspects described in the Slovak legal system.

With regard to assets that are subject to seizure and realisation in both of the institutions under consideration, it is necessary to highlight their negative definition. Under Italian law, the scope of assets not included in judicial liquidation is assessed and determined by the court on a case-by-case basis; by contrast, in Slovakia, the definition of assets not subject to bankruptcy is laid down uniformly for every case by statute. In this context, we therefore reasonably assume that, given the purpose of the negative definition of assets, the Italian legal framework represents a fairer approach to the rights of both debtors and their creditors; this should serve as an inspiration for the Slovak legislature in future.

With regard to the service or handover of correspondence addressed to the debtor to the appointed administrator in Italy, and in the context of Slovak legislation, we take the view that such regulation – or the absence thereof – does not constitute a fundamental issue in the identification, securing and realisation of assets. However, we consider this to be an issue that would require further discussion within professional circles in Slovakia.

In relation to the issue under examination concerning the prohibition on individual enforcement of decisions and the prohibition on the application of protective measures, we have found that the legal framework in Slovakia is complicated and unnecessarily fragmented, whilst the legal framework in Italy is simple, concise and to the point in this area as well. In the case of the Slovak legal framework, this may result in difficulties in the application, interpretation and compliance with the relevant legal provisions. In this respect, too, Italian legislation could serve as a source of inspiration for Slovak lawmakers.

Under Italian legislation, the sale of assets that are simultaneously subject to a security interest is only possible under the supervision of and with the consent of the court. Under Slovak law, such a sale depends primarily on the decision of the secured creditor concerned, whilst the court has review powers only where the creditor's binding instruction conflicts with the law, or, where the secured creditor remains passive, the court has the power to decide on the procedure for realising the secured assets. In the area under consideration, the legal frameworks of both countries appear to us to be adequate and to fully reflect the rights of both secured and unsecured creditors. It is therefore worth considering and discussing further which legal framework would be more effective within the context of the Slovak judicial system.

In the event of the invalidity of legal acts, and in view of the need to ensure effective protection of creditors' rights, the Italian legal system provides for the *ex lege* invalidity of gratuitous legal acts by the debtor, as well as a reversal of the burden of proof in the case of unusual legal acts, which always falls on the defendant. However, compared with the Slovak legal system, the period under consideration for the debtor's legal act in question is shorter than

[75] E.g. the choice between "standard" bankruptcy and small-scale bankruptcy, or the choice between "standard" bankruptcy and debt relief through bankruptcy in the case of sole traders.

is the case in Slovakia. From an overall perspective on the structure of invalid legal acts, the Italian legal framework appears to us to be clearer than the Slovak one.

To begin with, we formulated hypotheses which, throughout the course of our research, provided the basis for our considerations and further steps in achieving the objectives set out for this paper.

First hypothesis: "Current modern insolvency law in Italy contains legal provisions which serve as a source of inspiration for the future development of insolvency law in Slovakia" – we were able to verify this in its entirety. Italian insolvency law has recently undergone a fundamental reform, which incorporates a modern approach to the issues under consideration, whilst also thoroughly integrating existing European legislation without the need for its partial transposition into the legislation already in force. The influence of European legislation is thus particularly evident, for example, in the very structure of the Italian insolvency legislation and in the classification of the various insolvency proceedings within it. The area under examination also provided, for example, an insight into the importance of the decision-making role of insolvency courts in Italy, rather than its elimination from several aspects of insolvency proceedings, as is the trend in Slovakia. In many respects, the Italian legislative text is straightforward and thus more effectively applicable in practice.

We were also able to verify the second hypothesis in its entirety: "Italian insolvency legislation contains legal institutions that are comparable to those in Slovak insolvency legislation". As explained in the introduction, the selection of specific legal institutions for comparison these were those which, by the very nature of insolvency law, must in principle be present therein; that is to say, on the one hand, they were aspects forming the basis of the selected insolvency proceedings, or they were typical insolvency institutions (effects relating to assets, secured creditors, the invalidity of legal acts, and others).

In view of the partial conclusions of this paper summarised above, as well as the overall framework of insolvency law in Italy, it must be concluded that the legislation in Italy, in the areas under comparison, constitutes a more concise and, above all, clearer legal framework than is the case in Slovakia. The reason for this may lie in the Italian legislature's long-standing efforts to carry out a comprehensive reform of insolvency law, as well as in the role and activities of the judiciary in this area and the structure of the Italian judicial system. Whilst in the Slovak Republic the current legislative trend is towards "relieving the burden" on Slovak insolvency courts as much as possible, primarily by transferring duties and responsibilities to other bodies, in the Italian legal system insolvency courts clearly play an important and irreplaceable role.

We believe that, in light of some of the illustrative examples presented in this paper, it would be appropriate – and, looking ahead, absolutely necessary – for an academic debate to take place in the Slovak Republic on how Slovak insolvency law could and should continue to develop in the modern world. Italian legislation could serve as one source of inspiration regarding the future development of legislation in Slovakia; ideally, however, not the only one. In our view, the current Slovak Act on Bankruptcy and Restructuring is already outdated in many respects, confusing given the ongoing reshaping of alternative liquidation mechanisms, and even difficult to apply; last but not least, we do not consider the gradual transfer of jurisdiction from insolvency courts to other bodies to be an appropriate solution. In our view, the overall structure of the insolvency law system in Slovakia is also a suitable subject for academic discussion, specifically through the formulation of preventive and reorganisation proceedings for various entities and on a broader scale than is currently the case. It might also be beneficial to consider the "psychological" repositioning of the institution of bankruptcy as the last resort for resolving a "negative situation"; and, where appropriate, its renaming, as has occurred, for example, in Italy.

Given the scope of this paper, we have only been able to undertake a partial comparative examination of the chosen topic; therefore we will continue our subsequent research by conducting a comprehensive analysis of the institution of judicial liquidation in Italy and, where necessary, a comprehensive analysis of the entire Italian insolvency law, so that we may be prepared for an academic debate which could result in the drafting and adoption of new insolvency legislation in Slovakia.

KEY WORDS
bankruptcy, judicial liquidation, Slovak insolvency law, Italian insolvency law, insolvency

KĽÚČOVÉ SLOVÁ
konkurz, súdna likvidácia, slovenské insolvenčné právo, talianske insolvenčné právo, platobná neschopnosť

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