

Alicja Rybak

ORCID: 0000-0002-5678-1980

University of Wrocław

305171@uwr.edu.pl

The institution of entering into a lease of a dwelling after the death of the current tenant (Art. 691 of the Civil Code) in the light of the jurisprudence

Date of submission: 21.12.2021; date of acceptance: 28.06.2022

JEL classification: K15

Keywords: lease agreement, entering into a lease agreement, death of the tenant

Abstract

The aim of this study is to explain how an institution can enter into a lease after the death of the tenant in accordance with Art. 691 of the the Polish Civil Code. The author tries to clarify the wording of Art. 691, which raises questions of interpretation on the basis of case law. In particular, the author undertook the examination of the conditions for entering into the rental relationship of a dwelling after the deceased tenant. Subsequently, the focus was on approximating the premises covered by this standard, then on clarifying the terms “residence” and “other persons to whom the tenant owed maintenance,” and on actual cohabitation with the tenant. The legal proceedings relating to the regulation in question are dealt with next, while the final part describes the possibility of terminating the contract by the rightholder and briefly refers to the provision of Art. 691 para. 5 of the Civil Code.

Introduction

The currently applicable Art. 691 of the Polish Civil Code (ustawa z dnia 23 kwietnia 1964 roku — Kodeks cywilny, tekst jedn. Dz.U. z 2020 r. poz. 1740 ze zm.; hereinafter: CC) governs the succession of tenancy rights after the death of the tenant. This mechanism was introduced to ensure the stability of the dwelling and the permanence of the rental (Bończak-Kucharczyk, 2011). Since the law of suc-

cession is not applicable here, it is irrelevant whether the relatives are heirs (Biały, 2018; Jezioro, 2013; Pietrzykowski, 2011) — entering into a tenancy relationship does not constitute an inheritance, persons who entered into a tenancy relationship after the death of the tenant do not incur inheritance and gift tax (wyrok NSA z dnia 22 stycznia 2015 roku, II FSK 3093/12, LEX nr 1769592). The standard under review does not differentiate between the basis of the deceased tenant's obligation, so Art. 691 of the CC applies both to the conclusion of a lease on the basis of a lease contract and to an administrative decision on the allocation (uchwała SN z dnia 23 października 1978 roku, III CZP 52/78, OSNC 1979, Nr 5, poz. 89). Entry into the rental relationship according to Art. 691 of the CC concerns the entire apartment, not for its individual rooms (uchwała SN z dnia 18 kwietnia 1986 roku, III CZP 15/86, OSNC 1987, Nr 2–3, poz. 33). The vicarious agent and the landlord are not obliged to conclude a new lease (Kozieł, 2014), since only the personal scope of the lease is changed by the death of the tenant. The persons who have entered into the same legal relationship pursuant to Art. 691 of the CC acquire the rights and obligations of the previous tenant, i.e., are bound by different contract provisions (wyrok NSA z dnia 5 października 2011 roku, I OSK 1222/11, LEX nr 1149136). If there are several close persons who lived together with the tenant until his/her death, all entitled persons become co-tenants (Biały, 2018). This creates a community of housing tenants. In this case, the rules on joint ownership of fractions apply, with certain exceptions, e.g., marital joint property (Kozieł, 2014), which is governed by Art. 31 ff. of the Law of 25 February 1964 — Family and Guardianship Code (ustawa z dnia 25 lutego 1964 roku — Kodeks rodzinny i opiekuńczy, tekst jedn. Dz.U. z 2020 r. poz. 1359; hereinafter: k.r.o.). Excluded from the application of Art. 691 para. 1 of the CC are premises which are at the disposal of the police (wyrok WSA w Krakowie z dnia 24 kwietnia 2018 roku, III SA/Kr 98/18, LEX nr 2482193). It is noteworthy that in the event of terminating the tenancy of the tenant before his/her death, it is not possible to enter the deceased's tenancy relationship on the basis of Art. 691 of the CC (wyrok SO we Wrocławiu z dnia 4 grudnia 2015 roku, I C 1047/15, LEX nr 2032059).

Theoretical framework of the research

The lease ratio has been the subject of research for many years. Civil law, including the law of obligations, has been widely analyzed by representatives of the legal doctrine. This article is based on the previous achievements of this doctrine and opinions from the jurisprudence, in particular the jurisprudence of the Supreme Court, which is a broad basis for the formulated research conclusions. The paper is also based on legal comments containing the conclusions assessed in the article, and outlines the historical aspect of the matter under study. Moreover, the article attempts to provide a new perspective on the subject matter as well as an up-to-date approach to the issue of the lease relationship.

Research methodology

In preparing the material which served as the basis for the arguments discussed in the article, extensive reviews were carried out, publications on the subject were collected and court decisions relating to the subject matter were thoroughly analysed. The conclusions of the article are drawn from a combined analysis of doctrine and case law. The paper attempts to describe both the theoretical and the practical implementations of the legislation. An essential element of the research methodology was the formulation of conclusions reached by a correct interpretation of law.

1. Prerequisites for entering into a lease of a dwelling after the tenant's death

Art. 691 para. 1 of the CC indicates a narrow circle of people who are entitled to enter into a tenancy relationship after the tenant's death. Accession to a lease is *ex lege* if two conditions are jointly met. The first involves belonging to a group indicated directly in Art. 691 para. 1 of the CC — the category of entities which, according to the wording of the provision, includes: a spouse who is not a joint tenant of the premises, children of the tenant and his/her spouse, other persons to whom the tenant was obliged to provide maintenance, and a person who was actually cohabiting with the tenant. A clear subject is a spouse who is not a co-tenant of the premises. The term “other persons to whom the tenant was obliged to pay maintenance and a person who was actually in cohabitation with the tenant” will be discussed later in this article. However, the literature does not define the term “children of the tenant and his/her spouse” in a uniform way. Some authors are of the opinion that this catalog includes the tenant's own children, adopted children and his/her spouse, children of the deceased tenant (Biały, 2018). According to another view, these are joint children (own and adopted) of the tenant and his/her current spouse, as well as the children of the deceased tenant's spouse. Therefore, it is controversial in the doctrine whether the catalog of Art. 691 para. 1 of the CC should include only the children of the deceased tenant or also of the deceased tenant's spouse (Kozieł, 2014). It is essential that the above-mentioned persons cannot be joint tenants of the premises, as the discussed regulation cannot be applied to joint tenants, therefore the provision will not apply to a spouse if the deceased tenant entered into a tenancy relationship during the marriage, because in such a situation, pursuant to Art. 680¹ of the CC, the spouses are jointly tenants.

