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## Update on bankruptcy case if the debtor's property is located in a temporarily occupied territory



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**T**he Court of Cassation (Commercial Division) has adopted a legal position in case No. 913/355/21, which is significant in the context of a liquidation procedure involving a debtor whose property is located in a temporarily occupied territory of Ukraine during martial law.

In this case, the liquidator filed a motion to close the bankruptcy proceedings due to the impossibility of completing the liquidation procedure. The liquidator argued that the debtor's only property complex is situated in a temporarily occupied territory, to which there is no access, thus the assets cannot be sold. Other property of the debtor is also unavailable.

The court of first instance and the court of appeal rejected the motion, referring to the absence of an exhaustive list of grounds for terminating bankruptcy proceedings.

However, the Court of Cassation took a different view. Its key argument was based on Article 90(1) of the Code of Bankruptcy Procedures, which allows for the termination of proceedings where other circumstances arise that make further consideration of the case impossible.



According to the Court of Cassation, the lack of access to the debtor's property located in the occupied territory may constitute such a circumstance.

The Court of Cassation further emphasised the need to determine whether the liquidator had taken all reasonable steps to identify, access, or replace the property – including efforts to locate other assets, assess the possibility of selling part of the property, or restore access to the affected assets.

The Court's conclusion also reflected current legislative restrictions on enforcement and other procedural actions concerning property located in temporarily occupied territories or combat zones. This means

that further continuation of bankruptcy proceedings would not only be meaningless in legal terms but would also conflict with the principle of procedural economy.

Under the exceptional conditions of wartime, courts may recognise the impossibility of completing a liquidation procedure as sufficient grounds for closing a bankruptcy case.

The legal position expressed by the Court of Cassation underscores the judiciary's role in addressing legislative gaps and adapting the application of the Code of Bankruptcy Procedures to the realities of martial law. ■



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