The second — and the last — condition is that the indicated people shall stay with the tenant permanently until his/her death. If both conditions are not met, *ex lege* the lease agreement expires upon the tenant's death. *De lege lata* provision of Art. 691 para. 3 of the CC is incomplete, because the lease expires if there are no eligible persons specified in Art. 691 para. 1 of the CC, or if there are such persons, but they do not meet the condition of joint residence in the apartment with the ten-

ant at the time of his/her death, as expressed in Art. 691 para. 2 of the CC (Kozieł, 2014). The moment of assessing the occurrence of the premises is the date of the tenant's death (wyrok TK z dnia 1 lipca 2003 roku, P 31/02, OTK-A 2003, Nr 6, poz. 58), therefore the provisions in force on that date apply (Bończak-Kucharczyk, 2011; uchwała SN z dnia 5 lipca 2002 roku, III CZP 36/02, OSNC 2003, Nr 4, poz. 45; wyrok SN z dnia 8 stycznia 2002 roku, I CKN 723/99, LEX nr 53132). The circumstances arising after the tenant's death are irrelevant to the assessment of entering into the lease relationship (wyrok SA w Szczecinie z dnia 28 marca 2013 roku, I ACa 879/12, LEX nr 1353835). Having a legal title to another apartment by a close person does not currently constitute an obstacle to entering into a relationship (uchwała SN z dnia 4 stycznia 1979 roku, III CZP 86/78, OSNC 1979, Nr 7–8, poz. 13). However, in accordance with the position of the Supreme Court, it should be considered justified to say that an action assumed in advance and subordinated to this assumption, aimed at acquiring the right to enter into a lease relationship, combined with the omission of the possibility of satisfying housing needs in a different way, is contrary to the principles of social coexistence (wyrok SN z dnia 8 lipca 1999 roku, I CKN 1367/98, OSP 2000, Nr 5, poz. 69).

At the time of residence, a stranger may also enter into a tenancy relationship if, during the period of residence, he/she became a person close to the tenant (wyrok SN z dnia 15 stycznia 1981 roku, III CRN 314/80, OSNC 1981, Nr 6, poz. 119), which under the applicable law may only mean cohabitation between the tenant and such a person. The analyzed regulation applies only when the tenant dies. It should be pointed out that the fact that a child regularly stays with a person other than the parents, in conjunction with an overnight stay with him/her, is not sufficient to conclude a rental agreement, because the necessary condition for such assessment is to establish that the child remains under full care with that person, except for parental custody (wyrok SN z dnia 17 lutego 1978 roku, II CR 24/78, OSNC 1979, Nr 1–2, poz. 32). It is also important that when changing the place of residence, one should not perceive a temporary — justified by specific reasons — stay outside the place of permanent residence, as this does not mean that the tenant has ceased to live in “his/her” premises (wyrok SN z dnia 20 czerwca 2001 roku, I CKN 1179/98, LEX nr 110589). When discussing this provision, it is impossible to ignore Art. 31 of the Act of 21 June 2001 on the protection of tenants' rights, municipal housing stock, and amendment of the CC (ustawa z dnia 21 czerwca 2001 roku o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie kodeksu cywilnego, tekst jedn. Dz.U. z 2020 r. poz. 611 ze zm.), according to which until the death of the tenant he/she takes care of the tenant on the basis of a contract concluded with the tenant before 12 November 1994, meeting the requirements set out in Art. 9 para. 2 of the Act of 10 April 1974 — Housing Law (ustawa z dnia 10 kwietnia 1974 roku — Prawo lokalowe, Dz.U. z 1987 r. poz. 165 ze zm.), Art. 691 of the CC in the version in force before 12 November 1994 (wyrok SN z dnia 29 kwietnia 1997 roku, I CKU 47/97, LEX nr 30384). This

standard provided that in the event of the tenant's death, the tenant's relatives who lived with him/her continuously until his/her death entered into a tenancy relationship (non-binding standard from the CC [Dz.U. Nr 16, poz. 93]).

Considering the premises of the regulation, it should be added that the Constitutional Tribunal ruled that the exclusion of a child's right to lease a flat in the event of the death of one of the parents — co-tenants of that flat, is consistent with Art. 32 sec. 1 of the Constitution of the Republic of Poland (wyrok TK z dnia 12 grudnia 2017 roku, P 13/16, OTK-A 2017, Nr 84). Referring to constitutional reasons, it requires noting that the literature expresses the view that there is no possibility of influencing the selection of the next tenant of the premises who entered the lease under Art. 691 of the CC, because it is inconsistent with the Constitution of the Republic of Poland, in particular with Art. 64 sec. 1 and 3 in connection with Art. 31 sec. 3, as the landlord's property rights are significantly limited (Kociubiński, 2012). It cannot be ignored that pursuant to Art. 922 para. 2 of the CC, the right to lease the premises was excluded from the inheritance. However, it is important that the inheritance debts include obligations resulting from an expired lease.

2. Types of premises covered by the regulation and the term “permanent residence”

The analyzed Art. 691 of the CC applies only to residential premises, and the lease of other premises for other purposes after the death of the tenant is regulated by Art. 922 of the CC determining the inheritance of property rights and obligations in connection with the death of a natural person (Radwański, 1981). This provision applies to both private premises and those belonging to public resources (Bończak-Kucharczyk, 2011). Entering into a lease under Art. 691 of the CC does not apply to social housing (uchwała SN z dnia 23 września 2010 roku, III CZP 51/10, OSNC 2011, Nr 3, poz. 25), because in accordance with the Act of 21 June 2001 (tekst jedn. Dz.U. z 2020 r. poz. 611 ze zm.), the concepts of social housing and housing are different, therefore there is no necessary premise from the regulation in question, namely the rental of a flat that is a residential premises.

Moving on to explaining the term “permanent residence,” in the first place it is worth emphasizing that the provision of Art. 691 para. 2 of the CC is not the same as the concept of the place of residence regulated in Art. 25–28 of the CC. At the same time, it means permanent stay in a given premises (Kozieł, 2014; Jezioro, 2013; Pietrkowski, 2011; cf. Stecki, 1989) in a situation in which the premises is the life center of a loved one (wyrok SN z dnia 3 lutego 2000 roku, I CKN 40/99, LEX nr 811808). In other words: it is a state in which a person close to the tenant actually had all his/her life activity concentrated in the tenant's premises at the time of the tenant's death (wyrok SN z dnia 28 października 1980 roku, III CRN 230/80, MP 1994, Nr 9, poz. 273). The jurisprudence gives as an example of such

a condition the life of children with their parents — the person who is helpless with the person who looks after them (wyrok SN z dnia 8 stycznia 1976 roku, I CR 926/75, OSP 1977, Nr 11, poz. 193). However, another judgment indicated that it should be assessed to what extent the permanent stay in the premises determines whether this is the sole center of a given person's life — in particular that these premises are a permanent focus of his/her current affairs, i.e., that he/she is staying in it as a household member (wyrok SN z dnia 13 lutego 1976 roku, I CR 930/75, OSNC 1977, Nr 1, poz. 5).

The jurisprudence also presents the view that, as a rule, the stay of a relative in order to provide emergency, though even longer-lasting assistance to the tenant of the apartment, will not constitute permanent residence (wyrok SN z dnia 6 maja 1980 roku, III CRN 61/80, MP 1994, Nr 9, poz. 273). Moreover, the Supreme Court pointed out that providing assistance in everyday matters to the previous tenant, due to the relationship with him/her and therefore staying in the above-mentioned premises, and even the fact of being registered in it, do not mean that the person lived in the premises constantly and that they would be the center of his/her life, family, and property matters (wyrok SN z dnia 29 kwietnia 1998 roku, I CKN 637/97, LEX nr 1225362). It should be noted that the registration of the entitled person is irrelevant, because the condition for entering into a tenancy relationship after the death of the deceased tenant is the fact of living together with the tenant, so a specific factual state, and not the legal status resulting from the content of the administrative decision on registration (wyrok SN z dnia 29 września 1998 roku, II CKN 910/97, LEX nr 50753).

3. Other persons to whom the tenant was obliged to pay maintenance

Some doubts are raised regarding the interpretation of the phrase “other persons to whom the tenant was obliged to provide maintenance,” because the legislator did not specify whether this includes the persons to whom the tenant could be obliged to pay maintenance, or only the persons to whom the benefits were actually paid. Another controversial issue is whether the maintenance obligation resulting from the applicable legal provisions should be taken into account, or if people who have a court decision obliging the tenant to these benefits should also be included. In addition, the term “maintenance obligation” also covers civil claims arising from a contractual legal relationship, such as sureties (Bończak-Kucharczyk, 2011).

Therefore, the maintenance obligation is regulated in Art. 128–144¹ of the k.r.o. as well as Art. 27, 60, and 61 of the k.r.o. The provision of Art. 128 defines the maintenance obligation indicating that it is an obligation to provide means of subsistence and, if necessary, also means of upbringing, burdening relatives in

a straight line and siblings. At the same time, Art. 141–143 of the k.r.o. constitute the father's maintenance obligation towards a child born out of wedlock, and Art. 144 of the k.r.o. concerns maintenance between a stepfather or stepmother and a stepchild. Art. 27 of the k.r.o. regulates the spouses' obligation to contribute to satisfying the needs of the family, while Art. 60 and 61 concern the obligation to provide the divorced spouse with a means of subsistence. In relation to full adoption, in which case — in accordance with Art. 121 of the k.r.o. — a relationship such as that between parents and children arises between the adopter and the adoptee, the above-mentioned Art. 128 of the Code of Criminal Procedure applies, which leads to the inclusion of the adoptee's descendants in the circle of persons under this provision. The maintenance obligation in incomplete adoption is governed by Art. 131 of the k.r.o. In the event of terminating the adoption relationship, pursuant to Art. 125 para. 1 sentence 3 of the k.r.o., the court may, depending on the circumstances, uphold the maintenance obligations arising therefrom. At this point, it should be remembered that there are relatives in the ascending line (e.g., mother, grandmother, great-grandmother) and descending relatives (daughter, granddaughter, great-granddaughter). A sibling is defined as a collateral relative (sister, brother) who has at least one of the parents as a common ancestor, so the term also includes step-siblings. At the same time, the order of maintenance is regulated by Art. 129 of the CC. Guidelines on the interpretation of the law and court practice in matters relating to maintenance are included in the Resolution of the Supreme Court of 16 December 1987 (uchwała SN z dnia 16 grudnia 1987 roku, III CZP 91/86, OSNC 1988, Nr 4, poz. 42).

Despite the conducted analysis of the provisions on maintenance obligations, there are still doubts as regards to which persons are entitled to enter into a lease under the discussed regulation. If the legislator used the phrase “to whom the tenant was liable for maintenance,” this would indicate that the tenant's relatives belonging to the circle of persons to whom the tenant was not, but could have been obliged to pay maintenance, entered into the tenancy relationship. From this, it follows that only persons who have a court decision confirming the tenant's actual maintenance obligation towards them are authorized to enter into a lease. It is worth emphasizing that not only may a court decision testify to the actual maintenance obligation, but also the maintenance obligation may be established by way of a court settlement or contract, or be provided voluntarily. Hence, Art. 691 of the CC should not be limited only to persons for whom the court has ruled a maintenance obligation (Bończak-Kucharczyk, 2011).

In view of the above analysis, it seems accurate that under Art. 691 of the CC the tenancy relationship should be entered into by all persons permanently residing with the tenant until his/her death, to whom the deceased tenant was actually obliged to pay maintenance, regardless of the basis for this obligation.

4. Actual cohabitation with the tenant

Currently, there is no legal definition of the term “actual cohabitation,” although it is also used in Art. 4 point 13 of the Act of 21 August 1997 on real estate management (ustawa z dnia 21 sierpnia 1997 roku o gospodarce nieruchomościami, tekst jedn. Dz.U. z 2021 r. poz. 1899 ze zm.). The wording used by the legislator, “cohabiting person,” should be interpreted only as a cohabitant of the tenant (wyrok TK z dnia 1 lipca 2003 roku, P 31/02, OTK-A 2003, Nr 6, poz. 58) connected with the tenant by a spiritual, economic, and physical bond, and not as the tenant’s further descendants (uchwała SN z dnia 21 maja 2002 roku, III CZP 26/02, OSNC 2003, Nr 2, poz. 20). At the same time, the term “cohabitation” should be defined as a stable, actual personal and property community of two people, regardless of gender (Nazar, 2008). In recent years, the European Court of Human Rights (hereinafter: ECHR) has emphasized that sexual orientation as one of the most intimate parts of private life is protected by Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (konwencja o ochronie praw człowieka i podstawowych wolności sporządzona w Rzymie dnia 4 listopada 1950 r., zmieniona następnie Protokołami nr 3, 5 i 8 oraz uzupełniona Protokołem nr 2, Dz.U. z 1993 r. Nr 61, poz. 284 ze zm.; hereinafter: the Convention). Due to this, it ruled that cohabitation also applies to homosexual persons (wyrok ETPC z dnia 2 marca 2010 roku w sprawie Kozak przeciwko Polsce, skarga nr 13102/02, LEX nr 560824) and is treated as family life (wyrok ETPC z dnia 24 czerwca 2010 roku w sprawie Kopf i Schalk przeciwko Austrii, skarga nr 30141/04, LEX nr 584459). Art. 32 of the Constitution of the Republic of Poland also speaks in favor of not differentiating between the cohabitation of same-sex and heterosexual couples, as it contains the requirement of equal treatment and, at the same time, the prohibition of any discrimination, including on the basis of sexual orientation (Ciepła, 2017).

In 2012, the Supreme Court adopted a resolution of crucial importance for the society and judicature, in which it shared the view expressed in the doctrine that, in the absence from Art. 691 of the CC the restriction of the notion of “cohabitation” with the attribute “marital” — i.e. in view of the obvious breaking of the link between this concept and the pattern of marriage — the provision of Art. 691 of the CC it applies not only to heterosexual unmarried relationships, but also to homosexual relationships in which the same ties are created as between cohabitants (uchwała SN z dnia 28 listopada 2012 roku, III CZP 65/12, OSNC 2013, Nr 5, poz. 57). The emotional, physical, and economic ties arising from such a relationship are identical in both cases and can create an equally strong join. In the justification of the resolution, the Supreme Court defined the understanding of this provision in a manner consistent with the content of Art. 8 and 14 of the Convention and the jurisprudence of the ECHR, setting a new direction for the interpretation of other legal institutions in which the concept of actual cohabitation occurs (Cebula, 2013). Due to the above, in another resolution, the Supreme Court stated

that Art. 691 of the CC applies not only to heterosexual relationships (uchwała SN z dnia 28 listopada 2012 roku, III CZP 65/12, OSNC 2013, Nr 5, poz. 57), as there is no legal distinction between the consequences of living together by heterosexual and homosexual persons (wyrok SA w Warszawie z dnia 26 czerwca 2014 roku, I ACa 40/14, LEX nr 1496122). The dominant position in the judicature of common courts includes an action for a homosexual partner to enter into a tenancy relationship (Konarska, 2016). Despite this, some parts of the doctrine still do not recognize the scope of the aforementioned expression of homosexual relationships (Panowicz-Lipska, 2016; Kozieł, 2014; Biały, 2018).

Moving on to another approach to the meaning of cohabitation, it should be noted that representatives of the doctrine, contrary to the case law, hold the position that the actual cohabitation should also be treated as the existence of a domestic, spiritual, and economic bond, without the necessity of physical people actually living together with the tenant, e.g., grandchildren, great-grandchildren, siblings, a child placed in a foster family, or ascendants (Panowicz-Lipska, 2016; Kozieł, 2014; Jezioro, 2006). This seems to be the correct position, therefore the *de lege ferenda* postulate is to add to the provision of Art. 691 para. 1 of the CC further descendants, ascendants, siblings, and adoptive parents (Kozieł, 2014). The opposite view, dominant in the case law, is presented in, e.g., a resolution in which the Supreme Court decided that the deceased tenant's grandson does not belong to the persons mentioned in Art. 691 para. 1 of the CC even when he and the tenant had an economic and emotional bond (uchwała SN z dnia 21 maja 2002 roku, III CZP 26/02, OSNC 2003, Nr 2, poz. 20).

In summary, Art. 691 para. 1 of the CC applies to people in informal heterosexual and homosexual relationships, because it results from the linguistic interpretation and *ratio legis* of this provision, despite the legislator's tendency to narrow the circle of people entitled to enter into a lease (Konarska, 2016). In the literature, legislative changes are proposed to cover further relatives — e.g., grandson, sisters — living with the tenant at the time of his/her death.

5. Court proceedings to determine the accession to the lease, pursuant to the Art. 691 of the CC

When considering court proceedings to enter into a lease contract under Art. 691 of the CC, first it should be pointed out that the plaintiff seeking a determination that he/she entered into a lease under Art. 691 of the CC should prove the existence of a legal interest (uchwała SN z dnia 19 listopada 1996 roku, III CZP 115/96, OSNC 1997, Nr 4, poz. 35) within the meaning of Art. 189 of the Act of 17 November 1964 — Code of Civil Procedure (ustawa z dnia 17 listopada 1964 roku — Kodeks postępowania cywilnego, tekst jedn. Dz.U. z 2021 r. poz. 1805 ze zm.). After the death of the tenant, precisely on the basis of Art. 189 of the Code of Civil Proced-

ure, everyone who has a legal interest in this may demand that the court agree to enter into the lease relationship. In such a case, it is useful to refer to the case-law in which the term “interest in law” has been defined. Pursuant to the judgment of the Court of Appeal in Szczecin (wyrok SA w Szczecinie z dnia 30 maja 2019 roku, I ACa 89/19, LEX nr 2718998), a legal interest arises if the very effect caused by the coming into force of the ruling will ensure the plaintiff’s protection of his/her legally protected interests, i.e., definitively end the existing dispute or prevent the occurrence of such a dispute in the future.

At the same time, according to the Supreme Court’s ruling, the legal interest should be interpreted taking into account broadly understood access to courts in order to ensure legal protection (wyrok SN z dnia 22 października 2014 roku, II CSK 687/13, LEX nr 1566718). Therefore, such an interest is surely enjoyed by a person close to the deceased tenant, if due to the date of death of the previous tenant there is uncertainty (dispute) as to the subjective or objective scope of that person’s accession to the lease (wyrok SN z dnia 15 grudnia 2000 roku, IV CKN 205/00, LEX nr 537011). Under no circumstances can Art. 5 of the CC be the basis for an action to establish that the defendant has lost the right to lease (wyrok SN z dnia 8 lipca 1999 roku, I CKN 1367/98, OSP 2000, Nr 5, poz. 69).

The landlord has a passive legal standing in such proceedings, and when the premises are jointly owned, then all co-owners, pursuant to Art. 195 of the Civil Procedure Code, become necessary participants in such conduct (wyrok SN z dnia 28 października 1980 roku, III CRN 188/80, MP 1994, Nr 9, poz. 273). Each of the entitled persons may, in separate court proceedings, demand that they enter into the lease relationship, so no necessary participation occurs between the relatives of the deceased. It is important that the court cannot make a decision on entering into a lease relationship with only one of the entitled persons, selecting on the basis of the degree of closeness or the time of living with the deceased tenant (wyrok SN z dnia 4 stycznia 1979 roku, III CRN 271/78, OSNC 1979, Nr 9, poz. 178). The process of establishing the existence or non-existence of a lease relationship is subject to examination in ordinary proceedings (uchwała SN z dnia 20 listopada 2003 roku, III CZP 77/03, OSNC 2004, Nr 7–8, poz. 109). It is also significant that the request to enter into a lease under Art. 691 of the CC does not expire (wyrok SN z dnia 12 lutego 2002 roku, I CKN 527/00, OSNC 2002/12, poz. 159). It is worth mentioning that the declaration of entering into a lease contract pursuant to Art. 691 of the CC may also, upon the defendant’s objection, take place in an eviction case, as a prerequisite for the decision (wyrok SN z dnia 5 grudnia 1995 roku, II CRN 128/95, LEX nr 209345). From a practical point of view, it is important that the claim for accession to the lease is a property claim, and therefore the possibility of challenging the decision of the appellate court with cassation depends on the value of the subject of the appeal (Civil Procedure Code, Art. 392 para.1). Therefore, in a dispute on entering into a tenancy relationship after the deceased tenant, the conditions laid down in Art. 23 of the Code of Civil Procedure — as

ones most closely resembling the nature of the case — apply during an assessment of the value of the appeal subject (postanowienie SN z dnia 19 grudnia 2002 roku, V CZ 186/02, LEX nr 583928).

6. Termination of the contract by the entitled party and Art. 691 para. 5 of the CC

The deceased tenant's successor has the option to terminate the lease using the statutory deadlines. The duration of the contract and contractual provisions are irrelevant (Kostański, 2006). Upon the passing of the statutory notice period, the lease expires. In the event of several people joining the lease, each of the co-tenants has the right to terminate the lease with effect only for the denouncing party (Kozieł, 2014). The possibility of terminating a lease concluded for a fixed period by persons who entered into a lease relationship is an exception to Art. 673 para. 3 of the CC stating that if the duration of the lease is fixed, both the landlord and the lessee may terminate the lease in the cases specified in the contract. There is a lack of regulation in the literature concerning the possibility of renouncing the lease by authorized persons (Bończak-Kucharczyk, 2011). Therefore, the *de lege ferenda* motion added to such a provision in Art. 691 of the CC seems appropriate.

Finally, it is worth discussing the provision of Art. 691 para. 5 of the CC, which stated that the provisions of Art. 691 para. 1–4 of the CC do not apply in the event of the death of one of the joint tenants of the apartment. However, since the lease is a divisible right, this type of regulation may raise various doubts (Bończak-Kucharczyk, 2011). The exemption from Art. 691 para. 5 of the CC applies irrespective of whether the right to lease the premises is shared in fractional parts or jointly. Of course, the effect of one of the co-tenants dying is the termination of the lease with the deceased (Bończak-Kucharczyk, 2011). The doctrine rightly questions the different treatment of the consequences following the death of one of the co-tenants, because the lack of application of Art. 691 para. 1–4 of the CC separates the protection of the housing interests of tenants and co-tenants who, after all, have the legal status of tenants (Nazar, 2008).

Conclusions

To summarize, Art. 691 of the CC applies only to residential premises. In order to enter into a tenancy relationship after the tenant's death, it is necessary to meet two conditions jointly, namely: 1. being a spouse who is not a joint tenant of the premises, a child of the tenant and his/her spouse, another person to whom the tenant was obliged to provide maintenance, or a person who actually cohabited with the tenant; 2. permanent residence with the tenant in the premises until his/her death.

Permanent residence in the premises means that one's all life activities are concentrated in the tenant's premises. At the same time, the person to whom the tenant was obliged to pay maintenance should be treated as the entity to whom the deceased tenant was actually obliged to pay maintenance, without any distinction between the bases of this obligation. Under the current legal status, a cohabiting person should be considered a cohabiting tenant, without differentiating between heterosexual and homosexual relationships.

Moving on to the court proceedings regarding the analyzed regulation, it should be pointed out that the necessary procedural premise is having a legal interest which must exist objectively. It is a precondition for further examination of the claim in terms of the existence or non-existence of the established right or legal relationship (wyrok SA w Warszawie z dnia 5 września 2018 roku, VII AGa 485/18, LEX nr 2566773). Due to the content of Art. 316 para. 1 of the Code of Civil Procedure, a legal interest must exist at the time the court adjudicates (wyrok SN z dnia 7 grudnia 2012 roku, II CSK 143/12, LEX nr 1288628). From the point of view of legal protection of entitled persons, it is advantageous that the claim under Art. 691 of the CC does not expire. A unique regulation is the possibility of terminating a lease concluded for a fixed period by persons who entered into a lease relationship after the death of the tenant.

References

- Biały, A. (2018). Art. 691. In M. Fras, M. Habdas (eds.), *Kodeks cywilny. Komentarz* [Civil Code. Commentary]. Vol. 4: *Zobowiązania. Część szczególna (art. 535–764⁹)* [Liability: Special Part (Art. 535–764⁹)]. Warszawa: Wolters Kluwer Polska.
- Bończak-Kucharczyk, E. (2011). Komentarz do niektórych przepisów ustawy — Kodeks cywilny [Commentary to some provisions of the Civil Code]. In *Ochrona praw lokatorów i najem lokali mieszkalnych. Komentarz* [Protection of the rights of tenants and rental of residential premises]. Warszawa: ABC a Wolters Kluwer Business.
- Cebula, R. (2013). Przejęcie przez homoseksualnego partnera prawa do najmu mieszkania, glosa do uchwały SN z 28.11.2012 r., III CZP 65/12 [Acquisition of the right to rent a flat by a homosexual partner, commentary on the resolution of the Supreme Court of November 28, 2012, III CZP 65/12]. *Monitor Polski*, 15.
- Ciepla, H. (2017). Art. 691. In J. Gudowski (ed.), *Kodeks cywilny. Komentarz* [Civil Code. Commentary]. Vol. 4: *Zobowiązania. Część szczegółowa* [Liability: Detailed Part]. Warszawa: Wolters Kluwer Polska.
- Jezioro, J. (2006). In E. Gniewek (ed.), *Kodeks cywilny. Komentarz* [Civil Code: Commentary]. Warszawa: C.H. Beck.
- Jezioro, J. (2013). In E. Gniewek, P. Machnikowski (eds.), *Kodeks cywilny. Komentarz* [Civil Code: Commentary]. Warszawa: C.H. Beck.
- Kociubiński, P. (2012). Wstąpienie w stosunek najmu a Konstytucja RP [Joining the lease and the Constitution of the Republic of Poland]. *Palestra*, 1–2.
- Konarska, E. (2016). Wstąpienie w stosunek najmu a zakaz dyskryminacji [Joining a lease and the prohibition of discrimination]. In T. Ereciński, P. Grzegorzczak, K. Weitz (eds.), *Sine Ira et*

- Studio. Księga jubileuszowa dedykowana Sędziemu Jackowi Gudowskiemu* [Sine Ira et Studio: Jubilee Book Dedicated to Judge Jacek Gudowski]. Warszawa: Wolters Kluwer Polska.
- Kostański, P. (2006). Wstąpienie w stosunek najmu lokalu mieszkalnego [Entering into the lease of a dwelling]. *Monitor Polski*, 11.
- Kozieł, G. (2014). Art. 691. In A. Kidyba (ed.), *Kodeks cywilny. Komentarz* [Civil Code: Commentary]. Vol. 3. *Zobowiązania — część szczególna* [Liabilities: Special Part]. Warszawa: Wolters Kluwer Polska.
- Mikoda, K., Osajda, K. (2008). In E. Łętowska, K. Osajda (eds.), *Prawo intertemporalne w orzecznictwie Trybunału Konstytucyjnego i Sądu Najwyższego* [Intertemporal Law in the Jurisprudence of the Constitutional Tribunal and the Supreme Court]. Warszawa: Wolters Kluwer Polska.
- Nazar, M. (2001). Ochrona praw lokatorów. Cz. II [Protection of the rights of tenants: Part. II]. *Monitor Polski*, 20.
- Nazar, M. (2008). Konkubinaty małżeństwo [Concubinage and marriage]. In M. Andrzejewski (ed.), *Księga Jubileuszowa Profesora Tadeusza Smoczyńskiego* [Jubilee Book of Professor Tadeusz Smoczyński]. Toruń: Dom Organizatora.
- Panowicz-Lipska, J. (ed.). (2016). *System prawa prywatnego* [Private law system]. Vol. 8: *Prawo zobowiązań — część szczegółowa* [Liability Law: Detailed Part]. Lublin: C.H. Beck.
- Pietrzykowski, K. (ed.) (2011). *Kodeks cywilny. Komentarz do artykułów 450–1088* [Civil Code. Commentary on Art. 450–1088]. Vol. 2. Warszawa: C.H. Beck.
- Radwański, Z. (2008). In S. Grzybowski (ed.), *System prawa cywilnego* [The System of Civil Law]. Vol. 3, part 2. Warszawa: Zakład Narodowy im. Ossolińskich.
- Robaczyński, W. (2005). Przegląd orzecznictwa [Review of jurisprudence]. *Przegląd Sądowy*, 11–12.
- Stecki, L. (1989). In J. Winiarz (ed.), *Kodeks cywilny z komentarzem* [Civil Code with Commentary]. Vol. 2. Warszawa: Wydawnictwo Prawnicze.
- Strus, Z. (2002). Przegląd orzecznictwa [Review of jurisprudence]. *Palestra*, 9–10.

Legal acts

- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku (Dz.U. Nr 78, poz. 483 ze zm.) [Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended)].
- Konwencja o ochronie praw człowieka i podstawowych wolności sporządzona w Rzymie dnia 4 listopada 1950 r., zmieniona następnie Protokołami nr 3, 5 i 8 oraz uzupełniona Protokołem nr 2 (Dz.U. z 1993 r. Nr 61, poz. 284 ze zm.) [Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended)].
- Ustawa z dnia 25 lutego 1964 roku — Kodeks rodzinny i opiekuńczy (tekst jedn. Dz.U. z 2020 r. poz. 1359) [The Act of 25 February 1964 — Family and Guardianship Code (consolidated text Journal of Laws of 2020, item 1359)].
- Ustawa z dnia 23 kwietnia 1964 roku — Kodeks cywilny (tekst jedn. Dz.U. z 2020 r. poz. 1740 ze zm.) [The Act of 23 April 1964 — Civil Code (consolidated text Journal of Laws of 2020, item 1740, as amended)].
- Ustawa z dnia 17 listopada 1964 roku — Kodeks postępowania cywilnego (tekst jedn. Dz.U. z 2021 r. poz. 1805 ze zm.) [Act of 17 November 1964 — Code of Civil Procedure (consolidated text Journal of Laws of 2021, item 1805, as amended)].
- Ustawa z dnia 10 kwietnia 1974 roku — Prawo lokalowe (Dz.U. z 1987 r. poz. 165 ze zm.) [Act of 10 April 1974 — Housing Law (Journal of Laws of 1987, item 165, as amended)].

- Ustawa z dnia 21 sierpnia 1997 roku o gospodarce nieruchomościami (tekst jedn. Dz.U. z 2021 r. poz. 1899 ze zm.) [Act of 21 August 1997 on real estate management (consolidated text Journal of Laws of 2021, item 1899, as amended)].
- Ustawa z dnia 21 czerwca 2001 roku o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie kodeksu cywilnego (tekst jedn. Dz.U. z 2020 r. poz. 611 ze zm.) [Act of 21 June 2001 on the protection of tenants' rights, the commune's housing stock and the amendment to the Civil Code (consolidated text Journal of Laws of 2020, item 611, as amended)].

Jurisprudence

- Postanowienie SN z dnia 19 grudnia 2002 roku, V CZ 186/02, LEX nr 583928 [Decision of the Supreme Court of 19 December 2002, V CZ 186/02, LEX No. 583928].
- Uchwała SN z dnia 23 października 1978 roku, III CZP 52/78, OSNC 1979, Nr 5, poz. 89 [Resolution of the Supreme Court of 23 October 1978, III CZP 52/78, OSNC 1979, No. 5, item 89].
- Uchwała SN z dnia 4 stycznia 1979 roku, III CZP 86/78, OSNC 1979, Nr 7–8, poz. 13 [Resolution of the Supreme Court of 4 January 1979, III CZP 86/78, OSNC 1979, No. 7–8, item 13].
- Uchwała SN z dnia 18 kwietnia 1986 roku, III CZP 15/86, OSNC 1987, Nr 2–3, poz. 33 [Resolution of the Supreme Court of 18 April 1986, III CZP 15/86, OSNC 1987, No. 2–3, item 33].
- Uchwała SN z dnia 16 grudnia 1987 roku, III CZP 91/86, OSNC 1988, Nr 4, poz. 42 [Resolution of the Supreme Court of 16 December 1987, III CZP 91/86, OSNC 1988, No. 4, item 42].
- Uchwała SN z dnia 19 listopada 1996 roku, III CZP 115/96, OSNC 1997, Nr 4, poz. 35 [Resolution of the Supreme Court of 19 November 1996, III CZP 115/96, OSNC 1997, No. 4, item 35].
- Uchwała SN z dnia 21 maja 2002 roku, III CZP 26/02, OSNC 2003, Nr 2, poz. 20 [Resolution of the Supreme Court of 21 May 2002, III CZP 26/02, OSNC 2003, No. 2, item 20].
- Uchwała SN z dnia 5 lipca 2002 roku, III CZP 36/02, OSNC 2003, Nr 4, poz. 45 [Resolution of the Supreme Court of 5 July 2002, III CZP 36/02, OSNC 2003, No. 4, item 45].
- Uchwała SN z dnia 20 listopada 2003 roku, III CZP 77/03, OSNC 2004, Nr 7–8, poz. 109 [Resolution of the Supreme Court of 20 November 2003, III CZP 77/03, OSNC 2004, No. 7–8, item 109].
- Uchwała SN z dnia 20 listopada 2009 roku, III CZP 99/09, OSNC 2010, Nr 5, poz. 74 [Resolution of the Supreme Court of 20 November 2009, III CZP 99/09, OSNC 2010, No. 5, item 74].
- Uchwała SN z dnia 23 września 2010 roku, III CZP 51/10, OSNC 2011, Nr 3, poz. 25 [Resolution of the Supreme Court of 23 September 2010, III CZP 51/10, OSNC 2011, No. 3, item 25].
- Uchwała SN z dnia 28 listopada 2012 roku, III CZP 65/12, OSNC 2013, Nr 5, poz. 57 [Resolution of the Supreme Court of 28 November 2012, III CZP 65/12, OSNC 2013, No. 5, item 57].
- Wyrok ETPC z dnia 2 marca 2010 roku w sprawie Kozak przeciwko Polsce, skarga nr 13102/02, LEX nr 560824 [ECHR Judgment of 2 March 2010 in the case Kozak v. Poland, application no. 13102/02, LEX no. 560824].
- Wyrok ETPC z dnia 24 czerwca 2010 roku w sprawie Kopf i Schalk przeciwko Austrii, skarga nr 30141/04, LEX nr 584459 [ECHR judgment of 24 June 2010 in the case of Kopf and Schalk v. Austria, application No. 30141/04, LEX No. 584459].
- Wyrok NSA z dnia 5 października 2011 roku, I OSK 1222/11, LEX nr 1149136 [Judgment of the Supreme Administrative Court of 5 October 2011, I OSK 1222/11, LEX No. 1149136].
- Wyrok NSA z dnia 22 stycznia 2015 roku, II FSK 3093/12, LEX nr 1769592 [Judgment of the Supreme Administrative Court of 22 January 2015, II FSK 3093/12, LEX No. 1769592].
- Wyrok SA w Szczecinie z dnia 28 marca 2013 roku, I ACa 879/12, LEX nr 1353835 [Judgment of the SA in Szczecin of 28 March 2013, I ACa 879/12, LEX No. 1353835].
- Wyrok SA w Szczecinie z dnia 30 maja 2019 roku, I ACa 89/19, LEX nr 2718998 [Judgment of the SA in Szczecin of 30 May 2019, I ACa 89/19, LEX No. 2718998].

- Wyrok SA w Warszawie z dnia 26 czerwca 2014 roku, I ACa 40/14, LEX nr 1496122 [Judgment of the SA in Warsaw of 26 June 2014, I ACa 40/14, LEX No. 1496122].
- Wyrok SA w Warszawie z dnia 5 września 2018 roku, VII AGa 485/18, LEX nr 2566773 [Judgment of the SA in Warsaw of 5 September 2018, VII AGa 485/18, LEX No. 2566773].
- Wyrok SN z dnia 8 stycznia 1976 roku, I CR 926/75, OSP 1977, Nr 11, poz. 193 [Judgment of the Supreme Court of 8 January 1976, I CR 926/75, OSP 1977, No. 11, item 193].
- Wyrok SN z dnia 13 lutego 1976 roku, I CR 930/75, OSNC 1977, Nr 1, poz. 5 [Judgment of the Supreme Court of 13 February 1976, I CR 930/75, OSNC 1977, No. 1, item 5].
- Wyrok SN z dnia 17 lutego 1978 roku, II CR 24/78, OSNC 1979, Nr 1–2, poz. 32 [Judgment of the Supreme Court of 17 February 1978, II CR 24/78, OSNC 1979, No. 1–2, item 32].
- Wyrok SN z dnia 4 stycznia 1979 roku, III CRN 271/78, OSNC 1979, Nr 9, poz. 178 [Judgment of the Supreme Court of 4 January 1979, III CRN 271/78, OSNC 1979, No. 9, item 178].
- Wyrok SN z dnia 6 maja 1980 roku, III CRN 61/80, MP 1994, Nr 9, poz. 273 [Judgment of the Supreme Court of 6 May 1980, III CRN 61/80, MP 1994, no. 273].
- Wyrok SN z dnia 28 października 1980 roku, III CRN 188/80, MP 1994, Nr 9, poz. 273 [Judgment of the Supreme Court of 28 October 1980, III CRN 188/80, MP 1994, No. 9, item 273].
- Wyrok SN z dnia 28 października 1980 roku, III CRN 230/80, MP 1994, Nr 9, poz. 273 [Judgment of the Supreme Court of 28 October 1980, III CRN 230/80, MP 1994, No. 9, item 273].
- Wyrok SN z dnia 15 stycznia 1981 roku, III CRN 314/80, OSNC 1981, Nr 6, poz. 119 [Judgment of the Supreme Court of 15 January 1981, III CRN 314/80, OSNC 1981, No. 6, item 11].
- Wyrok SN z dnia 20 marca 1981 roku, III CRN 30/81, LEX nr 68 [Judgment of the Supreme Court of 20 March 1981, III CRN 30/81, LEX No. 68].
- Wyrok SN z dnia 15 października 1984 roku, I CR 309/84, OSNC 1985, Nr 8, poz. 113 [Judgment of the Supreme Court of 15 October 1984, I CR 309/84, OSNC 1985, No. 8, item 113].
- Wyrok SN z dnia 5 grudnia 1995 roku, II CRN 128/95, LEX nr 209345 [Judgment of the Supreme Court of 5 December 1995, II CRN 128/95, LEX No. 209345].
- Wyrok SN z dnia 29 kwietnia 1997 roku, I CKU 47/97, LEX nr 30384 [Judgment of the Supreme Court of 29 April 1997, I CKU 47/97, LEX No. 30384].
- Wyrok SN z dnia 17 października 1997 roku, I CKN 90/97, LEX nr 811810 [Judgment of the Supreme Court of 17 October 1997, I CKN 90/97, LEX No. 811810].
- Wyrok SN z dnia 5 grudnia 1997 roku, II CKN 485/97, LEX nr 583765 [Judgment of the Supreme Court of 5 December 1997, II CKN 485/97, LEX No. 583765].
- Wyrok SN z dnia 16 kwietnia 1998 roku, I CKN 621/97, LEX nr 1050446 [Judgment of the Supreme Court of 16 April 1998, I CKN 621/97, LEX No. 1050446].
- Wyrok SN z dnia 29 kwietnia 1998 roku, I CKN 637/97, LEX nr 1225362 [Judgment of the Supreme Court of 29 April 1998, I CKN 637/97, LEX No. 1225362].
- Wyrok SN z dnia 29 września 1998 roku, II CKN 910/97, LEX nr 50753 [Judgment of the Supreme Court of 29 September 1998, II CKN 910/97, LEX No. 50753].
- Wyrok SN z dnia 17 czerwca 1999 roku, I CKN 46/98, LEX nr 1211713 [Judgment of the Supreme Court of 17 June 1999, I CKN 46/98, LEX No. 1211713].
- Wyrok SN z dnia 8 lipca 1999 roku, I CKN 1367/98, OSP 2000, Nr 5, poz. 69 [Judgment of the Supreme Court of 8 July 1999, I CKN 1367/98, OSP 2000, No. 5, item 69].
- Wyrok SN z dnia 3 lutego 2000 roku, I CKN 40/99, LEX nr 811808 [Judgment of the Supreme Court of 3 February 2000, I CKN 40/99, LEX No. 811808].
- Wyrok SN z dnia 15 grudnia 2000 roku, IV CKN 205/00, LEX nr 537011 [Judgment of the Supreme Court of 15 December 2000, IV CKN 205/00, LEX No. 537011].
- Wyrok SN z dnia 20 czerwca 2001 roku, I CKN 1179/98, LEX nr 110589 [Judgment of the Supreme Court of 20 June 2001, I CKN 1179/98, LEX No. 110589].
- Wyrok SN z dnia 8 stycznia 2002 roku, I CKN 723/99, LEX nr 53132 [Judgment of the Supreme Court of 8 January 2002, I CKN 723/99, LEX No. 53132].

- Wyrok SN z dnia 12 lutego 2002 roku, I CKN 527/00, OSNC 2002/12, poz. 159 [Judgment of the Supreme Court of 12 February 2002, I CKN 527/00, OSNC 2002/12, item 159].
- Wyrok SN z dnia 7 grudnia 2012 roku, II CSK 143/12, LEX nr 1288628 [Judgment of the Supreme Court of 7 December 2012, II CSK 143/12, LEX No. 1288628].
- Wyrok SN z dnia 22 października 2014 roku, II CSK 687/13, LEX nr 1566718 [Judgment of the Supreme Court of 22 October 2014, II CSK 687/13, LEX No. 1566718].
- Wyrok SO we Wrocławiu z dnia 4 grudnia 2015 roku, I C 1047/15, LEX nr 2032059 [Judgment of the District Court in Wrocław of 4 December 2015, I C 1047/15, LEX No. 2032059].
- Wyrok TK z dnia 1 lipca 2003 roku, P 31/02, OTK-A 2003, Nr 6, poz. 58 [Judgment of the Constitutional Tribunal of 1 July 2003, P 31/02, OTK-A 2003, No. 6, item 58].
- Wyrok TK z dnia 12 grudnia 2017 roku, P 13/16, OTK-A 2017, Nr 84 [Judgment of the Constitutional Tribunal of 12 December 2017, P 13/16, OTK-A 2017, No. 84].
- Wyrok WSA w Krakowie z dnia 24 kwietnia 2018 roku, III SA/Kr 98/18, LEX nr 2482193 [Judgment of the Provincial Administrative Court in Kraków of 24 April 2018, III SA/Kr 98/18, LEX No. 2482193].